The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 29, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ November 29, 2005, Scheduled case of:

9:00 A.M. DONALD & MARILYN COSTELLO, SP 2005-BR-034 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7013 Leesville Blvd. on approx. 11,234 sq. ft. of land zoned R-3 and HC. Braddock District. Tax Map 80-2 ((5)) (1) 7.

Chairman DiGiulian noted that SP 2005-BR-034 had been administratively moved to December 20, 2005, at 9:00 a.m.

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~ ~ ~ November 29, 2005, Scheduled case of:

9:00 A.M. SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 and 12519 Braddock Rd. on approx. 15.64 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24 and 25 pt. (Admin. moved from 11/30/04, 1/11/05, 2/8/05, and 3/15/05 at appl. req.) (Decision deferred from 4/5/05, 4/26/05, 6/28/05, and 10/11/05) (Admin. moved from 11/1/05 for revisions)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hamid Matin, the applicant's agent, Professional Design Group, Inc., 14301-B Sullyfield Circle, Suite 202, Chantilly, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report addendum dated November 22, 2005. He noted that the BZA had deferred decision to allow the applicant sufficient time to address the BZA's concerns. The March 29, 2005 staff report recommended approval, but urged the applicant to incorporate all of Lot 25 into the application so that the temple could be moved to the west and the entrance driveway reduced in length. The applicant amended the application to incorporate all of Lot 25, as staff recommended, with the proposed 20,000-square-foot building now on 15.64 acres. The temple would contain 364 seats and 142 parking spaces. The parking was increased from the original 114 spaces. The floor area ratio was 0.03 as opposed to 0.06 in the previous application with 64 percent of the site remaining as undisturbed open space, which was 14 percent more than the original application. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with applicable zoning provisions, and recommended approval with the adoption of the proposed development conditions.

In response to Mr. Hart's question concerning Development Condition 5 and the use of the word "worshipers," Susan Langdon, Chief, Special Permit and Variance Branch, said there was another temple on Braddock Road whose number of worshipers on-site had been limited. She said that with these uses one counted the number of attendees in the sanctuary or building, and enforcement would be determined by the Zoning Enforcement staff after making site visits.

Mr. Hart referenced Development Condition 24, and Ms. Langdon explained that staff wanted the temporary trailer and the area previously allotted for temporary parking moved over to the newly included land area, which would be cleared, and thereby an entranceway would be installed that utilized the median break on Braddock Road.

In response to Mr. Hart's concern about the septic/refuse system designed for the temple, Ms. Langdon explained that the setup was recommended and approved by the Sanitary Sewer Department. It met all County requirements, was an enclosed system, and it would not leak into adjoining property's well systems

and was considered safe.

Discussion followed between Mr. Hart and Ms. Langdon concerning staff generated e-mails regarding the parking situation and proposed resolution.

Discussion followed between Mr. Hammack and Ms. Langdon concerning the number of worshipers permitted. She clarified that the number did not correlate with the facility's square footage, that issues such as the provision of parking, the size of the site, and the size of the building all were considered by staff when evaluating a requested number of worshipers. Ms. Langdon explained the parking provisions, adding that staff consulted with Zoning Enforcement to assure that compliance was enforceable with both the parking and the number of attendees.

Mr. Matin explained that the temple's service was ongoing all day Sunday with worshipers arriving and leaving at varied times throughout the day and assured the Board that the parking arrangement was satisfactory for the nature of the services. He explained the temple's septic system and holding tank, pointing out that it was approved by the County's Health Department and Department of Public Works. Mr. Matin explained where the applicant proposed to place the temporary trailer, which would accommodate additional parking. He noted that the location was not where staff suggested, but where the applicant believed was more appropriate considering that there would be ongoing construction activities for several years. He requested that proposed Development Condition 24 be struck. Mr. Matin referenced Condition 25, concurring that the applicant agreed to provide 33 parking spaces, but the last sentence regarding the access road, which was part of the original application, he requested be struck.

In response to Mr. Hart's question, Mr. Matin explained that the temple would also have smaller weekly services, and sought to keep the construction traffic and equipment separated from the worshipers. He explained the current proposed access way, acknowledging that a U-turn was required. He responded to several more questions from Mr. Hart concerning certain depictions on the plat, an area consisting of paving stones, and the anticipated number of attendees to annual special events/services.

Ms. Langdon explained staff's standard language for development conditions for places of worship regarding maximum numbers for seats or worshipers in the main area of worship. She said she knew of only one mosque whose number was specifically limited to 100 people on-site at any one time. In response to Mr. Hammack's question, she explained the "off-site parking designation by a legal right approval," which was planned for the temple.

In response to Mr. Hammack's question on how the temple arrived at the number 364 for worshipers, Mr. Matin explained that the temple had discussed projections for the next ten years, considering the site and building constraints with a continual flow of worshipers coming and going during a service, and had determined that 364 worshipers would be accommodated.

In response to Mr. Byers' comment concerning the temporary proposed access way which utilized a U-turn configuration to enter the site during three years of construction, Ms. Langdon said that without a median break, the entranceway at that location to accommodate 100 worshipers was not supported by the Department of Transportation as it was considered dangerous, and that issue was the reason for Development Conditions 24 and 25.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, explained staff's reservation over the parking situation and its proposed solution through a shuttle bus service.

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

Mr. Hammack moved to approve SP 2004-SP-052 for the reasons stated in the Resolution.

Mr. Hart seconded the motion. He said he agreed with Mr. Hammack that the case had improved significantly with the building shifted to the other lot, and he hoped the development conditions would mitigate any impact. He said he still had concerns over the parking situation, citing another church located on Braddock Road where during special events vehicles parked in the median strip and on both sides of the

~ ~ ~ November 29, 2005, SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052, continued from Page 2

road. Mr. Hart said he thought the Ordinance did not adequately address such situations by correlating the number of worshipers with the number of seats and the tabulation of necessary parking. Mr. Hart said he believed the matter was another issue that should be considered on the Work Program as it was an ongoing problem.

Mr. Hammack commented that he thought the BZA once recommended that the number of worshipers be related to the square footage of the main worship area, which he thought was a more appropriate standard to calculate the load factor in relation to the required parking.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 and 12519 Braddock Rd. on approx. 15.64 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24 and 25. (Admin. moved from 11/30/04, 1/11/05, 2/8/05, and 3/15/05 at appl. req.) (Decision deferred from 4/5/05, 4/26/05, 6/28/05, and 10/11/05) (Admin. moved from 11/1/05 for revisions) 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 29, 2005; and

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

1. The owner of the property is the applicant.
2. The applicant has satisfied the other requirements of the Ordinance.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 03-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Sri Venkateswara Lotus Temple of Virginia, and is not transferable without further action of this Board, and is for the location indicated on the application, 12501 and 12519 Braddock Road, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Professional Design Group, Inc., dated May 6, 2004, as revised through October 4, 2005.

3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved

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

5. The maximum number of worshippers in the main area of worship shall be 364.

6. Parking shall be provided as depicted on the Special Permit Plat, except as modified by Condition 25.

7. All parking shall be provided on-site, except as otherwise provided in these development conditions. No parking shall be permitted on Braddock Road or other local streets. In the event parking cannot be completely accommodated on-site, the applicant shall provide a shuttle service to transport worshippers to and from the subject property from an approved legal off-site parking location. Such off-site parking location shall be approved by the Zoning Administrator.

8. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be supplemented as shown on the plat, with the following modifications:

   - Additional plantings shall be provided along the eastern lot line adjacent to the proposed stormwater management pond, and in the northwestern portion of Lot 24, to screen the view of the developed area from Braddock Road. Additional plantings shall be provided along the western lot line (Lot 25) between the parking lot and the western lot line to supplement existing vegetation to screen the parking lot from the adjacent residential use if deemed necessary by Urban Forestry Management (UFM). The size, species and location of plantings shall be provided in consultation with UFM.

9. Foundation plantings and shade trees shall be provided around the church building to soften the visual impact of the structures. The species, size, and location shall be determined in consultation with UFM of DPWES.

10. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

11. The barrier requirement shall be waived along all lot lines.

12. The limits of clearing and grading shall be the minimum amount feasible as determined by DPWES and shall be no greater than shown on the special permit plat. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including UFM, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including UFM, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction.

13. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.

14. The applicant shall submit a tree preservation plan as part of the first and all subsequent site plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and shall be subject to the review and approval of Urban Forest Management, DPWES.

    The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 10 inches in diameter and greater, and 20 feet to either side of the limits of clearing and grading shown on the special permit plat for the entire site. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the plat, and those additional areas in which trees can be preserved as a result of final engineering. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities

that will maximize the survivability of trees identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan."

All tree preservation-related work occurring in or adjacent to tree preservation areas shall be accomplished in a manner that minimizes damage to vegetation to be preserved including any woody, herbaceous or vine plant species that occurs in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation. Any removal of any vegetation or soil disturbance in tree preservation areas including the removal of plant species that may be perceived as noxious or invasive, such as poison ivy, greenbrier, multi-floral rose, etc. shall be subject to the review and approval of Urban Forest Management, DPWES.

The use of motorized equipment in tree preservation areas will be limited to hand-operated equipment such as chainsaws, wheel barrows, rake and shovels. Any work that requires the use of motorized equipment, such as tree transplanting spades, skid loaders, tractors, trucks, stump-grinders, etc., or any accessory or attachment connected to this type of equipment shall not occur unless pre-approved by UFM, DPWES.

The applicant shall 1) root prune, 2) mulch, and 3) provide tree protection fencing in the form of four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart, or other forms of tree protection fencing approved by Urban Forest Management, DPWES for all tree preservation areas. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets and demolition plan sheets of the site plan submission. The details for these treatments shall be reviewed and approved by Urban Forest Management, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- Tree protection fence shall be installed immediately after root pruning, and shall be positioned directly in the root pruning trench and backfilled for stability, or just outside the trench within the disturbed area.
- Immediately after the phase II E&S activities are complete, mulch shall be applied at a depth of 4 inches extending 10 feet inside the undisturbed area without the use of motorized equipment
- An Urban Forest Management, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

15. A minimum of 60% of the site shall be preserved as undisturbed open space. There shall be no clearing or grading of any vegetation except for dead or dying vegetation, as determined by UFM. No structures or fences shall be permitted in the area of undisturbed open space.

16. If public sanitary sewer is not available, a special permit amendment will be required to incorporate a septic drainfield on the site.

17. If blasting is required, and before any blasting occurs on the application property, the applicant will insure that blasting is done per Fairfax County Fire Marshal requirements and all safety recommendations of the Fire Marshal, including, without limitation, the use of blasting mats, shall be implemented.

18. If DPWES, in coordination with the Air Quality and chemical Hazards Section of the Health Department and with the Soil Science Office, determines that a potential health risk exists caused by the presence of rock containing asbestos on the site, the developer shall:

    a. Take appropriate measures as determined by the Health Department to alert all construction personnel as to the potential health risk.

b. Commit to appropriate construction techniques as determined by DPWES, in coordination with the Air Pollution Control Division and with the Soil Science Office, to minimize this risk. Such techniques may include, but shall not be limited to, dust suppression measures during all blasting and drilling activities, covered transportation of removed material presenting this risk and appropriate disposal.

19. Any proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. All lighting shall be full cut-off luminaries and shall be controlled by timers (except for security lighting). No uplighting of landscaping, signage or architecture shall be permitted.

20. The maximum height of the building, measured from the lowest ground level to the top of the building, excluding the spire, shall be 60 feet.

21. Unless required by DPWES to construct a dry stormwater detention pond, the applicant shall provide bioretention Stormwater management/Best Management Practices facilities that include, to the extent possible, plant materials that can assist in screening the development from Braddock Road. Subject to approval by DPWES, the pond shall be designed with structural elements to increase holding time, such as sediment traps and forebays and/or trickle ditch check dams to divert water into the pond floor. The pond shall be designed to encourage the establishment of a shallow marshy wetland floor to create a naturalized planted environment.

22. The applicant shall obtain a sign permit for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.

23. A geo-technical engineering and soil study shall be submitted to DPWES for review and approval as determined necessary by DPWES and implemented as determined by DPWES.

24. Notwithstanding that which is shown on the plat, the temporary trailers and associated parking shall be placed on Lot 25 in an area to be cleared for the main place of worship, driveway, and/or parking lot.

25. The temporary trailer depicted on the plat shall be approved for a time period not to exceed three (3) years from the date of the approval of the special permit. Development Conditions numbers 1, 2, 3, 4, 16, 19, 22 and 25 shall be implemented prior to the issuance of the Non-RUP for the trailer. The trailer shall have a maximum of 100 seats. Thirty-three (33) parking spaces shall be provided prior to issuance of the Non-RUP for the trailer, in an area now depicted as a parking area on the Special Permit Plat. Additionally, the access road shall be constructed and transitional screening along Braddock Road adjacent to the access road, as depicted on the plat, shall be installed prior to issuance of the Non-RUP for the trailer.

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

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

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

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~ ~ ~ November 29, 2005, Scheduled case of:

9:30 A.M. THANH TRUONG, A 2005-PR-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a place of worship on property in the R-3 District without an approved special permit in violation of Zoning Ordinance provisions. Located at 3418 Annandale Rd. on approx. 3.35 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A. (Decision deferred from 5/24/05)

Chairman DiGiulian noted that a deferral request had been received, and staff recommended a date of February 14, 2006.

Diane Johnson-Quinn, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in her memorandum dated November 18, 2005. This was an appeal of a determination that the appellant was operating a place of worship in the R-3 District without an approved special permit, in violation of Zoning Ordinance provisions. She reminded the Board that the public hearing had been held on May 24, 2005, during which there had been considerable discussion on the definition of a place of worship and the activities occurring on the property. She stated that the appellant had submitted paperwork evidencing the sale of the subject property to a developer and his proposed acquisition of another parcel. Ms. Johnson-Quinn said the appellant was requesting a deferral until May of 2006, which was the anticipated closing on the sale of the subject property. She said staff would agree to an interim deferral to February of 2006 as the property had an ongoing violation.

Thanh Truong, the appellant, 3418 Annandale Road, Falls Church, Virginia, said he was requesting a deferral. In response to Mr. Hammack's question concerning the February date, Mr. Truong said he agreed to staff's suggested date.

Chairman DiGiulian called for speakers to address the issue of a deferral.

John Murphy, 7321 Statecrest Drive, Annandale, Virginia, came forward to speak. He said he understood the contract for the subject parcel was based on the developer's ability to build a certain number of homes, the County had rejected the plan, and if the deferral was based on the premise of the property's sale, the premise warranted reexamination. Mr. Murphy stated his objection to the deferral of the decision because the temple was in violation of the zoning laws for over seven years, had sought no remedy, and would continue operating unfettered, as already demonstrated over the years, until the new deferral date. Mr. Murphy urged the Board to uphold the Zoning Administrator's determination.

Addressing Mr. Murphy's comments, Mr. Hart referenced staff's November 18th memorandum noting that although the developer's initial plan was rejected, the Department of Public Works and Environmental Services had suggested revisions, and with a revised plan, the proposal was probable, and that would resolve the subject property's violation.

With respect to the potential acquisition of a property on Franconia Road, Mr. Hart asked whether staff would be speaking to the appellant about what activities might or might not require a special permit approval and how to proceed so the problem was not being shifted from one lot to another. Ms. Johnson-Quinn replied that she had been unable to locate a street file on the Franconia Road property and found no special permit listed for the property, although the tax assessment file showed it had been built in the 1920 or 1930 timeframe. She said she intended to do a title search to determine whether it had always been owned by churches to verify that it was a 15-101 type of place of worship, in which case the proposed use could theoretically go right in provided the buildings were not being expanded. She said she would try to document what the level of place of worship activity had been on the property and discuss with the appellant how his proposed use would fit into that, and the appellant would have to explain to staff his proposal regarding the use of the new property.

Discussion followed between Mr. Hart, Mr. Hammack, and Ms. Johnson-Quinn concerning the services held at the temple as explained by the appellant and as described by staff, and whether a special permit was required for what the Buddhist monks considered were prayer services.

Bruce F. Miller, Senior Zoning Inspector, Zoning Enforcement Division, said he issued the Notice of Violation because the site's special permit had expired, and although the monks' main worship service had been moved to another location, prayer services still continued at the subject property. He noted that the services performed involved a type of blessing as there were no weddings or funeral services. Staff's position

~ ~ ~ November 29, 2005, THANH TRUONG, A 2005-PR-008, continued from Page 7

remained that the subject parcel was utilized as a place of worship, and staff supported a deferral for additional time in order to negotiate an acceptable solution within a specific timeframe.

Ms. Johnson-Quinn said staff would reinvestigate the ongoing activities at the subject property, which had been reduced but not eliminated, and staff would reconsider the similarities and differences between the Hindu and Buddhist religions to ascertain the acceptability of certain ceremonies under a special permit approval.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to defer decision on A 2005-PR-008 to February 14, 2006, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 29, 2005, Scheduled case of:

9:30 A.M. ROBERT AND JOYCE HARRISON, A 2004-PR-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have constructed an addition which does not meet the minimum side yard requirement for the R-1 District in violation of Zoning Ordinance provisions. Located at 8909 Glenbrook Rd. on approx. 31,351 sq. ft. of land zoned R-1. Providence District. Tax Map 58-2 ((4)) 76. (Admin.moved from 1/25/05, 7/26/05, and 9/13/05 at appl. req.)

Chairman DiGiulian noted that A 2004-PR-038 had been withdrawn.

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~ ~ ~ November 29, 2005, Scheduled case of:

9:30 A.M. BATAL CORBIN, LLC, A 2005-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of the order contained in a February 10, 2005, Notice of Violation directing the appellant to immediately cease all development activities until such time as legislative action is secured from the Board of Supervisors to resolve the violation. Located at 2346 Gallows Rd. on approx. 7.69 ac. of land zoned R-2. Providence District. Tax Map 39-4 ((1)) 26. (Admin. moved from 6/7/05, 9/20/05, and 11/8/05 at appl. req.)

Chairman DiGiulian noted that A 2005-PR-007 had been withdrawn.

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~ ~ ~ November 29, 2005, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17. (Deferred from 5/11/04 for notices.) (Decision deferred from 7/20/04, 9/14/04, 9/28/04, 11/9/04, 12/14/04, 4/5/05, and 10/11/05)

Chairman DiGiulian noted that the appellants' agent, Mr. Phillips, had requested a deferral to December 6, 2005.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, acknowledged that the appellants had requested a deferral. She stated that the violation was longstanding, and because staff knew a violation existed, they did not support an additional deferral.

Chairman DiGiulian called for speakers to address the issue of the deferral request; there was no response.

~ ~ ~ November 29, 2005, CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004, continued from Page 8

Mr. Hammack commented that the case was ongoing for a number of years, and he believed a deferral of one week was not unreasonable. He moved to defer decision on A 2004-SP-004 to December 6, 2005, at 9:30 a.m., stipulating that no further deferrals would be granted. Mr. Ribble seconded the motion.

Mr. Byers commented that he would reluctantly support a one-week deferral based on the stipulation that no further deferrals would be considered. He pointed out that on one occasion a deferral had already been granted as a courtesy to the agent, and he believed the facts appeared clear-cut, and the matter warranted resolution.

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

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~ ~ ~ November 29, 2005, After Agenda Item:

Consideration of Waiver of Posting Requirement
A 2005-SU-050, Liz Cristofano

In response to Mr. Hart's question concerning the Board's purview procedurally to consider a request to waive posting requirements, Diane Johnson-Quinn, Assistant to the Zoning Administrator, quoted pertinent Zoning Ordinance language. She said that because there were no procedural processes defined, staff brought the issue before the BZA as an After Agenda Item. She said, to her knowledge, she knew of no other time the Board had considered such a request, and there was no notification that the Board would consider the waiver request. Ms. Johnson-Quinn clarified that, in this particular instance, staff was not opposed, but they did not support or encourage such requests. She clarified that the requester of the waiver was not the appellant in a subject appeal, but the owner of the subject property, and that the requester, Ms. Thies, was unable to be present.

Chairman DiGiulian recognized a speaker and requested she approach the podium and identify herself for the record.

Liz Cristofano, 13189 Ashvale Drive, Fairfax, Virginia, identified herself as the next-door neighbor to Ms. Thies. Ms. Cristofano voiced her opposition to granting the waiver as she believed the posting should be required so that interested parties would be aware of any actions being considered.

Chairman DiGiulian called for a motion.

Mr. Hammack commented that he believed it bad policy to waive posting requirements and moved that the posting requirement not be waived. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 29, 2005, After Agenda Item:

Request for Intent to Defer
Michael Bratti and Ginni Bratti, A 2005-DR-009

In response to Mr. Hammack's question, Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that Mr. Bratti had reduced the height of the fence to six feet.

Mr. Hammack moved to approve the request for an intent to defer A 2005-DR-009 to February 14, 2006. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 29, 2005, After Agenda Item:

Additional Time Request
Holy Spirit Lutheran Church, SP 95-S-050

Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff recommended denial of the requested 18 months of additional time because in 2003 when the applicant requested 30 months of additional time, staff had pointed out that at the completion of those 30 months, 10 years would have transpired since the application had been approved. She noted that during those ten years, there were significant changes to the area and an increase in traffic that would affect the property, and staff believed it warranted reevaluation. Ms. Langdon reminded the Board that staff had stated at that time in 2003 it would not support another additional time request.

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

Sarah E. Hall, Esquire, Blankingship Keith, representing Holy Spirit Lutheran Church, explained that although a significant amount of time had elapsed, the church had undergone a series of misfortune. She said the application property would be the first home for the church, that it recently merged with another Lutheran Church, and would soon afford its parishioners an eastern and western campus. She also stated that the church's engineering firm closed its Virginia office, and that was a major setback for the church as several documents, site plans, et cetera, had been pending. Another firm was retained, and the church anticipated that its record plat would be approved and construction could soon commence. Ms. Hall stated that the church had significant citizen approval and was welcomed as a credit to the community. She assured the Board that the applicant was quickly proceeding to the finish of its project proposal and requested that the additional time be approved to allow them to do so.

In response to Mr. Hart's question, Ms. Hall said she believed 12 months was sufficient time for the church to complete its project, stating that the holdup was the approval of a record plat with a signature problem and a site plan with some revisions being approved. In response to Mr. Hammack's question, she said the applicant would not refuse 18 months of additional time, that staff opposed 18 months, and that she believed 12 months was sufficient.

Mr. Ribble moved to approved 18 months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

Mr. Hart acknowledged staff's recommendation and complimented staff on its determination that the application warranted revisiting.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Bristow Shopping Center case, the Virginia Equity Solutions case, the Lake Braddock case, the McCarthy case, the BZA By-Laws, and correspondence with the County Executive and possibly others, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

The meeting recessed at 10:42 a.m. and reconvened at 12:17 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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Mr. Hart moved that the Chairman be authorized to send the letters discussed during closed session to Mr. Foster, Ms. Bailey, Mr. Chadwick, and to the Clerk of the Circuit Court. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.
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~ ~ ~ November 29, 2005, continued from Page 10

As there was no other business to come before the Board, the meeting was adjourned at 12:18 p.m.

Minutes by: Paula A. McFarland

Approved on: July 1, 2008

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 6, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; Norman P. Byers; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:02 a.m. and asked if there were any matters to be brought before the Board.

Mr. Hart said he and Mr. Byers had been guests at the Planning Commission's roundtable discussions, hosted by Peter F. Murphy, Jr., Chairman of the Planning Commission, and noted that the Board of Zoning Appeals was the featured topic. Mr. Hart said the discussion would be broadcast on Channel 16 on Thursday evening, December 8, 2006, at 6:30 p.m., and would be shown again throughout the month.

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

~ ~ ~ December 6, 2005, Scheduled case of:

9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, and 7/12/05)

9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, and 7/12/05)

The applicants were not present when called to the podium. Chairman DiGiulian asked staff whether they knew why the applicants were not present.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applications had been deferred numerous times for decision for both a building in error and a request to construct a fence on the property to keep balls from the County's golf course from landing on the applicants' property, and Deborah Hedrick was the staff coordinator on this case. Ms. Langdon explained that Ms. Hedrick had spoken to the applicants' agent the prior Wednesday, and he had indicated that the applicant would seek to withdraw the applications.

John Carter, the applicants' agent, no address given, arrived and said he did not know why the applicants were not present. He requested that the Board defer the cases until he could contact Mr. Hatcher to determine why he was not present at the hearing.

Chairman DiGiulian said he would come back to the case later in the meeting.

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~ ~ ~ December 6, 2005, Scheduled case of:

9:00 A.M. ROBIN AND EILEEN MARCOE, SP 2005-BR-031 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.1 ft. with eave 3.4 ft. from rear lot line and 3.2 ft. with eave 2.4 ft. from side lot line. Located at 5646 Inverchapel Rd. on approx. 13,337 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((3)) (3) 49. (Admin. moved from 11/8/05 at appl. req.)

Chairman DiGiulian noted that SP 2005-BR-031 had been administratively moved to January 24, 2006, at 9:00 a.m., at the applicants' request.
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~ ~ ~ December 6, 2005, Scheduled case of:

9:00 A.M. ROBIN G. DAVIS, SP 2005-LE-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 14.1 ft. with eave 13.7 ft. from side lot line. Located at 6504 Windham Ave. on approx. 26,793 sq. ft. of land zoned R-1. Lee District. Tax Map 90-2 ((9)) 100.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robin Davis, 6504 Windham Avenue, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions to minimum yard requirements based on errors in building location to permit an addition, specifically the enclosure of an existing carport, to remain 14.1 feet with eave 13.7 feet from a side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 5.9 feet and 3.3 feet, respectively, were requested.

Ms. Davis presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she had purchased the property in 1993, and the garage structure had already existed. She said she had no idea that a permit had not been obtained for the structure until she had applied for a permit to do some additional construction on her home. Ms. Davis said she had submitted the application in order to correct the error so that she could proceed with the planned construction.

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

Mr. Byers moved to approve SP 2005-LE-037 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBIN G. DAVIS, SP 2005-LE-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 14.1 ft. with eave 13.7 ft. from side lot line. Located at 6504 Windham Ave. on approx. 26,793 sq. ft. of land zoned R-1. Lee District. Tax Map 90-2 ((9)) 100. 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 6, 2005; and

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

1. The applicant is the owner of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

~ ~ ~ December 6, 2005, ROBIN G. DAVIS, SP 2005-LE-037, continued from Page 14

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This Special Permit is approved for the location of the garage addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated August 10, 2005, as revised through November 7, 2005, as submitted with this application and is not transferable to other land.

2. A building permit and final inspections shall be diligently pursued within 30 days and obtained within 90 days of final approval of this application for the addition or this Special Permit shall be null and void.

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

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

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~ ~ ~ December 6, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF PEACE EVANGELICAL LUTHERAN CHURCH, SPA 98-M-050 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-050 previously approved for a chuch to permit a correction in building height. Located at 6362 Lincolnia Rd. on approx. 4.41 ac. of land zoned R-3. Mason District. Tax Map 72-1 ((1)) 52; 72-1 ((7)) 109 and 110. (Admin. moved from 9/20/05 and 11/8/05 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ed Donohue, the applicant's agent, Holland and Knight, LLP, 2099 Pennsylvania Avenue, N.W., Washington, DC, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 98-M-050, previously approved for a church, to permit a correction to the building height from 25 feet to 32.5 feet. No other changes were proposed with the application except the closure of the entrance from Lincolnia Road and additional transitional screening, which were required with the approval of SP 98-M-050 and were never completed. Staff recommended approval of SPA 98-M-050 subject to the proposed development conditions.

Mr. Donohue presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that Steve England, a member of the church, was present. He

said the applicant agreed with staff's comments with respect to the correction in height and the closure of the entrance on Lincolnia Road. He asked for clarification of Development Condition 8 that dealt with transitional screening on the northeast corner of the property. Mr. Donohue stated that the church was concerned that a dense, double row of plantings, while providing screening to the neighbors, would be conducive to some adverse activities that had been seen in that area, for example, teenagers drinking and litter. He asked that the church be allowed to put in a more transparent screening to discourage that type of activity. He stated that a single row of six-foot trees had been planted, and the church preferred that planting to the one shown on the plan that had been suggested by staff.

Mr. Hart asked staff to respond to Mr. Donohue's request concerning Development Condition 8. Mr. Varga said that staff thought Condition 8 more closely resembled the plan that had been presented on the original 1998 plat. He said the two rows of trees were necessary to provide adequate transitional screening to the north. Mr. Varga pointed out the area where the previous development conditions had not been fully implemented. He said the portion of the 1998 plat showing the double row of trees had been completed, and the 2005 plat that staff had received represented the plantings the church was requesting. In answer to another question from Mr. Hart, Mr. Varga said that staff did not consider it to be a denial issue.

Mr. Hart asked Mr. Donohue if the applicant agreed with the wording in the development conditions as presented by staff. Mr. Donohue stated that the 1998 plan showed 19 species of vegetation, and staff was calling for not only what was stated in the 1998 plan, but they were adding 11 more. Susan Langdon, Chief, Special Permit and Variance Branch, stated that was not correct. She said staff had responded to the 2005 plan submitted by the church and were subtracting from what had been shown in 1998, and that was how staff had arrived at Condition 8.

In answer to Mr. Hart's question, Mr. Donohue said that his point was that the 2005 plan submitted by staff added four more species of trees for a total of 23, and the agreement in 1998 was for 19. Mr. Hart said he saw nothing in the development condition about species. He asked for clarification, noting that what he saw was that the 1998 drawing plus 11 more evergreens was what the development condition stated. Ms. Langdon said that was correct, and that was staff's understanding. She stated that staff had looked at the approved development plan from 1998 that was in the files and compared that against the new plan that the church had submitted.

Mr. Donohue stated that may be where one error was, because in the 1998 plan the applicant culled out 11 white pines for the total campus; however, in the location referred to by Mr. Hart, there were less than that. He reiterated that the 11 trees came from a total plant count for the entire church.

Mr. Hart pointed out that the development condition did not specify white pines and stated that there was a blight associated with white pines at the present time. He asked why there were 19 different species. Mr. Donohue responded that there were a total of 19 new species as required in the 1998 plan. Ms. Langdon stated that she thought Mr. Donohue was referring to 19 different trees, not different species.

In response to Mr. Hart's question concerning teenagers using the property for drinking parties, Mr. Donohue responded in the affirmative and said it was happening in other locations around the neighborhood as well.

Mr. Donohue stated that other than the requirement for planting a double row of trees, the conditions were acceptable to the applicant and that the applicant could comply with the six-month deadline contained in Condition 14.

Mr. Hart asked why the applicant had not closed the entrance to Lincolnia Road when the original application was approved. Mr. Donohue deferred to Steve England, Arnold & Porter, 1600 Tysons Boulevard, McLean, Virginia, for a response.

Mr. England stated that shortly after the 1999 special permit was approved, there was a significant turnover in the church, and the condition became lost. He said the church had just recently become aware of the requirement to close the entrance, and they intended to do so as soon as the amendment application was approved. Mr. Hart stated that the Board was serious about applicants adhering to the development conditions. He said there was a requirement that a copy of a special permit be posted in a conspicuous place so that even if there was turnover in personnel, the new parishioners/officers would be informed and

~ ~ ~ December 6, 2005, TRUSTEES OF PEACE EVANGELICAL LUTHERAN CHURCH, SPA 98-M-050, continued from Page 16

duty-bound to follow the conditions just as the original group had been. He said the Board wanted to ensure that the use was consistent with the approval and the development conditions were implemented. He stated that if the Board was going to approve the application, it was important that the church be consistent with the approval and that it did not pick and choose among the conditions that had been agreed to.

Referring to Condition 6, Mr. Beard asked what had happened with respect to the discrepancy in height as stated in the staff report and on page 3 of the letter submitted by the applicant. Mr. Donohue explained that the error on the plat was identified by the Zoning Evaluation Division, and in so doing staff had also determined that the entrance located on Lincolnia Road had not been closed, as well as the issues concerning the implementation of landscaping. Mr. England stated that the church building had been built approximately 40 years ago, and to the best of his knowledge, the issue of height was one that was carried over from the 40-year-old plat and might reflect a change in the Zoning Ordinance at some point in the last 40 years. He said the church structure had not been modified in that time, and the applicant had not been aware of any noncompliance until the present issues were raised.

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

Mr. Hart moved to approve SPA 98-M-050 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF PEACE EVANGELICAL LUTHERAN CHURCH, SPA 98-M-050 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-050 previously approved for a chuch to permit a correction in building height. Located at 6362 Lincolnia Rd. on approx. 4.41 ac. of land zoned R-3. Mason District. Tax Map 72-1 ((1)) 52; 72-1 ((7)) 109 and 110. (Admin. moved from 9/20/05 and 11/8/05 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 6, 2005; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony showing compliance with the required standards for a special permit.
3. This is a relatively modest request.
4. The reasons for the existing problem are not sufficient that the Board would have concern about compliance with the new conditions.
5. The development conditions adequately mitigate any impacts.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees of Peace Evangelical Lutheran Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 6362 Lincolnia Road, and is not transferable to other land.

~ ~ ~ December 6, 2005, TRUSTEES OF PEACE EVANGELICAL LUTHERAN CHURCH, SPA 98-M-050, continued from Page 17

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat prepared by Burgess & Niple, signed and dated October 31, 2005, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

6. The maximum number of seats in the main area of worship shall be limited to 280 seats.

7. The number of parking spaces provided shall satisfy the requirements set forth in Article 11 and shall be a minimum of 70 parking spaces. Parking spaces shall not number more than 104 spaces. All parking for this use shall be on site, as shown on the special permit plat.

8. Transitional screening and barriers shall be modified in favor of that shown on the special permit amendment plat.

9. Parking lot landscaping shall be provided as depicted on the special permit amendment plat.

10. Lighting located on the application site shall focus onto the subject property only. If necessary, appropriate lighting shields shall be installed to prevent high intensity glare form projecting onto adjacent residential property. Any new lights that may be installed on the site shall be limited to a maximum of twelve (12) feet in height and shall be provided in accordance with the performance standards contained in Par. 9, Outdoor Lighting Standards, of Art. 14 of the Zoning Ordinance.

11. The concrete deposit located in the lawn near the northern parking lot area shall be removed.

12. The pavement of the entrance drive from Lincolnia Road shall be removed, and the area shall be scarified and replanted with grass and/or other ornamental vegetation.

13. The parking lot shall be re-striped as denoted on the special permit amendment plat.

14. All plant material shall be planted and improvements completed as outlined in Conditions 8, 9, 11, 12, and 13 above, and an inspection made by the staff coordinator and/or Branch Chief of the Special Permit/Variance Branch, ZED, within six (6) months of approval of this special permit amendment, and prior to issuance of a new Non-RUP (if needed), or this special permit shall be null and void.

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

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

Mr. Ribble seconded the motion, which carried by a vote of 7-0.
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~ ~ ~ December 6, 2005, Scheduled case of:

9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, and 7/12/05)

9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, and 7/12/05)

Chairman DiGiulian called the applicants to the podium. John Carter, the applicant's agent, no address given, stated that he had spoken to Mr. Hatcher, who had indicated that he would not be able to be present for the hearing.

Mr. Carter stated that since the last time the application had been before the Board, he had conducted a hearing in front of Judge Vieregg in the Fairfax County Circuit Court and had requested that the judge enter an order to quiet title to remove the potential cloud on the title with respect to the 25-foot area that could be considered an easement on the property that had caused the Board of Zoning Appeals (BZA) to determine that it could not render any decisions regarding some of the things requested. He said that after the hearing the judge had decided that he could not enter such an order immediately and had referred it to a commissioner in chancery and had also suggested that a guardian ad litem be appointed in the case, even though none of the parties that were served had responded. He said he thought most of the parties were deceased. He said Mr. Hatcher was concerned about the costs associated with the matter, particularly in light of having a commissioner and guardian ad litem, and Mr. Hatcher had not given him the funds for the commissioner to proceed with the hearings.

Mr. Carter stated that when he had spoken to Mr. Hatcher several weeks prior, Mr. Hatcher indicated that he might drop the whole matter and was frustrated because he had initiated the process the prior year because he wanted a fence erected to protect his property from the golf balls that were continuing to land on his property from the adjacent golf course. Mr. Carter said he had found out the morning of the hearing that the Zoning Administration Division believed it was possible that a sports containment structure could be constructed on the property, and Mr. Hatcher would like the opportunity to have a fence erected even though currently there was an issue as to how that would be accomplished because the Park Authority, who had previously stated it would be willing to put up a fence, had changed its position. If there was a possibility a fence could be erected, then it was Mr. Carter's opinion that Mr. Hatcher felt the extra expenses involved with proceeding would be worth it. Mr. Carter asked the Board to again defer the applications to allow the applicants to complete the commissioner's hearing which, assuming it would be uncontested, would not take a long period of time.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that Debbie Hedrick, Staff Coordinator, had spoken with Mr. Carter the prior week, but Ms. Langdon said she wanted to make sure the applicant understood that the application for the sports containment fence was an application for a special permit with additional fees required and a trajectory plan that must be submitted with the application. She said there were other building in errors on the site that continued, several structures located in the wrong place, one that was 116 square feet too large, so there were still outstanding issues that also needed to be addressed.

Mr. Hart noted that the Board had deferred the applications several times. He said the situation was very complicated, and the applicants had many problems that needed to be cleared up. He said the applicants had a house that had been expanded without the right approvals that was currently too close to the lot line and partly in a 25-foot right-of-way. Mr. Hart said that would be a problem if the applicants ever attempted to sell the property, and it was in the applicants' interest to address the issues. He said that some members of the Board had a problem with the idea of approving the structure in the 25-foot right-of-way, which the applicants were attempting to clear up, and he thought that the reason for the guardian ad litem was probably because there were unknown errors or unknown parties who might be claiming an interest. Mr. Hart said he did not think the judge was being unreasonable, but the applicants had plenty of time to comply.

Referring to the location of the house, Mr. Hart said he would be more favorably inclined to that if the 25-foot right-of-way issue was resolved because the house had been there for so many years.

Mr. Hart asked whether any of the sheds had been moved off the Park Authority property since the last hearing. Mr. Carter said he could not state that had been done. He said he had spoken to the applicants about the requirement and had been told that the applicants would take care of moving the one shed that was moveable, but he did not know whether that had been accomplished. Mr. Carter said the other shed was problematic because it was a poured foundation framed structure. He said Mr. Hatcher had inherited the property from his father, and his father had built the garage addition before Mr. Hatcher inherited the property, and the poured foundation shed had been there for many years.

Mr. Hart stated that it was better that Mr. Hatcher inherited it than having done it himself for the purposes of meeting the standards. He said his concern was not so much making a decision on that, but that if the sheds could be moved, the applicants had had plenty of chances to do so. Mr. Hart said the shed that was on the Park Authority property would not be able to remain, regardless of the size. He said he thought the Zoning Ordinance amendment on the containment structures was for balls, golf balls, and high nets. He said it had been his understanding that Mr. Hatcher thought that what the Park Authority wanted to do was too small, and the Park Authority was not agreeable with what Mr. Hatcher wanted. Mr. Hart said that if someone was going to file an application to do a container structure, that person had to be on the same wavelength as the Park Authority because if they were not willing to pay for it, Mr. Hatcher was not going to do it, and it was on the Park Authority's property, it was all academic. Mr. Hart stated that if the Board of Zoning Appeals was going to defer the decisions to allow Mr. Hatcher to determine whether he would be filing a new special permit application to have a sports containment structure, he would have to talk to the Park Authority, and from everything he had read, the Park Authority did not want to do it.

Ms. Langdon stated that the fence was not shown on Park Authority property. She said it was shown on Mr. Hatcher's property, and the Park Authority had at one time agreed to pay for it; however, it was her understanding that they would not do so currently because the issue had gone on too long and Mr. Hatcher wanted a higher fence than the Park Authority would pay for. Ms. Langdon said two of the sheds shown on the plat were on Park Authority property, and the Park Authority did not support those to remain.

Mr. Hart stated that there were different problems, the house, the deck, the sheds, and the fence. He said the Board did not have the application or the trajectory study; however, he remembered from working on the Zoning Ordinance amendment that depending on where the net was placed, the amount of balls that it caught changed, so perhaps there was a mathematical probability reason to shift it to one side of the line or the other. Mr. Hart said Mr. Hatcher would have to be in tune with what the Park Authority wanted to do, and it did not seem that discussion had progressed. He stated that the applications had been deferred many times, and if the Board was going to defer the applications again, it would have to be for a good reason to get everything finalized.

Mr. Carter said he understood Mr. Hart's position and stated that he had advised Mr. Hatcher of everything the Board had told him when Mr. Hatcher had not been present. He stated that Mr. Hatcher had a long history with the Park Authority concerning the golf ball problem, and there had been previous litigation between the parties many years ago, so the parties did not always see eye-to-eye. He said Mr. Hatcher would prefer to have some sort of fence, regardless of whether it was as high as he wanted, because it would diminish the expenses of regularly replacing broken windows in his house and vehicles. Mr. Hart stated that was even more reason for Mr. Hatcher to get it settled with the Park Authority, file the paperwork, and tell the Board what he wanted to do.

Mr. Carter said that just as he had become involved in the matter, the Park Authority had removed its previous offer to put up the fence. He said he had tried to negotiate on the applicants' behalf to purchase the strip of land between the property line and a barbed wire fence. He said the barbed wire fence had existed for decades, and sheds were located on the applicants' side of the fence, but according to a survey conducted by the County or the Park Authority, the property line was located several feet inside of the fence and touched the sheds. Mr. Carter stated that the Park Authority did not see any benefit in selling that little stretch of land to the applicants even though the golf course was a considerable distance away. He said the Park Authority was trying to grow an area of trees to attempt to screen the applicants' property from the golf balls, but the golfers still hooked their balls into the applicants' property. He said that when he spoke with

Ms. Hedrick, she had not told him about the change in position regarding the fence or sports containment structure, so he asked for a deferral in light of the new information.

Ms. Gibb stated that in a memorandum dated May 29, 2005, Ms. Hedrick told the Board that she had telephoned Mr. Carter on October 25th, 27th, 31st, and November 1st, 3rd and 21st, 2005, in an attempt to inform him about the special permit. Mr. Carter said they had missed each other, left messages, and he had spoken with Ms. Hedrick a week or two prior.

Ms. Gibb said that she did not see any way the sheds could be resolved in their present location. Mr. Carter said Mr. Hatcher had incurred a large amount of expenses for a number of years due to the damage on his property from the golf balls. Mr. Carter said he thought it was a bully situation for the County to fine the applicants because the structures were inches onto the Park Authority property which was hundreds of feet away from any traveled area of the golf course. He said he would hope that the Park Authority and Fairfax County could look the other way and not enforce something on that issue.

Ms. Langdon stated that the application had been before the Board since March of 2004. She said the Park Authority had drawn and provided the plat so that Mr. Hatcher did not have to incur that expense, and the Park Authority had originally offered to put a fence 35 feet high where Mr. Hatcher wanted it on his property, but Mr. Hatcher wanted to go up to 60 feet. After the application had been pending for two years and in light of the expenses also incurred by the Park Authority, including changing the position of one of the holes on the golf course that was adjacent to Mr. Hatcher's property, she said it needed to proceed.

Mr. Carter said the change in the location of the hole was done prior to the applications being filed. He said he agreed with Mr. Hart that it was a complicated case and would leave it to the Board's discretion.

Chairman DiGiulian called for speakers; there was no response.

In answer to Mr. Ribble's question concerning the possibility that the Park Authority property may not be a golf course in the future, Mr. Carter said he had no knowledge of that. He said the other part of the issue was a 50-foot area that had been designated for a future roadway in the 1940s, and 25 feet of that was on Mr. Hatcher's property and the other 25 feet on the Park Authority property. He stated that because of that issue and because a house had been built on it, it would be impossible to build a road there. He said the development of the area had changed and a road built in a different area, so there was never a need for a road in the designated area.

Mr. Beard asked whether Mr. Hatcher was putting forth any adverse possession claims. Mr. Carter said that had been done in an earlier proceeding, and a quiet title action had been filed and served on the Park Authority and the County. He said the County had answered and won a summary judgment on the issue because the statute of limitations had run against any claim that could have been asserted by Mr. Hatcher's parents at the time, and one could not adversely possess against the Commonwealth of Virginia, the Park Authority, or any of its agencies. He said that part of the case had been dismissed, and the quiet title part was ongoing with respect to the 25-foot area.

Mr. Gibb stated that she was ignoring the 25-foot easement and pretending that Mr. Hatcher owned all of the property because she thought he did and a road would not be put in; however, two of the sheds were on Park Authority land, and every indication was that the Park Authority was not going to look the other way. She said the applicants would have to continue to deal with them and did not see how that could be solved by the Board.

Mr. Ribble said that if the applicants had their own surveyor, he might come up with a different result. Mr. Carter stated that the applicants had recently engaged a surveyor named Mr. White (phonetic) to resurvey the property.

Mr. Hammack asked how Mr. Hatcher had determined that he needed a 60-foot barrier instead of one that was 35 feet in height. Mr. Carter said he did not know other than it was Mr. Hatcher's own personal preference for a higher fence, but any fence was better than no fence.

Mr. Hammack stated that he concurred with his colleagues and staff comments regarding the length of time

the application had been pending. He said he would be willing to give the applicants a little more time, but Mr. Hatcher had to decide what was in his best interest. He said the Board could not cure the situation with the sheds being on Park Authority property, and Mr. Hatcher would have to deal with it and could withdraw the current application and file for a barrier. Mr. Hammack asked how much time Mr. Carter was requesting. Mr. Hammack said that if Mr. Hatcher wanted to file for the sports barrier, he thought it could be done fairly quickly, and if he wanted to go for the commissioner's hearing, he should make the arrangements to go forward. Mr. Carter stated that it would take at least four months to complete the commissioner hearing, and the report would then be filed with the court to enter a decree pursuant to the report. He said the decision process could be accomplished by January of 2006, as far as whether to withdraw some or part of the present matter and/or file for the additional special permit for the sports containment structure.

Mr. Hammack moved to defer decision on VC 2003-PR-194 and SP 2003-PR-054 to January 24, 2006, at 9:00 a.m. He said that if the applicants wanted to file for a sports barrier or to get a commissioner in chancery to hear the case, it should be underway before the next hearing. Mr. Hart seconded the motion.

Mr. Byers stated that he would not support the motion. He referenced a memorandum dated April 27, 2004, from Cynthia Tiante, an Assistant County Attorney, and said that in actuality the situation had been ongoing since 1996 when there had been litigation filed by Mr. Hatcher, in which Mr. Hatcher had not prevailed. Mr. Byers said he thought the Park Authority had been very reasonable over the years from the standpoint of trying to alleviate the problem. He gave the following examples: A 35-foot net had been erected on Park Authority property; the tee on Hole 2 had been redesigned many times; plantings at various locations had been installed in an attempt to have golfer shots stay within the course; the Park Authority assisted Mr. Hatcher in identifying particular golfers who had caused the damage; and, the Park Authority in the past had its staff repair damage and replace broken windows on Mr. Hatcher's property. Mr. Byers stated that Mr. Hatcher had declined the Park Authority's offer to erect a structure on his property to protect the numerous vehicles that Mr. Hatcher insisted on parking directly against the Park Authority's fence rather than at some other location on the property to avoid damage. He said the Park Authority had offered to erect a 35-foot net when they had no legal obligation to do so. Mr. Byers said that when he looked at all of the efforts that had been made by the Park Authority, he questioned whether Mr. Hatcher really wanted to resolve the issue. He said the memorandum stated that the Assistant County Attorney was not aware that the requirement had gone from 35 feet to 65 feet by Mr. Hatcher. Mr. Byers said there was no analytical basis for that other than the applicant wanted to change it. He noted that the Board had discussed the sheds that were on Park Authority property. Mr. Byers said he understood that there might be ill feeling between the two entities, but if the memorandum was read in its totality, the Park Authority had tried over a number of years to resolve the issue, and from his perspective, there was a lack of reasonableness on the part of Mr. Hatcher.

Ms. Gibb commented that Mr. Byers had not been present when Mr. Hatcher had provided his testimony. She said that despite of the Park Authority's efforts, there were an incredible number of golf balls still reaching the property. She suggested that if Mr. Hatcher felt that the sheds were on his property, he should have his own survey done. She suggested that if a deferral was granted, Mr. Carter may want to look at the notes on the plat which could answer some questions.

Mr. Carter stated that Mr. Hatcher had explained during his testimony that the closer he parked the vehicles to the fence, the more protected the vehicles were and the farther away, the more likely they would be struck.

Mr. Hart said he would support the motion. He said he thought there were problems with the sheds, and if another survey was done, he would be willing to listen to the findings. He said that if Mr. Hatcher did not resolve the issues with the Park Authority, the sports containment structure, fence, or net would not get approved because of a lack of agreement regarding what it would be and who would do it. Mr. Hart stated that the principal reason for the deferral was that, given some diligent effort, the 25-foot future roadway issue could be cleared up in such a way that might give the Board a reason to approve some relief on the existing house, which to him was as big a problem as the golf balls and the fence because it would be a horrendous expense to tear it down. He said that even if the application was withdrawn, the existing house would still be a violation, and he thought that was a fixable problem if effort was made by Mr. Hatcher. Mr. Hart said the point of the deferral was to fix the house.

~ ~ ~ December 6, 2005, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 22

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-1. Mr. Byers voted against the motion.

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~ ~ ~ December 6, 2005, Scheduled case of:

9:30 A.M. ANDREW CLARK AND ELAINE METLIN, A 2005-DR-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 1905 Rhode Island Av. on approx. 24,457 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (1) 36B.

Chairman DiGiulian noted that A 2005-DR-037 had been withdrawn.

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~ ~ ~ December 6, 2005, Scheduled case of:

9:30 A.M. STAPF, LUCEY, MILLER, A 2005-DR-043 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that Interstate I-495 meets the definition of a street as set forth in the Fairfax County Zoning Ordinance and, as such, lot width can be measured along Interstate I-495 for lots within the proposed Estates at Ballantrae Oaks Subdivision. Located at 1301, 1306, 1307 and 1315 Scotts Run Rd. on approx. 27.57 ac. of land zoned R-1. Dranesville District. Tax Map 30-1 ((1)) 13B and 30-1 ((9)) 4, 4A and 5.

Chairman DiGiulian called the appellants to the podium. Adrienne Whyte, no address given, came forward and stated that she was serving as the agent for the appellants.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, indicated that Elizabeth Perry, Zoning Administration Division, would present the Zoning Administrator's position.

Ms. Perry presented staff's position as set forth in the staff report dated November 29, 2005. Staff recommended that the Board uphold the Zoning Administrator's determination.

In response to a question from Chairman DiGiulian regarding whether she had examples of subdivisions where similar lots had been approved, Ms. Perry responded that she had one, and on the overhead viewer, she displayed a copy of the Oaks Subdivision located at Tax Map 46-4.

In answer to Ms. Gibb's questions regarding when the Oaks Subdivision was approved, Ms. Perry said she did not have the information on when the subdivision had been approved; however, she said that Bruce, Nassimbeni, Department of Public Works and Environmental Services, had indicated that the approval had been within the last five years.

In answer to Ms. Gibb's question, Ms. Perry indicated that the Oaks subdivision was located on I-66. Ms. Gibb asked how old the administrative practice was of having a major thoroughfare considered to be a street. Ms. Perry stated that it was not necessarily that a major thoroughfare could be used to measure a lot width as a long-standing administrative practice, but it was that the definitions of the Zoning Ordinance defined I-495 and I-66 as streets. She said lot width was measured from the street line, and as they were considered to be streets, the street line could be used to measure lot width. Ms. Gibb asked how long the long-standing administrative practice of using a through street had been in existence whether the practice was in writing. Ms. Perry responded that the administrative practice predated the 1978 Zoning Ordinance, and it was not written. In answer to Ms. Gibb's question regarding whether staff had past letters of interpretation based on the practice, Ms. Perry stated that because the practice predated 1978, there was no letter documentation, but there was documentation in the files and a note in the interpretation database that tracked procedures where she found information regarding the regulation of through lots and how it had been administered. Ms. Gibb asked whether long-standing processes were ever changed. Ms. Perry said they could be codified to be changed if there was a change in the Zoning Ordinance, and as far as she knew, if staff felt there was

another way in which it needed to be administered, the Zoning Ordinance would have to be changed to reflect a new way of decision making. Ms. Gibb stated that she had been thinking about the illegal lot issue where an interpretation had gone on for many years and then it changed. Ms. Perry said she was not familiar with the example.

Mr. Hart said it seemed to him that the issue turned in part on long-standing administrative practice and whether that carried any weight with the Board or whether the substance of it was what it had been announced to be or perhaps some other variation. He said he remembered a couple appeals that he thought that basis had been legitimately presented to the Board, one of which being whether the rental of U-Haul trucks was a legitimate accessory use to a filling station. He said the Board had a fairly abundant factual background of written interpretations or court cases where zoning administrators, judges, or the Board had looked at the issue and said the sale of tires and batteries were accessory to pumping gasoline, but the rental of trucks was different. Mr. Hart said there was a track record and paper trail for that case, but as far as the subject case, it appeared to him that there were no written interpretations. Ms. Perry said there were not with regard to whether or not lot width on both sides of a through lot had to be met. Mr. Hart asked if there were written interpretations regarding whether the Beltway counted as a street for determining lot width at the front of a lot. Ms. Perry said there were not because the Zoning Ordinance provisions supported that it met the definition of a street. Mr. Hart asked for confirmation that there were no written interpretations by the Zoning Administrator. Ms. Perry said she was not aware of any written interpretations. She referred to a memorandum dated August 15, 2005, from the Zoning Administrator on which the subject appeal had been based, and she said an interpretation had been officially entered into the database so that it could be located in the future. Mr. Hart asked whether there were any previous interpretations, and Ms. Perry said there were not. Mr. Hart asked whether there had been any other previously submitted Board of Zoning Appeals cases on the issue. Ms. Stanfield said she was not aware of any, and there were also no court cases.

Mr. Hart referred to a previous case in the Mount Vernon District where the lots were on a court, and the backside of the property was located on a paper street. He said he thought that was the case referred to in the October 10, 2003 memorandum, and there were some things in the memorandum that gave him pause concerning the idea of glossing over the issue of long-standing administrative practice. He said it seemed to be very inconsistent with the practice two years ago and the Zoning Administrator's interpretation at the time. Mr. Hart stated that one of the issues in that case was whether the paper street provided the "principal means of access to property," and that was a phrase taken from the Zoning Ordinance. He said he was not referring to the Oaks case, but to the Oehrlein application in the Mount Vernon District, and the property backed up to a subdivision with a paper street and had a very similar odd connection of long, narrow strips fanning out to the pieces along the paper street in the rear, with a similar configuration of the lots to the lots in the subject. Mr. Hart stated that there were slope and floodplain issues associated with the Oehrlein case, and it had been a difficult site with difficulties coming up with enough frontage. He stated that the homes were planned to be built on a cul-de-sac, but there wasn't enough frontage on the lots, which was why the "fingers" pinwheeling out to the back were needed. Mr. Hart stated that in that case the Zoning Administrator said the homes could not be built because the paper street, among other things, did not provide the principal means of access to property. He said he could not imagine the Virginia Department of Transportation (VDOT) would allow driveways off of the Beltway as a principal means of access to property. Ms. Perry stated that the issue of property versus lot in the definition of a street referred to access to property, and there were many different types of streets, and different streets that gave access to different types of property. Mr. Hart stated that there was property located in Richmond and Baltimore and one could drive in either direction, but that could not be what the Zoning Ordinance meant. Ms. Perry said that I-495 was a principal arterial that provided access to property. She said the staff report provided some of the definition, and within the definition, the type of property to which principal arterial streets provided principal access were those properties lying within urban areas based on the definition of a principal arterial. Ms. Perry went on to say there were different types of streets defined in the Zoning Ordinance such as, but not limited to, local and collector streets, which more specifically accessed lots, and those were the types of properties that those streets provided access to. She stated that "properties" was a general term.

Referencing the wording "providing the principal means of access to property," Mr. Hart asked to which property was the Beltway providing principal means of access, the property that was the subject of the subdivision plan or any property anywhere in the world. Ms. Perry responded that it was providing principal means of access to a variety of properties within urban areas. She said the Ordinance further defined different types of streets which accessed different types of property, and as a principal arterial, it was a street which carried the major portion of the trips entering and leaving an urban area, so I-495 was a street as well

as a principal arterial in that it carried the major portion of trips entering and leaving the properties within an urban area. Mr. Hart stated that it would have been easy enough for the Board of Supervisors to have stated in the Ordinance that frontage could be on the Beltway and that it counted.

Mr. Hart stated that part of the subject case depended on the lots being determined to be through lots, had frontage on the new court, and went through to a street, the Beltway. He said that it was his understanding that for the interpretation to work, the frontage along the Beltway needed to be determined to be a front line. He asked if it would be a front yard. Ms. Perry said it was not a front yard, and she clarified that it would be a front street line. She said a front street line was where lot width was measured, and sometimes it might be the same as the front lot line, but it did not have to be. Mr. Hart said there were many homes where the functional back yard backed up to the Beltway, I-66, I-95, or some other limited access type of road, and a lot of those homes seemed to be on lots smaller than 36,000 square feet and seemed to have sheds and other items in the functional backyard which the Ordinance would prohibit in a front yard of a lot less than 36,000 square feet. He said he thought a front yard would be the space between the structure and the street. Ms. Perry said that for a lot with reverse frontage, there was a way of determining where the front and rear yards were, and there would be a functional rear yard where accessory structures could be kept.

Mr. Hart asked whether the space between a house and the Beltway would be considered a front yard in a situation of a through lot on a street where the backyard was the Beltway. He said it was his opinion that it would not. Ms. Perry stated that it would depend on where the house was facing. If it was reverse frontage and the house was not facing the Beltway, it would not be considered a front yard. Mr. Hart asked whether it would still be the front yard measurement for the lot frontage if it was not a front yard. Ms. Perry said it was the front street line, and the front street line was not always the same as a front lot line. Referring to the scenario provided by Mr. Hart, Ms. Perry said the front lot line would be along the front yard, the yard between the front of the house and the street that was not a principal arterial, but in measuring lot width along a front lot line using a principal arterial such as I-495 or I-66 to measure the lot width, that lot line along the rear yard would basically meet the definition of a front street line, and that was where lot width could be measured. Ms. Perry said that it was similar to a corner lot that had a front street line and a side street line, and the front street line did not necessarily have to be along the front lot line. Mr. Hart asked whether there could be a front street line in something that was not a front yard, to which Ms. Perry answered that there could. Mr. Hart asked if what Ms. Perry was saying was there could be a front street line on the Beltway even if they were not the front yard of the lots. Ms. Perry said that was correct. Mr. Hart asked if it was correct that there was no way a driveway could be built from the Beltway side of the property down the "fingers" up to the court because of the stream, the topography, and the width. Mr. Perry said that was something the Zoning Ordinance did not regulate, but from her understanding of the properties and based on the features of the land, it would not be feasible even if VDOT would permit something like that. Mr. Hart stated that there were some environmental features that would restrict that type of access in that manner and asked if some other layer of approval would be required to cross the stream. Ms. Perry said that was not a Zoning Ordinance question and suggested that staff from the Department of Public Works and Environmental Services (DPWES) address the question.

Mr. Nassimbeni said another layer of approval would be required for access to come through in the manner Mr. Hart had described.

Mr. Hart said he was struggling with the statement in the staff report that this was a long-standing administrative practice because there were not a lot of examples of it, the Board did not have any, and there did not seem to be any written interpretations or court cases. Referring to the Mount Vernon case that he had mentioned earlier, he said there were little narrow ribbons connecting the disparate ends of the lots, and he read from a document from the Zoning Administrator that stated, "In addition, I would note that the extremely unusual shape of the lots will present potentially severe conflicts with respect to the use and maintenance of those areas of the lots that are far removed from the areas of the lots upon which the dwellings will be placed, that it is my judgment that the odd-shaped configurations of Lots 2 through 5 are not in keeping with the purpose and intent of the Zoning Ordinance to provide for orderly and controlled development and the creation of an attractive and harmonious development; therefore, based on the above discussion, it is my position that the proposed subdivision cannot be approved as it is currently designed." Mr. Hart said it was his recollection that there was very strange topography and little narrow strips a few feet wide and many feet long that connected the frontage area in the back to where the houses would be located. He said it seemed to him that was a written interpretation and that it was an administrative practice established in black and white in 2003, and the announcement in the staff report that it was a long-standing

administrative practice to approve these things was contradicted by a written interpretation two years prior where the Zoning Administrator had clearly said that the odd shapes were not in keeping with the purpose and intent of the Zoning Ordinance. Mr. Hart asked how the Board could get around that it was not a flip-flop when the Zoning Administrator had said the little "fingers" were not allowable two years prior and currently staff did not address it. Ms. Perry said the long-standing administrative procedure referenced in the staff report was not the practice of measuring lot width off of I-495, but was the issue of how lot width for through lots would be regulated, and that was something staff did whether it was a principal arterial or not. She said residential through lots were regulated in that way, and they only had to meet lot width along one street line. Mr. Hart said that forgetting the frontage on the Beltway problem and just saying the lots were oddly shaped between one street on one side and one street on the other, two years prior the Zoning Administrator had written that the odd little connections were not allowed. Mr. Hart said he thought the two cases were identical in that there was a certain depth along a paper street to reach the minimum front yard line and little connections or ribbons out to where the houses were, so they were contiguous, but oddly shaped, and the Zoning Administrator had said it was not allowed. Mr. Hart asked how the Board could get around that administrative practice. Ms. Perry responded that the Zoning Administrator had stated that could not be done as part of a total discussion, and it was not the sole basis of the determination. She said it was a comment made about the shape of the lots, but what it came down to was if someone was meeting the Zoning Ordinance regulations, sometimes situations would be produced that may not initially seem to meet the purpose and intent of the Zoning Ordinance. She reiterated that in order to fix that, the Zoning Ordinance would need to be amended to find ways of better regulating land use. Ms. Perry said the issue of irregularly shaped lots was being addressed through DPWES because the Zoning Ordinance did not address lot shape issues.

Referring to the Oaks plat displayed on the overhead viewer, Mr. Hart asked whether there had been an appeal of anything. Ms. Perry stated that she had not found any. Mr. Hart asked whether a written interpretation had been requested on the Oaks. Ms. Perry said she had not found any. Mr. Nassimbeni said he did not believe there was a written interpretation, that there were just internal inquiries to the Department of Planning and Zoning (DPZ). He said the difference between the subject case and the Mount Vernon case was that the interpretation provided by the Zoning Administrator was for the lot width on Talbert Street. Mr. Nassimbeni said he thought the determination made was that Talbert Street basically did not exist, was a paper street, and provided access to nowhere. He said there were trees in that location, so it did not meet the definition of street, and that was why it could not be used for lot width. He said there were currently no regulations on how a lot could be configured. He said it may not meet the intent, but until there was something in the Zoning Ordinance, a lot could be configured any way one chose, with long fingers or twenty different sides. Mr. Hart said it could be done except where the Zoning Administrator said that it could not be done, as he had done two years prior. Mr. Hart repeated the statement he had earlier read. Mr. Nassimbeni said he thought the basis of the interpretation was strictly for the lot width on Talbert Street. He said the Zoning Administrator had provided another opinion on the lot configuration, but that had not been the initial inquiry about the interpretation. Mr. Hart said he thought that was exactly wrong, that there were two clear reasons that the Zoning Administer had spelled out in black and white, one being that the street did not provide the principal means of access to the property and the second being that the odd configurations were not in keeping with the purpose and intent of the Zoning Ordinance to provide for orderly and controlled development and the creation of an attractive and harmonious development. Mr. Hart said the determination had been directed to Mr. Nassimbeni, and he had not appealed it, but the developer did. Mr. Hart said he recalled that the BZA had deferred the case a few times, the developer redesigned it, and the BZA had never voted on it. He said the Planning Commission had pulled the case and said it was wrong. Mr. Hart said he thought the determination in the Oaks case was well written, and there were multiple reasons articulated and multiple problems, two of the principal ones being principal means of access to property and the odd configurations. He said he did not know how long standing it was, but it was at least two years and two months, and it was not consistent with what was presented in the subject staff report.

Mr. Hart asked why staff was stating that the practice was long-standing if there was only one example. Ms. Perry said the long-standing administrative procedure she referenced in the staff report was the general procedure of how through lots were regulated, which happened in any number of circumstances, that being they only had to meet lot width on one of the two street lines.

Ms. Gibb commented that if you had two little neighborhood streets like Oak and Maple with a lot between them and the lot met lot width on one and not the other, it made perfect sense, but she asked when staff was attempting to apply its long-standing administrative procedure to an example where it did not make sense

because there was truly no access from I-495, whether staff ever went back and looked at the rationale for its procedure to determine that it was the same as a paper street and the lot width should be measured where it really was, on the cul-de-sac. Ms. Perry said the Zoning Ordinance would have to be amended. With respect to Ms. Gibb's example, Ms. Perry said Oak, Maple, and I-495 were all streets that met the criteria for creating a street line, and they could all form a street line from which lot width could be measured.

Ms. Gibb said the rationale should be looked at when you look at something that looked so odd, everyone agreed it made no sense, it violated the spirit of the Zoning Ordinance, but was not in the Zoning Ordinance, staff had nothing in writing, but had done something in the past because it did make sense on other streets, but in this case it did not. Ms. Stanfield stated that the lots in the subject case were not necessarily what staff would want to see approved; however, they had to apply the regulations consistently, and staff felt that it had no other way of applying the regulations in the subject case. Ms. Gibb said staff would have another way of applying the regulations if staff looked at the purpose. Ms. Stanfield cited the Giles Run case and stated that staff had felt there was an argument to be made that it was not a street, and in that case staff was able to apply the regulations in a way that precluded that development. Ms. Gibb said she assumed that staff treated paper streets the same throughout the Zoning Ordinance because it seemed to her that it was a mystery as to how it was going to be treated every time it came to the Board. Ms. Stanfield stated that the Board of Zoning Appeals had at one point requested an interpretation from the Zoning Administrator regarding how paper streets were regarded, and she offered to reproduce and provide the BZA with a copy.

In answer to Mr. Beard's question concerning who determined where the measurement was taken for the front, Ms. Perry stated that when the preliminary plat was submitted, DPWES reviewed it to ensure that all regulations were met, and if there was a question, she assumed they would refer it to the Zoning Administrator. Mr. Beard said it was the developer who submitted it and made the determination, and Ms. Perry agreed.

Mr. Beard asked whether all the houses would face the Beltway. Ms. Perry said that on the plans she had seen, she did not see which way the houses were facing, but it was her understanding that the houses were facing the interior court that was being developed. Mr. Beard said that for purposes of the measurement, the developer would use the backyard, but the house would face the front yard, which was the backyard.

Mr. Beard referred Mr. Hart's use of the phrase "principal means of access to property" and said proximity of access was not being considered, and he did not think the Beltway met the criteria of a principal means of access to property.

Mr. Hammack said it was his understanding from staff's comments that the long-standing administrative practice had been in existence since 1978 when the Ordinance was changed. Ms. Stanfield said staff believed it predated the current Ordinance.

Mr. Hammack asked whether the name of the person who had established the long-standing administrative practice or regulation was indicated in staff's database. Ms. Perry stated that the database was a resource used by staff to determine how provisions had been administered previously for consistency purposes. She said the older information was used as guidance, and there was not the same type of extensive recordkeeping as was done currently that listed inquiries, responses, and associated names. She said she had reviewed many different things in the database to research the subject case, but she did not know who established the practice.

Mr. Hammack asked whether the Board of Supervisors had approved the practices used by staff. Ms. Stanfield gave an example of a long-standing practice regarding smaller lots in the County which had been consistently permitted to modify their lot lines provided other steps were taken to ensure that density was not increased and the lots were not made more nonconforming. She said that practice eventually became codified, but had previously been a long-standing administrative practice.

Mr. Hammack said he had seen something in the staff report that said DPWES was proposing a change to the Ordinance that would not allow this type of development. Ms. Stanfield said that was correct.

In response to Mr. Hammack's question regarding how long the DPWES amendment had been pending, Mr. Nassimbeni said DPWES had been working on the amendment for the past year, but it would deal only with irregularly shaped lots, not with frontage. Mr. Hammack asked why DPWES would be dealing with the issue

instead of the Zoning Ordinance with DPZ. Ms. Perry stated that the Zoning Ordinance regulated land use. She said that when a proposed subdivision was submitted, it would go through the Subdivision Ordinance, and DPWES would look at the Public Facilities Manual (PFM), which was where lot shape issues were addressed. Mr. Nassimbeni stated that DPZ was represented on the committee. He said there had been some discussion concerning whether the proposed amendment would be established in the PFM or the Zoning Ordinance.

Mr. Hammack said the definition of a street leads to property, although it was technically written, was not a very satisfying explanation because property could be anywhere. He said he was concerned about the way the regulation had been developed.

Ms. Whyte presented the arguments forming the basis for the appeal. She stated that in August of 2005 the Zoning Administrator had made a determination regarding the proposed Ballantrae Oaks subdivision that justified the developer's ability to measure lot width off the Beltway in a way the appellants believed did not meet the letter, intent, or spirit of the Zoning Ordinance. She said she believed the Zoning Administrator had erred in the citation of long-standing administrative practice. She explained that the preliminary plan provided for lots on a local street with residences facing the local street that were separated by long, narrow strips of land that crossed floodplain, resource protection areas, and Scott's Run that were connected to rear yards also located in the floodplain that were immediately adjacent to the Beltway and almost a half mile from the front yards. Ms. Whyte said the rear yards were totally inaccessible by vehicle from the Beltway, totally inaccessible through the connecting strips of land which had a water crossing with no bridge, and totally inaccessible from local streets. She said the Zoning Administrator had determined that a limited access interstate highway that provided no vehicular access to the proposed lots was a street and could be used in the determination of lot width, however, had not considered the Ordinance provisions that clarified the intent of lot width with respect to the entrance or front of the property.

Ms. Whyte said the Zoning Ordinance defined "street" as a strip of land intended primarily for vehicular traffic and providing a principal means of access to property and defined "lot width" as the width of a lot along a line parallel to the front street line equal to the required minimum front yard. She said that although the Zoning Ordinance did not define "front street line," it did define "front lot line" as a street line which formed the boundary of a lot, or in the case where a lot did not abut a street other than by its driveway or for a through lot, the lot line which faced the principal entrance of the main building. She said the Zoning Ordinance defined "front yard" as a yard extending across the full width of a lot and lying between the front lot line and the principal building and also addressed front yards in Article 2, Sect. 413 of the Zoning Ordinance; "Notwithstanding any other provision of this Ordinance, on any residential lot designed to have reverse frontage along a major thoroughfare, the minimum front yard requirements as set forth for a given zoning district shall be determined to apply to that yard in front of the principal entrance or containing the approach to the primary building occupying the lot. The opposing yard shall be deemed to be the rear yard and shall be subject to the requirements set forth for rear yards." Ms. Whyte said the Zoning Ordinance defined reverse frontage as a residential through or corner lot intentionally designed so that the front lot line faced a local street rather than facing a parallel major thoroughfare, and it was clear that the Zoning Ordinance's intent was that reverse frontage was to be used to provide access to a lot from a local street. She said the Board of Supervisors intended that lot width be measured from the front street or lot line, and that line on a through lot was defined to be the one facing a local street that provided vehicular access to the property and the yard in front of the principal entrance or containing the approach to the primary building occupying the lot.

Ms. Whyte said it was clear through construction of the Zoning Ordinance as a whole that the intent was to ensure that lots in by-right subdivisions were of uniform size and shape with respect to the street providing access and to provide for orderly and controlled development. She said it was also clear that other zoning mechanisms, such as Cluster and P Districts, were available to developers who wished to submit proposals for irregularly shaped lots that did not meet conventional frontage or lot width requirements. She said that in the similar Mount Vernon case referenced by Mr. Hart, the Zoning Administrator inconsistently determined in 2003 that the lots did not meet lot width requirements because a paper street, a platted unimproved right-of-way that did not provide vehicular access to the lots, was being used to measure lot width. Ms. Whyte noted that the word "street" was part of the phrase "paper street." She said that in that determination the Zoning Administrator stated, "Those lots are configured such that there is an area of each lot created solely for lot width purposes that is attached to the main buildable portion of the lot by a long appendage." She said there was no substantial difference in the physical layout of the convoluted Ballantrae Oaks lots subject to the appeal and the convoluted lots in the Mount Vernon case. She said the Beltway did not provide access to

the proposed lots and never would.

Ms. Whyte said that based on the cases referenced in the staff report, it appeared that the Zoning Administrator was attempting to justify the subject determination with a claim of long-standing administrative practice, but the problem with that was the long-standing administrative practice that was referenced was the practice of using either one of two local street lines abutting a property to measure lot width, which she said was quite different than the subject situation. In such cases, she said both streets provided or potentially provided vehicular access to properties, thus were properly defined as through lots. She said there was no long-standing administrative practice that had validated the use of interstate highways for the measurement of lot width at least since the Zoning Ordinance had been enacted. Ms. Whyte said that because the Zoning Administrator had verbally referenced such situations, she had sent many requests along with a Freedom of Information Act request asking that the cases where interstate highways were used for lot width be identified, and that after months of waiting for a response, she had received one case, the one shown earlier to the Board at the hearing, where irregularly shaped lots were approved on Interstate 66. She said that as far as she knew, that case had not been challenged by appeal, and she was told by Zoning Administration that there were no determinations on the subject. She said that rather than long-standing administrative practice, it was a case of unchallenged error, and the Zoning Administrator could not be given the presumption of correctness when there had been erroneous or inconsistent interpretations.

Ms. Whyte said there was case law that tipped the balance in favor of the appeal, which said that an ordinance should not be construed by singling out a particular phrase, as the Zoning Administrator in the subject case had singled out the definition of the word "street." She said the case law said that the various provisions of an ordinance must be read as a consistent and harmonious whole, and all relative provisions and sections of an ordinance must be considered and read together in constructing one provision or section. She said case law also dictated that one must consider the intentions of those who drafted the law, and with respect to zoning ordinances in particular, the Supreme Court of Virginia had said that they should be given a fair and reasonable construction in light of the manifest intent of the legislative body enacting them, the object sought to be attained, the natural import of the words used in common and accepted usage, such as "front," the setting in which such words were employed, and the general structure of the ordinance as a whole. Ms. Whyte said that in the case of lot width as well as other lot measurements and setbacks, the intentions were clear, and lot width was intended to be measured from the street in front of the building and the one providing principal vehicular access to the property. She stated that the Zoning Administrator erred in the determination because lot width must be measured parallel to the front street line equal to the required minimum front yard, but the front lot line for a through lot was the line that faced the principal entrance of the main building, and reverse frontage was intentionally designed so that the front lot line faced a local street rather than facing a parallel major thoroughfare. She said the minimum front yard requirement shall be deemed to apply to that yard in front of the principal entrance to or containing the approach to the primary building occupying the lot.

Mr. Hammack asked how a front line could be determined until the orientation of the house was known and what staff's response was to the argument that the front lot line has to face the customary front of the building. Ms. Perry replied that the issue for lot width was the front street line, which was not always going to be the same as the front lot line. She said that in this case there might be a front lot line along the courtyard, because it was going to be a through lot with reverse frontage, but the front street line was going to be along I-495, and that was determined by where the lot width was measured.

Referring to testimony given by Ms. Whyte regarding definitions, Mr. Hammack said that one of her points was that the front lot line should be the front street line toward the orientation of the house. Ms. Perry stated that the confusion was that Ms. Whyte was equating the front street line with the front lot line, and they would not always be the same. She said the definition provided by Ms. Whyte was for a front lot line, not a front street line.

Mr. Hammack asked how a street measuring off a street off the Beltway could be different from the street in front of the house. Ms. Perry stated that they were both street lines, and to determine which one was the front street line, because it was a though lot, lot width only had to be met on one side. She said once the developer identified which street line they would be using to measure lot width, by definition, it would become the front street line.

Chairman DiGiulian called for speakers.

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The following speakers spoke in support of the appellant's position. Yvonne Sabine, 1343 Scotts Run Road, McLean, Virginia; Beth Chung, 1335 Windy Hill Road, McLean, Virginia; Dennis Lucey, 7340 Hooking Road, McLean, Virginia; David Miller, 7344 Hooking Road, McLean, Virginia; Frank Fisher, 7503 Box Elder Court, McLean, Virginia; Martin Smith, 1328 Windy Hill Road, McLean, Virginia; Malcolm Butler, 7350 Hooking Road, McLean, Virginia; Bryan Judd, 1330 Windy Hill Road, McLean, Virginia; Mason Pickett, 7349 Hooking Road, McLean, Virginia; Annette Woodward, 7417 Dulany Drive, McLean, Virginia; and, Patricia Butler, 7411 Dulany Drive, McLean, Virginia.

Their main points were that the Zoning Administrator's determination had been written in haste, and his use of the definitions appeared to be the only arguments he could make to justify his ruling; he was not interpreting the Zoning Ordinance consistently; the stream valley, floodplain and RPA would be compromised; the fundamental purpose of the Ordinance seemed to have been lost in a long and tenuous string of justifications in support of the proposed development; staff had documented only one case supporting their position, and that case had not been reviewed by the Board of Zoning Appeals; the plan was an attempt to exploit ambiguities in the Zoning Ordinance to maximize density and profit margins; the Zoning Administrator was not interpreting the Ordinance consistently; the front street could not be considered to be I-495 because front doors and driveways of dwellings could not be constructed in an RPA; it would be a disastrous conservation strategy to carve up the floodplain and RPA of a half mile of Potomac tributary among 13 owners, each of whom would have allowable uses; the new homeowners would have to travel hundreds of yards over treacherous terrain to get to their back yards; emergency rescue vehicles would be unable to reach anyone who had fallen in the river one half mile from a public street; DPWES was working on an amendment to the Subdivision Ordinance that would address irregularly shaped lots; the Beltway was not a street that qualified for the measurement of lot width; the character of the neighborhood would be compromised, and properties would be devalued; the developer's proposal to use disjointed and irregularly shaped lots in order to maximize housing density in a flood plain went against the precepts of the planned community of McLean; it would be inconsistent with the intent and nature of the County's planning and zoning; without a conservative no cut tree buffer zone to defray the anticipated increase in I-495 traffic, there would be significant negative impact that would increase the noise factor to all existing homeowners; the configuration was of no value to anyone, and its only purpose was to provide arcane logic in order to justify a few additional houses; the front lot widths of Lots 9 and 10 were less than 40 feet, not the required 150 feet; the neighborhood must have one acre lots; there had been narrow readings of definitions and misapplication of prior determinations in order to circumvent the spirit of the County's zoning requirements; the proposal of buying sub-parcels of land in order to produce lots that may meet technical acreage requirements, but were much smaller at the street than was contemplated by the Zoning District, was not acceptable; and, the citizens of McLean and those living in the abutting neighborhood were adamant in their opposition to the proposed subdivision. In addition, Ms. Sabine played a portion of a videotape of a recent Planning Commission hearing that was held on the Giles Glen subdivision, at which Jack Reale, Zoning Administration Division, had stated that a paper street did not provide vehicular access to the Giles Glen property and likely never would.

Referring to Mr. Reale's statement before the Planning Commission, Mr. Hart asked staff if they had changed their position that the odd configurations of the site complicated things like sheds, fences, accessory structures, and maintenance, which were against the purpose and intent of the Ordinance. Ms. Perry said staff's position was that there was a full discussion and analysis of that particular case, and the issue was that if something was meeting all the Zoning Ordinance provisions, staff could not prevent it from moving forward. She said it was possible that when there were cases that followed the regulations that were in place and they didn't seem to be within the intent and purpose of the Zoning Ordinance, not much could be done without an amendment to the Ordinance. Mr. Hart asked Ms. Perry if she was indicating that the answer was yes, that two years prior staff said it could not be done and now they were saying it was bad, but an amendment to the Zoning Ordinance was required to prohibit it. Ms. Perry stated that it could not be done based on several factors, such as I-495 being a paper street. She said there had been discussion concerning the possibility that these types of lots did not meet the purpose and intent of the Zoning Ordinance; however, staff could not prevent the case from going forward. Mr. Hart said, in his opinion, that was a 180-degree turn on staff's part because it had been considered a fatal problem two years prior, and now it did not get much attention.

Referring to the Reale tape, Ms. Stanfield explained that the Planning Commission had held hearings on proposed changes to the Comprehensive Plan and harmonious development. She said Mr. Reale had begun his discussion by saying that secondarily the Giles Glen Subdivision did not meet the intent, and it

was staff's position that the primary position at that time was that lot width from a street that did not exist could not be attained. She said staff saw that as being very clearly distinct from the issue before the Board today.

Mr. Hart noted that in the Ordinance the word "intended" was used. He said he was not certain who determined the intent or whose intent the Board was being asked to determine. He asked whether it was staff's position that the word was referring to property other than the property that was the subject of the application. He said he was asking about the intent to provide the principal access to property and the definition of street. He acknowledged that it would not refer to every street and that staff had to determine that the intent was satisfied; however, he said he was asking whether staff was determining that it was intended to go to a different property other than the one before the Board today. Ms. Perry explained that it was a general definition of a street, and the intent did not link the street in question with the application for a subdivision.

Mr. Lucey said he and his fellow appellants had looked at the Zoning Ordinances of several other Virginia counties to determine if they were as convoluted as Fairfax County's. He presented information he said the appellants had obtained with respect to the Albemarle County and Stafford County Ordinance definitions pertaining to the issues raised by previous speakers. He stated that it was his opinion that the Fairfax County Board of Supervisors knew exactly what they intended with respect to the Ordinance, but through hasty or incomplete editing did not clearly articulate their intentions, at least not clearly enough to prevent clever developers and engineers from taking advantage of definitions and isolation of the whole Ordinance. He said that one of those engineers was Mr. Marshall who had laid out the Ballantrae Oaks and Giles Glen Subdivisions

In response to Mr. Hart's question, Mr. Lucey confirmed that the same firm that was represented by Mr. Marshall was the one that laid out both the Ballantrae Oaks and Giles Glenn Subdivisions.

Mr. Fisher said it was his opinion that the Zoning Administrator had not tried to determine the legislative intent of the statute and that he had found the statute to be ambiguous. He said the definition of a front street line was not defined in the statute, but it was essential to understanding lot width. He said the question was how to determine what the legislature intended with respect to lot width and front street line. Mr. Fisher said that what the Zoning Administrator had done was to resort to the so-called long-standing administrative practice. He explained that no one interpreted a statute in that manner. They looked at the legislative intent of the statute or the commonly accepted meaning of the words used in the statute. He said he was addressing the commonly understood meaning of the word "front" and referred to copies of information he had submitted utilizing the Merriam-Webster Online Dictionary that provided definitions of the word "front," such as "the side that contains the principal entrance." He said that it was clear that the Zoning Administrator had not followed that definition in his interpretation of the statute. Mr. Fisher said it was his opinion that a more strict interpretation of legislative intent and the purpose of the statute should be done.

The following speakers came forward in support of the Zoning Administrator's position.

Eric Kinney came forward to speak in support of the Zoning Administrator's position. He stated that he was the landowner and a partner in The Ballantrae Group that was developing the property. He said he was confused about some of the statements made by the speakers today. He said he had owned the 27-acre parcel since 2001. He said that something that was not made clear in prior testimony was that the parcel could have been broken up into 27 one-acre lots, but he had chosen not to do that because it would have entailed putting more streets in, tearing more trees out, and developing more of the property than what the surrounding homeowners wanted. He said they had subdivided the property into 19 lots instead, and they were one or more acres in size. Referring to the floodplain issue mentioned by the speakers, he indicated that the "finger" lots were part of the floodplain. He noted that the actual size of the building side of the lots was more than one half acre for each of those lots, so the prospective homeowners would not have to walk down to a backyard for useable backyard area. He said no one could build on a floodplain, and there would be no accessory structures built in that area. He said they were trying to protect the floodplain as much as possible.

With respect to the Giles Run Subdivision, Mr. Kinney said the reason the street could not be used as frontage was because it was an unimproved street, and had it been improved, the issue of irregularly shaped lots would not have been an issue. He advised that a subdivision would have been approved with the

frontage on the paper street because it would have been an improved street and, therefore, a through lot. He said the developer had worked out a different design with the County so that would not continue to be an issue.

Mr. Kinney stated that all the houses on Ballantrae had been positioned so they faced a road that the developer had designed to minimize the impact on the environment and the number of cut trees, so the houses would front an improved road, and none of the lots would face the Beltway. He said the determination of lot frontage could be issued in any direction a house was faced and indicated that a house could be faced within the building restriction lines of the buildable property in any direction the developer deemed fit. Mr. Kinney said the determination of lot frontage had nothing to do with whether or not there was lot width on the frontage of a road in order to make the property buildable. He stated that zoning regulations for auxiliary structures clearly state that no one could place those items in a floodplain area, and they were not going to use any of that land for anything other than part of the one-acre lot. He said splitting the lots would preserve more of the tree line. He said there would not be any activity in the floodplain, so fire and rescue there would not be an issue. He said emergency vehicles could get into any of the backyards by accessing the newly built Scotts Run Road and the Scotts Run cul-de-sac; therefore, they were in compliance with the zoning regulations concerning emergency vehicles. With respect to the stormwater management pond, the regulation was a part of DPWES, and it would be placed in the same area whether the subdivision was approved for a two-lot split on 13-plus acres or whether they utilized the maximum 27 lots they were allowed, so he said that issue was moot. Mr. Kinney addressed the issue of tree preservation inside the floodplain and the RPA and stated that the Department of Planning and Zoning was responsible for that. He said that if a homeowner went into one of those areas and engaged in any type of activity that was prohibited, the County would take the homeowner to task for any problem they may have caused.

Mr. Kinney addressed comments made by Ms. Butler, who had indicated that her property abutted the rear of several of his proposed lots and that there was a RPA and a floodplain that intersected her backyard from the front to the useable backyard. He stated that her argument was that his properties had a split between the RPA and floodplain and advised that her property also had an intersecting RPA that allowed her backyard to be split into useable and non-useable space. He stated that some of the statements that had been made at the hearing were not completely correct, and they had not discussed the true nature of previous discussions that had been held on the original submission. He said he had taken his 27-lot subdivision down to 19 at the request of the homeowners association, and he was not under any obligation to do that. Mr. Kinney stated that he would be in better shape financially by building larger houses with less tree cuts on 19 lots, which would provide him with the same amount of revenue for the sale of his property as it would have had he sold 27 lots and cut down more trees and put in more roads. He said by doing that it helped the homeowners surrounding his property to have more tree preservation. Mr. Kinney said the issue of I-495 being considered a road was not the first time that it had been done as the homeowners had alluded to. He said the next speaker, Lynne Strobel, would address that issue as well as irregularly shaped lots, sewer, and septic fields.

Ms. Gibb asked Mr. Kinney if he had an approved record plat. Mr. Kinney said they were at preliminary plan approval at this time and could not proceed until the appeal before the Board was determined. He said four houses were currently on the property; one was under construction as well as three existing homes that would be demolished. He said that one of the houses under construction was on the larger parcel that would be part of the subdivision and would be used as a model home. Noting that the plat she was looking at showed a great deal of floodplain, Ms. Gibb asked if he was saying that he could build 27 houses on the property notwithstanding the RPA and floodplain. Mr. Kinney said yes.

Lynne Strobel, Walsh, Colucci, Lubeley, Emrich & Terpak, PC, 2200 Clarendon Boulevard, Arlington, Virginia, came forward to speak in support of the Zoning Administrator's position. She said she was representing the Williamson Group, the developer that had filed the preliminary plan. She said the narrow issue on appeal was the determination by the Zoning Administrator that I-495 met the definition of a street and as such could be utilized for determining lot width, specifically in a proposed subdivision known as Estates at Ballantrae Oaks, and other issues cited in the appeal were not relevant, specifically the statements that the proposed lots would have an adverse and environmental impact. She said the developer in this process would be required to meet all Ordinance requirements.

Ms. Strobel said the second issue that was brought up in the appeal which did not have any relevance was that the lots did not meet the purpose and intent of the Ordinance to create an attractive and harmonious

community. She said the appellant had referenced a commentary made in a prior determination. Ms. Strobel stated that it was a commentary, not a determination, and noted that there were no regulations in the Ordinance to support the position that the Ordinance mandated attractive and harmonious development.

Ms. Strobel stated that the developer would be meeting all requirements for the district, including yards, height, and density. She said that the sole issue on appeal was that the appellant had stated that the highway could not be used for width and it was not a street that provided access to the lots. She noted that staff had detailed in their report direct access to the specific lots for which lot width was created was not a requirement. She said that access was provided from the proposed lots to I-495, and it was not direct access as had been discussed this morning. Ms. Strobel said the appellant had cited a prior determination by Mr. Shoup that lot width could not be taken from an unimproved street and noted that he had determined that because the street did not provide any access to lots, not to specific lots for which the subdivider hoped to create lot width. She stated that because a use of streets without direct access for the measurement of lot width was a long-standing administrative determination, it should be upheld. Ms. Strobel displayed examples of lot frontage that had been taken off I-66 and Old Dominion Drive in McLean and said she thought it was clear that it was not an unusual circumstance to have lots that were configured so that they backed up to an interstate highway. Ms. Strobel stated that it was a very narrow issue that the Board had before it on appeal, and she thought that prior practice supported the Zoning Administrator's determination and Mr. Kinney should not be treated differently from other property owners. She said that it was her opinion that the way to correct the situation was to amend the Ordinance.

Referring to the examples distributed by Ms. Strobel, Mr. Hart asked whether they were all by-right submissions rather than something approved by the Board for a variance of lot width or by the Board of Supervisors for pipestem lots. Ms. Strobel said that, to her recollection, there were four submissions that had been approved by the Board of Supervisors that had not been submitted to the Board of Zoning Appeals for a variance, and they were located in the P Districts. She said she thought they were conventional lots that had taken their lot frontage or lot width from an interstate highway or another arterial without having access to a roadway. Mr. Hart asked whether the Board of Supervisors had flexibility under the Ordinance to approve a certain percentage of pipestem lots in certain zoning districts in a rezoning, whether or not they met the frontage requirements. Ms. Strobel responded that in a P District a certain percentage of pipestem lots were allowed, and if it exceeded 20 percent, a waiver could be approved by the Board of Supervisors. Referring to the examples she had provided, she said she did not think the developer had pipestem lots in those particular configurations. Mr. Hart and Ms. Strobel discussed the definition of a pipestem lot and whether or not there were any written determinations that had been appealed to the Board of Zoning Appeals or the courts.

Ms. Perry stated that there were many things that were beyond the purview of the Zoning Ordinance as it was currently administered and as current provisions provided, and the Zoning Ordinance did not have the scope to determine the issues of fire and rescue and the practicality of people traversing their lots. She stated that from a zoning perspective, the proposed development met the Ordinance requirements, and there was no basis by which the Board would not be able to approve the proposed method for dividing the properties. She stated that the developer was meeting the minimum lot width along the front street line along I-495. Ms. Perry said that with respect to the issues raised concerning accessory structures, there were some Ordinance provisions that would address some of the concerns of the adjacent property owners with respect to where they could be placed and how they may or may not be configured along different parts of the proposed properties.

In her rebuttal, Ms. Whyte said she agreed that there were 27 acres involved, but there was no way Mr. Kinney could get 27 one-acre lots out of the parcel. She asked that the RPA map be displayed on the overhead projector and stated that most of proposed Lot 13B was currently floodplain and RPA. She said that when she and the appellants had last spoken to Mr. Kinney about the proposed development, it concerned only Lots 4 and 4A, with the exception of one house they managed to squeeze in on the floodplain side of Scotts Run Road by what she called an administrative sleight of hand to have some RPAs swapped out. She stated that they were trying that again and had succeeded in doing that. She referred to Mr. Kinney's statement concerning useable backyard area when he had said that there could be no accessory uses. She said that was not true. She called attention to items that were listed in the Ordinance where the only stipulation was that such uses had to be anchored so they would not float away in a severe rainstorm. Ms. Whyte stated that she and the community had made it clear in their discussions with Mr. Kinney that they wanted Lot 13 to be placed in a conservation easement. She also stated that the previous

owner of Lot 5, which also contained floodplain and RPA, had recently passed away, and it was only recently that that property had become available for consolidation. Referring to Ms. Strobel's example of lot frontage on Old Dominion Drive, Ms. Whyte stated that there were streets that provided access to that property; therefore, it was a real through lot. Referring to another statement made by Ms. Strobel concerning prior practice, Ms. Whyte stated that there were no determinations that supported lot width on an interstate. She said the prior practice that had been referenced referred to properly defined as through lots.

Chairman DiGiulian closed the public hearing.

Mr. Hart said that as the County approached buildout, the vacant sites that remained for development were increasingly difficult and constrained. He said the Board had heard issues concerning slopes, floodplains, and streams, and stressed that all the pieces that were picked over in the past were being given a second, third, and sometimes more looks, and in the real estate market over the last few years, there had been increasing economic pressure to come up with ways to develop those problem sites in a way that would perhaps get around some of the constraints. He said the Board of Zoning Appeals had seen that week after week, and this was an example of a residential configuration, but they had seen it primarily on church sites. He said the sites that were left had problems, and it was very difficult to make things work. Mr. Hart stated that this particular scenario presented a different question. He said he tended to agree with Ms. Strobel that the issue before the Board this morning was relatively narrow, and the appeal challenged the Zoning Administrator's determination that lot width frontage may be measured along the Beltway. Mr. Hart stated that it would appear from the memorandum from staff that although the County had not really dealt with those issues, there were other problems with the design, and they were issues that were not before the Board this morning. Mr. Hart said that in looking to the Zoning Ordinance definition of a street, including the words "a strip of land intended primarily for vehicular traffic and providing the principal means of access to property," it was his conclusion that the Beltway, although it might be a street for other purposes, was not intended to provide the principal means of access to property, and it was a distortion of the plain language of the Ordinance to read otherwise.

Mr. Hart said he believed there was a second fatal problem contained within the conclusion that the Beltway could be used to measure the public street frontage. He said the irregular configuration was attenuated to such a point that it was not consistent with the phrase in the Ordinance of a "convenient, attractive, and harmonious development." He indicated that he believed in this case the configuration had been used to allow more homes to be developed on an oddly configured site than would otherwise be built. He said the Board had not seen the by-right configuration for 27 lots and stated that there may be other geometric problems with that; however, that was not before the Board today. Mr. Hart said that it was his thought that the case in 2003 brought up also the second problem in this case with respect to the lot width and the measurement of frontage. He said the staff position today was not consistent with the Zoning Administrator's position in 2003 or the Ordinance as a whole, and he thought the tape that had been shown to the Board of Mr. Reale's explanation of staff's conclusion in that case, that the odd configuration of these lots with these attenuated pieces not being consistent with the purpose and intent of the Ordinance, was not consistent with what staff was saying today.

Mr. Hart said that staff was arguing to the Board that there was a long-standing administrative practice which should control here, but he did not think the Board needed to reach the issue today about whether that sort of pronouncement trumped the Board of Zoning Appeals' determination. He said he would tend to agree that a long-standing administrative practice by the Zoning Administrator would be entitled to some weight, and at the same time the Board had to use its judgment and its commons sense and listen to what had been presented to them on a case-by-case basis. He said he did not think that staff's say so standing alone gave rise to the sort of determination that the Board would give great weight to, and in this case nothing persuasive had been shown to him that there, in fact, was a long-standing administrative practice that the Beltway or another interstate could suffice within the definition of a public street so as to provide the principal means of access to property. Mr. Hart stated that he had reviewed the examples provided by Ms. Strobel, and he appreciated that and wished that the Board had been provided with that information at an earlier date; however, in general those examples of other situations where there were through lots or reverse frontage lots were distinguishable. He noted that there were several situations where the lots might front on a cul-de-sac or a subdivision street and then have frontage as well on what appeared to be busier streets, some sort of main arterial that housed the oriented internal to the development. He stated that in those cases, there might be situations in which that sort of street could provide the principal means of access to a property. Mr. Hart noted that for whatever reason it did not and probably that sort of street provided access

in other locations; however, there appeared to be only two that seemed to deal with an interstate in any way. One of them appeared to be a rezoning and the other, the Oaks Subdivision, which did not seem to have been challenged.

Mr. Hart stated that the Board often deferred to staff's explanation or interpretation, but here the suggestion was that what staff was saying now should be given some super special great weight, and because they said this was the long-standing administrative practice, that the Board need go no further because staff knew best. He said he did not think that the function of this Board was necessarily to defer to that sort of thing, and if the surface was scratched, there did not seem to be anything behind it. He said there did not appear to be any memoranda, written interpretations, appeals to the Board of Zoning Appeals, or court cases, and it did not seem that anyone had raised this issue before. He indicated that as far as the Board was concerned, it seemed more that this was a case of first impression and practically as much with the Zoning Administrator.

Mr. Hart stated that there was another situation where the Zoning Administrator seemed to have reviewed these issues, which he found strikingly similar to this case, and he thought it was similar the first time he looked at it. He said that was the Oehrlein case in Mount Vernon where someone had the same type of situation where there were attenuated pieces separated by ribbons of property connecting to the area where the homes were going to be built. He said in that case the Zoning Administrator had said that the lot width could not be measured from the paper street because it did not provide the principal means of access to the lot. He stated that the Zoning Administrator also raised a second fatal problem which was linked to the frontage problem in that these bizarre configurations were not consistent with the convenient, attractive, and harmonious development kinds of guidance terms to comport with the intent and purpose of the Zoning Ordinance. Mr. Hart said he could not determine any meaningful distinction here between the use of the strange configurations to get frontage on a public street or two years later to do it on the Beltway. He said he did not understand the Zoning Administrator's change in position, that this question of intent of providing the principal means of access to property did not work on a paper street, but it did work on the Beltway, and it seemed to him that the practical effect was the same. He stated that no one intended that the Beltway should be the principal means of access to these lots, and this case may even be a worse example than the one the Board had seen two years prior.

Mr. Hart said the Board had to be consistent and could not make up the rules as they went along. He said that at times the Board had a difficult job to try to read meaning into Zoning Ordinance provisions that may not have been focused on with this type of example at the time they were written; however, given the plain language of the Ordinance, he did not believe that the Board of Supervisors intended that the Beltway or other interstate highways would be providing the principal means of access to a lot. He said he did not believe that when the provision was adopted, the Board of Supervisors intended that people would be measuring their public street frontage off of the Beltway, and nothing had been presented to this Board suggesting that they did. He said that to the contrary, there had been numerous Ordinance provisions pointed out to them that were consistent with the reading the other way, that the front of these lots were really the ones with the front of the house or facing the street or some other provision along those lines. He said he thought the Board had to read the Ordinance as a whole, particularly in situations where it was suggested that maybe the Board of Supervisors did not mean what they had said. Mr. Hart stated that he had seen nothing in the provisions that suggested that it was an equal consideration that perhaps frontage on the Beltway or on another interstate might be appropriate. He noted that all of the other Ordinance provisions that were shown to the Board today seemed to be going in the other direction. He said he thought that the determination that the public street frontage for lot width purposes could be measured along the Beltway was plainly wrong, given the wording of the Ordinance and taking the Ordinance as a whole, as well as the purpose and intent of the Ordinance and as well as the Zoning Administrator's determination two years prior on a very similar subdivision plan.

Mr. Hart moved to reverse the determination of the Zoning Administrator. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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The Board recessed at 12:17 p.m. and reconvened at 12:48 p.m.

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~ ~ ~ December 6, 2005, Scheduled case of:

9:30 A.M. IKHMAYYES J. JARIRI, A 2005-MA-044 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has erected an accessory storage structure, which exceeds eight and one-half feet in height and 200 square feet in floor area and which does not comply with the minimum yard requirements for the R-3 District, without a valid Building Permit, in violation of Zoning Ordinance provisions. Located at 3513 Washington Dr.. on approx. 15,411 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (F) 502.

Chairman DiGiulian noted that A 2005-MA-044 had been administratively withdrawn.

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~ ~ ~ December 6, 2005, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17. (Deferred from 5/11/04 for notices.) (Decision deferred from 7/20/04, 9/14/04, 9/28/04, 11/9/04, 12/14/04, 4/5/05, 10/11/05, and 11/29/05)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that this case had been deferred for decision only, and the representative for the appellant was present.

Jerry Phillips, agent for the appellants, stated that he had wanted to present live testimony from members of the family that had developed the property in the 1940s and 1950s; however, they were unable to attend because of health reasons. Mr. Phillips presented the Board with written statements that verified what the appellants had previously testified to. He stated that the letters acknowledged that the vehicles in question had been located on the property for many years. He said the County had placed a burden on the appellants to prove that they were not in violation of the Zoning Ordinance, and the appellants had provided a substantial number of documentation and photographs showing that the trucks had been on the property when it was purchased from the original owners. He stated that the County's position that the appellants were in nonconformance was unacceptable. He said the Ordinance that was in effect at the time of the purchase by the appellants was the 1941 to 1959 Ordinance, and at that time the property was located in an agricultural district. He said the uses at that time were in harmony with the neighborhood. Mr. Phillips said the County claimed that since the 1959 Ordinance changed the property to residential, the appellants should not be grandfathered. He said that position was not tenable primarily because the whole concept of nonconforming use was that if it was lawful at the time that the Ordinance was in effect, then it would still be in effect. He said the County had nothing in its street records to indicate that it was a nonconforming use. Mr. Phillips stated that the appellants had presented affirmative evidence, and the County had presented none. He said he thought the burden had been carried by Mr. and Mrs. Crabtree and requested that the Board overrule the finding of the Zoning Administrator since the property was grandfathered. He indicated that the restrictions the County wanted to impose were all after the appellants had lawfully used the property under the Ordinance that was in effect at the time of purchase. Mr. Phillips stated that the appellants had tried to resolve the issue with the County, and the family had indicated that once their parents passed on, they had no desire to keep the trucks there and would be willing to enter into any type of stipulation or agreement with the County that would run with the land if that would resolve the issue.

Elizabeth Perry, Staff Coordinator, Zoning Administration Division, stated that the issue of looking for additional information from the appellants that would demonstrate that there were nonconforming uses was because the County had no record of any of the uses that the appellants suggested were in the area at the time the truck use first started. She said that if the County had no information that would indicate that there were any legally established uses, such as this one, that constituted the County's records. She said the appellants had been given the opportunity to provide some contradicting information, none of which had been satisfactory to staff. Ms. Perry noted that in a staff memorandum dated November 1, 2004, they had provided an overview of all the residential uses that were in the neighborhood. She said she understood that the Board had been given information today that talked about other operations, but in previous public hearings it was established that the truck and trailer use of the subject property had been established in 1955. Pointing to the overhead, she said residential developments that predated the use were already in existence. She said the first indication of a violation had taken place in January of 2004. Ms. Perry stated

that she had been receiving calls from neighbors in the area who were diligent in keeping track of the issue and were waiting for a resolution from the Board.

In response to Mr. Beard's question, Ms. Perry stated that there was no way a nonconforming use could run with the occupant as opposed to the land.

Mr. Hammack asked whether staff had an opportunity to look at the letters that had been submitted by Mr. Phillips, both of which appeared to support commercial vehicles on the property as early as 1947. Ms. Perry said that what she was reading talked about vehicles on Anderson and Sasher Lane, and the property in question was located on Ruby Drive. She said she did not see any reference to the appellants' property. Mr. Hammack noted that street names often got changed. Pointing out a diagram that had been attached to one of the documents submitted by the appellants, Mr. Hammack said it showed where Ruby Drive and Anderson merged. He said Ms. Perry was talking about vehicles being in the area and called attention to the diagram that showed Ruby Drive, the Hancock Sawmill at the intersection of Ruby and Sasher, as referenced in a letter from James Vannoy dated October 6, 2005, as well as the Braddock Construction office on the corner of Sasher and Anderson, one block down. Referring to the overhead, Ms. Perry pointed out the intersection of Sasher Lane and Anderson, the subject property, Ruby Drive, and the residential development that dated back as early as 1949. She noted that in previous public hearings it had been established that the use of the appellants' property had been established in 1955. Mr. Hammack asked Ms. Perry to use the overhead and show the Board where the lots were located on the diagram that had been submitted. She said that the first street diagram showed the intersection of Ruby Drive and Anderson which had originally shown the sawmill, and the second one showed Sasher Lane and Anderson that showed the office. Mr. Hammack said there was a reference to Hancock Sawmill 2 at the corner of Ruby Drive and Anderson. Ms. Perry said that was Lot 5, and in 1950 there was a house on it. Mr. Hammack stated that did not mean that a sawmill did not exist. Ms. Perry stated that if the sawmill had been there and a house was built there in 1955, that was when Mr. Crabtree started using his property for storage of his trucks. She said it was her understanding that this was hinging on a provision in the 1947 Ordinance about the character of the neighborhood, and staff was demonstrating that prior to 1955 when the use was allegedly established, it was a residential area.

Ms. Gibb asked whether residential use could have been mixed in with the business use. Ms. Perry said there was a house on the Crabtree property, and they were storing trucks in violation of the Zoning Ordinance, and the trucks were not supposed to be located there. Ms. Gibb said that could have been the case since 1947 or 1950. She said the character of the neighborhood at that time could have included a mix of residences and businesses. Ms. Perry stated that there was nothing in staff files that indicated that there were industrial uses such as the ones in question in the area. Ms. Gibb said that staff had indicated that their files were empty. She said Mr. Phillips had presented evidence saying that the trucks were present on the property at that time. Ms. Perry said that was around 1947, and staff was arguing that in the 1950s a residential development had been put in there. Ms. Gibb said she understood that there were houses being built in that area; however, she was trying to point out that trucks were also located there at that time. Ms. Perry stated that the properties indicated in the attachment submitted by Mr. Phillips did not depict the subject property staff had been referring to. She said she did not understand what the Board was trying to determine.

Mr. Hart stated that his recollection of the testimony was that there were other commercial enterprises such as a paving company and a sawmill operating in the neighborhood prior to 1959 as well as in 1955. He said one of the appellants' arguments was that such other equipment or vehicles were allowed if they were consistent with the character of uses in the neighborhood. Setting aside the number of trucks located on the property, which he thought were still an issue, Mr. Hart asked why homes could not be built in the neighborhood even if the other uses were going on. He said that if a sawmill or agricultural uses were permitted under the 1941 Ordinance in 1955 and other things were happening in the neighborhood which were going to involve trucks starting in 1955, was not that use consistent with the character of the other uses in the neighborhood. He said he thought what staff's response to that was "But back in 1950 at least, we start getting homes built." He asked how one got rid of the other. He noted that more and more homes were getting built and asked how the issuance of building permits beginning in 1950 for more homes got rid of the other existing uses in the area. Ms. Perry said the County did not have records of those uses, and there were no permits in the files to indicate that sawmills were in operation. She said that one of the memorandums submitted to the Board that contained drawings of the property referenced the Meadows property, and that property was subject to enforcement actions. It was referenced in the street files, and

people were trying to clean up that property because of storage issues. She said that was not a permitted use.

Mr. Hart stated that if the testimony was to be believed, those uses were ongoing and called attention to the two letters that had been submitted indicating that at least in 1947 those uses were going on. He said that if the Board believed that, even if the file was empty, and they thought that those kinds of things were consistent with the very broad spectrum of uses that were allowed in the Springfield District under the 1941 Ordinance and in 1955, the appellants had shown that it was consistent with what was happening in the neighborhood at that time. He asked why the information presented from those persons who had lived in the area at the time was not enough for staff regardless of whether or not the files were empty. Ms. Perry stated that if someone had a property where the principal use was a sawmill, they had heavy equipment parked on the property, and the principal use of that property also included a residence, construction equipment could not be stored there. She said that if a property owner lived on the lot next door to that property, it was considered to be a residential unit, and that was why such equipment and/or accessories could not be stored on the property. She said they had to be ancillary to the principal use of the lot, as had been stated in the November 1, 2004 memorandum.

Mr. Hart stated that the 1941 Ordinance expressly provided that other equipment, such as vehicles or machinery, was consistent with the other uses. Ms. Perry stated that was "permitted uses," and the subject property was permitted for residential use, not a storage area. Mr. Hart said that in that zoning district under the 1941 Ordinance, there could be many more things than just residences, and he asked whether sawmills and agricultural uses could be allowed. Ms. Perry said that could be permitted. Mr. Hart asked why equipment or machinery was not consistent with that. Ms. Perry responded that there was a primary use on the lot, and that was residential. Mr. Hart asked if the 1941 Ordinance expressly included such other equipment or machinery or vehicles as were consistent with other uses in the general area, not just on that one lot. Ms. Perry said she would obtain the specific provisions and provide them to the Board.

Mr. Hammack indicated that such uses could be considered under the agricultural and forestry portion of the Ordinance.

Ms. Perry stated that tractor-trailer trucks and uses that were minor was what the staff was dealing with, and they could be pulled. She stated that she thought Mr. Hart had been referring to Section 3 of the Agricultural District use regulations, which stated, "The first use is farming, dairy farming, livestock and poultry raising, lumber and sawmilling and all uses commonly classed as agricultural and forestry, and uses which are pertinent thereto, and which are in harmony with the character of the neighborhood in which no restrictions as to the operation of such vehicles or machinery as are incident to such uses." Mr. Hart asked if "right around the corner" was considered to be in the neighborhood if it stayed in harmony. Ms. Perry stated that there were other Zoning Ordinance provisions, and the idea of having trucks on the property in question was not the principal use. She said the trucks on the property were the primary use as a storage area, and if the implication was that the property had been used as a storage yard since 1955, that lot had been established with a residential unit on it. Mr. Hart asked whether there was a clause in the Ordinance that stated that such other equipment or machinery or vehicles were consistent with other uses in the neighborhood. Ms. Perry stated that it was "uses that were customarily pertinent thereto and which are in harmony with the character of the neighborhood." Mr. Hart said he thought that the Ordinance contained a provision about equipment, machinery, or vehicles, and he remembered that was brought up at the public hearing. Ms. Perry read the following from the Ordinance, "...which are incident to such uses and with no restrictions as to the sale or marketing of products raised on the premises, provided that no building or structure for the raising, housing or sale of poultry, livestock, or of animals on a commercial scale or a sawmill shall be located less than 100 feet from any street, lot or property line." She said that was all under the use of agriculture so the limitations with respect to vehicles were associated with agriculture.

In answer to Ms. Gibb's question, Ms. Perry said sawmills were referenced in the Ordinance. Mr. Hart asked why approvals were required and why there should be any paperwork in the file if it was perfectly legal to do so. Ms. Perry stated that the nature of the neighborhood could include a sawmill and a residential structure; however, just because a neighbor had trucks on his property did not mean that it was permissible when the primary use of the lot was a residence. Mr. Hart stated that he thought a by-right use under the 1941 Ordinance included such other equipment, machinery or vehicles as were consistent with the other uses in the neighborhood. Ms. Perry said the Ordinance stated "...the uses which are in harmony with the character of the neighborhood with no restrictions to the operation of vehicles or machinery...." Mr. Hart asked Ms.

Perry to complete the reference. She repeated what she had read earlier with respect to pertinent uses being in harmony with the character of the neighborhood. In response to Mr. Hart's question, Ms. Perry stated that trucks used for the sawmill would not be incident to the property in question because it did not contain a sawmill.

Mr. Phillips suggested that staff ask the County Attorney to submit a memorandum on the 1941 Ordinance, and he said he would submit a memorandum on the Ordinance as well. He said that if that was done, the Board could look at the legal interpretations on which to base their decision.

Ms. Gibb stated to Ms. Perry that Alvin Meadows did not leave his property because he agreed that he was in violation, but had left because he felt he could not afford to fight the violation. Ms. Perry stated that it was her opinion that there was consistent enforcement action in the neighborhood for uses that were not permitted. Ms. Gibb stated that she did not want the Meadows case to be used as a rationale or an admission that Mr. Meadows had done anything wrong. Ms. Perry said it was the County's position that there were activities in the area that may have been going on, but were not permitted under the Zoning Ordinance. Ms. Gibb said she wanted to clarify that may have been the County's opinion, but it was not Mr. Meadow's.

John Zemlan, Zoning Inspector, Zoning Evaluation Division, said that in 1941 the appellants did not have four or five large tractor-trailer trucks on the property and noted that the sawmill trucks were smaller. He pointed out that Mr. Crabtree no longer owned or operated the trucks, and he was storing them for his relatives. He said the 1941 Ordinance indicated that vehicles could be permitted to operate a business, but there was no business going on at the appellants' residence. He said the trucks on the property had increased in number and size in the early 1950s.

Mr. Phillips stated that he disagreed with Mr. Zemlan's comments and pointed out that the appellants' photographs showed the type of trucks that were there as well as photographs taken by County staff that showed that the use was continuous up to the present time. He noted that James Vannoy and his brother, Robert, had both stated that the housing of such equipment had continued since 1947 on the Vannoy acres. He said the large equipment and commercial trucks had also been housed at the Anderson Lane location. He reiterated his request that the County Attorney review the information contained in the 1941 Ordinance and give the Board an opinion. He said he would submit a memorandum discussing the appellants' assertions and submit that to the Board as well. Chairman DiGiulian said he thought Mr. Phillip's suggestion was a good one.

Mr. Hammack asked whether there was any objection to discussing Mr. Phillip's proposal with the County Attorney and addressing non-enforcement for a period of a few months or a year in return for an agreement that the trucks would be removed when Mr. and Mrs. Crabtree moved from the property. Ms. Perry stated that she did not know whether that was legal. Mr. Hammack asked if there was any objection to discussing it. He asked whether staff always looked for the easiest way to save taxpayers money in an attempt to resolve this type of problem. Ms. Perry said staff was also trying to respond to people in the neighborhood who had brought the issue to the County.

Ms. Stanfield stated that she had spoken to Mr. Phillips who had asked for a compromise. She said she asked him what he had in mind, and he responded that he would like to be given two years to try for a resolution. Ms. Stanfield said she did not think she had the authority to continue the violation for a two-year period, nor did she think it was fair to the neighbors to do that.

Mr. Hammack said his question was whether there would be any objection on staff's part to taking the issue to the County Attorney for discussion, assuming that the County Attorney would consider such a request. Ms. Perry said it was not clear to her whether staff had the authority to agree to such a request. Mr. Hammack stated that the County Attorney could advise staff. Ms. Perry stated that the County Attorney represented the Zoning Administrator as counsel, and beyond that she could not comment. In answer to Mr. Hammack's question, Ms. Perry said it was her understanding that staff did not have a lawyer to represent them or to provide them with legal advice. Mr. Hammack said he thought staff should bring that issue to the attention of James Zook, Director, Department of Planning and Zoning.

Mr. Byers called attention to page 5 of the July 9, 2004 staff report that said, "The parking of more than one commercial vehicle on a residential property has not been a permitted use of the subject property since the

implementation of the first Zoning Ordinance in March of 1941." He asked if that was a factually accurate statement. Ms. Perry said that it was. Mr. Byers stated that if there were four commercial vehicles that were parked, stored, et cetera, at least three of them were in violation and that staff could argue about one. He asked if that was correct, and Ms. Perry said yes. In answer to Mr. Byers' question, Ms. Perry said there were four vehicles parked on the property at staff's last inspection, with no legally established business. She said staff had records that the trucks belonged to a trucking business. Mr. Byers said the County was trying to establish use, and he said that if staff was basing their argument on the 1941 Ordinance, regardless of the other discussion items, if that was a factually accurate statement, the appellants now had three vehicles on the residential property that were not permitted under any circumstance. He said they could be permitted one commercial vehicle if it could be assumed that it was not based on use. He asked whether it could be possible for the appellants to have one semi-trailer on the property. Ms. Perry said that was correct.

Chairman DiGiulian asked for a copy of the 1941 Ordinance where the information could be located.

Mr. Byers and Mr. Ribble said they thought the Ordinance stated that there was no restriction on the number of vehicles that could be parked on property at that time. Mr. Ribble said it was his opinion that staff was making a statement that they considered to be correct because they said that it was. Mr. Byers said that was why he questioned whether the statement was factual. He said he wanted to know what the 1941 Ordinance said about the number of vehicles that could be parked on a property.

Mr. Ribble said he wanted time to examine the 1941 Zoning Ordinance, get some clarification on Mr. Vannoy's letter, as well as get some information from the County Attorney's Office to compare with the information that Mr. Phillips had offered to provide.

Mr. Ribble moved that the decision on this case be deferred for a period of nine months. Mr. Beard seconded the motion.

Mr. Hart said he was agreeable to a deferral, but considered nine months to be too long. He said he wanted to receive some clarification on the issue of the overlap between the uses and the building permits commencing in 1950 because he thought that staff's response was that the issue of building permits began in 1950; therefore, it was no longer considered to be consistent because it was a residential property. He said he did not read the letters provided by the appellants the way they were construed by staff and thought that the other uses were continuing from 1947 forward for 25 or 30 years.

Mr. Hart made a substitute motion to defer the case for 45 days. Mr. Hammack seconded the motion.

Mr. Hart stated that there was one other issue before the Board that had been brought up by Mr. Zemlan. He said he agreed that there was an issue concerning the number of trucks on the property and stated that even if there was a nonconforming use, it could not be expanded, and the number of trucks on the property had grown from two. He said a deferral would allow either side the opportunity to address the issue of the expansion of a nonconforming use. He said that even if the Board agreed with staff's statements that it was continuous from 1955, he wanted to know why that would justify the number of trucks on the property today being any more than two.

Ms. Gibb suggested a three-month deferral, stating that with the upcoming holidays 45 days would not be long enough.

Mr. Hart amended his motion and moved to defer decision on A 2004-SP-004 to March 7, 2006, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

Ms. Stanfield asked the Board to explain what they wanted staff to provide to them at the next hearing and whether or not they expected a response from the County Attorney. Mr. Hart said it did not sound like the Board would get one, but it would be helpful.

Chairman DiGiulian advised Mr. Phillips that he could submit whatever he thought was prudent.

Mr. Ribble stated that he was asking for clarification from Mr. Vannoy, not staff.

Mr. Hart said the new evidence received today suggested that there had been two sawmills and other things

~ ~ ~ December 6, 2005, CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004, continued from Page 40

going on commencing in 1947, and staff's response to that was that they did not have any records of that, but did have records of building permits on the subdivision commencing in 1950; therefore, they considered the use to be residential and that those uses would not be consistent with the residential harmony of the neighborhood. He said he thought that the information provided by staff was vague as to whether it was overlapping with respect to the sawmills and when houses were being built in 1950. He said he thought there was an overlap and that it was consistent with the testimony the Board had heard before; however, he wanted clarification from the people who were writing the letters that pertained to 1947.

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~ ~ ~ December 6, 2005, Scheduled case of:

9:30 A.M. DONALD E. AND BETTY B. BOYD, A 2005-SP-047 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a junk yard and storage yard on property in the R-C District in violation of Zoning Ordinance provisions. Located at 13316 Compton Rd. on 10 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-1 ((1)) 26.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report dated November 29, 2005.

Brant Baber, friend of the appellants, presented the arguments forming the basis for the appeal. He submitted photographs to the Board depicting progress that the appellants had made with respect to cleaning up their property. He stated that the appellants had purchased the property in 1963 at a time when the Zoning Ordinance was not nearly as articulate and when the R-C District did not exist. Mr. Baber stated that in 1978 when the Ordinance was adopted, the definitions which the appellants were accused of violating, that of operating a storage yard, were articulated. He said one of them permitted accessory use which was outside storage not more than 100 square feet. Mr. Baber stated that the problem was a long-standing situation. He said the Zoning Ordinance was being applied to the appellants in a confiscatory manner. He said Mr. Boyd had continued the use. It may be messy, and it may be ugly, but the question was whether it was unlawful and was his use of the property grandfathered. He said Mr. Boyd also disputed staff's assertion that he had made no progress. He said that although the photographs had not been submitted to John Zemlan, the zoning inspector, he did get them done and brought them to the hearing. Mr. Baber stated that the photographs showed Mr. Boyd was moving things out of the property. He said the appellants had acted in good faith, and they expected to sell the property within the next two years, which was a good motivation to get something done.

Mr. Baber said the current Zoning Ordinance permitted accessory use. He said that most of the properties adjoining the appellants' property were more than 10 acres in size, and there was only one subdivision close to their property that had been constructed in 1966. He said that when the property was purchased, it was located in a rural area, and the area was still considered to be rural. He questioned staff's application of the standard of the subdivision for all of the large adjoining pieces of property. He said other properties along Compton Road had a lot of debris and items on them. Mr. Baber said the use was not incompatible with the current size of their property, which was 43,000 square feet, and even if staff claimed that the appellants' property had approximately 3,000 square feet of storage yard, that was ancillary by anyone's definition. He asked that the appellants be permitted to continue to make progress and said they would welcome further inspections by the zoning inspector. He asked that the Board determine that based upon the circumstances in this matter, the appellants' use was an accessory use because it met all the standards of that definition in the current Zoning Ordinance, none of which required them to meet the standards of any particular subcategory. He stated that it was unfair to change the rules on the appellants' use of their property as had occurred under the Zoning Ordinance, specifically in connection with its 1978 recodification.

In response to Mr. Hart's question, Mr. Baber said there was no dispute on the appellants' part that vehicles with dead plates were kept on the property overnight.

Mr. Hart asked staff whether the 1959 Ordinance had been applied in 1963. Ms. Stanfield said it probably had. Mr. Hart asked if there was any meaningful difference between the 1959 Ordinance and that of 1978 as to limitations on outdoor storage. Ms. Stanfield said she would have to check; however, it was her understanding that the items in question had been brought to the site not that long ago and that it had been

stored in Manassas prior to that time.

Mr. Hart asked Mr. Baber if Mr. Boyd had kept the items in a warehouse in Manassas, and because the storage fees were increased to the point that it cost more than the items were worth, he vacated the warehouse and moved the items to his property, so it was not something that had been going on for many years, but was the fact that he was losing the warehouse. Mr. Baber agreed that a portion of the quantity was attributable, but the use had been continuous since they had moved into the property. Mr. Hart asked whether there was any dispute that the photographs did not depict an accurate condition of the property either at the time of the initial letter or when they were taken. Mr. Baber said no.

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

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said there was more than 100 square feet of materials being stored outside, and it violated Par. 24, Sect. 10-102 of the Zoning Ordinance. She noted that the original inspection was done in July of 2004, and in that timeframe several notices had been sent to Mr. Boyd. She said one of the notices had been sent because Mrs. Boyd's name was not on the original notice. She noted that Mr. Boyd had made little progress toward compliance. Ms. Gibb said that when she read Mr. Boyd's reply, he had stated that when he asked staff what he should do, they had replied that he needed to clean it all up. Ms. Gibb stated that was the answer, that he could have his 100 square feet, but that was all.

Mr. Beard asked Mr. Zemlan if he was the inspector, and Mr. Zemlan said he was. In response to Mr. Beard's question, Mr. Zemlan said that he had not seen any significant improvement since he had made his initial inspection. He stated that the appellants had cleaned out part of their barn with the intention of moving the items from the yard into it; however, the items that were in the barn were now outside the barn. He said the appellants had mentioned 3,000 square feet of storage space, but it was his opinion that the items in the yard would fill up approximately three quarters of the Board Auditorium space.

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

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~ ~ ~ December 6, 2005, Scheduled case of:

9:30 A.M. ANGELA C. MEDEROS, A 2005-MA-031 (Admin. moved from 9/13/05 and 10/18/05 at appl. req.)

Chairman DiGiulian noted that A 2005-MA-031 had been withdrawn.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Oakwood Road Associates, Bristow Shopping Center, Lancaster Landscaping, McCarthy, Virginia Equity Solutions, the Smith case, the Lake Braddock case, correspondence, and personnel matters. Mr. Hart seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 1:36 p.m. and reconvened at 2:08 p.m.

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

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Mr. Hammack moved that the Board authorize a letter to Mr. Griffin that was discussed in the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

~ ~ ~ December 6, 2005, continued from Page 42

Mr. Hart moved that the Board authorize the Chairman to send the letter to Mr. Bobzien that was discussed in the Closed Session. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

Mr. Hammack moved to authorize Ms. Gibb, the Board's secretary, to send the letter that was discussed in the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Mr. Hart moved that staff report to the Board on the Annual Report requirements in the Ordinance, tell them who was preparing it, what the status of the project was, and asked that the Board be given a draft copy for review. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 2:12 p.m.

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

Approved on:

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 13, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; James Hart; Norman P. Byers; and Paul Hammack. John Ribble and Nancy Gibb were absent from the meeting.

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

~ ~ ~ December 13, 2005, Scheduled case of:

9:00 A.M. DAVID M. LAUGHLIN AND CHARLOTTE H. LAUGHLIN, VC 2005-HM-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 20.73 ft. with eave 26.20 ft. and steps 16.83 ft. from front lot line. Located at 1884 Beulah Rd. on approx. 41,448 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((1)) 57 pt.

Chairman DiGiulian noted that VC 2005-HM-007 had been administratively moved to January 24, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:00 A.M. KINGDOM HALL OF JEHOVAH'S WITNESSES MOUNT VERNON CONGREGATION, SPA 99-V-013 Appl. under Sect(s). 3-503 of the Zoning Ordinance to amend SP 99-V-013 previously approved for a place of worship to permit a reduction in land area. Located at 7920 Holland Rd. on approx. 3.98 ac. of land zoned R-5. Mt. Vernon District. Tax Map 102-1 ((1)) 38A. (Admin. moved from 11/15/05 at appl. req.)

Chairman DiGiulian noted that SPA 99-V-013 had been administratively moved to February 7, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:00 A.M. HECTOR F. CACERES, SP 2005-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck (open porch) to remain 27.2 ft. and dwelling 22.6 ft. with eave 22.5 ft. from front lot line of a corner lot. Located at 5530 Janelle St. on approx. 11,266 sq. ft. of land zoned R-4. Lee District. Tax Map 82-2 ((2)) (B) 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Noemi LaGuardia, the applicant's agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on error in building location to permit dwelling to remain 22.6 feet with eave 22.5 feet from the front lot line of a corner lot. A minimum front yard of 30.0 feet with permitted eave extension of 3.0 is required; therefore, modifications of 7.4 feet and 4.5 feet were requested.

Ms. LaGuardia presented the special permit request as outlined in the statement of justification submitted with the application. She said Mr. Caceres built the addition in error and asked that the BZA allow him to keep his dwelling as it was. He did not know what the requirements were.

Chairman DiGiulian asked if Mr. Caceres had obtained a building permit. Ms. LaGuardia said he did.

Mr. Hammack asked how the building permit got approved on a 1976 plat. Ms. Hedrick responded that the outline depicted on the building permit was not what was actually built in comparison with the new plat, and so long as Mr. Caceres used a certified plat and he was within the required yard setbacks, he was permitted to use the plat. The plat was approved based on the dimensions he provided on the plat in 2000.

Ms. LaGuardia said that Mr. and Mrs. Caceres owned the property since April 1993. His friend, who was not a licensed contractor, helped him construct the addition. There was no written contract. He applied for the building permit that was approved in 2000.

Mr. Hammack asked why Mr. Caceres built something different from what was depicted on the building permit. Mr. Caceres responded that he got the permit and built another addition.

Mr. Hart had questions relating to the plat. Ms. Hedrick responded that the June 30, 2000 approval was for the one-story addition and showed the minimum set backs at 35.5 feet using the old plat from 1976.

Ms. Hedrick addressed the front porch, explaining that Mr. Caceres applied for it as part of the special permit and because it was less than 10% in error, the error was 9%, it was submitted as part of the development condition and was removed from the special permit request. Mr. Caceres's agent was informed that they needed to obtain an administrative reduction for the front porch error.

Mr. Hart asked why Mr. Caceres and his friend built the room next to the garage in 2003 when he had not obtained a permit. Ms. LaGuardia responded that Mr. Caceres thought it was okay to build it because there was no second floor and he was enclosing it.

Mr. Hart summarized that the back wall of the house had two dimensions; 63.8 and 12.7. It appeared to him that the right hand side was an addition of about 15 feet that was on the plat in Appendix 4 of the staff report. The original house of 33 feet had a 15-foot addition which made it 48 feet. It looked like there was a totally different addition at the left hand side of the house that was about 12.7 feet on the back and 12.6 feet at the front, which was probably the 2003 addition. All of the 2003 addition conflicted with the 35-foot building restriction line that was drawn through the left side of the house. Everything in 2000 was approved, the front porch was to get an administrative reduction, but the addition to the left that was 22.6 with the additional 12.6, made it 35.2. Mr. Hart pointed out that the 35 feet that was circled on the plat with the approvals from 1976 and the addition of about 12.6 feet was what was different from the plat in the street file.

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

Mr. Hammack moved to approve SP 2005-LE-038.

Mr. Beard seconded the motion. He added that the County was sufficiently protected by the proposed developmental conditions which the applicant needed to conform to, and there were no letters of opposition by the neighbors.

Mr. Hart agreed that all of the Standards had been met except for 1B. Mr. Hart said he was not persuaded that the non-compliance was done in good faith or through no fault of the property owner. It was apparent that a building permit was obtained in 2000, but was not obtained in 2003. He said he could not support the motion and it would be a hardship for the applicant to tear it down. He said he did not have a problem with the addition itself and would support a deferral until after March when the Zoning Ordinance amendment for reduction in minimum yards might be available and if it passed, the applicant may not have to clear that threshold. On the existing Standards for the mistake in building location, Mr. Hart said he needed to hear more about how the second addition was built with no permit despite getting a permit once before and trying to get a permit at least one other time.

Mr. Hammack made a substitute motion.

Mr. Hammack moved to defer decision on SP 2005-LE-038 to August 1, 2006, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 4-1. Mr. Byers voted against the motion. Ms. Gibb and Mr. Ribble were absent from the meeting.

Mr. Byers said he would not support a deferral because the standards in 1B were not met. He said he thought the Zoning Ordinance Amendment on the 50% reduction to be decided by that timeframe was problematic.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:00 A.M. SIMIN HAYATI-FALLAH, VC 2005-SU-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line. Located at 6220 Hidden Canyon Rd. on approx. 10,688 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) 49.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Asghar Ghalambor, the applicant's agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically the enclosure of an existing carport into a garage, to be located 10.4 feet from the side lot line. As noted in the staff report, at the time the dwelling was constructed in 1978, it met the R-2 Cluster regulations because a carport could extend 5.0 feet into the minimum required yard and therefore total yards permitted for the carport would have been 19.0 feet. With enclosure of the carport, the 5.0 foot extension does not apply, and the R-2 Cluster yards at a total of 24 feet could not be met; therefore, this application must be for a variance and not a special permit for an R-C lot. A minimum side yard of 20.0 feet is required; therefore, a variance of 9.6 feet was requested.

Mr. Ghalambor presented the variance request as outlined in the statement of justification submitted with the application. Mr. Ghalambor said Ms. Hayati-Fallah wanted to convert her existing carport to a garage because she was a special nurse and needed to store equipment; also due to her own health issues. Ms. Hayati-Fallah said she was a visiting nurse with INOVA and wanted to ensure the confidentiality of her patients through storing the documents in her garage.

Mr. Hart asked the applicant if the ordinance interfered with all reasonable beneficial use of the property taken as a whole. Ms. Hayati-Fallah responded that her neighbors supported her application.

Mr. Hammack asked Ms. Hayati-Fallah if she stored patient records in her trunk overnight and she replied that she did.

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

Mr. Byers said he was sympathetic to the applicant, but going back to the Cochran decision and based on the strict application of the Zoning Ordinance denial would not produce undue hardship, or prohibit or unreasonably restrict all reasonable use of the property and he did not agree that the granting of a variance would alleviate clearly demonstrable hardship approaching confiscation.

Mr. Byers moved to deny VC 2005-SU-012. Mr. Hammack seconded the motion.

Mr. Hammack said it was a very reasonable request on the part of the applicant. The way the ordinance was written allowed carports to encroach, but you could not enclose them. If the carport was built within the setback lines it could be enclosed. Under Cochran the BZA was precluded from granting any relief.

Mr. Beard said that it was another case in which the citizens needed to go to their elected officials.

Mr. Hart said he could not conclude that it met the new test and that there was no reasonable beneficial use of the property in the absence of a variance. He said he would support a deferral and assumed that the intrusion into the minimum yard was less than 50%. Mr. Ghalambor responded that the applicant wanted a deferral.

Mr. Hart made a substitute motion to defer decision on VC 2005-SU-012 to August 1, 2006, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were absent from the meeting.

Ms. Hedrick said she discussed with the applicants the potential of filing a special permit for an RC lot if they reduced the size of the garage to meet the total side yards of 24 feet. It would give them a 7.8 foot garage; however the applicant said she wanted to do what she could now. Ms. Hedrick said she did not know if this could be done while having a variance pending for the same issue and apply for a special permit for an RC lot.

Chairman DiGiulian responded that he thought they could withdraw the variance if they were applying for a

~ ~ ~ December 13, 2005, SIMIN HAYATI-FALLAH, VC 2005-SU-012, continued from Page 47

special permit.

Mr. Hart suggested to staff that they work with the applicant during the deferral period to see if a garage could be put off the back of the house.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:00 A.M. CONCEPTS 21 LTD C/O SHADOWLAND, SP 2005-LE-035 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit indoor recreational use. Located at 5508 Franconia Rd. on approx. 1.80 ac. of land zoned C-6 and HC. Lee District. Tax Map 81-4 ((1)) 71A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Randall Briggs, 9179 Red Branch Road, Columbia, Maryland, the applicant's agent, replied that it was.

Steve Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant, Concepts 21 Limited, c/o Shadowland, requested a special permit to allow an indoor recreational use comprised of a laser tag facility. Proposed hours of operation were 10 a.m. to 10 p.m. Sunday through Thursday and 10 a.m. to 12:00 midnight Friday through Saturday. The business would employ 8 to 10 full-time workers, and expected a maximum of 70 players at any one time. The applicant proposed 100 parking spaces. Exterior changes amounted to the installation of a 25-foot wide landscaping buffer along the western lot line to provide transitional screening to the townhouses to the west. The applicant proposed to construct 10 landscaped islands throughout the parking lot area to aid in defining traffic circulation, add parking lot landscaping, and re-stripe the parking lot. New down-lighting was proposed for the parking lot also.

There was no new construction proposed on the site.

Staff believed that the application was in harmony with the Comprehensive Plan and was in conformance with the Zoning Ordinance provisions. Staff recommended approval with the adoption of the proposed development conditions located in Appendix 1 of the staff report. The applicant requested the morning of the hearing that Development Condition 6 be deleted and indicated that they may have more than 10 employees on site at a time. Staff had no objection to the applicant's request. Development Condition 5, which limited the amount of persons inside the building to 250, addressed staff's concern adequately.

Mr. Hart suggested that Development Condition 9 which referred to planting landscaping should also say something about maintaining it. Mr. Varga responded that staff had no objection to the revision.

Mr. Briggs said that the existing use was the roller skating rink which had been there for 30 years. Mr. Briggs said they received a special permit for a laser tag facility at the Dulles Expo Center in 2002. They provided indoor recreation for the community. Mr. Briggs said there had been business entity changes so they wanted the application granted to Adventure Concepts, Limited which was also on the affidavit. Mr. Briggs said he had a contract on the building and was planning on leasing the building to Adventure Concepts, Ltd.

Mr. Hart asked if Development Condition 1 could be changed to a different entity. Ms. Langdon answered that it was a legal question that she did not know if she could answer, although the conditions could be changed to run with the land and added that was what special exceptions did, or you could put successors and assigns.

Mr. Hammack asked if Concepts 21 had a lease on the building. Mr. Briggs responded that Fairfax Skating Corporation was the owner of the property not Concepts 21 and they were also on the affidavit.

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

Mr. Hart said he wanted to defer the case for one week to allow time to get an answer regarding Development Condition 1 regarding the change in entity.

~ ~ ~ December 13, 2005, CONCEPTS 21 LTD C/O SHADOWLAND, SP 2005-LE-035, continued from Page 48

Mr. Hart moved to defer decision on SP 2005-LE-035 to December 20, 2005, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were absent from the meeting.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:30 A.M. JOHN N. GERACIMOS and MEI LEE STROM, A 2005-MV-018 (Admin. moved from 8/9/05 at appl. req.)

Chairman DiGiulian noted that A 2005-MV-018 had been administratively moved to February 28, 2006 at 9:30 a.m., at the applicant's request.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:30 A.M. ROBERT H. AND ANJALI M. SUES, A 2005-PR-023 (Admin. moved from 8/9/05 at appl. req.)

Chairman DiGiulian noted that A 2005-PR-023 had been administratively moved to February 28, 2006, at 9:30 a.m., at the applicant's request.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:30 A.M. DAVID M. LONGO, A 2005-DR-025 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-1 District, is in violation of Zoning Ordinance provisions. Located at 9813 Spring Ridge La. on approx. 20,100 sq. ft. of land zoned R-1. Dranesville District. Tax Map 19-3 ((10)) 20. (Admin. moved from 8/2/05 at appl. req.)

Chairman DiGiulian noted that A 2005-DR-025 had been administratively moved to March 14, 2006, at 9:30 a.m., at the applicant's request.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:30 A.M. LEANN M. JOHNSON AND JAMES W. KOCH, A 2005-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 1830 Massachusetts Av. on approx. 15,729 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (2) 1. (Admin. moved from 8/2/05 at appl. req.)

Chairman DiGiulian noted that A 2005-DR-026 had been administratively moved to February 28, 2006, at 9:30 a.m., at the applicant's request.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:30 A.M. MICHAEL J. RYAN, A 2005-DR-030 (Admin. moved from 9/13/05)

Chairman DiGiulian noted that A 2005-DR-030 had been administratively moved to February 28, 2006, at 9:30 a.m., at the applicant's request.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:30 A.M. BROOKS H. LOWERY, A 2004-MA-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 60-2 ((15)) 148 is in violation of Zoning Ordinance provisions. Located at 3212 Cofer Rd. on approx. 12,781 sq. ft. of land zoned Mason District. Tax Map 60-2 ((15)) 148. (Decision deferred from 11/9/04 and 7/12/05)(Decision deferred from 2/8/05 at appl. req.)

Chairman DiGiulian noted that A 2004-MA-023 had been administratively moved to February 28, 2006, at 9:30 a.m., at the applicant's request.

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~ ~ ~ December 13, 2005, Scheduled case of:

9:30 A.M. JOANNE LOISELET, A 2005-SP-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory storage structure, an accessory structure, and a fence in excess of four feet in height, which are located in the front yard of property located in the R-C District, are in violation of Zoning Ordinance provisions. Located at 5138 Pheasant Ridge Rd. on approx. 25,529 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 56-3 ((9)) 9.

Keith Martin, the appellant's agent presented the arguments forming the basis for the appeal. Mr. Martin said the Loiselets had lived in the property for 2 ½ years. He said there had been many exterior improvements to the property. They installed a fence within the past year and a swing set. The appellant's purchased the shed from a neighbor. It was a corner lot that had two front yards. He described the rear and front yards. Mr. Martin said to a layman when facing the front of the house you might mistakenly consider the area where the shed and the play set were as being the rear yard. The applicant thought it was a rear yard. The actual rear yard was located directly behind the house. The rear yard was very narrow and heavily vegetated and there was no room to place anything between the back side of the deck and the tree line without removing the trees. The fence provided security for their small children.

Mr. Martin explained that he discussed with Zoning Inspector John Zemlan, Zoning Administration Division, alternatives to solving the situation. The appellant's were to remove the lattice work which would make the fence 6 feet. There were no complaints regarding the swing set or the shed; those were discovered by Mr. Zemlan when he came out to inspect the fence.

Mr. Martin presented letters in support from all 12 of the surrounding and abutting homeowners who were in support of the fence, shed, and the play set.

Mr. Martin asked if the case could be deferred so that he could work with the Zoning Administrator to allow for the reduction in yard ordinance to play out through the upcoming proposed Zoning Ordinance. He went through several scenarios of what this could mean to the rear yard.

Chairman DiGiulian noted that there was one letter of opposition regarding the fence.

Mr. Byers referred to the staff report and asked Inspector Zemlan if the fence was in excess of 6 feet. Mr. Zemlan answered that the fence could be reduced to 6 feet. Mr. Zemlan also clarified that when he originally inspected the fence it was installed, but the lattice was not on it.

Jayne Collins said staff had no objection to a deferral for the Zoning Ordinance Amendment.

Chairman DiGiulian asked if there was anyone to speak to the deferral. There were no speakers, and Chairman DiGiulian closed the public hearing.

Chairman DiGiulian reopened the public hearing for a speaker.

Craig Beales (phonetic) resided in Lee High village, adjacent to the Brentwood Village where the property was located. Mr. Beales remarked that there had been other corner lots that had applied for variances to have a 6-foot fence and were denied. He added that there were very few fences in the community. The few that there were in front yards were 4 feet in height. The large fences posed a safety concern because of

children not being seen over them. Mr. Beales said the appellant knew the fence was illegal prior to it being completed, and within a week of completion of the fence, the owner had vehicles and construction in the yard. The shed in the front yard was 10 feet tall by 10 feet wide and 20 feet long. It was not a tiny shed.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to defer A 2005-SP-045 in order that the County Board would have the opportunity to act on the fence ordinance. He said although they had deferred others with fences in front yards, he was tempted not to do it because of the attitude of the appellant was unreasonable. A deferral to August 1st would perhaps give the appellant time to implement some of the things suggested by her attorney.

Mr. Byers said he would not support the motion due to the attitude of the appellant. The appellant did not dispute the findings in the notice of violation, nor argue that the Zoning Ordinance provisions cited in the notice were wrongly applied. Mr. Byers said he believed that it was the responsibility of the homeowner to obtain information pertinent to a property being considered for purchase or for improvements and he did not think that the appellant should be relieved of responsibilities of complying with the regulations governing homeownership in Fairfax County. Mr. Byers noted that the letters that came in support were form letters with the exception of one letter and from his perspective the form letters carried very little weight. The appellant had a responsibility to the community.

Mr. Hart said he agreed with most of what Mr. Byers had said. He did think that initially the appellants took a hard line with staff, but now after receiving counsel they were prepared to comply with lowering the fence. If there were continual problems he did not think staff would support further deferrals.

Mr. Beard said Mr. Byers made a compelling argument, but the appellant had shown through counsel to be willing to work with the County on this so he supported the motion.

Mr. Hammack moved to defer decision on A 2005-SP-045 to August 1, 2006, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 4-1. Mr. Byers voted against the motion. Ms. Gibb and Mr. Ribble were absent from the meeting.

Mr. Hammack made an amendment to the motion to look at the fence at the January 10, 2006 meeting, to see that it had been lowered. Mr. Beard seconded the motion.

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Chairman DiGiulian noted that there were no After Agenda items.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in McCarthy appeal, Virginia Equity Solutions versus BZA, Bristow Shopping Center, Harry Heisler, Oakwood Road, Landcaster Landscapes, Antioch Baptist Church, Lee, RLUIPA, correspondence, and Logrande case pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were absent from the meeting.

The meeting recessed at 10:58 a.m. and reconvened at 1:18 p.m.

Mr. Byers then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Hammack was not present for the vote. Ms. Gibb and Mr. Ribble were absent from the meeting.

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~ ~ ~ December 13, 2005, continued from Page 51

As there was no other business to come before the Board, the meeting was adjourned at 1:20 p.m.

Minutes by: Vanessa A. Bergh

Approved on: June 26, 2007

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 29, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. DONALD & MARILYN COSTELLO, SP 2005-BR-034 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7013 Leesville Blvd. on approx. 11,234 sq. ft. of land zoned R-2 and HC. Braddock District. Tax Map 80-2 ((5)) (1) 7. (Admin. moved from 11/29/05 for ads)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marilyn Costello, 7013 Leesville Boulevard, Springfield, Virginia, replied that it was.

John-David Moss, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit for an accessory dwelling unit approximately 523 square feet in size to be located on the first floor of a newly constructed addition to the existing single-family detached dwelling. The unit would be the dwelling for an elderly parent. Staff recommended approval of SP 2005-BR-034 subject to the proposed development conditions.

Ms. Costello presented the special permit request as outlined in the statement of justification submitted with the application. She said they met all of the requirements, and she briefly explained the proposed living quarters for her elderly mother-in-law clarifying that it would be the 523-square-foot area.

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

Mr. Hammack moved to approve SP 2005-BR-034 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD & MARILYN COSTELLO, SP 2005-BR-034 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7013 Leesville Blvd. on approx. 11,234 sq. ft. of land zoned R-2 and HC. Braddock District. Tax Map 80-2 ((5)) (1) 7. (Admin. moved from 11/29/05 for ads) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 20, 2005; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with the general standards for Special Permit Uses.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

~ ~ ~ December 20, 2005, DONALD & MARILYN COSTELLO, SP 2005-BR-034, continued from Page 53

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

1. This approval is granted to the applicants, Donald and Marilyn Costello, only and is not transferable without further action of this Board, and is for the location indicated on the application, 7013 Leesville Boulevard (11,234 square feet), and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by KEA, LLC dated August 23, 2004 and revised through February 26, 2005, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit shall be posted in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Paragraph 5 of Section 8-918 of the Zoning Ordinance.

5. The accessory dwelling unit shall contain no more than one (1) bedroom.

6. Parking shall be provided as shown on the special permit plat.

7. Provision 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 applicable regulation for building safety, health and sanitation.

8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

9. Should the property be sold, the only use for the accessory dwelling is that of an accessory dwelling unit with approval of a special permit amendment in accordance with Section 8-918 of the Fairfax County Zoning Ordinance or another use as permitted by the Zoning Ordinance.

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2005. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. COMMUNITY ENTERTAINMENT & RECREATION, LLC, SPA 97-Y-028 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 97-Y-028 previously approved for a commercial recreation park to permit change in permitte and in development conditions.

~ ~ ~ December 20, 2005, COMMUNITY ENTERTAINMENT & RECREATION, LLC, SPA 97-Y-028, continued from Page 54

Located at 4600 Brookfield Corporate Dr. on approx. 6.27 ac. of land zoned I-5 and WS. Sully District. Tax Map 44-1 ((6)) 3B.

Chairman DiGiulian announced that the agent for the applicant would be arriving late to the meeting; therefore, he would call the next case on the agenda.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. MARK TURNER, III, VC 2005-DR-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure to remain 6.8 ft. with eave 5.3 ft. from rear lot line. Located at 10607 Georgetown Pk. on approx. 1.28 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 24A1 pt. and 12-2 ((1)) 47 pt. (In Association with VC 2005-DR-010)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Turner, III, 10607 and 10609 Georgetown Pike, Great Falls, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an accessory structure, a dairy shed, to remain 6.8 feet with eave 5.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 18.2 feet and 16.7 feet, respectively, were requested.

In response to Mr. Hart's queston regarding whether the upcoming Zoning Ordinance Amendment relating to existing structures or reductions in minimum yard requirements would be of help to the applicant, Ms. Hedrick said she discussed the possibility with Zoning Administration and was informed that what was currently scheduled to go forward would not afford the applicant any relief as the requirement was up to 50 percent and applicant's yards were more than 50 percent. She added that there had been no definite yes or no given by Zoning Administartion until such time as the matter went forward to the Board of Supervisors for review and approval.

Discussion followed between Mr. Hart and staff concerning various possibilties that might apply to the applicant's unique circumstances, such as a rezoning and/or a modification of the minimum yard requirement. In response to Mr. Hart's question, Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff had no opinion on whether the Ordinance interfered with all reasonable beneficial use of the applicant's property taken as a whole.

In response to Mr. Hammack's question concerning the lot line adjustment and the property listed in the County records as an historical site, Ms. Hedrick referred to the next application listed on the agenda and stated that the case was not listed as concurrent, but it accommpanied Mr. Turner's application. She said that the Park Authority submitted the application, and Kirk Holley, who represented the Park Authority, was present and better versed on how the lot line was established. She explained that in 1999 structures did not have to be shown on the plat for recordation within land records, and that was how and why the plat was filed without the structure being shown.

Kirk Holley, Engineer, Fairfax County Park Authority, said the error of ommitting the strucuture on the plat apparently occurred during the documents recordation at the time the County acquired the property. He said the documentation was confusing, but the fact remained that an error was made in the platting of the line which ran it through the center of the building because it was not obvious where the building was when the line was drafted and prepared. Mr. Holley said it was not the intention of either party to run the property line through the building when the purchase was made, and the Park Authority was proposing a lot line adjustment which required a variance.

Mr. Holley explained that with the variance, the Fairfax County Park Authority would meet the requirements to prepare a minor lot line adjustment for the Turner property and the Park Authority property. He said that originially the Turners had owned 20.03 acres, which was now shown as four separate parcels, and sold 18.75 acres to the Park Authority in 1999. The existing lot line was recorded in 1999 in the Fairfax County

land records, and it split the application property and the Park Authority property through the dairy shed. He stated that the property was recorded on the Fairfax County list of historic sites. Mr. Holley said the applicant wanted to maintain the historic character of both properties, and with the approval of the variance and the incorporation of the minor lot line adjustment, the dairy shed would be solely on the Turner property.

In response to a question by Mr. Beard, Mark Turner, 10607 Georgetown Pike, Great Falls, Virginia, gave a brief chronological summary of the farm property's buildings and agricultural uses since the 1930s. He said the family farm was purchased in 1869 and had remained in his family.

In response to Mr. Byer's question of whether the dairy shed could physically be moved, Mr. Holley said the Park Authority's opinion was that it was possible.

In response to Mr. Ribble's question concerning whether there was a reason for obtaining the variance prior to the boundary line adjustment, Ms. Hedrick said staff had determined that the yards must be first set prior to the boundary line adjustment because it was the boundary line adjustment that the Park Authority was proposing which required the need for a variance prior to the minor modification.

Mr. Turner presented the variance request as outlined in the statement of justification submitted with the application. He said the contract with the Park Authority retained a majority of the acreage as an historical site, and during the turn of the 20th Century, Fairfax County consisted almost entirely of dairy communities, of which only a few now remained that were intact. He said the proposal enjoyed the support of the community, the historical society, and the site had warranted a bond referendum. Mr. Turner said it was important that the agricultural image of what Fairfax County formerly produced be offered to future generations, and the project was sentimental to him as well as important to many of his neighbors. He responded to several questions from Mr. Hammack concerning which structures would transfer to the Park Authority. He explained how and why the lot lines were drawn as they were and by whom.

Chairman DiGiulian called for speakers.

Joan Shark-Turner, the applicant's wife, came forward to speak. She said her family greatly enjoyed living on the farm amidst the surrounding multi-million dollar estates. She said for ten years they had worked on the matter. She explained that they had not created the problem, and it initiated with a computer generated drawing prepared at and by the County, but they sought to fix it. She said a lot line adjustment was needed.

In response to Mr. Hart's question, Mr. Turner further explained how the lot line was determined and their wish to retain for personal use three usable lots from the original acreage.

Mr. Hammack said he viewed the situation as a self-inflicted hardship because the applicant was involved in the complex process of portioning off parts of the acreage, trying to save several farm structures, and agreeing to a lot line that effectively partitioned one of the historic buildings.

Mrs. Turner said that if they would not get the lot line adjustment, she would pay to have the dairy house moved, which the Great Falls Historic Society opposed.

In response to Mr. Hammack's question of why the accessory farm structures had not conveyed if the Park Authority wanted to keep the farm intact, Mr. Turner explained that his lots were shifted further east with the lower lot requiring a drainfield, and with the separate garage apartment and the farmhouse located on the primary lot, to run the drain line up the hill to the perk area on the west end of the property, the unusual lot line was drawn with a 20-foot easement through the lower lot because of the lot's unusual shape. Mr. Turner said that as he and his wife understood it, the lot line was to run between the two buildings, not through the center of one of the buildings.

Mr. Hart commented that the situation would not have been a problem several years prior because the Board operated under a different standard at that time. He referenced the Cochran case which effected a major change in Virginia law and mandated the Board make a threshold determination before granting a variance. Mr. Hart explained that the threshold determination required that the Board must first find that the Ordinance interfered with all reasonable beneficial uses of the property taken as a whole; otherwise, the Board was powerless to go further. The Board could no longer consider issues such as cost, aesthetics or community support, and he said he was unsure whether a variance was approvable under the current standard.

~ ~ ~ December 20, 2005, MARK TURNER, III, VC 2005-DR-011, continued from Page 56

In response to Mr. Hart's question, Ms. Langdon said that although there was no violation currently written on the property, technically the property would be in violation without a variance. She said a re-subdivision could be considered because technically the property must be evenly taken from both lots with a lot line adjustment, which may not make it possible to save the buildings. She said she believed the Board did not have the authority to waive lot line requirements, which necessitated the variance.

Responding to Mr. Hart's suggestion of zigzagging the line so that both structures were on the Park Authority property thus meeting the minimum yard requirements for both structures, Mr. Holley said that scenario was a possibility, but the two parties' original intent when the purchase was agreed upon was that the dairy structure remain with the applicant and the barn would be on Park Authority property. He said another arrangement with appropriate compensation would need to be considered, and if it was determined a variance was not possible, an alternative solution would be sought.

Mr. Hammack stated that one well-established BZA law was that if someone created or self-inflicted a hardship or did something for convenience, a variance could not be granted.

Mr. Beard commented that he was encouraged by Mr. Holley's statement that a solution would somehow be worked out. He suggested deferring the decision to allow the Park Authority to propose a plan.

Mr. Hammack moved to continue VC 2005-DR-011 to June 27, 2006, 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 absent from the meeting.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. FAIRFAX COUNTY PARK AUTHORITY, VC 2005-DR-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 7.0 ft. with eave 3.0 ft. from side lot line. Located at 925 Springvale Rd. on approx. 18.75 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 24A1 pt. and 12-2 ((1)) 47 pt. (In Association with VC 2005-DR-011)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kirk Holley, Engineer, Fairfax County Park Authority, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an accessory structure, a barn, to remain 7.0 feet with eave 3.0 feet from a side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 13.0 feet and 14.0 feet, respectively, were requested.

Mr. Holley presented the variance request as outlined in the statement of justification submitted with the application. He said because of the previous discussions regarding Mark Turner, III, VC 2005-DR-011, which were relative and pertained to the subject application, he would suspend most of his comments. He said the Park Authority supported the Turner application, and most of what was presented with the Turner application was the Park Authority's position. The County acquired the property in 1999, and when establishing the property line that divided the property, there was an error in that the line ran through the middle of an historic building. Mr. Holley stated that the complex of buildings as well as the individual buildings, the barn, silo, house, and dairy shed, and the cultural landscape were on the inventory of historic places for Fairfax County. He said the existing condition created a non-conformance, and the harshest remedy was to remove the building. He said the removal or alteration of the building would impair the quality of the landscape, and the citizens of Fairfax County would receive an undue hardship that would be irreparable. The arrangement of the buildings would be changed, and it would no longer represent what had been there. He said the present condition did not represent the intent of the parties, and the correction would not result in something that conformed completely. He said other options had been explored, but they were not as desirable as the proposed lot line adjustment that would split the location of the two buildings. Mr. Holley said that if the variance was not approved, other options would be considered, but he currently had no idea what the result would be.

~ ~ ~ December 20, 2005, FAIRFAX COUNTY PARK AUTHORITY, VC 2005-DR-010, continued from Page 57

In response to Mr. Hammack's question, Mr. Holley indicated that Fairfax County Park Authority was unaware at the time of the acquisition that the lot line would go through the structure, and it later came to light during the review of the documents when preparing to develop the park. He said that at the time of the acquisition, the documents had been reviewed by the Park Authority's attorney and land acquisition staff, but the timeframe for the review was less than a day, and documents did not show any footprints for any buildings, so it was not apparent in the documents where the line was located.

Mr. Hammack asked Mr. Holley whether he was requesting a deferral, and Mr. Holley said he was.

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

Mr. Hammack moved to defer decision on VC 2005-DR-010 to June 27, 2005, at 9:00 a.m.

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

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. COMMUNITY ENTERTAINMENT & RECREATION, LLC, SPA 97-Y-028 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 97-Y-028 previously approved for a commercial recreation park to permit change in permitte and in development conditions. Located at 4600 Brookfield Corporate Dr. on approx. 6.27 ac. of land zoned I-5 and WS. Sully District. Tax Map 44-1 ((6)) 3B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, the applicant's agent, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, replied that it was.

Carrie D. Lee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 97-Y-028, previously approved for a commercial recreation park, to modify the development conditions to reflect a change in the permittee from Chantilly Amusements, LLC, to Community Entertainment & Recreation, LLC, and additional language for the special permit to run to the applicant's successors and assigns in Development Condition 1; and to add language to Development Conditions 9 and 12 pertaining to maximum occupancy and landscaping. Staff recommended approval subject to the proposed development conditions.

In response to Mr. Hart's question concerning Development Condition 12, Ms. Lee explained what encompassed the interior landscape area, concurring with Mr. Hart's summation that it was all the area within the property's boundary lines.

In response to Mr. Hart's question, Susan C. Langdon, Chief, Special Permit and Variance Branch, clarified the signage situation as evidenced on the plat.

Mr. Fox presented the special permit request as outlined in the statement of justification submitted with the application. He said he concurred with staff's recommendation for approval. He said the subject application highlighted a situation that the Board would repeatedly see when special permits were limited to a specific user by name or entity. Mr. Fox stated that the only change was the property's acquisition by a new owner; that it was a simple name change; and, there would be no change in the operation. He suggested the Board consider amending the standard language to extend such special permits to successors and/or assigns. He said each new user would have to obtain an occupancy permit, which would include a review by Planning and Zoning at that stage. He said the process was expensive to come back to the Board only to change a permittee.

Mr. Beard said he concurred with Mr. Fox's statements regarding transfer of ownership situations.

In response to Mr. Beard's question, Mr. Fox explained that the Go-kart area would be permanently

~ ~ ~ December 20, 2005, COMMUNITY ENTERTAINMENT & RECREATION, LLC, SPA 97-Y-028, continued from Page 58

deactivated and the area landscaped with possible future consideration for an additional parking area. He said the facility was his client's sole operation. He explained the parent company of the corporation's ownership and their future plan for utilizing the parcel.

Mr. Hart commented that the building type, referred to as a "butler building," was different than its surroundings and not the same general high quality. He said it was easily visible from the major thoroughfare, was not screened from view, and he thought it important that such a building type as a "butler building" be well-screened. Mr. Hart commented that the landscaping language and the areas it included was confusing.

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

Mr. Byers moved to approve SPA 97-Y-028 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

COMMUNITY ENTERTAINMENT & RECREATION, LLC, SPA 97-Y-028 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 97-Y-028 previously approved for a commercial recreation park to permit change in permitte and in development conditions. Located at 4600 Brookfield Corporate Dr. on approx. 6.27 ac. of land zoned I-5 and WS. Sully District. Tax Map 44-1 ((6)) 3B. 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 20, 2005; 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 I-5 and WS.
3. The area of the lot is 6.27 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 5-503 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Community Entertainment & Recreation, LLC, and its successors and assigns only, and is for the location indicated on the application, 4600 Brookfield Corporate Drive, Tax Map 44-1 ((6)) 3B, 6.27 acres, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by D.A. Bryant, P.C., dated October 31, 1997 as revised through February 2, 1998, 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.

~ ~ ~ December 20, 2005, COMMUNITY ENTERTAINMENT & RECREATION, LLC, SPA 97-Y-028, continued from Page 59

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. Verification of wetland permits, if determined to be required, shall be presented to Department of Public Works and Environmental Services (DPWES) prior to site plan approval.

6. A 6 foot high masonry wall shall be located along the northern property boundary to buffer the adjacent hotel properties from the park uses, as determined by DPWES.

7. A 6 foot high board on board fence shall be located along the length of the southern property line and the row of large evergreen trees proposed along the southern property line shall be extended to the eastern property line, as determined by DPWES.

8. The small evergreens proposed between the roller rink building and Route 28 shall be replaced with 6-8 feet tall evergreens to increase the visual buffer between the building and Route 28, as determined by DPWES.

9. Parking shall be provided to Code, as determined by DPWES. All parking for the commercial park use shall be on-site as shown on the Special Permit Plat. Upon establishment of the Special Permit Amendment, the capacity of the recreation park shall be limited to 629 patrons and employees.

10. Landscaped islands shall be located within the parking lot every 10-12 parking spaces, and planted with shade trees, as determined by DPWES.

11. If an agreement to utilize off-site stormwater management facilities is obtained and approved by DPWES, the existing stormwater management pond located on Tax Map 44-1 ((6)) 4 shall be upgraded to PFM standards, as determined by DEM, and maintained as part of this project. If no such agreement is reached, all required stormwater management and BMP facilities shall be located on site and may necessitate a Special Permit Amendment.

12. Prior to the issuance of a new Non-Residential Use Permit, any dead, dying or damaged landscaping existing in the landscape, including the go-kart track area, shall be replaced with like kind and shall be maintained in a healthy condition.

13. All signs shall conform to the requirements of Article 12 of the Zoning Ordinance. In addition, no pole-mounted signs shall be permitted on the subject property.

14. Hours of operation shall be limited to:

    Water facility – 10:00 a.m. to sundown daily. Opening no earlier than one week prior to Memorial Day and closing no later than two weeks after Labor Day.

    Go-kart Track – 10:00 a.m. to 10:00 p.m., Sunday through Thursday; 10:00 a.m. to 11:00 p.m., Friday and Saturday. Open year round.

    Roller Rink Building – 10:00 a.m. to 11:00 p.m., Sunday through Thursday; 10:00 a.m. to 1:00 a.m., Friday and Saturday. Open year round.

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2005. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. FIORAVANTE AND ELISABETTA M. GAETANO, SP 2005-MA-040 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.2 ft. with eave 6.9 ft., addition 10.7 ft. and accessory structure 11.5 ft. from the side lot line. Located at 6833 Little River Tnpk. on approx. 1.00 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((1)) 11.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, the applicants' agent, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit reduction to the minimum yard requirements based on an error in building location to permit a dwelling to remain 7.2 feet with eave 6.9 feet; an addition 10.7 feet; and, an accessory structure 11.5 feet from a side lot line. A minimum side yard of 15 feet with permitted eave extensions of 3.0 feet are required; therefore, modifications of 7.8 feet for the dwelling, 5.1 feet for the eave, 4.3 feet for the addition, and 4.5 feet for the accessory structure were requested.

Mr. Hart said he remembered this case as one where a mistake was made and caught within the 60 days and that the stop work order resolution permitted construction to proceed up to a point where what was built would be protected from the elements. He questioned if the package was for an error in building location and whether the applicants could finish the interior if the Board approved the special permit.

In response to Mr. Hart's question, Ms. Hedrick explained that the applicants could complete their interior because the initial building permit and stop work order was for the location of the addition to meet the minimum yard requirements. She said the actual construction presently did not meet the minimum yard requirements, thus warranting the special permit for building in error.

Susan C. Langdon, Chief, Special Permit and Variance Branch, explained that there are cases where the structure was under construction, an error discovered before completion, and the construction halted until a special permit for an error in building location is approved. If the special permit was not approved, that portion of the structure would have to be torn down or removed and could not be completed, and there are cases when the error was not discovered until construction was long completed; therefore, a special permit would request permission for it to remain.

Mr. Fox presented the special permit request as outlined in the statement of justification submitted with the application. He said a dump truck had careened into his clients' house, and the damage rendered the house uninhabitable. The family was displaced and placed in a temporary shelter that dragged into practically three years due to ensuing complications with the insurance company and a dishonest contractor. The March of 2005 permit to rebuild and remodel their home approved the renovation and the addition of a second story and enclosure of an existing patio/deck. Construction proceeded, but after a site inspection, a notice of violation was issued for the new structure and the enclosed porch as they did not meet the 15-foot required setback. A stop work order was issued. The owners ceased construction activity. They were granted limited authority to complete the work to a stage where it was protected from the elements. Mr. Fox said the

notice of violation and staff's review uncovered several matters, which his clients had diligently pursued to correct, but which were not their fault but a matter of an error in building placement. Mr. Fox stated that throughout the process to remedy the matter, the applicants had evidenced their good faith by expending substantial funds to cooperate with County staff and comply with County regulations.

Chairman DiGiulian stated that several citizen e-mails objecting to the project had been received.

Mr. Fox submitted that, as required by the building in error permit, there was the opportunity for sufficient buffering. He said he believed that the neighbors need not be concerned as there would be no negative impact.

In response to Mr. Hammack's question, Mr. Fox explained how the lot lines were laid and by whom. He clarified the particulars concerning the dimensions, measurements, and enclosure of the deck.

Discussion followed among Mr. Fox, Mr. Hammack, and Ms. Langdon clarifying the existing structures, approximately when and by whom they were built, and the ensuing renovations.

Fioravante Gaetano, 6833 Little River Turnpike, Annandale, Virginia, came forward to speak. He said the house was in a dilapidated condition when they purchased it in 1993, and he has been working with the County since its purchase. He listed a brief chronological history of the house, stating that the County approached him in 1993 when he bought the house to offer an "extreme restoration" which had become a terrible ordeal. The project commenced in April of 2002, the house destroyed in May of 2002, and his family had only just reoccupied it. The original property was incorrectly subdivided in 1988 with the lot lines being only seven feet from the property line. Mr. Gaetano stated that only what already existed was renovated, with the exception of the garage. He said because the basement continually flooded, he built a temporary storage structure, a shed, to keep some of his possessions, and although it had a garage door on it, he said it was a shed built to Code on skids, which did not have electricity. He said it could not and did not house a vehicle, and in time it would be moved.

Ms. Langdon quoted the Zoning Ordinance measurements and locations for accessory structures. She clarified that whether one considered the structure a shed or a garage, it still was too tall and must meet the side yard requirements.

Mr. Fox responded to Mr. Hart's questions concerning the building permit application, the plat submitted by Absolute Surveys, the garage addition, the house's location, what was pre-existing and what was added on, and the renovation that was done over the deck.

Discussion followed among Mr. Hart, Ms. Langdon, Ms. Hedrick, Mr. Fox, and Mr. Gaetano concluding that the 1988 subdivision of the lot created the lot lines that proved problematic years later, and the house never had a bump-out in front except the garage that Mr. Gaetano had constructed.

Ms. Langdon stated that a 1965 building permit showed the house 15 feet from the left lot line. Discussion followed among staff and the Board regarding what had been requested and permitted with the permit, what was original with the dwelling, subsequent renovations and additions, and the applicability of the 15-foot setback requirement.

Ms. Langdon clarified for Mr. Hammack what was advertised for approval under the error in building location special permit category, what additions and accessory structures were noted in the staff report, and that the dwelling remain 7.2 feet and the addition 10.7 feet from the property line. Ms. Langdon said throughout the process staff had assumed that the house was built in 1938 in a correct location, and the second story and the addition must meet today's Ordinance standards.

Mr. Gaetano explained that during an August of 2002 meeting with Supervisor Gross to address the County's violation which was cited by the Corps of Engineers for work the County performed on a creek, it was determined that his neighborhood was subdivided sometime during the mid-1980s, and staff questioned him on how had the lot lines been approved.

Mr. Fox stated that there was insufficient evidence of a re-subdivision, that he never considered a

~ ~ ~ December 20, 2005, FIORAVANTE AND ELISABETTA M. GAETANO, SP 2005-MA-040, continued from Page 62

re-subdivision as fact, and that he had prepared the case based on the dwelling being built in 1938. He offered to do additional title work, but said that historically the property was treated as he presented it. He distributed additional photos to the Board and pointed out work currently under construction and the original features.

In response to Mr. Hart's question, Mr. Fox requested 180 days instead of 90 days to complete the process, to which staff concurred.

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

Mr. Hammack commented that he was sympathetic with the situation the applicants were in, but he still thought there was an issue involving the re-subdivision; therefore, he would abstain from the vote.

Mr. Hart moved to approve-in-part SP 2005-MA-040 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FIORAVANTE AND ELISABETTA M. GAETANO, SP 2005-MA-040 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.2 ft. with eave 6.9 ft., addition 10.7 ft. and accessory structure 11.5 ft. from the side lot line. **(THE BZA APPROVED THE DWELLING WITH EAVE AND ADDITION ONLY)** Located at 6833 Little River Tnpk. on approx. 1.00 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((1)) 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 December 20, 2005; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with the standards for Special Permit Uses.
3. The applicants have incurred significant expense to where they are so far and it would be a hardship for them to raze the structure.
4. Based on the record before the Board, the applicants are not at fault.
5. The 15-foot error is unfortunate, and the paperwork should have been better handled.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

~ ~ ~ December 20, 2005, FIORAVANTE AND ELISABETTA M. GAETANO, SP 2005-MA-040, continued from Page 63

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 dwelling and the addition, as shown on the plat prepared by Walter L. Phillips, Incorporated, dated July 8, 2005, as revised through September 26, 2005, as submitted with this application and is not transferable to other land.

2. Building permits and final inspections shall be diligently pursued within 30 days and obtained within 180 days of final approval of this application or this Special Permit shall be null and void.

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

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2005. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. CONCEPTS 21 LTD C/O SHADOWLAND, SP 2005-LE-035 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit indoor recreational use. Located at 5508 Franconia Rd. on approx. 1.80 ac. of land zoned C-6 and HC. Lee District. Tax Map 81-4 ((1)) 71A. (Decision deferred from 12/13/05)

Mark. G. Jenkins, the applicant's agent, 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, reaffirmed the affidavit.

At Chairman DiGiulian's request that staff refresh the Board's memory on the particulars of the case, Susan C. Langdon, Chief, Special Permit and Variance Branch, informed the Board that the decision had been deferred from December 13, 2005, to enable the applicant to submit proposed language for Development Condition 1. She stated that the changes were hand-delivered that morning, distributed, and staff had no objection to the language.

In response to Mr. Hart's concern voiced December 13th at the public hearing, Mr. Jenkins said Development Condition 1 was crafted to ensure all advertising requirements were met and to mandate that with future assignment of the special permit, if the principals were different than those currently listed, that the applicant

~ ~ ~ December 20, 2005, CONCEPTS 21 LTD C/O SHADOWLAND, SP 2005-LE-035, continued from Page 64

would return before the BZA to request a change in permittee.

Mr. Hart then moved to approve SP 2005-LE-0355 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CONCEPTS 21 LTD C/O SHADOWLAND, SP 2005-LE-035 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit indoor recreational use. Located at 5508 Franconia Rd. on approx. 1.80 ac. of land zoned C-6 and HC. Lee District. Tax Map 81-4 ((1)) 71A. (Decision deferred from 12/13/05) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 20, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant has shown compliance with the applicable standards for a Special Permit.
3. Bringing this property under Special Permit approval will help with its appearance.
4. Staff has made a favorable recommendation for it.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 4-603 of the Zoning Ordinance.

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

1. This Special Permit is granted to 5508 Franconia Road, LLC, as the successor and assign of the Applicant/Contract Purchaser, and to any tenants of the subject property, such as Adventure Concepts, Ltd. Upon any change of ownership of the subject property by 5508 Franconia Road, LLC, the BZA must approve the new owner as the permittee of this Special Permit.

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 Colleen Bogan "CLB", Lehman Associates, PC, dated October 28, 2005, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The total maximum number of persons inside the building shall not exceed 250.

6. The maximum hours of operation shall be limited to 10 a.m. to 10 p.m. Sunday through Thursday, and 10 a.m. to 12:00 midnight Friday through Saturday.

7. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site.

8. Transitional screening shall be modified along the northern, eastern, and western lot lines as shown on the special permit plat. The applicant shall provide plant material to equal transitional screening 1 along the western lot line. The applicant shall provide plant material equal to one row of evergreen trees along the eastern lot line. All plant materials shall be a minimum of 6 feet in height at the time of planting. Species, number, and location shall be determined in consultation with Urban Forest Management. The landscaping shall be maintained in a healthy condition.

9. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. There shall be no uplighting on site, including any sign or the building, and parking lot lighting shall be on an automatic timer which turns off 30 minutes after the end of operating hours.

10. The brick wall along the northern lot line shall be repaired and maintained in good condition.

11. The applicant shall install a stop sign in front of the facility at the main entrance for westbound traffic.

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.

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.

Mr. Beard seconded the motion, which carried by a vote of 5-0-1. Mr. Ribble abstained from the vote. Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2005. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-MA-176 to permit fence greater than 4.0 ft. in height to remain in front yard and greater than 7.0 ft. in height to remain in side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (Admin. moved from 6/15/04 and 10/19/04 at appl. req.) (Moved from 3/1/05 for notices) (Admin. moved from 4/19/05, 5/24/05, 7/12/05, and 8/9/05)

Chairman DiGiulian noted that VCA 2002-MA-176 had been administratively moved to June 20, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. DWAYNE A. & LAURA L. CARABIN, VC 2004-MA-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from rear and side lot lines. Located at 6234 Yellowstone Dr. on approx. 10,999 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((7)) (J) 6. (Decision deferred from 9/28/04 and 7/12/05)

Chairman DiGiulian asked if the applicant was ready.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the application had been deferred for decision, and the applicants had been contacted to remind them of the upcoming public hearing. She spoke with Mrs. Carabin about the disposition of the application, asked whether they wished to go forward or what action they wanted to take, but they had not responded. Ms. Langdon said the application involved an accessory structure two feet from the side lot line for an R-3 District where the minimum side yard is 12 feet, and even under the proposed Ordinance Amendment for a 50 percent reduction, if adopted, the application did not meet the criteria.

Mr. Hammack stated that the Board previously deferred the case to allow the applicants the opportunity to relocate the garage or to design a smaller one. He said he could not support a 30-foot garage two feet from the lot lines and noted that it had been over a year without further requests or instructions from the applicants. Mr. Hammack said he felt comfortable making a motion to deny.

Mr. Hart said the structure was enormous as well as being two feet from the side and rear lot lines and that it was probably something the Board would not have approved even before the Cochran case. He said the lot was wide enough and the house close enough to the street to have sufficient room in the rear yard to allow a garage structure if it were centrally located, and a variance probably would not be required. Mr. Hart said he would support a motion to deny.

Mr. Ribble moved to deny VC 2004-MA-101 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DWAYNE A. & LAURA L. CARABIN, VC 2004-MA-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from rear and side lot lines. Located at 6234 Yellowstone Dr. on approx. 10,999 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((7)) (J) 6. (Decision deferred from 9/28/04 and 7/12/05) Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 20, 2005; and

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

1. The applicants are the owners of the land.
2. This case has been difficult and there have been several deferrals to allow revisions.
3. The applicants have not met the standards required for such a variance.

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

~ ~ ~ December 20, 2005, DWAYNE A. & LAURA L. CARABIN, VC 2004-MA-101, continued from Page 67

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2005. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. CHAN S. PARK, SP 2005-SP-012 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12219 Braddock Rd. on approx. 3.65 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 57. (Admin. moved from 5/17/05, 7/19/05, and 10/25/05 at appl. req)

Chairman DiGiulian noted that SP 2005-SP-012 had been administratively moved to January 31, 2006, at 9:00 a.m.

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The meeting recessed at 11:23 a.m. and reconvened at 11:29 a.m.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. KENNETH R. EIRIKSSON, JR., SP 2005-SP-036 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 8107 Ainsworth Ave. on approx. 12,420 sq. ft. of land zoned R-3. Springfield District. Tax Map 79-4 ((3)) (4) 40A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth R. Eiriksson, 8107 Ainsworth Avenue, Springfield, Virginia, replied that it was.

~ ~ ~ December 20, 2005, KENNETH R. EIRIKSSON, JR., SP 2005-SP-036, continued from Page 68

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a home professional office to provide homeowners' association support services including processing assessments and bill payments. The home is a one-story single-family dwelling, the office is located on the first floor of the home occupying 800 square feet, and access will be through the front door. The applicant proposed a total of three parking spaces: the owner to park in the garage, one employee and one visitor in the driveway, and the two additional part-time employees and other visitors would park on Ainsworth Avenue.

Mr. Eiriksson said that since the onset of his home office operation in 1999, he had only two complaints, both from the same individual who was dissatisfied with his treatment and not necessarily that his was a home professional business. He said his operation was not intrusive and did not generate traffic, and he believed himself to be a good neighbor and had no issues with any of his neighbors. Mr. Eiriksson requested that the Board allow his operation to continue for two more years.

Mr. Eiriksson responded to Mr. Hammack's questions concerning the office hours, how many visitors were anticipated, and the usual length of time for an individual's in-house servicing. He said that traffic was not an issue, and the house appeared residential and no different than the neighbors. He responded to issues that were cited in a letter of opposition, the number of employees he needed, and the number and types of associations he managed.

In response to Mr. Hart's question concerning the parking situation, Mr. Varga concurred that it was an issue and said staff had determined the driveway was insufficient to prevent on-street parking.

Mr. Eiriksson explained his parking needs, the current situation, the fact that on-street parking was appropriate for his location, that the nature of his business was administrative and seldom required office visitors, that it was impossible to park his and his associates' vehicles all in the driveway, and that the nature of the business necessitated frequent out in the field appointments. He said that to have to continually jockey cars in and out of the single driveway was inconvenient and time consuming.

In response to Mr. Beard's question concerning the number of employees he wanted, Mr. Eiriksson explained that ideally he needed four besides himself to effectively operate his business and allow some flexibility.

In response to Mr. Hammack's question concerning whether a corporation could operate its business under a home professional office permit, Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff determined that the use the applicant sought was considered a home professional office, but she was unsure whether a corporation status must be noted on the affidavit. She said the County Attorney's Office reviews applications for correctness, and nothing was questioned.

Discussion followed between Mr. Hart and Ms. Langdon concerning the types of businesses staff supported for a professional home office. In response to Mr. Beard, she explained staff's criteria and standard recommendation for off-street parking. She said that staff strived to negate any adverse impact a use may have in a neighborhood because the use was allowed by special permit and was not by right.

Mr. Eiriksson said the County's guidelines allowed up to four employees for a home professional office, and he believed he met all the standards. He said that the parking situation was sufficient and was not an issue, although he would consider widening his driveway, but it was not something he preferred to do.

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

Mr. Beard moved to approve SP 2005-SP-036. Mr. Ribble seconded the motion.

Mr. Hart commented that he could support some of the application, but he still thought a limit should be imposed concerning the parking because parking several cars in front of the house was not an ideal situation. He moved to defer the decision.

Chairman DiGiulian stated he had no problem with family members parking on the street.

Ms. Langdon said that Development Condition 9 regarding parking on-site should be amended because, as it

~ ~ ~ December 20, 2005, KENNETH R. EIRIKSSON, JR., SP 2005-SP-036, continued from Page 69

presently read, it was a condition the applicant could not meet. She said that if it was the Board's intention to park everyone on-site, then the condition was accurate, but if the intention was that not all the cars were required to park on-site, Condition 9 could cause a problem with enforcement.

Mr. Beard said he would amend his motion to not require all the parking to be on-site.

Mr. Hammack complimented Mr. Eiriksson on his candor and efforts to comply with County laws and ordinances, but said he opposed the motion because he believed the size of the operation did not fit into that which was permitted under a special permit. Another fact that concerned him was that the special permit was for a home professional business, but Mr. Eiriksson had admitted to being a corporation. Mr. Hammack said he did not think Mr. Eiriksson's management company met Ordinance criteria.

Chairman DiGiulian called for the vote. The motion failed by a vote of 3-2-1. Mr. Hammack and Mr. Byers voted against the motion. Mr. Hart abstained from the vote. Ms. Gibb was absent from the meeting. Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of four members of the Board of Zoning Appeals is needed to grant a special permit.

Mr. Hart moved to defer decision on SP 2005-SP-036 to February 28, 2006, at 9:00 a.m. Mr. Ribble seconded the motion.

Mr. Byers voiced his concern over the on-street parking and its impact on a residential neighborhood. He said additional vehicles would certainly be added to the on-street parking, and that was the reason for staff's determination that a condition for this application's approval be that all parking be on-site and that the number of employees be limited. Mr. Byers stated that currently neither matter was clarified.

Mr. Hart stated that during the 60-day deferral, the proposal could be modified and/or the development conditions could be reworded to address staff's concerns about the impact of the parking and allow the applicant to continue operating in a manner that had not caused a problem for several years. He said that with Ms. Gibb's presence at the future meeting, there would be a fourth vote in support or opposition.

Chairman DiGiulian called for the vote. The motion carried by a vote of 4-2. Mr. Hammack and Mr. Byers voted against the motion. Ms. Gibb was absent from the meeting.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF CHESTERBROOK METHODIST CHURCH, SPA 80-D-068 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-D-068 previously approved for a nursery school and private school of general education to permit an existing church with private school of general education to increase enrollment, add child care center, construct an addition, site modifications and deletion of nursery school. Located at 1711 Kirby Rd. on approx. 3.91 ac. of land zoned R-2. Dranesville District. Tax Map 31-3 (91)) 119.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stuart Mendelsohn, the applicant's agent, Holland & Knight, 1600 Tysons Boulevard, Suite 700, McLean, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit an existing church to construct an 18,030-square-foot addition to a 10,870-square-foot private school building; increase enrollment for the private school from 165 to 225 students; add a child care center for up to 40 children; modify the parking area by reassigning parking space locations; constrict the entrance width; and, add 20 grass-crete parking spaces. No changes were proposed to the existing church building itself, and staff recommended approval with the adoption of the revised proposed development conditions dated December 20, 2005, that were distributed at the hearing.

In response to Mr. Hart's request for clarification, Susan C. Langdon, Chief, Special Permit and Variance Branch, explained staff's language in Development Condition 22 concerning "building" versus "construction" of a trail and the dedication of an easement.

~ ~ ~ December 20, 2005, TRUSTEES OF CHESTERBROOK METHODIST CHURCH, SPA 80-D-068, continued from Page 70

Mr. Mendelsohn presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the church had a century long presence in the community; that the sanctuary seating would remain the same at 125; that the church would continue to offer worship services to its small congregation of approximately 25 to 40 Sunday attendees; and, because of the need for quality education, the Montessori school, which had been in operation since 1973, hoped to expand from the present 165 students to 225. He said there would be minimal trip generated traffic because a small number of students would be bussed, others carpooled, and many of the students were siblings who would ride together. He stated that the proposed expansion was mostly in the pre-school area, which he believed was significant as it concluded at noon and would not generate additional afternoon traffic. Mr. Mendelsohn said there were numerous beneficial improvements, citing the drop-off area, parking, the entranceway, traffic ingress/egress, the general internal movement, stormwater management, as well as considerable tree-save, and the play area would remain unpaved open green space. Mr. Mendelsohn referred to Development Condition 11 concerning handicapped parking, stating that as proposed by staff, it probably would not meet handicapped ADA (Americans with Disabilities Act) provisions. He suggested that the spaces remain at the top of the hill, not moved to the bottom, because of the difficulty elderly members would have negotiating a wheelchair up a hill. He requested that Development Condition 11 be deleted and that the parking in that area be unchanged.

Regarding staff's determination of 90 feet concerning the parking, Ms. Langdon explained that the point of measure was from the edge of pavement with the intention that two parking spaces remained to become handicapped spaces, and the deletion of other spaces was to address the Department of Transportation's issue of vehicles backing up onto Kirby Road. She responded to Mr. Byers' question concerning Development Conditions 5, 13, and 14, explaining that the conditions required that the applicant address the issues raised by the Department of Public Works and Environmental Services, and an applicant could choose to do so before the application came before the Board, but it definitely must be done for approval.

Mr. Mendelsohn stated that he concurred with the Department of Transportation's rationale, but he maintained that the church still would not meet the ADA compliance even that far down the hill.

Chairman DiGiulian called for speakers.

Patrick Malloney (phonetic), no address given, came forward to speak. He said his concern was the increased traffic, which was already a safety consideration and would only be exacerbated.

In his rebuttal, Mr. Mendelsohn stated that the road improvements proposed by the applicant had addressed any potential backup and congestion problems.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 80-D-068 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF CHESTERBROOK METHODIST CHURCH, SPA 80-D-068 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-D-068 previously approved for a nursery school and private school of general education to permit an existing church with private school of general education to increase enrollment, add child care center, construct an addition, site modifications and deletion of nursery school. Located at 1711 Kirby Rd. on approx. 3.91 ac. of land zoned R-2. Dranesville District. Tax Map 31-3 ((1)) 119. 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

~ ~ ~ December 20, 2005, TRUSTEES OF CHESTERBROOK METHODIST CHURCH, SPA 80-D-068, continued from Page 71

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 20, 2005; and

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

1. The applicants are the owners of the land.
2. The applicant has presented testimony indicating compliance with the general standards for Special Permit Uses.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees of Chesterbrook Methodist Church and is not transferable without further action of this Board, and is for the location indicated on the application, 1711 Kirby Road, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Charles F. Dunlap (Walter L. Phillips, Inc.) dated July 29, 2005 revised through December 7, 2005 (cover page), and July 29, 2005 revised through November 21, 2005 (remainder of plat), and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. All parking shall be on-site, as depicted on the special permit plat. The applicant shall obtain approval of a parking reduction through DPWES as required by Sect. 11-106.3 of the Zoning Ordinance prior to issuance of a new Non-RUP for the church, school of general education, or child care center to permit the shared use of the church parking lot for the church use, school use, and child care use. If approval of a parking reduction is not obtained, the number of seats in the worship area and/or the number of children in the school of general education or child care center shall be reduced to meet the parking requirements as determined by DPWES.

6. Upon issuance of the Non-RUP for this special permit, the total maximum daily enrollment in the private school of general education shall not exceed 225.

7. Upon issuance of the Non-RUP for this special permit, the total maximum enrollment in the child care center shall not exceed 40.

8. The child care center's maximum hours of operation shall be 7:00 A.M. to 7:00 P.M., Monday through Friday.

9. The private school of general education's maximum hours of classes shall be 9:00 A.M. to 3:15 P.M., Monday through Friday, with after-school activities concluding by 5:30 P.M.

~ ~ ~ December 20, 2005, TRUSTEES OF CHESTERBROOK METHODIST CHURCH, SPA 80-D-068, continued from Page 72

10. The temporary trailer shall be removed prior to the issuance of the Non-RUP for the addition or within five (5) years of approval of the special permit amendment, whichever occurs first.

11. Notwithstanding that which is depicted on the special permit plat, the four (4) parking spaces depicted closest to Kirby Road shall be removed. Two (2) handicapped parking spaces depicted on the special permit plat shall remain with an ADA-approved loading area between them.

12. The Church and school/child care center-related events shall not be held simultaneously.

13. The outlet/inlet structures shall be provided to the satisfaction of DPWES. If such cannot be achieved in substantial conformance with the special permit plat and these conditions, an amendment to this special permit may be required.

14. Adequate outfall shall be provided to the satisfaction of DPWES. If such cannot be achieved in substantial conformance with the special permit plat and these conditions, an amendment to this special permit may be required.

15. Transitional screening shall be modified along all lot lines to permit existing vegetation and landscaping as shown on the special permit plat to, at a minimum, meet the transitional screening requirements. Additional plant material may be required if determined by Urban Forest Management to meet the intent of Transitional Screening I along the northern and eastern lot lines.

    Plant selection, including size, species, and number shall be coordinated with Urban Forestry Management (UFM).

16. The barrier requirement shall be waived along all lot lines in favor of that shown on the special permit plat.

17. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. There shall be no new uplighting on site, including any sign or the building. The lights shall be turned off when the site is not in use, except for security lighting.

18. The applicant shall conform strictly to the limits of clearing and grading as shown on the special permit plat subject to the installation of utilities or trails as determined by the Director of DPWES, except as noted in Condition 20.

19. The proposed conservation easement areas, totaling 0.62 acres, shall remain undisturbed. The tree save areas depicted in the special permit plat shall be protected by tree protection fencing in the form of four (4) foot high, 14-gauge welded wire, attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart. Prominent signs shall be placed on the fencing "TREE SAVE AREA – DO NOT DISTURB" to prevent construction from encroaching on these areas. The tree protection fencing shall be made clearly visible to all construction personnel, and shall be installed prior to any clearing and grading activities on the site. The installation of tree protection fencing shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, gardening or demolition activities, the Applicant's certified arborist shall verify in writing that the tree protection fencing as been properly installed.

20. The applicant shall consult with UFM to determine if the tree located southeast of the proposed bioretention area (canopy encircles the words "FT. BOARD –") can be saved based on the health and location of the tree. If determined worthy of preservation, tree protection shall be provided as outlined in Condition 19.

21. Stormwater Management/Best Management Practices facilities shall be provided as depicted on the special permit plat or as determined by DPWES, provided, however, no additional vegetation shall be cleared over that which is shown on the plat. Bioretention/infiltration trenches and/or other low-impact design techniques for stormwater management and Best Management Practices shall be

~ ~ ~ December 20, 2005, TRUSTEES OF CHESTERBROOK METHODIST CHURCH, SPA 80-D-068, continued from Page 73

provided around the perimeter of the parking lot, in the parking lot islands or in other areas on site as determined feasible by DPWES.

22. At the time of site plan approval the applicant shall construct an eight-foot wide public trail along Kirby Road's frontage as depicted on the special permit plat, except in front of the church where a six foot wide public trail may be provided.

23. The architecture of the church shall be in substantial conformance as depicted in the elevation included in Attachment 1.

24. All signage, both existing and proposed, shall satisfy requirements contained in Article 12 of the Zoning Ordinance.

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2005. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:30 A.M. MICHAEL BRATTI AND GINNI BRATTI, A 2005-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 2025 Franklin Av. on approx. 20,471 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 2. (Admin. moved from 5/24/05 at app. req.) (Deferred from 6/28/05 and 7/19/05)

Chairman DiGiulian noted that on November 29, 2005, the Board issued its intent to defer A 2005-DR-009 to February 14, 2006.

Mr. Hammack moved to defer A 2005-DR-009 to February 14, 2006, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:30 A.M. ADAM RUTTENBERG, A 2005-DR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 2021 Franklin Av. on approx. 21,599 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 4. (Admin. moved from 8/2/05 at appl. req.)

Chairman DiGiulian noted that A 2005-DR-027 had been administratively moved to February 28, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:30 A.M. DWIGHT AND CECELIA JONES, A 2005-PR-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure and a fence in excess of four feet in height, which are located in the front yard of property located in the R-4 District, are in violation of Zoning Ordinance provisions. Located at 2048 Madrillon Rd. on approx. 8,978 sq, ft. of land zoned R-4. Providence District. Tax Map 39-2 ((45)) 1.

Dwight Jones, the appellant, 2048 Madrillon Road, Vienna, Virginia, presented the arguments forming the basis for the appeal. He acknowledged that he had an accessory structure and a fence that were in violation of Zoning Ordinance regulations. He stated that neither structure had required a permit; that he expended considerable effort to design and construct the fence and the play-set to be attractive and harmonious with the neighborhood; and, as advised by the contractor, the play-set was enclosed within the fence for safety reasons. Mr. Jones stated that the mistakes were done in good faith without his knowledge of potential violations; that the installation of both structures were by reputable contractors; that both units were completed in June; and, that he relied on the contractors' assurances that they complied with County regulations. He addressed the concerns posed by several neighbors over decreased property value and sight-view problems.

In response to Mr. Hart's question, Michael A. Adams, Zoning Inspector, Zoning Enforcement Division, said the fence was six feet in height with some of its posts inches higher. He clarified that the play structure's height was not the problem, but that it was in a front yard on a lot less than 36,000 square feet.

Discussion followed between Mr. Hammack and Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, regarding Ordinance criteria that allowed a fence.

Mr. Jones responded to Mr. Beard's question concerning proposed locations for the play-set.

Mr. Beard asked whether staff had any recommendations. Ms. Stanfield said the appellants' situation was not uncommon; that such applications used to come before the BZA as variances; and, unfortunately the play-set was not something that the proposed Zoning Ordinance Amendment addressed.

Chairman DiGiulian called for speakers.

Elizabeth Woods, 8201 Madrillon Estates Drive, Vienna, Virginia, came forward to speak. She said her home was across the street from the appellants; she had an unobstructed view; she had no problem with the play-set and fence; that the construction was quality and well done; and, there was no sight distance problem. She said that because her home also faced Madrillon Road and she had a side-loading garage, she was surprised to learn that the Ordinance considered the yard across the street from her driveway (the appellants' yard) as a front yard. She stated that the appellants' layout was not out of character with the neighborhood and gave examples of several neighbors' layouts that were not "cookie-cutter."

Ms. Stanfield concurred with Mr. Hart's assumption that if the issue with the play equipment was resolved, staff had no objection to a deferral to consider the fence.

Reza Gharavi, 8204 Madrillon Estates Drive, Vienna, Virginia, came forward to speak. He said the adverse impact of the fence did not affect Ms. Woods' view because of the direction her property faced. He said the application should be denied for the following reasons: the fact that the Ordinance prohibited a fence higher than four feet in a front yard; that play equipment was only permitted in one's backyard; and, that the appellants purchased their corner lot with full knowledge that it was smaller and options for placing accessory structures would be limited. Mr. Gharavi stated that the fence was without style, a sight distance hindrance, presented a safety hazard, and adversely affected property values.

Tarek El Ghazawi, 8202 Madrillon Estates Drive, Vienna, Virginia, came forward to speak. He said his issue was the fence, which he found was a hardship he suffered because it completely obstructed the view of his home when entering the development. He indicated that both structures were in violation and to allow them would set a bad precedent.

Cecelia Jones, the appellant, utilizing the overhead, pointed out that the fence was not right on the street and that Ms. Woods had an excellent view of their property. Ms. Jones said the fence did block a side view of Mr. El Ghazawi's yard, but the fence was compatible with others in the neighborhood. She said she and her husband thought they were in compliance as they relied on professionals throughout the process, and they

~ ~ ~ December 20, 2005, DWIGHT AND CECELIA JONES, A 2005-PR-039, continued from Page 75

never would do anything that would bring down property values.

Chairman DiGiulian closed the public hearing.

In his rebuttal, Mr. Jones said the play-set could not be relocated, that it was immovable, and that the contractor insisted the present site was the only feasible one. Mr. Jones said that many of his neighbors had voiced their support to him, and there apparently were numerous other violations in the neighborhood of which no one to date had filed a complaint. In response to Mr. Hammack's suggestion, Mr. Jones agreed with a deferral. Discussion followed among Mr. Hammack, Ms. Stanfield, and Mr. Jones on possible locations for the play-set.

Mr. Beard moved to defer decision on A 2005-PR-039 to August 8, 2006, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, and 9/20/05 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-040 had been administratively moved to January 31, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:30 A.M. HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, and 9/20/05 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-042 had been administratively moved to January 31, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ December 20, 2005, Scheduled case of:

9:30 A.M. NVR, INC., A 2004-DR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordanc with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance Provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, and 9/20/05 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-041 had been administratively moved to January 31, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ December 20, 2005, After Agenda Item:

Request for Additional Time
New Life Christian Church, SPA 01-Y-069

Mr. Hart moved to approve 18 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting. The new expiration date was June 16, 2006.

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~ ~ ~ December 20, 2005, After Agenda Item:

Request for Additional Time
Unitarian Universalist Church in Reston, SP 90-C-026-2

Mr. Beard moved to approve 24 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting. The new expiration date was September 4, 2007.

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~ ~ ~ December 20, 2005, After Agenda Item:

Request for Additional Time
Trustees of Singh Sabha Gurdwara, SP 99-S-058

Mr. Byers moved to approve 12 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting. The new expiration date was October 21, 2006.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Oakwood Road Associates vs. BZA, a resolution, Horace Cooper vs. BZA, Lancaster Landscapes vs. BZA, the resolution regarding service, and the Lee case, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Byers were not present for the vote. Ms. Gibb was absent from the meeting.

The meeting recessed at 1:18 p.m. and reconvened at 1:31 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Byers were not present for the vote. Ms. Gibb was absent from the meeting.

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Mr. Hammack moved that the Board adopt a resolution dealing with the way litigation matters, suit papers, and writs of certiorari were to be served on the Board of Zoning Appeals. Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Byers were not present for the vote. Ms. Gibb was absent from the meeting.

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Mr. Beard moved that the Board authorize Vice Chairman Hammack to send a letter that was discussed during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Byers were not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ December 20, 2005, continued from Page 77

As there was no other business to come before the Board, the meeting was adjourned at 1:37 p.m.

Minutes by: Paula A. McFarland

Approved on: September 23, 2008

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 10, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. John F. Ribble III was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:03 a.m.

Ms. Gibb nominated John DiGiulian for Chairman and John Ribble and Paul Hammack as Vice Chairmen. Mr. Hart and Mr. Beard seconded the motions, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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

~ ~ ~ January 10, 2006, Scheduled case of:

9:00 A.M. MARK A. CHRISTMAS AND ELIZABETH B. POWELL, SP 2005-PR-032 (concurrent with VC 2005-PR-008) (Admin. moved from 10/18/05 at appl. req.)

Chairman DiGiulian noted that SP 2005-PR-032 had been administratively moved to February 14, 2006, at 9:00 a.m., at the applicants' request.

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~ ~ ~ January 10, 2006, Scheduled case of:

9:00 A.M. BULENT BOZDEMIR, SP 2005-DR-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 3.7 ft. with eave 2.7 ft. from side lot line and accessory structure 4.2 ft. from the rear lot line and 8.2 ft. from the side lot line. Located at 1605 Kirby Rd. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((10)) 23.

Chairman DiGiulian noted that SP 2005-DR-042 had been administratively moved to March 7, 2006, at 9:00 a.m., for notices.

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~ ~ ~ January 10, 2006, Scheduled case of:

9:00 A.M. CHARLES A. COLLIGAN, JR. & ELIZABETH B. COLLIGAN, VC 2005-DR-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. and deck 0.8 ft. from the side lot line. Located at 12211 Windsor Hall Wy. on approx. 25,443 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 6-3 ((13)) 13.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles A. Colligan, 12211 Windsor Hall Way, Herndon, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a screened porch, to be located 6.8 feet and deck 0.8 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, variances of 5.2 feet and 11.2 feet were requested.

Mr. Colligan presented the variance request as outlined in the statement of justification submitted with the application. He said there was no access to the backyard from either the first or second floors. The only access was through an unfinished basement and storage area. The second floor back door, which originally was intended to serve as the access point to a deck for the backyard, was a hazard due to the one-story drop to the ground. The applicants were not permitted by their homeowners' association regulations to have children's equipment and toys in the front yard which sloped directly to the street, and there was a danger to the children because of the slope to use the front and side yards. Mr. Colligan said the Fairfax County parkland directly behind the house was heavy with mosquitoes and other insects during the warm months of the summer, and they needed a screened porch and gated deck for the safety of their children, one of which

~ ~ ~ January 10, 2006, CHARLES A. COLLIGAN, JR. & ELIZABETH B. COLLIGAN, VC 2005-DR-013, continued from Page 79

was autistic. The proposed porch and deck addition were consistent with other structures throughout the neighborhood. The additions would enhance the property value and benefit the neighborhood as well as the local government due to the resulting increased assessed value and the higher property taxes. Mr. Colligan said the proposed addition would allow access to the backyard through the kitchen and give additional exits in case of a fire.

Mr. Hart stated that the proposed Zoning Ordinance amendment would not help the applicants because it was more than a 50 percent intrusion. Ms. Hedrick agreed that it would not because the current design was 0.8 feet from the side lot line.

Mr. Hart said most of the porch would be by right, and if the steps were shifted to the right, it could be entirely by right. Mr. Hart asked whether the applicants could reconfigure the deck to the right. Mr. Colligan said that such a shift would make the deck more visible to the neighbors on the side and from the street which would be a violation of the homeowners' association.

Mr. Hart noted that the Park Authority was the owner of Parcel A and asked whether the applicants had discussed a lot line adjustment with the Park Authority. Mr. Colligan answered that he had not, but said that the lot line was determined by a 100-year floodplain.

Mr. Hart asked about the 50-foot ingress/egress easement shown on the plat. Mr. Colligan responded that VDOT owned the easement. Mr. Hart asked whether it was considered a front yard. Ms. Hedrick said it was considered an easement and not a front yard because the property had not yet been developed. She said she had spoken with the owner of Lot E, who had confirmed that it was meant as a turnaround for his property.

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

Mr. Hammack moved to deny VC 2005-DR-013. He said the applicants had reasonable use of the property. He suggested redesigning the deck to a smaller size and commented that it would not have been approved as it was submitted even if was pre-Cochran. Mr. Byers seconded the motion.

Susan Langdon, Chief, Special Permit and Variance Branch, requested a deferral on behalf of the applicants. Ms. Langdon stated that the proposed Zoning Ordinance amendment would not help the applicants with the deck, but could help with the addition.

Mr. Hammack asked whether the applicants would need a variance if the Ordinance was amended. Ms. Langdon replied that a special permit would be needed, and the application could be converted into a special permit with no additional cost.

Mr. Hammack moved to defer decision on VC 2005-DR-013 to August 8, 2006, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ January 10, 2006, Scheduled case of:

9:00 A.M. A. DANE BOWEN, JR., VC 2004-MA-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling 6.7 ft. with eave 6.3 ft. from the side lot line. Located at 6330 Hillcrest Pl. on approx. 10,515 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 74. (Deferred from 11/2/04, 4/12/05, and 7/12/05 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. A. Dane Bowen, Jr., 6330 Hillcrest Place, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an existing dwelling to remain 6.7 feet, with eave 6.3 feet, from a side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to

extend 3.0 feet into the minimum side yard; therefore, variances of 5.3 feet and 2.7 feet, respectively, were requested. A portion of an existing garage, which crossed the shared lot line for Lots 73 and 74, would be removed if the variance was approved.

Mr. Hart asked if the proposed Zoning Ordinance amendment would help the applicant. Ms. Langdon answered that the 50 percent reduction could help.

Mr. Bowen presented the variance request as outlined in the statement of justification submitted with the application. He said he purchased the property in good faith, not knowing the structure was too close to the side. He said he needed a house with wheelchair access for himself and to leave as his estate to his son who suffered from mental illness and was unable to work. He paid taxes on the vacant lot, which was worth $400,000, and could not sell it until he obtained a variance. Mr. Bowen said Cochran never intended to end the granting of variances. Mr. Bowen explained that there were four separate grounds under Cochran in which he should be granted a variance. In the analysis of Cochran, the Virginia Supreme Court wrote of instances where a variance should be given when a lot was relatively useless, which was his situation with his vacant lot, and without a variance, it was completely useless. Cochran pointed out that the Virginia Code adopted by the General Assembly provided for the granting of a variance that would alleviate a clearly demonstrable hardship approaching confiscation, and Mr. Bowen said that in his situation, it was confiscation until it was modified.

Mr. Bowen said the Court stated that the Board could grant a variance when it found that the strict application of the ordinance would produce undue hardship, and in his situation, it produced several hardships. The hardships included the tearing down of the old house and the interference of the development of the vacant lot to help maintain his disabled son. In providing for his son without a variance or ability to develop the lot, he would be forced to sell the house and the vacant lot to some developer who would tear down the house and build some mansions, and he and his son would be driven from their home and community. His failing health was also a hardship. The Virginia Supreme Court concluded that the threshold question was whether the effect of the Zoning Ordinance upon the property under consideration interfered with all reasonable beneficial use of the property as taken as a whole, which was his situation regarding the vacant lot. The way Zoning Administration interpreted the Zoning Ordinance, it did interfere with reasonable use of his property. Mr. Bowen stated that his buildable lot in no way resembled any of the cases appealed in Cochran. In each of those cases, the owners could have made do without a variance, but he could not use the vacant lot without a variance.

Mr. Byers asked staff whether the applicant would receive relief without a variance under the proposed Zoning Ordinance amendment. Ms. Langdon answered that under the proposal there was up to a 50 percent reduction that could be granted by a special permit. Mr. Byers asked about additional fees to the applicant. Ms. Langdon answered that there would be no additional fees if it was deferred.

Ms. Gibb asked if the applicant had considered a boundary line adjustment. Mr. Bowen answered that it would cost an additional $3,500, result in a zigzagged boundary, and cause him to build a smaller house.

Ms. Gibb said this would have been a case that the Board would have routinely granted pre-Cochran.

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

Mr. Byers moved to defer decision on VC 2004-MA-113 to August 8, 2006, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ January 10, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF THE FULL GOSPEL FIRST CHURCH OF WASHINGTON, SPA 89-M-041-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 89-M-041 previously approved for a church to permit a child care center, building addition, increase in land area and site modifications. Located at 6401, 6405 and 6407 Lincolnia Rd. on approx. 3.89 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 59, 59C and 59D. (Admin. moved from 11/15/05 at appl. req.)

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert A. Lawrence, the applicant's agent, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

John-David Moss, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to a special permit, previously approved for a church, to increase the land area from 3.89 acres to 4.35 acres, enlarge the existing church building by 15,675 feet, and add a childcare facility for 80 children. He said staff believed that the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions and recommended approval with the adoption of the revised proposed development conditions distributed at the meeting.

Mr. Hart asked about the escrow account. Ms. Langdon responded that the original condition required that the trail be built, which was what staff preferred. The applicant indicated to staff that they wanted to request a waiver.

Mr. Lawrence presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the sanctuary would not be expanded, the additions were for fellowship activities and the childcare facility, and the construction would allow the church to meet all of its parking requirements onsite whereas currently some of the parking was satisfied using the Parklawn Elementary school parking lot. The church would keep this agreement with the elementary school for overflow parking, but according to the Code, all the parking would be onsite. The stormwater detention requirements would be met. The entrances would be relocated so they would be further away from the intersection, which would be a safety improvement for the general public. He worked with staff on the development conditions and came to agreement on them except for Condition 17. Condition 17 would require them to perform a floodplain study. They wanted the opportunity to discuss that at the site plan stage, and he requested that Condition 17 be deleted. Mr. Lawrence asked the church congregation to stand to show support of the application.

Mr. Hart asked if the trail was depicted on the Comprehensive Plan. Mr. Moss answered that it was on the Countywide Trails Plan.

Mr. Hart asked about Condition 17 being deleted. Ms. Langdon responded that the condition required the floodplain study which may or may not be required under the current Ordinance. She said a stormwater management representative was at the pre-staffing meeting and recommended the language for Condition 17. Mr. Lawrence said at the time of site plan they still may be required to do the floodplain study. The engineer would have to convince the Department of Public Works and Environmental Services (DPWES) that it was not necessary. A floodplain study would be costly. Ms. Langdon said that DPWES said it was required, and they wanted the condition because of the problems on the site and downstream. Mr. Byers referenced a letter from DPWES in which they said the floodplain study was required.

Chairman DiGiulian called for speakers.

Kay Wood, 3356 Woodburn Road, Number 31, Annandale, Virginia, came forward to speak. She said she represented her aunt, Frances Martin, who was 85 years old and recovering in a nursing home. Her aunt did not agree with the modification of the screening according to the proposal and wanted the cattails removed because they blocked drainage. The vegetative screening needed to be completed as originally planned, which included 25-foot trees, so that Ms. Martin's view was restored to its original condition. Ms. Wood urged the Board not to approve the waiver of the screening and said it should be completed prior to the approval of any new construction. She said the church did not follow the plan by Urban Forestry. The trail along Braddock Road to continue across the front of her aunt's property was not supported by her aunt because her house was so close to the road. She said they supported DPWES requiring a floodplain study. The natural path of the stream was disrupted when the church was built, and the swale was poorly designed and engineered and needed to be corrected. There would be an extensive increase in rush-hour traffic with the child care facility, and a left turn out of the premises could be dangerous. The playground needed to be relocated and monitored by an adult at all times. Based on the above issues, she said the Board should not

approve the childcare center.

Mr. Hart asked about the flooding. Sarah Burton, another niece of Ms. Martin, no address given, answered that flooding occurred on Braddock Road.

Mr. Hart asked about the landscaping shown on page 2 of the special permit plat. Ms. Wood responded that there was to be a 25-foot wide screening barrier, but it had not been done. Ms. Langdon said there was an easement that prevented some planting. Because it was a floodplain area, staff had included Condition 14, which talked about restoration of the swale area, keeping out of the easement, and the type of vegetation being approved by DPWES and the Urban Forestry Branch at the site plan review. The typical transitional screening material would not survive in the area and would have to be planted outside of the easement.

Mr. Hart asked if the Zoning Ordinance required a fence or barrier. Ms. Langdon said it did, but it could be waived. Ms. Wood responded that Ms. Martin did not want the fence. Ms. Martin wanted the area restored to the way it was previously.

Mr. Hammack referred to handouts regarding the removal of trees. Ms. Wood said it was promised to be restored, but it was not. Ms. Burton said there was noncompliance by the church to plant the trees prior to the church being developed. It was not done and was never followed up on.

Ms. Langdon said there was a violation issued in the past where the church was told to restore the area, but it did not require full transitional screening, which staff was suggesting in Condition 14.

Ms. Gibb asked about the easement. Mr. Moss responded that there was a sanitary sewer easement, and that was what restricted the type of plantings in the meadow.

Ms. Gibb asked about the trees. Ms. Wood answered that trees were removed from her aunt's property. The church was to replace the trees, but had not.

Mr. Hart asked about the easement and the outlet road location. Ms. Langdon answered that there was no outlet road on the subject property. Mr. Lawrence pointed out that the area in yellow was the storm drainage easement to the County. Mr. Lawrence said plantings could be done on Ms. Martin's property if that was acceptable to her because they could not plant in the sanitary sewer easement. Staff had asked that water friendly trees, subject to the approval of DPWES, be planted within the storm drainage easement to provide further screening. Mr. Lawrence said transitional screening could not be provided because of the drainage and sanitary sewer easements.

Ms. Burton said the sanitary sewer easement and the outlet road easement were two separate issues. The road had been there since the 1800s. Ms. Martin's quality of life had been greatly diminished because the natural path of the stream was destroyed, the swale was unsightly, and it should be reviewed and the church required to conform to the promises that were made to Ms. Martin in the past.

Ms. Langdon explained that there was a sanitary sewer easement and that was why they were not allowed to plant there. The original violation was in another area.

Chairman DiGiulian closed the public hearing.

Mr. Lawrence said he had not known there were outstanding issues with Ms. Martin. The sanitary sewer easement was on the special permit plat for the prior approval. The stormwater easement was required in the swale. It was intentionally designed to detain water to prevent flooding downstream, and plantings must be approved by DPWES. They were willing to provide landscaping on Ms. Martin's property if it was acceptable to Ms. Martin. They would provide two additional underground storm sewer storage vaults on the site, so they were addressing the stormwater management issues that were concerns for the expansion of the church. They would relocate the playground to behind the addition of the church with the approval of the daycare center.

Mr. Hart said he wanted the decision to be deferred in order to review the trail with the trails representative from the Mason District, to get an understanding from DPWES why Development Condition 17 was needed

~ ~ ~ January 10, 2006, TRUSTEES OF THE FULL GOSPEL FIRST CHURCH OF WASHINGTON, SPA 89-M-041-02, continued from Page 83

or could it be changed, and to look at the issue of landscaping. Mr. Hart moved to defer decision on SPA 89-M-041-02 to February 28, 2006, at 9:00 a.m. Mr. Hammack seconded the motion.

Ms. Gibb said she thought it was troublesome to have development conditions which repeated requirements that DPWES would have.

Chairman DiGiulian said his understanding was that if the Board took out the requirement for a trail, it would still be up to DPWES, but if the Board put in a requirement, then DPWES would say it had to be done because the Board required it.

Mr. Byers said that, based on the correspondence he had read, there was a concern regarding whether the church was in compliance with the original special permit. There were two notices of violation regarding the installation of the stormwater management structures and grading of the swale, in July and September of 1993, and the church had not taken care of it. Another issue was the landscaping plan. Mr. Byers recommended having people from stormwater management and DPWES come to the next hearing to discuss the issues and get answers from them.

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

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~ ~ ~ January 10, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF TRINITY UNITED METHODIST CHURCH, SPA 87-D-074 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 87-D-074 previously approved for a church and child care center to permit deletion of child care center and addition of a nursery school, increase in land area, building additions, columbarium, and site modifications. Located at 1201 Dolley Madison Blvd. on approx. 7.30 ac. of land zoned R-2. Dranesville District. Tax Map 30-2 ((32)) A, 1 and 5. (Admin. moved from 11/15/05 at appl. req.)

Chairman DiGiulian noted that SPA 87-D-074 had been administratively moved to February 14, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ January 10, 2006, Scheduled case of:

9:00 A.M. POTOMAC IN LINE HOCKEY, INC., SP 2005-SU-041 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a skating facility. Located at 3933 Avion Park Ct. on approx. 2.29 ac. of land zoned I-5, HC and WS. Sully District. Tax Map 33-2 ((1)) 5B1 pt.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michelle A. Rosati, the applicant's agent, Holland & Knight, LLP, 1600 Tysons Boulevard, Suite 700, McLean Virginia replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an inline skating facility to be located in a 35,000-square-foot portion of Building B of a warehouse and office development. Expected patronage was 112 patrons, comprised of 48 players, 8 coaches, and 56 spectators. At capacity, there would be four referees supervising play and up to three other employees on-site, for a total of 119 patrons. The site contained 99 parking spaces for customers and employees within a portion of a 277-space parking lot. The proposed floor area ratio would be 0.35. Staff recommended approval subject to the revised proposed development conditions dated January 10, 2006.

Mr. Hammack asked whether the revised hours of operation the applicant requested would require an additional parking study. Mr. Varga said he did not believe so because there were 99 parking spaces on the site that would fulfill the requirements. Susan Langdon, Chief, Special Permit and Variance Branch, said the

regulations would not change based on the hours of operation because there was parking on the site that was dedicated specifically for the subject use.

Ms. Rosati presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Rosati said the proposal was to build a 27,000-square-foot regulation size rink and a smaller rink for younger players. There would also be office and observation space in the facility. It was to be an organized league sports facility, rather than an open recreation situation where people showed up at will, and would be supervised by coaches, general managers, and shift managers. Full capacity would be two teams on the big rink and two teams on the smaller rink. Most activity would be on the weekends and after 5 p.m. during the week; however, during the summer there would be a possibility of using the rink during the week when children were not in school, increased league play, and clinics, and the applicant requested hours to accommodate those activities. The applicant was providing 99 parking spaces, twice the amount of the 47 spaces required by the Zoning Ordinance. The use would not have a detrimental impact in terms of noise, traffic, glare, or any other things seen frequently by right in an I-5 District. The Sully Land Use Committee had reviewed the proposal and found no issues with it.

Mr. Hart whether there would be a drop-off area for children. Mike Dennis, Potomac In Line Hockey, Inc., no address given, said there was a sidewalk that included a six-foot door in the back entrance where children could be dropped off. Ms. Rosati added that the sidewalk was located on the passenger side of the cars.

Mr. Hart asked whether staff agreed with the proposed drop-off process. Mr. Varga said it was the preferred configuration.

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

Ms. Gibb moved to approve SP 2005-SU-041 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

POTOMAC IN LINE HOCKEY, INC., SP 2005-SU-041 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a skating facility. Located at 3933 Avion Park Ct. on approx. 2.29 ac. of land zoned I-5, HC and WS. Sully District. Tax Map 33-2 ((1)) 5B1 pt. 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 10, 2005; and

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

1. The applicant is the owner of the land.
2. Staff recommended approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 5-503 of the Zoning Ordinance.

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

~ ~ ~ January 10, 2006, POTOMAC IN LINE HOCKEY, INC., SP 2005-SU-041, continued from Page 85

1. This approval is granted to the applicant only, Potomac In Line Hockey, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 3933 Avion Park Court, and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit Amendment, if such uses do not affect this Special Permit use.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Jack E. Rinker, Rinker Design Associates, P.C., dated September 23, 2005, and approved with this application, as qualified by these development conditions. This approval shall only serve to limit the use of the 35,000 square foot area to be occupied by the approved inline skating facility at 3933 Avion Park Court.

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 hours of operation shall be limited to 6:30 a.m. to 12:30 a.m. daily.

6. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site.

7. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.

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

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

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

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~ ~ ~ January 10, 2006, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-08 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 previously approved for a funeral home, cemetary, mausoleum, crematory and columbarium to permit additional parking and mausoleums, building addition and a modification of development conditions. Located at 4401 Burke Station Rd. and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson Hanes, the applicant's agent, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

~ ~ ~ January 10, 2006, CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-08, continued from Page 86

Greg Chase, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SPA 81-A-022, previously approved for a funeral home, cemetery, mausoleum, crematory, and columbarium, to permit additional parking, mausoleums, a building addition to a storage shed, and a modification of development conditions. Staff recommended approval of SPA 81-A-022-08 subject to the proposed development conditions dated January 10, 2006.

Mr. Hanes presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Hanes handed out revised development conditions at the hearing. He said there were two changes to accommodate an adjoining property owner, which included the deletion of five trees along the east property line and the enclosure of a garage for the hearses.

Mr. Beard asked whether staff was in agreement with the revisions to the development conditions presented by Mr. Hanes. Ms. Langdon responded that the development conditions that staff attached to the salmon colored sheet were the ones that staff had come to agreement on with the applicant. Staff had not reviewed the ones Mr. Hanes presented at the meeting, nor the revised plat, because the meeting was the first they had seen them.

Mr. Hart asked why the dumpster was not to be enclosed with a fence or landscaping. Ms. Kelsey, also an agent for the applicant, responded that it was on the back of the property in the middle of the maintenance area.

Mr. Hart asked about the mausoleum. Ms. Langdon responded that the conditions did not mean that individual mausoleums were to be screened. They would be addressed with the transitional screening only around the periphery of the site.

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

Mr. Beard moved to defer decision on SPA 81-A-022-08 to January 31, 2006, at 9:00 a.m., to allow staff time to review the proposed changes to the development conditions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

Mr. Hart stated that the hearing process for the applicant which occurred five years prior had been very contentious with many speakers, but he was pleasantly surprised when he later viewed the site and found it had turned out better than he had expected and was a very attractive facility which did not negatively impact what was around it. He said he thought that was one of the reasons why there were no speakers at the current hearing.

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~ ~ ~ January 10, 2006, Scheduled case of:

9:30 A.M. BRANDON M. AND MELISSA CLARK RUSHING, A 2005-MV-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Contractor's Office and Shop and are allowing the storage of commercial vehicles in excess of the allowable number for the R-3 District in violation of Zoning Ordinance provisions. Located at 8230 Frye Rd. on approx. 28,109 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-3 ((12)) 2. (Admin. moved from 10/18/05 at appl. req.)

Chairman Ribble called the appellants to the podium. Brandon Rushing, 8230 Frye Road, Alexandria, Virginia, came forward.

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 3, 2006. She stated that the property had been twice inspected, and the inspections revealed that the property was developed with a single-family detached dwelling unit which was owned by the appellants and rented by them to an unrelated individual. The inspections also revealed two garage like accessory structures, the larger of the two containing approximately 1,290 square feet which was being occupied by administrative personnel employed by the appellants' landscaping business and the smaller structure containing approximately 757 square feet which was being used as a repair and

maintenance shop for the commercial vehicles and other lawn care equipment associated with the business. Observed in the rear yard was an area of approximately 1,200 square feet which was covered with gravel and was being used for the parking of commercial vehicles, equipment, employee's vehicles, and other materials associated with the landscaping business. The Zoning Ordinance permits the parking of only one commercial vehicle per dwelling unit in a residential district provided the commercial vehicle was owned and operated by the occupant of the dwelling at which it is parked. Ms. Collins said the appellants were parking eight commercial vehicles on the subject property and were not occupying the dwelling; therefore, they were in violation of Zoning Ordinance provisions.

Ms. Collins stated that the residentially zoned property was being used as the main office of a commercial lawn care and maintenance business, which employed 14 individuals, three of whom worked in one of the accessory structures on the property, and the remainder reported to work at the property, loaded the commercial vehicles, and drove the trucks to off-site locations to do lawn maintenance. The activity was consistent with that of a contractor's office and shop, which was not permitted in the R-3 District. In accordance with the definition of an accessory structure, the structure must be clearly subordinate to the principal use. The dwelling contained approximately 1,745 square feet, and the accessory structures contained 1,290 and 757 square feet and clearly were not subordinate in area, extent, or purpose to the principal structure. Ms. Collins said the structures and the gravel area covered nearly 100 percent of the backyard, which was a higher percentage than permitted by the Zoning Ordinance.

Ms. Collins said it was staff's understanding that the appellants had been looking for over a year for another location to move the landscaping business, and staff felt that a sufficient time to find a suitable location.

Mr. Hart asked whether there had been a prior approval of one of the storage sheds. Ms. Collins said building permits had been obtained in the past for an eight-by-ten-foot shed, and in 1978 a building permit had been obtained for a garage of unspecified dimensions.

Mr. Rushing said the issue he had been facing was finding suitable industrial property that had I-4, I-5, or I-6 zoning that he could purchase for the long-term use of his company. He said he had been working on a contract the past summer and had submitted the paperwork to the zoning inspectors, but the property owner had withdrawn from the contract before it was finalized. He reported that on December 23, 2005, he had submitted a letter of intent on a property that was currently zoned R-1, but had the potential to be zoned I-4. He asked for a deferral so he could move directly to the new property once it had been approved.

Mr. Hammack asked Mr. Rushing if he had read the notices of violation. Mr. Rushing answered affirmatively. Mr. Hammack said that the appellants had offered no defense, and he asked whether Mr. Rushing admitted the notices of violation were correct. Mr. Rushing said that was correct, and his goal was to bring everything into 100 percent compliance as soon as possible, but it was not an easy task to move a company. He said he had started the process two to three years before the violation was served on him. When he moved to the property in 1999, he said the buildings existed, and he assumed they were in compliance, and by three years later he had grown beyond the by-right use of the property and had started looking for additional property that would be legal to use by right.

Mr. Hammack asked Mr. Rushing if he had thought about obtaining counsel. Mr. Rushing answered that he had not.

Chairman DiGiulian called for speakers; there was no response.

Ms. Collins said the rezoning process was long and involved, with there being no guarantee that the R-1 property would be rezoned to be useful to the appellants, and staff could not support a deferral.

Mr. Rushing said the property he was considering was surrounded by I-4, I-5, or I-6 properties, and the planner he had spoken with said he saw no problem with potentially having the property rezoned. Mr. Rushing said the property was zoned R-1, but there was no other residential property nearby.

Mr. Hart said the appellants had a lot at stake with their business, and he suggested the appellants consult with an attorney.

~ ~ ~ January 10, 2006, BRANDON M. AND MELISSA CLARK RUSHING, A 2005-MV-038, continued from Page 88

Chairman DiGiulian closed the public hearing.

Mr. Hammack said the violation had been outstanding since April of 2005, and he was sympathetic to the appellants' request for a deferral to try to get property rezoned, but rezoning took a long time and there was no assurance that it could be accomplished. He said the appellants had not presented any defense to the violation and had admitted that it existed, and the Board had no equitable powers and did not have the same authority a court might be given. Mr. Hammack moved to uphold the determination of the Zoning Administrator. Mr. Byers seconded the motion.

Mr. Hart said there were many reasons why the Board had granted deferral requests, but when the purpose of the deferral was to prolong the activity, the Board did not have the discretion to facilitate that, and for the purposes only of delaying matters, a deferral would not be appropriate. He stated that he would support the motion.

Mr. Hammack noted that the appellants had requested and received an administrative move of the hearing from October 18, 2005, so the appellants had three additional months to try to get something worked out.

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

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~ ~ ~ January 10, 2006, Scheduled case of:

9:30 A.M. LIZ CRISTOFANO, A 2005-SU-050 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination made by the Zoning Permit Review Branch to grant a 0.8 foot administrative reduction in the minimum required side yard to allow a screened porch to remain. Located at 13187 Ashvale Dr. on approx. 10,494 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-3 ((24)) 14.

Michael Congleton, Deputy Zoning Administrator, Zoning Enforcement Branch, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 3, 2006. He explained that the appeal involved the granting of an administrative reduction for a property located at 13187 Ashvale Drive, which was owned by Ms. Thies, and at issue was staff's approval of an administrative reduction for a screened porch. The dwelling on the subject property was constructed in 1992 and at the time was zoned PDH-2, which did not establish any minimum yard requirements for dwellings. The existing dwelling was constructed at a distance of 5.2 feet from the southern property line and 6.1 feet from the northern property line, which abutted the appellant's property. In 1995, a building permit had been issued to Ms. Thies to construct a screened porch addition. In accordance with Article 16, additions to dwellings in a P District were controlled by the most similar conventional district, which in the subject case was the R-2 Cluster, which established a minimum side yard of eight feet. The approved building permit noted that the proposed addition was to be located eight feet from the northern property line, and the porch was subsequently constructed.

Mr. Congleton stated that in March of 1999 the appellant purchased the property adjacent to the subject property, and in July of 2004 staff received a complaint regarding the location of the porch addition. Based on a field inspection by Zoning Enforcement staff, it was determined that the porch was located at a distance of less than eight feet from the northern property line, and a notice of violation was subsequently sent to Ms. Thies. Ms. Thies commissioned the preparation of a house location survey, which established that the porch was located 7.2 feet from the northern property line, and she requested the approval of an administrative reduction of the side yard as set forth in Sect. 2-419 of the Zoning Ordinance. Based on a review of the standards, staff found that the request conformed to all of the standards, and an administrative reduction was approved in September of 2005. In October of 2005, the appellant filed the subject appeal.

Mr. Congleton explained that the position of the appellant was that the granting of the administrative reduction by staff was not in accordance with four of the standards found in Sect. 2-419, and the appellant had given the following reasons. The eaves on the porch extended an additional six to eight inches into the side yard. Mr. Congleton noted that paragraph 1A of Sect. 2-412 of the Zoning Ordinance provided that

eaves and other similar structures were permitted to extend up to three feet into minimum required yards provided they were no closer than two feet to the side lot line and were ten feet above finished grade, and the eaves in question met both of the criteria.

The appellant's second point was that the error was not made in good faith. Mr. Congleton stated that a review of the building permit from 1995 clearly showed the porch was to be constructed eight feet from the side lot line, and there was no evidence that the porch was constructed intentionally in error.

The appellant's third point was that the granting of the reduction was detrimental to the use and enjoyment of other properties in the immediate area. Mr. Congleton noted that the porch had been constructed in 1995, nine years before the complaint had been filed, during which time the location of the porch had not been brought to the attention of County staff. The subject dwelling and other dwellings in the subdivision were constructed as close as five to six feet to side property lines, and it appeared that the location of the porch at 7.2 feet from the side property line was consistent with the development pattern of the neighborhood and imposed no harm to neighboring properties.

The appellant's final point was that the Zoning Administrator must determine that to force compliance would cause unreasonable hardship upon the owner and that recent court cases had demonstrated that there would be no unreasonable hardship to the owner if the porch had to be removed. Mr. Congleton said the appellant's claim was based on court decisions related to variances, and there was a clear distinction between the standards for a variance, which spoke to undue hardship, and standards for an administrative reduction, which spoke to unreasonable hardship. He said the purpose of the administrative reduction recognized that a structure had been built, and to force its removal would create an unreasonable hardship, not undue hardship.

Mr. Congleton stated that staff had determined that the approval of the reduction to the minimum side yard requirement for the subject property was done in accordance with all of the stated standards.

In response to Mr. Hart's question regarding whether it was correct that the corner of the house was closer to the property line than the porch, Mr. Congleton said that was correct. It was noted that there was a bay window which also protruded two feet from the house and was located four or five feet from the side lot line. Mr. Hart asked whether those locations were all legal because the original builder had done the construction, to which Mr. Congleton answered affirmatively. Mr. Hart asked whether the porch would have been legal if the builder had built it when the house had been originally built, and Mr. Congleton said it would. In response to a question from Mr. Hart regarding why a special permit had not been applied for, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, answered that it was because the error was less than 10 percent.

Liz Cristofano, 13189 Ashvale Drive, Fairfax, Virginia, presented the arguments forming the basis for the appeal. She said that she had her walkout basement finished, and the contractor had created steps from the basement to the yard which were to be located at the back of the house on the side that was closest to the screened porch. The steps were well within the setbacks established by Fairfax County. During the process, she had to notify the neighbors on both sides of her property in association with submitting an application to the homeowners association, and Ms. Thies, the owner of the property that was the subject of the determination being appealed, refused to sign the notification and e-mailed a list of her concerns regarding the project to the homeowners association, which included potential impact on the stability of her screened porch. The homeowners association granted the application. Ms. Thies placed a number of calls to the County to attempt to disrupt the appellant's building permit process, stating that the steps would impact her enjoyment of the use of her screened porch.

Ms. Cristofano said they attempted to have a backyard conversation with Ms. Thies, saying that her screened porch was built in violation of the setback and Ms. Thies should not be using it as an obstacle to prevent her from adding any construction to her property, but Ms. Thies had refused to discuss the issue. Ms. Cristofano said there was a pattern of Ms. Thies attempting to delay the project.

Ms. Cristofano said Ms. Thies was granted the administrative reduction, but four of the standards had not been met. The first criterion was to force compliance with the minimum yard requirement would cause unreasonable hardship upon the owner. The second was noncompliance was done in good faith or through no fault of the property owner or was a result of an error in location of the building subsequent to the

issuance of the building permit, if such was required. The third was it would not be detrimental to the use and enjoyment of other property in the immediate vicinity, and the fourth being that the errors did not exceed 10 percent of the measurement involved.

Ms. Cristofano said that the essence of staff's argument was that there were two different standards being applied. For variances, it was undue hardship, and for an administrative reduction associated with an error in building location, it was unreasonable hardship. She said staff had said that the Zoning Ordinance Sect. 18-404 came from the State code and specifically mentioned undue hardship, but staff did not mention that the enabling legislation for administrative reductions also came directly from the State code and also used the same "undue hardship" term and not the more lenient "unreasonable hardship" term. Ms. Cristofano read from page 8, paragraph 3-12, that Zoning Administration may be authorized to grant a variance from any building setback requirement contained in the Zoning Ordinance if the administrator finds in writing that the strict application of the Zoning Ordinance would produce undue hardship. Ms. Cristofano said it was reasonable to assume that the terms "undue hardship" and "unreasonable hardship" were intended to be used interchangeably and not as two different standards.

Ms. Cristofano said that in the case of Cochran vs. the Board of Zoning Appeals (BZA), the Supreme Court had ruled that the phrase that the strict application of the Ordinance would produce undue hardship should be viewed as adhering to the rule in Packer, and the BZA had no authority to grant a variance unless the effect of the Zoning Ordinance as applied to the piece of property under consideration would, in the absence of a variance, interfere with all reasonable beneficial use of the property taken as a whole. She said the Supreme Court determined that none of the terms were distinct and held the same meaning as the term "undue hardship." Ms. Cristofano said an important point to note from the case was that a Constitutional hardship was the most important thing, and without one, the BZA did not have the authority to go further to examine any other criteria. She said that in this case it had been determined to mean that the hardship created by the denial of a variance would be the equivalent of or approaching confiscation. The entire property needed to be looked at to determine if a hardship existed and the question was whether it was enough for the court that the property was already put to use because there was not a requirement that it be put to further use. Ms. Cristofano said there was no right to put an addition onto an already existing structure or add to a detached structure that already had substantial value to it.

Ms. Cristofano said Ms. Thies had shown in the past and continued to show through her actions and derogatory comments a lack of respect for the rules and laws as well as towards her personally and was not an innocent bystander caught in the middle of the actions of a disgruntled neighbor, but rather had decided to use a structure she had located in the setback against Ms. Cristofano. Ms. Cristofano asked the BZA to overturn the Zoning Administrator's reduction in the minimum side yard and require Ms. Thies to bring her screened porch into compliance with the zoning laws.

William B. Lawson, Jr., 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, agent for Ms. Thies, came forward to speak. He noted that Ms. Thies' addition was approved by the Zoning Administrator in 1995. He said no violation should have proceeded because it was past the 60 days from when it had been decided, and the General Assembly passed 15.2-2311C with that in mind. He said the Board of Supervisors had established setbacks in the Zoning Ordinance and also a relief valve, so if the deviation was 10 percent or less, it was handled by zoning staff. The Board of Supervisors in Fairfax County had said that a structure would not have to be removed if you made an honest mistake and it was a minor violation. In Arlington, you would have to file for a variance. Mr. Lawson said the court cases that Ms. Cristofano cited were about variances, which did not apply to the subject case. He did not think the neighbor was aggrieved according to the state code, which would be a personal property right that was being denied. The situation existed before the neighbor lived there, and he did not know how a neighbor would have a legal right to force another neighbor to tear down something when the neighbor went through the procedures and had gotten a final sign-off.

Kevin Dougherty, 2812 Mustang Drive, Oak Hill, Virginia, the original owner of 13187 Ashvale Drive, came forward to speak. He said he had hired a contractor, helped with the design, and went through about eight approval processes until it had been signed off in November of 1995. The County approved the porch as built and where it was located. The appellant was not an adjoining property owner until four years after completion of the project and approval by Fairfax County. He said he and Ms. Thies had acted as responsible, law abiding citizens, and were mindful and careful in everything they did to ensure that any modification did not negatively impact of the neighbors. Mr. Dougherty said Ms. Cristofano challenged the

porch even though the original owner before her, Tom Collin, never had any problem. Mr. Dougherty read a letter from Admiral Collins that said the porch did not adversely affect him, and Ms. Cristofano never expressed any problem with it as renters or when the property was subsequently sold to them.

Adrienne Abers, P.O. Box 812, McLean, Virginia, came forward to speak. Ms. Abers said she was disturbed that a structure could be called into question more than a decade later after it was approved by the County. She said the Thies acted responsibly, and Ms. Cristofano did not live there until two years after the structure was built. Ms. Abers said every one of the neighbors had signed a petition in support of Ms. Thies.

Mary C. Rigsby, 13197 Ashvale Drive, Fairfax, Virginia, came forward to speak. She had owned the property diagonally behind subject property for over ten years. Ms. Rigsby said the screened porch was added while she lived there, and she was alarmed that it could be brought into question years afterward.

Terri Radcliffe, 2501 Rushton Road, Fairfax, Virginia, came forward to speak. Ms. Radcliffe read comments from the police and a pastor in support of Ms. Thies.

Gregory Thies, the brother of Ms. Thies, came forward to speak. Mr. Thies said his sister was an honest person, and he knew she followed all the rules in the construction of her porch. He said his sister got all the required permits, spoke with her neighbors, and the structure had been exceptionally well built, with the design being consistent with the architectural flavor of the neighborhood. Mr. Thies said the argument in the appeal turned on inches, and it seemed unreasonable to him that a porch could be torn down after 12 years.

With respect to Ms. Cristofano's earlier comment regarding the Code of Virginia concerning the Zoning Administrator's ability to grant variances, Mr. Congleton said the ability to grant an administrative reduction had been in the Zoning Ordinance since 1978. The language Ms. Cristofano read had been enacted by the General Assembly approximately two years ago, which the County had not enacted into their Zoning Ordinance, so what was being dealt with was an administrative reduction, not a variance in any manner, shape, or form.

Tony Cristofano, the appellant's husband, came forward to speak. He said his wife got the information regarding the enabling legislation off the website, and it said it was as of July 25, 2005.

Mr. Hart explained that what Mr. Congleton pointed out was that the statute regarding the authority of the Zoning Administrator to grant variances was a statute that Fairfax County had never availed itself of. The General Assembly had said variances could be done in two ways. It could be done through the BZA, and it could be done through the Zoning Administrator. Mr. Hart said he did not know of a county in which the Zoning Administrator did it, but that was an option out there that Fairfax County had never taken. The statute was out there, but was not germane to what happened here.

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

Mr. Hart said he would support the motion. He said there had been many letters and e-mails received asking why the BZA could not dismiss the appeal, but he explained that every appeal which had been timely filed with the appropriate fees paid was heard, and that was how the system worked.

Mr. Hammack said it was clear that the Zoning Ordinance treated administrative reductions differently than variances, and he supported the Zoning Administrator's authority to grant reductions.

Ms. Gibb said she would support the motion on the basis of the staff report and that there was no adverse impact on the neighbor.

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

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~ ~ ~ January 10, 2006, Scheduled case of:

9:30 A.M. CHRIS D. AND GLENDA F. GRABIEL, A 2005-LE-051 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure, which is located in the front yard of property located in the R-3 Cluster District, is in violation of Zoning Ordinance provisions. Located at 5307 Foxboro Ct. on approx. 12,427 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((5)) 57.

Chris D. Grabiel, 5307 Foxboro Court, Alexandria, Virginia, came to the podium and identified himself.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 3, 2006. A site inspection had revealed that an approximately 16-foot high accessory structure used for vehicle storage had been established in the front yard of the subject property. A house location survey and building permit further supported the determination.

Mr. Hart asked about the front lot line as shown on the plat. Ms. Tsai answered that the definition of a front lot line in Article 20 of the Zoning Ordinance states that it is a street line which is formed by the boundary of the lot or in the case where the lot did not abut a street other than by its driveway or being a through lot, the lot line which faces the principal entrance of the main building. Mr. Congleton added that a pipe stem lot was considered to be a lot that abutted the street, and it only abutted the street by its driveway. The driveway was considered the front yard also.

Mr. Grabiel said there had been an original carport when he moved in, but it had deteriorated, so he replaced it. He said he now understood that he was violation in because it was in front of his house.

Mr. Beard asked about relocating the carport. Mr. Grabiel said there was no room in the back.

Mr. Beard asked whether the inspector had felt compelled to also issue a notice of violation regarding the carport on the abutting property. Roy Biedler, Senior Zoning Inspector, Zoning Enforcement Branch, Zoning Administration Division, said he saw the two structures and realized the subject one was too big and could not be located where it was, but he had to return to the office to check the records regarding the carport on the abutting property and would deal with the issue.

Chairman DiGiulian called for speakers.

Jim Pan, 7000 Vantage Drive, Alexandria, Virginia, came forward to speak. He said he was an engineer, and in trying to determine how to apply the Zoning Ordinance to the subject pipe stem lot, common sense would say that when the Zoning Ordinance says front, the house must face the street. He said he thought the front lot line would be between the public and private right-of-ways, and because it was a pipe stem lot, it only had 15 feet of street frontage, which was the driveway, and included easements for sanitary sewer and electric and telephone lines. Mr. Pan said that the closest point from the Foxboro Court curb was approximately 129 feet, so the front yard setback was met.

Mr. Hart asked whether everything would change if the appellants moved the front door over to the side of the garage. Mr. Congleton said the yard designations would change if that was the principal entrance to the dwelling, but the accessory structure would still be in violation, and the entire house would be in violation because it would not have a 25-foot rear yard.

Mr. Hart asked whether the accessory structure would become legal if the carport was shifted over and attached to the house and otherwise met the minimum yard. Mr. Congleton said that in most cases it would. It would become part of the principal dwelling if it was connected with a wall or roof assembly. He said staff would be willing to look at whatever plans the appellants might want to have drawn.

Mark Archer, 5306 Foxboro Court, Alexandria, Virginia, came forward to speak. He said he owned three homes on Foxboro Court and one on the corner of Wickford Drive. He said he had contacted the County with regard to the subject structure and had been told that no permit had been pulled. Mr. Archer said the appellants intended to put a car lift in the structure and had one built in the driveway just previous to the time the building had been constructed. He said the concrete slab underneath the building was quite large, and he had noticed a lot of water runoff coming down the driveway. Mr. Archer said the property values were the biggest concern to him, and the neighbors had signed a petition requesting the Board have the structure removed. He said the structure was an industrial/commercial structure which did not belong in the neighborhood.

~ ~ ~ January 10, 2006, CHRIS D. AND GLENDA F. GRABIEL, A 2005-LE-051, continued from Page 93

Michael Rodgers, 7323 Wickford Drive, Alexandria, Virginia, came forward to speak. He said he was the president of the Wickford Wellfleet Community Association, which was a community organization, not a homeowners association. The community was located within the 100-year floodplain for Doe Creek and Huntley Meadows, and the majority of the homes, about 95 percent, did not have basements because of the water table. He said the association was concerned that the structure had been built without going through the County permit process. Mr. Rodgers said the association's position was that the structure had a negative impact on the neighborhood and took away from the value of the adjacent homes.

In his rebuttal, Mr. Grabiel said the carport could be adjusted, and none of the neighbors had spoken to him about the carport.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on A 2005-LE-051 to February 14, 2006, at 9:00 a.m. He said more information was needed regarding whether there had been other determinations on the question of front yards and pipe stems and the wording regarding the frontage being only the driveway. He said he wanted to know whether there had been other situations where the frontage had been mostly the driveway but also a couple feet of grass of either side. Mr. Hammack seconded the motion.

Ms. Gibb stated that the structure was still too big. Mr. Hart said he agreed. He said the structure probably could not be in the existing location no matter what, but he was not sure it was a front yard, and he wanted to sort that out first. Mr. Hart said the determination the appellants were appealing was with respect to an accessory structure being located in a front yard, not that it was too big or too close to the side. Ms. Gibb said the structure would not be able to stay in the current location. The Board was just trying to determine the valid reason for the appellants not being able to keep it.

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

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~ ~ ~ January 10, 2006, After Agenda Item:

Approval of September 13, 2005 Minutes

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

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~ ~ ~ January 10, 2006, After Agenda Item:

Approval of July 19, 2005 Minutes for
Virginia Equity Solutions, LLC, A 2005-PR-015
for inclusion into the Return of Record

Mr. Hart said he would not participate in the vote because he had recused himself from the July 19, 2005 hearing.

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

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Cooper v. BZA; Williamson Group Land Development, LLC, v. BZA; Virginia Equity Solutions, LLC, v. BZA; the Lee and McCarthy cases; BZA rules; RLUIPA issues; and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the

meeting.

The meeting recessed at 1:17 p.m. and reconvened at 1:51 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Mr. Hart moved that Mr. Hammack be authorized to send the letter to the County Executive that was discussed in the Closed Session regarding Willliamson Group Land Development, LLC. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Mr. Hammack moved that in the case of Horace Cooper v. BZA, CL-2005-7636, the Clerk prepare the record of the proceeding to be filed in the subject action on or before February 27, 2006. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Mr. Hart moved that Chairman DiGiulian be authorized to send the letter to Mr. Guggenheim (phonetic) that was discussed in the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 1:55 p.m.

Minutes by: Vanessa A. Bergh

Approved on: January 9, 2013

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 24, 2006. The following Board Members were present: V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:05 a.m. He asked if the members had any matters to bring before the Board.

Mr. Hart moved that Nancy Gibb be re-elected as the Board of Zoning Appeals secretary. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

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

~ ~ ~ January 24, 2006, Scheduled case of:

9:00 A.M. DAVID M. LAUGHLIN AND CHARLOTTE H. LAUGHLIN, VC 2005-HM-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 20.73 ft. with eave 26.20 ft. and steps 16.83 ft. from front lot line. Located at 1884 Beulah Rd. on approx. 41,448 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((1)) 57 pt. (Admin. moved from 12/13/05 at appl. req.) (In association with RZ 2005-HM-024)

Vice Chairman Ribble noted that VC 2005-HM-007 had been withdrawn.

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~ ~ ~ January 24, 2006, Scheduled case of:

9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05 and 12/6/05)

9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05 and 12/6/05)

Vice Chairman Ribble noted that the cases would be heard concurrently and were for decision only.

John Carter, Esquire, the applicants' agent, 4103 Chain Bridge Road, Suite 101, Fairfax, Virginia, informed the Board that Mr. Hatcher was en route to the meeting and the hearing could proceed.

Vice Chairman Ribble noted that the applications were deferred several times for decision, and he requested that staff refresh the Board's memory on the particulars.

Deborah Hedrick, Staff Coordinator, said the cases were deferred from December 6, 2005, for decision only. Issues remained with one of the storage structures, depicted as Shed 2 on the plat, as it exceeded 200 square feet in size, was 1.5 feet from the property line, and required a variance. There was also the outstanding issue regarding the 316-square-foot Shed 1, the building in error special permit, which was partially located on Park Authority property and which the Park Authority requested removed. The applicant also asked that his dwelling remain 2.5 feet with eave 1.5 feet from the side lot line and its second story deck remain 1.5 feet from the side lot line. Ms. Hedrick said either Mr. Carter or Mr. Hatcher should address the Board regarding the structures built within the 25-foot future roadway easement.

Mr. Carter submitted that presently he was unprepared to go forward because he was unable to reach Mr.

Hatcher to apprise him of the applications' status. Mr. Carter pointed out that Mr. Hatcher only recently returned from out-of-town, had indicated he wanted to proceed, and advised that due to his sudden serious health complication, was now on disability and operating with depleted funds, which complicated possible remedies such as the pursuit of Quiet Title and other legal actions that required costly professional fees.

Mr. Hammack stated that the Board had already granted several deferrals to allow resolution of or progress on certain issues, but it appeared as though nothing was done. He noted that Mr. Hatcher sought the Board's approval to allow structures to remain that were not on his property, and that he could not support such a request.

Having just arrived at the meeting, Mr. Hatcher identified himself at the podium as residing at 2747 Oldewood Drive, Falls Church, Virginia. At Vice Chairman Ribble's request, he explained various structures depicted in several photographs. He noted that the recent addition to his home was not included with his variance request as its setback was not an issue. He explained that in 1965 his father constructed a carport, that the permit allowed it to be built 12 feet from the property line, and over the years, it was enclosed, converted into a garage, but it now set 2.5 feet from the property line. Years later he placed a deck over the garage. He stated that he did not understand why the deck was even an issue because it was over a structure that was built 30 years ago. He explained, as he understood it, the chronological history and ownership of the property within the right-of-way easement.

Mr. Hart said he concurred with Mr. Hammack in that he, too, could not support the sheds. He listed the three issues, as he understood them, one being the location of the sheds, which he believed were in serious trouble. The second issue was the fence/net for the golf balls, which he understood the Park Authority had withdrawn its offer to install, and filing for a sports containment structure that may have afforded some relief was not pursued; therefore, under the current set of circumstances, he could not see the Board granting a variance on the fence. The third issue was the location of the house; however, whether it was there since 1966 was not within the Board's scope of review. He pointed out that what the Board received was a building permit showing a location that approved a carport, but the structure built was enclosed, as well as ten feet closer to the property line than what the permit indicated. Mr. Hart cautioned Mr. Hatcher that if the Board denied his special permit, Mr. Hatcher's problem with the structure could exacerbate if something had to be torn down. Mr. Hart reminded the applicants that the Board already granted several deferrals in an effort to allow them time to sort things out. Mr. Hart said the major issue to him was the approval of the location of the existing house, which became complicated by the fact that the Quiet Title had not progressed and the possibility of a Quit Claim Deed from the neighbor may not be sufficient to resolve the question of the right-of-way. Mr. Hart agreed that it would be a hardship for Mr. Hatcher to tear down the garage, but before the Board went forward, Mr. Hatcher needed to address and resolve whether he intended to go forward with the Quiet Title case; settle the dispute with the Park Authority; decide if the sheds would be moved; and whether he would conduct another survey, and these matters all required Mr. Hatcher's action in order for the Board to move on a resolution.

Mr. Hammack tasked Mr. Hatcher to either make his case or decide what action he would take. He pointed out that Mr. Hatcher's applications were before the Board and the Board was required to take action.

Mr. Hatcher proceeded to explain the actions he took over the past two years to include submitting several contracts with the County that were considered and agreements he posed with the Park Authority.

Ms. Langdon called the Board's attention to the fact that the two smaller sheds were not always in their current location as evidenced by a plat prepared in June 2001 by Alexandria Surveys which showed three small sheds up close to the house, and the one larger shed. It was October of 2001 that the Park Authority prepared the current plat which showed the three sheds gone, two moved to their present location, and the large shed remaining in its current location. In response to Mr. Hart's question concerning scheduling deferrals, she said it was certainly possible that whenever a case was deferred, the deferred case could preclude another application from being heard on that date.

Mr. Hatcher insisted that other sheds in his neighborhood had similar setbacks from the property line to where his sheds were and questioned why he would be required to come into conformance when his neighbors were not required to do so. He maintained his issue was that the County was more concerned about the location of his shed, which had been there for years, than the continual destruction of his home

and property from errant golf balls, for which he blamed the Park Authority. He maintained that he has suffered a contentious relationship with them over the years.

In response to Mr. Beard's question of whether Mr. Hatcher thought it reasonable for the Park Authority to allow his shed to remain encroaching upon its property when the two of them were apparently at odds, Mr. Hatcher conceded that the Park Authority may not permit it, but he still intended to propose some sort of remedy for consideration. He said the County has considered his situation as a legal issue, but he disagreed. He believed his circumstances were a matter of what was right. Mr. Hatcher submitted that he believed it reasonable for the Park Authority to lease him its small strip of property.

Mr. Byers referenced the April 27, 2004 memorandum from County Attorney, Cynthia L. Tianti, in which she specifically stated that the Park Authority had a long-standing practice of opposing any encroachment on its land. "The structures on Mr. Hatcher's property that encroached on public land," he read, "the Park Authority saw no basis to alter its practice." Mr. Byers said the Park Authority clearly stated its opposition in that they opposed any part of Mr. Hatcher's application that would allow any structure to remain on Park Authority property. Mr. Byers said he could see no room for compromise.

Vice Chairman Ribble stated again that these applications were for decision only, and he called for a motion.

In response to Mr. Hammack's stated intention to move on and further defer decision on portions of the special permit application, Ms. Langdon reminded the Board that all the issues/structures were under the same special permit number; and, therefore, the action could not be finalized until all the issues were decided. She said, in essence, the entire application would be deferred.

In response to Mr. Hammack's question of how much time would be necessary to complete the Quiet Title procedure, Mr. Hatcher said the issue remained that of money and he could better determine when the necessary funds would be available after consulting with Mr. Carter. Following a brief discussion between Mr. Carter and Mr. Hatcher, it was determined that the fee would be approximately $5000 and the process could be completed in 120 days.

Mr. Hart commented that 120 days seemed reasonable.

Discussion followed among Board members and staff concerning further deferring decision on VC 2003-PR-194 and SP 2003-PR-054 to a date in May or June 2006, and what information Mr. Hatcher should present and the action to take in the interim. Mr. Hammack moved to defer Mr. Hatcher's concurrent cases for 120 days. The motion was seconded by Mr. Beard, and further discussion ensued.

Mr. Hart said the Board should be informed the following week whether the applicant would go forward or withdraw or what his intentions were, and that information need not wait until May or June. He suggested to Mr. Hatcher to decide by the next public hearing, and that the Board would decide whether to defer or to vote.

Mr. Hammack then withdrew his initial motion, and moved to defer decision to February 7, 2006, at 9:00 a.m., which was seconded by Mr. Beard and carried by a vote of 5-1-0. Mr. Byers voted against the motion. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ January 24, 2006, Scheduled case of:

9:00 A.M. ROBIN AND EILEEN MARCOE, SP 2005-BR-031 (accessory dwelling unit & bldg. in error) (Admin. moved from 11/8/05 and 12/6/05 at appl. req.)

Vice Chairman Ribble noted that SP 2005-BR-031 had been administratively moved to March 14, 2006, at 9:00 a.m., at the applicants' request.

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~ ~ ~ January 24, 2006, Scheduled case of:

9:00 A.M. CHRISTOPHER L. EISENBIES, SP 2005-SU-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 17.6 ft., dwelling 17.2 ft. from side lot line and 19.8 ft. from rear lot line. Located at 15108 Elk Run Rd. on approx. 13,766 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 419.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher Eisenbies, 15108 Elk Run Road, Chantilly, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on an error in building location to permit a deck to remain 17.6 feet from the side lot line and dwelling to remain 17.2 feet from the side lot line and 19.8 feet from the rear lot line. A minimum side yard of 20 feet is required; therefore, modifications of 2.4 feet for the deck and 2.8 feet for the dwelling were requested. A minimum rear yard of 25 feet is required; therefore, a modification of 5.2 feet for the dwelling was requested.

At Mr. Hart's request for clarification, Susan C. Langdon, Chief, Special Permit and Variance Branch, explained the reasons for determining which sides of the subject property's five sides were considered the front, rear, and side lot lines. Ms. Langdon paraphrased the Ordinance stating that the Ordinance maintained there can only be one rear yard, but multiple side or front yards, and that the rear yard is considered opposite of the front yard. She said it was Zoning Administration who determined the yard to be the rear yard because it was the most opposite the property's front yard. Ms. Langdon said for those lots with more than four sides, it is a determination made by Zoning Administration on a case-by-case basis. She noted that since the house was built, before Mr. Eisenbies' ownership, the yard determination was consistent.

Mr. Eisenbies concurred that what was determined to be the rear yard was also recognized as such by the permits issued for his deck and addition. He said the home was built in 1998, and the deck and addition were built by previous owners which, he pointed out, was noted in the statement of justification as well as the record. He purchased the house in 2003 not realizing there was a problem with the 17.2 foot setback in the north side corner. Mr. Eisenbies requested that the Board clear up the problem through the special permit process.

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

Mr. Hammack complimented Mr. Eisenbies on the preparation of his statement of justification in that it was one of the better ones to be presented before the Board.

Mr. Byers moved to approve SP 2005-SU-043 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER L. EISENBIES, SP 2005-SU-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 17.6 ft., dwelling 17.2 ft. from side lot line and 19.8 ft. from rear lot line. Located at 15108 Elk Run Rd. on approx. 13,766 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 419. 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 24, 2006; and

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

~ ~ ~ January 24, 2006, CHRISTOPHER L. EISENBIES, SP 2005-SU-043, continued from Page 100

1. The applicant is the owner of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This Special Permit is approved for the location of the dwelling and deck as shown on the plat prepared by B.W. Smith and Associates, Inc., dated October 5, 2005, submitted with this application and is not transferable to other land.

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

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

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~ ~ ~ January 24, 2006, Scheduled case of:

9:00 A.M. THANH TRUONG AND TOTAM LE, SP 2005-DR-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.3 ft. with eaves 7.1 ft. from side lot line. Located at 7738 Leesburg Pi. On approx. 14,989 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 39-2 ((6)) 99.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lawrence H. Spilman, III, LS2PC Land Surveying

~ ~ ~ January 24, 2006, THANH TRUONG AND TOTAM LE, SP 2005-DR-044, continued from Page 101

Services, 2890 Emma Lee Street, Suite 200, Falls Church, Virginia, the applicants' agent, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction to the minimum yard requirements based on error in the building location to permit the dwelling to remain 8.3 feet from a side lot line. A minimum side yard of 10 feet is required; therefore, a modification of 1.7 feet was requested.

Mr. Spilman said his surveying company was hired by the applicants to prepare the site and grading plan for the applicants' new home. In order to allow the size of the garage requested, the placement of the dwelling was relocated during construction to 8.3 feet from the eastern side lot line, which resulted in the error in the location of the building. He said the construction was halted, and the Board's approval of the special permit was requested to resolve the matter and allow the project's completion. In response to Ms. Gibb's question of how the mistake was discovered, Mr. Spilman said the error was uncovered during his inspection of a wall check survey of the concrete walls.

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

Mr. Hart moved to approve SP 2005-DR-044 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THANH TRUONG AND TOTAM LE, SP 2005-DR-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.3 ft. with eaves 7.1 ft. from side lot line. Located at 7738 Leesburg Pi. On approx. 14,989 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 39-2 ((6)) 99. 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 24, 2006; and

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

1. The applicants are the owners of the land.
2. Based on the Statement of Justification and the explanation given to the Board, the applicants are without fault in this.
3. There are issues of contract or stake-out mistakes, and this is one of the reasons that the Mistake Section is in the Ordinance.
4. One of the errors could almost be approved administratively, and the other is a matter of inches and is not particularly severe.
5. Given the photographs and topography, the impact on surrounding properties is not a big deal.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

~ ~ ~ January 24, 2006, THANH TRUONG AND TOTAM LE, SP 2005-DR-044, continued from Page 102

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This Special Permit is granted for the location of the dwelling as shown on the special permit plat prepared by Lawrence H. Spilman III, LS2PC, dated August 18, 2005, as submitted with this application, and is not transferable to other land.

2. Building permits and final inspections shall be diligently pursued within 30 days and obtained within 90 days of final approval of this application or this Special Permit shall be null and void.

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

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

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~ ~ ~ January 24, 2006, After Agenda Item:

Request for Additional Time
St. Francis Episcopal Church, SPA 82-D-087-4

Mr. Hammack moved to approve 12 months of Additional Time. Mr. Hart seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was October 16, 2006.

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~ ~ ~ January 24, 2006, After Agenda Item:

Request for Additional Time
Hopkins House, SP 01-V-016

Mr. Hammack moved to approve six months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was May 19, 2006.

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~ ~ ~ January 24, 2006, continued from Page 103

Vice Chairman Ribble called attention to a request by a citizens group to reschedule the 9:00 a.m., January 31, 2006, public hearing for Appeal A 2005-MV-055, Concerned Citizens of Hollin Hall Village, to a night meeting.

Susan C. Langdon, Chief, Special Permit and Variance Branch, noted that the application would have to be re-advertised and re-noticed.

Vice Chairman Ribble stated that re-advertising was not the sole consideration with scheduling an application out of the established timeframe, as interested persons might find it a hardship to travel into the late evening for a night meeting. He encouraged written comments via post or electronic mail for those who wished to make their concerns or opinion a matter of record.

Mr. Hart moved that the Board not consider scheduling night meetings, but keep to its daytime meetings. Mr. Byers seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Cooper v. BZA, Williamson Group Land Development LLC v. BZA, Virginia Equity Solutions v. BZA, the RLUIPA (Religious Land Use and Institutionalized Persons Act) issues, BZA By-Laws, the Lee case, McCarthy case, and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 10:25 a.m. and reconvened at 11:01 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

Minutes by: Paula A. McFarland

Approved on: September 15, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 31, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; Norman P. Byers; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:03 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 DiGiulian called for the first scheduled case.

~ ~ ~ January 31, 2006, Scheduled case of:

9:00 A.M. MULFORD ENTERPRISES, INC., SP 2005-SU-039 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a riding and boarding stable. Located at 15109 Lee Hwy. on approx. 14.41 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((3)) 22 and 23. (Associated with SEA 2003-SU-001) (Admin. moved from 1/31/06 at appl. req.)

Chairman DiGiulian noted that SP 2005-SU-039 had been administratively moved to February 28, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:00 A.M. LEE M. AND ROBIN L. MILLER, SP 2005-HM-045 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 1867 Beulah Rd. on approx. 1.93 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((1)) 55. (Admin. moved from 1/31/06 at appl. req.)

Chairman DiGiulian noted that SP 2005-HM-045 had been administratively moved to February 7, 2006, at 9:00 a.m., at the applicants' request.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:00 A.M. JOHN B. LOGRANDE, VC 2005-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling to remain less than eighteen inches above 100 year flood plain level. Located at 1212 I St. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (38) 30. (In association with SEA 78-V-115) (Decision deferred from 11/15/05)

Chairman DiGiulian stated that Stephen Varga, Staff Coordinator, was researching information concerning VC 2005-MV-006, and the Board would address the application later in the meeting.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-08 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 previously approved for a funeral home, cemetary, mausoleum, crematory and columbarium to permit additional parking and mausoleums, building addition and a modification of development conditions. Located at 4401 Burke Station Rd. and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Decision deferred from 1/10/06)

Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicant's agent, came forward to speak. She stated that the applicant and the applicant's attorney were not present due to traffic issues.

Chairman DiGiulian said the Board would address the application later in the meeting.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:00 A.M. WILLIAM T. KENNARD, SP 2005-SU-046 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 11 ft. 2 in. with eave 10 ft. 4 in. from side lot line. Located at 15128 Weatherburn Dr. on approx. 15,050 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 281.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Kennard, 15128 Weatherburn Drive, Centreville, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow modifications to minimum yard requirements for certain R-C lots to permit construction of an addition 11 feet, two inches with eave 10 feet, four inches from the side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 7.92 feet and 5.72 feet, respectively, were requested.

Mr. Kennard presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would be architecturally compatible with surrounding construction and that the plans had been approved by the Virginia Run Architectural Review Board. He noted that the Board had received a letter of support from the neighbor that would be most affected by the construction of the porch.

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

Mr. Hammack moved to approve SP 2005-SU-046 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM T. KENNARD, SP 2005-SU-046 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 11 ft. 2 in. with eave 10 ft. 4 in. from side lot line. Located at 15128 Weatherburn Dr. on approx. 15,050 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 281. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 31, 2006; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

~ ~ ~ January 31, 2006, WILLIAM T. KENNARD, SP 2005-SU-046, continued from Page 106

development conditions:

1. This Special Permit is approved for the location of the screened porch addition as shown on the plat prepared by Rice Associates, dated March 10, 1992, as recertified on November 15, 1993 and signed on October 26, 2005, as submitted with this application and is not transferable to other land.

2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.

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

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

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~ ~ ~ January 31, 2006, Scheduled case of:

9:00 A.M. JOHN B. LOGRANDE, VC 2005-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling to remain less than eighteen inches above 100 year flood plain level. Located at 1212 I St. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (38) 30. (In association with SEA 78-V-115) (Decision deferred from 11/15/05)

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael Holm, Womble, Carlyle, Sandridge & Rice, PLLC, 8065 Leesburg Pike, Tysons Corner, Virginia, replied that it was.

Barbara Byron, Director, Zoning Evaluation Division, noted that since the case had been last deferred, the Board had received three pieces of information from staff. She said that on November 15, 2005, the Planning Commission had held a hearing on the applicant's special exception and on December 8, 2005, had recommended that the Board of Supervisors approve the special exception and the Board of Zoning Appeals (BZA) approve the variance application. Ms. Byron reported that the Board of Supervisors held their hearing on January 9, 2006, at which time they had approved the special exception and strongly suggested that this was a variance that the BZA could approve even under the recent Supreme Court decisions. She noted that a partial verbatim of the Board of Supervisors' hearing had been provided to the BZA. Ms. Byron stated that on January 27, 2006, a letter had been faxed to the BZA from Jim Zook, Director, Department of Planning and Zoning, giving a staff recommendation of approval for the variance application.

Mr. Holm presented the variance request as outlined in the statement of justification submitted with the application. He said the case was about homeowners who had purchased the property in 1999, believing that it complied with all zoning ordinances at the time of purchase. He called attention to the fact that the Certificate of Occupancy had been issued in error by County inspectors when the house was built. He said this case was not about people who were attempting to obtain a variance to allow them to build an addition to their property or to tear it down and rebuild it closer to the lot lines, and it was not a setback issue. It was a vertical issue with respect to the continued existence of the house as it was constructed. He said he had not been able to find any variance information dealing with vertical issues.

Mr. Holm noted that the BZA and the Bar Association had wrestled with the Cochran decision issued in 2004 and with the Hickerson decision that was issued last year by the Virginia Supreme Court. He said the subject case satisfied the test that was established in the Cochran case which made it clear that the

threshold inquiry for a Board of Zoning Appeals was whether the effect of the zoning ordinance upon the property as it stands interfered with all reasonable beneficial uses of the property taken as a whole. Mr. Holm submitted that taken as a whole, in the context of a piece of property with a house, the decision indicated that the house must be considered as well. He pointed out that what had made the Cochran case distinguishable was that in each of the variance cases that were before the Court, the Court made a finding that without the variance, each property retained beneficial uses and substantial value. He said the problem in this case was that if no variance was granted, in light of the fact that staff had said that it violated the Zoning Ordinance, there was no use of this property in its current state. He stressed that the applicant could not use the home unless it was torn down and rebuilt, which would cause them to incur great financial hardship.

Referring to the Hickerson case, Mr. Holm stated that the owner could still retain the use of the property without the variance, and what they wanted to do was tear the house down and build two houses after the property was subdivided. He said the Court reiterated that the inquiry was to determine whether or not it rose to the level of a constitutional type taking, where there was an unconstitutional result. He submitted that in the Hickerson case, it would satisfy the test for a regulatory taking, given the facts as applied.

Mr. Holm also submitted that the Penn Central Transportation case that had been heard by the United States Supreme Court, which had been cited in the Cochran case, cited another U.S. Supreme Court case, Goldblad v. Hipstead (phonetic), where the Court said that use restrictions on real property may constitute a taking if it had an unduly harsh impact on the owner's use of the property. He stated that that was precisely what was happening with this case, because there would be a significant monetary impact. He stated that the case that was before the Board did satisfy the test in Cochran in that it would permit the Board to grant the variance.

Mr. Holm pointed out that the 60-day rule under Section 15.2-2311c may also apply in this instance because the Code of Virginia provision provided that after 60 days where the party had changed its position, based upon an action of the Zoning Administrator, it could not be changed. He noted that a building permit had been issued to the applicant for renovation of the home and submitted that it satisfied the test for a change in their behavior. He also called attention to a 2001 tax assessment bill that showed an increase in the value of the home due to completed construction. He submitted, for the record, a copy of the contract with the builder that reflected the amount of money spent on the renovation and a copy of the 2001 tax assessment. He indicated that he had not seen a copy of the building permit because it had just been found this morning. Mr. Holm requested that the Board approve the variance for the reasons stated.

Ms. Gibb asked staff what their position was with respect to the building permit issued to the property in question. Ms. Byron indicated that staff had just become aware of the permit this morning and hadn't had a chance to research it; however, it had been issued only for first floor interior renovations. She said she would echo the position of Mr. LoGrande's counsel, that the issue could be debated for several years, and from staff's perspective, the better course of action would be to deal with the variance in case it was needed, and the other issue did not come out in Mr. LoGrande's favor. In answer to Ms. Gibb's question, Ms. Byron said staff did not dispute that it was a valid building permit that had been signed off by the Zoning Administrator.

Ms. Gibb noted that the Board would be hearing another case today that involved a building permit that was for interior work only. Ms. Byron stated that she was not aware of that case and suggested that perhaps staff could answer the question. Jayne Collins, Staff Coordinator, Zoning Administration Division, stated that the case cited by Ms. Gibb was an appeal where the people had an existing house that was legal at the time it was built, and when they applied for a building permit last year, they were told they could not add onto the house because the house was nonconforming. She said it could be added onto, but any addition would have to meet the current setbacks. She stated that the owner had built the addition anyway despite the revoked permit and stop work order. Ms. Gibb asked whether that case involved a plat. Ms. Collins said they had stated in their request for a building permit that they were doing interior renovations to an existing second floor, and a plat was not associated with the building permit they had applied for the past summer.

In response to Ms. Gibb's questions to staff, Mr. Holm called attention to Section 18-603 of the Zoning Ordinance that stated no building permit shall be issued for the erection of any building or structure on a lot, or addition, or modification to a building or structure that was in violation of the Zoning Ordinance. He said he did not think the Board could read the language to draw a distinction between an interior building permit

versus one that dealt with the exterior of the building.

Mr. Hammack asked staff why a special permit for an error in building location would not be appropriate in lieu of a variance. Susan Langdon, Chief, Special Permit and Variance Branch, stated that a special permit for building in error dealt with minimum yards so that a homeowner could get relief if they made a mistake and located an addition or structure too close to one of the lot lines by obtaining a valid building permit indicating that the mistake was made. She said this case dealt with an elevation and was not covered under building in error.

Mr. Hammack asked why the Ordinance did not cover elevation issues and whether it excluded it. Ms. Langdon said she did not know why the Ordinance specified yards and not elevations and offered to read that portion that applied for the special permit for building in error. Mr. Hammack stated that he would be interested in knowing why the Ordinance did not cover elevation and height. Ms. Langdon said staff would have to research back to the time the Ordinance amendment was made, and she did not know if that information was available.

Chairman DiGiulian asked if staff knew how far below the 18 inches the first floor of the LoGrande house was. Ms. Langdon responded that it was seven inches below and 11 inches above the floodplain, which met the Federal Environmental Management Agency (FEMA) regulations.

In response to Mr. Hammack's question, Ms. Langdon replied that it was staff's understanding that FEMA regulations had been met, and the County's Ordinance requirements took precedence over those regulations.

Chairman DiGiulian called for speakers; there was no response.

Mr. Hammack stated that he wanted a response to his question concerning why the Ordinance did not cover elevation issues. Ms. Byron said the pages of the Zoning Ordinance which related to the issue were missing from the copy in the Board Auditorium. She said staff was attempting to get the text electronically.

Mr. Zook stated that the issue raised by Mr. Hammack dealt with height variances, and staff believed the Ordinance provided for adequate height for single-family detached dwellings. He noted that consideration of that issue was among the packages of items that were to be potentially considered in terms of the special permit amendment for variances, and it could be that would be addressed at a later date. He noted that was an issue of height of the principal structure itself and was not an issue of height above the floodplain. He said the subject case was an extremely unusual circumstance which could and should be addressed through a variance rather than amending the County Zoning Ordinance, which should be applicable to a variety of properties which may be similarly situated. Mr. Zook said staff had no knowledge of properties similarly situated to the subject property, and because of that, it lent itself to a variance rather than a general modification of the County Zoning Ordinance.

Mr. Hammack asked what had happened with the development conditions associated with the special exception amendment application for sections that had been approved and those that had not been approved. Ms. Byron stated that Stephen Varga, Staff Coordinator, would provide a copy of the Board of Supervisors' conditions. She said the Planning Commission had removed the conditions pertaining to "the moat."

Mr. Hammack asked whether it was known why the fill referenced in the original special permit was not brought in to meet the required full 18 inches above the floodplain. Ms. Byron stated that it was originally required because the Ordinance was similar at that time. She said the building had been built approximately 25 years ago, and there was no record of what had happened as far as why it was lower than 18 inches. She said it was clear that the applicant's predecessor had done it, and it was also clear that they did raise the building. Ms. Byron said there had been an attempt to build the lot up with fill; however, it came up short of the amount. She stated that Planning Commissioner John Byers had speculated that there could have been many reasons why it happened, one of which was that the ground could have settled if the fill was not compacted correctly. She said staff could not tell the Board with certainty what had actually happened.

Ms. Langdon advised the Board that the wording for reduction of minimum yard requirements based on error in building location said, "The BZA may approve a special permit to allow a reduction to the minimum yard

requirements for any building existing or partially constructed."

Chairman DiGiulian closed the public hearing.

Mr. Zook noted that the staff recommendation, as stated in his memorandum to the Board of Zoning Appeals, did not include consideration that was raised recently with regard to the building permit. He stated that the issue regarding the building permit could stand aside from the Board of Zoning Appeals' determination. He said there were other portions of the statute that dealt with whether there was some kind of clerical or administrative error. Mr. Zook said that staff's recommendation to the Board was that there was substantial reason to move forward with a variance without drawing a parallel to the subsequent building permit.

Mr. Byers asked, even though there had been a great deal of speculation about what had happened 25 years ago, whether there had been a County requirement that when an inspector went out and actually measured a property, that the soil had to be compacted, and also whether it was currently a requirement.

Jerry Stonefield, Department of Public Works and Environmental Services, said that based on their research, there was no record that indicated the elevation of the house was checked at the time it was constructed. He said that under current procedures, DPWES required that the builder or applicant submit an elevation certificate showing the elevation of the floor prior to approving the framing inspection and prior to completing construction of the house.

Mr. Byers asked whether the elevation certificate was based on compacted fill or just fill dirt going into a particular location. He said that if fill dirt was put in and sat for 25 years, it would settle to some amount unless it had been previously compacted, regardless of whether there had been an inspection or not. He asked whether the Board should insist that the measurements be based on compacted fill or just fill. Mr. Stonefield stated that he was not familiar enough with the Virginia Uniform Statewide Building Code to know the requirements for the foundation of the structure itself and what information the inspector required with respect to that and that would be a question for building plan review.

Ms. Gibb asked to see and received a copy of Section 18-603. She asked why the 60-day rule did not apply in this case. Mr. Zook stated that staff had just received the information today, and there were provisions within that with respect to whether there was an administrative or clerical error, which would then negate the 60-day requirement. He said that issue may or may not be applicable, but he thought that the BZA could act on the application favorably without coming to any conclusion on that particular issue. Ms. Gibb stated that she was troubled by it, and if there was an Ordinance which would allow the Board to act, she would prefer to act that way. She said a number of lawyers had argued the Cochran case before the Board and noted that the Board did not have an attorney to advise them on the issue. She said the Board was doing the best it could with interpreting the Cochran decision as well as the Hickerson case, which was more troublesome coming after the Cochran decision had been made. She said the Board was sympathetic with the subject case; however, if there was another way to proceed, she would be more comfortable. Ms. Gibb asked for and received a copy of the 60-day rule.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2005-MV-006 for the reasons stated in the Resolution.

Mr. Beard seconded the motion and stated that there was no doubt that Cochran imposed a very high standard on the BZA pursuant to the granting of variances, but he was comfortable in believing that the subject case well met the criteria.

Ms. Gibb asked whether the applicant only would sign an indemnity agreement or everyone who owned the property and what they were indemnifying. Mr. Hammack said it should be for the applicant, his wife, and the successors and assigns, and it would indemnify against the effects of a house that was located lower. Ms. Gibb asked what the practical effect of the indemnification would be. Mr. Hammack said he hoped it would be that no one could sue the BZA for not following an Ordinance requirement that required a house to be built 18 inches above a floodplain. Ms. Byron added that it was a standard condition that the Board of Supervisors placed on every application for fill in the floodplain to ensure that the applicants would not return and say my house flooded and it is the County's fault.

~ ~ ~ January 31, 2006, JOHN B. LOGRANDE, VC 2005-MV-006, continued from Page 110

A discussion ensued regarding how future purchasers of the property would know they were buying a house that required them to hold the County harmless.

Mr. Ribble said he would like the remarks of Mr. Holm incorporated into the record as a reason for the granting of the variance.

Ms. Gibb indicated she would support the motion based on Virginia Statute 15-2-2311c, which said in part, "In no event shall a written order, requirement, decision, or determination made by the Zoning Administrator or other administrative officer be subject to change, modification, or reversal by any Zoning Administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision, or determination where the person aggrieved has materially changed his position in good faith." She said a building permit application for interior changes had been made and signed off on by the Zoning Administrator November 5th, 1999, after the statute was enacted, which indicated no change to the yards, and an earlier building permit had been issued which approved the building of the house. Ms. Gibb said that whether an inspection had been done and the house settled or there was no inspection done, it was through no fault or error by the owner of the property.

Chairman DiGiulian indicated he would support the motion and was in agreement with Ms. Gibb regarding Section 15-2-2311c, but also thought the case was similar to the Weigle (phonetic) case on the Potomac River where the foundation of the house was in such disrepair that the only way to solve the problem was to demolish the house the rebuild it. He said that based on the statement in Mr. Zook's memo that if the variance was not granted, the house could not lawfully be used, there would be no reasonable beneficial use.

Mr. Holm asked what the status was on the requirement on the Hold Harmless and who would be required to sign it. Mr. Hammack replied that it would be the applicant and his wife. He noted the same provision was in the special exception amendment which was approved. Mr. Hammack said the applicant would have to execute it in favor of his successors in title and assigns, and the existence of the Hold Harmless would have to be made known to any purchasers before a contract was executed.

Mr. Hammack commented that the County had declined to allow the BZA to have any legal counsel on any issues for some time, and the subject case underscored the need for having access to lawyers occasionally when dealing with issues like the 60-day rule, variance Ordinance requirements, and how some of the Supreme Court decisions apply.

Mr. Ribble suggested the BZA require that the variance be recorded among the land records of Fairfax County, to which Mr. Hammack agreed. Mr. Beard said he did not have a problem with the suggestion as long as it did not obstruct the free trade.

Ms. Gibb asked for clarification regarding whether, after the applicant and his wife signed the Hold Harmless, they would forever be liable and were letting people know or whether each purchaser of the property would be liable as an assignee. Mr. Stonefield informed the Board that the hold harmless agreement was a standard condition in special exceptions as well as in certain permitted uses in the floodplain, and the agreement was required prior to the approval of a building permit. He stated that the agreement would be recorded in the land records and would run with the land so that any future purchaser would be made aware. The agreement between the County and the current owner would be recorded which stated the current owner and his successors and assigns had agreed to the indemnification.

Mr. Beard asked whether the applicant would be released once he sold the property and the agreement passed on to the next title holder. Mr. Stonefield said that when the owner sold his interest in the property, everything would be conveyed to the new owner.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN B. LOGRANDE, VC 2005-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit

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existing dwelling to remain less than eighteen inches above 100-year flood plain level. Located at 1212 I St. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (38) 30. (In association with SEA 78-V-115) (Decision deferred from 11/15/05) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 31, 2006; and

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

1. The applicant is the owner of the land.
2. Looking at Sect. 18-404, which sets forth the required standards for variances, it does not seem there is any issue of the application meeting Standard Number 1, that the subject property was acquired in good faith.
3. Under Standard 2, some of the provisions are not applicable, but F is one of the two keys, that an extraordinary situation or condition of the subject property applies. This is an unusual situation. Much of the neighborhood was built prior to the subject house being developed, and it is all built at the natural topography.
4. The subject house was supposed to be constructed 18 inches above the floodplain. For some unknown reason, it was not constructed quite high enough, and the error surfaced over 25 years later to create the applicant and his family a lot of headaches and anguish.
5. There is no known similar situation existing next to it or in that immediate area. There may be, but the Board is not aware of it.
6. Standard 3, the condition or situation of the subject property or the intended use of the subject property is not so general or recurring a nature 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. The application meets that standard for obvious reasons.
7. Standard 4, that the strict application of this Ordinance would produce undue hardship, there is no doubt about that.
8. Standard 6, the other key that deals with Cochran, that the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, which is undoubtedly true. If the variance is not granted, the alternatives for the applicant are extreme.
9. Subsection B under Standard 6, that the granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience. The application meets that. Failure to grant a variance would require the house to be vacated or it would deny the applicant the use of the property until the property was reconstructed, if the house could be raised on its foundation another seven inches.
10. Standard 7, authorization of the variance will not be of substantial detriment to the adjacent property, there is no question.
11. Standard 8, the character of the zoning district will not be changed by the variance.
12. Standard 9, the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.
13. Initially there was concern that the Board did not have the authority to grant a variance in a floodplain, but the Board was assured by the County staff that the Board had that authority.
14. The applicant has satisfied the nine required standards for variance applications.
15. This is an extremely unusual case, and it can be factually distinguished from some of the other cases the Board has had difficulty with in the past couple of years, including Cochran.

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;

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D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

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

1. This Variance is granted for and runs with the land indicated in this application and is not transferable to other land.

2. This Variance is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Variance Plat approved with the application, as qualified by these development conditions.

3. Any plan submitted pursuant to this Variance shall be in substantial conformance with the approved Special Exception plat entitled *The LoGrande Residence, 1212 I Street, Alexandria, Virginia 22307 – Construction Documents Permit Package.*

4. Prior to the implementation of the variance, a Hold Harmless agreement shall be executed with the County and the BZA for all adverse effects which may arise as a result of the location of the site within a floodplain area. The Hold Harmless agreement shall be recorded among the land records of Fairfax County.

5. Disclosure of the potential flood hazards and of the Hold Harmless agreement due to the location of the site within the 100-year floodplain shall be made in writing to any potential home buyers prior to execution of a sales contract.

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 Residential Use Permit through established procedures, and this Variance shall not be valid until this has been accomplished.

Pursuant to Sect. 9-015 of the Zoning Ordinance, this variance 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 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 exception. The request must specify the amount of additional time requested, the basis for the amount of time

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requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-08 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 previously approved for a funeral home, cemetary, mausoleum, crematory and columbarium to permit additional parking and mausoleums, building addition and a modification of development conditions. Located at 4401 Burke Station Rd. and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Decision deferred from 1/10/06)

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson Hanes, Reed Smith, LLP, 3110 Fairview Park Drive, Falls Church, Virginia, the applicant's attorney, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 81-A-022, previously approved for a funeral home, cemetery, mausoleum, crematory, and columbarium, to permit additional parking, mausoleums, a building addition to a storage shed, and a modification of development conditions. Staff recommended approval of SPA 81-A-022-8 subject to the proposed development conditions contained in Appendix 1 of the staff report.

Mr. Hanes presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that he and Jane Kelsey were representing the applicant. He said the Board had requested that the applicant and staff address the issues raised at the public hearing. He said the applicant had requested that they be permitted to add 100 parking spaces, to expand the maintenance area, and to remove vegetation along the property line, and all those issues had been resolved with the exception of the last paragraph of Condition 25 and its relationship with Condition 4. Mr. Hanes said the applicant did not agree with the condition that the parking lots be retrofitted to accommodate sidewalks. He said sidewalks had been addressed with the initial site plan approval approximately five years ago. There had been no problems, and everything had been working successfully. He advised that retrofitting the parking lots would require an expansion of the stormwater detention pond and the relocation of the inlets. Additionally, the parking area would not meet the five percent interior planning for landscaping. He stated that Condition 4 required that the site plan be approved and the engineering be done by the Department of Public Works and Environmental Services (DPWES). He said that if DPWES required the addition of sidewalks, the applicant would work with the engineers to come up with a solution. Mr. Hanes said he did not think a public forum was the place to discuss engineering.

Mr. Hart asked staff what the difference was between the initial approval of the site plan and the amendment. He also asked where the sidewalk for Condition 25 was on the plat. Mr. Chase stated that during the review of the application, the Office of Transportation had indicated that a sidewalk should be required, and, therefore, the condition was proposed to address that issue. In answer to another question from Mr. Hart, Mr. Chase said he was not aware that Condition 25 would change the parking lot and consequently the stormwater pond. Susan Langdon, Chief, Special Permit and Variance Branch, stated that sidewalks would be reviewed at site plan to determine the best location, and Transportation had determined that walking up the drive to the parking lot would be hazardous. She said that when special permit and special exception uses were at issue, staff would normally request that a sidewalk be connected to a parking area, and that was not an unusual request.

In response to another question posed by Mr. Hart, Ms. Langdon said that if 25 spaces were to be removed, the issue would still be reviewed at site plan; however, it was an issue for Transportation, and hopefully they

would bring it up at site plan review. Mr. Hart asked where the sidewalk would be located. Ms. Langdon said Transportation had not specified any certain place. They just wanted to be sure that a connection would be provided and that it would be looked at by DPWES. She stated that it was never staff's intent that the location would be adjacent to the stormwater management pond.

Ms. Gibb asked if the sidewalks would be located in an area that did not have a parking lot and whether the applicant would be adding more impervious surface. Ms. Langdon said it was possible that Transportation wanted some sidewalks along the parking lot islands or at the end of the islands to facilitate people walking from the lot areas in order to access the front of the building.

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

Mr. Byers moved to approve SPA 81-A-022-08 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-08 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 previously approved for a funeral home, cemetary, mausoleum, crematory and columbarium to permit additional parking and mausoleums, building addition and a modification of development conditions. Located at 4401 Burke Station Rd. and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Decision deferred from 1/10/06) 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 31, 2006; and

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

1. The applicant is the owner of the land.

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

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

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

1. This approval is granted to the applicant, Calvary Memorial Park, Inc. T/A Fairfax Memorial Park and Fairfax Memorial Funeral Home, L.L.C., only and is not transferable without further action of this Board, and is for the location indicated on the application, 4401 Burke Station Road and 9900 Braddock Road (128.14 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 DeLashmutt Associates Ltd., dated June 25, 2005 and signed November 16, 2005, with Sheets 1 and 2 revised through January 9, 2006 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The funeral home/crematory building shall be limited in size to 16,150 square feet of interior floor area, and the garage and crematory unit shall be limited to a total of 3,968 square feet, as depicted in the plat building dimensions.

6. All parking shall be on-site, as shown on the special permit amendment plat. Except for times of use, hearses and similar business vehicles shall be parked and/or stored within the garage.

7. A landscape plan shall be submitted at the time of site plan review for the review and approval of Urban Forest Management. The plan shall maintain, to the greatest extent possible, berming and landscaping as approved in conjunction with SPA 81-A-022-7 and depicted in Attachment 1. Any plant material damaged or removed by the installation of the "Proposed Parking" area depicted on P. 1 of 4 of the special permit plat shall be replaced with vegetation of like kind and size. All replacement plat material shall be planted around the periphery of the proposed parking area. Additional ornamental and evergreen trees shall be planted around the eastern, northern and western periphery of the proposed parking area to provide screening and soften the appearance of the parking area. Size, species and location of the plant material shall be determined in consultation with Urban Forest Management.

8. (A) At the time of grading plan review, the Urban Forest Management will designate the limits of clearing and grading, consistent with the trees shown to be preserved on the special permit plat.

   (B) The applicant shall retain the existing bond to ensure the saving or replacing of such "individual trees" and all other trees which are outside or beyond the limits of clearing and grading as established at the time of grading plan approval. The existing bond will be in a form acceptable to the County Attorney and in an amount determined by the County Urban Forest Management; however, in no event shall such amount exceed fifteen thousand dollars ($15,000). The applicant will post with the County, within fourteen (14) working days of receipt of a request by the Director, DPWES, an amount equal to the replacement value of any tree destroyed as established by the Valuation of Landscape Trees, Shrubs and Other Plants. It is the intent of this development condition that at all times, the $15,000 existing bond be held by the County no matter how many requests for replacement funds have been called previously, but in no event shall the amount paid to Fairfax County for tree replacement exceed $15,000 per the existing bond. In determining the amount of the bond, the Urban Forest Management will assign a replacement value to each existing individual tree shown to be saved on the approved grading plans in accordance with the methods contained in the Valuation of Landscape Trees, Shrubs and Other Plants published by the International Society of Arboriculture. Should bond or any replacement bond be called by the County and the funds expended to restore or replace trees pursuant to Part 4, Section 12-0400, et. seq. of the Fairfax County Public Facilities Manual (PFM) the applicant will post with the County, within 14 working days of receipt of a request by the Director, DPWES, a replacement bond payable to the County, in a form acceptable to the County Attorney and the same amount as the original bond required by this development condition. Upon release of the Conservation Bond or other similar bond, the bond will be released.

   (C) During construction, the County Urban Forest Management shall periodically inspect the project and determine if any of the designated "individual trees" or any trees located outside or beyond the limits of clearing and grading as shown on the approved grading plans are dead or dying due to acts of negligence by the applicant or are due directly to the development of the project. The applicant may then elect to remove and replace such dead or dying trees according

to the directions of the Urban Forest Management pursuant to Part 4, Section 12-0400 of the PFM or pay to the County the assigned value as defined in the Valuation of Landscape Trees, Shrubs and Other Plants of such dead or dying tree from the bond.

(D) Any funds received by Fairfax County pursuant to this development condition shall be utilized solely to preserve, restore to health or replace trees on the subject property which are shown on the approved grading plans to be saved.

9. The existing vegetation along the eastern lot line shall be deemed to satisfy the transitional screening requirement. To the north of the parking lot, the hedge and the existing row of evergreen trees, a maximum of fifteen (15) feet on center as shown on the Special Permit Plat shall be maintained. These shall be large evergreens a minimum of six (6) feet in height. In addition, between the hedge and the evergreen trees, an earthen berm shall be provided, as shown on the plat. The vegetation and berm shall extend from the western to the eastern corners of the parking lot, as shown on the plat. The existing vegetation along the western lot lines shall be deemed to satisfy the transitional screening requirement, except within the area of the parking lot and Burke Station Road where existing evergreen trees shall be maintained. The evergreen trees to be maintained sufficient in number and height to create a year-round visual screen for residential properties to the west, to the satisfaction of Urban Forest Management.

   The existing vegetation along the southern lot lines shall be deemed to satisfy the transitional screening requirement, except that the existing trees shown within the limits of clearing and grading for the funeral home/crematory facility, stormwater management pond and turn lane shall be replaced if removed or if irreparably damaged during development, as determined by Urban Forest Management. Any required replacement trees shall be installed and maintained within the area between the funeral home facility and Braddock Road, to the satisfaction of the Urban Forest Management. All vegetation required for screening purposes shall be maintained in good health. Dead or dying vegetation shall be replaced with like-kind vegetation.

10. The barrier requirements shall be waived along all the lot lines of the special permit property.

11. All signs shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance. The directional sign shall be permitted if in accordance with the Zoning Ordinance, as amended.

12. The maximum number of chapels within the funeral home/crematory structure shall be limited to one (1). The maximum total number of seats contained within the funeral home chapel shall be limited to 272. The maximum number of viewing parlors within the funeral home/crematory structure shall be limited to five (5). The maximum total number of seats contained within each viewing parlor shall be limited to 30.

13. Any dumpster located at the funeral home shall be placed indoors or within an enclosure constructed of brick or architectural block. A gate shall be included on the enclosure. The dumpster in the maintenance area shall continue to be screened by the existing vegetation and topography.

14. Lighting for the funeral home/crematory property shall focus only onto the subject property. Any parking lot lighting fixtures shall be limited in height to twelve (12) feet. All lighting fixtures added for the funeral home/crematory use shall be full cut-off lights, and shall be fully shielded in such a manner to prevent light from projecting onto adjacent residential property.

15. Funeral services shall be conducted only between the hours of 10:00 a.m. and 3:00 p.m. Visitations and wakes shall be conducted only between the hours of 2:00 p.m. and 4:00 p.m. and between 7:00 p.m. and 9:00 p.m.

16. Stormwater detention shall be provided to the satisfaction of the Director, DPWES.

17. The crematory shall comply with all County, State and Federal Environmental Regulations and any other regulations applicable to its operation.

18. Prior to first submission of the site plan, the applicant shall meet with adjacent property owners and shall provide an opportunity for comment and input on landscape and buffering issues.

19. Crematorium services shall not be provided for any other funeral home establishment.

20. There shall be no chapel within the mausoleum, or use of chimes or bells in conjunction with this use.

21. The number of burial services within each of the mausoleum or columbarium structures shall be limited to one at a time.

22. The flower shop (as noted on the plat) shall be maintained as an accessory use to the cemetery/mausoleums or columbariums only. No retail sales to the general public for use outside the cemetery grounds shall be permitted.

23. The family crypt/mausoleum structures shall be limited to a maximum height of 25 feet, and shall have a maximum footprint of 400 square feet above the concrete foundation upon which is placed.

24. All structures except the mausoleums and columbarium structures depicted on sheet 1 of 4 and 2 and 4 of the special permit plat identified as "proposed mausoleums" and "existing mausoleums" (approved originally in conjunction with SPA 81-A-022-4) shall be a minimum of fifty (50) feet from all lot lines. The crypt and columbarium structures shall be screened from the view of residential properties by evergreen vegetation between the structure and the closest lot line. Screening vegetation shall have a minimum planted height of 6 feet, with an ultimate growth height to be the same or higher than the above ground height of the crypt or columbarium structure. Mausoleum structures approved in conjunction with SPA 81-A-022-4 shall be screened pursuant to Development Condition # 9 above.

These conditions incorporate and supersede all previous conditions except that the expiration date for the mausoleums and columbariums approved with SPA A-022-4 and extended by SPA 81-A-022-5 shall continue to be in effect. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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

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

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~ ~ ~ January 31, 2006, Scheduled case of:

9:00 A.M. CHAN S. PARK, SP 2005-SP-012 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12219 Braddock Rd. on approx. 3.68 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 57. (Admin. moved from 5/17/05, 7/19/05 and 10/25/05 at appl. req.) (Admin. moved from 12/20/05)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Baskin, Baskin, Jackson & Hansbarger, PC, 301 Park

Avenue, Falls Church, Virginia, the applicant's agent, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit conversion of a 2,150-square-foot, single-family home with a 2,600-square-foot addition for use as a church. Staff recommended denial of SP 2005-SP-012.

Mr. Hart asked Mr. Varga to identify the two parcels he had referred to in his presentation. He said he wanted to know if including either or both of the parcels would put the applicant over the 50 percent of undisturbed open space. Mr. Varga said it was possible, but they would have to present that area in a plat as undisturbed open space and indicate it would remain undisturbed.

Mr. Hart and Mr. Varga discussed the outlet road shown on the tax map and its possible access to Braddock Road, whether or not the applicant planned to use it, and the fact that the applicant could not block access to it to anyone living to the south of the property. In response to Mr. Hart's question, Susan Langdon, Chief, Special Permit and Variance Branch, said there was no road on the property, and something would have to physically be put in there for someone to use that access easement. She said at that point it would have to be reviewed by Transportation or Site Review to determine how the driveway could tie in with any new road that would come down in that area.

In answer to another question from Mr. Hart, Ms. Langdon said that technically the applicant could not put gravel down for a driveway. Mr. Hart asked how that could be prevented. Ms. Langdon responded that the applicant would be paving an area that would have to come under a grading plan review because it was more than 2,500 square feet. Ms. Langdon indicated that if the applicant were to request putting in a driveway, according to PFM regulations, it would be reviewed by Site Review at that point and in consideration of what was on the plat, which currently showed the area as being open.

Mr. Hart asked where the offsite easement for the stormwater would be located. Ms. Langdon stated that it was not provided; however, it would come from the pond. She emphasized that it was an easement and no planting could be provided there. Staff suggested screening be provided in two areas outside the easement to screen the nearby residential lots, but the location of the pond did not allow the screening. She said there were indications from DPWES that the pond may not be large enough, which had to do with the soil, shallow bedrock, and asbestos soil that was located there.

In answer to Mr. Hart's question, Ms. Langdon said that the areas on the plat that were depicted by black circles were trees and the only screening that would be provided.

Mr. Hart noted that there was public sewer on-site, but not water. Ms. Langdon said that because of the circumstances involved, the applicant had originally proposed two separate buildings; however, after talking to the people in the Sanitary Sewer Department, they were told that they could not have two different connections. She said it was her opinion that was what drove the applicant to request that the two buildings be put together. She said public water only came as far as the other side of the parkway and was not proposed to be extended to the area.

In response to Mr. Hammack's questions, Ms. Langdon and Mr. Varga said the applicant had an existing congregation, but had not specified the denomination of the proposed church. Mr. Hammack asked whether there was any requirement in the Ordinance for a church application to designate what type of church it would be. Ms. Langdon said no, the Ordinance only stated a church or place of worship.

Mr. Hammack stated that if the Board were to go along with staff's recommendation of denial, a church would not exist on the property. Ms. Langdon said that at the current time there was no indication that a church was operating on the site. Mr. Hammack said the Board would be denying them the right to operate. Ms. Langdon agreed, saying that a special permit request for a church on a residential lot was a special permit or special exception use. Mr. Hammack stated that he wanted additional information concerning how this application met the Religious Land Use and Institutionalized Persons Act (RLUIPA) requirements and asked if staff had an opportunity to address that and consider what the least restrictive means would be. Ms. Langdon said they had not looked at that, but they had looked at the Zoning Ordinance requirements and the Comprehensive Plan recommendations and had made a recommendation based on those. She said there were ways to design the site so it could meet the requirements. There were two additional properties that the applicant owned, and staff thought that with those additional properties, the site could be designed to

meet the standards and recommendations of the Comprehensive Plan. She said staff had also noted in the staff report that originally the applicant had asked for 70 seats and then increased the request to over 100 seats. Ms. Langdon said that after staff had discussed the issues and concerns, the applicant was now requesting 20 seats.

Mr. Baskin presented the special permit request as outlined in the statement of justification submitted with the application. He stated that Mr. Park was a Presbyterian minister and that his small congregation met in his home for worship services. He said a church was not currently operating on the site, but Mr. Park would like to change that. Mr. Baskin took exception to staff's opposition to the application, noting that they were dealing with site plan issues and assuming that the applicant would not be able to obtain the necessary drainage easements or meet the requirements with respect to the stormwater pond. He said those were issues that should be addressed at site plan review. Mr. Baskin said he differed with staff with respect to the general standards and pointed out that the Zoning Ordinance permitted the use. He said there would be no adverse effect on the Occoquan Watershed, and it was his opinion the proposed church would be harmonious with the neighborhood and would have little or no impact.

Mr. Baskin displayed several photographs of the subject site on the overhead projector that showed significant screening on either side of the property. He said most of the vegetation would remain, and the applicant would supplement where necessary. He pointed out a parcel that was owned by the Board of Supervisors that had been developed as a recreation center and said it was obvious to him that less than 50 percent of the site was maintained in undisturbed open space. He said the same standards should be applied to the applicant. He also pointed out that a large church had been built in the immediate vicinity of the applicant's property. Mr. Baskin said there was no requirement for 50 percent of open space in the Ordinance, but it did indicate that within the zoning district that cluster developments were required to have that percentage of open space. He called attention to several items in the staff report that he determined to be inequitable. He said it was his opinion that the application met all the general standards and requested a favorable decision by the Board.

Mr. Beard and Mr. Baskin discussed the reduction in seating and the necessity for the applicant's strict adherence to the development conditions should the application be approved.

In answer to Mr. Ribble's question concerning Mr. Park's plans for the other two lots, Mr. Baskin said he was not aware of any plans. He noted that Mr. Park had other partners who had interests in those lots and they were not inclined to add the lots to the application.

Mr. Hart stated that the Board had struggled with approvals of non-residential uses in the R-C District in the past. He said that when an applicant requested to build a church on property that was less than four acres, the details became very difficult. He noted that the Comprehensive Plan stated that the R-C District was different and the Board had to give non-residential uses a rigorous review. He said that three super criteria had to be met, orientation to an arterial, size and scale of the use, and the use would have to be designed to mitigate impact on the Occoquan Reservoir. He noted that while the 50 percent standard was not a hard and fast rule, it was a means for an applicant to demonstrate that they were mitigating those impacts. He said that one reason he had asked about the offsite easements was he thought that perhaps where there was a gap in the bushes, that was where the outside easement or outfall was located. He said Mr. Baskin had alluded to the fact that perhaps more could be done with the application. With respect to the location of the stormwater pond and the conflict with the screening, Mr. Hart said he thought more information should be provided.

In response to Mr. Hart's query, Ms. Langdon said staff was not requiring that the applicant bring the other parcels in. She said the applicant had indicated that they would execute an easement across the parcel. Mr. Hart asked if staff was requiring the applicant construct a road and plant bushes in the location indicated on the plan as a condition of the approval and whether it would be a violation if it was not done. Ms. Langdon stated that Transportation had said they would not grant an access directly off Braddock Road because the Fairfax County Parkway was so close and there would not be a median break in front of the parcel. She said that because of the location of the parkway and the median break at Blue Topaz Lane, Transportation would not support the application with direct access onto Braddock Road. She said that when the information was given to the applicant, he proposed an entrance off Blue Topaz, and staff did not have a problem with that entrance.

Mr. Hart rephrased his question and asked Ms. Langdon if the applicant would be in violation if he built the church, did not plant the trees shown along the driveway, and decided to do something different. Ms. Langdon responded that if the application was approved with the plantings shown, the applicant would be in violation. Mr. Hart asked how staff could require something that was not on the application. Mr. Langdon said that some of the trees had been shown within the easement, and that was what staff's request was. She stressed that the applicant owned the other two parcels, and if he chose to provide those trees, which he had shown on the plat, staff had no objection because of his ownership. Mr. Hart stated that he was confused procedurally about whether the Board could require the applicant to build something that was not part of the application. Ms. Langdon said there had been incidents in the past when staff required an applicant provide something that was not part of the application.

Mr. Hart and Mr. Baskin discussed possible access to the outlet road located off Braddock Road in the easement to the rear of the property, who would have a right to use it, staff's opposition to direct access to Braddock Road, and the applicant's agreement to relocate access to the property from Blue Topaz Lane to Braddock Road.

In response to Mr. Hart's question, Mr. Baskin said the applicant had a well on the property, but would require access to sewer facilities. Mr. Hart said it was easier to compare places of worship to each other than to a governmental facility, noting that the General Assembly did not allow the County to impose development conditions on a governmental use similar to the recreation center referred to earlier by Mr. Baskin. Mr. Baskin said that since the Board of Supervisors owned that property, they could impose water quality requirements on themselves.

Ms. Gibb asked if the applicant and his partners would be willing to grant an easement 10 feet wide across their property for conservation purposes in order to add to the 50 percent of open space. Mr. Baskin responded that the easement was wider than the paved area, and the space that would be maintained was not undisturbed open space. It would be maintained as a lawn. He said he would ask Mr. Park's partners if they would be willing to expand the easement in order to meet the goal of 50 percent open space.

In response to Mr. Hammack's question, Mr. Baskin confirmed that Mr. Park was an ordained minister; however, he did not know if the church was sponsored by the Presbyterian Church. Mr. Hammack said he was curious because most churches were run by trustees, and this one would be established by an individual person, which was different from other church applications the Board had received. In answer to another question posed by Mr. Hammack, Mr. Baskin stated that Mr. Park did not plan to live on the site, and he did not know if he planned to convey the church to any trustees if the church was approved. Mr. Hammack also expressed concern about the number of seats the applicant had proposed, citing that other applicants had received an approval for a small church, applied for an expansion at a later date, and then became angry when their amended application was denied. Mr. Baskin stated that staff had made it clear that they would oppose any expansion of the church. He said that if Mr. Park was successful in building a larger congregation, he would either have to apply for an amendment or find another location, which was not uncommon.

Chairman DiGiulian called for speakers.

Jimmy Win (phonetic), address not given, came forward to speak. He stated that he owned the adjoining property. His main point was that the church would serve the Korean community in the area. He requested that the Board approve the application.

In answer to Mr. Beard's questions, Mr. Win confirmed that he owned 3.9 acres adjoining the applicant's property and that he did not currently plan to do anything with it. He said he had spoken to many Korean people in the area, and they had expressed a desire to have a place where they could worship in their own language.

Michelle Cleveland, 12234 Blue Topaz Lane, Fairfax, Virginia, came forward to speak. She presented a petition to the Board signed by most of her neighbors. She stated that she and her neighbors were in opposition because of the possible harmful effects to the Occoquan Watershed, the house on the Park property was served by a well, and the area had a history of wells drying up. She said the property owners could not afford to dig another well should the one they were using go dry. Ms. Cleveland called attention to a letter from the Health Department that stated that the rock formations in the area made it difficult to find

water. She said she did not believe that the number of seats listed in the application would remain at 20 and indicated that 15 parking spaces would not accommodate the number of persons expected to attend the church services. She pointed out that there was no regulation to prevent anyone from parking on Blue Topaz Lane; however, using the road for commercial purposes would only exacerbate the problems that already existed with numerous potholes and the disrepair of the road. She said she and her neighbors had been unsuccessful in getting the road repaired. Referring to the outlet road that had been discussed earlier, Ms. Cleveland said she and her neighbors had access to the outlet road and used it to get onto Braddock Road.

In response to Mr. Hart's request, Ms. Cleveland used the overhead projector to point out the location of her lot. With respect to having a sewer system, she explained that all of the properties in the area used a sewer injector system, which was a grinder. She said they had repeated problems with the injector system in the past. In answer to Mr. Hart's question, she said everyone had a well, and she had not had any problems with hers.

In his rebuttal, Mr. Baskin stated that the applicant was not requesting a waiver of water quality requirements. He noted that there were a number of ways the requirements could be met, and if the Board felt that the preferable way to meet those requirements was to hold to a 50 percent undisturbed open space, they could accommodate that. He said that was a site plan issue where the applicant would have to meet certain water quality requirements that could be done through a variety of means, such as a stormwater pond or rain gardens as well as other equally sound methods to ensure water quality. He said the applicant would like the opportunity to address the issues raised today and would prefer a deferral of the case.

Ms. Langdon stated that with respect to General Standards 8-006, Number 6, the open space requirement, a question had been asked as to why "not applicable" had been checked on the application. She stated that dealt specifically with the Zoning Ordinance requirements for open space which were generally in the commercial and industrial districts. She said there was no requirement for open space in residential districts. Ms. Langdon said there was a definition in the Zoning Ordinance under open space that included, among other things, a majority of parking lot islands and maintenance of lawns around a building. She pointed out that when staff referred to undisturbed open space, they were tying back into Number 1 of 8-006 as well as the Comprehensive Plan recommendations on how to meet water quality measurements, which were two completely different issues. She addressed Mr. Baskin's comment that the issues could be addressed at site plan. Ms. Langdon said staff had worked very hard to coordinate with the Department of Public Works and Environmental Services (DPWES) and the Division of Stormwater Planning. She said those departments had informed staff about the requirements for a stormwater management pond, its size and adequate outfall. She said they were typical issues that were brought up to all applicants in an attempt to address problem areas before going to public hearing. She said that if staff could inform an applicant prior to public hearing that an approval could not be obtained, then they would not be placed in the position of having to return to the Board for a special permit amendment. Ms. Langdon stated that staff had been working on the application for almost a year and had brought up issues and concerns that they had asked the applicant to address. She said that to date the majority of those concerns had not been addressed. She agreed with Mr. Hart that the Mott Center had been constructed in the 1960s or 1970s. Using the overhead projector, she pointed out that all of the undisturbed open space had not been vegetated with trees and that they had gotten very close to 50 percent. She said the Mott Center site was across from the on ramp to the Parkway and not across from residential structures such as the church.

Responding to Ms. Langdon's comments, Mr. Baskin said the applicant was aware of the risk, and if they wanted to go forward and work through DPWES to get the site plan approved, their engineer had advised that they could meet the 50 percent requirement. He stated that if the Board wanted to insist that the applicant return, he would be happy to do so. He said he thought the application was in a form that was approvable as is, and the details could be worked out through the site plan process.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on SP 2005-SP-012 to May 9, 2006, at 9:00 a.m.

Mr. Hart stated that the Board's function on a review of a non-residential application in the R-C District required a rigorous review, and sometimes that process required a little more time, particularly when staff had recommended denial. He noted that there were issues that had not been resolved, but were susceptible

~ ~ ~ January 31, 2006, CHAN S. PARK, SP 2005-SP-012, continued from Page 122

to improvement. He said that, based on Mr. Baskin's comments, some of the issues could be resolved and indicated that further refinement of the stormwater pond area was needed, whether the 50 percent undisturbed area could be achieved through some reconfiguration on-site, some accommodation with one of the adjacent properties, or through an easement that would include one of the parcels noted in the application. Mr. Hart said there could be other options, such as low impact development techniques as noted in the staff report. He said he did not think the issue of the 50 percent undisturbed area was an absolute final rule; however, in order to convince the Board that an application was getting a rigorous review and that everything had been done to mitigate the impacts on the Occoquan Reservoir, more could be done, and if the stormwater issue progressed, the issue of the transitional screening could be improved. He said he was confused about the outlet road and not sure that had been properly addressed, and he asked staff to look into that more thoroughly. Mr. Hart stated that he wanted clarification about the number of seats the applicant was asking for, whether there was an existing congregation, what the current size of the congregation was, and whether it was projected to grow in the foreseeable future.

Mr. Hammack stated that he supported the motion. He requested that staff provide him with a copy of the organizational structure of the church and asked for clarification as to whether an individual could be designated as a church. He said he also wanted additional information on the RLUIPA statute and what effect it would have on the application.

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

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~ ~ ~ January 31, 2006, Scheduled case of:

9:00 A.M. YUMA COURT LLC C/O LAWRENCE E. IRELAND, PE., VC 2005-MA-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 22.79 ft. from front lot line. Located at 5213 Yuma Ct. on approx. 18,185 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((11)) 81. (Admin. moved from 1/31/06 at appl. req.)

Chairman DiGiulian noted that VC 2005-MA-014 had been administratively moved to February 28, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:30 A.M. JOHN R. FISHER AND BARBARA G. FISHER, A 2005-MA-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are allowing the parking of a construction vehicle on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 7323 Wayne Dr. on approx. 10,500 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((23)) 2.

Michael Congleton, Deputy Zoning Administrator, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 24, 2006. Mr. Congleton stated that staff had been advised last week that the appellants had removed the vehicle from the property and it would not be returning. He indicated that this had been confirmed by a recent inspection of the property.

Mr. Hart asked what staff was doing with the appeal since the vehicle was no longer on the appellants' property. Mr. Congleton stated that if staff could confirm with the appellants that the vehicle would not return, then the violation would be abated and the appeal could be withdrawn.

Steven Frei, the appellants' agent, Hall, Sickels, Frei & Katterburg, PC, 12120 Sunset Hills Road, Reston, Virginia, presented the arguments forming the basis for the appeal. He stated that the appellants intended to keep the vehicle on the premises. He stated that the initial impetus for the inspection of the property was the result of a complaint against the appellants because it was thought that they were doing business out of their home. He noted that the inspection at the property determined that was not the case. He stated that in the initial notice of violation issued on September 2, 2005, reference was made that there was more than one commercial vehicle parked there; however, it did not mention the Monticello pump truck, which was the

subject of the appeal now before the Board. He said he had requested that staff withdraw the September notice of violation, and it was withdrawn; however, on October 5, 2005, Mr. Frei said the County issued a second notice of violation addressing the pump truck and indicating that it was considered to be a commercial vehicle because it contained a pneumatic well drilling device. He stated that he had spoken to Mr. Congleton and indicated that the rig did not drill wells. He said he had provided photographs to staff showing that the vehicle was a pickup truck that had been converted to carry equipment and tools. He acknowledged that it did have a boom on it and there was a wench located inside the bed of the truck. Mr. Frei said there were no drilling devices on the truck, and there was no comparison between a drilling rig and the vehicle in question. He said that contrary to statements made by staff in the staff report, there was no similarity between the pump truck and construction equipment.

Discussion ensued between Mr. Beard and Mr. Congleton regarding the weight break for a commercial truck, whether or not the County considered a vehicle with commercial lettering to be a commercial vehicle, how many commercial vehicles were allowed to be stored on-site, and how many could be parked on a public street.

Mr. Hart and Mr. Frei referred to the photographs attached to the staff report and discussed the types of equipment and uses for each of the items attached to the appellants' truck. Mr. Hart said that the truck was larger than a car and the same size as a wrecker and, therefore, would fall into the same category. Mr. Frei argued that the size of the vehicle was no larger than any dually pickup truck on the roadways in the County. He indicated that the body frame of the truck could be made into various types of commercial vehicles. He stated that it was clear that the truck did not fall into any of the categories referenced in Section 16a.

Mr. Hart asked if the Board was being asked to determine whether the appellants' truck was construction equipment or a similar vehicle under Section 16a of Standard 10-102. Mr. Congleton said that was correct and stated that staff took the weight into consideration when they made the determination that the appellants' truck was similar to a construction vehicle with the gross weight of 26,000 pounds. He said a good comparison would be a wrecker, and a wrecker over 12,000 pounds was prohibited. He noted that the appellants' vehicle had a carrying capacity of 18,000 pounds and a vehicle weight of 26,000 pounds. Mr. Congleton indicated that he had suggested to Mr. Frei that the appellants bring the vehicle to the BZA meeting, park it in the lot, and demonstrate what it could do. In answer to Mr. Hart's reference to the phrase "or similar such vehicles or equipment," Mr. Congleton agreed that phrase modified everything that appeared before it, and it could be determined that it was in the same category as wrecker with a gross weight of 12,000 pounds or more, or similar such vehicles.

Discussion ensued between Mr. Hart, Mr. Frei, Mr. Congleton, and Ms. Gibb concerning whether or not the vehicle fell into the commercial area, whether the weight was allowable, why the lettering on the truck did not place it in a commercial truck context, what the allowable weight was, and whether its gross weight would place it in the construction process. Mr. Congleton explained that staff had made its determination based on the gross weight of the vehicle and that it was used as part of a construction process, not just to transport goods or staff to a site. He said it was a piece of construction equipment, and that was why the determination had been made.

Responding to Mr. Byers' questions, Mr. Frei stated that he was aware of the letters that had been written in opposition to the appeal.

Chairman DiGiulian called for speakers.

Ed Garlepp, 7325 Wayne Drive, Annandale, Virginia, came forward to speak. He said he and some of the adjacent neighbors were not disturbed by Mr. Fisher parking his vehicle on his property. He said they believed there was no basis for the ruling, and the appellants should be allowed to continue the use.

Mr. Congleton reiterated that the initial complaint was the running of a business from the location, and there was no evidence of that; however, staff did need to take action when they saw the nature of the vehicle that was parked on the site. He noted that there had been a lot of testimony today as well as information in the staff report about what the actual function of the vehicle was. He said that he thought that everyone could agree that it functioned as a crane, whether it was drilling wells or lifting well liners, which, in staff's determination, would be considered construction equipment, and it was not appropriate in a residential

~ ~ ~ January 31, 2006, JOHN R. FISHER AND BARBARA G. FISHER, A 2005-MA-053, continued from Page 124

district.

In his rebuttal, Mr. Frei stated that the vehicle was not used to drill wells as had been suggested in the staff report.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. He said he was sympathetic with the appellants' dilemma; however, the vehicle was a large one, and it carried a boom. He said that if it were not for the boom, he probably could live with the vehicle being located in a residential neighborhood, notwithstanding the weight issue; however, when both issues were taken into consideration, there was a problem, and he had no choice other than to uphold the Zoning Administrator's determination.

Mr. Hart stated that although he didn't necessarily agree with everything that was said, he supported the motion. He said that in a situation where clear guidance was not available with respect to the definitions, the Board had to abide by the plain meaning of the words that were used, and he would conclude that the vehicle in question was similar to either construction equipment or a wrecker with a gross weight of 12,000 pounds or more. He stated that whatever the vehicle was, with the addition of the boom and racks attached to it, taken as a whole it fell within the definition under Paragraph 16a.

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

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~ ~ ~ January 31, 2006, Scheduled case of:

9:30 A.M. CLYDE AND AUDREY CLARKE, A 2005-MA-054 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the enlargement of a nonconforming principal structure does not comply with current bulk regulations for the R-3 District in violation of Zoning Ordinance provisions. Located at 3444 Rock Spring Av. on approx. 8,250 sq. ft. of land zoned R-3, H-C, SC and CRD. Mason District. Tax Map 61-2 ((22)) 12.

Vice Chairman Ribble called the appellants to the podium. H. M. "Lynn" Primo, the appellants' agent, 1200 Prince Street, Alexandria, Virginia, came forward.

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 24, 2006.

Referring to Attachment 5 of the staff report, Mr. Hart asked who had crossed out the information originally written into the "description of work" sections of the building permit application and when it had happened. Ms. Collins stated that in the description section the initials were those of Darryl S. Varney, Assistant Chief, Permit Review Branch, and indicated that the appellants may have used the same permit when they returned the second time and changed the scope of the work. She said she was not sure whose initials were written on the right column.

Mr. Hart asked what had happened. Ms. Collins said the appellants had initially requested a second story addition and had been told they could not do that because the addition would not meet the setbacks. She agreed with Mr. Hart's comment that the appellants had received approval to do only interior alterations, and that had been revoked. Mr. Hart asked whether the appellants would have to apply for a variance because of the changes to the current Zoning Ordinance if they wanted to build straight up. Ms. Collins said yes.

Referring to line 3 of the building permit, Mr. Hammack asked if the zoning approval dated May 16, 2005, had been signed off by Mr. Varney. Ms. Collins stated that the initials were his and that he had approved the change scope to the building permit.

Ms. Primo presented the arguments forming the basis for the appeal. She stated that the appellant agreed with the staff report's interpretation of Section 15-101 insofar as the building not being a nonconforming building. She said the architect, Enrique Anwario (phonetic), was present to speak to the Board regarding

any questions they had concerning the building permit.

Mr. Anwario, no address given, explained that it was his understanding that if the appellants were building directly over the footprint, it would be acceptable, and they could submit an application to the Department of Planning and Zoning. He said their plans indicated that there was an existing second floor with two bedrooms, and the clients wanted to add another bedroom and two baths on that floor. He said they submitted a plan for a new second floor layout for review and indicated that Mr. Varney had determined that they were not requesting a new second floor so he had made the change from identifying it as a new construction to a renovation. Mr. Anwario said it was his opinion that there was a misinterpretation on the part of the staff who reviewed the process.

Ms. Gibb asked for copies of photographs of the house before the renovation. Mr. Anwario said he did not have any with him and proceeded to describe the house as it was before any renovations took place. He said he had photographs that had been taken after completion of the job. He explained the layout of the second floor before it was renovated and what had been changed. In answer to Ms. Gibb's question, Mr. Anwario stated that he had contacted staff in the zoning office several times because there was confusion on the appellants' part as to what the County expected them to do. He said he had been told that if the appellants had a footprint and they were not going beyond it, they would be allowed to continue. He stated that once they had received the building permit, they had the roof removed within days of receipt.

Mr. Hammack requested staff put a photograph on the overhead and asked Mr. Anwario if it was a photograph of the house as it appeared before reconstruction. Mr. Anwario said no, it was how it looked currently.

Mr. Hart and Mr. Anwario discussed the number of times he had accompanied the appellants to the zoning office and who he had spoken to besides Mr. Varney. Mr. Anwario said he did not know.

In response to Mr. Hart's question, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that she did not know who was attending the counter when the appellants and Mr. Anwario were there. She indicated that she had spoken to Mr. Varney in preparing the staff report, and he had a different version of what had happened. She said she had left him a message asking him to come to the hearing, but he was not currently at his desk.

In response to Mr. Hammack's question concerning structural engineering, Mr. Anwario stated that he had been told by one of the reviewers that she needed the calculations for the proposed spa to determine whether or not it would be too heavy for the second floor, and she wanted to ensure that the structural engineer could confirm that it could be done. He said when he returned with the analysis that had been provided by their structural engineer, the reviewer signed off on it. He said the County had a copy of the information he had provided. Ms. Stanfield indicated that there could be structural plans that had been approved; however, it would have been done by a different office, and she did not believe those plans had been submitted for this particular building permit application. In answer to Mr. Hammack's request that he look at copies of the approval that the County had signed off on, Mr. Anwario stated that they had copies of the documents that the County had submitted to them that contained the proper stamps and approvals. He presented copies of the documents to Mr. Hammack. He approached the dais and explained to the Board the details pertaining to the approval of the building permit. Mr. Hammack requested that he show the documents to staff.

In response to Mr. Hammack's question, Lynne Snyder, Code Enforcement Branch, Department of Public Works and Environmental Services (DPWES), stated that she had seen the documents presented by Mr. Anwario, and when they were talking to the appellants about meeting the structural engineer's certifications, it was because staff wanted to ensure that the existing four trusses would hold the additional weight of the spa they were proposing. She said the original plans had been submitted for a second story addition, and when the description of the work being performed was changed on the actual application, Mr. Varney made sure that it was reflected in the computer before staff reviewed the building plans, and staff reviewed it only for proposed interior alterations. She stated that staff did not review for nor did they approve a second story addition. Ms. Snyder pointed out that the original building permit had a Q number that indicated a second story addition and required several days of building plan review. When it was changed to a W number, that indicated that it was a walk-through, and it was reviewed for interior renovations only. She said that in the interest of customer service, they did not always make everyone submit a new set of plans if they could

adequately review what was on the existing plans for interior alterations.

Mr. Hammack asked why the permit was approved when the interior alterations plan showed an addition, not just alterations. Ms. Snyder explained that the work description was for interior alterations only. She reiterated that staff looked only at what was on the permit. She pointed out that the interior alterations showed the existing roofline on the plans, and staff had assumed there was an existing second floor. She indicated that the building permit application that had been submitted to staff indicated interior alterations only. Mr. Hammack asked if the person who reviewed the plan knew what had been approved for construction. Ms. Snyder said the building permit application that was submitted to staff said interior alterations only, and the permit would not be approved for construction until the plans had been reviewed.

In answer to Ms. Stanfield's question, Ms. Snyder stated that the plan submitted showed the second floor already in existence. Mr. Anwario referred to a document which said second floor demolition and another which showed the new second floor. He said that was when the staff person had said that it was not new, that it was a renovation.

Mr. Hart asked how anyone would know from the plan that the second story would go straight up because the only thing that was shown was the footprint. Mr. Anwario said the elevations on the last page of the staff report had to be looked at, and he proceeded to point them out. Ms. Snyder said that staff had been looking at what had been proposed, and when the application itself was altered to say interior renovations, staff would have reviewed it only for the existing structure. They would not have reviewed or approved anything going upward. In response to Gibb's question, she said staff would act as if it was not there. She stated that when a permit application indicated interior alterations, staff would only review for that. In response to Mr. Hammack's comment, Ms. Snyder agreed that the only reason it was on the same plan was because of customer service, so an applicant would not have to submit a new set. She pointed out that there were instances where things were completed in phases, and that was the reason why staff did not ask that their customers return with a new set.

Mr. Hart asked why the appellants did not stop working if they had been ordered to do so Ms. Snyder said she did not know.

Discussion ensued concerning staff's position, the claims of the appellants and their representatives, and why construction had not ceased when they had received the order.

Ms. Primo conceded that her clients had exceeded what had been agreed to with respect to the building permit and had been in violation of the letter sent by Ray Pylant, Building Official, Land Development Service, DPWES. She said they did stop when they received the order; however, because the roof had already been removed and the second story was already under construction, they wanted to ensure that they were protected from the elements by going ahead with putting in windows and putting on the roof. In response to Mr. Hart's question, she said the appellants were currently occupying the premises.

Mr. Beard asked whether the judge had stated that the addition of the windows and roof could have happened in the interim period between the time they were notified and actually received the stop order. Ms. Primo said yes. Mr. Beard said it sounded like Ms. Primo was now saying the appellants had violated the stop order, and he asked her which was correct. Ms. Primo stated that they had exceeded the permission they had received to do certain things in order to keep the elements out of the exposed second story. She said whether or not that was intentional had been a question for the Circuit Court, and the Court had not believed the appellants acted with malice or intention in covering up the second story. She pointed out that mistakes were made on the part of both the appellants and the County. She said her clients had recently entered into a contract to sell the property to a developer whose intention was to buy up all the properties and demolish them. She requested that the Board grant a stay on the Administrator's findings to remove the second story or allow the appellants to file for a special permit within 30 days of the hearing.

Ms. Gibb said it appeared to her that an attempt had been made to file for a special permit for the mistake, but then it was dropped. Ms. Primo said her client had done that prior to hiring her. She said that if the Board thought they should apply for a special permit, they would do so.

Audrey Clarke, the appellant, explained what had happened as a result of her discussions with staff and that because of the stop work order, rain was ruining her home because she was unable to put a roof on or

enclose the windows, her experiences with respect to the application for a building permit, the reason she needed the increased number of rooms and bathrooms on the second floor, and why she felt it was necessary for her to close the house in.

Chairman DiGiulian called for speakers.

The following speakers spoke in support of the appellants' position: Enrique Pailin, 3445 Rock Spring Avenue, Falls Church, Virginia; Michael Graham, 3442 Rock Spring Avenue, Falls Church, Virginia. Their main points were that the Clarkes may have made some errors, but the County was just as much at fault. The appellants had proceeded with completing the second floor to provide a safe environment for their children. The property owners in the neighborhood were in negotiations to sell their homes to a developer. The County had paid a neighbor to spy on the Clarkes. The house would have been condemned if they had not put a roof on or installed the windows. There were two full bedrooms that existed in the house. The children had to be removed from the home because of the dangerous conditions posed by the excessive rains. County officials had been very abrasive and rude.

Mr. Pailin submitted a petition signed by some of the neighbors supporting the appellants and stated that the structure in question did not offend anyone, was not unsafe, and that most of the members of the community had no objections.

Mr. Byers asked if the second story of the home was currently being occupied. Ms. Primo replied that it was, and no inspections had been done. Mr. Byers said he was concerned about the safety aspect. She said that the appellants had called an inspector to come out to the house, but because of the appeal, no one was sent. She said they would be happy to have someone do an inspection right away.

Jeri Lynn Bynaker, 3441 Rock Spring Avenue, Falls Church, Virginia, came forward to speak in support of the Zoning Administrator's position. She identified herself as the complainant. She stated that she had applied for and had been denied a permit for the same reasons the appellants had. She said she had not agreed to sell her home to the developer, and if all the homes on the street were not sold, the developer was not interested in buying any of them. She requested that the Board deny the appeal unless they allowed her to do the same thing.

Ms. Snyder stated that at no time did the County ask a neighbor to spy on the Clarkes and at no time did they say the appellants could not waterproof or protect their house. She said staff did not want them to have an uninhabitable space. Ms. Snyder pointed out that the appellants had added windows that were not there at the time they had received the stop work order. In addition to their safety concerns, one of the issues staff had was the contractor was not appropriately licensed to perform the work. She said staff was concerned about the work that had been performed and called attention to the lack of safety inspections, noting that staff had concerns about the electrical work. She said the appellants needed to bring their home into compliance.

Ms. Gibb asked staff what the appellants should do if they wanted their home inspected. Ms. Snyder stated that the County was not allowed by code to do any inspections unless there was an appropriate building permit for the work. She said staff did not at this time have the right of entry.

Mr. Hammack asked why there were no electrical or plumbing permits issued if it the appellants had an approval to do interior alterations to the second floor. Ms. Snyder replied that the appellants had never applied for the permits.

Mr. Beard pointed out that there were existing finished bedrooms on the second level before this started.

Mr. Anwario said that contrary to Ms.Bynaker's statement, the homes on the street were A-frames, and the majority of the houses on the street were considered to be bungalows. He said the appellants' house was a cape with two full bedrooms on the second floor, and it was not an attic space. It was livable space.

Mr. Hammack said he had been told that with renovations it was not necessary to pull permits for many things because they were not required by the County. He asked if that applied to the subject case. Ms. Snyder said it was not the case because with interior alterations where a wall was added or removed and the plumbing work that was being proposed, permits would have been required. She pointed out that there

would have been a weight issue for the spa and the bathtub. She said that permits were not required for interior alterations for exact replacements.

In response to a question from Mr. Hart, Ms. Primo stated that she had applied for a special permit for a mistake in building location, and it had been done within two weeks. She said Ms. Clarke had attempted to file it on her own, but did not understand the process for filing.

In answer to Mr. Hart's question, Ms. Stanfield said the appellants could apply for a special permit. She said she did not know whether or not the Board would be holding a public hearing today if they had applied for such a permit. Ms. Primo indicated that based on the staff report, the answer would be yes.

Ms. Stanfield stated that Mr. Varney was available to answer the Board's questions concerning the items that had been crossed out on the application for a building permit and the conversations he had had with the appellants and their architect.

Mr. Varney said the representatives for the Clarkes came to the counter with an application to add a second story to their home. He explained what had transpired between the appellants, the technicians, the reviewer, and himself during the initial presentation, which was denied. He stated that later on the same day the same two people returned to the counter and said he had misunderstood what they were doing, that they were only working within the existing space. Mr. Varney said he had asked them specifically if they were telling him that they were doing interior alterations to an existing second floor, and the representatives said yes. He said he crossed out the word "description" and wrote "interior alterations to existing second floor," because that was the way he wanted the permit center to log the permit in, and on the right-hand side of the permit, he changed the wording "build second story addition over existing dwelling" to read "interior alterations to add bedrooms and baths," and then signed off on the permit.

In answer to Mr. Hammack's question, Mr. Varney said that he had not added the statement "no second story addition permitted" because he was very busy that day and it had not occurred to him. Mr. Hammack noted that the building height on the permit was still 34 feet, 6.25 inches, which showed as the second story addition. Mr. Varney said it could have also been an existing second story, but he had not looked at that. He said the extent of his review had been to look at the floor plans to ensure that the appellants were not creating a second dwelling unit.

In response to Mr. Beard's question, Mr. Varney stated that when the persons returned to the counter, they told staff that they were working within an existing space. He said he had specifically asked them if they were doing interior alterations to an existing second floor, and they said yes. He stated that he had told them they would have to change their work description. Mr. Beard asked if Mr. Varney had notified the appellants that it was new construction. Mr. Varney said staff had denied the permit, and if they had not returned, he would not have given it a second thought.

In response to the Chairman DiGiulian's request for additional comments, Ms. Stanfield indicated that staff had addressed the outstanding issues, but would answer any questions the Board had.

Ms. Gibb said she understood that unless the Board found for the appellants, there would not be an inspection of the upstairs for plumbing or anything else because the County could not enter the premises, and she asked Ms. Snyder if that was correct. Ms. Snyder reiterated that without the appropriate approved permits, the County did not have the right of entry. She stated that in order to inspect the floor joists, electrical and plumbing work, staff would have to require that the appellants take down the drywall and perhaps remove parts of the floor.

Ms. Gibb asked what would happen if the appellants invited staff to enter the premises. Ms. Snyder said it would be a double-edged sword because the Code said there must be a permit on file except for the purpose of violations. She said staff could not do courtesy inspections, but if they did inspect, found violations, and needed to cite the appellants, staff would be right back where they started from with charges that the County was picking on the appellants again.

Ms. Gibb asked what would happen if the inspectors entered the premises today, presuming that they were invited to do so, and a determination was made that the work was up to Code. Ms. Snyder indicated that would have to be a decision made by the building code official. She stated that if a permit had been obtained

~ ~ ~ January 31, 2006, CLYDE AND AUDREY CLARKE, A 2005-MA-054, continued from Page 129

and the appellants or the contractor called and asked for an inspection, the County would do so.

In response to a question by Ms. Gibb, Ms. Stanfield said the Board was not being asked to decide whether a permit had been obtained. They were being asked to make a decision on the enlargement of a non-conforming principal structure. She said the permit would not be valid if the information provided on it was incorrect, and unless the Board determined that the permit was valid, there would be no inspections of the property.

Mr. Hart asked if the problem would be solved if the appellants applied for and received a special permit for a mistake in building location and an inspector could be sent out. Ms. Stanfield replied that it would be.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to defer decision on A 2005-MA-054 to April 25, 2006, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Please note: The BZA previously approved the minutes for the following appeal on June 27, 2006, for inclusion into the Return of Record.

~ ~ ~ January 31, 2006, Scheduled case of:

9:30 A.M. CONCERNED CITIZENS OF HOLLIN HALL VILLAGE, A 2005-MV-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that lots, including the originally recorded underlying lot lines, met the zoning requirements at the time of their creation and are, therefore, buildable lots under Zoning Ordinance provisions. Located at 8059 and 8063 Fairfax Rd. and 8033 and 8037 Washington Rd. on approx. 1.243 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 77, 79, 112 and 114.

Mr. Ribble gave a disclosure and indicated that he would recuse himself from the public hearing.

The meeting recessed at 1:25 p.m. and reconvened at 1:37 p.m.

Chairman DiGiulian called the applicant to the podium. Catherine Voorhees, 8029 Washington Road, Alexandria, Virginia, stated that she represented the Concerned Citizens of Hollin Hall Village.

Jayne Collins, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 24, 2006. She stated that the appeal was of a determination that each individual lot with its originally recorded underlying lot lines met the zoning requirements at the time of its creation and was a buildable lot under the Zoning Ordinance. She noted that there was a typographical error on page 12 of the staff report where it referred to the 4,000-square-foot lots. She said that should have been 5,000 square feet. Ms. Collins stated that Hayden Codding, Office of the County Attorney, was present to answer questions.

Mr. Beard asked how the properties in question were taxed. Ms. Collins stated that they were shown on the tax map with a dashed line that showed the original lot line. She said that if they were under the same ownership, she thought that one bill showing the two lots would be sent by the Department of Tax Administration (DTA). He asked what would be reflected on the tax bill, and Ms. Collins indicated that she had not seen one of the tax bills and, therefore, could not comment.

Mr. Codding stated that the DTA web site showed the lot numbers and stated that once a building permit had been issued, taxation would be done as one unit; however, if the building permit were to be taken away or the structure was demolished, it would go back to being taxed as two separate lots.

Mr. Hart asked whether there had been any other determinations made by the Zoning Administrator concerning the validity of a lot in the Hollin Hall subdivision. Ms. Collins stated that staff was not aware of any.

~ ~ ~ January 31, 2006, CONCERNED CITIZENS OF HOLLIN HALL VILLAGE, A 2005-MV-055, continued from Page 130

Mr. Hart then asked whether anything had been entered into the records since 1946 that would be germane to the appeal, such as revising lot lines or consolidation. Ms. Collins responded that the 1946 plat added property to the corner lots and added restrictive covenants; however, she was not aware of anything after that.

Mr. Hart asked whether any of the lots in the appeal had been involved in the crackdown on illegal lots a few years prior. Ms. Collins said she was not aware of any.

With respect to the eight lots that were listed in the appeal, Mr. Hart asked whether any building permits had been issued for any of the lots after 1986. Ms. Collins stated that the building permits that had been issued for the subject lots were listed in the staff report, and they were the only ones she could find.

Mr. Hart asked whether there had been any requests for electrical permits or remodeling after 1986. Ms. Collins said she had not seen anything in the files that would address the question.

Mr. Hart asked whether there were some places, such as, Lots 51, 104, and 105, where a house would have been built initially on one lot. Ms. Collins said yes.

Mr. Hart stated that there had been a prior Board of Zoning Appeal (BZA) case where there had been similar dashed lines, and the DTA had sent out a tax bill on one piece of paper that listed the lots as Lot 1, 2, and 5. He asked whether that was how the bills were currently being sent out. Mr. Codding replied that was his understanding and was what showed up on DTA Web site for the address.

Ms. Voorhees presented the arguments forming the basis for the appeal. She called attention to a document that had been presented to the Board supporting the appellants' arguments against the Zoning Administrator's decision to allow developers and contractors to increase density in their neighborhood. She quoted from the County's Zoning Ordinance and stated that the Commonwealth of Virginia was under Dillon's Rule, and as such the regulations and ordinances of the local governing bodies, such as Fairfax County, were interpreted in view of powers granted by the Virginia Assembly. She stressed that the Code of Virginia determined whether the local government had power or authority to act, not the local governing body. She further stressed that the regulations of the Fairfax County Zoning Ordinance were determined in accordance with the Code of Virginia. Ms. Voorhees said the Virginia Supreme Court had stated that landowners have no property right in anticipated uses of their land since they have no vested property right in the continuation of the land's existing zoning status. She said the property in Hollin Hall had been zoned R-3 decades before the current property owner bought the properties in question, thus any infill development should follow all the R-3 District regulations. She stated that according to the arguments she had presented, County staff could not interpret their Zoning Ordinance to allow new construction using only some of the R-3 District regulations.

Ms. Voorhees noted that to be uniform in an R-3 residential district, a house could not be built on a lot area smaller than 10,500 square feet, have a lot width smaller than 80 feet, and/or density greater than three dwelling units per acre, as set forth in Sect. 3-306 of the Zoning Ordinance. She stated that according to the Virginia Code, the County must apply those regulations uniformly throughout the residential district. She argued that Sect. 2-405 of the Zoning Ordinance was an exception, and exceptions did not create uniform regulations. Ms. Voorhees stated that under the Zoning Administrator's determination, only one of four of the bulk regulations, including setbacks, of the R-3 District were to be applied. She said that was not uniform and was inconsistent with the laws of the Commonwealth and that as the graphics showed, the proposed development was not uniform with the existing conforming R-3 development. She pointed out that the proposed development would place two homes on an existing parcel of land and that the minimum land size in that development conformed to an R-5 residential district regulation. Ms. Voorhees said the Zoning Administrator's interpretation of Sect. 2-405 of the Ordinance was inconsistent with the Virginia Code.

Mr. Hart asked whether Ms. Voorhees was stating that Sect. 2-405 of the Zoning Ordinance allowed someone to use a grandfathered lot that would be too small to be approved today as long as the lot was otherwise valid. Ms. Voorhees responded that it was her understanding that in order to build on a particular lot, the landowner would have to have a vested right, and it was her belief that the regulation allowed that someone who already had a house on that lot would be allowed to build another one.

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In response to Mr. Hart's question concerning the statement in the regulations that indicated that a lot may be used for any use permitted in the zoning district in which it was located, even though the lot did not meet the minimum district size lot area or lot width, Ms. Voorhees said that statement referred to an existing lot. Mr. Hart referred to Sect. 101-112a and asked if that would cure any concerns with a lot prior to September 1, 1947, where there was a problem if someone approved it. Ms. Voorhees said yes, but it did not mean that just because the lots were recorded in 1943, that they would be etched in stone and would continue to millennium.

In response to an earlier comment made by Ms. Voorhees, Mr. Hart asked if she was stating that Joseph Berry was not the County surveyor. She said she had not said that. She stated that it was her interpretation that Fairfax County believed that the problem was that Mr. Berry signed the document as a land surveyor, and what she was saying was that if Mr. Berry signed the document as a civil engineer, she was questioning whether he was the same man that staff's research of the County records had shown. Mr. Hart indicated that the burden of proof was on the appellants in persuading the Board that Mr. Berry was not the same Joseph Berry that was the County's surveyor. Ms. Voorhees insisted that if Mr. Berry had signed the document as the County's land surveyor, he would have signed it that way, not as a civil engineer.

Referring to the appellants' illustration and the tax map, Mr. Hart said it appeared to him that some of the homes in the neighborhood had been built on one lot rather than two. Ms. Voorhees disagreed, stating that some larger lots had been developed in that manner, but not the small recorded lots he was referring to.

Mr. Hart stated that a lot of material had been submitted to the Board concerning current drainage problems and asked whether it was correct that it was not germane to the issue currently before the Board. Ms. Voorhees said there were several issues raised in the document, and that was one of them.

Mr. Hart said his question was to the validity of the lots, and whether there was a drainage problem in 2006 was not a current BZA issue. Ms. Voorhees responded that it was a BZA issue in 2006 because the adequate outfall had to be met, and amends would have to be made for any increased impervious surface so the outfall would not flood the neighbors. She stated that there was current flooding, and a speaker was present to address the issue.

Mr. Beard asked Ms. Voorhees if she was an attorney, and she responded in the affirmative.

Chairman DiGiulian called for speakers.

The following speakers spoke in support of the appellant's position. Gretchen Walzl, 7917 New Market Road, Alexandria, Virginia; Douglas Palo, 2103 Rossiter Place, Alexandria, Virginia; James Stein, President, Hollin Hall Village Citizens Association, 8039 Fairfax Road, Alexandria, Virginia; Mark Welch, 8036 Washington Road, Alexandria, Virginia; Melvin Smith, 8048 Fairfax Road, Alexandria, Virginia; Sean Bird, 1905 Paul Spring Parkway, Alexandria, Virginia; Donald Rogich, 8024 Washington Road, Alexandria, Virginia; Rachel Riley, 80236 Washington Road, Alexandria, Virginia; Mary Chadduck, 1904 Clayton Place, Alexandria, Virginia; Don Martin, 7920 Wellington Road, Alexandria, Virginia; Eugene Groshong, 8060 Fairfax Road, Alexandria, Virginia; William Cerutti, 8046 Fairfax Road, Alexandria, Virginia; and Patricia Moore, 8044 Fairfax Road, Alexandria, Virginia. Their main points dealt with poor stormwater management in the development, an increase in traffic congestion, the effects on the character of the neighborhood, their belief that their property rights were not being protected, that there was no basis for the ruling, and that the inspections by the Zoning Enforcement Branch were unlawfully executed.

Ms. Gibb asked Ms. Walzl what rights would be developed if they had expired long ago. Ms. Walzl responded that because of the dotted lines, the lots were never split. She said that at the time the village was developed, only one house was built on the lots, and the usage had not changed in over 50 years. Ms. Gibb stated that, in her opinion, the crux of the matter was that subdivision plats were recorded in the land records where public notices and the tax maps were located. She said that was not the controlling factor, however, because the law stated that the recordation was primary. She said the land records still showed the lots as originally drawn, with no dotted lines, and that was what everyone bought all over the County. She said that to imply that those lot lines could be abandoned was a concept she had never heard of. Ms. Walzl pointed out that the 1943 plat did not have a County stamp on it, recognizing it as a valid plat. Ms. Gibb said she thought it was valid, and she knew Joseph Berry's signature and believed that he had signed

~ ~ ~ January 31, 2006, CONCERNED CITIZENS OF HOLLIN HALL VILLAGE, A 2005-MV-055, continued from Page 132

the plat as a County surveyor. She said that if for some reason they had not been validated at the time, they had been when the Board of Supervisors adopted the updated Ordinance two years ago. She said that the claim that lot lines had been abandoned was not a legal concept and that if the citizens had other grounds, they should focus on those. Ms. Walzl argued that the developer would be creating a de facto R-5 District in the neighborhood. Ms. Gibb stated that zoning designations had changed since March of 1941 when the Zoning Ordinance was amended, and not only had designations been changed, the definitions of what could be done in zoning districts had changed as well. In response to a comment made by Ms. Walzl that what the homeowner was allowed to do was very different from what a developer could do, Ms. Gibb advised that there were two different concepts involved. She said that when Ms. Walzl's lot was originally created, that was where she started from when she had applied for a variance. She pointed out that at that time Ms. Walzl had to start from where the lines were drawn on the plat when the subdivision was originally drawn and recorded in the land records. Ms. Gibb said houses were not taken into consideration because they would come and go through generations. It was the recorded lines on the plat that was the determining factor.

Addressing the issue of stormwater management brought up by Mr. Stein, Mr. Hart stated that the narrow question that was currently before the BZA dealt with the validity of the lots and whether there were one or two lots. He said the stormwater drainage problem was not something the BZA was reviewing, and it was not the basis for the Zoning Administrator's determination. He suggested that the homeowners contact Supervisor Gerald Hyland's office to determine whether or not there would be any funding for improvements in the Hollin Hall neighborhood in the Board of Supervisors' upcoming budget hearings to be held in April of 2006. He said they were legislative issues for the BOS, and they were not presented to the BZA with respect to the validity of the plats referenced in the appeal.

In response to a question from Mr. Beard, Mr. Rogich said the lot had a dotted line through it; and, therefore, his house was located on a double lot that was approximately 13,000 square feet. In answer to Mr. Beard's question, Mr. Rogich said he would be willing to consolidate his lot so it could not be divided by a developer at any given time.

In response to Ms. Chadduck's comments and that of other speakers, Ms. Gibb stressed that the issues did not involve a rezoning or a subdivision, and the BZA did not have authority over stewardship of the land or stormwater management problems. She stressed that all the BZA could do was determine how Sect. 2-405 was applicable. Ms. Gibb emphasized that what she and the other members of the BZA had been stating was that if the residents of Hollin Hall wanted less development or to have the Ordinance changed, they had to present their requests to the Board of Supervisors.

Noting that there were approximately 650 residences in the Hollin Hall neighborhood, Mr. Beard asked how many of the lots in question had been designated by dotted lines. Ms. Voorhees stated that there were 65.

The following speaker came forward to support the Zoning Administrator's position.

Jerry Emrich, an attorney representing the three legal entities who owned the involved properties; PFK, LLC; PJB, LLC; and Hall Hollins, LLC; stated the belief that the Zoning Administrator professionally analyzed and applied the law to the facts of the case. He said the appellants were confusing subdivision with zoning and the ability of the BZA in the areas of rezoning. He reported that the Supreme Court of Virginia had ruled in the Shillings versus Germetz (phonetic) case that third party challenges to subdivision approvals were not permitted by law and pointed out that the reason was that the land records would be substantially confused if people could challenge subdivision ordinances many years later. Mr. Emrich said the Zoning Ordinance provided that the lots in question were validated, and the state code provided for validation as well. He recounted a story about another subdivision plat of which a copy contained only a name and did not include the position of the person who approved the plat. He said it was subsequently learned that in the process of copying the plat, the title of the person who signed the plat did not appear on the microfilmed copy, but did appear in the old deed books in Richmond. Mr. Emrich stated that the lots were not nonconforming lots. He said a subdivision could not be abandoned for nonuse, and the only way to change it would be to initiate another subdivision, and that had not occurred. He said the property owners were not claiming a vested status, but were relying on the existing provisions of the statute and the County ordinances. With respect as to who had standing, he said he believed that the Concerned Citizens group did not have legal standing to bring the appeal unless they first established that they owned property that was affected. He said he did not believe that the appeal was timely. Mr. Emrich also stated that the Zoning Administrator had given the same

opinion to Supervisor Hyland, and that had not been appealed within 30 days.

Ms. Collins stated that all extraneous issues aside, the individual lots were legal, valid building lots under Sect. 2-405 of the Zoning Ordinance. She said they had been legally created in 1943 and were not nonconforming lots because their use for residential dwelling was permitted under today's regulations.

In answer to Mr. Beard's question, Ms. Collins indicated that the developer would have to meet all the existing setbacks if the Administrator's determination was upheld by the BZA.

In her rebuttal, Ms. Voorhees stated that under the Code of Virginia all zoning regulations shall be uniform for the R-3 District, and Sect. 2-405 was an exception that only allowed the use of one of the regulations. She said the proposed redevelopment was an R-5 development in an R-3 District, which she declared to be wrong. She said that it was clear that the lot lines no longer existed. She said there had to be a diligent pursuit to keep the vested right of that subdivision lot. Referring to the Subdivision Ordinance and consolidation, she said her house was built in 1948, and most of the houses were built prior to 1950. She said all of the laws in the Subdivision Ordinance were prospective, not retroactive. Ms. Voorhees said the property owners could not be forced to use the Subdivision Ordinance after their houses had been built to say that they had not been consolidated then and needed to be reconsolidated again. She said it was her opinion that all of the regulations for R-3 should apply and that the proposed redevelopment was more consistent with an R-8 or R-5.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator. He said that what had been presented to the BZA was a fairly common issue in Fairfax County. He noted that after the 1978 Zoning Ordinance, there were many existing subdivisions where the lots did not meet a current Zoning Ordinance requirement either as to area or width, or more frequently the structures did not conform to the current setbacks, situations where the structures were built in a certain way and were legal at the time, but could not be done in the same way currently. He stated that there were many situations in the County where there were homes constructed on two and sometimes more than two lots, and that scenario raised other problems for the neighbors when the price of land had gone way up. He noted that there was very little land left to build on, the County was approaching build-out, and there was an incentive to redevelop many homes as tear-downs. Mr. Hart said many of the issues presented to the BZA were present in the subject neighborhood, but not necessarily before the BZA for the purposes of the decision. He said issues such as the impact on stormwater, conformance with the Comprehensive Plan or aesthetics were legislative issues to be dealt with in the future and were not before the BZA today. He stated that the issue currently before the BZA was primarily whether the Zoning Administrator's determination was correct and essentially whether these were buildable lots at the time of their creation and were they still buildable lots currently.

Mr. Hart said he would address two procedural issues and indicated that based on the record before the BZA, the appellants would have standing to appeal the decision. He said sometimes it was difficult when there was a group of neighbors rather than individuals, but he thought that on the record before the BZA, there were neighbors in proximity to the site whose homes were also shown on the same subdivision plats as the three plats referenced in 1943 and 1946. Mr. Hart concluded that they would have a sufficient interest, they were aggrieved, and they could appeal the Zoning Administrator's decision.

Mr. Hart said the second procedural issue dealt with timeliness. He said the issue had not been squarely presented to the BZA; however, he thought that on the record before the BZA, the appeal that was filed with respect to the written determination from the Zoning Administrator was timely. He said it appeared to him that the determination was the result of a specific request by Supervisor Hyland to recapitulate what the previous answer was. He stated that although the BZA had had similar situations in other cases, he thought that the BZA had concluded that to the extent that a determination was without notice to an aggrieved party, the 30-day limitation could result in a due process problem. He said he thought the appeal was timely.

Mr. Hart concluded that on the record before the BZA, the staff analysis in the staff report was correct and that Mr. Emrich's observations, aside from procedural issues, were also correct. Mr. Hart said that nothing had been shown that there was anything wrong with the approval of these lots, at least after the provision in the Ordinance for the lots prior to 1947. He said he did not think there was any basis to conclude that lots

were somehow abandoned. He stated that he first encountered that concept when preparing for the current hearing. Mr. Hart said there were many old lots in Fairfax County, and just because something was old did not mean something was wrong with it. He said he was not familiar with the concept of abandonment as it dealt with a recorded subdivision or other division in the land records. Mr. Hart stated that he did not think anything persuasive had been shown to the BZA that there was any impropriety in the approval or that Joseph Berry was not, in fact, the County surveyor at that point in time. Mr. Hart said there were hundreds, if not thousands, of plats that the BZA had seen and that Mr. Berry had signed in the corresponding time period, and he did not think there had ever been a dispute that Mr. Berry did not have the authority to sign those plats.

Mr. Hart said he wanted to address some of the confusion that had been alluded to. He stated that he thought that some of the concepts that had been argued to the BZA were conflating one issue with another, and he did not see this as a resubdivision. He said the subdivision had been done in the 1940s, and if he understood the record, nothing had been recorded since 1946 and that the same was true with respect to the question of a rezoning. He said the BZA did not do rezonings. Mr. Hart stated that the property was zoned to the R-3 District at some point in the past, still was R-3, and nothing the BZA would do would change that. He stressed that all of the properties would remain subject to all of the requirements in the R-3 District if someone was going to build a house on them. He said he took issue with statements made that there was no problem with respect to stormwater. He said that if there was a stormwater problem, it was not a BZA issue, and it was for some other department. He said he hoped that with the assistance of staff or Supervisor Hyland's office, that the appropriate personnel could be contacted about situations such as dumping in a stream or whatever was resulting from that. Mr. Hart stated that the BZA's role in the process was to call balls and strikes, and the question was whether the Zoning Administrator was correct that the lots were still buildable, and Mr. Hart said he thought the answer was yes. He said there may be some legislative changes as a result of the case, but that would be up to someone else at another time. He said perhaps there was something the Board of Supervisors could do, but the narrower question before the BZA was whether the Zoning Administrator was correct.

Mr. Hart stated that, to his mind, the concept of diligent pursuit could be applicable in Virginia in a determination of whether someone had vested rights or not in an approval. He said he had always read those cases as dealing with a zoning approval, not a subdivision approval in the past. Mr. Hart said that in the confusion in the terminology, perhaps some of the zoning approval issues had been blended with subdivision issues. He stated that none of the cases about vested rights or diligent pursuit of an approval in Virginia, as he understood it, had ever dealt with the concept of a recorded subdivision that had been challenged at a later time. He said it had always been, to his knowledge, something where someone got a rezoning or other type of approval for a special exception or special permit and then did not take action, whether that action was engineering or construction or some other activity or expenditure of money in furtherance of what that approval was. He said he did not read those cases as having anything to do with a subdivision approval as opposed to a zoning approval. Mr. Hart stated that those reasons should be the BZA's findings of fact and conclusions of law, and the Zoning Administrator should be upheld.

Ms. Gibb seconded the motion.

Mr. Hammack said he would support the motion generally for the reasons set forth by Mr. Hart, but two things concerned him. Mr. Hammack said there had not been much testimony regarding the issue of standing or on the 30-day appeal, and he was concerned about making findings of fact on those issues when they were really not argued. He said he had no objection for Mr. Emrich's remarks and his position to be part of the record, but the BZA was not really presented with that as they had been in the past on 30-day appeals. He stated that oftentimes the BZA had had hearings on just whether the appeal was timely filed, and that had not been raised at the hearing. He also noted that the BZA had had hearings on standing, and while he said he was inclined to think there would be standing, the BZA had not heard the type of testimony and evidence that they had heard in the past.

Referring to comments made by others concerning the tax assessor's records, Mr. Hammack said the tax assessor had nothing to do with zoning. They identified property for tax purposes, and zoning was created through the Zoning Ordinance. He said there were more 50-by-100 foot lots in the County than most people realized, and those issues come up regularly. He said it was happening not only in the Hollin Hall neighborhood, but in many other neighborhoods. Mr. Hammack stated that some of the speakers had

~ ~ ~ January 31, 2006, CONCERNED CITIZENS OF HOLLIN HALL VILLAGE, A 2005-MV-055, continued from Page 135

referred to covenants, and although they may give a property owner private rights, the BZA had no equitable powers or authority, and it was very limited in what it could do. He said he was sure the citizen concerns were valid, but the BZA did not have the jurisdiction or authority to deal with those issues. He said that all the BZA could decide at the hearing was whether the Zoning Administrator's opinion was correct or not.

Mr. Beard said he would reluctantly support the motion, but with great trepidation. He said he lived in Mount Vernon, and Hollin Hall had approximately 10 percent of the subdivision that was vulnerable. He said he thought that Ms. Voorhees' comment was correct that there would basically be a de facto R-5 in an R-3 District.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:30 A.M. RAYMOND L. HUBBARD III AND PATTY H. HUBBARD, A 2005-MA-056 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a swimming pool, a concrete deck and walkways are deemed accessory uses and are, therefore, included in calculating the 30 percent maximum permitted coverage of the minimum required rear yard. Located at 7815 Antiopi St. on approx. 15,098 sq. ft. of land zoned R-2 Cluster. Mason District. Tax Map 59-2 ((22)) 13.

Chairman DiGiulian noted that A 2005-MA-056 had been withdrawn.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, and 12/20/05 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-040 had been administratively moved to March 14, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:30 A.M. HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, and 12/20/05 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-042 had been administratively moved to March 14, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ January 31, 2006, Scheduled case of:

9:30 A.M. NVR, INC., A 2004-DR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordanc with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance Provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, and 12/20/05 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-041 had been administratively moved to March 14, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ January 31, 2006, After Agenda Item:

Request for Additional Time
Cub Run Baptist Church/Cub Run Primitive Baptist Church
SP 97-Y-029 and VC 97-Y-058

Mr. Hart moved to approve 18 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date was March 12, 2007.

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As there was no other business to come before the Board, the meeting was adjourned at 3:27 p.m.

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

Approved on: September 22, 2010

K. A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 7, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; Norman P. Byers; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:02 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 DiGiulian called for the first scheduled case.

~ ~ ~ February 7, 2006, Scheduled case of:

9:00 A.M. KINGDOM HALL OF JEHOVAH'S WITNESSES MOUNT VERNON CONGREGATION, SPA 99-V-013 Appl. under Sect(s). 3-503 of the Zoning Ordinance to amend SP 99-V-013 previously approved for a place of worship to permit a reduction in land area. Located at 7920 Holland Rd. on approx. 3.98 ac. of land zoned R-5. Mt. Vernon District. Tax Map 102-1 ((1)) 38A. (Admin. moved from 11/15/05 and 12/13/05 at appl. req.)

Chairman DiGiulian noted that SPA 99-V-013 had been administratively moved to April 11, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ February 7, 2006, Scheduled case of:

9:00 A.M. HOSSEIN FATTAHI, VC 2004-PR-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.5 ft. from side lot line. Located at 8723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 5A. (Decision deferred from 5/25/04, 7/20/04, 1/25/05, 5/3/05, and 9/20/05)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hossein Fattahi, 8723 Litwalton Court, Vienna, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that it was her understanding that the applicant wanted to request a deferral. She noted that this application was for a variance and that if the special permit application was to go forward it would apply to this application. She said she and the applicant had discussed a date of September 26, 2006.

In response a question from Chairman DiGiulian, Mr. Fattahi confirmed that he wanted this case deferred.

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

Mr. Ribble moved to defer decision on VC 2004-PR-037 to September 26, 2006, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

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~ ~ ~ February 7, 2006, Scheduled case of:

9:00 A.M. CHARLES AND PAMELA MESLER, SP 2005-SU-048 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 12.8 ft. with eave 11.8 ft. from side lot line. Located at 4338 Silas Hutchinson Dr. on approx. 12,328 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 224.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Mesler, 4338 Silas Hutchinson Drive, Chantilly, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a modification to minimum yard requirements for certain R-C lots to permit construction of an addition to be located 12.8 feet with eave 11.8 feet from the side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum

~ ~ ~ February 7, 2006, CHARLES AND PAMELA MESLER, SP 2005-SU-048, continued from Page 139

side yard; therefore, reductions of 7.2 feet and 5.2 feet, respectively, were requested.

Mr. Mesler presented the special permit request as outlined in the statement of justification submitted with the application. He said there was an existing deck on his property that he wanted to enclose so that he could provide a first floor bedroom for his 81-year-old mother-in-law. He stated that his closest neighbor had expressed no objection to the addition.

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

Mr. Byers moved to approve SP 2005-SU-048 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES AND PAMELA MESLER, SP 2005-SU-048 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 12.8 ft. with eave 11.8 ft. from side lot line. Located at 4338 Silas Hutchinson Dr. on approx. 12,328 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 224. 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 7, 2006; and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The present zoning is R-C, WS, and AN.
7. The area of the lot is 12,328 square feet.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This Special Permit is approved for the location of an addition as shown on the plat prepared by Burgess & Niple, dated November 4, 2005, revised by Pamela Mesler, dated November 21, 2005, as submitted with this application and is not transferable to other land.

2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.

~ ~ ~ February 7, 2006, CHARLES AND PAMELA MESLER, SP 2005-SU-048, continued from Page 140

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

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

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~ ~ ~ February 7, 2006, Scheduled case of:

9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05, 12/6/05, and 1/24/06)

9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05, 12/6/05, and 1/24/06)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Carter, the applicant's agent, 4103 Chain Bridge Road, Fairfax, Virginia, replied that it was.

Mr. Carter said the applicants had been before the Board on several occasions. He said that two weeks prior the applications had been deferred to allow Mr. Hatcher to make a final determination as to how he would proceed in this matter. He said that it was Mr. Hatcher's decision to move ahead in an attempt to get the quiet title action resolved by June 6, 2006. He said that would then allow the Board to make a decision on the applications. Mr. Carter said Mr. Hatcher was also going to try to move one of the sheds and try to determine what he would do with the other shed on the property. He asked the Board to defer the cases to the date referenced above.

Mr. Ribble asked whether Mr. Hatcher was going to go forward with a survey. Mr. Carter responded that Mr. Hatcher had a survey done subsequent to the Park Authority's request, and he did not believe a new survey would show anything different.

In response to a question from Chairman DiGiulian, Mr. Carter confirmed that the applicant was requesting a June deferral date to enable him to complete the title action. He said Mr. Hatcher had agreed to assume the cost of the commissioner and the guardian ad litim that would be required to issue a decree for quiet title.

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

Subsequent to the action taken on the motion, Mr. Hart suggested that not only did Mr. Hatcher need to pursue the quiet title action, but relative to the issuance of the fence or the net, he thought there should be some resolution with the Park Authority as to exactly what Mr. Hatcher wanted, what the Park Authority was willing to do, and what the Board was being asked to approve. He said that although this case had been presented several times, there didn't seem to be any progress in the discussions, just lines drawn in the sand, because neither party wanted to acquiesce to the other's requests. Mr. Hart said that since the cases were being deferred again, he thought there was ample time to patch things up.

~ ~ ~ February 7, 2006, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 141

Mr. Hammack moved to defer decisions on VC 2003-PR-194 and SP 2003-PR-054 to June 6, 2006, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-1. Chairman DiGiulian voted against the motion. Ms. Gibb was not present for the vote.

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~ ~ ~ February 7, 2006, Scheduled case of:

9:00 A.M. SANDRA SANTAMARIA AND MARLENE SANTAMARIA, SP 2005-DR-047 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7428 Paxton Rd. on approx. 11,995 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (J) 1.

Chairman DiGiulian noted that SP 2005-DR-047 had been administratively moved to March 14, 2006, at 9:00 a.m., for notices.

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~ ~ ~ February 7, 2006, Scheduled case of:

9:00 A.M. LEE M. AND ROBIN L. MILLER, SP 2005-HM-045 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 1867 Beulah Rd. on approx. 1.93 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((1)) 55. (Admin. moved from 1/31/06 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lee Miller, 1867 Beulah Road, Vienna, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a special permit to keep two horses, which consisted of one horse and a miniature donkey, and five chickens on a residential lot which consisted of 1.93 acres. A lot consisting of a minimum of two acres is required for the keeping of livestock and domestic fowl as an accessory use by right. The applicants had stated that the property had previously been over two acres, but a portion of the land had been dedicated for road right-of-way. Based on the Zoning Ordinance requirements, six horses and 64 chickens could have been kept by right on a two-acre property.

Mr. Miller presented the special permit request as outlined in the statement of justification submitted with the application. He said his 16-year-old daughter, who worked at a stable in Great Falls, had acquired a horse, and currently the horse was being boarded at the stable. If new arrangements were necessary for the horse, the applicants wanted to relocate the horse to their property. Mr. Miller said they had no intention of having any sort of boarding facility for any additional animals. The provision for the miniature donkey had been added because some horses were more comfortable with a companion animal.

In response to a question from Mr. Beard regarding the previous size of the property, Ms. Langdon said the previous two-acre dimension had been indicated in the applicants' statement of justification. Mr. Miller said that in the 1970s, his lot in the existing 1.93-acre size had been cut off from a larger piece of property that originally had been 4.1 acres. The lot that had been cut off to the rear was cut off to be exactly two acres, and his lot had been two-plus acres, but the proffer had been made for a public street dedication on Beulah Road, which required 25 feet from their lot along Beulah Road which had not been developed or acted upon, so the lot was still perceived as a lot of more than two acres.

In response to a question from Mr. Hart regarding whether the applicants were agreeable with the proposed development conditions, Mr. Miller said they were.

Mr. Hart asked whether the applicants were agreeable to a maximum of five chickens. Mr. Miller said they were. He said they currently had four chickens, which were laying hens they kept as family pets. He said he had contacted the County years prior to inquire about having chickens and had been told that one acre was

the minimum for keeping chickens and they were entitled to have many more than five.

Mr. Hart said he understood 32 chickens were allowed for each acre, but a minimum of two acres was required. Mr. Miller said he believed that was the current requirement.

Chairman DiGiulian called for speakers.

Nell Armstrong, 1871 Beulah Road, Vienna, Virginia, came forward to speak. She said that because the request included a horse, a donkey, five chickens, two rabbits, two dogs, and the building of a barnyard structure, she was concerned about whether she should prepare to sell her property because it would have a barnyard next to it. She said the property represented a good portion of her retirement income. Ms. Armstrong also had concerns regarding cleanup, noise control, and dust and dander coming onto her property. She said she had read that donkeys could be very loud and that donkeys and dogs were enemies.

Mr. Hart asked whether it was correct that the rabbits and dogs would be allowed by right. Ms. Langdon said that was correct.

In response to a question from Mr. Hart regarding whether the barn structure could be built by right if it was under the height limitation and appropriately located from the lot line, Ms. Langdon said that was correct.

Mr. Hart asked whether staff had addressed the noise issue or the potential conflict between a donkey and dogs. Ms. Langdon said it had not.

Diane Yaworski, 1832 Abbotsford Drive, Vienna, Virginia, came forward to speak. She said the rear of her house was fairly close to the subject property, and she was very sensitive to noise and was concerned the noise would carry into her bedrooms. Currently the neighborhood was quiet, and she was concerned only about the noise from the donkey.

In his rebuttal, Mr. Miller said the properties of the two neighbors who spoke were the furthest from the proposed location of the structure. He said the noise issue with a donkey was very real with male donkeys, and they would seek out a female donkey for that reason. Mr. Miller said he was as sensitive to the noise issue as his neighbors. He said there had been no noise complaints in the past, and they did not intend to have any in the future.

In response to a question from Mr. Beard regarding the length of time the applicants had lived at the property, Mr. Miller said since 1983.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2005-HM-045 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LEE M. AND ROBIN L. MILLER, SP 2005-HM-045 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 1867 Beulah Rd. on approx. 1.93 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((1)) 55. (Admin. moved from 1/31/06 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 February 7, 2006; and

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

~ ~ ~ February 7, 2006, LEE M. AND ROBIN L. MILLER, SP 2005-HM-045, continued from Page 143

1. The applicants are the owners of the land.
2. The applicants have shown compliance with the required standards for a special permit.
3. Looking to the words of the Ordinance, the Board has equated horses, donkeys, and some other things in the same category for purposes of what ought to be allowed.
4. The subject property is just a whisker short of what would be necessary to have this by right.
5. Since the road has not been widened into the area and is dedication only, the situation is basically the same.
6. This is practically a by-right use, except that there is technically a dedication along the road frontage.
7. The development conditions largely mitigate any impacts.
8. The applicant addressed the concerns regarding the noise from one donkey.
9. Given that this is so close to being a by-right, the applicants have cleared whatever hurdles the Ordinance would require.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

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

1. This approval is granted to the applicants only, Lee M. and Robin L. Miller, and is not transferable without further action of this Board, and is for the location indicated on the application, 1867 Beulah Road (1.93 acres) 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 a maximum of two horses/donkeys and five chickens, as well as the additional animals being kept on the property by right.

4. The yard areas where the horses and chickens are kept shall be cleaned of animal waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.

5. The chicken coop shall be relocated within the side or rear yards to a location that is a minimum of 50 feet from any lot line.

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

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

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~ ~ ~ February 7, 2006, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, and 9/20/05 at appl. req.)

~ ~ ~ February 7, 2006; RONALD AND LETA DEANGELIS, A 2003-SP-002; ROBERT DEANGELIS, A 2003-SP-003; and GEORGE HINNANT, A 2003-SP-004; continued from Page 144

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, and 9/20/05 at appl. req.)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, and 9/20/05 at appl. req.)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to May 16, 2006, at 9:00 a.m., at the appellants' requests.

Mr. Hart stated that the Board had issued two intents to defer and the public hearing had been moved 13 times. He asked staff if there was any progression with respect to the applications. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellants had applied for a special exception which required a plan that had to be reviewed by the Department of Public Works and Environmental Management for water quality, the plan had gone back and forth several times, the special exception public hearing had been rescheduled numerous times, and the latest rescheduling of the appeals had been based on the latest public hearing date before the Planning Commission, which would be sometime in early May of 2006. She noted that no date had as yet been set for the Board of Supervisors public hearing. Mr. Hart suggested that if the appellants were not ready, perhaps the appeals should be moved to a later date. Ms. Stanfield stated that the May 16th date would give the appellants ample time to have their appeals heard.

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~ ~ ~ February 7, 2006, Scheduled case of:

9:30 A.M. BRIAN J. BROADHEAD, A 2005-MV-058 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has constructed an open deck which does not meet the minimum side yard requirement for the R-20 District in violation of Zoning Ordinance provisions. Located at 8262 Phelps Lake Ct. on approx. 2,214 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 107-1 ((4)) 54A.

Jayne Collins, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 31, 2006.

Mr. Hart asked if the Board would have been hearing the appeal if the appellant had filed a special permit for an error in building location. Ms. Collins replied that the appellant could do that if he chose to and it would fix the problem. Mr. Hart asked whether what was built was the same as that shown on the application for a building permit. Ms. Collins replied that it was. Mr. Hart asked if staff knew whether any construction work had been done subsequent to receipt of the stop work order. Ms. Collins stated that Leslie Johnson, Zoning Permit Review Branch, should be the person to answer the question because she was the one who had issued the order and was the person who had been in contact with Mr. Broadhead. She indicated that Ms. Johnson was on her way to the hearing and would arrive momentarily.

Mr. Beard asked Ms. Collins what the basis was for her statement that the appellant had proceeded to build a deck knowing full well that the permit had been issued in error. Ms. Collins again deferred the question to Ms. Johnson. She stated that when she had spoken to Zoning Permit Review Branch staff, they had indicated to her that Mr. Broadhead had been called to tell him about the error. She noted that staff had found the error before 8:00 a.m. the following morning, and they had contacted Mr. Broadhead and his contractor right away.

Referring to Attachment 8, Mr. Ribble asked what it had to do with the appeal since it was for a different lot with a different address. Ms. Collins stated that Mr. Broadhead had brought up several other locations in his neighborhood that he felt also had their deck too close to the lot line. She said that Ms. Johnson was now present to answer questions.

Chairman DiGiulian referred to Attachment 8 and indicated that page 7 of the staff report addressed a 9-foot setback for the corner of the house, but it appeared to him that the deck was only about 6 feet from the side lot line, similar to Mr. Broadhead's situation.

Mr. Hart stated that it appeared the engineer who had drawn the plat had obtained an administrative reduction for one of the houses and asked if that was for the deck on Lot 62A. Ms. Collins said that it had been and referred to the first paragraph on page 7 of the staff report that stated that the appellant had been granted a 10 percent administrative reduction. Mr. Hart stated that it appeared to be more than 10 percent. Chairman DiGiulian agreed and said that he thought the 10 percent reduction was to the 9-foot setback for the corner of the dwelling. Mr. Hart and the Chairman agreed that it did not make any sense. Ms. Collins offered to look into the situation for the Board.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that staff was not absolutely positive, but they believed that the deck had probably been approved in error and that there should probably be another special permit issued for a building in error.

Mr. Hart asked if staff knew whether construction had continued subsequent to the appellant's receipt of the stop work order. Ms. Johnson stated that when the permit had been issued, after receipt of documentation from the Department of Public Works and Environmental Management (DPWES), staff had done a routine review of all building permits. She stated that after that review, which was one day after the permit had been issued, staff had noticed there was a problem. They called the contractor and talked with the homeowner, and there had been numerous correspondence between staff and the appellant. She noted that Mr. Broadhead had sent e-mails to the Office of the County Executive and to Supervisor Hyland's office. Ms. Johnson said that during that time staff had been trying to determine if there was a way to rectify the situation by amending the permit and bringing it into compliance. She indicated that when she had spoken to Mr. Broadhead early in the process, he had indicated that the footer holes had been dug, the band board had been put on the house, and that was why he was concerned about staff's phone call. Ms. Johnson stated that before the stop work order had been issued and her follow-up letter had been sent to the homeowner, she had asked the zoning inspector to go to the property to verify the current status, and it was at that point in time that staff had determined that the deck had been finished. Ms. Johnson stated that only DPWES could issue a stop work order. She stated that when she found out that the deck had been completed, she had contacted the contractor and asked him why he had proceeded with construction when he knew there was a problem. She said the contractor had told her he had been advised by the homeowner that everything had been worked out with the zoning office.

Mr. Hart said that earlier a comment had been made that staff was emphatically making the point that the appellant had built the deck and that they knew it had been the subject of the direction to stop the work. He said he could not determine the timing of events from the staff report, and it was not clear if the deck had been built before or after the issuance of the order. Ms. Johnson stated that she had telephoned the appellant on September 15, 2005, and her letter was dated September 23, 2005. She said the stop work order had been issued on September 26, 2005. She said it was her belief the deck had been constructed by that time because when she sent the zoning inspector out prior to September 23rd, which was the date of her letter, the inspector informed her that the deck had been completed. Ms. Johnson said it was her opinion that the deck had to have been finished after September 15th.

Mr. Hammack stated that there had been a footer inspection that had occurred after the telephone conversations took place which approved the locations of the footers. Ms. Johnson said that was true.

Mr. Hammack said that according to part of the background information the Board had, on the afternoon of September 15th, the contractor was led to believe that since it would have been a violation to approve the footers, that having them approved meant that the violation had been resolved, and that was indicated in the staff report. Ms. Johnson stated that there had been an overlap because staff received the permits the following morning, her technician reviewed them sometime around 8:00 a.m., and the contractor had already called in for the inspection on the footers. She said such a call was not logged. She indicated that when staff had determined that there was an error, a phone call had been made to DPWES requesting them to place an inspection hold on the deck. She stated that because that call had already been received through the automated system, staff did not get it in time, and, therefore, the footing inspection had been completed. In answer to a question from Mr. Hammack, Ms. Johnson said the DPWES building inspector would have done the footer inspection, and he had signed off on the footers because he did not know about the stop work order at the time because he had an approved permit when he went out.

Mr. Hammack asked what the procedures were for notifying DPWES that a permit had been issued in error. Ms. Johnson said staff's process was to immediately call the applicant listed on the permit, who could be either the contractor or the owner, alert that person to the problem and the error, and ask if construction had begun. She said that it was at that point that a request would be made asking the builder to hold off on doing any construction until the problem was resolved. She said sometimes staff was able to come to a resolution over the telephone. Sometimes the applicant would have to come in to the office to amend the plans, and that was when the majority of the problems identified by staff would be solved. Mr. Hammack asked how the contractor would know that a stop order had been issued if DPWES had issued a permit and the inspector had approved the footers. Ms. Johnson stated that, in the subject case, approval had been given because at the time of inspection, the inspector had an approved permit, and he did not know there was a hold on it. She said the inspection had been called for on September 15th, and the inspectors were given their assignments for the morning before staff's phone call got logged in. She said inspections on deck permits were done quickly.

Mr. Hammack asked whether a builder would have the right to rely on an inspector that stated that the footers were okay. Ms. Johnson reiterated that the footer inspection had been scheduled for the morning of September 15th. Mr. Hammack stated that the inspection was scheduled for that afternoon, after the morning controversy took place. He asked again if the builder would have any right to rely on the DPWES inspection after having gotten a call from the zoning office stating that there was a problem. Ms. Johnson reiterated that at that point in time, the applicant did have an approved building permit.

In response to a question from Mr. Hart concerning who had signed off on the building permit, Ms. Johnson stated that the technician, Mr. Moore, Zoning Permit Review Branch, Zoning Administration Division, had signed off on the permit. Mr. Hart referred to the next page of the permit and asked who had initialed the Zoning Administrator's approval of the open deck dated September 13, 2005, and asked whose initials were noted above that. Ms. Johnson replied that permit technicians initialed the building permit, stamped the plat, and initialed that as well. In answer to another question posed by Mr. Hart, she indicated that the plat and the building permit were received at the same time, and, therefore, the same technician would sign off on both. Mr. Hart noted what he called a weird line that paralleled the lot line and asked what that was. Ms. Johnson said the line indicated the dimension and was put on by staff at the time of receipt. She said the line referred to the setback, and that was how staff determined whether a submittal met the setback requirement or not. She stated that there would always be notations on building permits because staff would dimension and measure from the lot lines. Mr. Hart indicated that he was talking about the angled line. Ms. Johnson said that line was put on the permit by the supervising technician after a stop order was issued, and it was staff's way of determining that portion of the deck was in error and did not meet the setback requirements.

Referring to the process that had taken place on September 15th, Mr. Byers asked why a contractor would not consider an approval of the footers to be reasonable. He asked how a citizen would be able to determine who the controlling agency was if he had gotten an approval in the morning from DPWES and then a stop order from Zoning in the afternoon. Ms. Johnson said it was her opinion that if the homeowner did not understand the process, the contractors doing business with the County should reasonably understand it. Responding to another question posed by Mr. Byers, Ms. Johnson stated that the supervising technician made the initial contact with the contractor, and it was her belief that when the information was passed on to Mr. Broadhead, he became concerned about staff's determination and spoke to her after that.

The appellant presented the arguments forming the basis for the appeal. He stated that his house was on a larger piece of property than his neighbor's who had built a deck two years ago that was five feet from the lot line and had been approved by the County. Mr. Broadhead said it was difficult to understand how the Zoning Administrator's current interpretation fulfilled the intent of the Zoning Ordinance when he had a larger piece of property, the same size house as his neighbor's, and was only permitted to make use of and build on a portion of the property that was smaller than his neighbor's. He argued that was not uniform and he should be able to exercise his property rights and build on at least as much area of his property as his neighbor had been allowed to do. Mr. Broadhead said there was a lack of consistent application of the Ordinance by the Zoning Administrator, an improper interpretation of the Ordinance had been made, there was a conflict with state law, and the Zoning Administrator's interpretation should be reversed.

Mr. Hammack asked Mr. Broadhead to show on the plat how the three sentences he had referenced in paragraph 3B of Sect. 2-412 of the Zoning Ordinance would allow him to legally build the deck in question. Mr. Broadhead said that if the paragraph was only interpreted for yards 17 feet or less, the third sentence would not apply to his lot, in which case he would be free to build where he had currently built the deck. Mr. Broadhead stated that his rear yard was approximately 23 feet and reiterated that the third sentence would not apply to him because it modified the second sentence that dealt with rear yards of 17 feet or less.

With respect to the appellant's references to state code citations which indicated that a townhouse was a separate building, Mr. Hammack asked Mr. Broadhead to cite the portions of the codes from which he obtained that information. In answer to Mr. Broadhead's request for clarification, Mr. Hammack asked if the appellant was referring to the state building code or the Code of Virginia. Mr. Broadhead stated that he had referred to both, but did not have copies of them with him, and offered to provide copies if they were needed.

Mr. Hart indicated that he did not see anything in the statewide building code or the Code of Virginia that indicated that a row of townhouses counted as one building and asked to see a copy that would apply. He asked about the plat that had been displayed, indicating that it was slightly different from the plat that was in the staff report. He said it was obvious to him that the stamps were different. Ms. Johnson explained that as part of staff's procedure, the applicant was required to bring two copies of a plat, both were stamped in separately, and that was why the lines appeared to be different. She noted that the original copy was returned to the applicant, and the second copy was attached to the yellow duplicate of the permit that was retained for the record. She stressed that the only difference was that the one line questioned by Mr. Hart had been drawn by her staff to demonstrate where the problem was, and it had been done for staff's own information and records.

Mr. Hart asked Mr. Broadhead if the deck had been finished before he received the stop work order. Mr. Broadhead replied in the affirmative. Mr. Broadhead also acknowledged that the footer inspection had occurred on the afternoon of the day he received the telephone call from Ms. Johnson. Mr. Hart asked why Mr. Broadhead had not filed for a special permit for a mistake in building location that would fix his problem. Mr. Broadhead asked if that route was only for a 10 percent reduction of the minimum requirement. Mr. Hart said no and advised that the Zoning Administrator could fix the problem administratively without an application or a public hearing if the requirement was less than 10 percent and explained how the appellant could file for a special permit to solve his problems.

Ms. Johnson explained to Mr. Hart that what she had suggested to Mr. Broadhead as a remedy was not a special permit for an error in building location, but a special permit for a modification to the regulations on permitted extensions in the minimum required yards, which would allow him to extend up to 50 percent, so that instead of being ten feet, he could opt for five feet. Ms. Johnson stated that the error in building location would have occurred after the deck was built, but when she had spoken to Mr. Broadhead, the deck had not been constructed, and the remedy would have been to file for the special permit for the modification, which would have allowed him to have gone five feet. She said that unfortunately the deck, as designed, was less than five feet, and in order to file for that special permit, Mr. Broadhead would have had to cut less than a foot off the angle, but he could have gotten it to five feet. Mr. Hart said he thought that an applicant was allowed to apply for a mistake if the construction was not completed. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said Mr. Hart was correct; however, what Ms. Johnson was referring to was that, at the time that she had spoken to Mr. Broadhead, there was an opportunity for him to slightly change the design of the deck, and that would not have precluded him from applying for a special permit for building in error.

Mr. Hart asked the appellant if he wanted an opportunity to apply for the special permit rather than have the Board vote on his appeal today. Mr. Broadhead did not address Mr. Hart's question, but instead indicated that the situation also affected his neighbors, and he could not believe that staff's interpretation of the Zoning Ordinance was correct. He said he was confused about how a special permit would work for him. Ms. Johnson explained that she had this conversation with the appellant and noted that the property was a residential use and that the error in building location was not specifically set out in the list of uses under Group 9 and that it was used for any structure that had been partially built. She said Mr. Broadhead could file the special permit for an error in building location.

Mr. Hart asked if any other interpretations had been made with respect to the side yard issue and the third sentence that the appellant had complained about. Ms. Stanfield said there had not been any other interpretations, and she had researched the Zoning Ordinance amendment that placed that language in the Zoning Ordinance. She said the language was there basically to assist people who had very small lots, such as those persons residing in the P District, as well as to give an applicant a little more room for a deck. Mr. Hart asked whether there was anything contained in the staff report that would determine who was correct with respect to the sentence previously referred to by Mr. Broadhead. Ms. Stanfield stated that the staff report for the Zoning Ordinance amendment contained a discussion of what the purpose of that sentence was. Mr. Hart said he did not recall seeing that.

Noting that DPWES issued building permits and stop work orders, Mr. Hammack asked why that agency was not the one responsible for calling the appellant instead of having the Zoning staff make the call. Ms. Johnson explained that it was staff's review and was subject to their approval. She noted that there were various offices in different sections of DPWES that had to sign off on a building permit, and because the approval came from the Zoning office, it had nothing to do with the building code. She said the Zoning staff took the initial step to contact the homeowner and alert them to the fact that there was a problem. She said that if the problem could not be resolved with the homeowner, then staff would follow it up with a request to DPWES to issue a stop work order based on a violation of the Zoning Ordinance. Mr. Hammack said staff may see an issue, but he wanted to know if there was any written documentation in the Zoning Ordinance that would give Zoning the right to issue a stop work order. Ms. Johnson responded that under the Ordinance, Article 18-114, if the Zoning office approved something in error, it said permits not to be issued for structures which would violate the Ordinance. She said that if staff determined that there was a problem, the permit would be void on its face, and that had been referenced in the staff report. Mr. Hammack asked Ms. Johnson if she thought that language was broad enough to give the Zoning office the authority to issue a stop work order. Ms. Johnson said yes and pointed out that there were provisions in the building code that addressed violations of other codes.

Mr. Hammack asked why the Zoning office or DPWES did not send an inspector out and issue a stop work order on the project at that time. He also asked why the order was placed in the in-house mail which delayed receipt by the appellant, and why an inspector wasn't sent out immediately. Ms. Johnson said that Mr. Broadhead was out of town when an attempt to deliver the order was done, and that was why it was sent by mail. Mr. Hammack asked why the order was not left on the appellant's door. Ms. Johnson said that type of action was not taken because staff had to ensure that the appellant received the order personally. Ms. Johnson said she believed the procedure described above had been followed and that an inspector had been dispatched, but she could not verify that without speaking to DPWES staff. Mr. Broadhead stated that he may not have been at home, but his wife would have been. Ms. Johnson said this issue dealt with the scope of the work to be done, a deck versus a structural issue that would have been treated differently. Mr. Hammack said his concern was that staff had relied on the violation of the stop work order that was not delivered to the appellant until after the project was completed. Ms. Johnson stated that it was her opinion that Mr. Broadhead and his contractor were well aware that there was a problem with the setback of the deck, and they had proceeded at their own risk. She said she had multiple contacts with the appellant through e-mail and telephone conversations, and the fact was that Mr. Broadhead was not happy with staff's position, and at that point when it had been determined that neither party could come to a resolution, staff sent the letter and the stop work order.

Chairman DiGiulian called for speakers; there was no response.

Ms. Stanfield indicated that staff would support a deferral if it was Mr. Broadhead's intention to file for a special permit for a reduction in minimum yard requirements based on an error in building location.

In his rebuttal, Mr. Broadhead stated that he wanted this issue to be resolved now. He said he did not think that he should have to file for a special permit and reiterated his earlier statement, that the Zoning Ordinance had been applied inconsistently and County staff did not seem to abide by state law.

Chairman DiGiulian closed the public hearing.

Mr. Ribble stated that red flags had been waved and it had been up to the appellant to find out what the problem was and not proceed with the completion of the project. He said he did not know what was in the state code that would pertain to this situation, but if Mr. Broadhead thought he could present anything within the next few weeks that would answer the question of townhouses not being treated as single-family dwellings, he would give him the opportunity to do so. He asked Mr. Broadhead if he thought he could provide any additional information. Mr. Broadhead responded that in his letter of response to the staff report, he had indicated that the state code did not specifically define what a building was. He said he thought that he had presented enough documentation from building codes used in other states as well as court decisions that determined that a townhouse was a separate building. He said that in other references in the County's Zoning Ordinance, commercial buildings that were separated by party walls were considered to be separate buildings. He asked why that would be different from a residential unit, pointing out that they were structurally separate and that it was inconsistent.

In answer to a question from Mr. Ribble concerning the surveys on Lots 25 and 62, Ms. Stanfield said that with respect to Lot 62, the permit had been issued in error, and the owner of that property should apply for an error in building location as well. She deferred to Ms. Johnson with respect to Lot 25.

Mr. Hammack asked what staff's position was on Mr. Broadhead's argument with respect to the third sentence in paragraph 3B of Section 2-412 of the Zoning Ordinance that he had referred to earlier in his testimony. He said he also wanted to hear staff's position on Mr. Broadhead's contention that staff was not treating end units uniformly with interior units in townhouses. Mr. Hammack said he thought that made a lot of sense and again requested that staff address those issues since they were not addressed in the staff report.

Chairman DiGiulian indicated that if discussion on the appeal was to continue, the public hearing would have to be reopened. Mr. Hammack moved that the public hearing be reopened. Mr. Hart seconded the motion.

Ms. Stanfield stated that the first sentence in paragraph 3B of Sect. 2-412 of the Zoning Ordinance was applicable to Mr. Broadhead's property because it was greater than 17 feet. She said she thought that the second sentence was applicable only to lots with rear yards of less than 17 feet. She indicated that the third sentence in paragraph 3B referred to by the appellant pertained to the minimum side yard for interior lots or for end units and noted that end units were the ones that had the side lot line. Ms. Stanfield stated that if staff were to take Mr. Broadhead's interpretation that all the interior lots of all the townhouses in Fairfax County had side yard restrictions, there would be tens of thousands of decks that would be in violation. She said it was staff's position that a stick of townhouses was regulated as one entity, so if there were two end units, then those units would have the side yard requirements.

Mr. Hammack stated that the appellant's argument that within the zoning district end units were not allowed to have as large a deck as interior units had some weight. Ms. Stanfield said that she thought that what had happened in this instance was that the appellant had a lot with an unusual shape. She said she thought that Mr. Broadhead was correct, that in this particular instance, it was a lot with an angled side yard. Ms. Johnson noted that with a lot of high decks on townhouses similar to the appellant's townhome, there were no steps that came down, and that was another thing she had spoken to the appellant about. She said Mr. Broadhead could have a wider deck if he didn't have steps because steps took up a large portion of the size of the deck.

Mr. Hart asked if staff was stating that the side yard setback on a deck kicked in for end units only and that interior units did not have a side yard problem because they had a party wall. Ms. Johnson replied in the affirmative. Mr. Hart said he had read some of Mr. Broadhead's rebuttal to the staff report and asked for a copy of the document handed out earlier by Ms. Collins.

Chairman DiGiulian closed the public hearing.

~ ~ ~ February 7, 2006, BRIAN J. BROADHEAD, A 2005-MV-058, continued from Page 150

Chairman DiGiulian asked staff to provide the Board with information on what they planned to do with respect to Lot 62. Mr. Hart requested a copy of Ms. Collins' handout. He said he assumed that the record would remain open for written comment. Mr. Hart also requested a response from staff with respect to the information submitted at the hearing by Mr. Broadhead.

Mr. Ribble moved to defer decision on A 2005-MV-058 to February 28, 2006, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0-1. Ms. Gibb abstained from the vote.

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~ ~ ~ February 7, 2006, Scheduled case of:

9:30 A.M. DANIEL T. AIDE, A 2005-LE-059 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 6705 Elder Av. On approx. 21,784 sq. ft. of land zoned R-1. Lee District. Tax Map 90-2 ((10)) 97.

Cynthia Porter Johnson, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 31, 2006. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Enforcement Branch, stated that staff had discussed the case with the appellant, and he had provided photographs showing the progress that he had made in cleaning up his property. She said he had also provided a copy of a contract with a builder that staff had previously requested, and he had provided a timeframe for construction of his addition. She indicated that photographs were being passed around to the Board showing the before and after scenarios. Ms. Stanfield said it was staff's position at this point that they would be willing to support a deferral. She indicated that the appellant expected to have the construction completed within a year, and she suggested that quarterly reports be provided to the Board indicating the progress of the construction.

The appellant presented the arguments forming the basis for the appeal. He stated that he was willing to accept a deferral of his appeal. He emphasized that in his appeal he was not appealing the junkyard and said he had gotten rid of 98 percent of the junk on his property. What remained were construction materials, a disassembled timber frame structure that he had purchased in New York and had delivered to use in the building of an addition to his home. He stated that the problem was that he had tried to design the addition himself, even though he was not a designer, and that subsequently he had hired a designer. Mr. Aide stated that when the design was completed, he would submit it to the zoning office and submit the forms needed for a construction permit. He said he had added a design and construction schedule to his handout for the major structure to be attached as the addition. He said he was putting as much of the remaining materials in his garage as he could and was disposing of materials that may not be useable.

In response to a question from Mr. Beard, Mr. Aide said he wanted a deferral of his appeal.

Chairman DiGiulian called for speakers; there was no response.

In answer to a question from Chairman DiGiulian, Ms. Stanfield said a six-month deferral would allow staff to determine what, if any, progress had been made by the appellant, and if everything was proceeding according to schedule, staff would return to the Board to request an additional deferral.

In response to a question from Mr. Beard, Mr. Aide stated that the timber frame structure had been delivered in the fall of 2003, and the junk had accumulated during the last one and a half years. Mr. Beard asked that the Board authorize a deferral of three months rather than six.

Mr. Beard moved to continue A 2005-LE-059 to May 9, 2006, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ February 7, 2006, After Agenda Item:

Request for Intent to Defer
Thanh Truong aka Thich Van Dam, A 2005-PR-008

Mr. Hart moved to issue an intent to defer A 2005-PR-008 to March 14, 2006, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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In response to a question from Mr. Hammack, Susan Langdon, Chief, Special Permit and Variance Branch, stated that the LoGrande language could be done unofficially.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the BZA Bylaws, the Lake Braddock case, the Bristow Shopping Center case, the Virginia Equity Solutions case, the Lee case, the McCarthy case, the Horace Cooper case, the Williamson Group Land Development LLC case, and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 10:40 a.m. and reconvened at 11:31 a.m.

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

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Mr. Hart moved that the Chairman be authorized to send the letter to Ms. Pelto that had been discussed. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Mr. Hart moved that Ms. Gibb be authorized to send the letter to Mr. Griffin that had been discussed. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:33 a.m.

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

Approved on: May 23, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John R. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 14, 2006. The following Board Members were present; Chairman John DiGiulian; V. Max Beard; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy C. Gibb was absent from the meeting.

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

~ ~ ~ February 14, 2006, Scheduled case of:

9:00 A.M. MARK A. CHRISTMAS AND ELIZABETH B. POWELL, SP 2005-PR-032 (bldg in error), concurrent with VC 2005-PR-008 (fence height) (Admin. moved from 10/18/05 and 1/10/06 at appl. req.)

Chairman DiGiulian noted that SP 2005-PR-032 had been indefinitely deferred at the request of the applicants.

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~ ~ ~ February 14, 2006, Scheduled case of:

9:00 A.M. CHERRY AND PETER BAUMBUSCH, VC 2005-DR-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line and 21.3 ft. from rear lot line. Located at 1436 Highwood Dr. on approx. 15,835 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-2 ((10)) 41.

Chairman DiGiulian noted that VC 2005-DR-015 had been administratively moved to September 19, 2006, at 9:00 a.m., at the applicants' request.

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~ ~ ~ February 14, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF TRINITY UNITED METHODIST CHURCH, SPA 87-D-074 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 87-D-074 previously approved for a church and child care center to permit deletion of child care center, addition of a nursery school, increase in land area, building additions, columbarium and site modifications. Located at 1201 Dolley Madison Blvd. on approx. 7.30 ac. of land zoned R-2. Dranesville District. Tax Map 30-2 ((32)) A, 1 and 5. (Admin. moved from 11/15/05 and 1/10/06 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith C. Martin, Sack, Harris & Martin, P.C., 8270 Greensboro Drive, Suite 810, McLean, Virginia, the applicant's agent, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought to amend SP 87-D-074, previously approved for an existing church with a child care center, to delete the child care center, add a nursery school, increase land area, build a columbarium, and add parking. The applicant proposed to construct a 21,200-square-foot, 450-seat addition for use as an auditorium/meeting hall to the existing 15,258-square-foot, 448-seat church, and increase parking from 244 to 253 spaces. The land area would be increased by 1.73 acres by including Lots 1 and 5, which each contained a single-family dwelling. The southern dwelling was proposed for use as a rectory, and the northern one as church-related office space. A columbarium was proposed for the area north of the proposed addition.

Mr. Varga said that after distribution of the revised development conditions dated February 14, 2006, the agent indicated that the church also wanted to delete Conditions 9, 10, and 17. The Dranesville Supervisor's Office informed staff that the applicant wanted to use the sanctuary and meeting hall simultaneously for large groups, and although staff previously evaluated that scenario, did not believe there was sufficient parking on-site for both uses. To limit simultaneous uses, staff developed Condition 9, with which the site currently met the parking requirement for all uses: sanctuary, auditorium, and nursery school. If the condition changed, all parking requirements may not be met, a parking reduction through the Department of Public Works and

Environmental Services would be required, and if the applicant wanted to change that condition, staff would likely not support the application and change its recommendation to denial. Mr. Varga noted that the auditorium use parking requirement was 1 space per 3 person ratio, rather than 1 space per 4 person ratio, as required for a church use.

In response to Mr. Hart's question, Mr. Varga clarified that staff supported a waiver of transitional screening to the south and that the applicant would provide additional screening to the north and west, construct a trail with its exact location yet to be determined, and contribute a pro rata share in the installation of a traffic signal.

Mr. Martin presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the church already provided numerous public services and meeting places for community activities, and the additional space would allow for the continuation of these beneficial public services. The nursery school had an excellent program with a long waiting list, and to increase enrollment had long been desired. The columbarium would honor the deceased and had been carefully planned and designed. Mr. Martin referenced the new Development Condition 22, given to staff that morning, that addressed the traffic signal issue, with the applicant committing $30,000 to its design and construction at such time the light was warranted by the Virginia Department of Transportation (VDOT). Concerning Condition 9, Mr. Martin stated that the parking was adequate for the existing sanctuary and the uses proposed and requested the number of attendees for the auditorium be increased to 225. The final requested change was to Development Condition 17, regarding up-lighting, which, he pointed out, the church already had; that it was considered an attractive feature; that it was in conformance with the existing Lighting Ordinance; and, that the Dranesville governmental building on Balls Hill Road also had such lighting. He asked to delete the second sentence that disallowed new up-lighting on the site or the building.

Discussion followed among Mr. Martin; Susan Langdon, Chief, Special Permit and Variance Branch; and Mr. Hart concerning the maximum number of attendees for a church and auditorium service, and the provision of necessary parking.

Mr. Martin responded to Mr. Beard's questions concerning the probable cost of a signal light, and he gave a description of the columbarium', noting that it was to be a 3 to 4 foot high arched wall, attractively landscaped and visible from the street.

In response to Mr. Hammack's question concerning the signal light, Ms. Langdon explained that when staff provided the information to VDOT, they determined that at that time a signal light was not warranted. The issue arose because the applicant had discussions with the Supervisor's office about it. Staff had not included a development condition because of VDOT's determination, but staff's one consideration for not supporting the additional simultaneous use was because the information given to VDOT was that the uses would be operating at different times, and staff concluded that VDOT's recommendation was based on the 448 church seats and that the auditorium would not be used at the same time.

Mr. Martin commented that Supervisor DuBois requested that the church consider a signal light, and his client voluntarily agreed to make a contribution.

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

Mr. Byers moved to approve SPA 87-D-074 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF TRINITY UNITED METHODIST CHURCH, SPA 87-D-074 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 87-D-074 previously approved for a church and child care center to permit deletion of child care center, addition of a nursery school, increase in land area, building additions, columbarium and site modifications. Located at 1201 Dolley Madison Blvd. on approx. 7.30 ac. of land

zoned R-2. Dranesville District. Tax Map 30-2 ((32)) A, 1 and 5. (Admin. moved from 11/15/05 and 1/10/06 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 14, 2006; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 7.3 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees of Trinity United Methodist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 1201 Dolley Madison Boulevard, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Charles F. Dunlap (Walter L. Phillips, Inc.) dated July 13, 2005, revised through January 20, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. All parking shall be on-site, as depicted on the special permit plat.

6. Upon issuance of the new Non-RUP for this special permit, the total maximum daily enrollment in the nursery school shall be limited to 99.

7. The nursery school's maximum hours of operation shall be 9:30 A.M. to 1:30 P.M., Monday through Friday.

8. The modular units shall be removed prior to the issuance of the Non-RUP for the addition or within five (5) years of approval of the special permit amendment, whichever occurs first.

9. Church services and auditorium/meeting hall-related events with more than 225 patrons shall not be held simultaneously. A minimum of 30 minutes shall be required between the conclusion of one event and the beginning of another to allow for orderly ingress and egress. The maximum number of seats associated with the church use shall be limited to 448; the maximum number of seats associated with the auditorium/meeting hall shall be limited to 450.

10. The drop-off area located south of the Dolley Madison entrance shall be signed to allow use only by handicapped patrons. Patrons of the nursery school shall use the southern church entrance for dropping off and picking up children.

11. If determined necessary by DPWES, a noise study shall be submitted to demonstrate that noise levels will not exceed DNL 65 dBA for the outdoor play area and recommend what measures are needed to address noise issues. Notwithstanding that shown on the special permit plat, if a noise study is not conducted, a masonry wall which matches the materials/colors of the church building shall be provided along the northern side of the proposed playground area.

12. The applicant shall provide curb and gutter on Buchanan Street and Dolley Madison Boulevard along the entire frontage, or as determined necessary by DPWES at the time of site plan review.

13. A taper shall be provided at the proposed entrance on Buchanan Street to the satisfaction of the Department of Transportation.

14. Transitional screening and barrier requirements shall be modified along the southwestern lot line in favor of existing vegetation, and additional plantings shown on the SP Plat.

15. Notwithstanding what is shown on the special permit plat, additional landscaping shall be provided along the length of the northern and western lot lines. This vegetation shall be shown on a landscaping plan submitted with the site plan and shall include additional deciduous, evergreen and ornamental trees and understory plantings to help screen and soften the appearance of the structures on site, including the parking lots. The applicant shall consult with Urban Forest Management (UFM) to meet the intent of this requirement. Plant selection, including size, species, and number shall be coordinated with UFM.

16. The barrier requirement shall be waived along all lot lines.

17. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. The lights shall be turned off when the site is not in use, except for security lighting.

18. Notwithstanding Note 13 on page 1 of the special permit plat, the proposed improvements on the site shall be in substantial conformance with the approved special permit plat.

19. Stormwater Management/Best Management Practices facilities shall be provided as depicted on the Special Permit Plat or as determined by DPWES, provided, however, no additional vegetation shall be cleared over that which is shown on the plat.

20. At the time of site plan approval, the applicant shall construct a 10-foot wide trail connection in the right-of-way along Dolley Madison Boulevard's frontage as depicted on the special permit plat, in accordance with VDOT standards.

21. All signage, both existing and proposed, shall satisfy requirements contained in Article 12 of the Zoning Ordinance.

22. At such time as a signal is warranted by VDOT at the intersection of Route 123 and Buchanan Street, the applicant will contribute $30,000 toward the total cost of the design and installation of such signal.

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.

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

~ ~ ~ February 14, 2006, TRUSTEES OF TRINITY UNITED METHODIST CHURCH, SPA 87-D-074, continued from Page 156

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

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

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~ ~ ~ February 14, 2006, Scheduled case of:

9:00 A.M. PROVIDENCE PRESBYTERIAN CHURCH, PROVIDENCE NURSERY SCHOOL, INC., SPA 82-A-039-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-A-039 previously approved for a church, child care center and private school of general education to permit deletion of private school of general education, addition of nursery school, building addition, increase in land area and site modifications. Located at 9001, 9005 and 9019 Little River Tnpk. on approx. 6.24 ac. of land zoned R-1. Braddock District. Tax Map 58-4 ((1)) 1; 58-4 ((8)) 1 and 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John L. McBride, 9200 Church Street, Suite 400, Manassas, Virginia, the applicant's agent, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested to amend SP 82-A-039, previously approved for a church, child care center, and private school of general education, to permit deletion of the private school of general education, and the addition of a nursery school, building addition, increase in land area, and site modifications. The increase in land area would be the addition of two vacant parcels, Lots 1 and 2, totaling 1.01 acres. There would be no proposed increase in the number of church seats or the number of children currently attending the child care center. A nursery school was currently operating. Staff concluded that the subject application was in harmony with the Comprehensive Plan and applicable Zoning Ordinance provisions with the adoption of the development conditions dated February 14, 2006, that were distributed that morning.

Mr. McBride presented the special permit amendment request as outlined in the statement of justification submitted with the application. The applicant requested to reduce the site's intensity by adding acreage, which would be kept in its natural state, to consist of a stream and a natural surface trail which would later become a prayer garden. There would be no additional sanctuary seating, and the expansion area, a kitchen, a fellowship hall, and classrooms for the Sunday school, would be ADA (Americans with Disabilities Act) compliant. A private school of general education would be deleted. Mr. McBride pointed out that meetings with citizens had produced development conditions that met all concerns. He noted there were two issues with Development Conditions 9 and 13, which staff was aware. He explained that because of a waterline and gas line easement, the first part of Condition 9 was difficult to meet as there simply was not enough room due to the existing and ample mature vegetation and the fact that the applicant believed additional plantings would have no purpose. Also of concern was the condition requiring landscaping to the property's frontage because only the well would be abandoned in that area. The church wanted visibility from Route 236, it preferred an expansive vista, and planting additional trees impaired the church's visibility. Referencing Condition 13, Mr. McBride said he had no issue with a pre-construction meeting with the Urban Forester, but he understood that everything in that condition was a Public Facilities Manual (PFM) requirement already in effect by the Department of Public Works and Environmental Services at site plan. Mr. McBride explained that the applicant preferred not to condition an existing Ordinance requirement because the site plan reviewers tended to think there was something else being added; and, therefore, it reduced confusion at the time of site plan. Mr. McBride said the community supported the application, pointing out that there was a lengthy petition on record, and he requested the Board's approval.

Mr. McBride responded to questions from Mr. Ribble and Mr. Hammack concerning the prayer garden and the applicant's concurrence with the revised proposed development conditions dated February 14, 2006.

Susan C. Langdon, Chief, Special Permit and Variance Branch, referenced Condition 13, stating that, as she understood it, there was not such a requirement in the PFM, which was why it was provided in the condition.

She clarified that the condition mainly dealt with the back property's clearing for additional parking and that vegetation and tree save was a priority as well as serving as screening.

Mr. McBride stated that if staff substantiated that the condition was not a PFM requirement, the applicant had no problem with it. His concern was that there not be such a standard Ordinance requirement.

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

Mr. Hammack moved to approve SPA 82-A-039-4 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PROVIDENCE PRESBYTERIAN CHURCH, PROVIDENCE NURSERY SCHOOL, INC., SPA 82-A-039-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-A-039 previously approved for a church, child care center and private school of general education to permit deletion of private school of general education, addition of nursery school, building addition, increase in land area and site modifications. Located at 9001, 9005 and 9019 Little River Tnpk. on approx. 6.24 ac. of land zoned R-1. Braddock District. Tax Map 58-4 ((1)) 1; 58-4 ((8)) 1 and 2. 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 14, 2006; and

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

1. The applicant is the owner of the land.

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

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

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

1. This approval is granted to the applicant only, Providence Presbyterian Church: Providence Nursery School, Inc., a Virginia Non-profit Corporation; National Capital Presbytery, Inc., a DC Non-profit Corporation, and is not transferable without further action of this Board, and is for the location indicated on the application, 9001, 9005, & 9019 Little River Turnpike, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by William R. Zink of Christopher Consultants, dated November 17, 2005, as revised through January 4, 2006.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The seating capacity in the main area of worship shall not exceed 450.

6. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site.

7. The total maximum daily enrollment of children enrolled in the child care center/nursery school shall not exceed 70.

8. The hours of operation for the child care center/nursery school shall be limited to 9:00 am to 3:30 pm, Monday through Friday.

9. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be supplemented as shown on the plat, with the following modifications:

    - Landscaping shall be provided on the proposed berm northwest of the existing church building. Landscaping shall include ornamental trees, shrubs, and understory plantings to soften the appearance of the graded areas and the parking and building areas.

    The size, species and location of plantings shall be provided in consultation with urban Forest Management (UFM).

10. Foundation plantings and ornamental trees shall be provided around the proposed building addition to soften the visual impact of the structures. The species, size and location shall be determined in consultation with UFM and DPWES.

11. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

12. The barrier requirement shall be waived along the northern lot line. The barrier requirement shall be modified along the southern, eastern, and western lot lines to permit the existing six-foot high wood and chain-linked fences to satisfy the requirements.

13. The limits of clearing and grading shall be the minimum amount feasible as determined by DPWES and shall be no greater than shown on the special permit plat, particularly in the southeastern picnic area. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including UFM, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction.

14. Existing healthy vegetation shall be preserved along the eastern lot line as depicted on the SP Plat. Additionally, notwithstanding that which is shown on the Plat, the Applicant shall install evergreen shrubbery (Inkberry and Hybrid Holly or a type recommended by UFM between the abutting Lots (99, 100, and a portion of 98 as shown on the SP Plat) and that portion of the "existing chain link fence" shown on the Plat along the eastern parking lot. Said plantings shall be installed for the purpose of screening views of the parking lot from the houses located on Lots 98, 99, and 100.

15. Any proposed new lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. All lighting shall be full cut-off luminaries and shall be controlled by timers (except for security lighting). No new uplighting of landscaping, signage or architecture shall be provided.

16. The treatment of the abandoned well and septic field shall comply with requirements of the Fairfax County Health Department.

17. Subject to Virginia Department of Transportation (VDOT) and the Department of Public Works and Environmental Services (DPWES) approval, the applicant shall dedicate and convey in fee simple to the Board of Supervisors, right-of-way up to 77 feet from the centerline along Lots 1 and 2 frontages to Little River Turnpike as shown on the SP plat. Dedication shall be made at the time of site plan review or upon demand of either Fairfax County or VDOT, whichever should occur first. The limits of the proposed conservation easement shown on the SP Plat for Lots 1 and 2 shall be adjusted at site plan review so as to exclude this right-of-way dedication and an area ten feet in width adjacent to such dedication area.

18. The existing asphalt trail shall be continued across the frontage of Lots 1 and 2 by designating a painted stripe on the shoulder of the service drive, as determined by the Department of Transportation (DOT).

19. The applicant shall obtain a sign permit for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.

20. All garbage or trash shall be picked up at the entrance to the church on the access road parallel to Little River Turnpike or at an appropriate location on the church property near the building.

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

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

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

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~ ~ ~ February 14, 2006, Scheduled case of:

9:00 A.M. MICHAEL BRATTI AND GINNI BRATTI, A 2005-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 2025 Franklin Av. on approx. 20,471 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 2. (Admin. moved from 5/24/05 at app. req.) (Deferred from 6/28/05, 7/19/05, and 12/20/05)

Chairman DiGiulian noted that A 2005-DR-009 had been indefinitely deferred.

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~ ~ ~ February 14, 2006, Scheduled case of:

9:30 A.M. MARC SEGUINOT, A 2004-PR-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 59-3 ((7)) 45 is in violation of Zoning Ordinance provisions. Located at 3807 Prosperity Ave. on approx. 29,164 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((7)) 45. (Notices not in order - Deferred from 1/11/05)

~ ~ ~ February 14, 2006, MARC SEGUINOT, A 2004-PR-035, continued from Page 160

(Decision deferred from 4/19/05 and 10/25/05)

Chairman DiGiulian noted that A 2004-PR-035 had been indefinitely deferred.

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~ ~ ~ February 14, 2006, Scheduled case of:

9:30 A.M. THANH TRUONG, A 2005-PR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a place of worship on property in the R-3 District without an approved special permit in violation of Zoning Ordinance provisions. Located at 3418 Annandale Rd. on approx. 3.35 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A. (Decision deferred from 5/24/05 and 11/29/05 at appl. req.)

Chairman DiGiulian noted that on February 7, 2006, the Board issued an itent to defer the decision on A 2005-PR-008 to March 14, 2006, and he called for a motion.

Mr. Beard moved to defer decision on A 2005-PR-008 to March 14, 2006, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ February 14, 2006, Scheduled case of:

9:30 A.M. A-1 SOLAR CONTROL, A 2005-DR-057 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a vehicle light service establishment on property in the C-5 District without approval of a Special Exception, a site plan, nor a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55.

9:30 A.M. CHARLES A. LANARAS, A 2005-DR-060 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a vehicle light service establishment on property in the C-5 District without approval of a Special Exception, a site plan, nor a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55.

William M. Baskin, Jr., 10510 Leesburg Pike, Vienna, Virginia, identified himself as the agent for the appellants.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated February 7, 2006. This was an appeal of a determination that the appellants were operating a vehicle light service establishment on property in the C-5 District without approval of a special exception, a site plan, or a Non-Residential Use Permit (Non-RUP), all in violation of Zoning Ordinance provisions.

The property is zoned C-5, Neighborhood Retail Community District, and was originally developed as a gas station which consisted of three service bays, a canopy, and an accessory office area. The operation of a vehicle light service establishment on the subject property by the appellants was the subject of prior appeal applications before the BZA, Appeals A 2005-DR-011 and A 2005-DR-012, in which the appellants were issued a Notice of Violation for not having obtained site plan approval and for not completing construction of all required improvements in accordance with Special Exception SE 2002-DR-011 prior to the issuance of a Non-RUP. The Non-RUP was issued in error to A-1 Solar Control, and was rescinded. In addition, a request for additional time for the special exception was denied by the Board of Supervisors, which rendered a decision by the BZA on these appeals moot.

A subsequent inspection by Zoning Enforcement staff revealed that the property was still occupied by A-1 Solar Control, and outdoor signage indicated there was an operation of a commercial, residential, and

automotive window tinting business. Ms. Tsai quoted the definition of a vehicle light service establishment as set forth in Article 20 of the Zoning Ordinance, stating that the appellants' use of the property for on-site tinting of automobile windows was the installation of a motor vehicle accessory use and was deemed a vehicle light service establishment. She pointed out that research of County records indicated that no site plan or Non-RUP approvals were issued for the subject property.

The appellants, in their Nature of Appeal, maintained that the property's use was a retail use which did not require a special exception, and that they proposed to operate as a retail sales establishment as the primary use with the vehicle window tinting establishment as an accessory use. Based on previous interpretations and in this instance, the vehicle light service establishment use would not be deemed an accessory use to a retail sales establishment. The definition of an accessory use clearly indicated that the use was subordinate to the primary use and subordinate in purpose and area. Staff's position was that the primary use of the property would be the vehicle light service establishment use, and the proposed retail sales would be an accessory use. A-1 Solar Control performed on-site vehicle window tinting as its primary use and, therefore, was deemed a vehicle light service establishment use in the C-5 District, which required a Category 5 special exception use approval. The appellants' use had been established without special exception, site plan, and Non-RUP approvals; therefore, the appellants, A-1 Solar Control and Charles A. Lanaras, were operating and permitting the operation of a vehicle light service establishment use without applicable approvals in violation of Zoning Ordinance provisions. Staff recommended that the BZA uphold the Zoning Administrator's determination.

Mr. Hart commented that neither a copy of the Non-RUP nor a copy of the statute was contained in the appellants' file, and requested that he be provided a copy of each. He clarified that if one did not consider the 60-day rule, and the appellants had done the site improvements and obtained the site plan showing the improvements, then the vehicle light service use could have been established under a special exception. He recited the scenario as he understood it, that the Non-RUP was issued, which was subject to the conditions of the SE, the SE expired, and now there was nothing, to which staff concurred.

Mr. Baskin gave a brief history of the property's use, stating that the appellants operated a window tinting business servicing approximately eight customers daily. The Non-RUP, which was applied for in December, had since elapsed, and his client was cited for a violation, which he appealed. Staff advised him to apply for an extension of time to the special exception that was issued, but never implemented, which the appellants pursued and was under the impression that he was to perform the conditions imposed by the Board of Supervisors (BOS), who were to take the matter up after the BZA made its decision on the pending appeal, but the BOS denied the time extension. Only after the appellant came before the BZA on September 27, 2005, was he informed of the denial of his time extension request. Mr. Baskin said he understood that staff withdrew the violation, the appellant asked the Board for a determination on its appeal, and the Board said there was nothing to decide as there was nothing pending.

Subsequently, staff re-issued the Notice of Violation, and the appellant raised the 60-day time issue on the appeal. The current staff position was that the original appeal became moot; therefore, the applicant lost his right regarding the 60-day defense of the Non-RUP having been issued with no action taken to nullify within the 60 days. Mr. Baskin stated that he found staff's position or argument illogical, as the facts remained that the Non-RUP was issued in December with no action taken to rescind it within 60 days. Mr. Baskin said the appellants had changed their position on the reliance of the issuance of the Non-RUP, and their position was that the Non-RUP was issued, the appellants had the right to rely on that, and if the Non-RUP should not have been issued because the SE had expired, then that perhaps was a mistake, which he thought was the type of mistake that the 60-day provision in the statute intended to remedy. He pointed out that the structure had been there for 35 years, had operated as a gas station serving far more customers than the present use, and that common sense should be applied in this situation. The other issue was that the use, in the appellants' opinion, was a retail use, and this particular use, a window tinting operation, was not defined within the statute that defined a vehicle light service establishment. Mr. Baskin concluded his presentation, stating that he believed this use was permitted in a C-5 District.

Discussion followed between Mr. Hart and Mr. Baskin concerning the issuance of the Non-RUP and the requirements of the conditions contained in the applicable SE.

One of the appellants, David Bellinger, proprietor of A-1 Solar Control, affirmed that the County Fire Marshall

inspector performed the required test after December 7, 2004, which was when the Non-RUP was issued, and the certification was posted on the wall.

Mr. Hammack stated that, in his opinion, when a Non-RUP was issued and it clearly stated subject to conditions set forth in the SE, he did not think the 60-day rule extinguished things. He said he believed the appellants must comply with the development conditions, and he thought the appellants should be allowed to continue with their application.

Discussion followed between Mr. Byers, Mr. Hammack, and Mr. Baskin concerning the time line regarding when the previous owner obtained the special exception, the subsequent issuance of the Non-RUP to the appellants, and the fact that no action was taken on fulfilling the development conditions for the required improvements.

Mr. Baskin responded to questions from Mr. Hart and Mr. Beard concerning a 30-month time extension, the BOS's discretion to approve or deny additional time, and whether notice to the appellants was required; whether the appellants had any information that might suggest staff's classification of a vehicle light service establishment as opposed to retail was inconsistent with previous determinations or other approvals given to window tinting establishments; the appellants' argument of retail versus vehicle light service; the fact that the Non-RUP application was for a vehicle light service; and, the appellants' reliance on the 60-day rule.

Chairman DiGiulian called for speakers; there was no response.

In closing staff comments, Mavis Stanfield, Assistant Zoning Administrator for Appeals, Zoning Administration Division, read Ordinance language regarding the expiration of a special exception, Article 9-015, Par. 4, which stipulated the expiration, without notice, of an SE if there was no action taken, and the use or the construction in accordance with the provisions, which included a request for additional time. She pointed out that staff prepared a memorandum to the BOS of its recommendation that the special exception and the additional time be denied, and that a copy of that memorandum was provided to the appellants.

Mr. Baskin declined rebuttal.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer the decision on A 2005-DR-057 and A 2005-DR-060 to March 14, 2006, at 9:30 a.m.

Mr. Hart addressed the two issues he believed should be considered during the deferral. The first was the issuance of the Non-RUP and the 60-day rule, commenting that he thought the argument that the clerical error exception was applicable was not persuasive, citing the SE's Development Condition 3, which clearly required a site plan in accordance with the drawings. He also pointed out that 30 months was not a guarantee, and that there may be an issue of a procedural problem that may be able to be sorted out. The second issue was whether the category of window tinting use clearly fell within a vehicle light service establishment, and he requested that staff provide the Board with information on other Non-RUPs for this kind of use and whether there were other determinations.

Mr. Ribble seconded the motion.

Mr. Hammack commented that, as he saw it, the appellants were operating without a valid Non-RUP at the present time, and the BZA had not the equitable power to make classifications. He also stated that there was no appeal filed within 30 days.

Mr. Byers stated he would not support a deferral as he thought the case stood on the facts presented and its own merit. He said staff made a distinction between a light service and a retail establishment, and he did not agree with the appellants that the use was like a 7-11. Mr. Byers stated that the overriding fact for him was that the BOS granted a special exception in 2002 with specific development conditions associated with the Non-RUP, and within 30 months, it was not adhered to. He said from his perspective he thought it was not his job, as a member of the BZA, to make a determination on something that from a zoning standpoint may be looked at in the future of whether it was correctly defined as a vehicle service establishment.

~ ~ ~ February 14, 2006, A-1 SOLAR CONTROL, A 2005-DR-057, and CHARLES A. LANARAS, A 2005-DR-060, continued from Page 163

Mr. Hart explained that he was not prepared that day to determine if the Zoning Administrator was correct in its classification of this as a vehicle light service establishment, as although the Zoning Ordinance definition was quite specific, there was no mention of window tinting. He thought it would be helpful for staff to provide further information of other similar cases because at the present time he was not prepared to conclude whether the appellants' use fit the definition.

The motion to defer the decision to March 14, 2006, at 9:30 a.m., carried by a vote of 4-2. Mr. Hammack and Mr. Byers voted against the motion. Ms. Gibb was absent from the meeting.

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~ ~ ~ February 14, 2006, Scheduled case of:

9:30 A.M. CHRIS D. AND GLENDA F. GRABIEL, A 2005-LE-051 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure, which is located in the front yard of property located in the R-3 Cluster District, is in violation of Zoning Ordinance provisions. Located at 5307 Foxboro Ct. on approx. 12,427 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((5)) 57. (Decision deferred from 1/10/06)

Chairman DiGiulian noted that A 2005-LE-051 had been withdrawn.

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~ ~ ~ February 14, 2006, After Agenda Item:

Approval of Minutes
August 9, 2005; October 25, 2005; and November 15, 2005 and
VC 2005-MV-005, for Horace Cooper, for inclusion into the Return of Record

Mr. Hart made a correction to the August 5, 2005 set of minutes, to clarify that the law firm of Hart and Horan, PC, had represented an adverse party, and was not the adverse party. He reminded the Board that he had recused himself from the public hearing.

Mr. Ribble moved to approve the Minutes, as corrected by Mr. Hart. Mr. Hammack seconded the motion, which carried by a vote of 5-0-1. Mr. Hart abstained from the vote. Ms. Gibb was absent from the meeting.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Cooper versus BZA, Williamson Group Land Development, LLC, v. BZA, Virginia Equity Solutions, Lake Braddock case, RLUIPA issues, BZA By-Laws, the Lee case, and the McCarthy case, and correspondence, pursuant to Virginia Code Ann. Sect. 2.2-3711(A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

The meeting recessed at 10:39 a.m. and reconvened at 11:24 a.m.

Mr. Hammack moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene closed session were heard, discussed or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ February 14, 2006, continued from Page 164

As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Minutes by: Paula A. McFarland

Approved on: September 15, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 28, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; and; Norman P. Byers. Paul W. Hammack, Jr. was absent from the meeting.

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

~ ~ ~ February 28, 2006, Scheduled case of:

9:00 A.M. YUMA COURT LLC C/O LAWRENCE E. IRELAND, PE., VC 2005-MA-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 22.79 ft. from front lot line. Located at 5213 Yuma Ct. on approx. 18,185 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((11)) 81. (Associated with SE 2005-MA-022) Admin. moved from 1/31/06 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert W. Nelson, 3900 Briars Road, Olney, Maryland, the applicant's agent, replied that it was.

Carrie D. Lee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to construct a single-family detached house with a two-car garage and driveway on a residential lot with a 100-year floodplain and Resource Protection Area (RPA). A variance was requested to permit the dwelling to be 22.79 feet from the front lot line when a 35-foot front is required for the R-2 Zoning District. She stated that the two factors which affected the request concerned the impact on the RPA by the portion of the lot which was within the floodplain and the RPA. Due to the orientation of the lot, the 12-foot front yard setback would align the structure with the adjacent home to the north, thus permitting the structure's location 12 feet further out of the floodplain and RPA, which would reduce the driveway's length, the amount of impervious surface, the amount of earth fill and disturbed area, and resulting in less encroachment into the RPA.

Ms. Lee stated that concerning the applicant's special exception application, the applicant had submitted a Chesapeake Bay Preservation Ordinance Encroachment Exception to the Board of Supervisors for a decision.

Mr. Nelson presented the variance request as outlined in the statement of justification submitted with the application. He said it was at staff's request that they appear before the Board of Zoning Appeals to request that the home be moved forward so as to minimize the impact into the floodplain and the RPA and, thus, reduce the amount of fill. Mr. Nelson concurred with staff's decision about moving the house forward and requested the Board's favorable recommendation.

In response to Mr. Hart's question of whether he had reviewed with staff the effects of the 2004 Cochran decision on his variance application, Mr. Nelson stated that he was not aware of that decision.

Mr. Hart informed the applicant that in April of 2004 the Virginia Supreme Court issued an opinion that effectively required the BZA to make a threshold determination of whether the Ordinance interfered with all reasonable beneficial uses of a property, taken as a whole, before further action could be taken. He noted that Mr. Nelson's development plans detailed Options A and B, and one option would not require a variance, so as a threshold matter, the application failed the test because a house could be built on the lot without a reduction of the minimum front yard. Mr. Hart clarified that staff had not made a recommendation concerning the reasonable, beneficial use standard.

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

Mr. Hart commented that there may be environmental reasons that Option B was preferable to Option A; however, if there were a situation that did not require a variance, by definition, the application would not meet the Cochran threshold test. He said he thought this application did not meet the criteria for a variance.

Mr. Byers moved to deny VC 2005-MA-014 for the reasons stated in the Resolution.

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~ ~ ~ February 28, 2006, YUMA COURT LLC C/O LAWRENCE E. IRELAND, PE., VC 2005-MA-014, continued from Page 167

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

YUMA COURT LLC C/O LAWRENCE E. IRELAND, PE., VC 2005-MA-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 22.79 ft. from front lot line. Located at 5213 Yuma Ct. on approx. 18,185 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((11)) 81. (Associated with SE 2005-MA-022) (Admin. moved from 1/31/06 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 28, 2006; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 18,185 square feet.
4. With regard to Standard 4, the strict application of the Ordinance would not produce undue hardship.
5. Because there was a second option, Standard 6A is not met.
6. It is not a clearly demonstrable hardship, and it is a convenience because there is an option.
7. The authorization of the variance could be detrimental to the adjacent properties.

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

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a

~ ~ ~ February 28, 2006, YUMA COURT LLC C/O LAWRENCE E. IRELAND, PE., VC 2005-MA-014, continued from Page 168

strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

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

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

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~ ~ ~ February 28, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF THE FULL GOSPEL FIRST CHURCH OF WASHINGTON, SPA 89-M-041-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 89-M-041 previously approved for a church to permit a child care center, building addition, increase in land area and site modifications. Located at 6401, 6405, 6407, and 6415 Lincolnia Rd. on approx. 4.35 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 59, 59B, 59C and 59D. (Admin. moved from 11/15/05 at appl. req.) (Decision deferred from 1/10/06)

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

Chairman DiGiulian called the applicant to the podium. Robert A. Lawrence, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, the applicant's agent, said the application was deferred for decision from January, and the applicant concurred with staff's revised development conditions, particularly Condition 14, that addressed the neighbors' concerns about the provision of transitional screening.

In response to Mr. Hart's question concerning Development Condition 10, John-David Moss, Staff Coordinator, clarified that nothing had changed concerning the appropriateness and flexibility of the waiver of the trail's provision and the disposition of its escrow.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff preferred that the trail be built, and staff was putting the applicant on notice of that requirement; however, a waiver could be requested if the trail, for whatever reasons, had to be constructed at a later date.

Mr. Lawrence cited two issues of concern, the fact that the trail would be going "nowhere" as to where it was to connect, and the extension of the trail to the culvert area which required additional box culverts at the church's expense. He noted that there was no objection to escrowing the cost of an asphalt trail for the specified length and redirecting the funds where they may be more appropriately utilized.

Mr. Hart stated that to waive the trail was the decision of the Department of Public Works and Environmental Services, while the BZA's consideration was that of the procedural issue if the trail were waived, not whether there were problems with its construction.

In response to Mr. Byers' question, Mr. Moss informed the Board that the property owner to the south had agreed with the transitional screening condition as revised by staff.

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

Mr. Hart moved to approve SPA 89-M-041-02 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE FULL GOSPEL FIRST CHURCH OF WASHINGTON, SPA 89-M-041-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 89-M-041 previously approved for a church to permit a

child care center, building addition, increase in land area and site modifications. Located at 6401, 6405, 6407, and 6415 Lincolnia Rd. on approx. 4.35 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 59, 59B, 59C and 59D. (Admin. moved from 11/15/05 at appl. req.) (Decision deferred from 1/10/06) 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 28, 2006; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a special permit.
3. The rationale in the staff report is to be adopted.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Full Gospel First Church of Washington, and is not transferable without further action of this Board, and is for the location indicated on the application, 6401, 6405, 6407 and 6415 Lincolnia Road, (4.35 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 Philip C. Champagne, Dewberry and Davis LLC, dated August 3, 2005; revised through November 30, 2005, approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of seats in the main area of worship shall be 250.

6. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site, except that off-site parking may be permitted during Sunday services only, and shall be confined to the Parklawn Elementary School, subject to the existing, express consent of the school and to the continued approval of an off-site shared parking arrangement by DPWES.

7. Transitional Screening and landscaping shall be provided as shown on Sheet 2 of the Special Permit Plat. All landscaping shown on the approved plat and required with these development conditions shall be subject to the review and approval of Urban Forestry Management of DPWES.

8. The barrier requirement shall be waived except for the fencing shown adjacent to Braddock Road on the special permit plat.

9. Stormwater management shall be implemented and maintained as required by DPWES to detain stormwater runoff on the site, and may include, but not be limited to, the provision of an on-site stormwater detention pond as shown on the plat, and/or contribution to off-site drainage projects downstream or other measures in accordance with County ordinances as determined by DPWES to alleviate flooding problems related to this site and the adjacent Braddock Road culvert.

10. A trail within a public access easement shall be provided along the frontage of Braddock Road from the terminus of the existing trail easement to the southern property line, unless waived at the time of site plan. If waived, funds shall be placed in escrow with DPWES to be used by DPWES for the extension of the trail to the southern property line at such time as a trail is constructed along the frontage of the adjacent parcel (Tax Map 72-1 ((1)) Parcel 56) to the south. The amount of the escrowed funds shall be determined by DPWES using County bonding estimates. In the event the trail is waived by DPWES but the escrowed funds are not used within five (5) years of the issuance of the non-RUP, then the escrowed funds may be used for other trail construction projects within the Mason District at the discretion of DPWES.

11. Any proposed lighting of the parking area shall be in accordance with the following:

    - The combined height of each light standard and fixture shall not exceed twelve (12) feet.
    - The lights shall focus directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility or off the property.

12. No outside public speakers or public address system shall be permitted.

13. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.

14. In order to restore a natural appearance to the southeastern corner of the subject site, a landscape plan shall be submitted as part of the first submission of the Full Gospel First Church of Washington site plan. The plan shall show any restrictive planting easement for the swale, and extensive landscaping appropriate for the conditions in all areas outside of the restrictive planting easement and the limits of the 100-year water surface elevation. The intent of Transitional Screening 1 shall be achieved to the maximum extent feasible, with particular care being given to screen the use from the dwelling located at Tax Map 72-1 ((1)) 56. Number, size and species of all plant material shall be determined in consultation with Urban Forest Management using Public Facility Manual and Transitional Screening 1 standards, with evergreen trees being utilized to the greatest extent possible. All plant material shall be perpetually maintained on the site and replanted if dead, dying or hazardous, unless removed by Fairfax County. Prior to the issuance of a Non-Residential Use Permit, staff from the Department of Planning and Zoning and Urban Forest Management shall walk the site to ensure that these conditions have been met.

15. Upon issuance of a new non-RUP, the total maximum daily enrollment in the child care center shall not exceed 80.

16. The child care center's maximum hours of operation shall be 7:00 A.M. to 6:00 P.M., Monday through Friday.

17. A floodplain study to establish the hundred-year floodplain and storm drainage easement for the natural channel within the site shall be submitted to DPWES for review and approval. The study shall adequately analyze the capacity of the existing culverts under Braddock Road. In the event that flooding extends beyond the limits of the existing storm drainage easement, drainage improvements shall be made on-site by either retrofitting the existing pond or upgrading the size of the existing culverts underneath Braddock Road as determined by DPWES. The capacity of the

~ ~ ~ February 28, 2006, TRUSTEES OF THE FULL GOSPEL FIRST CHURCH OF WASHINGTON, SPA 89-M-041-02, continued from Page 171

downstream receiving channel, up to the point of a major floodplain or 100 times the drainage area from the site, shall also be adequately analyzed.

18. The dwelling on Tax Map 72-1 ((1)) Parcel 59B shall be used only as a residence and occupied only by an employee or member of the church and his/her family.

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

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

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

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~ ~ ~ February 28, 2006, Scheduled case of:

9:00 A.M. KENNETH R. EIRIKSSON, JR., SP 2005-SP-036 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 8107 Ainsworth Ave. on approx. 12,420 sq. ft. of land zoned R-3. Springfield District. Tax Map 79-4 ((3)) (4) 40A. (Decision deferred from 12/20/05)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth R. Eiriksson, 8107 Ainsworth Avenue, Springfield, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, stated that application was deferred for decision to allow staff time to determine if Mr. Eiriksson had the right to file the application for a home professional office in his name and not be required to include the name of his company. The determination by Bette Crane, County Attorney's Office, and Scott Wynn, a supervising County Attorney, found that Mr. Eiriksson was not required to list his company's name; however, if Mr. Eiriksson were to lease a portion of his property to his company, that information must be disclosed in the affidavit and additional information provided about the company.

In response to Mr. Hart's question of whether there were changes to the requested number of employees or the parking configuration, Mr. Vargas said the applicant would comply with staff's development conditions.

Chairman DiGiulian called attention to two additional letters of opposition as well as an opposition petition signed by 11 neighbors that were received after the close of the December 20, 2005, public hearing.

Mr. Eiriksson requested that he be allowed to comment on the opposition letters. He said several of his neighbors had spread erroneous information about him and his business. He maintained that his business was harmonious with the community, he had been there for six years without incident, and regretted that those neighbors who had questions had not approached him directly as he would have dispelled their concerns. He said he believed the petition signers, whom he never met, had signed out of ignorance without knowing what his business entailed.

Although the case was for decision only, Chairman DiGiulian allowed one spokesperson from the neighborhood to address the Board.

~ ~ ~ February 28, 2006, KENNETH R. EIRIKSSON, JR., SP 2005-SP-036, continued from Page 172

Ronald J. Kurth, 8106 Ainsworth Avenue, Springfield, Virginia, said he represented 10 neighbors who all were present in the audience. Mr. Kurth listed their four issues of concern: that an incorporated business should not be permitted in a home in a residential neighborhood; that the general assumption in the neighborhood that the business met all the requirements of the law was in error; that what was required was what Mr. Eiriksson should have put on his affidavit, although whether or not the business was a corporation was unclear; and, lastly, that the definition of a home professional office should be clear. Mr. Kurth refuted the applicant's previous assertions that there were barking dogs, numerous neighbors' cars parked on the street, and that the neighborhood was in transition. He asserted that the golf course across the street increased privacy on Ainsworth Avenue and that the Springfield/Franconia Parkway relieved a good deal of traffic on Old Keene Mill Road. Mr. Kurth referenced his February 4, 2006, letter to the Board and briefly commented on the facts of the neighborhood's transition, concluding his statements reaffirming that he and his neighbors had lived in the neighborhood for a very long time, some all of their lives, and some for most of their professional lives, and they did not care to take the risk that this variation from zoning might permit.

In his rebuttal, Mr. Eiriksson maintained that his previous comments at the public hearing were correct, that the neighborhood was in transition. He stated that was not the issue, the issue was whether or not the use was appropriate and whether he should be classified as a corporation. Mr. Eiriksson stated that a business such as an accountant or realtor warranted personal asset protection that a corporation status afforded, but his particular service did not. He conceded that there appeared to be great opposition, and he recognized that the Board took that into consideration. If the decision were to deny, he requested the courtesy of several months in order to transition to another location. Mr. Eiriksson affirmed that he was a professional with considerable professional and educational accreditations. He stated that millions of Americans lived in community associations, and that in his office he managed 17 of such associations with one and one half employees for 40 hours per week. He maintained that the improvements he made to the house had increased property values and he was not a detriment to the neighborhood.

Chairman DiGiulian closed the hearing.

Mr. Beard stated that he did not doubt Mr. Eiriksson's sincerity, but voiced his concern over several development conditions such as the hours of operation and the number of employees and clients allowed per day, which he said he believed may warrant monitoring that would be difficult to accomplish.

Mr. Ribble moved to deny SP 2005-SP-036 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH R. EIRIKSSON, JR., SP 2005-SP-036 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 8107 Ainsworth Ave. on approx. 12,420 sq. ft. of land zoned R-3. Springfield District. Tax Map 79-4 ((3)) (4) 40A. (Decision deferred from 12/20/05) Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 28, 2006; and

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

1. The applicant is the owner of the land.
2. Although the business may not bring in a lot of traffic, there is the possibility that it may.
3. Although staff has recommended approval, one of the standards that must be met is that the use be harmonious with and not change the character of the neighborhood, but the neighbors' oral and written testimony indicates that standard is not met.

~ ~ ~ February 28, 2006, KENNETH R. EIRIKSSON, JR., SP 2005-SP-036, continued from Page 173

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-907 of the Zoning Ordinance.

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

Mr. Beard seconded the motion, which carried by a vote of 5-0-1. Ms. Gibb abstained from the vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 28, 2006, Scheduled case of:

9:00 A.M. MULFORD ENTERPRISES, INC., SP 2005-SU-039 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a riding and boarding stable. Located at 15109 Lee Hwy. on approx. 14.41 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((3)) 22 and 23. (Associated with SEA 2003-SU-001) (Admin. moved from 1/31/06 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Harry Mulford, representing Mulford Enterprises, replied that it was.

Jonathan Papp, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to operate a riding academy with boarding stables out of an existing nursery school. Staff believed the application was in harmony with the Comprehensive Plan and in conformance with Zoning Ordinance provisions. The Planning Commission had recommended approval of the concurrent special exception amendment, SEA 2003-SU-001, on February 16, 2006, with the Board of Supervisors scheduled to hear the case March 13, 2006. Staff recommended approval with adoption of the proposed development conditions dated February 27, 2006, and distributed that morning, to include a change in Condition 6 to better define the hours of operation of the riding academy.

Mr. Mulford approached the podium and stated that staff had considered all issues, and he had nothing further to add. He agreed to all the development conditions, including Development Condition 6.

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

Ms. Gibb moved to approve SP 2005-SU-039 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MULFORD ENTERPRISES, INC., SP 2005-SU-039 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a riding and boarding stable. Located at 15109 Lee Hwy. on approx. 14.41 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((3)) 22 and 23. (Associated with SEA 2003-SU-001) (Admin. moved from 1/31/06 at appl. req.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 28, 2006; and

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

~ ~ ~ February 28, 2006, MULFORD ENTERPRISES, INC., SP 2005-SU-039, continued from Page 174

1. Staff has recommended approval.
2. The analysis of this application appears very thorough.

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

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

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

1. This approval is granted to the applicant only, Mulford Enterprises, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 15109 Lee Highway, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Bowman Consulting Group, Ltd., dated November 8, 2002, revised February 24, 2006, approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The horse paddock and barn on site are for the use of the caretakers and school only (riding lessons/barn visits for the students). There shall be no use of the riding facilities for any type of horse shows or riding demonstrations at any time. There shall be no lighting of outdoor riding facilities or use of loudspeaker systems at any time. There shall be no commercial boarding allowed in this facility. The maximum number of horses on site shall be ten (10) at any one time.

6. The riding academy shall be limited to a maximum of ten riders at any one time. Lessons will be held between 2:00 p.m. - 6:30 p.m. Monday through Friday, and 9:00 a.m. – 4:30 p.m. on Saturday, January through May and September through December. Summer lessons will be held 9:00 a.m. – 5:00 p.m. Monday through Friday, June through August. Summer lessons will be limited to a maximum of twenty riders at any one time.

7. Horse riding shall only take place in areas specifically designated as equestrian trails on the SP/SEA Plat. All trails shall be maintained in order to minimize the impact upon the surrounding undisturbed open space; any clearing necessitated to establish these trails shall be approved by UFM and animal waste shall be regularly removed and disposed of per the recommendation of the conservation plan to be developed with Northern Virginia Soil and Water Conservation District (see Condition 11).

8. A minimum of 50% of the site shall remain as undisturbed open space to include the areas identified on the SE Plat as those areas outside the limits of clearing and grading. No structures, fences, utility locations, and/or clearing and grading shall be permitted within these areas. The undisturbed open space shall not be used for permanent or temporary paddock or housing or riding trails (except as permitted by Condition 7) for horses, ponies or other livestock.

9. This undisturbed open space shall be placed in a conservation easement. If approved by DPWES, stone dust trails for walking and exercise may be constructed to loop through the rear of the site. If access onto adjacent parcels can be acquired, these trails shall connect with the parcels to the west, south and east.

~ ~ ~ February 28, 2006, MULFORD ENTERPRISES, INC., SP 2005-SU-039, continued from Page 175

10. A Water Quality Management Plan shall be submitted which has been prepared with the assistance of the Northern Virginia Soil and Water Conservation District, in compliance with the Chesapeake Bay Preservation Ordinance to ensure that the equestrian component does not impact water quality.

11. A conservation plan outlining Best Management Practices (BMP) for the operation shall be developed and implemented, prior to approval of a non-residential use permit, in coordination with the Northern Virginia Soil and Water Conservation District (NVSWCD). The conservation plan shall include management techniques for the operation, including pasture management, disposal of animal waste, composting and nutrient management. No animal waste shall be permitted to decay in place or to be washed into natural drainage from the site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

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

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

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~ ~ ~ February 28, 2006, Scheduled case of:

9:00 A.M. FIRST BAPTIST CHURCH OF FOXCHASE, SPA 2002-MA-038 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 2002-MA-038 previously approved for a place of worship to permit a change in development conditions and site modifications. Located at 4215 Pine La. on approx. 1.78 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 63.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert C. Mereness, CADCON Consulting, Inc., 10706 Vandor Lane, Manassas, Virginia, the applicant's agent and engineer, replied that it was.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested to amend SP 2002-MA-038, previously approved for a place of worship, to permit site modifications. The site was previously approved for a 4,860-square-foot church with 240 seats and 84 parking spaces. The applicant requested to modify the previously approved limits of clearing and grading due to final engineering, which were restricted by the approved development conditions. Staff recommended approval of the application.

Mr. Mereness presented the special permit amendment request as outlined in the statement of justification submitted with the application. He explained that the special permit was approved in 2002, following which the site plan was submitted, which was now in bonding. He said they were required to modify the limits of clearing and grading and requested the Board's favorable recommendation so that the project could commence.

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

Mr. Beard moved to approve SPA 2002-MA-038 for the reasons stated in the Resolution.

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~ ~ ~ February 28, 2006, FIRST BAPTIST CHURCH OF FOXCHASE, SPA 2002-MA-038, continued from Page 176

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FIRST BAPTIST CHURCH OF FOXCHASE, SPA 2002-MA-038 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 2002-MA-038 previously approved for a place of worship to permit a change in development conditions and site modifications. Located at 4215 Pine La. on approx. 1.78 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 63. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 28, 2006; and

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

1. The applicant is the owner of the land.
2. The application has staff's recommendation of approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, First Baptist Church of FoxChase, and is not transferable without further action of this Board, and is for the location indicated on the application, 4215 Pine Lane (1.78 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 CAD-CON Consulting, Incorporated, dated August 23, 2005, as revised through February 1, 2006.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of seats in the main area of worship shall be two hundred and forty (240).

6. Parking shall be provided as depicted on the Special Permit Amendment Plat. All parking shall be located on site.

7. The design of the church shall be consistent with the architectural renderings included as Attachment 1 to the Special Permit Amendment conditions.

8. The transitional screening requirement shall be modified along all lot lines in favor of the existing vegetation and shall be supplemented with a mixture of deciduous, flowering, and evergreen trees to visually screen the church from adjacent residential properties.

~ ~ ~ February 28, 2006, FIRST BAPTIST CHURCH OF FOXCHASE, SPA 2002-MA-038, continued from Page 177

Along the western and southwestern lot lines, invasive and undesirable vegetation such as mulberries, black locust and black cherries shall be removed as determined necessary by Urban Forest Management and replaced with evergreen trees to meet the intent of Transitional Screening 1.

The size, type, and number of supplemental trees shall be as approved by Urban Forest Management.

9. The barrier requirement shall be waived along all lot lines.

10. Interior and peripheral parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance, as determined by DPWES, and as shown on the special permit amendment plat. In addition, an evergreen hedge shall be provided around the periphery of the parking lot to reduce headlight glare into neighboring residential properties.

11. Foundation plantings shall be provided on all sides of the structure as shown on the Special Permit Amendment Plat and as approved by Urban Forest Management, to visually soften the appearance of the structure.

12. Stormwater Management/best management practices (SWM/BMP) shall be provided, as determined by the Department of Public Works and Environmental Services (DPWES). If approved by DPWES, a bioretention facility shall be provided for SWM/BMP purposes; however, notwithstanding what is shown on the SPA Plat, the facility shall be located outside the transitional screening areas.

13. Tree cover shall be provided per Article 13 of the Zoning Ordinance. Final determination regarding compliance with these requirements shall be as approved by Urban Forest Management at the time of site plan review.

14. All signs on the property shall conform to the provisions of Article 12.

15. The limits of clearing and grading shall be no greater than shown on the Special Permit Amendment plat. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including Urban Forest Management, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction. In no event shall any area on the site be left denuded for a period of longer than 14 days except for that portion of the site in which work will be continuous for beyond 14 days.

16. Any proposed lighting on the site shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. All lighting shall be full cut-off luminaries which include shields, if necessary, to prevent the light from projecting beyond the property, and shall be controlled by timers and will remain off when the site is not in use (except for security lighting). There shall be no up-lighting of landscaping, signage or architecture.

These conditions incorporate and supersede the previously approved development conditions.

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

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

~ ~ ~ February 28, 2006, FIRST BAPTIST CHURCH OF FOXCHASE, SPA 2002-MA-038, continued from Page 178

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

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

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~ ~ ~ February 28, 2006, Scheduled case of:

9:30 A.M. JAMES I. LANE AND/OR JOAN C. TOOMEY, JTWROS, A 2004-SP-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 66-4 ((8)) 7 is in violation of Zoning Ordinance provisions. Located at 12419 Popes Head Rd. on approx.25,276 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((8)) 7. (Continued from 11/16/04) (Decision deferred from 3/1/05, 5/3/05, 6/14/05, and 7/19/05) (Decision deferred from 8/2/05 and 10/11/05)

Chairman DiGiulian noted that A 2004-SP-025 had been indefinitely deferred.

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~ ~ ~ February 28, 2006, Scheduled case of:

9:30 A.M. JOHN N. GERACIMOS AND MEI LEE STROM, A 2005-MV-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-4 District, is in violation of Zoning Ordinance provisions. Located at 2104 Windsor Rd. on approx. 8,213sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602.

Chairman DiGiulian noted that A 2005-MV-018 had been indefinitely deferred.

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~ ~ ~ February 28, 2006, Scheduled case of:

9:30 A.M. ROBERT H. AND ANJALI M. SUES, A 2005-PR-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-1 District, is in violation of Zoning Ordinance provisions. Located at 3228 Highland La. on approx. 57,272 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((8)) 20A. (Admin. moved from 8/9/05 and 12/13/05 at appl. req.)

Chairman DiGiulian noted that A 2005-PR-023 had been indefinitely deferred.

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~ ~ ~ February 28, 2006, Scheduled case of:

9:30 A.M. MICHAEL J. RYAN, A 2005-DR-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 6340 North Nottingham St. on approx. 47,600 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 48. (Admin. moved from 9/13/05 and 12/13/05 at appl. req.)

Chairman DiGiulian noted that A 2005-DR-030 had been indefinitely deferred.

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~ ~ ~ February 28, 2006, Scheduled case of:

9:30 A.M. BROOKS H. LOWERY, A 2004-MA-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 60-2 ((15)) 148 is in violation of Zoning Ordinance provisions. Located at 3212 Cofer Rd. on approx. 12,781 sq. ft. of land zoned Mason District. Tax Map 60-2 ((15)) 148. (Decision deferred from 11/9/04 and 7/12/05) (Decision deferred from 2/8/05 at appl. req.) (Admin. moved from 12/13/05 at appl. req.)

Chairman DiGiulian noted that A 2004-MA-023 had been indefinitely deferred.

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~ ~ ~ February 28, 2006, Scheduled case of:

9:30 A.M. BRIAN J. BROADHEAD, A 2005-MV-058 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has constructed an open deck which does not meet the minimum side yard requirement for the R-20 District in violation of Zoning Ordinance provisions. Located at 8262 Phelps Lake Ct. on approx. 2,214 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 107-1 ((4)) 54A. (Decision deferred from 2/7/06)

Brian J. Broadhead identified himself as the appellant.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in her status update dated February 21, 2006. This was an appeal of a determination that the appellant had constructed an open deck which did not meet the minimum side yard requirement for the R-20 District. On February 7, 2006, the Board of Zoning Appeals (BZA) conducted the public hearing, closed the public hearing, and after some discussion, deferred decision to allow the appellant time to consider submitting an application for a special permit for an error in building location and to provide additional information regarding applicable State Code provisions. The BZA also wanted to review the appellant's rebuttal, and staff required time to address the issues the appellant raised and to clarify the issue of the appeal, which was the side yard setback, not the rear yard setback. There were several neighboring properties whose compliance Mr. Broadhead questioned, which resulted in site inspections by the Zoning Enforcement Branch.

Another issue was Mr. Broadhead's challenge of the Zoning Administrator's determination that a row of townhouses was a building, and the appellant submitted documentation from other jurisdictions in support of his argument. Ms. Collins stated that the material, documentation, and decisions were not relevant to the issue because the issue on appeal was whether the appellant's deck complied with the regulations of the Fairfax County Zoning Ordinance, which it did not. Ms. Collins quoted Ordinance language regarding the matter.

In response to the appellant's allegation that the Zoning Ordinance regulations were not uniformly applied and that he was being treated unfairly and singled out for enforcement, Ms. Collins quoted Ordinance language addressing the issue. She stated that staff had occasionally issued a building permit in error, as Mr. Broadhead asserted, but such mistakes were infrequent. She said that the appellant continued to erect the deck to completion even with the knowledge that the permit was issued in error and a Stop Work Order would soon be issued. Ms. Collins stated that Mr. Broadhead's two options were to apply for a special permit for an error in building location or alter the deck's configuration to come into compliance with the 10-foot side yard setback.

Ms. Collins responded to Mr. Beard's question concerning staff's processing of a permit revocation and ensuing notification.

Mr. Broadhead referenced several questions the BZA brought up at the public hearing. He quoted case law and Ordinance language which, he attested, validated his argument that the Zoning Administrator in the past had not applied all Ordinance requirements that applied to his property. He pointed out a neighbor with an approved deck that also was constructed 10 feet from the lot line, commenting that he hoped a Notice of Violation would not be served to that person as the 60-day rule had long passed. He referenced a Zoning Ordinance amendment that provided greater flexibility for construction of above ground decks for single-family attached units where a rear yard precluded construction of a reasonably sized deck and pointed out that, with staff's interpretation, the provision did not apply in his situation.

~ ~ ~ February 28, 2006, BRIAN J. BROADHEAD, A 2005-MV-058, continued from Page 180

Mr. Broadhead addressed the other issue raised, which was the definition of a building, quoting language from the Code of Virginia. He stated that staff's current interpretation violated the law and cited case law that upheld his contention. He said that the Fairfax County Zoning Ordinance did not determine the intent of the legislature and that the definition of other statutes that address the same subject should be used to define the pertaining words. He quoted language from several cases that he said supported his position. With regard to a building, townhouse, and row house, Mr. Broadhead noted that Fairfax County's Zoning Ordinance adopted a non-standard definition that was not supported by law, which created a situation where each building was not treated uniformly by the Zoning Ordinance. Concluding his presentation, Mr. Broadhead said he was not asking to build a large deck out of character with his neighborhood, but simply requesting that the Zoning Administrator's determination be reversed to allow him a deck like his neighbors.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said it was regrettable that the circumstances occurred for Mr. Broadhead, but she understood that a contractor licensed in Fairfax County was advised and should have known not to proceed with the deck's construction. She repeated Ms. Collins' earlier comments that Mr. Broadhead could apply for a special permit for an error in building location which could correct the situation.

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

Mr. Hart moved to uphold the determination of the Zoning Administrator. He stated that the case was difficult, and both sides had given thorough presentations on several complicated issues, although the case had mixed issues which were not always present in an appeal. Mr. Hart said he disagreed with staff to some extent as to Mr. Broadhead's culpability in a situation like this. Such cases as this were ordinarily seen in the context of an application for special permit for error in building location, but Mr. Broadhead chose not to file one and had gone forward with an appeal on the underlining Ordinance provision. Mr. Hart stated that on the facts before the Board, he did not necessarily find that Mr. Broadhead should have stopped the work at the time staff said, and that this was a confusing series of events, as well as the fact that there was a footers inspection subsequent to staff's original phone call, which suggested that the construction project was proceeding pursuant to a permit. The owner was proceeding in good faith and was entitled to assume, notwithstanding what was occurring in zoning, that the continuation of construction was appropriate at least until such time as a written Stop Work Order was received.

Mr. Hart stated that this case was not that of the BZA dealing with the owner's good faith and whether the special permit should be approved, but whether the Zoning Administrator was correct on the underlining interpretation of the Ordinance provision. Some of the observations that were made about side yards for end unit townhouses were interesting and reasonable; however, the issue that decks for townhouses should be treated the same as interior units was not the BZA's purview, but the Board of Supervisors. The matter of other mistakes having been made in the neighborhood did not persuade him that the Ordinance had not been enforced in a consistent manner. There was not enough to conclude that the violation should be revoked because there were other decks in the vicinity that may or may not comply with the same provision. He quoted Ordinance Sect. 3-2007, Par. 6, and said that considering the provision, the Board's intention was that side yards would be treated differently along peripheral lot lines. Therefore, end units were a different class than side lines for interior units, and that paragraph would distinguish the references Mr. Broadhead made to cases from other jurisdictions and the Statewide Building Code and might suggest an attached unit should be treated in a different manner. He stated that this section of the Ordinance spelled out what this situation was, and it made clear that an end unit for a townhouse did have a different side yard specification. Mr. Hart quoted the Ordinance, Section 2-412, Sec. 3B, Sub. Par. 2, ". . . providing that there be no extension into a minimum side yard for a deck of this height." The Ordinance Section 3-2007, 2A, Sub. Sec. 2, required a side yard of not less than 10 feet, and although unfortunate that the permit was issued in error, it was undisputed that the deck did intrude into the 10-foot minimum yard. Mr. Hart stated that although this was not a sterling example of how a permit should be handled and it was not a good example of good communication with an owner, the underling interpretation of the Zoning Ordinance provision found that the Zoning Administrator was correct. The structure extended into the minimum side yard in violation of Zoning Ordinance requirements, and for those reasons and those findings of fact and conclusions of law, Mr. Hart moved to uphold the determination of the Zoning Administrator.

Mr. Beard stated that he understood how the County may have made errors and then proceeded to immediately remedy the situation, but because Mr. Broadhead was aware of other routes to resolve or ameliorate the situation and chose not to pursue them, he supported the motion.

~ ~ ~ February 28, 2006, BRIAN J. BROADHEAD, A 2005-MV-058, continued from Page 181

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Ms. Gibb abstained from the vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 28, 2006, Scheduled case of:

9:30 A.M. LEANN M. JOHNSON AND JAMES W. KOCH, A 2005-DR-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 1830 Massachusetts Av. on approx. 15,729 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (2) 1. (Admin. moved from 8/2/05 and 12/3/05 at appl. req.)

Chairman DiGiulian noted that A 2005-DR-026 had been indefinitely deferred.

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~ ~ ~ February 28, 2006, Scheduled case of:

9:30 A.M. DANIEL AND DAWN GALVIN, A 2005-SP-052 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-3 District, is in violation of Zoning Ordinance provisions. Located at 12841 Mount Royal Ln. on approx. 10,437 sq. ft. of land zoned R-3 and WS. Springfield District. Tax Map 45-4 ((3)) (46) 3.

Chairman DiGiulian noted that A 2005-SP-052 had been indefinitely deferred.

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~ ~ ~ February 28, 2006, Scheduled case of:

9:30 A.M. ADAM RUTTENBERG, A 2005-DR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 2021 Franklin Av. on approx. 21,599 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 4. (Admin. moved from 8/2/05 and 12/20/05 at appl. req.)

Chairman DiGiulian noted that A 2005-DR-027 had been indefinitely deferred.

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Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding cases; the McCarthy case, the Lee case, the Horace Cooper case, Virginia Equity Solutions, Williamson Group, RLUIPA (Religious Land Use and Institutionalized Persons Act), correspondence, and other legal matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

The meeting recessed at 10:14 a.m. and reconvened at 11:00 a.m.

Mr. Hart moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 28, 2006, continued from Page 182

Mr. Hart moved that the Board authorize Chairman DiGiulian to hire Sharon Pandak to advise the Board and staff on RLUIPA. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Mr. Hart moved that the Board authorize the Chairman to send the correspondence regarding legal matters that the BZA discussed during the February 28, 2006 Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:03 a.m.

Minutes by: Paula A. McFarland

Approved on: September 22, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 7, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; Norman P. Byers; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:02 a.m.

Mr. Hart stated that at 7:00 p.m. on Monday, March 20, 2006, in Rooms 4 and 5 in the Government Center, a public information session would be held on the upcoming Zoning Ordinance amendment regarding modifications to minimum yards. He said the proposed amendment had not yet been heard by the Board of Supervisors (BOS), and the meeting would be the last presentation before the BOS voted on the reauthorization. He noted that the Board of Zoning Appeals had a number of applications pending on the subject until the BOS made its decision. Mr. Hart encouraged anyone who was interested in modifications to side yards to attend.

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

~ ~ ~ March 7, 2006, Scheduled cases of:

9:00 A.M. DOUGLAS & MICHELE ADAMCZYK, VC 2005-DR-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.2 ft. with eave 15.2 ft. from rear lot line. Located at 12507 Forty Oaks Ct. on approx. 8,820 sq. ft. of land zoned R-3. Dranesville District. Tax Map 5-4 ((4)) 15. (Concurrent with SP 2005-DR-050).

9:00 A.M. DOUGLAS & MICHELE ADAMCZYK, SP 2005-DR-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.4 ft. from the rear lot line. Located at 12507 Forty Oaks Ct. on approx. 8,820 sq. ft. of land zoned R-3. Dranesville District. Tax Map 5-4 ((4)) 15. (Concurrent with VC 2005-DR-016).

Chairman DiGiulian noted that requests for indefinite deferrals had been received on VC 2005-DR-016 and SP 2005-DR-050.

Mr. Ribble moved to indefinitely defer VC 2005-DR-016 and SP 2005-DR-050. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 7, 2006, Scheduled case of:

9:00 A.M. BULENT BOZDEMIR, SP 2005-DR-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 3.7 ft. with eave 2.7 ft. from side lot line and accessory structure 4.2 ft. from the rear lot line and 8.2 ft. from the side lot line. Located at 1605 Kirby Rd. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((10)) 23. (Admin. moved from 1/10/06 for notices.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bulent Bozdemir, 1605 Kirby Road, McLean, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions to minimum yard requirements based on error in building location to permit an addition, specifically the enclosure of an existing carport into a garage, to remain 3.7 feet with eave 2.7 feet from a side lot line. A minimum side yard of 15 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 11.3 feet and 9.3 feet, respectively, were requested. Although the application also included a request to permit an accessory structure, specifically play equipment, which according to the applicant measured 7.0 feet, 2.0 inches in height, to remain 4.2 feet from the rear lot line and 8.2 feet from the side lot line, the applicant had agreed to remove, relocate, or reduce the height of the structure so as to comply with Zoning Ordinance regulations. The maximum height permitted is 7.0 feet. Staff included a proposed development condition in Appendix 1

to the staff report to address the issue.

Mr. Hart noted that in correspondence dated February 22, 2006, from John C. and Gladys M. Mott, 6158 Tompkins Drive, McLean, Virginia, a neighbor, there was a suggestion that the carport had been constructed a long time prior in conjunction with a dentist office. He said the neighbor had implied that there had been a restriction at that time that the carport was not to be enclosed. He said the letter also indicated that there had been a garage that had been turned into an office. Mr. Hart asked staff whether there were any restrictions, development conditions, or other information on file concerning the information contained in the Mott letter. Ms. Hedrick responded that no restrictions had been imposed, and the carport enclosure had been done by the applicant. Mr. Hart stated that he was asking if the County had any information pertaining to the enclosure of the original garage for the construction of a dentist office or for the carport. Ms. Hedrick stated that she had pulled the building research for this particular application and did not find any restrictions that would apply. She said she had reviewed the building permit information, and other than the information on the original building permit for the house, there had been nothing else in the file. Ms. Hedrick requested a few minutes to allow her to check the records.

In answer to the questions posed by Mr. Hart, Mr. Bozdemir stated that the only thing he had done was close the garage and had done nothing else in the garage. He said it had existed when he purchased the property and was in the plan. Mr. Hart explained that he had asked the questions based on the letter from the Motts who had stated that when the previous owner had made the garage into a dentist office, a carport had been built, and a condition or restriction had been imposed that the carport could not be enclosed, and he was asking whether staff had any records regarding the events. Mr. Bozdemir indicated that the modifications had been done approximately 15 years prior, before he bought the property. He said currently there were two rooms in the basement that used to be the garage that had later been used as a dentist office, and other than what the Motts had told him, he had no knowledge of it. He acknowledged that he had a copy of the letter from the Motts.

After looking at the building permit history, Ms. Hedrick informed the Board that the file contained only the original permit to build the home and another permit to enclose a rear deck.

Mr. Bozdemir presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he had closed in the carport to provide a space for his children to play and to ensure that the car was warm for his children in the wintertime. He stated that he was unaware that he had to obtain a permit to enclose the carport. He said he had been told that he did not need permission to enclose the carport. Mr. Bozdemir said there was no door leading into the house from the carport.

In answer to a question from Mr. Hammack as to who had told him he did not need a permit to enclose his carport, Mr. Bozdemir said he had been told that by the men he had hired to put in the drywall. He said he had seen them working in his neighborhood, had hired them to put in the drywall, and they had told him that he did not need a permit because the carport was already in place. In answer to another question posed by Mr. Hammack, Mr. Bozdemir stated that he did not enter into a written contract with the men who did the work and had paid them by check. Mr. Hammack asked the applicant to provide the Board with a copy of the check. Mr. Bozdemir stated that he would try, but the payment had been made almost two years prior, and he doubted that he would be able to find it.

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

Mr. Hammack moved to defer decision on SP 2005-DR-042 to March 21, 2006, at 9:00 a.m., to allow the applicant to bring in the information concerning payment to the men who installed the drywall. Mr. Hart seconded the motion. Mr. Hart requested that staff recheck for records regarding the garage having been turned into a dental office for Dr. Messner. He said the Mott letter was very specific, and he wondered whether there was more paperwork somewhere. The motion carried by a vote of 7-0.

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~ ~ ~ March 7, 2006, Scheduled case of:

9:00 A.M. FLOR CAMARGO, SP 2005-MA-049 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit a home child care facility. Located at 7400 Hamilton St. on approx. 12,000 sq. ft. of

~ ~ ~ March 7, 2006, FLOR CAMARGO, SP 2005-MA-049, continued from Page 186

land zoned R-4. Mason District. Tax Map 60-3 ((13)) 1B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Flor Camargo, 7400 Hamilton Street, Annandale, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a home childcare facility for up to ten children. The applicant proposed four total parking spaces: two for the owner, one for an employee, and one for child pickup and drop off. Mr. Varga said staff was concerned that the parking would not be adequate if more than one patron was dropping off or picking up a child. There was no other area on the property to park, so parking must be on the street, which was narrow and contained no sidewalk to provide access to the facility. Staff concluded that the application was not in conformance with the applicable Zoning Ordinance provisions and recommended denial.

In response to a question from Ms. Gibb, Mr. Varga stated that parking was the only issue staff had with the application. He indicated that staff had not received any complaints with respect to the application.

Ms. Gibb said that the applicant indicated there would be ten children attending the Kids World Daycare facility and asked how many were currently using the facility. Mr. Varga stated that, to his knowledge, there were seven children currently enrolled. He said the applicant had provided information that the patrons entered and left the facility at staggered times and had assured staff that there would not be any overlap in the times. Mr. Varga said staff had concerns that if there was some overlap, there would be no way for the patrons to turn around. He also said that because there was no sidewalk, there was no pedestrian access from the street. Ms. Gibb asked why someone could not park at the end of the driveway and walk up to the door. Mr. Varga indicated that staff had determined that there was no room on the applicant's property to allow that to occur, and if that was done, a portion of a vehicle would spill out into the right-of-way. Ms. Gibb asked why the patrons could not walk up to the house on the lawn. She said she was concerned with the fact that Fairfax County did not have enough childcare facilities, and when it appeared that someone had a good operation and was fulfilling a current need, the County should bend over backwards to see that it worked. She stated that the applicant had a big house, and she believed Ms. Camargo when she said the parents and children would arrive at different times. Ms. Gibb said that if parking was the only objection staff had, she did not think that was enough to deny the application.

Susan Langdon, Chief, Special Permit and Variance Branch, said that staff was not arguing any of the points Ms. Gibb had made; however, from staff's point of view, they were trying to ensure that the applicant would be complying with Zoning Ordinance requirements and that the health, safety, and welfare of the people using the center and those living within the area were taken care of. She said staff's recommendation was just part of what the Board had to consider, and those issues had to be brought forward, especially when the Virginia Department of Transportation (VDOT) had expressed concern. Ms. Gibb asked if staff felt strongly about parking being a big safety issue. Ms. Langdon responded that it was staff's only issue and pointed out that there were four parking spaces on the site. She said staff always believed that users should be able to park on the site, and there would only be one extra spot on the site for patrons to park. She pointed out that the Zoning Ordinance required that for a single-family dwelling, two parking spaces were to be provided for the residents. She said staff knew that an employee would be taking up a third space, which left only one space for patrons. She said staff had spoken to other departments. VDOT was the only one to bring it up as an issue, and that was why staff had brought it forward.

Ms. Gibb asked the applicant how many cars she had. Ms. Camargo replied that the family had one car, and the employee did not have one, so only one car would be parked on the site. Ms. Langdon stated that perhaps the employee did not have a vehicle now, but there was the possibility that if the current employee left, a new employee may have one. She reiterated that the Zoning Ordinance required two parking spaces for each residence. Ms. Langdon said that staff had spoken to the applicant about the particulars, but if the application was approved, it would be for an indefinite period of time. Ms. Gibb said that the applicant had provided information on the facility's uses, had stated that she had only one car, and the special permit would be issued to her.

Mr. Hammack noted that, according to the application, there would be an increase of three in the number of children that would be attending the daycare facility. He said that routinely in institutional settings the Board had a development condition that required people to stagger, or not to conflict with, services where hundreds of people would be in attendance at a particular facility. He asked staff why the concern could not be satisfied by adding a sentence that said the applicant shall take measures to stagger the delivery and pickup of children so as to comply with parking requirements of the Ordinance. Ms. Langdon stated that if the Board wanted to add that condition, it could do so. She said adding such a condition would help to address staff's concern.

Mr. Ribble stated that, according to the photographs that had been included in the staff report, there appeared to be more than four parking spaces available. Ms. Langdon said that had been brought up in discussions with VDOT; however, when VDOT looked at them, they determined that the cars located in the back of the driveway were in the right-of-way.

Mr. Hart stated that when looking at the plat, it appeared that the house was 39.9 feet from the street, but in one of the photographs that had been submitted, there were three cars parked on the right side of the driveway, and they were lined up bumper to bumper between the house and what appeared to be the street. He said he was assuming that there was some further distance between the edge of the right-of-way and where the pavement on Hamilton Street was. He said it also appeared that there were several feet more past the end of the third car, and if the road was not widened, there would be room for at least six cars in the driveway as well as room for one more space near the utility pole, for a total of seven spaces. He asked staff whether the Board could approve the application for now until the street was widened. Mr. Hart said it was his opinion that this was the kind of street that would never be widened; however, if that came about, then some of the concerns about the right-of-way would be more important. He said that until that time it seemed to him that there appeared to be room for six or seven cars at a facility of ten children without having to make any changes. Mr. Varga agreed with Mr. Hart's comments and stated that staff's main concern was to provide that area as a right-of-way for VDOT, and it was his belief that may be a way to address staff's concern. Ms. Langdon stated that staff would include a development condition, if the Board wanted it, which would indicate that the Board was approving the application with the caveat that the issue would be revisited if VDOT widened Hamilton Street.

Mr. Hart asked whether it would be illegal to park a car on the part of the driveway that was in the right-of-way. Ms. Langdon responded that it was not illegal, but it was the right-of-way, and that was why they were not considered legal parking spaces.

Mr. Byers asked staff whether the County's Office of Transportation and VDOT had considered Ms. Camargo's letter dated November 30, 2005, because there was a very definitive listing of staggered times both for arrival and departure. He said he noticed that with ten children, the closest time for children arriving in the morning was 15 minutes, and there was greater staggering in the afternoon, with the closest times being 30 minutes apart. Ms. Langdon confirmed that both agencies had received the information.

Mr. Beard asked staff whether the applicant had come in of her own volition to request the addition of three children. Mr. Varga stated that was correct, and insofar as he knew, there was no violation on the part of the applicant.

Rosemary Camerra (phonetic), acting as the applicant's agent and interpreter, presented the special permit request as outlined in the statement of justification submitted with the application. She presented photographs to the Board showing that there was a space of 13 feet, 5 inches between the end of the driveway and the right-of-way. She said the total length of the driveway was 49 feet, and no one would be endangered if they walked from the street to the lawn to gain access to the daycare facility. She submitted a document from the neighbors indicating that they did not have any concerns about traffic impact.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak: Claudia Elias (phonetic) and Luce Menyata (phonetic), no addresses given. Their points were that their children had attended the daycare facility for over a year, and they had never encountered each other or any parking problems.

Chairman DiGiulian closed the public hearing.

~ ~ ~ March 7, 2006, FLOR CAMARGO, SP 2005-MA-049, continued from Page 188

Ms. Gibb moved to approve SP 2005-MA-049 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FLOR CAMARGO, SP 2005-MA-049 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit a home child care facility. Located at 7400 Hamilton St. on approx. 12,000 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((13)) 1B. 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 7, 2006; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Flor Camargo, only and is not transferable without further action of this Board, and is for the location indicated on the application, 7400 Hamilton Street, 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 Dominion Surveyors, Inc. dated October 11, 2004 as revised through November 29, 2005, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The maximum hours of operation of the home child care facility shall be limited to 6:00 a.m. to 5:30 p.m., Monday through Friday.

5. The maximum number of employees shall be limited to one (1) on-site at any one time in addition to the applicant.

6. The dwelling that contains the child care facility shall be the primary residence of the applicant.

7. Parking shall be limited to two (2) spaces for the dwelling, and two (2) spaces in the driveway for the child care facility. All parking shall be on-site.

8. The maximum daily enrollment shall not exceed ten (10) children.

9. There shall be no signage associated with the home child care facility.

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10. At such time the pavement on Hamilton Street is widened, the applicant shall come before the Board of Zoning Appeals to amend the special permit.

11. The applicant shall implement measures to stagger the arrival and departure times of the children so as to assure compliance with present and future parking requirements for the use permitted.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

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

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

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~ ~ ~ March 7, 2006, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17. (Deferred from 5/11/04 for notices.) (Decision deferred from 7/20/04, 9/14/04, 9/28/04, 11/9/04, 12/14/04, 4/5/05, 10/11/05, 11/29/05 and 12/6/05)

Jerry Phillips, the appellants' agent, Phillips, Beckwith, Hall & Chase, 10513 Judicial Drive, Fairfax, Virginia, stated that staff had submitted an updated status report to the Board, and he had submitted a two-page response with an attachment. He said that when the appellants had appeared before the Board in December of 2005, he thought that staff was to ask the County Attorney for a review of the legal issue of whether or not the use was nonconforming or grandfathered. He said staff had not addressed his question as to whether the County Attorney had taken a legal position on the 1941 Ordinance and the evidence the appellants had presented at the last hearing. He indicated that since the inception of the appeal, the appellants' position had been that it was a nonconforming use because it was in harmony and character with the neighborhood when the appellants stored the trucks. He said that his response dated March 6, 2006, was that the appellants carried the burden by presenting information submitted by neighbors, family, and the founders of Vannoy Estates, and he thought that information had established that the appellants' use was in harmony with the character of the neighborhood at the time they moved in. Subsequent to that, there was a series of ordinances that changed the property from agricultural to residential. He requested that the Board ask County staff to submit the entire file to the County Attorney for a legal opinion that would enable the Board to determine the position of the County government on whether or not there was any statutory or case law that would assist in making a decision. Mr. Phillips stated that perhaps the County Attorney could determine that the evidence as presented by staff was inconclusive to rebut the appellants' evidence. He reminded the Board that at the last hearing staff had submitted a 1953 aerial photograph that did not show what the character of the neighborhood was at that time, and everyone had concluded that the only evidence the Board would have would be oral testimony. He stated that evidence had been presented by the neighbors and the Crabtree family, and he did not agree with staff's conclusions.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that in previous hearings staff had very clearly stated its position and continued to recommend that the Board uphold the Zoning Administrator's determination.

Mr. Phillips referenced a statement from Mrs. Hogland (phonetic) that he had received the morning of the

hearing that provided additional information concerning the appellants' property. He submitted a copy of the statement to the Board.

Chairman DiGiulian closed the public hearing.

Mr. Hart said he would move to uphold the determination of the Zoning Administrator in part and reverse it in part and adopt the following findings of fact and conclusions of law: The violation originally had been issued for the parking of four trucks on residential property in the R-C District. The Board had deferred the appeal for decision nine or ten times and struggled with the difficulty of trying to understand the application of the 1941 Ordinance at a distance of many years and particularly with reference to facts a long time prior. For the most part, the facts that were important were in the 1950s. It was undisputed or largely undisputed that there really was not any basis for a conclusion that Truck Numbers 3 and 4, or two of the four trucks, would be nonconforming because the evidence before the Board dealt only with two trucks or two dump trucks or two tractor-trailers back in the 1950s, and an expansion or enlargement of the nonconforming use from two trucks to four trucks would not be allowed. At least as a threshold matter, the Zoning Administrator had been correct as to two of the four trucks currently being in violation. An expansion from two to four trucks would not retain the benefit of the original nonconforming use.

Mr. Hart said the Board was then left with the first two trucks and how to sort that out. Looking back to the 1941 Ordinance under Section III, Agricultural District, Subsection A, Use Regulations, and Sub-subsection 1 underneath that, the first two of the four trucks were covered within the scope of that paragraph. Under Use Regulations, no land shall be used unless otherwise provided in the Ordinance except for one or more of the following uses, and under Subsection 1 there were several things listed, farming, livestock and poultry raising, lumber and sawmilling, and all uses commonly classed as agriculture and forestry, and uses which were customarily appurtenant thereto and which were in harmony with the character of the neighborhood with no restrictions as to the operation of such vehicles or machinery as incident to such uses. That language suggested that there were other things going on in this neighborhood which were not residential, lumber and sawmilling particularly, or uses which are customarily appurtenant thereto or which are in harmony with the character of the neighborhood, and with no restrictions as to the operation of such vehicles or machinery.

Mr. Hart said, unlike some of the cases the Board had where there was no evidence at all as to what was going on, over the course of time the Board had received a number of letters and photographs as to what the state of affairs was in the 1950s in the neighborhood and what else was going on. The photos confirmed that at least there were trucks on the property a long time prior. The use of trucks would be customarily appurtenant to lumber and sawmilling and perhaps the farming or livestock and other related uses which were allowed in this district at that time. Those vehicles would have been in harmony with the character of the neighborhood at least at that time. Unlike some of the other cases where there had been no evidence, the Board had several letters in this case. The Board had a letter from Pastor Vannoy which talked about the sawmill and construction company on Sacher Lane and that over a span of 25 to 30 years other neighbors had equipment of one type or another parked at their homes. The Board had a letter from James Vannoy which dealt with the sawmill and large equipment and commercial trucks from 1947 in the subdivision and a second letter from Mr. Vannoy about the second sawmill and other things with some diagrams. The Board had letters from people in the neighborhood at the time, which were somewhat more specific than some of the testimony the Board had in other cases.

Mr. Hart said that based on the things that were said from the applicants, their family members, and the letters from the Vannoy family, there were sawmills and construction operations going on in the neighborhood for many years and back to the 1950s. This kind of storage of trucks would be in harmony with the character of the neighborhood under either of those scenarios, whether it was because it was customarily appurtenant to the sawmilling or the agriculture, the use of trucks with those uses, or because the equipment was in harmony with the character of the neighborhood and the other similar operations which seemed to be going on. Two of the four trucks would still be within the scope of the paragraph under the 1941 Ordinance. The other thing that was pertinent about the paragraph was that it said with no restrictions as to the operation of such vehicles or machinery as were incident to such uses. No restriction suggested that you could have them, park them there in the day, park them overnight, park as many as you wanted, at least in 1941 or under the 1941 Ordinance. The Board received very little in the way of testimony or evidence from the Zoning Administrator relating to the state of affairs in the neighborhood in the 1950s.

~ ~ ~ March 7, 2006, CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004, continued from Page 191

Mr. Hart said he disagreed with one point that the appellants had raised as to the legal standard. Case law was fairly clear that the absence of records in the street file does not help the appellants. In a situation where the Board did not know what the documents would have been or know what may or may not have been approved at the time, the tie would go to the Zoning Administrator. He said the aerial photos from the 1950s the Board had were not really indicative of much of anything. The drawings were on a very small scale, and it was hard to see what was going on. It was also possible the trucks were out on the road at that point in time. The letters from the neighbors, the photographs from the appellants, and the other evidence the Board had suggested that the appellants had overcome any problem of absence of records of approvals in the street file.

Mr. Hart said that based on the evidence presented, he believed that there were at least two trucks at the property since the 1950s, that they were consistent with the other uses going on in the neighborhood, that they would be permitted within the scope of the paragraph in the 1941 Ordinance, and at least as to two trucks, the conclusion of the Zoning Administrator had been incorrect. He said it was probably not what would be intuitively expected in a residential neighborhood or it might not be consistent with the way the neighborhood was now developing, and at a distance of 50 or 60 years the combination of residential uses and tractor-trailer trucks was probably not ideal. Mr. Hart said that although his conclusion as to the Zoning Administrator's interpretation would not be affected, in the photographs the Board had seen, there still appeared to be many, many trucks in the neighborhood. There may be other violations going on, but the subject trucks did not seem to be the only trucks in the residential neighborhood.

Mr. Hart moved that the Board uphold the Zoning Administrator as to two of the four trucks and reverse the determination as to the other two trucks. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 7, 2006, Scheduled case of:

9:30 A.M. ANDREW CLARK AND ELAINE METLIN, A 2005-DR-061 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure and a fence in excess of four feet in height, which are located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1905 Rhode Island Av. on approx. 24,457 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (1) 36B.

Chairman DiGiulian noted that A 2005-DR-061 had been administratively moved to May 2, 2006, at 9:30 a.m., at the appellants' request.

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~ ~ ~ March 7, 2006, Scheduled case of:

9:30 A.M. BRUCE ELTON, A 2005-PR-062 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is operating an office in a freestanding accessory structure on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 3456 Annandale Rd. on approx. 30,471 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 46B.

Cynthia Porter Johnson, Zoning Administration Division, presented staff's position as set forth in the staff report dated February 28, 2006. The appeal was of a determination that the appellant was operating an office in a freestanding accessory structure in violation of Zoning Ordinance provisions. The property was developed with a single-family detached dwelling, two garage accessory structures, and a shed. A zoning inspection conducted on July 13, 2005, revealed a loan and mortgage business operating at the property from a detached freestanding accessory structure, which appeared to be a detached garage that had been converted into a two-level office. Three people, other than the appellant, were working out of the structure. The appellant indicated that he had been operating out of the structure for at least five years and had approval for a home professional office; however, no records could be found that indicated the appellant had sought or obtained approval of a home occupation permit or a special permit for a home professional office. During the inspection, the appellant indicated that customers visited the subject property to conduct

business.

The appellant presented the arguments forming the basis for the appeal. He stated that he and his wife worked for a company called Loans and Mortgages located in Tysons Corner where they had an office and met with clients. He said he did not deny that on infrequent occasions they had seen clients at their home office. He stated that approximately 25 years ago he and his wife had a business, and they did obtain a home office permit at that time and operated out of the basement of their home. He said Attachment 10, which was an aerial photograph, showed that the property was secluded, and no one could see cars or people entering or leaving the premises. He said the notice of violation that had been sent out by Susan Epstein, Senior Zoning Inspector, had been mailed to the wrong address. Mr. Elton said that if he needed to move the office back into the home, he would do so.

At Mr. Beard's request, Mr. Elton pointed out the location of his property on the overhead viewer. Mr. Elton stated that a portion of the garage was part of the original dwelling when he purchased the property, and he had added a shed where he stored various types of lawn and leisure equipment.

In response to questions from Mr. Hammack, Mr. Elton stated that he was currently working for Loans and Mortgages located on Boone Boulevard in Tysons Corner; the business identified as Mi Casa Mortgages Credit Solutions was incorporated; he and his wife dealt only with loans and mortgages when working out of their home; and, he had opened Mi Casa Mortgages with the intent of obtaining his broker's license, but he had not yet received it from the State of Virginia. Mr. Hammack asked what portion of the business would deal with Credit Solutions. Mr. Elton responded that his wife owned the company called Credit Solutions that assisted many of their mortgage clients who had credit issues. Mr. Elton stated that the Credit Solutions portion of the business was being operated out of the garage as well. Mr. Hammack asked whether the appellant or his wife had a home occupation permit. Mr. Elton said they had operated a cleaning company approximately 25 years ago, and at that time they had a home office permit. He said he had researched all of his files and could not find a copy of it and, to his knowledge, neither had Ms. Epstein. Ms. Epstein stated that she had checked the street files and could not find any home occupation permits in the County's records. In response to questions from Mr. Hammack, Mr. Elton said that he, his wife, his son, and one employee worked out of the home; he and his wife were paid by Loans and Mortgages; and, the employee worked for Loans and Mortgages and was paid by them.

Mr. Hammack asked if Loans and Mortgages knew that the appellant was operating a satellite office. Mr. Elton stated that his office was not a satellite office because no processing was done there, and all the information received from the clients was put together in a file and processed through the main office. He said his business could not be a satellite office unless it was licensed by the State of Virginia as a branch under Loans and Mortgages.

In response to a question from Mr. Hart, Ms. Porter Johnson stated that a Group 9 special permit would allow the business to be operated out of a single-family dwelling. She agreed with Mr. Hart's statement that the appellant could not operate his business out of his garage and had to operate it out of his home. She said he could also obtain a home occupation permit, but he would be limited to not having any clients come to his home office. Mr. Hart asked if the appellant could obtain a special permit to operate his business out of his basement and if he could have an employee. Ms. Porter Johnson agreed that he could. Mr. Hart asked if the appellant could obtain a home occupation permit that would restrict him from having anyone come to the house. Ms. Porter Johnson said he could. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant would not be able to use the office in the accessory structure if he had a home professional permit.

Mr. Hart asked if the appellant had received a permit to expand his garage. Ms. Stanfield said that he had.

Mr. Hart asked if Mr. Elton had refused to allow the zoning inspector to take photographs of what was inside the garage. Ms. Epstein stated that when she went to conduct her inspection, she asked if she could take photographs and was told that she was not permitted to do so. Ms. Epstein indicated that a permit had been obtained by the appellant to put an addition onto the garage, but what she had seen inside on the second level was that it was set up as an office and was not related to the building permit that had been approved.

Ms. Porter Johnson confirmed Mr. Hart's statement that the property was owned by both Bruce and Yvonne Elton. She acknowledged that the violation had been issued to both parties, but only Mr. Elton had

appealed.

In answer to questions posed by Mr. Hart, Ms. Stanfield stated that the only business staff was aware of was the one that was noted in the staff report. She said staff was unaware of the other two businesses, and Mr. Elton had not shared that information with staff. Mr. Hart asked whether Mr. Elton's appeal would be moot since Mr. and Mrs. Elton jointly owned the property, both had been noticed on the violation, and only Mr. Elton had filed an appeal. He also asked if the Zoning Administrator could take Mrs. Elton to court because she would still be operating a business, and because of that, there would be procedural problems attached to this case in the future. Ms. Stanfield said she could not answer the questions and would have to look into it further.

Mr. Ribble noted that the name of Pedro Blaine was on the deed that was before the Board and asked the appellant who he was. Mr. Elton explained that Mr. Blaine was on the original deed, but he was not on the title and did not have anything to do with the property. Mr. Ribble asked how Mr. Blaine got off the title, and Mr. Elton did not have a response. Ms. Porter Johnson stated that there was a deed on file that showed that Mr. Blaine had been taken off the deed; however, staff had only included the original deed in the staff report. She said she had seen a copy of the revised deed, but did not have a copy with her.

Mr. Hart stated that the fact that the property had been refinanced and Mr. Blaine was not on the new deed of trust would not change the underlying ownership of the property. He said there would need to be another instrument, other than a resolution of the financing, to show that Mr. Blaine was no longer associated with any portion of the property. Mr. Elton explained that since Mr. Blaine had been removed from the deed, the property had been refinanced several times, and he offered to fax a copy of his current deed of trust to staff.

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

Mr. Byers moved to defer decision on A 2005-PR-062 to March 21, 2006, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 7-0.

Members of the Board requested that before the next hearing date, staff should provide an answer as to whether the Zoning Administrator could proceed with the case since there was only one appellant and provide copies of all the deeds pertaining to the Elton property. The Board also requested information regarding whether or not the correct appellants were appearing before them, whether there was a way for Mr. Elton to apply to move his business to the basement of his home, and whether Loans and Mortgages should also have received a notice of violation. Staff was also asked to determine whether the reference to Mi Casa Mortgages Credit Solutions should be included in the notice since the appellant was awaiting a license to operate that business.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel or briefings by staff members and consultants regarding the Lee, McCarthy, Concerned Citizens, Lake Braddock, Bristow, Williamson Group, and Cooper cases, RLUIPA, and correspondence, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 10:32 a.m. and reconvened at 12:09 p.m.

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

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Mr. Hart moved that the Board authorize Mr. McCormack to take the actions discussed in the Closed Session. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 7, 2006, continued from Page 194

Mr. Hart moved that the Board authorize Ms. Gibb to send a letter to the managing partner of the law firm that had been discussed. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Mr. Hart moved that the Board authorize Ms. Gibb to send a letter to Mr. Griffin that had been discussed. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Referring to Item 2 in the After Agenda Items, Mr. Hart asked whether Mr. Broadhead was correct in his assumption that a Group 9 special permit could not be used in an R-20 Zoning District. Susan Langdon, Chief, Special Permit and Variance Branch, said Mr. Broadhead was incorrect, and he could file for a special permit for building in error. She stated that staff had informed him of that fact.

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As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

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

Approved on: May 23, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 14, 2006. The following Board Members were present: Chairman John DiGiulian; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

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

~ ~ ~ March 14, 2006, Scheduled case of:

9:00 A.M. ROBIN AND EILEEN MARCOE, SP 2005-BR-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.1 ft. with eave 3.4 ft. from rear lot line and 3.2 ft. with eave 2.4 ft. from side lot line. Located at 5646 Inverchapel Rd. on approx. 13,337 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((3)) (3) 49. (Admin. moved from 11/8/05, 12/6/05 and 1/24/06 at appl. req.)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robin V. Marcoe, 5646 Inverchapel Road, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction to the minimum yard requirements based on error in building location to permit an accessory storage structure, which measured 12.6 feet in height, to remain 4.1 feet with eave 3.4 feet from the rear lot line and 3.2 feet with eave 2.4 feet from the side lot line. A minimum rear yard of 12.6 feet and side yard of 12.0 feet with permitted eave extensions of 3.0 feet are required; therefore, modifications of 8.5 feet and 6.2 feet for the rear yard and 8.8 feet and 6.6 feet for the side yard were requested.

Mr. Marcoe presented the special permit request as outlined in the statement of justification submitted with the application. He said he hired a contractor to replace an existing shed, which was rebuilt in the same location. He responded to Mr. Hart's questions concerning the shed's foundation, informing the Board that to move the shed even slightly, the shed would have to be destroyed and rebuilt.

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

Mr. Byers moved to approve SP 2005-BR-031 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBIN AND EILEEN MARCOE, SP 2005-BR-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.1 ft. with eave 3.4 ft. from rear lot line and 3.2 ft. with eave 2.4 ft. from side lot line. Located at 5646 Inverchapel Rd. on approx. 13,337 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((3)) (3) 49. (Admin. moved from 11/8/05, 12/6/05 and 1/24/06 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 March 14, 2006; and

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

~ ~ ~ March 14, 2006, ROBIN AND EILEEN MARCOE, SP 2005-BR-031, continued from Page 197

1. The applicants are the owners of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This Special Permit is approved for the location of the accessory storage structure as shown on the plat prepared by Alexandria Surveys International LLC, dated March 21, 2005, as revised through September 14, 2005, submitted with this application and is not transferable to other land.

2. Building permits and final inspections shall be diligently pursued within 30 days and obtained within 90 days of final approval or this Special Permit shall be null & void.

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

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Mr. Beard was absent from the meeting.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:00 A.M. PAUL H. COOVERT AND MALIHE KARIMI, VC 2005-DR-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.7 ft. from rear lot line. Located at 503 Walker Rd. on approx. 2.00 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((4)) A.

~ ~ ~ March 14, 2006, PAUL H. COOVERT AND MALIHE KARIMI, VC 2005-DR-017, continued from Page 198

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul H. Coovert, 503 Walker Road, Great Falls, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition to be located 19.7 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 5.3 feet was requested.

Mr. Coovert presented the variance request as outlined in the statement of justification submitted with the application. He said a New Jersey company was contracted to build the addition, and it was intended for personal use, but only after they applied for the permit was it found that a variance was necessary. Mr. Coovert submitted that there really was no other place in the yard to place the structure than where it was proposed.

Mr. Hart asked the applicant if he wanted a decision to be made that day. Mr. Coovert said he did not want a deferral, and if the application was denied, he intended to request a waiver of the one-year waiting period for refiling his application.

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

Mr. Hammack moved to deny VC 2005-DR-017 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL H. COOVERT AND MALIHE KARIMI, VC 2005-DR-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.7 ft. from rear lot line. Located at 503 Walker Rd. on approx. 2.00 ac. of land zoned R-E. Dranesville District. Denied Tax Map 7-4 ((4)) A. 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, 2006; and

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

1. The applicants are the owners of the land.
2. The applicants have not presented testimony indicating compliance with the nine required standards for variance applications.
3. The plat and photographs provided by the applicants show that there is reasonable use of the property.
4. The variance requested does not meet the test under Cochran.
5. Two letters in opposition were received.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;

C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

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

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

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

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~ ~ ~ March 14, 2006, Scheduled case of:

9:00 A.M. SANDRA SANTAMARIA AND MARLENE SANTAMARIA, SP 2005-DR-047 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7428 Paxton Rd. on approx. 11,995 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (J) 1. (Admin. moved from 2/7/06 for notices)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marlene Santamaria, 345 Whipp Drive, Leesburg, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to permit a modification to the limitation on the keeping of animals to permit the keeping of a maximum of six (6) Chihuahua dogs. The keeping of two dogs would be permitted by right on the applicants' property. On May 18, 2005, the applicants received a Notice of Violation from the Zoning Enforcement Branch stating that they were not in conformance with the Fairfax County Zoning Ordinance regulations because they were housing six dogs on the property. He said the applicants had indicated that the Chihuahua dogs were quite small and that measures had been taken to decrease barking, such as installing several barking inhibition units.

Ms. Gibb's questioned the nature of the complaint. Bruce F. Miller, Zoning Enforcement Branch, replied that

the complaint was in the form of a letter from someone residing within the neighborhood, but was not an immediate neighbor, and it called attention to the dogs' barking.

In response to Mr. Hart's question on whether staff had a recommendation, Mr. Varga said staff did not make a recommendation on the keeping of animals.

Ms. Santamaria presented the special permit request as outlined in the statement of justification submitted with the application. She said all six dogs did not reside at the Falls Church address as her dog lived in Leesburg with her and was dropped off in the mornings on her way to work. Two dogs recently were included in the family because they belonged to her handicapped brother who became unable to care for himself, had to move in with their mother, and, of course, brought his dogs. Ms. Santamaria stated that the dogs had been kept for over seven years, they were well-maintained, there was continual cleaning of the patio, a fence to keep them on the property, and a device mounted in several areas that inflicted an unpleasant buzz in the ear of the dog who barked. She said her mother had the devices for several years. It was determined that the complaint was filed in May of 2005. She responded to Ms. Gibb's questions concerning the age and health of the dogs.

In response to Mr. Hart's question, Susan Langdon, Chief, Special Permit and Variance Branch, said staff was not familiar with the noise device Ms. Santamaria spoke of.

Ms. Santamaria informed the Board that the dogs were not at the Falls Church address on weekends as her mother took them to her other property in another county, and if one or two were left, either her brother or father stayed at the house with them.

Ms. Gibb pointed out that there were two opposition letters from neighbors indicating a problem with noise and odor.

Ms. Santamaria offered to replace the wire fence in the front yard with a solid one so that pedestrians would not be visible from the sidewalk and, therefore, would not excite the dogs. She said her family would do anything required in order to keep all the dogs.

Responding to Mr. Ribble's questions, Mr. Miller said he could not comment on the dogs' behavior over a weekend, but the weekday he made a home visit and knocked on the door, the dogs inside the house came outside, and the barking was much louder when they were outside.

Ms. Santamaria said that there was a dog door; however, she assured they would be in compliance with Development Condition 5, which restricted outside unattended periods over 30 minutes, because the dogs slept almost entirely during the day and only went outside to "potty."

Responding to Mr. Hart's question concerning an indicated rodent problem and any correlation between rodents and the number of pets, Mr. Varga and Ms. Langdon said staff had not performed any study regarding that matter, and staff had not heard of the problem until Mr. Hart mentioned it.

In response to Mr. Hammack's question regarding whether staff conducted any sort of test to see if there was a Noise Ordinance violation, Mr. Miller said in the matter of barking animals, the barking must be incessant. He said he was at the home for approximately 20 minutes, and the dogs barked incessantly the entire time.

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

Mr. Hart moved to deny SP 2005-DR-047 for the reasons stated in the Resolution.

Stating that he could not support the motion, Mr. Hammack commented that he thought Ms. Santamaria had given reasonable explanations about the number of dogs, the fact that they were not all there at the same time on the weekends, the sixth dog was in Leesburg nightly, and with five dogs there some of the time, he was not satisfied that there was compelling testimony about the noise. He acknowledged the inspector's

testimony that they barked while he was there, but stated that there were no readings to determine if the Noise Ordinance was violated. Mr. Hammack also pointed out that the complaining person had not come forward to testify as to the extent of the noise. He noted that the dogs were very small, and the development conditions in the staff report restricted additional dogs kept at the house and that the existing dogs could not be replaced when they died. Mr. Hammack said he thought the applicants could comply with the development conditions and that the dog door could be removed.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANDRA SANTAMARIA AND MARLENE SANTAMARIA, SP 2005-DR-047 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7428 Paxton Rd. on approx. 11,995 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (J) 1. (Admin. moved from 2/7/06 for notices) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 2006; and

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

1. The applicants are the owners of the land.
2. On the record before the BZA, there was not enough given to show satisfaction of the required standards for a special permit.
3. Of particular concern is the noise issue and the number of dogs relative to the size of the lot.
4. The Ordinance requires a 20,000 square-foot lot for more than two dogs. The subject lot is about 12,000 square feet, and the applicants are requesting that they be allowed to keep six dogs.
5. There was testimony from the inspector regarding the incessant barking.
6. There were two letters in opposition.
7. There is a doggie door, and Development Condition #5 could not be enforced if the dogs could come in and go out.
8. The dogs are small, but it is known that small dogs can make a lot of noise, and if there are six dogs together, one dog barking would make them all bark.
9. Under the standards in the Ordinance, the Board has to impose conditions to ensure that there will be no adverse impact on adjacent property and no emission of noise and/or odor detrimental to other property in the area, and based on the evidence presented to the Board, that requirement has not been met.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

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

Mr. Byers seconded the motion, which carried by a vote of 4-2. Mr. Hammack and Ms. Gibb voted against the motion. Mr. Beard was absent from the meeting.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:00 A.M. ESFANDIAR KHAZAI, VC 2004-DR-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed Lot 2 having a lot width of 20.0 ft and to permit existing dwelling 9.0 ft. from front lot line. Located at 7072 Idylwood Rd. on approx. 1.27 ac. of land zoned R-2. Dranesville District. Tax Map 40-1 ((1)) 12. (Admin. moved from 11/2/04, 3/15/05, 5/17/05, 8/9/05, and 11/15/05 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-111 had been administratively moved to November 14, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:30 A.M. ANTHONY TEDDER, A 2004-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing a dwelling to be constructed and has allowed a land area in excess of 2,500 square feet to be filled and graded, both occurring in the floodplain and the Resource Protection Area without an approved permit, in violation of the Zoning Ordinance provisions. Located at 2862 Hunter Rd. on approx. 4.74 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-2 ((7)) (44) D. (Admin. moved from 7/13/04, 10/12/04, 1/18/05, 4/5/05, 6/14/05, and 9/13/05 at appl. req.)

Chairman DiGiulian noted that staff had requested a deferral of A 2004-PR-011.

Mr. Ribble moved to defer Appeal 2004-PR-011 to June 13, 2006, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:30 A.M. DAVID M. LONGO, A 2005-DR-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-1 District, is in violation of Zoning Ordinance provisions. Located at 9813 Spring Ridge La. on approx. 20,100 sq. ft. of land zoned R-1. Dranesville District. Tax Map 19-3 ((10)) 20. (Admin. moved from 8/2/05 and 12/13/05 at appl. req.)

Chairman DiGiulian noted that A 2005-DR-025 had been indefinitely deferred.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:30 A.M. IKHMAYYES J. JARIRI, A 2005-MA-063 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has erected an accessory storage structure, which exceeds eight and one-half feet in height and 200 square feet in floor area and which does not comply with the minimum yard requirements for the R-3 District, without a valid Building Permit, in violation of Zoning Ordinance provisions. Located at 3513 Washington Dr. on approx. 15,411 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (F) 502.

Chairman DiGiulian noted that A 2005-MA-063 had been administratively moved to June 20, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:30 A.M. HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, 12/20/05 and 1/31/06 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-042 had been administratively moved to September 12, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, 12/20/05 and 1/31/06 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-040 had been administratively moved to September 12, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:30 A.M. NVR, INC., A 2004-DR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordanc with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance Provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, 12/20/05 and 1/31/06 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-041 had been administratively moved to September 12, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:30 A.M. THANH TRUONG, A 2005-PR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a place of worship on property in the R-3 District without an approved special permit in violation of Zoning Ordinance provisions. Located at 3418 Annandale Rd. on approx. 3.35 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A. (Decision deferred from 5/24/05 and 11/29/05 at appl. req.)

Chairman DiGiulian noted that A 2005-PR-008 had been withdrawn.

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~ ~ ~ March 14, 2006, Scheduled case of:

9:30 A.M. A-1 SOLAR CONTROL, A 2005-DR-057 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a vehicle light service establishment on property in the C-5 District without approval of a Special Exception, a site plan, nor a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions.

Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 2/14/06)

9:30 A.M. CHARLES A. LANARAS, A 2005-DR-060 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a vehicle light service establishment on property in the C-5 District without approval of a Special Exception, a site plan, nor a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 2/14/06)

William M. Baskin, Jr., 301 Park Avenue, Falls Church, Virginia, identified himself as the attorney for the appellants. He requested a brief deferral because Mr. Bellinger, the proprietor of A-1 Solar Control and appellant, was not present, and he preferred that the full BZA Board decide the matter. Mr. Baskin said that he understood the matter was previously before the Board in July of 2005, which was before he became involved, and the vote to uphold the Zoning Administrator's position failed by a vote of 4-3.

Chairman DiGiulian informed Mr. Baskin that there was never a guarantee of a full Board.

Mr. Ribble said he remembered that the case was deferred to see if there were similar cases and what the Zoning Administrator did in those cases.

Chairman DiGiulian noted that the two questions that arose during the February 14, 2006, public hearing which warranted a deferral for clarification was: what was a vehicle light service establishment and the 60-day rule. He asked staff's opinion on a deferral.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said staff preferred that the Board take action that day, and Ms. Tsai's presentation would recap staff's status update dated March 7, 2006.

Mary Ann Tsai, Zoning Administration Division, presented staff's position as set forth in her memorandum dated March 7, 2006. This was an appeal of a determination that the appellants were operating and allowing the operation of a vehicle light service establishment on property in the C-5 District without approval of a special exception (SE), a site plan, and a Non-Residential Use Permit (Non-RUP), all in violation of Zoning Ordinance provisions. Referencing her March 7, 2006, status update, she addressed the questions that were raised June 14, 2005, by the BZA concerning staff's review of the previously issued and revoked Non-RUP with respect to the 60-day notification and limitation and whether automobile window tinting was a vehicle light service establishment use. The 60-day notification limitation was questioned because the Non-RUP was issued to A-1 Solar Control, and later revoked on February 14, 2005, because the appellant had not completed the required site improvements pursuant to the approval of the SE 2002-DR-011. As the SE would expire April 7, 2005, the appellant requested additional time, and on September 26, 2005, the Board of Supervisors denied the request, which rendered the SE no longer valid. Therefore, the appellants were operating a vehicle light service establishment use on the referenced property without the approval of a SE.

Staff maintained that an approval of Non-RUPs, as with building permits, is an administrative function and not subject to discretionary decision by the technicians processing them. Therefore, the Non-RUP's revocation would not be subject to the 60-day limitation as set forth in the Code of Virginia, and staff's position was that the Non-RUP was null and void. Based on a past interpretation and a previously approved Non-RUP, the Zoning Administrator had consistently interpreted that a vehicle window tinting business is a vehicle light service establishment use. The appellants' use of the property for vehicle window tinting was a vehicle light service establishment use, which required a special exception approval in the C-5 District, and staff maintained that the 60-day notification limitation was not applicable. Staff recommended that the BZA uphold the Zoning Administrator's finding that the appellants, A-1 Solar Control and Charles A. Lanaras, were operating and allowing the operation of a vehicle light service establishment on property in the C-5 District without approval of a special exception, a site plan, and a Non-Residential use Permit, all in violation of Zoning Ordinance provisions.

Ms. Stanfield informed the Board that the California Tint business referenced during the February 14th public

hearing was deemed to be a vehicle light service establishment.

At Ms. Gibb's request, Mr. Baskin explained the e-mail comments exchanged between himself and his client, Mr. Ballinger, and Mr. Ballinger's subsequent phone message, which did not indicate whether or not he would be able to attend the meeting. Mr. Baskin submitted that he thought his client was coming.

Ms. Stanfield responded to Mr. Hart's questions regarding an exception to the 60-day rule, of which the Ordinance stipulated that it required the concurrence of the attorney of the governing body, noting that, for appeals A 2005-DR-057 and A 2005-DR-067, Pam Pelto, County Attorney's Office, was present to address. She said that the 2006 appeals were basically the same as those previously heard; therefore, staff did not request the County Attorney's opinion. She further explained the applicability of the 60-day rule for the revocation of the Non-RUP, noting that the County Attorney had rendered its opinion on the previous appeals, and stating that the issue remained the same, whether or not the Non-RUP could be revoked. Ms. Stanfield referenced staff's status update dated September 20, 2005, in which the County Attorney's position on the 60-day rule was set forth.

Discussion followed between Mr. Hart and Mr. Baskin concerning the applicability of the statutory requirement referenced in the memo. Mr. Hart said the difficulty he had with the appellants' position was that the SE was not extended, but they still wanted the right to operate the business.

Ms. Tsai said the previous appeal's SE expired the previous summer in the process of its hearing and before the current case was filed.

Mr. Hart said that because the appellant was not present, but was expected, the Board typically would grant a deferral. He moved to defer A 2005-DR-057 and A 2005-DR-060 to April 4, 2006, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-1. Mr. Byers voted against the motion. Mr. Beard was absent from the meeting.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Cooper versus BZA, Williamson Group Land Development, LLC, v. BZA, Virginia Equity Solutions, RLUIPA issues, BZA By-Laws, the Lee case, McCarthy case, Bristow Shopping Center case, Concerned Citizens case, correspondence and other matters, pursuant to Virginia Code Ann. Sect. 2.2-3711(A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

The meeting recessed at 10:08 a.m. and reconvened at 11:16 a.m.

Mr. Hammack moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed or considered by the Board during the closed session. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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Mr. Hart moved that Ms. Gibb be authorized to send the letter to Mr. Griffin regarding the Cooper case discussed in Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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Mr. Hart moved that Chairman DiGiulian be authorized to send the letter to Ms. Pelto and Ms. Rosati discussed during Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ March 14, 2006, continued from Page 206

Mr. Hart moved that Mr. McCormack be authorized to take the action discussed. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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Mr. Hart moved that Ms. Gibb be authorized to send the letter to Mr. Griffin regarding assistance with responding to the Writs of Certiorari. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:18 a.m.

Minutes by: Paula A. McFarland

Approved on: September 22, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 21, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ March 21, 2006, Scheduled case of:

9:00 A.M. HAMID M. KHAN, SP 2006-LE-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.3 ft. from rear lot line. Located at 7205 Sumpter La. on approx. 3,204 sq. ft. of land zoned R-5. Lee District. Tax Map 90-3 ((10)) 120.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hamid Khan, 7205 Sumpter Lane, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit a deck to remain 3.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, decks are permitted to extend 12 feet into the minimum rear yard; therefore, a reduction of 9.7 feet was requested.

Mr. Hart stated that there was a shed located in the right rear corner of the plat that indicated a height of 8.5 feet. He asked whether the shed was allowed at its location at that height. Ms. Hedrick stated that as long as a shed was 8.5 feet or under, it was permitted to be in a side or rear yard. Ms. Hedrick said the minimum rear yard in the R-5 District was 25 feet. Mr. Hart noted that the house was past the allowed number of feet and asked if that was because the house had been built before the Ordinance went into effect. Ms. Hedrick said the house had been built in 1977, and it predated the requirements of the 1978 Ordinance; however, any additions to the house had to meet current standards.

Mr. Khan presented the special permit request as outlined in the statement of justification submitted with the application. He said that in 2002 he had hired a contractor, John Shumack (phonetic), to put siding on the house, and at that time he had no plans to add a deck. They had soon realized that one was needed in order to prevent anyone from falling down the steps into the backyard. He said that at that time his contractor told him he would build the deck in conjunction with putting up the siding. Mr. Khan said he had trusted the contractor to take care of all necessary requirements for building the deck. He stated that the new deck had been built to the same specifications as the original one. Mr. Khan said it was his thought that some of his neighbors had submitted complaints to the Board because on a few occasions he had called his Supervisor's office to report some construction that he did not think should be done in his neighborhood. He stated that had he known he needed a permit to build the deck, he would have obtained one.

Mr. Beard asked whether there was anything on record concerning the deck that had been on the house. Ms. Hedrick explained that it appeared that the deck had been built at the same time the house was built in 1977 and then removed in 1997. She confirmed Mr. Beard's statement that the deck had not been permitted separately.

In response to a question from Mr. Byers, Leo Conrad, Senior Zoning Inspector, Zoning Enforcement Branch, said that someone in the neighborhood had made a complaint, and that was why he had gone out to inspect the property.

In response to a question from Mr. Hart, Mr. Khan stated that he would agree to the addition of a development condition stating that laundry would not be hung out on the deck.

The Chairman noted that one letter had been submitted in opposition to the application.

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

~ ~ ~ March 21, 2006, HAMID M. KHAN, SP 2006-LE-002, continued from Page 209

Mr. Hammack moved to approve SP 2006-LE-002 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HAMID M. KHAN, SP 2006-LE-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.3 ft. from rear lot line. Located at 7205 Sumpter La. on approx. 3,204 sq. ft. of land zoned R-5. Lee District. Tax Map 90-3 ((10)) 120. 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 21, 2006; and

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

1. The applicant is the owner of the land.
2. The applicant meets the criteria set forth under Sect. 8-914 for the permit to be granted.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

~ ~ ~ March 21, 2006, HAMID M. KHAN, SP 2006-LE-002, continued from Page 210

1. This Special Permit is approved for the location of the deck as shown on the plat prepared by APEX Surveys, dated October 12, 2005 as revised through December 27, 2005, submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the deck shall be diligently pursued within 30 days and obtained within 90 days of final approval or this Special Permit shall be null & void.

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

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

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~ ~ ~ March 21, 2006, Scheduled case of:

9:00 A.M. ROBERT & SARA FAULK, SP 2006-SU-001 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 16.5 ft. from side lot line. Located at 4361 Cub Run Rd. on approx. 10,560 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 310.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Reames, the applicants' agent, Vice President and General Manager, Reamco, Inc., a Patio Enclosures, Inc., Franchise, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a modification to minimum yard requirements for certain R-C lots to permit construction of a sunroom addition to be located 16.5 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 3.5 feet was requested.

Mr. Reames presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would be no closer to the side lot line than the existing structure, and the addition would be in compliance with the original minimum yard requirement prior to rezoning.

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

Mr. Byers moved to approve SP 2006-SU-001 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT & SARA FAULK, SP 2006-SU-001 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 16.5 ft. from side lot line. Located at 4361 Cub Run Rd. on approx. 10,560 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 310. 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 21, 2006; and

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

~ ~ ~ March 21, 2006, ROBERT & SARA FAULK, SP 2006-SU-001, continued from Page 211

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

3. This Special Permit is approved for the location of an addition as shown on the plat prepared by Larry N. Scartz, dated September 8, 2005, revised by Robert and Sara Faulk, dated January 3, 2006, as submitted with this application and is not transferable to other land.

2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.

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

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

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~ ~ ~ March 21, 2006, Scheduled case of:

9:00 A.M. BULENT BOZDEMIR, SP 2005-DR-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 3.7 ft. with eave 2.7 ft. from side lot line and accessory structure 4.2 ft. from the rear lot line and 8.2 ft. from the side lot line. Located at 1605 Kirby Rd. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((10)) 23. (Admin. moved from 1/10/06 for notices.) (Decision deferred from 3/7/06)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bulent Bozdemir, 1605 Kirby Road, McLean, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, indicated that the public hearing had been deferred for decision only from the March 7, 2006 meeting because the Board had requested additional information from the applicant and staff. She stated that she had provided a memorandum dated March 14, 2006, to address the issue of the dentist office in the garage of the application property. She said Mr. Bozdemir would address the issue of the contractor.

Mr. Bozdemir stated that he had looked through all his papers and could find no record or cancelled check that would address to whom and how he had paid the contractor. He stated that it was his wife's recollection that the contractor had been paid in cash. He stated that he needed the room to ensure the safety of his

~ ~ ~ March 21, 2006, BULENT BOZDEMIR, SP 2005-DR-042, continued from Page 212

children.

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

Mr. Hart moved to approve-in-part SP 2005-DR-042 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BULENT BOZDEMIR, SP 2005-DR-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 3.7 ft. with eave 2.7 ft. from side lot line and accessory structure 4.2 ft. from the rear lot line and 8.2 ft. from the side lot line. **(THE BZA APPROVED THE ADDITION TO REMAIN 3.7 FT. WITH EAVE 2.7 FT. FROM SIDE LOT LINE.)** Located at 1605 Kirby Rd. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((10)) 23. (Admin. moved from 1/10/06 for notices.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 21, 2006; and

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

1. The applicant is the owner of the land.
2. This was a difficult case because the structure itself is so close to the side line. Ordinarily something at 3.7 feet would be very difficult to approve.
3. At the same time, on the record before the Board, there was no evidence to suggest that this was not done in good faith.
4. It is unfortunate that the contractor did not seem to have been following appropriate procedures, either complying with the regulations of the state board for contractors requiring construction contracts to be in writing and contain certain information or requiring a statement in the contract, identifying as between the parties, who would be responsible for obtaining a building permit or the failure to obtain a building permit or zoning approval or any of these things.
5. On the record before the Board, it appears that the owner did not have specific knowledge of this, and the owner did not affirmatively request them to violate the Ordinance requirements.
6. The structure itself is very attractive and professionally done, unlike some of the others.
7. The structure is a finished brick structure.
8. The structure is in keeping with the house and the next-door neighbor.
9. In the photographs, there does appear to be room to get around the left side of the house.
10. Because it is a brick structure, there does not appear to be a lot of maintenance that is going to be required to the wall in the area.
11. On the record before the Board, there appears to be sufficient space between the subject house and the next-door neighbor to the left that it is not going to negatively affect the neighbor or any other properties.
12. It would be a hardship on the owner to incur the expense to demolish the structure now or reopen it again.

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

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

~ ~ ~ March 21, 2006, BULENT BOZDEMIR, SP 2005-DR-042, continued from Page 213

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This Special Permit is approved for the location of the addition as shown on the plat prepared by CAD-CON Consulting Inc., dated September 20, 2004, as revised through February 8, 2005, submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the addition shall be diligently pursued within 30 days and obtained within 90 days of final approval or this Special Permit shall be null & void.

3. The applicant shall remove, relocate, or reduce the height of the accessory structure (play equipment) so that it meets Zoning Ordinance requirements.

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

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

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~ ~ ~ March 21, 2006, Scheduled case of:

9:00 A.M. TRUSTEES FOR KNOLLWOOD COMMUNITY CHURCH, SPA 82-S-028-05 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 82-S-028 previously approved for church and nursery school to permit an increase in enrollment, building additions and site modifications. Located at 10000 Coffer Woods Rd. on approx. 5.00 ac. of land zoned PRC. Braddock District. Tax Map 78-3 ((1)) 40.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benjamin Tompkins, the applicant's agent, Reed Smith, LLP, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

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

affected.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 82-S-028-04, previously approved for a church and nursery school, to permit building additions, site modifications, and an increase in enrollment in the nursery school. The proposed building addition would consist of a multiphase increase of the size of the existing sanctuary from 168 seats to a maximum of 400 seats and would provide additional space for church-related uses, including a nursery school, an education area, administrative office space, kitchen, gymnasium, and cellar space. The current total square footage of the sanctuary and education buildings would increase from 9,127 square feet to 42,000 square feet and include 17,000 square feet of cellar space. Other site modifications included the addition of 75 parking spaces through the expansion of an existing 95-space parking lot, for a total of 170 spaces. The parking lot would be reconfigured to provide right in/right out access to Burke Centre Parkway and consolidate the ingress/egress leading to Coffer Woods Road. The current nursery school enrollment allowed for a maximum enrollment of 80 children, up to 40 at any one time. The increase in nursery school attendance would permit a maximum enrollment of 99 children, up to 50 at any one time. All special permit uses must meet the requirements for special permits and Group 3. For the reasons out lined in the staff report, staff did not believe that the application met Standards 1, 2, 3 and 5, and recommended denial of the application.

Mr. Hart noted that staff's objections, which were addressed in the development conditions, were regarding the intensity of the project and the methodology of stormwater management. He asked if there were any other major issues that staff had not covered in the development conditions. Mr. Varga said there were not, that staff had addressed as many issues as possible in the conditions.

With regard to the intensity and phased expansion of the project, Mr. Hart asked whether there would be a breaking point at which staff would approve the project if the later phases were dropped. Mr. Varga stated that staff had discussed those issues, and there was no one phase that would meet staff's approval.

Mr. Hart asked whether there was a maximum floor area ratio (FAR) that staff considered to be too much insofar as the increase in church facilities was concerned. Susan Langdon, Chief, Special Permit and Variance Branch, stated that when staff was looking at proposals, they tried not to come to a definite number because much of their decisions were based upon how a project would look at the end and what could be done to improve it. She said that staff could probably come to some consensus or approval if the applicant proposed to do less than they were currently applying for. She indicated that at that point staff would look at what the applicant was proposing, how big the building would be, how far it would be from the northern lot line, and what type of tree save would they end up with, for example, a 50-foot buffer along the parkway such as there were on other parcels along the parkway. She said staff would also be looking at whether or not that could be done, whether they could get the parking in, and how many seats they would end up with. She stated that all of those things worked together. Ms. Langdon said that some of the issues she had raised were addressed in the conditions. She indicated that staff was looking for the site to work, and there were things staff thought the applicant could do, such as putting in an underground vault for stormwater detention that would provide a significant area of tree save. Ms. Langdon said they also needed to increase part of the screening along the parkway.

Referring to Insert 7A of 9, Mr. Hart called attention to Detail B that showed the south elevation of the completed building. He said it seemed that the site was dropping off approximately 10 to 12 feet to the west. He noted the differences between a basement and a cellar and said that depending on what was being counted, it would affect the FAR. He said that what was confusing to him was that the site dropped off with what started out as a cellar and was now considered to be a basement. He asked what was being counted and what was not and whether there was a disagreement among staff and the applicant about what was being counted to determine the FAR. Ms. Langdon stated that she was not aware of any disagreements. Mr. Varga stated that it was not at all clear to staff that the applicant was proposing a cellar in the area on the western edge of the building. Ms. Langdon stated that the average grade was taken and suggested that the engineer discuss where the basement or cellar would be located. She noted that the majority of the project in that area would be more than 50 percent underground, and that was why it did not count in the FAR. Mr. Hart asked whether staff's problem with the intensity was with the upper two levels. Ms. Langdon responded by saying that staff was not counting the basement/cellar. They were counting the upper two levels, and

staff felt the building would be too big with just the upper two levels. She said that when staff was looking at the size of the building and its relationship to the northern lot line, staff was concerned about the height of the building that would be out of ground and its relationship to the townhouses. She said they were also concerned about how close that building would be to the lot line.

Mr. Beard expressed concern that staff and the applicant were so far apart and asked why that was. Ms. Langdon stated that there were issues that staff had discussed with the applicant, such as an underground stormwater detention pond that staff thought could work and that would save additional trees. She said that the applicant did not want to do that. She stated that staff had also recommended breaking up the 280-foot building or possibly pushing it further to the south so it would be further away from the northern lot line and could provide more transitional screening, and that had not been done. Ms. Langdon said that staff had requested an upgrading of the screening or the existing vegetation along Burke Center Parkway that would allow for at least a 50-foot save area, similar to what other users along the parkway had done, and that had not been done. She stated that it was obvious that the applicant was looking at how many seats they could put in and how many parking spaces they wanted on a very small site and those issues had not been resolved.

Mr. Hammack asked what the permitted maximum FAR was on the site. Ms. Langdon responded that there was no maximum FAR requirement in the P District.

Mr. Ribble asked whether the northern edge of the property where the townhouses were located was lower than the rest of the property. Using the overhead viewer, Ms. Langdon pointed out a drop-off at that location. Mr. Varga said the drop-off continued northward toward the townhouses and stayed relatively even with them. Mr. Langdon showed the relationship of the proposed building to the townhouses and indicated that in some areas it was not as high as others, but the land dropped off more along the northwest lot line and the difference was greater.

Chairman DiGiulian asked what the distance was from the proposed church building to the rear property lines. Ms. Langdon stated that it was 32 feet from the rear of the building to the property line and approximately another 20 feet to the back of the townhouse lots. Chairman DiGiulian noted that page 7B of 9 showed a 35-foot buffer area along the church property and 30 feet of buffer for the homeowners. Ms. Langdon agreed that was approximately 60 feet and noted that the distance in some places was 25 feet and in other places it was 30 feet. Ms. Langdon indicated that there was approximately 65 feet of buffer between the buildings.

Mr. Thompkins presented the special permit amendment request as outlined in the statement of justification submitted with the application. He expressed the applicant's disappointment at staff's recommendation for denial of the application. He stated that the applicant thought the application was consistent with the Comprehensive Plan and met the applicable zoning district provisions. He said that contrary to staff's comments that the applicant was unresponsive to staff issues, numerous changes had been made to accommodate staff beginning with comments received at the pre-application meeting with Ms. Langdon that included expanding the buffers along the western, northern, and southern boundaries, a reduction in the number of parking spaces, and making various onsite revisions. Mr. Tompkins said that contrary to Mr. Varga's comment that some of the property should be cleared all the way to the lot line; the applicant would not be doing that based on advice from their civil engineer. Mr. Tompkins said the fundamental basis for staff's recommendation for denial seemed to be a subjective determination that the church's desire to expand was too intense. He said that to try to respond to that determination, the applicant had examined several objective criteria to include the Comprehensive Plan, the existing site conditions, the Zoning Ordinance, including the proposed FAR and open space calculations, the surrounding development, building design, and the opinion of the community and the Burke Center Conversancy. He noted that the Comprehensive Plan for the area designated it for high density residential, which contemplated townhomes, garden apartments, or high-rise apartments for the site, all of which would typically have a higher FAR and less open space than the applicant's proposed expansion, which would have an FAR of 0.19 with approximately 42 to 50 percent open space. He noted that the Burke Center area was designated for high density residential, and it would be expected that they would have an FAR similar to the church's proposal.

With respect to existing conditions and the question of whether this development would make the development conditions better onsite, Mr. Tompkins pointed out that the current site had an entrance and

travel way that ran immediately adjacent to the townhouse community. He said the applicant was proposing to rip out the travel way and replace it with a 35-foot transitional landscape screen. He stated that the existing site provided no onsite detention facilities or Best Management Practices (BMPs) since it was developed prior to those requirements, and as a result the sheet flow off the site created some flooding problems downstream. Mr. Tompkins stated that as part of this application, the applicant would be implementing all onsite detention BMPs as required by Fairfax County, both by Ordinance and within the PFM (Public Facilities Manual). He noted that there had been some discussion concerning the creation of an underground vault, and the applicant had indicated that was not a viable plan because it would impact the LID (Low Impact Design) they were trying to implement on the site. He stated that the applicant was also planning to provide for an onsite rain garden. He said that staff had indicated that the church did not want to put in an underground vault because of the cost, but the church was not motivated solely by cost. He explained that there was a situation where they needed to go offsite of the property with their stormwater management design. Mr. Tompkins said the applicant had the option of clear cutting a number of trees and having an open ditch scenario, or at more expense, piping the stormwater and having to deal with the outfall elements of creating a piped situation. He said the church had agreed, at additional expense, to do the pipe to save offsite trees.

Mr. Tompkins discussed the existing FARs in the surrounding areas and indicated that they were in excess of what the applicant was proposing. He stated that he did not think the church would be in conflict with the surrounding area. With respect to compliance with the Zoning Ordinance, Mr. Tompkins stated that their civil engineer had said that the application complied with all material, Zoning Ordinance and PFM requirements. Mr. Tompkins said he took exception to staff's comment that the proposed setback was a minimum of 25 feet and noted that the proposed plan provided a minimum of 35 feet along all property lines and in some cases more. He said staff had also indicated that the minimum open space requirement was 10 percent, and according to the staff report, staff was not sure that the applicant would be meeting that. He explained that the answer to that was that the applicant was meeting 42 percent of open space onsite, and it would probably be closer to 50 percent at the end of the Phase III expansion. With respect to the question concerning the FAR in the PRC District, Mr. Tompkins confirmed that there was no specific FAR within that district, so their guide was the Comprehensive Plan. With respect to the criterion in the surrounding development, he indicated that it would be an R-8 type development, which was consistent with townhouses or multi-family FARs. Mr. Tompkins said that with respect to design, the applicant had taken great pains to ensure that the proposed buildings would be compatible with the surrounding community. He said the expansion had been intended to look like three different but compatible buildings with a residential feel and scale.

Mr. Tompkins said the church had sent out 400 notices to the surrounding community and hosted an open house to present their expansion plans. He said the meeting had been well attended and had generated numerous letters of support, some of which had been provided to the Board. He said the plans had also been presented to the Burke Center Conservancy, who had by recorded covenant the right and responsibility to review and specifically consider six criteria in approving new development, to include design, color, location, impact, scale, workmanship, and timing. He noted that the Burke Center Conversancy had given the church preliminary approval of the project. He said there were no transportation or infrastructure issues associated with the expansion. Mr. Tompkins said all infrastructure necessary to serve the development was professionally in place, including sewer, water, and public streets. A traffic analysis indicated that the proposed expansion could be accommodated within the existing transportation network. He said the applicant considered the application to be consistent with the Comprehensive Plan and the Zoning Ordinance and had been designed in a manner and at a density that was compatible with the existing surrounding development. He stated that the applicant had reviewed the development conditions dated March 14, 2006, and had proposed minor changes, and those changes had been set forth in the handout dated March 20, 2006, that had been provided to the Board. Mr. Tompkins stated that the application merited approval.

Mr. Hart and Mr. Tompkins discussed the south elevations. Mr. Tompkins indicated that the gable shown in the photograph on the overhead viewer was the top of the roof. He said that the current sanctuary was a doublewide trailer that was never intended as a permanent use, and that was part of the issue of the expansion. Mr. Tompkins confirmed that the entire roof line was new and said that the applicant did not have a representation of the current sanctuary and church. With respect to the issue of the basement/cellar, Mr.

Tompkins stated that the architect's drawing showed more of the area exposed than would actually be exposed, and that area was designated as cellar space. He said the grade did not drop off as dramatically as the architect had shown on the drawing; however, it did drop in that direction, and much more of that space would be below grade. Mr. Hart asked whether the third level would be a finished level of classrooms and meeting rooms when it was built out. Mr. Tompkins deferred the question to the pastor.

Kenneth Harding, Decision Planning Group, Inc., Centreville, Virginia, said that what was confusing in looking at both the northern and southern elevations was that they did not depict the addition to the existing space. He explained what would happen with the existing buildings during Phases I and II and stated that by the time they reached Phase III, there would be no existing buildings. He pointed out that the drawing Mr. Hart looked at pertained to final build-out with no existing structures. He confirmed for Mr. Hart that the new building would be taller than the existing one. Mr. Harding also confirmed that the third level would be a functional space with classrooms and meeting rooms. Mr. Harding stated that the cellar would run all the way across the building, with the exception of the gymnasium, which would be a slab on grade.

In response to a question from Mr. Hart concerning the development conditions proposed by staff, Mr. Tompkins said the applicant had proposed some minor modifications to the conditions as contained in Tab 8 of their handout. He said the only significant change the applicant made was to eliminate the condition that would impose the underground vault as a requirement and noted that the applicant was providing all BMPs and full detention. He said that should the PFM be amended to give credit for low impact design elements, such as the applicant was proposing in the parking area and rain garden, they would be able to shrink the size of the stormwater management facility onsite. Since the applicant could not be assured that the County would approve those amendments, they had to be conservative and size the pond in a way that they could receive credit for the LID elements for providing onsite retention.

Referring to Item 13 in Tab 8 that addressed lighting, Mr. Hart asked why the lighting would not be directed downward. Mr. Tompkins referred to the second sentence of that item and said that perhaps it was the up-lighting that Mr. Hart may have associated with landscaping. He noted that there was a prohibition on up-lighting and the applicant had clarified that with respect to the northern and western sides of the building that were adjacent to the residential communities. He said they had no neighbors on the south and east sides of the building, and there would be no prohibition of using up-lighting in association with landscaping in those areas. He said the applicant had provided that information to staff the day before the hearing. Ms. Langdon stated that staff had received the information late in the afternoon and had not had an opportunity to review it.

Referring to proposed Development Condition 9, Mr. Hart asked if the applicant had any difficulty with accepting staff's recommendations with respect to preserving existing vegetation along the lot lines as well as supplemental plantings of evergreen trees. Mr. Tompkins replied that the applicant would be willing to comply with that condition. Ms. Langdon said that she believed that the way Condition 9 had been modified would delete any additional landscaping that staff was proposing. She said staff felt that with the clearing that was going on and the fact that the trees that were onsite were deciduous, the transitional screening that was shown was not sufficient to meet transitional screening requirements, and that was why Condition 9 had been included. She stated that this in essence stated "as shown on the special permit plat," and, therefore, there would not be any additional screening required.

Mr. Ribble suggested that the Board and staff needed time to analyze the development conditions.

Chairman DiGiulian called for speakers.

The following persons came forward to speak in support of the application: Mark Petersburg, Senior Pastor, Knollwood Community Church, 2212 Senseney Lane, Falls Church, Virginia; and Patrick Gallagher, 10117 Schoolhouse Woods Court, Burke, Virginia. Their main points were that the congregation wanted to remain a community-based church and be able to meet their immediate and projected needs; what their immediate and future vision was; the Burke Center Conservancy Architectural Review Board had expressed approval of the proposed design; neighbors to include the Hemlock Woods development had expressed approval; staff's concerns had been met; the plans would significantly improve the site and would enable the church to continue to have a positive impact on the community; the church had been an excellent neighbor; and the planned design would fit in well with community designs. Letters of support from Alan and Hazel Mann,

~ ~ ~ March 21, 2006, TRUSTEES FOR KNOLLWOOD COMMUNITY CHURCH, SPA 82-S-028-05, continued from Page 218

Cindy Steiner, and the committee chairperson for Chestnut Wood cluster were read into the record. Members of the Knollwood community who were in attendance were asked to stand to show their support.

Chairman DiGiulian noted that one letter in opposition to the application had been received.

Mr. Byers asked whether staff's objection to the stormwater management pond was because there could be additional tree save with an underground facility or if it was a safety issue. Ms. Langdon responded that the pond would be dry and indicated that staff believed that it could be designed differently to allow the vegetation in that corner to be preserved. She said one way to do that would be with an underground detention facility. She stated that if the applicant wanted to provide other LIDs, there were other areas where they could be provided. She said one area was shown on the plat, but staff believed that area should be used for the underground detention facility.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to defer decision on SPA 82-S-028-05 to April 25, 2006, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ March 21, 2006, Scheduled case of:

9:30 A.M. DAVID L. BROWN AND MARY ELLEN BROWN, A 2005-DR-064

Chairman DiGiulian noted that A 2005-DR-064 had been administratively withdrawn.

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~ ~ ~ March 21, 2006, Scheduled case of:

9:30 A.M. BRUCE ELTON, A 2005-PR-062 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is operating an office in a freestanding accessory structure on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 3456 Annandale Rd. on approx. 30,471 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 46B. (Decision deferred from 3/7/06)

Chairman DiGiulian noted that A 2005-PR-062 had been withdrawn.

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~ ~ ~ March 21, 2006, After Agenda Item:

Request for Reconsideration
Sandra Santamaria and Marlene Santamaria, SP 2005-DR-047

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the applicants were present if the Board wished them to speak.

No motion was made; therefore, the request for reconsideration was denied.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding legal matters concerning Horace Cooper v. BZA; Concerned Citizens of Hollin Hall Village v. BZA; Williamson Group Development LLC v. BZA; McCarthy v. BZA; RLUIPA; correspondence; by-laws; and service in the clerk's office, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a

~ ~ ~ March 21, 2006, continued from Page 219

vote of 6-0. Ms. Gibb was absent from the meeting.

The meeting recessed at 10:22 a.m. and reconvened at 12:29 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Byers and Mr. Beard were not present for the vote. Ms. Gibb was absent from the meeting.

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Mr. Hart moved that the Board authorize Mr. McCormack to take the actions that had been discussed in Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Byers and Mr. Beard were not present for the vote. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:30 p.m.

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

Approved on: May 23, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 28, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. John F. Ribble III; and Norman P. Byers were absent from the meeting.

Chairman DiGiulian 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 DiGiulian called for the first scheduled case.

~ ~ ~ March 28, 2006, Scheduled case of:

9:00 A.M. RAYMOND L. HUBBARD III AND PATTY H. HUBBARD, SP 2006-MA-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.5 ft. from side lot line. Located at 7815 Antiopi St. on approx. 15,098 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-2 ((22)) 13.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, the applicant's agent, replied that it was, and he requested a deferral of the application.

Chairman DiGiulian asked if there was anyone present who wished to speak to the issue of a deferral.

Carol Burke, 7817 Antiopi Street, Annandale, Virginia, came forward to speak. She informed the Board that she intended to file an appeal of the Zoning Administrator's decision that defined the rear lot line versus the side lot line for 7815 Antiopi Street, Annandale, as written in the Hubbard's staff report. She said she had no objection to a deferral.

In response to the Board's question, Susan C. Langdon, Chief, Special Permit and Variance Branch, said the Zoning Administrator's determination of the minimum required rear yard was made the middle of December of 2005, and the staff report for SP 2006-MA-004 was published the week of March 20, 2006.

Mr. Hart asked Mr. Fox how much deferral time would be needed to deal with the boundary line issue.

Mr. Fox explained that the issue was that of a minor site plan, which required submission to the Department of Public Works and Environmental Services, and that he was not sure of the amount of time required.

Discussion followed between Mr. Hart and Mr. Fox concerning notification and the applicability of the 30-day rule for an application's submission with regard to the appeal.

To clarify, Ms. Langdon said that if Ms. Burke's appeal was filed immediately, the public hearings for the special permit and the appeal would be scheduled quite close together, if not on the same date. She pointed out that the appeal matter was different than the building in error issue covered in the staff report for the accessory structure. She said, as she understood it, the determination that was being appealed was the paving of the rear yard, which would be a variance application.

Discussion followed among Mr. Hart, Mr. Fox and Ms. Langdon concerning the accessory structure's location as measured from a rear versus side yard lot line; the amount of area in the rear yard that was paved; the paved area's distance from the lot lines; the issues that would change with the rear yard versus side yard determination; and, the public hearing scheduling of the appeal and the special permit.

Mr. Hart said he sought to defer the special permit for a sufficient amount of time to take care of all contingencies.

Chairman DiGiulian recognized a person who wished to address the Board on the issue of a deferral.

Mark Westerfield identified himself as the recently retained attorney who would represent Carol Burke with her appeal. He submitted that there were two issues, the 30 percent rule regarding rear yard coverage and the 25-foot setback requirement. He requested that the appeal be scheduled to be heard first and then the special permit.

~ ~ ~ March 28, 2006, RAYMOND L. HUBBARD III AND PATTY H. HUBBARD, SP 2006-MA-004, continued from Page 221

Mr. Hart moved to defer SP 2006-MA-004 to September 26, 2006, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Byers were absent from the meeting.

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~ ~ ~ March 28, 2006, Scheduled case of:

9:00 A.M. JAY D. HIRSCHMAN, SP 2006-BR-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 9236 Kristin La. on approx. 10,625 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-2 ((10)) 57.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jay D. Hirschman, 9236 Kristin Lane, Fairfax, Virginia, replied that it was.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant was requesting approval of a special permit for an accessory dwelling unit for his wife's elderly parents. The 836.5-square-foot accessory unit was proposed to be located in a second story addition with one bedroom, a kitchen, a living area, and a handicapped accessible bathroom. Access to the accessory dwelling unit would be from the rear of the home along a path extending around the house from the driveway. Staff believed that the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions, and recommended approval with the adoption of the proposed development conditions dated March 21, 2006.

Mr. Hirschman presented the special permit request as outlined in the statement of justification submitted with the application. He briefly explained the accommodations proposed for his wife's parents and said that his father-in-law was a World War II Veteran, his mother-in-law a retired bookkeeper, and that they were to celebrate their 60th wedding anniversary in September of 2006. Mr. Hirschman said that the addition was designed to be in compliance with all Ordinance and Code requirements and listed the amenities. He requested that the special permit designee include his wife's name.

Ms. Langdon suggested that the development condition language be changed to include, beside the applicant, Mr. Hirschman, whomever else Mr. Hirschman wanted to list. In response to Mr. Hart's question, she concurred that if development conditions were not specific as to who was granted the special permit, a new owner would have to apply for a special permit amendment.

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

Mr. Hammack moved to approve SP 2006-BR-003 for the reasons stated in the Resolution.

In response to Mr. Beard's question, Mr. Hammack explained that there were specific requirements for a special permit, and an owner, other than to whom the special permit was granted, may not meet the criteria to continue the accessory dwelling unit.

Ms. Langdon pointed out that Development Condition 8 addressed Mr. Beard's concerns.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAY D. HIRSCHMAN, SP 2006-BR-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 9236 Kristin La. on approx. 10,625 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-2 ((10)) 57. 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

~ ~ ~ March 28, 2006, JAY D. HIRSCHMAN, SP 2006-BR-003, continued from Page 222

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 28, 2006; 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 conditions for a special permit to be granted

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

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

1. This approval is granted to the applicants only, Jay D. and Vera D. Hirschman, and is not transferable without further action of this Board, and is for the location indicated on the application, 9326 Kristin Lane (10,625 sq. ft.), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Bryant L. Robinson, dated December 8, 2005 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

5. The accessory dwelling unit shall contain a maximum of 836.5 square feet, including a maximum of one bedroom.

6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.

7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

8. If the use of the accessory dwelling unit ceases and/or the property is sold, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold, a special permit amendment may be submitted to permit the continued use of an 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. 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.

~ ~ ~ March 28, 2006, JAY D. HIRSCHMAN, SP 2006-BR-003, continued from Page 223

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

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The Board recessed at 9:26 a.m. and reconvened at 9:34 a.m.

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~ ~ ~ March 28, 2006, Scheduled case of:

9:30 A.M. CLAUDIA J. CAMACHO, A 2005-SP-065 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has erected an accessory storage structure (tree house) which exceeds eight and one-half feet in height and which does not meet the minimum rear nor side yard requirements for the R-3 District in violation of Zoning Ordinance provisions. Located at 8115 Blairton Rd. on approx. 11,700 sq. ft. of land zoned R-3. Springfield District. Tax Map 79-4 ((2)) 242.

Mavis E. Stanfield, Deputy Zoning Administrator, Zoning Administration Division, acknowledged that the appellant was not present.

Elizabeth Perry, Zoning Administration Division, informed the Board that a recent phone conversation with the appellant confirmed that the intention was to be present, but there may have been a conflict with the agent's schedule.

Chairman DiGiulian asked if there was anyone present who wished to address the appeal.

Charles Trowbridge, Jr., 8118 Old Oaks Drive, Springfield, Virginia, said he agreed with the staff report and hoped the Board would concur that the structure was in non-compliance. He said he would like it taken down.

Discussion followed among Board members about holding the public hearing without the presence of the applicant.

At Chairman DiGiulian's request, Ms. Perry presented staff's position as set forth in the staff report dated March 21, 2006. This was an appeal of a determination that the appellant had erected an accessory storage structure, which exceeded 8 ½ feet in height and did not meet the minimum rear or side yard requirements for the R-3 District in violation of Zoning Ordinance provisions. The subject property was a lot area of approximately 11,700 square feet and was developed with a single-family detached dwelling and an accessory storage structure.

In response to a complaint, staff of the Zoning Enforcement Branch conducted two inspections which revealed that an accessory structure, that appeared to be a tree house approximately 57 square feet in area, had been built approximately 8 feet above grade and located approximately 3.3 feet from a side lot line and approximately 13 feet from the rear lot line. The inspections revealed the tree house was apparently being utilized to store chairs and tables and was not being used as a child's playhouse. Therefore, the structure was deemed an accessory storage structure and could be located in the rear yard provided it was no closer than 15 feet to the rear lot line and no closer than 12 feet to the side lot line. Although the appellant contended that the structure was a child's playhouse, it did not comply with the location regulations for a playhouse. The structure did not comply with locations for an accessory structure 15 feet in height. It remained in violation of the Zoning Ordinance, and staff recommended that the BZA uphold the Zoning Administrator. Ms. Perry noted that the appellant recently indicated to staff an intention to file an application for a special permit for an error in building location.

Ms. Perry concurred with Mr. Hart's comment that the purpose of the structure was irrelevant because its location was in violation of setback requirements. From several pictures presented, she identified assorted items, noting that they were associated with other activities on the property.

Adriana Torres, a sister representing the appellant, presented the arguments forming the basis for the appeal.

She clarified that there was only a stepstool in the playhouse that was being used to fix the roof and that it may have appeared like a table or chairs. She added that the roof project was halted pending the outcome of the appeal. Ms. Torres said she researched tree houses before commencing construction, that there were other tree houses in the neighborhood, and they were unaware that the structure would be considered an accessory structure. Its location and height were carefully chosen to assure it would not be within the neighbors' view and did not align with anyone's windows. She explained that it was a work in progress, having been ongoing for a year, and was the hobby of her niece who was instrumental in its planning, painting, and decoration. At a neighbor's suggestion, they planned on painting it a less noticeable color of brown, but were waiting for the warmer spring weather. Ms. Torres repeated their three options, tearing it down, relocating it to another area of the yard, or getting a special permit. She said that, if required, they probably would move it to the only other feasible location, and then it would block a neighbor's view. She expressed her surprise that the tree house even became an issue as the neighbors have always been supportive.

Chairman DiGiulian called for speakers.

Addressing the Board for a second time, Mr. Trowbridge said his property was adjacent to the subject property and that he was in agreement with the Zoning Administrator that the playhouse was noncompliant. He returned from a trip and found it very close to his fence already constructed. It was framed in his rear picture window, and it was an unpleasant sight and an invasion of his privacy. He refuted the appellant's contention that the structure was safe for children as he believed it was apparent it would not meet County standards. He said the workmanship was shoddy, it was poorly painted, and that the original roof was replaced with tar paper that would flap in the wind as had the original roof. Mr. Trowbridge stated that the structure was not an appealing neighborhood amenity, and the neighbors with whom he spoke also wanted it removed. Concluding his comments, Mr. Trowbridge said that the matter was not personal, and there was no complaint with the Camachos, but that he strove to be a considerate neighbor and only sought compliance with the County zoning regulations.

Nancy Re, 8120 Old Oaks Drive, Springfield, Virginia, said her home was contiguous to the subject property. She said she understood and commended a mother who wanted to provide a play area for her children, but she concurred with the safety issue Mr. Trowbridge raised. It did not appear sound and was an unsafe distance of 15 feet off the ground. She would not permit her children to play in it. Ms. Re pointed out that the tree house was unsightly, and when out on her deck, it encroached on her privacy.

In closing staff comments, Ms. Perry stated that accessory structures were measured from grade to the maximum height of the structure, and whether this structure was deemed a playhouse or a storage structure, it did not meet Zoning Ordinance provisions, and it remained in violation. Staff requested that the Board uphold the Zoning Administrator.

In rebuttal, Ms. Torres pointed out that the playhouse had no window that afforded a view of the neighbors' properties nor were the children concerned with the neighbors' activities. She apologized that some felt it was a privacy issue, that was not their intention, and it was built off the ground because it was a tree house.

Ms. Perry responded to Ms. Gibb's question concerning another location that would meet setback requirements for the structure's height, stating that because of the lot's development and shape, there was a possibility it might not be retained as a tree house.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator. He pointed out that although tree houses apparently were a permitted use under the Ordinance, not every tree was suitable for a tree house as high as this one, although some other resolution could be possible. Before the Board was the question of whether the Zoning Administrator was correct under these circumstances, and the Board was not given anything to show otherwise regarding the determination; and; therefore, the determination of the Zoning Administrator should be upheld.

Mr. Hammack said he would support the motion, commenting that the appellant made some interesting points about there being nothing in the Ordinance about tree houses, and he said he believed the

construction was done innocently. He noted that the appeal was presented by Ms. Torres, but the Notice of Violation went to the property owner, and there was no proof of Ms. Torres as the agent. He said he believed something in the file should show who had the authority to act as the agent on behalf of the property owner. Mr. Hammack said that it was the process he found problematic because anyone could file an appeal, and there was no proof who had the authority to speak on behalf of the property owner.

Ms. Perry noted that the appeal application indicated who the appellant was and who was to be the agent.

Mr. Hammack submitted that there was no proof as to who was who, and he thought the form should be considered for revision.

Ms. Stanfield said staff would create a document, a form page, that would specify who was representing the appellant, which would require the appellant's signature.

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

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Cooper v. BZA, Concerned Citizens of Hollin Hall v. BZA, Virginia Equity Solutions v. BZA, the McCarthy case, the Lee case, RLUIPA issues, the by-laws, Lake Braddock case, and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Byers were absent from the meeting.

The meeting recessed at 10:01 a.m. and reconvened at 11:35 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Byers were absent from the meeting.

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Mr. Hart moved that the Board authorize Mr. McCormack to take the actions discussed in Closed Session. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Byers were absent from the meeting.

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Mr. Hart moved that the Board authorize the Chairman to send the letter discussed in Closed Session. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Byers were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Minutes by: Paula A. McFarland

Approved on: September 15, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 4, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:03 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 DiGiulian called for the first scheduled case.

~ ~ ~ April 4, 2006, Scheduled case of:

9:00 A.M. CARLOS H. ZUNIGA, SP 2006-PR-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13 ft. with eave 12 ft. from front lot line of a corner lot. Located at 2923 Meadow La. on approx. 5,627 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((9)) 20.

Chairman DiGiulian noted that SP 2006-PR-007 had been administratively moved to May 2, 2006, at 9:00 a.m., for notices.

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~ ~ ~ April 4, 2006, Scheduled case of:

9:00 A.M. WARREN H. SHANG/CYNTHIA M.W. SHANG, SP 2006-SU-006 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit a modification to certain R-C lots to permit construction of addition 17.0 ft. with eave 16.0 ft. from side lot line and 25.0 ft. with eave 24.0 ft. from front lot line. Located at 15121 Elk Run Rd. on approx. 12,487 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 431.

Deborah Hedrick, Staff Coordinator, advised the Board that she had recently been in contact with the applicants; however, they had not yet arrived.

Chairman DiGiulian stated that the Board would take the matter up again later in the meeting.

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~ ~ ~ April 4, 2006, Scheduled case of:

9:00 A.M. NANCY J. SLOCUMB, SP 2006-MV-005 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 1906 Joliette Ct. on approx. 11,893 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 48.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy Slocumb, 1906 Joliette Court, Alexandria, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a modification to the limitation on the keeping of animals to permit the keeping of two pot-bellied pigs. Section 2-512, Paragraph 3 of the Zoning Ordinance requires the keeping of livestock or domestic fowl to be an accessory use on any lot of two acres or more in size.

In response to a question from Mr. Beard, Mr. Varga indicated that the violation had been reported by a neighbor to the Zoning Enforcement Branch of the Zoning Administration Division.

Mr. Hammack asked whether the call had been placed anonymously. Mr. Varga said that insofar as he knew, the call was anonymous, but he suggested that the applicant could address the question more specifically.

Ms. Slocumb presented the special permit request as outlined in the statement of justification submitted with the application. She said that Animal Control had approached her and indicated that they had received a

complaint via an anonymous letter. She stated that she did not know that pot-bellied pigs were illegal in Fairfax because she had kept them in California as house pets. She said that once she had been approached, she had immediately contacted Zoning Enforcement. She said the pigs had been rescued and were now house pets. She said they were quiet, clean, and smarter than most cats and dogs. Ms. Slocumb stated that most of her neighbors' children had visited the pigs at her home. She said the notice of violation had been received just prior to a neighborhood block party, and she had posted an invitation for the neighbors to go to her house to observe the pigs and their habitat. She said that the neighbors who had responded to her invitation had signed a petition asking that her family be allowed to keep the pigs. She noted that several letters had been written to staff in support and that Senator Tom Harkin from Iowa had stopped by and signed the petition. Ms. Slocumb requested that the Board allow the pigs to remain.

In answer to a question from Mr. Hart, Ms. Slocumb stated that the pigs could not get out of her yard. They had a yard of their own within her yard, and they had never gotten out.

Mr. Hart asked staff whether there was something specific in the anonymous letter that the person was complaining about. Mr. Varga stated that staff had not seen the letter and did not know its contents.

In response to a question from Mr. Hammack, Ms. Slocumb stated that she had read the development conditions and would have no problem adhering to them.

Chairman DiGiulian called for speakers.

The following speakers spoke in support of the application: Carolyn Murphy, 1904 Joliette Court, Alexandria, Virginia; and Arnold Kurtz, 1903 Joliette Court, Alexandria, Virginia. Their main points were that the Slocumbs were good neighbors; they and the neighborhood children loved the pigs; the pigs were clean and quiet, rarely visible; and, they were in full support of the applicant being allowed to keep the pigs.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2006-MV-005 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY J. SLOCUMB, SP 2006-MV-005 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 1906 Joliette Ct. on approx. 11,893 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 48. 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 4, 2006; and

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

1. The applicant is the owner of the land.
2. Having one or two dogs is allowed, and there is no requirement from the standpoint of the size of the property.
3. Pigs are fastidious animals, very clean, and do not make any more noise than one or two dogs barking on the same limitations of 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

~ ~ ~ April 4, 2006, NANCY J. SLOCUMB, SP 2006-MV-005, continued from Page 228

Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Nancy Slocumb, and is not transferable without further action of this Board, and is for the location indicated on the application, 1906 Joliette Court (11,893 sq. ft.), 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 two (2) pot-bellied pigs. If any of these specific animals die or are given away, the pot-bellied pigs shall not be replaced.

4. The yard areas where the pot-bellied pigs are kept shall be cleaned of animal waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.

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

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

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~ ~ ~ April 4, 2006, Scheduled case of:

9:00 A.M. WARREN H. SHANG/CYNTHIA M.W. SHANG, SP 2006-SU-006 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit a modification to certain R-C lots to permit construction of addition 17.0 ft. with eave 16.0 ft. from side lot line and 25.0 ft. with eave 24.0 ft. from front lot line. Located at 15121 Elk Run Rd. on approx. 12,487 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 431.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Cynthia Shang, 15121 Elk Run Road, Chantilly, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow modifications to minimum yard requirements for certain R-C lots to permit construction of a one-story garage addition to be located 17 feet with eave 16 feet from the side lot line and 25 feet with eave 24 feet from the front lot line. A minimum side yard of 20 feet and minimum front yard of 40 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side and front yards; therefore, modifications of 3.0 feet, 1.0 foot, 15 feet, and 13 feet, respectively, were requested.

Ms. Shang presented the special permit request as outlined in the statement of justification submitted with the application. She said she wanted to expand their one-car garage into a two-car garage. She pointed out that many of the residents of the neighborhood had modifications made under Sect. 8-913 of the Zoning Ordinance.

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

Mr. Hart moved to approve SP 2006-SU-006 for the reasons stated in the Resolution.

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~ ~ ~ April 4, 2006, WARREN H. SHANG/CYNTHIA M.W. SHANG, SP 2006-SU-006, continued from Page 229

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WARREN H. SHANG/CYNTHIA M.W. SHANG, SP 2006-SU-006 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit a modification to certain R-C lots to permit construction of addition 17.0 ft. with eave 16.0 ft. from side lot line and 25.0 ft. with eave 24.0 ft. from front lot line. Located at 15121 Elk Run Rd. on approx. 12,487 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 431. 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 4, 2006; and

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

1. The applicants are the owners of the land.
2. The applicants have shown compliance with the required standards for this type of special permit.
3. The lot was originally engineered under a different set of zoning regulations.
4. The lot is subject to five-acre lot setbacks as a result of the downzoning.
5. The lot is only 12,487 square feet.
6. The approval is consistent with numerous other approvals for modifications to existing dwellings in the subdivision and consistent with the standards which would otherwise have been in effect prior to the downzoning.
7. It will not adversely affect anyone.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

~ ~ ~ April 4, 2006, WARREN H. SHANG/CYNTHIA M.W. SHANG, SP 2006-SU-006, continued from Page 230

unreasonable hardship upon the owner.

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

1. This Special Permit is approved for the location of an addition as shown on the plat prepared by Rice Associates, P.C., dated March 21, 1994, revised by Cynthia M.W. Shang, dated January 26, 2006, as submitted with this application and is not transferable to other land.

2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.

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

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

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~ ~ ~ April 4, 2006, Scheduled case of:

9:00 A.M DOROTHY A. WINE, SP 2006-DR-008 Appl. under Sect(s). 8-907 and 8-914 of the Zoning Ordinance to permit a home professional office and reduction to minimum yard requirements based on error in building location to permit accessory storage structures to remain 3.8 ft. with eave 3.1 ft. from rear lot line and 4.1 ft. from side lot line and 6.0 ft.from rear lot line and 6.0 ft. with eave 5.3 ft. from side lot line. Located at 1834 Cherri Dr. on approx. 10,075 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 310. (Admin. moved from 4/11/06)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dorothy Wine, 1834 Cherry Drive, Falls Church, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a home professional office for a therapist and reductions to minimum yard requirements based on errors in building locations to permit a 9.5-foot tall accessory storage structure to remain 3.8 feet with eave 3.1 feet from the rear lot line and 4.1 feet from a side lot line; and an 11.5-foot tall accessory storage structure to remain 6.0 feet from the rear lot line and 6.0 feet with eave 5.3 feet from the side lot line. A minimum rear yard equal to the height of the accessory storage structures and minimum side yard of 10 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum rear and side yards; therefore, modifications of 5.7 feet, 3.4 feet, 5.9 feet, 5.5 feet, 4.0 feet, and 1.7 feet, respectively, were requested. Staff recommended denial of the home professional use for the reasons outlined in the staff report relating to the limited parking on site.

Ms. Wine presented the special permit request as outlined in the statement of justification submitted with the application. She said that, as a therapist, she treated patients with phobias, anxiety, and Asperger Syndrome, which fell within the autistic spectrum. She said many people who fall within those categories benefited from a quiet, home-like atmosphere that eliminated the stresses of public areas. She stated that her neighbors had expressed no opposition to her having a professional office in her home. She read into the record a letter from her neighbor requesting that the Board approve the application. Ms. Wine indicated that photographs showing cars parked in her driveway had been submitted to staff. She noted that the cars

fit comfortably. She also referenced letters of support that had been submitted by her neighbors which were also in the record.

Ms. Gibb asked whether the applicant had an office elsewhere. Ms. Wine said she had one in a professional building in Falls Church, and she had not determined yet whether she would keep that office or not; however, if she were told she could not see couples at her home, she might keep that office open one day a week. In answer to a question from Ms. Gibb, Ms. Wine said she had read the development conditions. She said that it was her understanding that staff was not recommending approval because they felt there was a parking problem. Ms. Gibb asked about the sheds that were located at the back of the property. Ms. Wine said she had written a letter to staff stating that she had never received complaints about the sheds. She said it would be difficult to move the sheds because they were on a block. She said she had written a letter of justification with respect to the sheds, indicating that they were not dangerous to her neighbors.

Mr. Hammack stated that the Board did not have a copy of the letter and asked who had constructed the sheds. Ms. Wine responded that there were sheds present on the property when she moved into the house. They were old, and her husband had built replacement sheds, which he located in the same place and made smaller. She said she and her husband had lived in the home for 33 years. Responding to a question from Mr. Hammack, Ms. Wine said her family owned two cars. She said her daughter owned the third car, and it was parked there to show that three cars could park comfortably and not obstruct the sidewalk.

Mr. Beard noted that there were three separate entrances to the home and asked which entrance the clients would use. Ms. Wine responded that they would use the front door. She confirmed that the entrance located in the rear of the house led to the basement entrance and the side door entered into a family room.

Mr. Hart asked staff whether there would still be a problem with parking if the applicant had the couples she treated come in one car since the photographs had demonstrated there was room for one more vehicle in addition to the applicant's two vehicles. Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff had based its opinion on the drawing and the minimum required size of the parking spaces according to the Zoning Ordinance. A minimum of two spaces were required for the house, and at least a minimum of one more was needed. She said that staff would not object if the Board felt three cars would fit. She said parking was staff's only issue with the application because the parking would be very tight, and if more than one client came at the same time, there would not be enough parking.

Mr. Hart asked whether having an occasional fourth car there would be a basis for denial. Ms. Langdon stated that staff would want the conditions adopted which stated that there will not be a fourth car on site, and if there were couples, they would arrive together so that all parking could be on site. Mr. Hart asked whether staff would recommend approval if not for the parking issue. Ms. Langdon said that was correct.

In answer to questions from Mr. Byers, Ms. Wine indicated that her husband worked part time, and his SUV would not necessarily be in one of the parking spaces during her requested office hours, so there would only be one car on the property when patients arrived.

Mr. Hammack asked if any other people came to the house that would occupy the parking spaces. Ms. Wine said that no other persons used those spaces during the week when she was working other than herself, her husband, and her patients.

In response to a question from Mr. Hammack regarding whether any of the patients would perhaps be at risk of being violent, Ms. Wine said absolutely not, she would not want anyone in her home that would be at risk of violence. She said her patients were very gentle people.

Chairman DiGiulian called for speakers.

Sheila Frace, 1836 Cherri Drive, Falls Church, Virginia, came forward to speak. She said Ms. Wine's home business would not have a negative impact on the neighborhood. The Wines were good neighbors, and having people coming and going during the day would add an additional level of security to the neighborhood. Ms. Frace said she did not share staff's concerns about parking either in the driveway or on the street. She said the sheds were unobtrusive, and she was in full support of the applicant's request.

Chairman DiGiulian closed the public hearing.

~ ~ ~ April 4, 2006, DOROTHY A. WINE, SP 2006-DR-008, continued from Page 232

Ms. Gibb moved to approve SP 2006-DR-008 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DOROTHY A. WINE, SP 2006-DR-008 Appl. under Sect(s). 8-907 and 8-914 of the Zoning Ordinance to permit a home professional office and reduction to minimum yard requirements based on error in building location to permit accessory storage structures to remain 3.8 ft. with eave 3.1 ft. from rear lot line and 4.1 ft. from side lot line and 6.0 ft.from rear lot line and 6.0 ft. with eave 5.3 ft. from side lot line. Located at 1834 Cherri Dr. on approx. 10,075 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 310. (Admin. moved from 4/11/06) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 4, 2006; and

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

1. The applicant is the owner of the land.
2. The applicant demonstrated that she qualifies for a home professional office.

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect(s). 8-907 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

1. This approval is granted to the applicant, Dorothy A. Wine, only and is not transferable without further action of this Board, and is for the location indicated on the application, 1834 Cherri Drive, and is not transferable to other land.

~ ~ ~ April 4, 2006, DOROTHY A. WINE, SP 2006-DR-008, continued from Page 233

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by John E. Krobath (Rice Associates) dated September 13, 2005, revised through January 25, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The hours of operation of the home professional office shall commence no earlier than 8:30 a.m. with the last appointment starting no later than 6:00 p.m., Monday through Friday.

6. The area utilized for the home professional office shall not exceed 400 square feet.

7. The dwelling that contains the home professional office shall be the primary residence of the applicant.

8. There shall be a maximum of six (6) appointments per day with no more than one (1) vehicle associated with an appointment and no more than two patients on site at one time.

9. There shall be a minimum of 15 minutes between appointments.

10. There shall be no signage associated with the home professional office.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

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

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

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~ ~ ~ April 4, 2006, Scheduled case of:

9:30 A.M. M SCRAP CORPORATION T/A M SCRAP AS LESSEE OF 6304E GRAVEL AVENUE, A 2006-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a recycling business on property in the I-4 District in violation of Zoning Ordinance provisions. Located at 6304E Gravel Av. on approx. 10.626 ac. of land zoned I-4 and NR. Lee District. Tax Map 91-1 ((1)) 36B.

Chairman DiGiulian noted that A 2006-LE-001 had been administratively moved to May 23, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ April 4, 2006, Scheduled case of:

9:30 A.M. A-1 SOLAR CONTROL, A 2005-DR-057 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a vehicle light service establishment on property in the C-5 District without approval of a Special Exception, a site plan, nor a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 2/14/06 and 3/14/06)

9:30 A.M. CHARLES A. LANARAS, A 2005-DR-060 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a vehicle light service establishment on property in the C-5 District without approval of a Special Exception, a site plan, nor a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 2/14/06 and 3/14/06)

Mary Ann Tsai, Zoning Administration Division, presented staff's position as set forth in a memorandum dated March 7, 2006. She noted that the Board had deferred its decision from the March 14, 2006 meeting, at the request of the attorney for the appellants. Ms. Tsai said that although the appellants' claimed that the primary use of the property was for a retail sales establishment, staff maintained that the use of the property was as a vehicle light service establishment use.

Mr. Hart asked for clarification regarding the square footage calculation by staff of 53 percent and the 19 percent calculated by the appellant. Ms. Tsai said 53 percent of the site would be for retail sales. Referring to the facsimile submitted by Mr. Baskin dated March 24, 2006, which included a diagram of the structure, the square footage, and its proposed uses, Mr. Hart asked whether staff concurred with the calculations and functions. Ms. Tsai said that her calculations resulted in the following: 672 square feet for the two service bay areas and 176 square feet for the office area, which totaled 848 square feet, and 240 square feet for the bathroom and mechanical area. She stated that her measurements had been done using the equipment, piping, and electrical plan that included a breakdown of the interior of the site, which she had measured using the scale provided on the plan. Mr. Hart asked whether the areas for the retail storage or the service bay were the same as shown by Mr. Baskin. Ms. Tsai stated that the plan she had referenced was the only one in the street file showing the interior of the site which showed where the three service bays were as well as the office and the bathroom. She noted that all other plans to which staff had access showed only the overall shell of the property. Ms. Tsai stated that the drawing had been approved in 1975. She said staff had not physically measured the building or functions inside. She said the files did not show any interior renovations to the site since it had been originally constructed, and the only things that were shown were located on the exterior of the building, such as canopies and additional pump stations being put in. She said, to her knowledge, there had never been any interior renovations attributed to the site.

In answer to another question from Mr. Hart, Ms. Tsai said that if the appellants were to sell car wax or other associated products, they could do it by right. Mr. Hart asked whether the appellants would need a special exception (SE) to have 10 percent of the building used for window tinting or whether an SE would be needed to have any amount of window tinting. Ms. Tsai indicated that would have to be evaluated on a case-by-case basis. She said staff had looked at the Circuit City example because in that situation it was clear that the area and the use were both subordinate to the retail sales and that retail sales was the primary use of that property and supported the property in its revenue without the vehicle light service use. She explained that when staff had looked at this situation they had asked if the car care products could support the property without the vehicle light service use, and they had determined that was questionable. Ms. Tsai stated that staff had not seen any revenue figures, and, to her knowledge, there was no other site in the county where the primary use was to sell car care products along with an accessory vehicle window tinting business. Ms. Tsai responded to a question from Mr. Hart indicating that it would be possible to have a Wal-Mart size building that sold car products and a small area for window tinting without requiring a SE.

Mr. Hart asked if the question was whether the window tinting operation was subordinate to the rest of the operation, either by size or income generated, and staff would determine that on a case-by-case basis. Ms. Tsai said staff would look at such an operation on a case-by-case basis, but it also went back to the definition of accessory use that stated an accessory use was subordinate in purpose and area to the principal use. Mr. Hart said it was not clear to him what the figures were that would support staff's conclusion and asked what they were basing their information on. Ms. Tsai said no figures had been submitted by the appellants, and the basis for staff's conclusions was whether or not it would be possible to

have retail sales that just sold car care products that would support the entire business with vehicle window tinting being done on the side. She said the question was which of the two would generate the greater revenue. Ms. Tsai concurred with Mr. Hart's comment that it was difficult for staff and the Board to make a determination without having any financial figures available. Mr. Hart said it would be hard for the Board to review staff's conclusion unless there was some backup material.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that no figures had been submitted concerning how much income the appellants could make with their car cleaning products versus their window tinting. She said that as demonstrated by the information staff had on the physical layout, it appeared that the window tinting was not going to be an accessory use to the retail. The appellants had told staff that they would put a wallboard across two of the bays and leave only one bay open for the window tinting operation, but Ms. Stanfield said it would be just as easy to remove the wallboard and increase the business as it would be to install the wallboard in the first place. She said she had requested that the appellants permanently remove the two bays, and it was her understanding that they were not willing to do that.

Mr. Hammack said he understood staff to be saying there were no other existing comparable businesses, and staff was making a best guess because there were no revenue figures to support its position. He said there were some businesses that sold only car care products, but they were usually located in shopping centers. Ms. Tsai said normally car care products were sold in a larger retail business or at a gas station. Mr. Hammack said there were places that sold only car care products, such as windshield wipers and floor mats. Ms. Tsai responded that the appellants were not proposing to sell those types of products, only cleaning products. Mr. Hammack said it was their choice as to what they wanted to sell. He said the BZA was stuck with a dilemma because this was an appeal of something that had occurred some time ago, not what was currently occurring, and it was up to the appellants to bring everything into compliance. He said he did not know why the Board of Supervisors would not extend the appellants the opportunity to comply with the SE.

Ms. Stanfield stated that it was her understanding that the reason the Board of Supervisors did not approve the additional time was because the appellants had represented that they were not willing to do the improvements associated with the SE.

Mr. Hammack said he understood that Mr. Baskin was attempting to bring the appellants into compliance as a by-right, but that did not help the BZA because they were not here to mediate the situation and had to look at what was before them. If the appellants could bring the property into compliance and the County would withdraw its notice of violation that would be a good solution. He said he thought the property was a difficult one to work with, and he did not know what the financial considerations were, but that was something the BZA did not take into consideration. He said he did not know why the appellants had not done what they had originally agreed to do; however, it was an ongoing situation, and as far as he was concerned, they were at an impasse. Mr. Hammack said he thought Mr. Baskin had proposed some sensible alternatives, but staff was not prepared to give the appellants a non-RUP unless they came into compliance. Ms. Stanfield said she thought there was an opportunity to work with the appellants; however, at this point in time staff was not completely comfortable with the fact that it was an accessory use.

Mr. Hammack asked whether any modifications had been made to the property to bring it into compliance as had been discussed this morning. Ms. Stanfield said she was not aware of any and suggested that the appellants be asked the question.

William Baskin, the appellants' agent, Baskin, Jackson, Hansbarger & Duffett, Falls Church, Virginia, stated that the appellants were proposing changes and indicated they would include erecting a wall to separate the bay that would be used for window tinting from the display area and wall off from the interior the garage doors that would lead to the display area so they could no longer be used by vehicles. He said he understood the County's dilemma with respect to having the dollar figure if they wanted to measure what was subordinate and what was primary, and the appellants were willing to make those figures available. He noted that the site had been built 35 years prior as a gas station, it had been vacant for four to five years, and the new property owner had a small business man as a lessee who was trying to make a living. He suggested that if the Board was not ready to vote on the appeal, the appeal could be continued for six to eight months rather than being dismissed. The appellants could do the improvements, build up a retail sales

history, and at that time it could be determined whether or not the operation was retail or not. Mr. Baskin indicated that he thought there was a solution that was workable, and the appellants were trying to come into compliance. With respect to the SE that had been mentioned earlier, he indicated that the figures on the diagram he had submitted had come from the SE plat. He said the prior owner had submitted the SE and had committed to taking out an entrance to the property from the service road into the site, leaving only a side entrance, which was not only expensive, but it was not workable for the new owner. Mr. Baskin said that starting over with the SE process would be too expensive and almost impossible for a small business man to undertake.

Mr. Hammack stated that the case was an appeal, and he did not know if the Board could fail to act on it. He said the Board was being asked to decide on a very narrow issue, and he did not think the Board had the authority to defer the case unless staff was amenable to withdrawing the notice of violation.

Mr. Baskin said the use itself, for which the violation was issued, was retail because it was not among the lengthy list of uses which were defined as vehicle light service, and he thought the Board could find that it was a retail operation by the way it was originally noticed in the violation, which would make the non-RUP incorrect.

Ms. Gibb asked staff to clarify a previous statement that they had requested that the appellants close two service bays with something more permanent than wallboard and whether that would be considered to be moving in the right direction. Ms. Stanfield indicated that was correct. Ms. Gibb asked what would happen if they appellants did that. Ms. Stanfield said it would give her a little more comfort knowing that they were actually moving in the direction of using it as a retail use. She said staff was trying to get to a place where they could say that was what it was and they were not there yet because wallboard could be easily removed and the bays could be opened for additional window tinting if business picked up. Ms. Gibb said she assumed that the appellants did not want to comply with staff's request because of the expense they would incur, especially when they were not sure of where the business would take them.

Mr. Baskin indicated that Ms. Gibb's comments were correct because the site had originally been built as a service station and would involve significant changes to remove the bays entirely and rebuild the structure. He said he thought that interior construction that would make the bays inaccessible by vehicles was more complicated than something that could be pulled away to allow the bays to be opened and cars to go in and out and then to put back. He said it would be obvious to a passing zoning inspector whether the bays were being used or not and could be readily identified as a violation if that were to occur. Mr. Baskin said the interior construction would be comprised of two-by-fours and drywall which would be fixed to the structure and would not be moveable.

Mr. Beard said he thought staff and the appellants could move forward with the appeal if both sides were willing to work together toward a solution.

Chairman DiGiulian pointed out that in a letter submitted by Mr. Baskin on April 3, 2006, he had indicated that the appellants would construct interior walls which would render the two service bays used for retail inaccessible by vehicles, and that indicated to him that the appellants would block the roll-up doors.

Mr. Hart stated that he agreed with Mr. Hammack that on appeals the Board was tasked with deciding whether the Zoning Administrator's determination was correct, not with negotiating a solution. He said it seemed to him that the appeal could easily be decided today, and that no matter what the Board did, it seemed to him that it could come back to the BZA again. If the Board upheld the Zoning Administrator, the appellants would apply for a non-RUP for retail, which would be denied, and the appellants would likely appeal that. If so, the same questions would be raised as to whether window tinting was within the definition of vehicle light service and whether the window tinting was subordinate to the retail use geometrically or financially. Mr. Hart said that with the submission of information that had been received within the last few weeks, and if there was such a thing as window tinting being subordinate to retail of car care products, perhaps a solution could be found with which staff would be satisfied.

Mr. Beard stated that he was ready to make a motion, notwithstanding what the Board was asked to do in the appeal process. He said he thought the parties could work it out, and he was willing to grant them more time.

Mr. Hammack stated that there were several past cases that had come before the Board concerning geometric areas of space. He said that stores which sold car care products exclusively were abundant throughout the county, and he did not understand why staff could not find that information. He said he was willing to grant the appellants an extension of time and that both staff and the appellants needed to get serious about what it would take to bring the site into compliance.

Mr. Byers said that what bothered him about the continuation of the case was that if Trak Auto was in a shopping center, the original intent of the company was to sell automobile accessories. When he looked back at the non-RUP that was established per the conditions of the original SE, it did not say automobile accessories. It specifically said vehicle light service establishment. His greatest concern was that when talking about money, if the appellants had actually completed the development conditions associated with the original SE to come into compliance, he would guess that it would almost be a wash from the standpoint of the cost imposed versus attorney fees and building out something to hide service bays. Mr. Byers stated that, from his perspective, regardless of the square footage and the percentages, the intent was not to sell automobile accessories, which he thought was an adjunct to the primary use of window tinting, and the Board needed to judge the appeal based on that. He asked whether it was correct that what would happen while the appeal went on was the business would continue to function in the same manner without a non-RUP or an approved SE, and essentially the appellants would be in violation until the problems were taken care of. Ms. Stanfield said that was correct. Mr. Byers said that, in his opinion, it was an obfuscation of what the original issue was, and he did not think it would be resolved.

Ms. Stanfield suggested that if it was the Board's intent to defer decision on the case, that they do so for three months and then evaluate any progress which had been made. She said that because the case had been going on for such a long time, staff would have to determine what would be an accessory use, and perhaps sometime this week she could do that; however, from that point on staff would want to see some real progress in complying with the Zoning Ordinance.

Mr. Hart asked whether staff preferred the case be deferred further or the Board take action today. Ms. Stanfield responded that she believed staff could still work with the appellants in bringing the case into compliance whether or not the Board took action. She said that she did not know that it was necessary that they have a deferral, but it would help staff in terms of enforcing the applicable provisions of the Zoning Ordinance while this was going on and staff was attempting to bring the appellants into compliance. She stated that if at some point staff determined that there would not be a resolution and the appellants would not come into compliance, then it would be much easier for staff to move forward.

Ed Tobin, Zoning Inspector, Zoning Enforcement Division, stated that it was his opinion that the appeal was a question of whether the Zoning Administrator was correct in issuing a notice of violation for violating the Zoning Ordinance. He said he believed it had been demonstrated that was a correct assertion. Whether or not the appellants could comply in the future to meet the needs of retail sales/accessory use was a different problem. He said he thought the violation had been established, and the appellants would remain in violation if it were further deferred. He said he would like to have a decision made.

In his rebuttal, Mr. Baskin said the appellants were prepared to begin immediately on changes to the structure. Obtaining figures on retail sales would take a little time, and he agreed that a three-month deferral would be enough time for the appellants to show that they had begun making changes to the structure and rearranging the uses within the structure. He agreed with Mr. Hart that it was not a slam dunk whether it was window tinting as a retail use or a vehicle light service use. Although he was asking for a deferral, Mr. Baskin said that if it was the Board's desire to vote on this appeal, he thought the vote should be that this was a retail use. He said the use was not listed in the exhaustive list of activities that constituted vehicle light service that was cited in the violation, so the question should be whether to defer or overrule the Zoning Administrator.

Mr. Beard asked when financial information would be furnished to staff and the Board. Mr. Baskin said they would do that, but he did not know whether the information would be available in 90 days. He said the appellants could take the steps to reconfigure the space and put the walls in to block off the service bays and begin stocking the store, but he did not think sufficient numbers from sales would be available on a gross receipts basis. Ms. Stanfield said staff was clear on the fact that the appellants would not have financial figures at that time.

~ ~ ~ April 4, 2006, A-1 SOLAR CONTROL, A 2005-DR-057, and CHARLES A. LANARAS, A 2005-DR-060, continued from Page 235

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

Mr. Byers indicated that he would not support the motion. He said he did support the comments of the zoning inspector and that the question before the Board was a narrow one and that was whether or not the Zoning Administrator was correct in issuing the violation. He said that, in his opinion, the answer was yes.

Mr. Hammack indicated that he did not know why a 90-day deferral was necessary. Because staff had indicated that they could make a determination as to whether window tinting was an accessory use within a week, he thought there could be a shorter deferral time. Ms. Stanfield stated that the reason she had suggested 90 days was because she would like to see the appellants get a new tenant layout and actually see something progress, assuming there was an agreement at some point on what constituted an accessory use.

Mr. Beard moved to defer decision on A 2005-DR-057 and A 2005-DR-060 to August 8, 2006, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Hart voted against the motion.

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~ ~ ~ April 4, 2006, After Agenda Item:

Request for Additional Time
Trustees of the Kings Chapel, SP 2002-SP-051

Mr. Hammack moved to approve six months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was August 18, 2006.

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~ ~ ~ April 4, 2006, After Agenda Item:

Request for Additional Time
Church of the Good Shepherd, SPA 81-A-025

Mr. Byers moved to approve 12 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was November 21, 2006.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Cooper, Concerned Citizens of Hollin Hall, Virginia Equity Solutions, McCarthy, Lee, Lake Braddock, Bristow Shopping Center, RLUIPA, by-laws amendments, and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 10:37 a.m. and reconvened at 12:21 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was not present for the vote.

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~ ~ ~ April 4, 2006, continued from Page 239

As there was no other business to come before the Board, the meeting was adjourned at 12:22 p.m.

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

Approved on: June 6, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 18, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John F. Ribble III; James R. Hart; and Paul W. Hammack, Jr. Nancy E. Gibb and Norman P. Byers were absent from the meeting.

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

~ ~ ~ April 18, 2006, Scheduled case of:

9:00 A.M. MALCOLM AND INNEKE ROSS, VC 2006-MA-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory storage structure to remain in the front yard of a lot containing 36,000 square feet or less. Located at 4219 Sleepy Hollow Rd. on approx. 15,776 sq. ft. of land zoned R-3. Mason District. Tax Map 71-2 ((16)) 84.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Malcolm Ross, 4219 Sleepy Hollow Road, Annandale, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The subject parcel was located at 4219 Sleepy Hollow Road, in the Sleepy Hollow Run subdivision, in the Mason District. The subject property and the surrounding properties were zoned R-3 and developed with single-family detached dwellings. The applicants requested a variance to permit an accessory storage structure to remain in the front yard of a lot containing 36,000 square feet or less.

Mr. Ross presented the variance request as outlined in the statement of justification submitted with the application. Utilizing the overhead projector, he showed his property's extraordinary shape, its setbacks, the layout and topography, and surrounding properties. He pointed out numerous improvements made to the yard, driveway, the installation of several gardens, a sidewalk and patio, and noted that there was a side entrance into the house. Mr. Ross said the shed was needed for his and his wife's considerable gardening tools, outdoor furniture, lawn care equipment, and bicycles. He pointed out that the property had no other area for storage. After being advised by the County that what he proposed was permitted, he stated that thousands of dollars were spent on property improvements and the construction of the shed. He discussed the reasons why different areas of the lot were neither appropriate nor convenient to place an accessory structure; that there really was no other place it could be located; that what was visible was aesthetically pleasing; that it improved his property value; and, that it did not detract from the neighborhood. Mr. Ross submitted that he felt as if he had no control over his property and had ceded the right to use and enjoy his land to the zoning regulations.

Ms. Hedrick concurred with Mr. Hart's assumption that none of the amendments on the Work Program dealt with allowing accessory structures in front yards. She explained why one could not apply for a special permit for an error in building location rather than a variance, noting that the Ordinance specifically stated no accessory structures were permitted in a front yard containing less than 36,000 square feet.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said depending on how an accessory structure was attached to the house, perhaps by an arbor or breezeway, the structure could be considered attached rather than accessory.

Discussion followed between Mr. Hart and Ms. Langdon concerning possible scenarios that might allow an accessory structure that would meet required setbacks.

In response to Mr. Hart's request that Mr. Ross address whether he believed the Ordinance interfered with all reasonable beneficial use of his property, Mr. Ross affirmed that it did, that all he sought was to improve and enjoy his property to the fullest.

Chairman DiGiulian called for speakers.

Jean Alford Mitchell, 4223 Sleepy Hollow Road, Annandale, Virginia, came forward to speak. She said that the Ross' had improved their property, its value, and the neighborhood's property values because of the improvements. She said a variance was a reasonable solution to solve the problem and that the Ross' should not be punished for putting in time, effort, and money to take care of their place. Ms. Mitchell said

she and her husband felt strongly about the matter, that they took off work to attend the meeting, express their opinion, and register their support of the Ross', and that many of the neighbors felt the same.

Chairman DiGiulian noted that there was one letter in opposition and several in support. He asked if there was anyone present who opposed the application.

Mary Jane Bednar, 4205 Breezewood Lane, Annandale, Virginia, came forward to speak. She said that they were neighbors, and they too lived in a home like the Ross'. They also had the need to store lawn and garden equipment, but they never felt compelled to put up an accessory structure. Ms. Bednar said the shed was not particularly attractive. Though she sympathized with the Ross', storage of tools and equipment was not easy, but they had managed to store theirs without an accessory structure. She suggested that a possible storage location was the unfinished basement.

In his rebuttal, Mr. Ross pointed out that his basement was finished and was completely unsuitable for storage of outdoor tools. One of their driveway improvements built over the walkout. He explained the topography of his property, maintaining that there was no other area that was suitable for construction of any kind. Mr. Ross again stated that a number of his neighbors had expressed approval of his home and grounds.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to deny VC 2006-MA-001 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MALCOLM AND INNEKE ROSS, VC 2006-MA-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory storage structure to remain in the front yard of a lot containing 36,000 square feet or less. Located at 4219 Sleepy Hollow Rd. on approx. 15,776 sq. ft. of land zoned R-3. Mason District. Tax Map 71-2 ((16)) 84. 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 18, 2006, and

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

1. The applicants are the owners of the land.
2. The applicants have not satisfied the required standards for a variance.
3. This is a very difficult case because this is a kind of case that likely would have been granted in the past.
4. This is a lot that has geometric problems, as a corner lot and with the curvature of the side street, it almost has three front yards as there are three little non-front yards as well as the house's position at a 45 degree angle creates triangles with respect to the setback lines and it is very difficult to place something in those triangles.
5. The lot is further constrained by topographic problems and perhaps problems with drainage in both directions and some mature existing trees, which ordinarily we would want to save.
6. The placement of the shed does not really impact adjacent neighbors as it is well-screened from the adjoining property, and to the extent it is visible, there does not appear to be any negative impact on anybody.
7. This is a reasonable request; it is the kind of thing somebody ought to be able to apply for; it is the kind of thing that probably would have been granted in the past.

8. The Board is constrained to follow the law and do what the court has told us. The court now requires on variance applications that it be first determined whether the Ordinance interferes with all reasonable beneficial uses of the property taken as a whole, and if it does not, the Board can go no further.
9. Although reasonable use is interfered with, it does not rise to the level that all reasonable beneficial uses of the property are interfered with.
10. There is an existing house on the property, and substantial buildable area on the property.
11. The owners have some use of the property; it is just a property where a shed is difficult or impossible to use.
12. The difference between depriving an owner of reasonable use and interfering with all reasonable beneficial uses is substantial and the word 'all' defeats this particular application.
13. Although this is a reasonable and carefully presented request for an attractive structure, it is not something this Board has the power to approve.

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

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

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

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

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

Mr. Beard seconded the motion, which carried by a vote of 4-0-1. Mr. Hammack abstained from the vote. Mr. Byers and Ms. Gibb were absent from the meeting. The Board waived the 12–month waiting period for refiling an application.

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~ ~ ~ April 18, 2006, Scheduled case of:

9:00 A.M. ELAINE METLIN AND ANDREW E. CLARK, VC 2006-DR-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in the front yard of a corner lot and an accessory structure to remain in front yard of a lot containing 36,000 square feet or less. Located at 1905 Rhode Island Ave. on approx. 24,457 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (1) 36B.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elaine Metlin, 1905 Rhode Island Avenue, McLean, Virginia, replied that it was.

Deborah A. Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The subject parcel is located at 1905 Rhode Island Avenue, in the Franklin Park subdivision, in the Dranesville District. The subject property and surrounding properties were zoned R-2 and developed with single-family detached dwellings. The applicants requested a variance to permit an existing fence greater than 4.0 feet in height to remain in the front yard of a corner lot and an accessory structure, specifically play equipment, to remain in the front yard of a lot containing 36,000 square feet or less.

Ms. Metlin presented the variance request as outlined in the statement of justification submitted with the application. She said she was before the Board for two issues, one involving a fence and the other a play yard. She said she had resided in the County for 30-plus years and over that time owned four homes. This was their dream home to live in and raise their children, and both structures were already there when they purchased the home. A disgruntled neighbor had apparently complained about his other neighbors with fences, and she was cited with a Notice of Violation for the fence. She complimented staff on their professionalism and courtesy. Ms. Metlin explained the geography of her property. There was a "paper street" along one side, and after requesting that the County authorities look at it, it was determined that the paper street was not counted as a real street for purposes of applying the Zoning Ordinance. She stated that they had three front yards, a creek, a floodplain, a resource protection area (RPA), and that the property was uniquely situated. She said she was not before the Board to ask the impossible and that she understood the Cochran case, although she was not a land use attorney. She addressed their fence issue, stating that the forthcoming Ordinance amendments would not afford relief because in places it exceeded six feet in height; therefore, they did not qualify for a special permit without a variance. Ms. Metlin requested that the Board defer its decision to allow her to pursue the special permit process and in the fall, if it were possible, bring the fence into compliance. She requested that the Board allow them to keep their play yard for some period of time because her two children enjoyed it tremendously, and it might be destroyed if moved. She noted that there was really no suitable area to move it without great expense because they had three front yards and an RPA, and to relocate the play set, if an area could be found, would be costly and difficult because the area would have to be leveled. Ms. Metlin asked that the Board also defer its decision on the play yard until the Ordinance amendments were adopted, and then professionals would be retained to make the play yard in compliance.

In response to Mr. Ribble's question concerning the paper street, Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff had no knowledge of vacating it, and, unfortunately, that area lay in the RPA and floodplain, so the area could not be utilized by the Metlins.

Bruce F. Miller, Zoning Enforcement Division, pointed out different areas where the fence ranged in height between 7 and 7.4 feet and said that he took his measurements outside the fence.

Ms. Metlin stated that it was a stair-step type fence with a trellis.

Mr. Hart suggested that the fence be cut down to six feet.

Ms. Langdon said that a six-foot height was addressed by the Ordinance amendment, and staff suggested a short deferral until the amendment was adopted.

Ms. Metlin requested that they not have to cut the fence twice, and in the fall, whatever relief the Ordinance amendment could afford, they then would cut it to that height so it would comply.

Mr. Hart verified with staff that a lot less than 36,000 square feet could not have an accessory structure or play equipment in its front yard.

~ ~ ~ April 18, 2006, ELAINE METLIN AND ANDREW E. CLARK, VC 2006-DR-002, continued from Page 244

Ms. Metlin said the play area was included in their appeal, and staff had suggested that the variance be heard first. She said if their appeal prevailed, the play equipment issue would be resolved.

Mr. Miller clarified that the complaint was on the fence, and during his site visit, he happened to observe the play area.

In response to Mr. Beard's question concerning the Cochran case in relation to her situation, Ms. Metlin said there was a hardship involved, but it did not approach confiscation, that they were able to reside in their house, and she respectfully requested that the Board allow her family some time to enjoy the property.

Chairman DiGiulian called for speakers.

Daniel Moore, 1901 Massachusetts Avenue, McLean, Virginia, came forward to speak. He said for 32 years he had lived across the street from the applicants' property, and it had never been better maintained. The fence and play area were attractive and aesthetic to the surroundings, and the play equipment was very similar to others in the area. He strongly recommended that the applicants be permitted to leave everything as it was.

Myrtle L. Moore, 1901 Massachusetts Avenue, McLean, Virginia, came forward to speak. She said the applicants' property was beautifully manicured, and over the 32 years of being across the street, the property had never looked or been maintained better. She said they were grateful for this family. The play area was a safe and wonderful place for the children, the fence was magnificent, and when looking out their window, all was a delight to see.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to defer decision on VC 2006-DR-002 to October 31, 2006, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers and Ms. Gibb were absent from the meeting.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, confirmed that there had been numerous cases where play equipment had been cited after a site visit for a fence inspection, and those cases had been deferred indefinitely.

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~ ~ ~ April 18, 2006, Scheduled case of:

9:00 A.M. LEE AND DEBORAH STEINMEYER, SP 2006-PR-009 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 2310 Chestnut Hill Ave. on approx. 24,051 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((60)) 4.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lee Steinmeyer, 2310 Chestnut Hill Avenue, Falls Church, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit for an accessory dwelling unit proposed to be located in the bottom level of the dwelling with one bedroom, a kitchen, a family room, and a handicapped accessible bathroom. Lee Steinmeyer's mother would live in the separate living space with a private entrance and have access to a garage space. Access to the accessory dwelling unit would be from the rear of the home along a path extending around the eastern side of the house from the driveway. No additional structures were proposed with this application. Staff recommended approval subject to the proposed development conditions contained in Appendix 1 of the staff report.

Mr. Steinmeyer presented the special permit request as outlined in the statement of justification submitted with the application. He complimented Mr. Varga on his presentation and agreed with staff's position. He stated that his mother would be living with them, and they wanted to give her proper living accommodations.

~ ~ ~ April 18, 2006, LEE AND DEBORAH STEINMEYER, SP 2006-PR-009, continued from Page 245

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

Mr. Beard confirmed with staff that the special permit ran only with the current owner. He moved to approve SP 2006-PR-009 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LEE AND DEBORAH STEINMEYER, SP 2006-PR-009 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 2310 Chestnut Hill Ave. on approx. 24,051 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((60)) 4. 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, 2006, 2005; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

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

1. This approval is granted to the applicants only, Lee and Deborah Steinmeyer, and is not transferable without further action of this Board, and is for the location indicated on the application, 2310 Chestnut Hill Avenue (24,051 sq. ft.), 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 Paul B. Johnson, dated January 6, 2005 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

5. The accessory dwelling unit shall contain a maximum of 902 square feet, including a maximum of one bedroom.

6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.

7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the

~ ~ ~ April 18, 2006, LEE AND DEBORAH STEINMEYER, SP 2006-PR-009, continued from Page 246

Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

8. If the use of the accessory dwelling unit ceases and/or the property is sold, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold, a special permit amendment may be submitted to permit the continued use of an 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. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ April 18, 2006, Scheduled case of:

9:30 A.M. MCLEAN BIBLE CHURCH, A 2006-DR-002 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a proposed religious education program is considered a college/university use and, therefore, requires an approved amendment to Special Exception SEA 78-D-098-2. Located at 8879, 8925 and 9001 Leesburg Pi. on approx. 42.60 ac. of land zoned R-1. Dranesville District. Tax Map 28-2 ((1)) 10, 11, and 18.

Stuart Mendelsohn, Holland & Knight LLP, 1600 Tysons Boulevard, Suite 700, McLean, Virginia, identified himself as the agent for the appellant.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated April 11, 2006. She stated this was an appeal of a determination that a proposed religious education program was considered a college/university use and required an approved amendment to Special Exception SEA 78-D-098-2. The subject property was located at 8879, 8925 and 9001 Leesburg Pike in the old National Wildlife Federation building just west of Tysons Corner and was zoned R-1 Residential District, one dwelling unit per acre. The Board of Supervisors approved SEA 78-D-098-2 on January 11, 1999, to retain a then-existing public benefit association, the National Wildlife Federation and recycling center, approvals and to add McLean Bible Church (MBC) with associated uses of a childcare center and a youth recreation center. October 28, 2004, the Zoning Evaluation Division determined that the provision of college courses that were a part of a graduate level degree program offered by Capital Bible Seminary (CBS) at MBC constituted a college/university use on the property, a use permitted only by amending the existing special exception. That decision was appealed to the BZA, and in March of 2005, the BZA upheld the Zoning Administrator's determination. The current appeal application was a result of the Zoning Administrator's further determination in December of 2005 that the proposed reduction in the scope of the college level courses still constituted a college/university use.

Ms. Collins quoted several definitions of what constituted a college/university, noting that it was a separate, recognized, and distinct use under the Zoning Ordinance and was allowed in the R-1 District by special exception only. CBS was the graduate division of Washington Bible College, a fully accredited seminary in Lanham, Maryland, and although the church indicated it would reduce in scope several of its activities, the seminary classes were still college level university courses offered by an institution of higher learning from which students could receive academic credit toward a master's degree, and thus they fell within the definition of a college or university. She explained the difference between traditional religious education classes and the college level education classes that were taught on a regular basis at MBC, noting that persons typically taking courses at their place of worship generally took the classes for personal edification

and not to satisfy requirements for a college degree. She noted that what distinguished the typical Sunday school type classes from the college level classes taught by CBS were that they were not part of a college degree program nor affiliated with a college or university. She noted that during a site visit it was observed that CBS had staff, offices, and a library, and there was a permanently affixed wall sign identifying the offices as those of CBS. Inspecting the records, it appeared that those amenities were permanent fixtures on the floor plan. There were brochures and pamphlets available, and the CBS website continued to advertise its Northern Virginia campuses at MBC and two other churches.

Staff e-mailed the Capital Bible's director of the Virginia classes, John Hartman, who responded at length about their Northern Virginia program in McLean. He included information of its college level courses, assuring that it was possible to complete most of a Masters Theology degree program in Northern Virginia. Ms. Collins stated that conducting such college level courses that may satisfy requirements for a graduate degree in Theology clearly went beyond the scope of Special Exception Amendment 78-D-098-2. There was no way to regulate the hours, the number of people, the classes or any other aspect of a college/university use without an amendment to the special exception, and staff respectfully requested the Board uphold the Zoning Administrator's determination of December 22, 2005, that the provision of such college level courses was not permitted with the approval of the SEA.

Ms. Collins responded to Mr. Hammack's questions concerning the instructors, stating she was unsure if they were paid by CBS nor did she know the cost of tuition. She responded to Mr. Hart's questions concerning the previous application, which was not appealed, and she concurred that this appeal was for the college level courses, not traditional religious education. Although cases were taken on their own merit, in most cases in the R-1 District, a college or university use could not be an accessory use to something else without a special exception. She added that this situation was the sole one in the County of which staff was aware.

William E. Shoup, Zoning Administrator, responding to Mr. Hart's question concerning a college/university definition as a subordinate use and whether there were other such cases staff had reviewed, said there had been questions about other educational programs with staff having to determine whether they fell under the college/university use, or under the Ordinance definition that addressed schools of special education, to include vocational training, and the determining factor was whether the program offered a variety of coursework which provided college credits that could lead to a degree. Those cases were determined to be a college/university use. Mr. Hart asked that the Board be provided with any past written determinations that staff had made regarding the definitions under which educational programs fell.

In response to Mr. Hart's question as to whether Development Condition 2 of the SEA referenced in the February 3, 1999 letter from Nancy Vehrs to Mr. Baskin was still valid, Ms. Collins said that it was. Mr. Hart asked whether a college or university use would have to be on the plat or in the conditions to be permitted based on the language in Condition 2, "The SEA is granted only for the purposes, structures, and/or uses indicated on the special exception amendment plat approved with the application as qualified by these development conditions." Ms. Collins said that was correct.

Stuart Mendelsohn, Esquire, Holland & Knight, LLP, 1600 Tysons Boulevard, Suite 700, McLean, Virginia, the agent for the appellant, presented the arguments forming the basis for the appeal. He pointed out that the previous application was significantly different, and on behalf of the church, he submitted a revised statement of justification. There were changes that addressed staff's previous issues, and these changes brought all into compliance. With this revised application, the facts were significantly different, and there no longer were any of the physical examples staff used in its previous determination that the church offered college/university activities, adding that this issue was fundamental to the church because it considered its seminary level class part of its Christian education program. He pointed out that staff took eight months, instead of meeting the 90-day statute, to reevaluate this new proposal, and he believed with these facts, staff's only conclusion would be that the church did not meet a college/university use category, but simply offered a religious education program.

Mr. Mendelsohn stated that another contentious issue was staff's determination/assumption that seminaries did not have relationships with churches. He stated that assumption was wrong, and staff had presented no evidence to support it. He addressed Development Condition 10, which he informed the Board was the subject of lengthy negotiations, was heavily debated before the Planning Commission and Board of Supervisors (BOS), and was worded intentionally as the BOS did not want to become involved in deciding

what was Christian education for one church versus another church. He pointed out that the classes had existed long before the special exception, that they always were considered part of MBC's education program, and it simply was not necessary to spell it out in the conditions. As staff's contention was that Condition 10 was not intended to give an overall blanket exception for all types of activities and events at the church, but to place restrictions on major events and festivals occurring on an irregular basis, Mr. Mendelsohn maintained that the condition was relevant to the appeal because the general reference in Condition 10 to the special exception allowed uses on the property that were sponsored by MBC and consistent with its ministry. He disagreed with staff's interpretation of the definition of a college/university, which he noted was not specifically defined in the Zoning Ordinance. He maintained that MBC's provision of classes for religious education as part of its outreach ministry did not fall under that classification, affirming many churches probably had college professors who taught Sunday school, and that did not make them a college or university.

Mr. Mendelsohn stated that it was a legislative act of the Board of Supervisors. Under the law, staff could not undo it, and it was wrong for staff to try to force the church to go through the special exception process again when they already had broad approval. He said that the Ordinance had no definition for a college/university use, staff made its own up, and referencing Webster's Dictionary's definition, it required that the institution be degree granting. MBC clearly was not degree granting. He said that the Zoning Ordinance's definition of schools of special education, which included churches having schools, religious education, nursery and private, was the definition that should have been applied. Mr. Mendelsohn reiterated that McLean Bible did not grant degrees. It was not an institution of higher learning, not a college or university, and no longer were CBS personnel running it or providing coursework, but only providing some of its professors to teach classes at a higher level of religious education. He said that for students attaining college credits, there was no difference than high school students taking courses that earn college credits.

Mr. Hart asked whether it was Mr. Mendelsohn's distinction that students must have their degrees issued at the Maryland location, although taking their courses at the MBC's facility. Mr. Mendelsohn explained that they probably would have to take their courses in Maryland as there would not be enough courses offered at MBC to afford a degree. He again pointed out that MBC, which was the controlling body, granted no degrees.

Mr. Hammack submitted that Mr. Mendelsohn was suggesting that there were limitations on how far a church could go and if acknowledging that, how far could a church go in offering classes without triggering the requirement that it obtain approval of some kind. He offered the scenario of MBC growing larger, from four existing classes to 10 or 20 or even 100 classes, 1,000 or even 3,000 students coming all hours of the day and night. Would that trigger the requirement that MBC come in for a special exception amendment. Mr. Hammack asked where the line would be drawn.

In response, Mr. Mendelsohn referenced his discussions with the Zoning Administrator over the past eight months, noting that MBC had set the parameters of how many, and the Zoning Administrator at that time easily could have said that was acceptable providing the use remained de minimus and there were no more than however many the Zoning Administrator chose to set. The only response from the Zoning Administrator was that it could not be done at all. Mr. Mendelsohn said that Mr. Hammack's question was hypothetical, affirming that at some point, depending on what it was, there should probably be some limitation.

Mr. Hammack said in some respects, his query was rather hypothetical, but if MBC were allowed to do what they proposed, even on a de minimus basis, would other churches in the County also be able to have a satellite school or college of their own denomination and teach credit courses locally without having to apply in another state and, therefore, not be subject to filing for a special exception or having to obtain approval to run a school, however de minimus. He questioned where MBC would draw the line. Mr. Hammack noted that concerning the Religious Land Use and Institutionalized Persons Act (RLUIPA) issue, he understood that the issue before the Board was that the requirement of one applying for something was not a RLUIPA violation.

Mr. Mendelsohn said if MBC was willing to restrict the number of students attending its courses and would never exceed that number, the church would have been satisfied with a determined number, whatever the Zoning Administrator stipulated. MBC would then continue its program. However, if in the future the church wished to expand its classes, they would obviously have to again come before the Board to request a new determination. He said things depended on what conditions were put on the church when they were

approved, whether by a special permit or a special exception. He pointed out that the development conditions' broad language was deliberate because MBC knew it would be large and would offer numerous varied programs. Mr. Mendelsohn said he thought that staff was now trying to rein in the church's growth, although the Board of Supervisors approved the church with its broad language.

Mr. Ribble asked Mr. Mendelsohn about the issue he had raised concerning the expense and time that the church anticipated if required to apply for a special exception amendment. He asked either staff or Mr. Mendelsohn how much the cost was for an amendment with the County. Mr. Mendelsohn explained that the legal fees to process such an application were substantial as well as the length of time one had to commit. He reminded the Board of the church's two previous special exception amendments, one in 1999 and the other in 2003, which were uncommonly lengthy and somewhat of an ugly, drawn out process. He said that, obviously, the church was rather reluctant to again go through a similar experience.

Mr. Ribble noted that MBC had gone through the process and had attained a favorable result, yet according to Mr. Mendelsohn, Condition 10 was what it was and was not considered problematic. Mr. Ribble said he could not understand why MBC just didn't get an amendment. He suggested that there was a fast track available on many of the applications and that one need not go through a lengthy process.

In response to Mr. Ribble's comments, Mr. Mendelsohn contested that anything done by MBC was never fast. He added that there could also be great risk with interpretation of the development conditions because the conditions were not proffers. He added that with a different Board of Supervisors, the Board could come back and place varied onerous conditions on the church which the church would not want itself opened to, and he thought that a special exception was not necessary.

Mr. Beard asked Mr. Mendelsohn to acknowledge that prior to this time, some six or seven thousand attendees of MBC had been permitted to attend classes not associated with CBS without interference from the Zoning Administrator. Mr. Mendelsohn agreed that there had not been previous interference.

Mr. Beard clarified that the issue of RLUIPA only applied to the seminary situation, to which Mr. Mendelsohn concurred.

Mr. Mendelsohn commented that the entire issue was about the seminary level classes, and those classes did not necessarily lead to degrees. He emphasized that the purpose for the church was to provide that level of education as part of its Christian education to the public and its members, and the fact that a seminary was willing to give credit to those who attended should be fine. In response to Mr. Beard's question, Mr. Mendelsohn said that at this stage the church was not prepared to speculate on the percentage of those credited. He was unsure at this time of the answer. He offered to provide the information perhaps during the public hearing if it were available.

In response to a comment from Mr. Beard, Mr. Shoup agreed that prior to the present appeal application, there was no interference of any kind from the County, that the County had no problem with the programs and Christian education classes offered by MBC. Mr. Shoup said that this was the sole issue.

Mr. Mendelsohn responded to Mr. Beard's questions regarding the type of bible classes that were offered over the years and which were currently offered by MBC and the numbers of people taking such classes. He said that MBC's traffic impact was minimal because the classes were offered at off-peak hours, evenings, and weekends, and that MBC dictated the coursework although some of the professors from Capital Bible Seminary would bring their own coursework. There were no longer any administrative functions of the seminary at McLean Bible Church.

In response to Mr. Ribble's question concerning the applicability of RLUIPA to the application, Mr. Shoup said, in meetings with the County Attorney's Office, they indicated that it was not a RLUIPA issue because requiring a special exception for this activity did not place a substantial burden on the religious activity.

In response to Mr. Hammack's questions, Mr. Mendelsohn acknowledged that there still remained some signs and brochures advertising the seminary classes, but they were in the process of being removed and/or taken down in compliance to the Zoning Administrator's determination. He submitted that only that morning MBC's website was to be revised, saying that MBC no longer operated as they once did. He clarified that the church did charge for tuition, which was not at all unusual. He concurred that the Ordinance provided for

schools of special education and that routinely churches obtained special permits for religious instruction; however, MBC's religious education was part of its ministry.

Mr. Shoup concurred with Mr. Beard's assumption that Zoning Administration had no problem with all the other classes offered by MBC, that the only issue was the seminary level classes. He apologized that it took eight months for staff to come to its determination, but it was a difficult case. Staff's reaction to MBC scaling back its seminary class program was initially viewed favorably, but the remaining single problem was that the courses were continuous, semester after semester and year after year, with the fact remaining that the courses provided college credit that could lead to a degree. The only definition staff could rely on was dictionary definitions, and because the seminary courses were continuous, Mr. Shoup said that issue could not be reconciled.

In response to Mr. Hart's query regarding Development Condition 10, Mr. Shoup said the special exception's advertisement notice should have indicated a separate, distinct use under the Ordinance to be considered for approval of a college along with the SEA application, which included a request for childcare. He referenced the Clerk's letter that identified the use in its introductory paragraph, concluding that staff's determination was that college level seminary classes did not fall within the definition of Christian education and was part of a church's mission. As noted in the staff report, the general reference in Special Exception Development Condition 10 allowing uses on the subject property that are sponsored by MBC and consistent with its ministry is not a blanket exemption from compliance with the Zoning Ordinance and cannot reasonably be interpreted to allow the college/university level course program at MBC.

Mr. Mendelsohn reiterated his position, stating that there were a number of colleges and universities no one would question were colleges/universities that grant degrees that existed without special exceptions that were approved under the private schools with special and general education category. He charged that staff was not consistent with requiring special exceptions for what clearly were colleges/universities except in this case. He pointed out that with MBC, staff was trying to make a definition of Christian education, and, in his opinion, staff was wrong.

Mr. Mendelsohn stated that it was MBC's belief that staff used the wrong analysis, their determination was arbitrary, discriminatory, and unlawful under Virginia's Code and Federal law, and that the written determination constituted a substantial burden on the congregation of MBC's religious exercise and did not further compel governmental interest. Staff chose not to prove its determination and limit the number of students that its determination would effect, which they believed violated RLUIPA. Mr. Mendelsohn respectfully asked that the Board overturn the Zoning Administrator's determination.

Chairman DiGiulian called for speakers.

Pastor Amos Dodge, Capital Church, Leesburg Pike, came forward to speak. He voiced his concern over the issue of Christian education, saying it was important for local churches to teach scripture to all who desired the education and to include all age groups from 3 to 90 years of age. He explained that Christian education may be taught by all kinds of persons from volunteer Sunday teachers, lay ministers, staff pastors, or college professors, and to his knowledge, there had never been a distinction on who could teach what age, for what purpose, if the main purpose was Christian education. Pastor Dodge said he strongly believed that the local church had the right and responsibility to teach Christian education at a level that was appropriate for the objective that kept the church on track. His concern was the interpretation that a church's responsibility and mandated mission could be minimized or marginalized by how Christian education was defined. He said he thought he spoke for most pastors in the County who would fear that it was a scary proposition if it were mandated who could teach the scripture on what level. He said he hoped the Board would consider this a Christian education issue.

John Yates, an Episcopal priest and a neighbor of the McLean Bible Church, came forward to speak. He said any pastor would want his congregation to obtain as much Christian education as possible and that it was not unusual for a church to offer seminary courses for its lay members so they were better equipped to serve God. He said his church had for years offered seminary courses. He responded to several question from Mr. Hammack regarding fees charged and handling of the payments.

Robert Nelson, 9027 Weatherwood Court, Vienna, Virginia, a neighbor to the church, came forward to speak. He stated his concern over the already existing traffic that was stop and go for a significant period of time.

Until traffic signals and road improvements were done, Mr. Nelson said anything that contributed to the traffic problem needed control, and he said he believed that the church should be required to obtain a special amendment for the important reason of establishing limits to hours of operation and the number of students for the seminary courses.

Jay Volkert, Ph.D., 1426 Trapline Court, Vienna, Virginia, came forward to speak. He read a statement from Jack Crosby, 1509 Snughill Court, Vienna, Virginia, Chairman of McLean Bible Church Communications Committee, a committee which was suggested and sponsored by the Dranesville Supervisor, Joan M. DuBois. He explained that the committee represented 500 homes in the vicinity of the church whose purpose was to meet twice a year to work out issues concerning the homeowners and the church. He reminded the Board that at the March 15, 2005, public hearing, the Board ruled that the church was not to conduct seminary type classes, but to date, nothing had changed. The church continued to operate its education classes, thereby ignoring the County's findings and rules in general.

Allan Caldwell, no address given, came forward to speak. He said he would present the president of Wolftrap Woods Homes Association's statement, Ms. Marcella Jansen, who was unable to be present. He said that nothing had really changed since the special exception public hearing except that Mr. Mendelsohn had become the church's representative. He noted that since MBC purchased the property in 1998 from the National Wildlife Federation, the neighbors had a difficult time getting straight answers on the magnitude and character of the MBC development, and the current Seminary classes were yet another example of the problem. The homeowners of Wolftrap Woods respectfully requested that the Board deny MBC's appeal, and if the church chose to pursue it, let it be through the County process of a special exception amendment where exactly what was proposed would be fully disclosed and there would be accountability.

Jane Edmondson, 7804 Ariel Way, McLean, Virginia, came forward to speak. She said she spoke in her capacity as the president of the Lewinsville Coalition. She said throughout 1998 numerous hours were spent with MBC representatives meeting and negotiating the plans for their new facility. A settlement agreement was signed in February of 1999 in which the church recorded a restrictive covenant that stipulated certain aspects of the plan would not change. She said that one of Mr. Mendelsohn's letters stated that the Board of Supervisors never intended to limit religious education classes, although it realized they existed at the time, yet another letter said the classes were not separately addressed because they were part of the church's activities. She noted that what had been discussed in length was the building's height, sanctuary, youth center, childcare center, parking spaces, and traffic. There was never any discussion related to religious education or seminary classes and certainly no discussion that there may be 7,000 people attending the classes. She said the issue before the Board was if the special exception under which the church operated gave them carte blanche to offer a Capital Bible Seminary type program, and a question of whether the program was normal and customary religious education, to which the County Zoning Administrator had said "no" twice, and the Lewinsville Coalition supported that determination. Ms. Edmondson stated that such a program was professional and not a customary congregation based religious education.

Richard Goldberg, 1425 Trapline Court, Vienna, Virginia, a retired judge, came forward to speak. He said it was his conclusion that the appellant's appeal should be denied because MBC's proposed religious education activities were not included with Condition 10 under the current special exception as County staff determined that the religious program as proposed constituted a college/university education program. The Zoning Ordinance required MBC to seek an amendment to its special exception.

Jim Robinson, 7209 Evens Mill Road, McLean, Virginia, Co-chairman of the McLean Citizens Association Planning and Zoning Committee (MCA), came forward to speak. He said the association was interested in the application since MBC requested an interpretation of the SE development conditions in 2004 regarding offering graduate courses by the Capital Bible Seminary conducted on church premises. MCA had not wavered from its initial determination that the MBC should seek a special exception amendment so that restrictions and guidelines were set which would address the already terrible traffic situation which would only be exacerbated by the church's expansion of courses and additional enrolled students, and written documents dated March and June of 2005 clearly emphasized their position. He stated that MCA supported the Zoning Administrator's position, that MBC should seek an amendment to its special exception, and Mr. Robinson urged the BZA to deny the appeal.

Sam Lowenstein, 1510 Snughill Court, Vienna, Virginia, came forward to speak. He requested that the BZA deny the church's request to allow college classes on the MBC property, and the MBC should be required to

go through the SEA process like every other property owner. He pointed out that MBC had been flagrant about the courses it offered, had made numerous false statements in order to benefit their agenda, and had withheld information.

John Dyer, 1421 Laurel Hill Road, Vienna, Virginia, came forward to speak. He voiced his opposition to the church's request and recommended that the appeal be denied and the church made to go through the standard process for an SEA.

In closing staff comments, Mr. Shoup addressed the issue of when a special exception was required for a childcare center or special education in conjunction with a church.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that she had gained five years' experience dealing with SP and SPA applications that involved schools of general education, to include Montessori schools. With respect to the issue of it being an extension of its religious education, there were circumstances in many of the amendments where businesses, because it was part of their business, came into churches solely to operate from space it leased, and there was no relationship with the church. She noted that there were other situations, specifically a Catholic church, whose special permit amendment was initiated by parents in the parish who wanted to have a particular Montessori program that integrated religious education into the curriculum. That school, she noted, initially had only 30 pupils, and the church had agreed to go through the special exception amendment process to legally establish the use.

Mr. Shoup pointed out that staff had issues with the fact that an institution must control the content it provides in order to have accreditation and essentially be responsible for anything done in its name, which was not what MBC proposed. Mr. Shoup questioned how Capital Bible Seminary and McLean Bible Church each controlled the courses in order to receive accreditation. He cited McLean Presbyterian Church as another case where a determination was made with respect to college/university use, and that church had requested permission to do essentially the same as what MBC proposed. It was staff's determination that could not be considered part of their approval to conduct a church and be a part of their education ministry, and to do it, they needed a special exception. Mr. Shoup pointed out that this issue was not something new, but had been addressed before. In summation, Mr. Shoup stated that with respect to the proposal which addressed and resolved some of staff's criteria to judge such activity, there was still the provision of college level courses at McLean Bible Church that were for credit and could lead to a degree. He likened MBC as a branch campus of Capital Bible Seminary, which required processing through a special exception amendment.

In his rebuttal, Mr. Mendelsohn said Ms. Stanfield's statement that many churches voluntarily go through the SE process was totally relevant as that did not make it a requirement, and he pointed out that there were a number of those type facilities that the County had not required to undergo the process. He said he understood the citizen concerns. The case had been discussed since 1997, and, unfortunately, it probably would never go away. He said the issue of education programs was discussed with citizen groups, and there were a number of citizens who were unhappy about the church's approval, but many citizens approved. The church, he reminded the Board, was approved unanimously. Mr. Mendelsohn referenced Development Condition 10, which he believed the Board should not try and interpret, but instead accept as written. He submitted that the BZA or the Zoning Administrator could address limitations without requiring the special exception process. The issue he said he found most disturbing was that the County could decide what was normal and customary. He pointed out that a previous speaker, Reverend Yates, testified that it was a normal and customary practice of many churches in the County, and he believed MBC was targeted because of a complaint. The process was not consistent, he professed. Mr. Mendelsohn reminded the Board that it was faced with the plain language of Condition 10. MBC made a good faith effort to meet all set requirements of a year ago, and he believed the church had met that burden and deserved the right to continue its Christian education. In conclusion, Mr. Mendelsohn submitted that a request for a determination often was hypothetical and not based on current activity but suggested scenarios to be considered and judged. He said that what was done in the past was not relevant. It was what the church proposed today that must be considered, and if approved, that is how the church would operate.

Mr. Hammack queried Mr. Mendelsohn on his April 26, 2005, letter to the Zoning Administrator that assured that neither an office, staff, or a library of Capital Bible Seminary would be located at MBC. However, the April 16, 2006, printout of MBC's Website offered a CBS library with computers and Bible software for its CBS students at the Northern Virginia extension of MBC. Reading the printout, he quoted the advertised

~ ~ ~ April 18, 2006, MCLEAN BIBLE CHURCH, A 2006-DR-002, continued from Page 253

amenities offered through CBS at MBC, to include accredited divinity degrees on weekly and Saturday mornings. Mr. Hammack charged Mr. Mendelsohn to reconcile his assertion that those programs were discontinued or no longer available.

In explanation, Mr. Mendelsohn pointed out that his April 26th letter proposed what MBC was going to do. It was a hypothetical situation, and it was intentional that the church continue as before and not change anything until a determination was made, and that determination was expected within 60 to 90 days. After eight months, the determination letter was received, and the seminary was notified to cease its activities. He noted that the seminary was in the process of winding down its program, and that CBS was slow changing its website.

In response to Mr. Beard's question, Mr. Mendelsohn clarified that he represented MBC in his capacity as an attorney, although he also attended the church as a parishioner.

Chairman DiGiulian closed the public hearing.

Mr. Hammack commented that there was a great deal of citizen input, documents, and material just received, and the Board needed time to review it. He said he needed additional facts on whether or not the seminary was still in operation at the church, and what changes, if any, MBC's website had made. He noted that staff would provide additional information concerning other schools of special education or facilities that, if appropriate, involved the definition of a university and how it applied that might shed some light on the case.

Mr. Hart requested copies of court cases concerning RLUIPA issues that may have pertained in similar cases and clarification on the SEA's advertisement with relation to Development Condition 10 and a college/university use. If available, he requested any written interpretations, perhaps for McLean Presbyterian Church, or other examples of the issue of what exactly was a college or university use or at what point a certain activity became that use. He questioned whether it was a RLUIPA problem if the issue was that they had to apply for it rather than whether the application should be approved or denied and included the question of whether there can be a RLUIPA problem if the dispute was over a subordinate kind of activity as opposed to the place of worship itself.

Mr. Beard commented that he would support a motion to defer the decision and that he wanted the church to address the specific concerns voiced by the neighbors concerning noise and traffic and how the church would ameliorate the adverse impact.

Mr. Hammack moved to defer decision on A 2006-DR-002 to June 6, 2006, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Byers and Ms. Gibb were absent from the meeting.

Mr. Shoup informed the Board that on May 23, 2006, staff would provide the Board with a packet containing the information the Board requested.

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~ ~ ~ April 18, 2006, Scheduled case of:

9:30 A.M. GOOD STAR CONSTRUCTION COMPANY, INC., A 2006-PR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a single family dwelling under construction exceeds the maximum building height of thirty-five feet in the R-1 District. Located at 3000 Apple Brook Ln. on approx. 36,000 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((15)) 8.

Chairman DiGiulian noted that A 2006-PR-003 had been administratively moved to May 2, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ April 18, 2006, After Agenda Item:

Request for Intent to Defer
Clyde and Audrey Clarke, A 2005-MA-054

Mr. Hart moved to approve the request for an Intent to Defer to September 12, 2006. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Mr. Ribble was not present for the vote. Mr. Byers and Ms. Gibb were absent from the meeting.

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The Board recessed at 12:39 p.m. and reconvened at 12:45 p.m.

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~ ~ ~ April 18, 2006, After Agenda Item:

Consideration of Acceptance – Application for Appeal
Hidden Brooke Condominium Unit Owners Association

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, explained that this was an appeal relating to an interpretation of the proffered conditions accepted by the Board of Supervisors in conjunction with the approval of Proffered Condition Amendment PCA C-402-8 and CDPA/FDPA C-402-6. Staff's position was that an appeal related to a proffer should be an appeal made to the Board of Supervisors.

Mr. Hart made a disclosure, but stated it would not affect his ability to participate in the case.

Sarah Ross, Esquire, with the law firm of Brendan P. Bunn, 9990 Fairfax Boulevard, Suite 200, Fairfax, Virginia, represented Hidden Brooke Condominium Unit Owners Association. She stated that her client respectfully disagreed with the Zoning Administration's position that the Board of Zoning Appeals did not have the jurisdiction to hear the appeal. She quoted staff's Ordinance justification, Sect. 18-204, Par. 10, clarifying that the matter was not an appeal of the Zoning Administrator's decision, but that of an administrative officer's opinion. Pertinent text applicable for her client's position was Sect. 18-301 which stated that a determination by an administrative officer may be appealed to the Board of Zoning Appeals. Ms. Ross maintained that it was more appropriate to bring this matter before the BZA.

In response to Mr. Hart's question, Ms. Ross clarified that the argument was not about the decision over a proffer interpretation, but that other staff, not Zoning Administration, had made the decision.

Ms. Stanfield pointed out that the proffer interpretation letter was signed by Barbara A. Byron, the Director of Zoning Evaluation, in her capacity as the duly authorized agent of the Zoning Administrator.

Addressing Mr. Hammack's question, Ms. Ross explained that with their interpretation of the Zoning Ordinance, they filed with the BZA, not the Board of Supervisors (BOS). If that was incorrect, she submitted that they would re-file with the Board of Supervisors, but the 30-day limitation for filing had passed.

Mr. Hart said he would support a deferral, but he would like staff and the appellant to provide information on the State Code concerning proffered conditions with respect to appeals and a duly authorized agent for the Zoning Administrator.

Commenting that he wanted to take some time to carefully review this application, Mr. Hammack moved to defer the Consideration of Acceptance on the Appeal filed by Hidden Brooke Condominium Unit Owners Association to April 25, 2006. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Byers and Ms. Gibb were absent from the meeting.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding By-Laws, Cooper v. BZA, RLUIPA issues, and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers and Ms. Gibb were absent from the meeting.

~ ~ ~ April 18, 2006, continued from Page 255

The meeting recessed at 12:57 p.m. and reconvened at 1:24 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers and Ms. Gibb were absent from the meeting.

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Mr. Hammack moved that the Board authorize staff to prepare a certificate in the Cooper case verifying that the record prepared and furnished to and filed with the Court was a true copy of the public record. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Byers and Ms. Gibb were absent from the meeting.

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

Minutes by: Paula A. McFarland

Approved on: October 6, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 25, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ April 25, 2006, Scheduled case of:

9:00 A.M. ROBERT AND DANIELLE NICHOLSON, SP 2006-BR-010 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.4 ft. with eave 1.2 ft. from rear lot line and 2.8 ft. with eave 2.6 ft. from side lot line. Located at 5104 Coleridge Dr. on approx. 10,554 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 152.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Savage, the applicants' agent/architect, 218 North Lee Street, Alexandria, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow an accessory dwelling unit. The applicants also requested a reduction to minimum yard requirements based on error in building location to permit an accessory storage structure to remain 1.4 feet with eaves 1.2 feet from the rear lot line and 2.8 feet with eaves 2.6 feet from the side lot line. A minimum rear yard of 9.3 feet and minimum side yard of 8.0 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum rear and side yards; therefore, modifications of 7.9 feet, 5.1 feet, 5.2 feet, and 2.4 feet, respectively, were requested. Staff recommended approval of SP 2006-BR-010 subject to the proposed development conditions. Mr. Varga noted that notwithstanding what was reflected in the staff report, the square footage of the house was 2,772 square feet, the size of the accessory dwelling unit was 750 square feet, and Condition 5 should read 750 square feet.

Mr. Savage presented the special permit request as outlined in the statement of justification submitted with the application. He said Ms. Nicholson's mother, Monica Cousins, had multiple sclerosis, and the application was being made to make necessary accommodations through a renovation of the basement for her comfort and well-being, including an ADA accessible bathroom and entrance. He said everything had been done by right, and the kitchen was roughed in. The special permit was being requested in order to complete the kitchen. With respect to the shed, Mr. Savage said he thought it was located correctly, and to move it would impact the root structure of the mature trees.

Chairman DiGiulian called for speakers.

Monica Cousins, 5104 Coleridge Drive, Fairfax, Virginia, came forward to speak. She said she had multiple sclerosis, and her family had submitted the application to provide facilities to enable her to live independently in her daughter's home and to allow privacy for all parties.

Mr. Hart noted that from the photographs it appeared that there were two sheds next to each other. He said he assumed one was on the next-door neighbor's property. He asked staff if the location of the neighbor's shed was legal. Mr. Varga stated that the height was not registered on the plat submitted by the subject applicant, and he was unable to provide a specific answer.

Responding to questions from Mr. Beard, Mr. Varga said the issue regarding the applicants' shed had come to light as a result of the application, and there had been no complaint about the shed on record.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2006-BR-010 for the reasons stated in the Resolution.

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~ ~ ~ April 25, 2006, ROBERT AND DANIELLE NICHOLSON, SP 2006-BR-010, continued from Page 257

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT AND DANIELLE NICHOLSON, SP 2006-BR-010 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.4 ft. with eave 1.2 ft. from rear lot line and 2.8 ft. with eave 2.6 ft. from side lot line. Located at 5104 Coleridge Dr. on approx. 10,554 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 152. 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, 2006; and

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

1. The applicants are the owners of the land.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses; and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance, Additional Standards for Accessory Dwelling Units; and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This approval is granted to the applicants, Robert and Danielle Nicholson, only and is not

transferable without further action of this Board, and is for the location indicated on the application, 5104 Coleridge Drive, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by John B. Savage (Savage & Associates, P.C.) dated February 3, 2006, revised through February 13, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

5. The accessory dwelling unit shall contain a maximum of 750 square feet, including a maximum of one bedroom.

6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.

7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

8. If the use of the accessory dwelling unit ceases and/or the property is sold, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

9. This special permit is approved for the location of the accessory storage structures shown on the plat prepared by John B. Savage (Savage & Associates, P.C.) dated February 3, 2006, revised through February 13, 2006, submitted with this application and is not transferable to other land.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

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

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

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~ ~ ~ April 25, 2006, Scheduled case of:

9:00 A.M. TRUSTEES FOR KNOLLWOOD COMMUNITY CHURCH, SPA 82-S-028-05 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 82-S-028 previously approved for church and nursery school to permit an increase in enrollment, building additions and site modifications. Located at 10000 Coffer Woods Rd. on approx. 5.00 ac. of land zoned PRC.

~ ~ ~ April 25, 2006, TRUSTEES FOR KNOLLWOOD COMMUNITY CHURCH, SPA 82-S-028-05, continued from Page 259

Braddock District. Tax Map 78-3 ((1)) 40. (Decision deferred from 3/21/06)

Chairman DiGiulian noted that a request for a decision deferral regarding SPA 82-S-028-05 had been received.

Mr. Hart moved to defer decision on SPA 82-S-028-05 to May 16, 2006, at 9:00 a.m., with the record remaining open for written comment. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 25, 2006, After Agenda Item:

Request for Additional Time
Kevin P. and Kristen A. McCarthy, VC 2002-DR-130

Mr. Beard moved to approve six months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting. The new expiration date was May 20, 2006.

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~ ~ ~ April 25, 2006, After Agenda Item:

Request for Intent to Defer
Trustees of Washington Farm United Methodist Church, SPA 75-S-177

Mr. Hammack moved to approve the request for an intent to defer to June 20, 2006, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 25, 2006, After Agenda Item:

Request for Reconsideration
Malcolm and Inneke Ross, VC 2006-MA-001

Susan Langdon, Chief, Special Permit and Variance Branch, explained that following the prior week's hearing, she and the applicant had discussed other possible solutions. She said it had been determined that if the Zoning Ordinance amendment was approved for a 50 percent reduction, the applicants would be able to take advantage of that for an accessory structure, and they could move the shed to either the rear or the side yard if they followed through with a special permit application and it was approved. The applicants requested reconsideration so they could see what would happen with the Zoning Ordinance amendment. She said the applicants could convert the variance to a special permit if the amendment was adopted, and they would not lose their fee.

In response to a question from Chairman DiGiulian, Ms. Langdon acknowledged that the Board had waived the one-year limitation for refiling. She said the applicants may have to remove the shed and pay an additional fee to apply for a special permit for the 50 percent reduction if the amendment was adopted.

Chairman DiGiulian said that the application could be reconsidered and deferred. Ms. Langdon said the Board could not defer decision because it had made a determination the prior week, which was to deny the application. She said the option available would be to schedule a reconsideration hearing, and the Board could hold a reconsideration hearing and defer that decision or they could put the reconsideration hearing off until the fall.

Mr. Hammack stated that he thought a reconsideration hearing had to be held within 90 days of its

acceptance. Ms. Langdon said that as with a regular hearing, the applicants could agree to go outside that timeframe. She said the Board could also set a reconsideration hearing within 90 days, which would be the end of July or the beginning of August.

Mr. Hammack asked if the information had been available to the Board the prior week. Ms. Langdon replied that the question the Board had asked staff was whether the Zoning Ordinance amendment or any of the amendments proposed would allow a structure to remain in a front yard. She said the answer was no. Ms. Langdon said the applicant had called her after the hearing, and the proposed 50 percent reduction amendment had been discussed, which had not been previously discussed.

Mr. Hart asked if he was correct that the amendment that would help the applicants would require them to move the shed elsewhere on the property. Ms. Langdon replied in the affirmative. She said that if an accessory structure was in the minimum required front yard, an amendment may help because a reduction to the setback would be allowed; however, the lot was less than 36,000 square feet, and there was no proposed amendment that would allow a special permit application for that type of structure. She said that in order to allow the structure to remain, the applicant would be required to move it to where it could legally be located. She stated that if the Zoning Ordinance amendment was approved and the applicants could then move the shed into the side or rear yard, they could apply for a special permit to move it closer with up to a 50 percent reduction. Ms. Langdon pointed out that there was no side yard on the property, but there was a possibility that they could move it to the rear yard.

Referring to a letter submitted by the applicants that suggested that this was new to them, Mr. Hart said he thought it had been odd that they had wanted to go forward on a variance. He said he thought staff had explained where things stood in light of the Cochran case. Ms. Langdon said the applicants had received a notice of violation, and she believed that it stated that one of the ways to fix the problem, besides moving it to a legal spot or taking it down, was to apply for a variance. She said that when she had spoken to Mr. Ross a week before the public hearing, he had expressed surprise, and she did not think he had spoken to anyone in application acceptance before applying and that he had applied on line. She said that once the application had been accepted and the hearing date was getting closer may have been the first discussion the applicants had with staff. Ms. Langdon said that it was possible the reason Mr. Ross decided to go forward was because there was no Zoning Ordinance amendment that would allow the structure to remain in the front yard.

In response to a question from Mr. Hart, Ms. Langdon indicated that if the Board reconsidered now, they would not know what the applicants' new proposal would be. Mr. Hart asked if the Board had granted reconsiderations on variances where the purpose of the reconsideration was to allow the applicant to file something the Board had not seen yet. Ms. Langdon said that it was possible, but she did not remember specifically, and she confirmed for Mr. Hart that the applicants could not currently file for a special permit because nothing existed at the moment to allow that.

Mr. Hart asked whether staff was doing any enforcement on cases where the applicants might get relief from the amendment. Ms. Langdon responded that she could not speak for Zoning Enforcement, but if the denial stood, because Zoning Enforcement normally would work with the applicants to try to come to some resolution within 30 days, she would assume that they would be pursuing the application as far as bringing it into compliance. She said she had explained to Mr. Ross that if reconsideration was granted, there was no guarantee that the Ordinance amendment would go forward as it stood or would be adopted or that a special permit would be approved once it was submitted. In response to a question from Mr. Hart, Ms. Langdon indicated that the applicants wanted to apply to move the shed into the backyard somewhere, but they did not know where.

Mr. Hammack said it was his impression that there were one or two areas that the applicants might be able to move the shed to, although they would not be areas in an optimum location because of either drainage problems or the narrow configuration of the building envelope. Ms. Langdon stated that was correct and showed on the plat where the shed could go. In answer to Mr. Hammack's question, Ms. Langdon indicated that there were two front yards involved with this application, not three.

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ April 25, 2006, After Agenda Item:

Request for Intent to Defer
Andrew Clark and Elaine Metlin, A 2005-DR-061

Mr. Hammack moved to approve the request for an intent to defer to December 5, 2006, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 25, 2006, After Agenda Item:

Request for Intent to Defer
Good Star Construction, Inc., A 2006-PR-003

Mr. Hart indicated that he would recuse himself from the public hearing.

Mr. Hammack moved to approve the request for an intent to defer to June 13, 2006, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from the hearing. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 25, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Hidden Brooke Condominium Unit Owners Association
(Decision deferred from 4/18/06)

Mr. Hammack stated that after the prior week's hearing, staff had been asked to provide answers to questions the Board had raised. He pointed out that State Code Sect. 15.2-2301 required that appeals of Zoning Administrators' determinations involving proffered conditions go to a governing body; therefore, the Board of Zoning Appeals (BZA) did not have jurisdiction to hear the subject case. He said it should have been presented to the Board of Supervisors. Mr. Hammack said it was interesting that the appellant had acknowledged that they had the right to appeal to the County Board, but because it was a Zoning Administrator's decision, they decided to appeal to the BZA.

Mr. Hammack moved to not accept the appeal application for reasons set forth in the Zoning Administrator's memorandum. Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 25, 2006, Scheduled case of:

9:30 A.M. CLYDE AND AUDREY CLARKE, A 2005-MA-054 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the enlargement of a nonconforming principal structure does not comply with current bulk regulations for the R-3 District in violation of Zoning Ordinance provisions. Located at 3444 Rock Spring Av. on approx. 8,250 sq. ft of land zoned R-3, H-C, SC and CRD. Mason District. Tax Map 61-2 ((22)) 12. (Decision deferred from 1/31/06)

Chairman DiGiulian noted that on April 18, 2006, the Board had issued an intent to defer decision on A 2005-MA-054 to September 12, 2006.

Mr. Ribble moved to defer decision on A 2005-MA-054 to September 12, 2006, at 9:30 a.m., at the appellants' request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 25, 2006, Scheduled case of:

9:30 A.M. RICHARD WILLIAM HORNER AND MARGARET DRAFFIN HORNER, A 2006-DR-005 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an amendment to Variance VC 85-D-061 is not required to construct a second story addition on a portion of an existing detached garage, and that the addition meets the minimum side yard requirements for the R-3 District, under Zoning Ordinance provisions. Located at 1426 Colleen La. on approx. 20,701 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-1 ((9)) 208.

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

CHAIRMAN DIGIULIAN: Richard William Horner and Margaret Draffin Horner, Appeal 2006-DR-005. Good morning.

RICHARD HORNER: Good morning. I reaffirm my application.

CHAIRMAN DIGIULIAN: Name and address.

MR. HORNER: Richard William Horner, 1428 Colleen Lane, McLean, Virginia. I reaffirm my application.

CHAIRMAN DIGIULIAN: Okay, if you'll be seated, we'll be with you in a moment. Ms. Stanfield or Ms. Tsai, whoever is --

MARY ANN TSAI: Good morning, Mr. Chairman, Members of the Board. This is an appeal of a determination that an amendment to Variance VC 85-D-061 is not required to construct a second-story addition on a portion of an existing detached garage and that the addition meets the minimum side yard requirements for the R-3 District under Zoning Ordinance provisions. The subject property is located at 1426 Colleen Lane in the Potomac Hills Subdivision, which is northwest of Kirby Road, south of the Potomac Hills Park, and east of the Potomac School. The property is zoned R-3, Residential District, three dwelling units per acre, and is developed with a single-family detached dwelling unit with a detached garage that is approximately 24 feet by 24 feet in area with an almost completely constructed second-story study above containing approximately 408 square feet of space and a bathroom. The second-story addition is located within the side and rear yards and does not encroach into any minimum required yards.

By way of background, on November 7th, 1985, Patrice and Madeline Guilmard, the owners of the subject property, applied for and were granted a variance to allow construction of a detached garage 5 feet from the side lot line on the south side of the subject property. In the R-3 District, the minimum required side yard is 12 feet. In January 2006, a review of whether the proposed second-story addition to the garage required an amendment to Variance VC 85-D-061 was prompted by concerns raised by the appellants. Upon consultation with the Zoning Evaluation Division, the determination was made that an amendment to the variance is not required to construct a second-story addition on a portion of an existing detached garage since the addition meets the minimum side and rear yard requirements for the R-3 District.

Subsequently, staff research revealed a similar situation in which a past determination permitted an addition without amending a variance provided that the addition did not encroach into any minimum required yard. In this situation in 1983, the BZA approved Variance VC 83-D-017 to permit a dwelling and a deck to remain 7.1 feet and 7.4 feet, respectively, from the north side lot line of the property located in the Franklin Park Subdivision. In 2002, a question was raised as to whether a second-story addition could be constructed on the dwelling. In this case, it was determined that further building additions from those shown on the approved variance plat were permissible provided that any construction complied -- provided that any construction complied with current applicable Zoning Ordinance provisions, including minimum yard requirements. Therefore, the second-story addition could be constructed subject to the approval of the building permit. It is noted that the variance approval included a condition that stated that the variance approval was for the location and the specific structure indicated on the plat.

Given that the second-story addition on a portion of the existing detached garage does not encroach into the minimum side and rear yards of the subject property, there is no change in height or location to that portion of the existing garage that extends into the minimum side yard. The determination was made that the variance -- that an amendment to the variance was not required. Based on this determination, building

permit approval was granted for the second-story addition, and construction on the addition is almost complete.

In conclusion, the determination was made in consultation with the Zoning Evaluation Division that an amendment to Variance VC 85-D-061 is not required to construct a second-story addition on a portion of an existing detached garage and that the addition meets the minimum side yard requirements for the R-3 District. Additional staff research revealed a similar past determination that permitted an addition without amending a variance provided that the addition did not encroach into any minimum required yards. Therefore, staff recommends that the BZA uphold the Zoning Administrator's determination which is the issue of the subject appeal. Thank you, Mr. Chairman.

CHAIRMAN DIGIULIAN: All right. Questions?

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you. The other determination you're referring to is the one with Ms. Strobel, with that --

MS. TSAI: Yes.

MR. HART: -- case with the three lots? Okay.

On this case, on the plat that goes with the approval in 1985, there's a note on the left-hand side, about -- just below the signature, it says proposed 24-by-24 garage, et cetera, if you see that. Am I correct now that the footprint of the structure, including the new porch, would be larger than 24 by 24?

MS. TSAI: It was my understanding that the footprint of the garage remained the same.

MR. HART: Okay, in the pictures it looks like there's a porch attached to it now, but you're saying that footprint -- I mean, the porch is within the old footprint?

MS. TSAI: No, the porch is not within the old footprint. The original garage remains the same, that there's been no expansion to the garage footprint, but the porch is an addition to the garage.

MR. HART: Well, that's kind of my question, but let me keep going with it. The second line of that note talks about a 12-foot height, again with reference to this 24-by-24 structure. Am I correct that the 12-foot height would be determined on the old garage, let's say, within the by-right area; that is, the 12-foot height limit isn't necessarily referring to just the portion of the structure within the minimum side yard?

MS. TSAI: That's correct.

MR. HART: I guess what I'm having trouble with is the development condition that says the variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land, but we have a specific note about a 24-by-24 structure that's 12 feet high, and it's changed now, even though it seems like the changes are probably in the by-right area. It seems like it might be larger than 24 by 24 if you count the porch and it might be taller than 12 feet, and the fact that it's within the by-right area, to me, it doesn't necessarily save it because it seems to me this note is referring to things that are happening sort of beyond the minimum yard anyway. I mean, most of the structure in the -- you couldn't have done a 25-by-25 garage at that point. I mean, I think this is very specific. You can do 24 by 24. You can go 12-foot high. You couldn't go 13 feet high. But now we're saying they've come in with a building permit, and they can do that? How do we get around the development -- the interaction between Development Condition Number 1 and the specific note on the plat with these dimensions?

MS. STANFIELD: Mr. Hart, I think it's our position that -- and we have done this typically in the past -- there is only one interpretation that we've been able to provide for you, but this language has been -- has been seen in other places where there has been an expansion of whatever use has been approved for a variance. And I guess that we're -- it's our position that that language does not preclude additional by-right

development. In fact, if you look at special permit applications for places of worship and what not, it's very specific to the structures and locations of all -- the entire property, and it does preclude any further development without an examination of a minor modification approval or a special permit amendment.

MR. HART: Let me ask it this way. Let's say 20 years hadn't gone by. Let's say this had just happened or it happened right before Cochran, this was approved this way and then they went down to the counter to get the building permit, and instead of 24 by 24, it was going to be 24 by 30, and it was going to be 20 feet high instead of 12 feet high, but they were doing everything that was different from the plat within the by-right area, if you're following. Would that be okay?

MS. STANFIELD: You know, I really don't know. I mean, we don't have that circumstance in front of us. Without seeing a specific property, it'd be hard to say.

MR. HART: All right. Thank you.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Just -- why isn't this considered a guest house, because it's called an office, is --

MS. STANFIELD: Mr. Beard, there are no facilities for cooking in this development. We did speak with the property owner. He has no intention of putting a dwelling unit in this facility, so there's no reason to even address the servant's quarters or any other dwelling unit per se because it is not their intent to make it a dwelling unit, and it's a pretty small area when you're inside it. There is -- there are facilities for a bathroom, but not for a kitchen.

MR. BEARD: Well, let me get this straight. So I could go in and put a microwave oven and refrigerator and then it's a guest facility; is that correct? Or it's a lodging facility? In other words, it doesn't meet the criteria that's established now.

MS. STANFIELD: Well, I mean, I think -- believe that that's a separate question. When this becomes a separate dwelling unit would pretty much have to be based upon the representations of the individuals who live there, as it is with all of our second kitchens or servant's quarters. It's usually determined on a case-by-case basis. Typically if you have a refrigerator and a microwave, you are considered a separate kitchen, and there would have to be some sort of reasoning behind, or some representation to us at least, that you are, in fact, using this as a servant's quarters or as a guest house. Actually a guest house would not allow an additional kitchen, and I think there is a -- there's a certain amount of acreage where you're permitted to have the servant's quarters as well.

MR. BEARD: I understand that, and, again, you have to go with what people tell you at this junction in the process, but an office, obviously there are offices with refrigerators. There are offices with microwave ovens. So it seems to me that this is a pretty ambiguous thing if this happened there, so then we go to if there's a couch that pulls out as a bed or whatever, since there are bath facilities -- okay. You've answered my question. Thank you.

CHAIRMAN DIGIULIAN: All right. Further questions? Mr. Horner.

MR. HORNER: Gentlemen of the Board, thank you for your time and attention today to hear our appeal on an issue that is extremely important to my family, my adjacent neighbors, the Potomac Hills neighborhood and the citizens of Fairfax County. Potomac Hills is a conventional subdivision zoned R-3. In 1985, the BZA authorized the construction of a detached garage at 1426 Colleen Lane with a side yard setback of five feet. In their report, staff would have you believe this appeal is all about a side yard setback and an interpretation of the 1985 variance resolution. It is much more than that. It is about Article 1, the Constitution of the Ordinance; Article 2, General Regulations; Article 3, Purpose and Intent in an R-3 Zoning District; Article 10, Authorization, Permitted Accessory Uses, Location, Regulations; and Article 18, Authorization, Required

Standards for Variances, Conditions and Expiration of a Variance; and more.

Now here are 21 reasons why this building permit was issued in error and why a structure of this type and magnitude is not in compliance with the Zoning Ordinance. Now, gentlemen, you all should have a book that shows these 21 reasons, and I'll go through them one at a time.

The first reason starts with the application. There's a letter that I have -- you have in front of you from the Guilmards dated March 30, 1985, that says they want a variance specifically for a garage of sufficient dimensions, 24 by 24 by 12 feet height, in order not only to accommodate cars, but also to provide much needed additional storage space. What they don't tell you is their existing dwelling already had a garage, which subsequent to the construction of this new garage, they converted into additional living space. This new garage or new garage house is clearly not the garage that they applied for in 1984 -- 1985.

Reason 2, in order to grant -- before you can grant a variance, the applicant must show that the required standards for variances in Section 18-404 of the Zoning Ordinance, as itemized, are met. There is no -- the original garage, there was no mention of living space; therefore, when this project was reviewed by the Board of Zoning Appeals, there was no vetting of living space, and if you look at the pictures behind Reason Number 2 and Reason Number 3, you'll see there's plenty of room, over 20 feet, in the -- at the rear of this dwelling in which they could add living space if that's what they needed.

That's reason -- Reason 3, there's no undue hardship that is not shared with any properties.

Reason 4, the strict compliance of the Zoning Ordinance and subsequent 1985 variance resolution would not effectively restrict all reasonable use of subject property.

Reason Number 5, the new structure would be considered a detriment to -- a substantial detriment to the adjacent properties, and if you see the pictures behind Reason Number 5, you will see not only the scenic vista that they have now taken, but also see the drainage problems that are created when you put a -- allow a structure within 5 feet of an adjacent structure.

Number 6, the character of the zoning district will be changed by the approval of this new structure. We do not have structures like this in Potomac Hills. In Potomac Hills, a neighborhood of 500 single-family homes, there is only one -- to my knowledge, one other detached structure, and that is a garage, a single-floor garage. This is a precedent.

Number 7, it is not in harmony with the intended spirit of the Ordinance and is contrary to public interest.

Number 8, the new structure is no longer a garage, but instead either a second dwelling unit, an accessory dwelling unit, or a multi-use accessory structure, such as, a garage apartment, garage office, garage guest house, garage servant's quarters, garage architectural studio, garage study, et cetera, et cetera.

Please note also that this garage on the second floor now has a full bathroom. This is not a half bathroom. This is a full bathroom, including shower, marble tile bathroom, hardwood floors, and it also -- the new garage has a 220-electrical-voltage outlet, a new one.

Reason Number 9, the 1985 variance resolution was subject to limitations. Those limitations specifically state that the Board of Zoning Appeals can only grant the minimum, the minimum structure that the applicant asks for in an application. That's as far as the Board of Zoning Appeals can go. This clearly goes beyond the minimum that was requested.

Staff would also suggest that the variance resolution was ambiguous. I suggest it was far from ambiguous. I suggest it was very exact. You used the word "specific." Now, from *Webster's Dictionary,* the definition of "specific" is free from ambiguity, accurate. A synonym, explicit. An antonym is vague. Your proc- -- your resolution, your conditions were not vague. They were specific. The *Oxford English Dictionary,* "specific," precise or exact in respect to fulfillment, condition of terms, definite, explicit, exactly as named or indicated or capable of being so, precise, particular.

This is not a garage. Number 10, this is not the garage that was subject to this application. Now, someone

brought up height. If you look at Article 10, Part 1, Section 10-104, Part 12 of the Ordinance, A states, for the purposes of determining height, the height of an accessory structure shall be measured from the highest point of the structure. As far as I can determine, the highest point of this structure is anywhere between 21.5 feet to 23 feet. Well, notice the building application, permit application suggests 23 feet, but looking at the plans and if the plans are to scale, it looks like it may be 21.5 feet. Now, also if you look at Article 20, the definition of height building, for a roof of this sort -- the definition reads, the vertical distance to the highest point of the roof for flat roofs, to the deck line of Mansard roofs, and to the average height between the eaves and the ridge for gable, hip, and gamble roofs measured from the curb level if the building is not more than 10 feet distant from the front line or from the grade level in other cases. If you want to use that as the building height calculation, as far as I can determine, using the 21.5-foot height, maximum height, and the 6.75 minimum height, you've got an average height here of 14.125, both of which exceed -- both of these height calculations would exceed the 12-foot limitation shown on the variance resolution.

We've talked about -- so, therefore, we already have the violation of 18-404. We have a violation of 18-405. We have a violation -- well, I'll move on here.

Number 12, staff suggests that, hey, there's nothing -- nothing's changed in the setback area, okay, all they did is put on a little bit of siding. Please, look at the photographs on -- behind Reason 12. This building was demolished. As a matter of fact, the only thing that was left was the building pad itself, and even that was altered, altered within the setback area, because in order to put a second floor, you had to -- I'm sorry. I've got a lot more to cover here.

CHAIRMAN DIGIULIAN: Go quickly, please.

MR. HORNER: Pardon?

CHAIRMAN DIGIULIAN: Could you please proceed quickly.

MR. HORNER: Okay. So Number 12 -- anyway this is more than siding, gentlemen. This is -- this whole structure has been rebuilt.

Also I think -- notice a few things. The staff talks about the Maryland Avenue case and why this is the big precedent. Well, if you look at the Maryland Avenue case, that's in a District R-2. It talks about an addition to a dwelling, not an addition to a separate structure. It's apples and oranges.

Another thing I think of interest and note is, looking at the building application, now according to staff, this building permit was really vetted by staff. Well, it's interesting to note that this application was filed on November 16th, and on November 16th, it was approved by Zoning. The same day that this application was presented, it was approved by Zoning. That's a real vetting process.

Reason 13, I think this is a dwelling unit. A dwelling unit -- someone brought up it doesn't have a kitchen. Well, it wouldn't take much to put a kitchen in this, and although the staff didn't note it, the building now has 220-volt. And if you look at what it does have, it has everything, a full bath, shower, everything you need but a kitchen to make it a house, and in R-3 you can only have one house on a lot.

Reason 14, if it's not a dwelling unit, what is it? I suggest it may be an accessory dwelling unit. Well, accessory dwelling units are only allowed in the R-3 District in separate structures on lots with acre -- acreage of two acres or more. This lot only has a half acre.

Number 15, this is not -- if it's not a dwell- -- accessory dwelling unit, then it must be an accessory structure. An accessory structure is only permitted under Article 10 if it's incidental to the primary dwelling. If you look at -- if you look at this structure, it's 984 square feet of enclosed space, 142-square-foot covered porch, and is not incidental to the primary structure and, thus, not permitted under the Ordinance. There's a picture behind that that I think will show you the scale of this building relative to the primary structure. The primary structure is 2800 square feet. That's 35 percent of the square footage.

Number 16, if it's not a dwelling unit, what is it? Well, in the plans, it says it's a garage office. Well, a garage office, if you look at the definition of office, is not permitted under Article 10 for an accessory structure. Well, now it's conveniently -- it's not an office anymore. It's now a garage study. Well, is a garage study authorized? Now, somebody brought up the point that maybe it's a guest house. Well, under Section 10-102, a guest -- a garage guest house is not permitted, a permitted use under Article 10 in an R-3 District, and it goes on to say a guest house or room for guests is described under Article 10 as a house without kitchen facilities that is used for the occasional housing of guests. I submit to you this is a guest house.

Reasons 18, if it's not a guest house, what might it be used for? How about a garage servant's quarters? In our neighborhood, we have many working couples who have children. They have -- they need nannies. They need au pairs. This is a perfect, perfect building to house a servant, an au pair.

Reason 19, and this deals with Article 10 again, Article 3, Part 3, Section 303, Paragraph 2 requires a side yard setback of 12 feet. Well, if you can't grandfather the old variance, then you need a new variance because this new structure is five feet from our property line.

Number 20, purpose and intent, allows for other uses in the R-3 District, allows for selected uses other than a dwelling unit which are compatible with the low density residential character of the district. This building is not compatible with the low density residential character of Potomac Hills. And reason 20, Article 1, the Constitution of the Ordinance, Part 2, 1-200, purpose and intent, states the Zoning Ordinance is designed to give reasonable consideration to each of 15 listed items, where applicable. The new structure conflicts with this purpose and intent in the following ways. It detracts, rather than facilitates, the creation of convenient, attractive, and harmonious community to provide light, air, et cetera. It adversely detracts from, rather than encourages, the preservation of stream valleys, steep slopes, lands of natural beauty and scenic vistas. You'll all note that it's -- one of the neighbors who received notice of this hearing is the Fairfax County Park Authority because this building sits right on the vista of Fairfax County parkland. Furthermore, it threatens, rather than protects, overcrowding of land, undue intensity of noise -- we're in the flight plan for National Airport -- and serves as an obstruction of light and air. Pictures behind that that I think clearly demonstrate those points.

Gentlemen of the Board, we believe we have clearly demonstrated the Zoning Administration Division violated many of the provisions of the Ordinance when authorizing the issuance of this building permit without authority of a new variance. Accordingly, we respectfully request the BZA fulfill their duties under the Ordinance and find, as is required under 18 -- Article 18-114 of the Ordinance, that this building permit be declared null and void and of no effect. We also respectfully request that you declare that the new structure, as presented in this hearing, is not in compliance with Article 10, Section 10-101, Authorization; Article 3, Section 3-301, Purpose and Intent; and Article 1, the Constitution of the Ordinance, Purpose and Intent. Thank you very much.

CHAIRMAN DIGIULIAN: Questions?

MR. HAMMACK: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hammack.

MR. HAMMACK: I have a series of questions. First with staff, the building permit was issued on November 16th; is that correct? It's hard to read in the staff report. It was a little blurry, but I think Mr. Horner just settled this issue on November 16.

MS. STANFIELD: Mr. Hammack, we're just checking.

MR. HAMMACK: Okay.

MS. STANFIELD: It's our understanding the building permit was approved on January 3rd –

MR. HAMMACK: Okay. January 3rd?

MS. STANFIELD: -- 2006.

MR. HAMMACK: Okay, just want to make sure.

MR. HORNER: Sir, the application was made on the 16th --

MR. HAMMACK: Okay.

MR. HORNER: -- and it was approved by Zoning on the 16th.

MR. HAMMACK: Okay, Zoning on the 16th. Okay. Well, for you, Mr. Horner, I have a question. Were you living next door when the variance was approved?

MR. HORNER: In 1985, no, sir. We moved into the -- our home in 1989.

MR. HAMMACK: Okay. Assuming there was no variance granted for the garage and this -- your neighbor wanted to put up a two-story accessory structure there, would you be objecting to that as well?

MR. HORNER: Yes, sir.

MR. HAMMACK: Is it your position that once a variance is granted on any given property, that expansion of that use within the building setback lines would require another variance application? We have a lot of houses and structures that have a variance for part of the structure, and if we adopted your position, there would be no way somebody could come in and put a porch on the back or do something like that within the building envelope without going through another variance ap- --

MR. HORNER: Well, sir, I think there's -- I'll make a distinction between a dwelling and an accessory structure. I think they're two different items, and what you are adding I think is -- depends on the answer to that question. And I would say when you're adding a living space onto an accessory structure, I have a concern with that when you could -- when there's plenty of room under the dwelling to add that same living space.

And actually in your packet -- and I'm sorry, I could have been better organized, but in the packet that I distributed to you, there is a case called Pennington versus City of Virginia Beach, and it addresses -- and it's a court -- a Supreme Court of Virginia case that addresses just that issue. And the case talks about a garage, a separate garage that's located on a site in Virginia Beach, a detached garage, and under their Ordinance, they say a separate structure can only be 20 percent in square footage as the main structure. And this garage was built prior to the authorization -- a 20 percent subject to a 500 square foot max, okay. This garage was built prior to the Ordinance, so the owner filed for a variance because it was five -- I think 523 square feet or something. They filed for an err -- a variance to get the extra 23 square feet approved so they didn't have to tear it down. At the same time, they filed for another variance because their daugh- -- their -- the husband was sick, sound like very seriously sick, and the daughter had to return home to care for her father. And in order to do that, they filed for a variance to add storage space to their garage, and the court found that they could not -- they found in favor of the City of Virginia Beach, that they could not add storage space to the garage because there was room on the dwelling to add storage space. So if they needed storage space, then go to your dwelling first, don't go to your detached garage. And I think that makes sense. You look to the primary structure first, and if you can fulfill the use, that need with the primary structure, that's where it belongs, especially in an R-3 District.

MR. HAMMACK: All right. Thank you.

CHAIRMAN DIGIULIAN: Further questions? Thank you. Is there anyone else to speak to this appeal? Step forward, please.

MR. BEARD: Better delineate, Chairman.

CHAIRMAN DIGIULIAN: Hmm?

MR. BEARD: Better delineate who we're --

CHAIRMAN DIGIULIAN: Yeah.

LI JEN DU: Mr. Chairman and Directors, my name is Li Jen Du. I'm owner of the house on 1408 Colleen Lane, which is the second neighbor from the house on 1426. We come -- we move in this property since 1981. The house -- the extra structure we are discussing today is located behind the house on 1426, (inaudible) the level -- you know, our neighborhood has a slope. Our house's level -- our lot's level is much lower than that on 1426. Our second house level is even lower than the first floor of 20 -- 1426's first floor. These new building structures, they build a second floor with windows and balcony facing directly toward our property. Since they are way above us, they are looking down on us clearly. If someone living in that property, we will have a feeling someone can constantly overlooking us overhead, and we will lose privacy in our own backyard. In the future, we are planning to sell the house and move away. With this unpleasant sight of this building which just looks awkward, it will have a significant negative effect on the price we can get from our property. Before they start building this structure, we were never notified, so we strongly oppose to have this kind of structure in our neighborhood. Thank you for listening.

CHAIRMAN DIGIULIAN: Questions? Thank you.

MR. DU: Yeah.

CHAIRMAN DIGIULIAN: Can we have the next speaker, please.

JUDY DU: My name is Judy Du. I feel the same way as my husband. This new structure somehow makes us feel that we're -- privacy's invaded, and as he said, in the future if down the road if we decided to move, then it affects our property value as well. Thank you for your attention.

CHAIRMAN DIGIULIAN: Next speaker, please.

JAMES O'BRIEN: Good morning.

CHAIRMAN DIGIULIAN: Good morning.

MR. O'BRIEN: My name is Jay O'Brien. I live at 1426 Layman Street, which is one block over from the property at 1426 Colleen. And my neighbors, the Horners, asked me to do a little research about the building codes because I'm a licensed architect and asked me to see if there was anything in addition to the zoning issues that we might have to speak about this morning, and there are three items. One is that this is a single structure. The addition, the free-standing garage, is not two parts, one that's within the setback and one that's beyond the setback. It's one structure. The initial waiver of a variance was for one structure, and you can't split it and say part of it complies and part of it doesn't. It either all complies or it all doesn't, and it's my opinion that it does not.

The second thing is that this is a change of use. When the original garage was there, it was for parking cars. When you add another level to it, you're not going to park cars in the other level. According to the building code, the international residential code, R102.7, under additions, alterations, and repairs, it says that the repairs to any structure shall conform to that required for a new structure, but without requiring the rest of the existing structure to comply with all the requirements of the rest of the code. Under that, in the uniform statewide building code, under change of occupancy, which this is since you're not going to park a car on that second floor, it says the owner or the agent shall in writing apply to and attain from the building official a new certificate of occupancy prior to a change of the existing occupancy classification or other structure or portion thereof. That step seems to have been skipped in this process.

The next thing is the actual setback of the face of the garage structure from the property line. We believe there's an error in that maybe from the beginning, but at least right now, it is less than five feet from the property line. Perhaps -- actually we measured it. It's four feet, nine inches. The code says that the only part of a structure that can extend beyond the required setback was a roof overhang and decorative trim. It doesn't say the siding can or the sheathing or part of the studs, none of it. And the issue with that is that if the first wall is too close to the property line, then the second-story wall is also too close to the property line.

Instead of being twelve feet back, as they contend, it's only eleven feet, nine inches back, and that is a violation. Thank you.

CHAIRMAN DIGIULIAN: Questions? Is there anyone else to speak?

ERIKA SOMERS: Hello. My name is Erika Somers. My address is 1429 Colleen Lane. It's right across the street from this 1426 Colleen Lane house. My living room, my balcony looks straight at the new structure that's going up, and the view that I used to have is no longer there. Plus I am 100 convin- -- 100 percent convinced that this is a living structure, meaning it's for living room purpose or whatever they're planning to do, and I feel that it's wrong. That's all. Thank you.

CHAIRMAN DIGIULIAN: Is there anyone else to speak?

MARGARET DRAFFIN HORNER: My name is Margaret Draffin Horner. I am also an appellant with my husband, and I wish to speak for three minutes because I was told by Kathleen Knoth I could. I would like to state that we have lived in Fairfax County since 1982. This is the second home we've owned with our children, one in college, one in high school, have attended Fairfax County Schools. I'd like to give you a brief history, please, but before I begin, I need say something in retort that you need to hear. Mavis Stanfield told me on March 14, 2006, when I came to the Lees' public hearing -- you might remember my face. I've seen a couple (inaudible) in March -- that this would set a precedent for Fairfax County as an accessory structure. So I want to make that completely clear to the Board, you all.

I'd like to go through a brief history. In 2005, they mentioned that perhaps they would do a renovation, addition sort of thing to us for the garage and maybe do a second floor. I said I was opposed to it. It was my understanding they had a variance for the garage in 1985, and Madeline Guilmard did not respond. Then in late 19- -- in 2005 in November we noticed that the family had been away a while, that's fine, started cleaning out the garage, and we thought that was really odd, so I -- we immediately called the County. And I talked to Lisa Feibelman directly, who works for Barbara Byron, Zoning Evaluation Division, and she told me not to worry, ma'am, you will have due process. You would need another variance, and you would have a public hearing. So I was -- my husband told me to calm down.

But, unfortunately, on January 3rd, 2006, we received a voice message from Madeline and Patrice Guilmard. They have been in our home a number of times, and we've been in theirs. And we were asked so -- to go, so on January 4 we went to Madeline and Patrice, and they told us we had a building permit and -- for a two-story structure, and I was aghast. I saw the plans. It looked like a house. It acted like a house. It reminded me of something I've seen in Outer Banks, North Carolina, where my college daughter, 20-year-old, would love to live there for the rest of her life probably, and I just was thunderstruck as I walked home with my husband and said this is crazy. The County told me this is not right. So I looked it up on the computer, and lo and behold, it actually was approved, and so I was shocked.

And the next morning, Bowers Construction showed up, 7:00 in the morning, and started demolishing the building, and I felt like we had lost our due process, lost -- violated our rights, and I was aghast and thunderstruck. I made a lot of phone calls back to the County. And we hired an attorney, and he tried to stop action. And my husband called that morning at 7:30 and talked to Patrice, who we know, we've known, we sent Christmas cards, et cetera, for years, and said, Patrice, slow down, we're against this. We have told you this from the get-go. And Patrice continued to -- and Madeline continued at full speed ahead with Bowers' permission, of course, because it's their property, to begin demolishing their garage.

So then we called Leslie Johnson, and our attorney, Bill Daly, asked for a freedom of information requirement for Leslie Johnson for all information related to this, and I spent hours and hundreds of dollars Xeroxing things, which a lot of you have done. I did on my own. And Bill Daly came back, but there was absolutely nothing from Leslie Johnson. So I can continue if you wish.

CHAIRMAN DIGIULIAN: Quickly.

MS. HORNER: Sorry. Okay. So then Leslie Johnson on January 6 -- if my dates are a little off, I'm sorry,

but it was like boom, boom, boom -- January 6 she wrote to Bowers Construction, and we also got an e-mail. Please stop action. There might have been a mistake. The County might have made a mistake. And we're talking, like, days, and we're all -- my husband and I are like what is going on? So he actually -- we -- the attorney asked for her to stop action, but the problem was Leslie Johnson on that Friday talked about her, said stop. They pulled out.

On -- excuse me if my dates are wrong, but on that following Monday again -- after Leslie Johnson saying she had talked with Barbara Byron, worked it out in Zoning Evaluation, everything was fine, and Bowers started again. And my husband and I once again saying what is going on? We want to stop this. And we want due process, and we didn't get it.

And my opinion is if they got a variance for a little -- what is annoying, but it's -- that's the way it was when we bought the house, a 24-by-24-by-12-foot-high structure, so be it. You, the Board of Zoning Appeals that I have extremely high regard for, approved it. That's the way it goes. That's the past, but to do something more and to pretend it's something, something else, is wrong. And Leslie Johnson said to my husband on the phone, and I heard her, it's two different structures, Mr. Horner. It's the old structure, which is the five-foot to the twelve-foot, and then indeed there's another structure on top. The only problem with that is that's like detaching my arm and saying it's not part of my body and putting it back on. So in -- the logic escapes me, and I would be happy to continue, answer any of your questions, but I feel that this is a terrible wrong.

And Vince Callahan, who actually I found out just circuitously works in the -- lives in the neighborhood, has lived there for 40 years, and he is completely opposed to this. You are welcome to call him. I have a letter that I just got signed, and he said he will back us 100 percent.

CHAIRMAN DIGIULIAN: We have a letter from Mr. Callahan.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: How long have you been neighbors with these folks?

MS. HORNER: Since we moved in, November 1989.

MR. BEARD: And you've had no -- they gave you no inclination as to what their intent was with this, the upstairs area?

MS. HORNER: No, sir. All they -- all I was told was maybe she would do something, the garage, and add a little something, and that's when I said -- and that's when I said you can't do it. You have another variance, because I thought she did, and she did not respond to my question.

MR. BEARD: Thank you.

CHAIRMAN DIGIULIAN: Okay. Further questions?

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: A couple of questions for staff. Do we have any information one way or the other about the measurements? The one gentleman was saying it was a couple inches off one way or the other.

MS. STANFIELD: We have the building plans, if that's what you're asking, which should show dimensions.

MR. HART: I don't mean the plans. I mean like field measurements. If we measured --

MS. STANFIELD: Has there been a field survey? Is that what you're asking?

MR. HART: Yes, or whether -- sometimes the inspector measures something. I don't know. We -- do we --

MS. STANFIELD: This was not -- this was not a violation, sir, so there wasn't an inspector making a measurement. And even if there was, you know, I would be hesitant to go by a tape measurement in the field in order to know -- I guess what you're addressing is is it closer than the five feet to the side yard?

MR. HART: Well, I was asking whether staff had anything to -- any light to shed on that one way or the other, other than we have what the -- they applied for in the building permit, but we don't know whether the structure was actually built in that location.

MS. STANFIELD: That's correct, sir.

MR. HART: Okay. The other question is if they tore down -- I mean, assuming that it is where it says on the plans, if they tore down the one level part so that the upper -- the wall of the upper part just went straight down and they chopped off the part between the 12-foot setback and where the furthest extension is, would that be a by-right?

MS. STANFIELD: Yes, sir, that would.

MR. HART: If we reversed the determination on this, can they still apply for mistake in building location or some other way to bless it?

MS. STANFIELD: I'm not sure. I'd have to make some inquiries to answer that question.

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

MR. BEARD: I'm sorry, Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Mr. Hart, I just wanted to be clear. You're saying, in other words, if you chop half of the bottom floor off, is that what you're saying? In other words --

MR. HART: Well, I didn't think it was as far as half, but whatever the -- that last seven feet is of the -- yeah --

MR. BEARD: Extension.

MR. HART: -- right, if you took that one -- that upper wall and just went straight down, then it's -- if you took that piece off, was it a by-right, and I thought they said yes.

MS. STANFIELD: Yes, sir, that's correct.

CHAIRMAN DIGIULIAN: Further questions? Thank you. Is there anyone else to speak?

SEBASTIAN GUILMARD: Sebastian Guilmard, 1426 Colleen Lane. Mr. Chairman, Vice Chairmen, Members of the Board, I would first like to apologize on behalf of my parents who were not able to make it back from Europe for this hearing. Family health issues have made their presence there essential.

We moved to Potomac Hills 30 years ago, and my parents still enjoy their property greatly to this day. Since our house is rather small and lacks basement and storage space, my parents decided to build a floor above our garage to be used strictly as a study and storage. The structure we have built is a vast improvement over what we had, a rather ugly and crumbling garage. My parents and Bowers Design Build wanted to create a structure that would befit -- that would fit the environment while meeting our needs. The design was approved by the Zoning Division, and we were ensured that no new update -- updated variance would be necessary as the original footprint of the garage would remain strictly unchanged. Let me assure you that

there have -- has never been any thoughts of using this space as a secondary dwelling nor to rent it out, which to my understanding would be illegal. Having lived here for years, we knew of several detached garages with spaces above, one at 1636 Maddox Lane, a second at 6320 Kelloggs Drive, and the last at 6164 Maury Street, all within our neighborhood. The one at 1636 Maddox Lane clearly has a habitable space above with an AC unit, and I have pictures of those if you'd like to see.

I would like to also bring your attention to the suspect nature of the petition introduced under the sponsorship of the Potomac Hills Citizens Association during their February meeting with photographs of our property. As my parents were never informed that a petition would be presented nor given an opportunity to explain the project background, the members of the association were deprived of a full and fair exposition of pertinent facts that would have permitted them for the public to form an independent opinion as provided by -- in the bylaws of the association. In fact, Mrs. Valerie White, the president of the association, had already taken a firm position against the project as early as January 6, 2006, without obtaining the facts. Second, out of the first three calls I made to neighbors who signed the petition, one rescinded his signature, and the second regretted signing without first having considered the other side of the argument. I have signed statements from both if you'd like those as well. In view of the suspect and misleading way in which the petition was introduced and the signatures obtained, we respectfully request to the Board disregard it.

In conclusion, I would like to emphasize again that my parents and Bowers made every effort to proceed openly and legally, seeking proper guidance and authorization, twice given from the County. They did everything by the book and in good faith. My parents have been victimized in this process, and any negative decision by the Board would have tremendous and unfair impact on my family both financially and emotionally. This is not a decision to be made on an abstract case. This is a real situation where a structure has been built in full compliance with the requirements and intent of the Zoning Ordinance. I'd like to thank the Board for their time in reviewing this matter today.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Would you help me out here about this full bath and this 220 electrical line.

MR. GUILMARD: Umm, hmm.

MR. BEARD: That's -- of all this voluminous amount of material and everything I've heard, actually those are the two things that seem to be extremely troublesome to me, so I would appreciate if you can help me there, a full bath with a shower.

MR. GUILMARD: I'm not exactly sure what the full bath was. I think -- I mean, we do do yardwork, and, you know, oftentimes when we're working in the garage or in the yard, walking through the whole house can often make a mess, so, I mean, that might have been one reason. I'm not sure exactly. The 220 volts, it would have been for potentially using equipment in the garage, such as a drill or any -- something like that that might require 220 volts. And I'm not sure if the AC -- I believe that the AC unit itself or the heating unit might require 220.

MR. BEARD: All right. You're telling me that there's no 220 outlet on the upper floor.

MR. GUILMARD: Not to my knowledge, no.

MR. BEARD: Well, there's an electrical plan here. I'll give the floor while I look at this if someone else --

MR. GUILMARD: The representative from Bowers is here, and he might be able to shed some light on that.

MR. BEARD: Oh, okay. Thank you.

MR. GUILMARD: Sorry. May I say one more thing?

CHAIRMAN DIGIULIAN: Sure.

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MR. GUILMARD: The view also -- I have some pictures, and I don't know if the Board would like to see those, but --

CHAIRMAN DIGIULIAN: Pass them over.

MR. GUILMARD: Sure. The view from our garage to one of our neighbors who spoke today, it's -- first of all, I'd like to say that the landscape as it is in Potomac Hills, well, on our street, is such that even standing in our yard, we have a complete view of our two neighbors who are to the north of us, and Erika, who spoke here today as well, she lives above us as well. So due to that, obviously it -- the issue of the view is something that's -- unless we were to put a huge screen, you know, we're always in view of each other.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Yes, I had a question for Mr. Guilmard. The -- it's hard to tell from the drawings, but the porch part of the garage, it seems to me it has four columns or piers, and then there's a balcony and a roof above that. Is that within the 24-by-24 or is it outside the 24-by-24?

MR. GUILMARD: It's outside of the 24-by-24.

MR. HART: Okay. Thank you.

CHAIRMAN DIGIULIAN: Further questions? Thank you. Is there anyone else to speak?

RALPH CRAFTS: Mr. Chairman, Members of the Board, my name is Ralph Crafts. I work with Bowers Design Build as the director of construction. I've been the guy that's been involved from day one with the Guilmards and through this whole process, and I want to emphasize just how much trouble the Guilmards went to to be sure that they were complying with all applicable regulations. I personally came down and met with the Zoning Department on February 1st of 2005, that's last year, to talk with them about the options that we had to accommodate the Guilmards' needs for extra storage. And if you look at the plat, you can see that the way this lot is laid out, it's severely constrained. We have easements that go directly behind the garage. We have easements that go down the right side of the property. The only place that they can put that garage is where it is. They went to tremendous additional cost to come up with a design that would accommodate the variance requirements to stay away from the seven feet that the current garage was encroaching, if you will, and to comply with the variance. We discussed it with the Zoning people. We went through everything. We made sure that we were following the proper procedure.

There's been some discussion today about how the new garage seems to be detrimental or an eyesore. Here's a picture of the old garage from the street, and here's a picture of the new one. It's really hard for me to see that the new structure really detracts from a whole lot in that community. The Guilmards even went to the additional trouble of putting very small windows up high on that second-floor addition so they would not intrude on the privacy of their neighbors. One thing that hasn't been discussed today is how badly that old garage had weathered. Here's a photograph of the structural beam in the front of the old garage. It was completely rotted out, and the garage door was starting to sag. It needed major structural repairs.

I also want to be clear that we never demolished that entire structure. We left the left-hand wall up. We did not expand the footprint of the garage slab, and we went to additional expense to have professional surveyors come in and do very precise measurements to ensure that we were not going over that 12-foot setback for the new work. Those dimensions, we actually added an inch to make sure that, in case there was a slight error on the part of the surveyor, we would not be encroaching over that property line.

As far as the use of that structure, I don't consider a bathroom with a small shower stall to be a full bath. Patrice and Madeline like to work in the garden. If you've ever seen their property, they have a beautiful landscaped yard that Madeline spends a lot of time in. Patrice likes to work on cars. This is going to be a very convenient place for him to wash up. And as far as the porch requirements, we had to have access to go to that second floor, and we toyed with open staircases on the outside of the building. The covered porch was the best way to give them protection from the weather while they went up and down to go to that

second-floor addition.

As far as encroaching on views, this is a view from the back of the Guilmards' property looking towards their neighbors, the Horners. You can see that the house next to them is much higher. They still have a tremendous view of the woods, and in all my research in the Ordinance, I didn't see anything in there that guaranteed views as far as the Ordinance requirements go. And I thank for your time, gentlemen.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Tell me about the 220 line.

MR. CRAFTS: Yes, sir. The 220 is only in the garage. It is only intended for use for equipment in the garage to work on vehicles and to supply the juice required for the air-conditioning system. There are no 220 outlets on the second floor.

MR. BEARD: Okay, now, but should one want to put 220 on the second floor, it's at the bottom -- it's in the first floor to be brought up, correct?

MR. CRAFTS: Yes, sir.

MR. BEARD: All right. Thank you.

MR. CRAFTS: There are a lot of things that are possible there, yes, sir.

MR. BEARD: No question, but 220 is in the building.

MR. CRAFTS: Yes, sir.

MR. BEARD: Thank you.

MR. CRAFTS: And it was specifically put in for that AC. That was the intent for it.

MR. BEARD: But this is an outlet that's on the first floor.

MR. CRAFTS: Yes, sir.

MR. BEARD: Thank you.

CHAIRMAN DIGIULIAN: Okay. Further questions? Thank you.

MR. CRAFTS: Thank you, gentlemen.

CHAIRMAN DIGIULIAN: Is there anyone else to speak to this appeal? Okay, one more. I'm sorry, sir, you've already spoken.

MR. GUILMARD: (Inaudible.)

CHAIRMAN DIGIULIAN: I didn't hear you.

MR. GUILMARD: I was wondering if I could present the similar cases of houses.

CHAIRMAN DIGIULIAN: You can pass something up, but you've already had your opportunity to speak.

CYRIL DRAFFIN: Well, I'm Cyril Draffin, and I live in Maryland. And I was just listening to what had happened. I guess there's -- I wasn't going to say anything, but I guess three responses. One, if the garage was not in good shape, you replace the garage. You don't put a whole huge structure on it, seems

confusing. Second of all, if someone wanted to put a garage -- wash up from being in the lawn, you wouldn't necessarily put a marble bathroom in. And third, a lot of our friends have put additions on houses. When you need more space, you put it on the back of the house. You don't try to put it right out in the middle of the whole backyard. So it seems like an odd thing to do, when most people put additions on the house, that you wouldn't just do in the house rather than trying to build a separate structure on top of a garage. It seems kind of flawed. I just pass that on.

CHAIRMAN DIGIULIAN: Okay. Is there anyone else to speak? Okay, Ms. Stanfield, Ms. Tsai, additional comments?

MS. STANFIELD: Well, I just had a few comments. One, I do believe that there was due process in this case. I believe that there was careful examination of how and when the building permit was issued, and, in fact, this appeal is an opportunity to address these issues. I would also say that Ms. Tsai and I met the property owner to discuss how this all came about. And I don't think you've had the benefit of hearing his point of view in terms of, you know, why he actually built the second story on the garage as opposed to building an addition on the house, and I would suggest that before coming to a final decision that the Board make -- move to defer a final decision so that Mr. Guilmard could be here to address many of these issues that have been brought up. Thank you, Mr. Chairman.

CHAIRMAN DIGIULIAN: Questions?

MR. RIBBLE: Yeah, Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Ribble.

MR. RIBBLE: For staff, I think there was a statement made that Barbara Byron weighed in on this at some point and said that it would require an amendment. Do you know anything about that?

MS. STANFIELD: I'm sorry. You said that it would require --

MR. RIBBLE: An amendment to a variance.

MS. STANFIELD: I don't know exactly. I think she meant maybe -- was that Lisa Feibelman perhaps?

MR. HORNER: Yeah, Lisa Feibelman. We contacted -- when we knew this building permit --

MR. RIBBLE: You come to the podium.

CHAIRMAN DIGIULIAN: You need to be on the microphone, sir.

MR. HORNER: Excuse me. When we heard this building permit had been filed, we contacted staff, and we -- we contacted staff, and we were put in touch with Lisa Feibelman of the Zoning Evaluation. And Lisa Feibelman was very responsive, and what she said was, Mr. Horner, this ne- -- or, Mrs. Horner, okay, that this is under a variance, and in order for this struc- -- them to put a second floor under -- on this structure, it would need to be referred to the Zoning Evaluation committee -- Division. And she looked in her computer and said there has been no such referral. That was on, I believe -- in December, okay. And at the time my wife is still, you know, not -- doesn't feel real comfortable here. Lisa Feibelman actually sends us a copy of the 1985 variance and the plat, and on the phone she points out to us the restrictions or the conditions and specifically says look at the height. The height is 12 feet. They cannot build above 12 feet without a new variance and that -- don't worry about it because this will have to be referred to the Zoning Evaluation Division, and the Zoning Evaluation Division will say no, you need a new variance.

Now, when we got notice on January 4th that the building permit had already been authorized on November -- on January 3rd when we met with the Guilmards, who at -- for the first time showed us this new addition or new structure, we immediately the next morning were on the phone to County as soon as this -- they opened. At the same time, Bowers Construction at 7:00 a.m. was demolishing this garage, and by the time

we reached -- we contacted Lisa Feibelman. She said let -- Mr. Feibelman, this is -- this can't be -- Mr. Horner, this can't be so. Okay? This can't be so because I see this has never been referred to us, and it has to be referred to us. That's the process in Fairfax County. And so she suggested I contact Leslie Johnson.

Leslie -- I finally got a hold of Leslie Johnson that afternoon. The proj- -- this -- the garage had already been demolished by then, and I said what's going on? And she said she knew nothing about the case, let -- she'd like to review it. That afternoon I drafted a letter based on what I had in front of me, which was the variance, and expressed a -- our concerns that this was an error. That after- -- the next afternoon she came back to us and says we think we did make an error. Okay, by now this garage has been demolished, okay? At this time, though, we figure we won our case, okay, that they now acknowledged that this garage, this new structure needed a variance. Well, come Monday they reverse it. She says, oh, I went and talked to Barbara Byron, and we do it all the time, Mr. Horner. There's plenty of precedent here. We do it all the time. And I said what do you mean you do it all the time? Give me an example, give me a case, show me where, and it was -- she couldn't answer that. We just do it all the time. And I submit to you the problem was is she realized on Monday that she had made an error, but it was too late. It was too late because this garage had already been demolished. Thank you.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Ms. Stanfield, help me out with the height thing again, please.

MS. STANFIELD: I'm sorry.

MR. BEARD: In other words, if the -- help me out with the height thing, if --

MS. STANFIELD: Okay, what kind of help would you like, Mr. Beard?

MR. BEARD: If -- I'm sorry, I can't see.

MS. STANFIELD: I know. Right.

MR. BEARD: You're like that show Home Improvement. I see this much, but I -- so if I look at you on the monitor -- anyway, if it was -- if it was approved -- thank you. If it was approved for -- the variance was approved for 12 foot.

MS. STANFIELD: The variance was approved for a five-foot reduction to the minimum required side yard.

MR. BEARD: I'm sorry.

MS. STANFIELD: And it was not approved specif- -- in our view, was not approved specifically for the height. If you look at the example of the interpretation that we provided in the staff report for a different piece of property, the height is also noted on that plat, but they were committed to build a second story provided they met the minimum required side yard in that situation.

MR. BEARD: So you're telling me then that the dimensions within the garage per se could have changed somewhat and it wouldn't have been effectual at all.

MS. STANFIELD: I think within that the area of the variance --

MR. BEARD: Yeah, because --

MS. STANFIELD: -- it could not exceed that height limitation. That's correct.

MR. BEARD: Thank you.

CHAIRMAN DIGIULIAN: Further questions? All right. The public hearing is closed.

MR. BYERS: Mr. Chairman, I do --

CHAIRMAN DIGIULIAN: Mr. Byers.

MR. BYERS: I think there are two things that I would at least provide my opinion on. First, I think Ms. Stanfield has a legitimate point. I would like to hear the property owner because there has to be some rationale for some of the things that have been done. I mean, we've heard the other side. I think in fairness to the property owner, we should hear what he believes. And the second thing also is, if it's possible, I would like to have Ms. Byron here the next time if we can do that because usually there is a very good rationale for the kinds of decisions that she renders, and I think that would be helpful to me. So I guess what I'm saying is it would be helpful if we could defer this until we get those folks here. And I understand they're in Europe, and I don't know what the timing of that would be, but --

MR. GUILMARD: If I can -- I have to double-check. I think they're coming back in (inaudible). Can I contact you? Check it.

MS. STANFIELD: I would suggest that if the Board makes a motion and if the timing is not appropriate, then we could come back to you at that time and let you know what the dates would be.

MR. BYERS: What's the suggestion?

CHAIRMAN DIGIULIAN: Well, we don't have a second yet.

MR. HART: What was the motion?

MR. BYERS: I haven't made -- was I making a motion? I didn't --

CHAIRMAN DIGIULIAN: I thought you were.

MR. BYERS: Well, I will. I will make a motion to defer and then to a date that -- do you have a good date?

MAVIS STANFIELD: 23rd is approximately one month.

MR. BYERS: I move we defer it until the 23rd of May, sir.

CHAIRMAN DIGIULIAN: The motion fails for lack of a second.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hammack.

MR. HAMMACK: I'll take a stab. This kind of a case is a difficult case in some ways because it involves -- well, just because it involves the addition to a structure for which a variance had been granted. I'm going to make a motion to uphold the determination of the Zoning Administrator because I think the issue before us is a narrow issue as to whether the Zoning Administrator erred in a -- in the determination in the issuance of a building permit and in their interpretation of the Ordinance, and I think the burden is on the appellant to show how the Zoning Administrator erred. I know Mr. Horner's made some arguments that a structure for which a variance had been granted cannot be changed without an amendment to the variance. He cites one case from Virginia Beach, but really from my understanding of how that case arose and was decided, I don't think it's in point on this. Mr. Horner argues that different zoning districts would have perhaps different standards for when an addition could be made to a building to which a grant -- a variance had been granted. That is not a convincing argument to me that the Zoning Administrator has erred.

I am aware that there are many, many structures in Fairfax for which variances have been granted, and if you accepted the argument of Mr. Horner, I think that no structure could be changed. You couldn't put a deck off the back or put -- just perhaps do almost anything. If there was a variance attached to the property

or associated with the property, you'd have to come back in. I don't think that -- at least that's not my understanding of the law in Virginia on the variances, but I'm not sure that that really makes any difference. I think the burden is showing that the Zoning Administrator erred in issuing the building permit, and in the interpretation of the Ordinance, the Zoning Administrator's given us good reasons as to why and how the Ordinance was interpreted. And absent a showing that, you know, he really made a mistake, I think the Board has to support that determination, and so for that reason I'll move that we uphold the determination that an amendment to Variance VC 85-D-061 is not required to construct a second-story addition on a portion of an existing detached garage and that the addition meets the minimum side yard requirements for the R-3 District under the Zoning Ordinance provisions.

CHAIRMAN DIGIULIAN: Do I hear a second? That motion fails for lack of a second.

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Well, maybe I should have seconded Mr. Byers' motion. The -- I agree with Mr. Hammack that it's a relatively narrow issue, and I'm not certain that this case stands for the proposition one way or the other that a structure, once the subject of a variance, could never be modified with a by-right addition or change to it. I think staff at the counter has to look at each building permit application on a case-by-case basis, as do we, whether it's a variance or appeal or something else, and there's a lot of material been presented to us. And, frankly, a lot of the reasons advanced by the appellants I don't agree with, and I don't think they're directly germane to the question. But where I'm getting hung up is Development Condition Number 1, which back in '85 said the variance was approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land. Well, the plat that was attached, if this is the same as in the staff report, and no one has suggested different, it's pretty clear to me that it has a 24-by-24 garage. That's the footprint. The height is 12 feet, and it shows the location of it. And the references on the plat, it's also clear to me, involve more than just the area of the needed variance, that is, that most of the garage, even under this scenario, is in what would otherwise be a by-right area for building on this lot.

I don't -- I thought I asked staff questions about if they went to get a building permit for something larger even having gotten it -- a variance for this, and I thought I was getting the wrong answers to those questions. I think that if you get a variance for a 24-by-24 garage 12 feet high, that's what you have to build, that the difference between the all-or-nothing scenarios that I think are suggested by both sides, neither of which I really like, the difference between this and that is I think that what junks this one up is the wording of Development Condition 1 is so specific with reference to a particular drawing, which is dimensioned both as to the footprint and the height. And I think that they've done a larger garage than 24 by 24, and I think it's taller than 12 feet, and if the application had been for that 21 years ago, I think there would have been a different evaluation by the Board of perhaps the impacts on adjacent property, perhaps drainage, or I don't know what. I think we're -- we would be evaluating the application under a different set of circumstances or different legal principles now anyway, but I can't reconcile the language of Development Condition 1 with what happened.

The problem with overruling the Zoning Administrator, I think, is that what's objectionable to the neighbors about the structure isn't necessarily the variance part. It's the by-right part. And you could make modifications to it, and it would be just as bad, at least in the eyes of beholder, and it wouldn't require a variance at all. And I think also it would tend to meet the standards for special permit for a mistake in building location. They had a legitimate building permit. It's mostly built. We've had that sort of thing happen before, too. So if we overturn the Zoning Administrator, I don't know where that leaves us. It leads us to another application with different standards, and it may well be approvable under that. So I guess I was hoping that someone was gonna say something to persuade me one way or the other, persuade me that I'm wrong about Development Condition Number 1.

Now, I wasn't here 21 years ago. If I'm reading the minutes correctly, three of my colleagues were present. It was the motion made by one of them. Two of them happened to have been out of the room, if the minutes are correct. I don't know what happened. Maybe we'll hear that in a few minutes. Maybe we won't. But that's what's hanging me up, Development Condition Number 1 and why -- why -- if there's a reference to a

specific drawing with specific dimensions, how can they make that structure, the structure that's gonna have the variance, how can they make it bigger and taller.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hammack.

MR. HAMMACK: I can respond. Whether it's convincing or not remains to be seen. I look at it. I agree with staff. The variance is to the side setback line. When we grant a variance, we grant -- we legalize a deviation from the building envelope. By granting the variance, we legalize the construction of that building. Now, I know that generally speaking we think in terms of size and bulk and everything, but the variance itself is just to the side setback line. We -- you know, I know that it's been our practice to sometimes have buildings reduced in size before we grant a variance, but the variance isn't to the whole building. It's just to the side setback line, and I can think if the owners tore down that five feet that encroached, they could have what they want. It still would be unacceptable to the Horners, but it would be approvable. Let me finish.

There are also some other cases. I can think of one, I think, where a second story is being built on -- over a building where setback lines had been changed under the Ordinance. I think there are implications to things like that if you -- I think we granted a variance on that one. I can't think of where it is. It's over -- is it in Pimmit Hills or someplace where we -- isn't there some out there where there's a second story being built and they pulled it in to the extent that -- to meet the setback lines and a building permit was issued?

MS. STANFIELD: Mr. Hammack, I'm not aware of that specific case, but I could certainly search for that information.

MR. BEARD: Question, Mr. --

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Mr. Hammack, how many times have I sat here and heard our former colleague, Mr. Pammel, try to get these people to reduce sizes of garages so they could be --

MR. HAMMACK: Yeah.

MR. BEARD: -- by right or have as least, you know, infringement, if you will, as possible, encroachment. So I think that it would certainly be an issue, and while I'm pontificating, if I might, I mean, I see that on the staff report here this was approved to allow a detached garage five feet from the side lot line, 12-foot high, 24 by 24, a garage. You know, this thing has taken on a dimen- -- I don't know that you can say this is just a gar- -- this is a garage now. So -- but as I say, I continually hear us deal with the dimensions of a facility.

MR. HAMMACK: Let me throw this out. Suppose the owners wanted to run a wing back, right along that setback line, two stories with a nice balcony facing the direction it faces, just the way the old farmhouses used to be built over in West Virginia so you could sit up there and catch the breeze in the afternoon and they attached it to the garage. Would that be prohibited?

MR. BEARD: If -- attached it to the principal residence?

MR. HAMMACK: And to the garage (inaudible) --

MR. BEARD: Well, if it's an attached thing, it takes on an entirely different dimension.

MR. HAMMACK: Well -- well --

MR. RIBBLE: Excuse me. Let me ask this question. If they had decided to come forward with this, say, make it 30 feet or 40 feet in length, would that be okay? It's -- they're still following the same setback line.

MR. HART: No.

CHAIRMAN DIGIULIAN: Well, I made the motion to grant this variance in 1985, and I really don't think if I saw -- if the application then had the structure that we're looking at today, I don't think I would have made that motion. I don't think it complies with Condition Number 7 or Number 9 of Section 18-404, the required standards for variances. And I just don't think I'd make the motion to grant it.

MR. BEARD: Well --

CHAIRMAN DIGIULIAN: And I think what they can do by right is what they can do by right. We don't have any control over that. So, you know, if they wanted to cut off that seven feet of the garage, then we don't have anything to say about it, but I think the bulk of the structure that's there today is something totally different than what we voted on in 1985.

MR. BEARD: And, Mr. Chairman, if I might, as Mr. Hammack said, we -- we're confronted with the situation here where there's been a lot of reliance upon what the County's interpretation -- and I'm not saying that there's anything wrong with that, but the homeowner has moved forward based upon that, and then you have something that's out of context with the neighborhood. And I contend, as I always have, that we're here for a reason. We're the shock absorber. We're here to ameliorate, if you will, these things, and to me this is one that sounds out for our wisdom at this juncture.

CHAIRMAN DIGIULIAN: Okay. Still waiting for a motion.

MR. HART: I'll -- I'll --

MR. RIBBLE: Well, I would go back to Mr. Byers' motion, possibly, maybe, because I would like to hear from Ms. Byron and the owners. But I just -- it seems to me like we grant variances and we're trying to protect the Ordinance with all this, and we vote on something. We think that's the way it's supposed to be, but it's not gonna happen that way. I just don't think we need to even have a category called variances.

MR. HAMMACK: Mr. Chairman, I -- it's a difficult question because we've always assumed to some extent that the variances are just for the building the way Mr. Hart described, to that structure. But it -- in reality, it's to the side setback line. We legalized the construction of that building by granting a variance, and I can't say for sure that staff or I'm correct in this, but if somebody wants to do something within the building envelope, you know, you can construct a house up to how many feet, 32 feet or 45 feet? I'm not sure what the height is on a residential structure in an R-3. They could do it right on the side property line. I mean, they could build an "L" all the way back. It may be legal. It might not fit into the neighborhood. It might not be acceptable to the neighbors. I don't know. We -- I don't think we've had this issue before us very often, but I can think of houses where we have an attached garage where people have wanted to build out over a garage, which may have had a variance, and we've allowed construction right up to the setback line without getting an additional variance, although the variance was granted to encroach in the setback line. Now, how does that -- how is that different from a detached garage? And there's certainly pool houses --

MR. BEARD: It's attached.

MR. HAMMACK: Well, yeah. Well, we could --

MR. BEARD: They've got the first --

MR. HAMMACK: We could put the proverbial two-by-four, run it back so we could attach it. But there are pool houses. There are sunrooms. There are all kinds of things that are out there and decks off of second stories and things like that that are granted by variance, and I don't know.

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Let me throw out another request. I'm not necessarily persuaded that the Lynn Strobel case,

and I've forgotten the name of it, the one -- the house with the three lots, the one that was -- we've read in some of the materials before, is the same situation as this or that it's the be all and end all. I would be more interested in any situation where -- because I don't really remember this happening where there was a variance granted to do something where there was some specific depiction of it on the drawing and then later there was a by-right modification to it. I expect it's --

CHAIRMAN DIGIULIAN: I don't remember one either.

MR. HART: It's probably more typical with a house, and in the house itself, I might see it a little different, but I can't think of any. Any of those -- if any of those went to court and a judge looked at it, that's important, and I think I would like to understand that. And that's something we haven't seen or heard yet, so maybe that's a reason to research that. Are there any of those where there was a variance granted for a structure that's specifically shown on a drawing and there was a later by-right modification to it and some dispute about whether that's okay or not and it went to court? Did it ever go to court from 1941 'til now? Maybe there's something.

This is a real mess, and I guess I really, really didn't want to make the motion to overturn because I know what happens. And then what's gonna happen is we're gonna be right back here with a special permit for mistake in building location, and somebody's got a building permit in good faith, and they spent money with the builder, and it's 90 percent built, and it's very rare that those are gonna get torn down. So this is all sort of an empty charade if we say, well, yeah, they -- technically they were wrong, but the people could have relied on it and they were reasonable. And I don't know where that leaves us because I don't think the impact of the structure is really the variance part. The impact is on the by-right part. It's because it's too tall, and it's not gonna change anything, so if we overturn, we're just leading ourselves up from debating this again.

MR. BEARD: Mr. Hart, very respectfully, though, I don't think we can make our judgments and decisions today predicated upon what might happen, so, you know, I'm -- I say --

MR. HART: I know, but I feel like we're jumping through hoops. In any event, I would be back to Mr. Byers' motion or maybe something like it if that got a couple of more votes, but to dig up whether there's any court cases on that principle. So I'll move, then, if I can, that we -- are we not meeting the 30th? How many cases on the 23rd? Or our June 6th was D-Day. We have something horrible then, but it will -- what's on the 23rd and what's on the 6th? We deferred I know something bad. I just don't remember what it was.

MS. STANFIELD: You have an appeal on the 23rd, and I'm not even sure that that one's going to go forward, so that might be the better day. On June 6th, we have McLean Bible.

MR. HART: Oh, okay. All right. Let's do it the 23rd. That's my motion, but to have Mr. Byers' things, but also the thing I've suggested, and maybe other folks have other requests. Oh, and the record remaining open for written comments from anybody, including the appellants, the neighbors, the owners, the milkman, the fireman, whoever.

CHAIRMAN DIGIULIAN: Do I hear a second?

MR. RIBBLE: Well -- but wait a minute. Excuse me. Mr. Byers I think specifically wanted the ap- -- the property owners here; is that right? Would you take written --

MR. BYERS: The thing that --

MR. RIBBLE: -- affidavits or something?

MR. BYERS: The thing that concerned me a little bit about this was in my reading that -- and it's beyond our purview, but there was a homeowners association meeting, a petition was circulated, and the fo- -- the property owners did not have an opportunity to respond to their neighbors. And I think part of that for me is due process. It's having an open and transparent look at all of this, and that's why I thought in fairness,

frankly, to the property owner, that he or his wife should have an opportunity to articulate exactly why it was built this way. And, secondly, in fairness to the decision that was made by the County staff, I thought it was fair to get a complete picture from the standpoint of the rationale for the decision that Ms. Byron had made. And I think if we're going to talk, this is a very, very difficult case, and I can see merit on both sides, frankly, and I think it's not going to hurt us to defer it if those folks can get back here on the 23rd.

MR. RIBBLE: Well --

MR. BYERS: I mean, are they --

MR. RIBBLE: There's a good chance they won't be back on the 23rd. I guess that's what I'm suggesting, and I don't know (inaudible) --

CHAIRMAN DIGIULIAN: Well, we need a second if we're going to discuss this.

MR. RIBBLE: I'll second it for purposes of discussion.

CHAIRMAN DIGIULIAN: Seconded by Mr. Ribble.

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: The difference between what I was trying to aim for and what I thought Mr. Byers was saying is I think it's not fair to let one side go and then not have the rebuttal because if they were here today, then there could be rebuttal to whatever it is, and if we don't let everybody go, then we're not gonna have rebuttal. It's just gonna be one side getting the last word, which we wouldn't be doing.

MR. RIBBLE: They could have asked for --

MR. BEARD: Well, why didn't they ask for a deferral? I mean, all these people came out here, all these -- I mean, you know, I didn't see a request for a deferral in here anywhere.

MR. RIBBLE: I didn't either.

MR. BEARD: Can staff address that, please.

MS. STANFIELD: I don't have a request for a deferral either. Perhaps Mr. Guilmard's son can address that question, sir.

MR. GUILMARD: I was actually going to ask, but when I gave my presentation, I guess I was a bit nervous. But my parents, I think they would like to be able to speak. They thought that --

MR. BEARD: How long have they been out of town?

MR. GUILMARD: I don't know exactly.

MR. BEARD: And this has been posted for how long?

MR. GUILMARD: About a month now, I think.

MR. BEARD: Okay. Thank you.

CHAIRMAN DIGIULIAN: Okay. Further discussion?

MR. BYERS: Are they going to be back on the 23rd?

CHAIRMAN DIGIULIAN: We still --

~ ~ ~ April 25, 2006, RICHARD WILLIAM HORNER AND MARGARET DRAFFIN HORNER, A 2006-DR-005, continued from Page 284

MR. HART: We don't know. Well, Mavis said we would defer it again.

CHAIRMAN DIGIULIAN: Yeah. The motion was to defer until May 23rd; is that correct?

MR. HART: Yes.

CHAIRMAN DIGIULIAN: Okay. Further discussion on the motion? All those in favor of the motion?

MR. BYERS, MR. HART, MR. HAMMACK, MR. RIBBLE: Aye.

CHAIRMAN DIGIULIAN: Opposed?

MR. BEARD, CHAIRMAN DIGIULIAN: Nay.

CHAIRMAN DIGIULIAN: Motion carries by a vote of four to two.

MR. HART: Ribble vote yes?

CHAIRMAN DIGIULIAN: He voted aye.

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~ ~ ~ April 25, 2006, Scheduled case of:

9:30 A.M. MERRIFIELD TOWN CENTER, L.P., A 2006-PR-004

Chairman DiGiulian noted that A 2006-PR-004 had been indefinitely deferred at the appellant's request.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Cooper, Lee, and McCarthy cases, bylaws amendments, and correspondence, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

The meeting recessed at 11:15 a.m. and reconvened at 12:29 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:29 p.m.

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

Approved on: June 6, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 2, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ May 2, 2006, Scheduled case of:

9:00: A.M. HENRY R. TORRICO, SP 2006-LE-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 0.8 ft. from side lot line. Located at 6414 Dorset Dr. on approx. 10,003 sq. ft. of land zoned R-4. Lee District. Tax Map 82-3 ((5)) (27) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Henry R. Torrico, 6414 Dorset Drive, Alexandria, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The subject parcel was located at 6414 Dorset Drive, in the Virginia Hills Subdivision, in the Lee District. The properties to the north, east and west were zoned R-4 and developed with single-family detached dwellings. Virginia Hills Homeowners Association open space was located to the south. The applicant requested a reduction to the minimum yard requirements based on error in the building location to permit a carport to remain 0.8 feet from a side lot line. A minimum side yard of 10.0 feet with a permitted extension of 5.0 is required; therefore, a modification of 4.92 was requested.

Mr. Torrico presented the special permit request as outlined in the statement of justification submitted with the application. He apologized for his mistake in not knowing that a permit was required to erect a carport. He explained that the carport was built to shelter his five-year-old daughter, diagnosed with leukemia, from the elements when getting out of the car. He pointed out that he had two letters of support from his adjoining neighbors.

In response to Mr. Hart's questions, Mr. Torrico explained he had added two additions, a second floor and an addition on the rear of the house, and for both he obtained building permits. He said that it was several months after he completed the additions that he built the carport. Although not in the construction business, he said he and his friends designed the carport after he had researched the project, that he had rushed to complete it before winter, it had two recessed electrical lights, and that it was not inspected by the County. Mr. Torrico maintained he did not know a carport required a building permit.

In response to Mr. Byers' question, Ms. Hedrick said an anonymous complaint was phoned in which brought the County's attention to the violation.

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

Mr. Hammack stated that the case was a difficult one, but he reluctantly would move to deny it.

Mr. Hart said he would support a motion to deny and agreed it was a difficult case. He said he would have had a problem concluding that Standard 1B, under 8-914 was satisfied, as well as 1C because of the magnitude of error with the carport's extension. Mr. Hart stated that Virginia Hills was an older neighborhood undergoing numerous renovations, and if a carport extension of 0.8 feet were allowed by special permit after the fact, it would change the character of the district, and such a modification would not satisfy Ordinance requirements.

Mr. Beard commented that the next-door neighbors were in support, any subsequent purchaser of the property would be aware of the situation, and he recognized Mr. Torrico had obtained two permits for extensive remodeling. He said he could understand how Mr. Torrico had concluded that a simple open carport would not require a building permit. Mr. Beard said the home was beautiful, and he was quite familiar

~ ~ ~ May 2, 2006, HENRY R. TORRICO, SP 2006-LE-011, continued from Page 287

with the neighborhood, Virginia Hills, having lived there at one time. The daughter's illness was the underlying factor, and because of that, he would not support the motion.

Mr. Hammack moved to deny SP 2006-LE-011 for the reasons stated in the Resolution. Mr. Hart seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Ms. Gibb was absent from the meeting.

Mr. Hart explained to Mr. Torrico that a number of amendments were under consideration that would allow some extension into minimum yards, and he hoped the pending amendments might offer relief if Mr. Torrico were to resubmit an amended application. He suggested that Mr. Torrico consult staff on the procedure.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HENRY R. TORRICO, SP 2006-LE-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 0.8 ft. from side lot line. Located at 6414 Dorset Dr. on approx. 10,003 sq. ft. of land zoned R-4. Lee District. Tax Map 82-3 ((5)) (27) 5. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 2, 2006; and

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

1. The applicant is the owner of the land.
2. It is difficult to find that the applicant complied with Subsection B, which requires that the non-compliance was done in good faith or through no fault of the property owner.
2. The owner had completed construction of additions where building permits were required, and it seems too much of a stretch to find that there was no fault on the part of the owner when that is required.
3. From the pictures, the addition appears very attractive and nicely done, but much closer to the lot line than this Board historically has ever allowed when the Board was granting variances, although that is not the criteria.
4. The applicant has not satisfied the Ordinance.
5. The applicant testified that his daughter has had leukemia for two and a half years, but he built the structure last year so there was adequate time to have checked with the County and found out if a building permit was needed.
6. If this application were allowed to satisfy that requirement, practically any person that was undergoing chemotherapy or with a medical problem could build something and say that the exigent circumstances satisfied the Ordinance.
7. The Board received two letters in support of the application by immediate neighbors.
8. The non-compliance was not done through no fault of the property owner or was a result of an error in the location of the building subsequent to the issuance of a building permit when one was required.
9. The application does not satisfy the other standards under the Ordinance, specifically C, D, and maybe F.
10. The granting of this 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.
11. The granting of this special permit will create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirement would not cause unreasonable hardship upon the owner.

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

~ ~ ~ May 2, 2006, HENRY R. TORRICO, SP 2006-LE-011, continued from Page 288

That the applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.

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

Mr. Hart seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refilling an application. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting

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~ ~ ~ May 2, 2006, Scheduled case of:

9:00 A.M. CARLOS H. ZUNIGA, SP 2006-PR-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13 ft. with eave 12 ft. from front lot line of a corner lot. Located at 2923 Meadow La. on approx. 5,627 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((9)) 20. (Admin. moved from 4/4/06 for notices)

Chairman DiGiulian noted that SP 2006-PR-007 had been administratively moved to May 23, 2006, at 9:00 a.m., for notices.

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~ ~ ~ May 2, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications including changes in parking layout, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, 4/19/05, 6/7/05, 6/14/05, and 8/9/05 at appl. req.) (Decision deferred from 9/13/05, 10/11/05, and 11/1/05)

Chairman DiGiulian noted that on April 25, 2006, the Board issued an Intent to Defer SPA 75-S-177 to June 20, 2006. He called for a motion.

Mr. Ribble moved to defer decision on SPA 75-S-177 to June 20, 2006, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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The Board recessed at 9:26 a.m. and reconvened at 9:31 a.m.

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~ ~ ~ May 2, 2006, Scheduled case of:

9:30 A.M. ANDREW CLARK AND ELAINE METLIN, A 2005-DR-061 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure and a fence in excess of four feet in height, which are located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1905 Rhode Island Av. on approx. 24,457 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (1) 36B. (Admin. moved from 3/7/06 at appl. req.)

~ ~ ~ May 2, 2006, ANDREW CLARK AND ELAINE METLIN, A 2005-DR-061, continued from Page 289

Chairman DiGiulian noted that on April 25, 2006, the Board issued an Intent to Defer A 2005-DR-061 to December 5, 2006. He called for a motion.

Mr. Hart moved to defer A 2005-DR-061 to December 5, 2006, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ May 2, 2006, Scheduled case of:

9:30 A.M. NORMA VIDAURRE, A 2006-MA-006 Appl. under Sect(s). 18-301 of the Zoning a determination that a home child care center has been established on property in the R-2 District without an approved Special Permit, in violation of Zoning Ordinance provisions. Located at 4106 Mason Ridge Dr. on approx. 16,403 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((15)) 59.

Chairman DiGiulian noted that A 2006-MA-006 had been administratively moved to July 11, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ May 2, 2006, Scheduled case of:

9:30 A.M. ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO LARIOS, A 2006-LE-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a carport and a dwelling do not comply with the minimum yard requirements for the R-3 District, in violation of Zoning Ordinance provisions. Located at 7320 Bath St. on approx. 10,062 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (34) 20.

Chairman DiGiulian noted that A 2006-LE-007 had been administratively moved to July 18, 2006, at 9:30 a.m., at the appellants' request.

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~ ~ ~ May 2, 2006, Scheduled case of:

9:30 A.M. GOOD STAR CONSTRUCTION COMPANY, INC., A 2006-PR-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a single family dwelling under construction exceeds the maximum building height of thirty-five feet in the R-1 District. Located at 3000 Apple Brook Ln. on approx. 36,000 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((15)) 8. (Admin. moved from 4/18/06 at appl. req.)

Chairman DiGiulian noted that on April 25, 2006, the Board issued an Intent to Defer A 2006-PR-003 to June 13, 2006. He called for a motion.

Mr. Hart indicated he would recuse himself from the public hearing.

Mr. Hammack moved to defer A 2006-PR-003 to June 13, 2006, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

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Chairman DiGiulian noted that there were no After Agenda Items.

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~ ~ ~ May 2, 2006, continued from Page 290

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding proposed By-Law revisions , the Bristow Shopping Center case, the Cooper case, and correspondence, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

The meeting recessed at 9:33 a.m. and reconvened at 10:02 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:02 a.m.

Minutes by: Paula A. McFarland

Approved on: October 6, 2010

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 9, 2006. The following Board Members were present: Vice Chairman John F. Ribble III; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Chairman John DiGiulian, V. Max Beard, and Norman P. Byers were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:09 a.m. He discussed the policies and procedures of the Board of Zoning Appeals.

Mr. Hart announced that a tragedy had occurred in the county the prior day which was a reminder to everyone of the importance of the job performed by our public safety officers. He stated that a Fairfax County police officer lost her life in the line of duty, and two other officers and a citizen were wounded in the shooting at the Sully District Police Station. He said the thoughts of the whole County were with the families of the police officers and the other persons affected by the tragedy. Mr. Hart said no one should take for granted the job that was being done for us every day by our public safety officers.

Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ May 9, 2006, Scheduled case of:

9:00 A.M. VILLAGE WEST, INC./NEW CINGULAR WIRELESS PCS, LLC, SPA 67-S-519-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 67-S-591 previously approved for a community swimming pool to permit site modifications (telecommunications tower). Located at 7008 Elkton Dr. on approx. 2.59 ac. of land zoned R-2. Springfield District. Tax Map 89-4 ((5)) A. (In association with SE 2005-SP-033).

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the applicant had not yet arrived due to traffic issues.

Vice Chairman Ribble stated that the Board would take up the matter again later in the meeting.

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~ ~ ~ May 9, 2006, Scheduled case of:

9:00 A.M. CHAN S. PARK, SP 2005-SP-012 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12219 Braddock Rd. on approx. 3.68 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 57. (Admin. moved from 5/17/05, 7/19/05 and 10/25/05 at appl. req.) (Admin. moved from 12/20/05) (Decision deferred from 1/31/06)

Vice Chairman Ribble called the applicant to the podium.

Susan Langdon, Chief, Special Permit and Variance Branch, said the agent for the applicant had submitted a revised application to add land area; however, the amended application had not yet been accepted. She said the agent was not present today, and staff had informed him that once the revised application was accepted, a public hearing date would be scheduled. She said staff was waiting for the acceptance, and since the agent was not present, she assumed that he did not want to go forward on the application as it existed.

Vice Chairman Ribble asked for an indication as to when the application would be withdrawn. Ms. Langdon said the applicant would not be withdrawing the application because once the amendment was accepted, a new public hearing would be scheduled, and it would have the same application number. She requested that the Board defer the application and said staff would set a new date when the amended application was accepted.

Mr. Hart referenced the handout that the Board had received and indicated that it appeared the applicant was adding the other lot located to the west. He said that if they were going to do that, the application would have to be re-advertised, but if it was not accepted, a new hearing date could not be set. He asked if it would be acceptable to defer the case indefinitely, and when and if the additional lot was accepted, a new hearing date could be set. Ms. Langdon indicated that would be acceptable.

Mr. Hart moved to indefinitely defer SP 2005-SP-012. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Byers were absent from the meeting.

~ ~ ~ May 9, 2006, CHAN S. PARK, SP 2005-SP-012, continued from Page 293

Thomas Goolsby, 5450 Goolsby Way, Fairfax, Virginia, came forward to speak. He asked for an assurance that new signs would be posted and the case re-advertised if the revised application was accepted by staff. Vice Chairman Ribble confirmed that was what would happen.

Mr. Hart explained that staff had informed the Board that the applicant had submitted a revised application because they had changed some things and the area of the application would include the other lot to the west. He said that when changes such as that were submitted, it was not appropriate for the Board to act on the application without having another public hearing. If there was going to be another public hearing, new signs would have to be posted, the case would have to be re-advertised in the newspaper, and new letters would have to be sent out. He suggested that Mr. Goolsby and his neighbors contact the applicant's attorney, William M. Baskin, Jr., who would in all likelihood arrange a meeting with the neighbors to explain the requested changes. He noted that it would be a while before this case came back to the Board and suggested that all interested parties contact Stephen Varga, the staff coordinator, or Susan Langdon for further information.

In answer to a question from Mr. Hammack, Mr. Goolsby stated that he had a copy of the staff report. Mr. Hammack suggested that Mr. Goolsby check with staff to find out when the revised application would be accepted, and once it was accepted, he could come in and review the application. Mr. Hammack noted that the Board had received a copy of Mr. Goolsby's letter to the Board of Supervisors.

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~ ~ ~ May 9, 2006, Scheduled case of:

9:00 A.M. VILLAGE WEST, INC./NEW CINGULAR WIRELESS PCS, LLC, SPA 67-S-519-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 67-S-591 previously approved for a community swimming pool to permit site modifications (telecommunications tower). Located at 7008 Elkton Dr. on approx. 2.59 ac. of land zoned R-2. Springfield District. Tax Map 89-4 ((5)) A. (In association with SE 2005-SP-033.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Michael, the applicant's agent, Jackson and Campbell, P.C., 1120 20th Street, NW, Washington, DC, replied that it was.

John-David Moss, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SPA 67-S-519-1, previously approved for a community swimming pool, Springvale Village West Community Pool, to permit the construction of a 120-foot tall candelabra monopole with 12 antennae and a related 2,250-square-foot equipment cabinet. Staff recommended approval of SPA 67-S-519-02 subject to the proposed development conditions.

Mr. Michael presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the applicant concurred with the staff report and the conditions set forth in the report with one clarification. The applicant would not be constructing a 2,250-square-foot shelter. That was the amount of the gross leased area of the equipment compound. He stated that the actual shelter that Cingular was proposing was 11.5 feet by 20 feet, totaling 230 square feet. Mr. Michael said the site drawing showed the Cingular equipment shelter as well as a shelter and cabinets for future carriers. He said the application would be the third wireless carrier located at a private swim club, and they had all worked out well. He displayed an aerial photograph on the overhead projector that showed where the equipment would be located and said it would not be visible to surrounding neighbors for most of the year. Mr. Michael stated that because the site was in a residential area, they had given the community three options as to how the pole would look, and the candelabra style had been chosen. The only impact on the neighborhood would be the visibility of the pole when the leaves were off the trees and would depend on where a person was standing. He stated that the applicant would visit the site by truck once a month to check on it, and the pole would not be lighted. He said that if the Board approved the application, the applicant would approach the Police Department to ascertain and confirm that helicopters would not be flying within close proximity to the pole. He indicated that if it were determined that helicopters would be flying close to the pole; it would have to be lighted with a constant red light, not a flashing light. Mr. Michael said there would be no adverse impact from other external factors, such as shining reflections or traffic to the facility.

~ ~ ~ May 9, 2006, VILLAGE WEST, INC./NEW CINGULAR WIRELESS PCS, LLC, SPA 67-S-519-02, continued from Page 294

Mr. Hart asked if the swim club was supportive of the barbed wire fencing because of security reasons. Mr. Michael said that was correct, but insofar as Cingular was concerned, that was not an issue; however, he would leave the decision up to the club's board and the BZA. In answer to a question from Mr. Hart, Mr. Michael confirmed that the added lighting would be in conformance with the new lighting ordinance.

Mr. Hammack stated that he owned stock in almost all of the companies noted in the application, and he recused himself from the proceedings.

Vice Chairman Ribble stated that due to Mr. Hammack's announcement, the Board would have to defer the application until a quorum was present to vote. Mr. Hart stated that the Virginia Supreme Court had recently ruled on a case from Front Royal that was similar to this one where a Wal-Mart had been approved with three votes instead of four, and the Court said that could not be done. Mr. Hart agreed that the application would have to be deferred.

Susan Langdon, Chief, Special Permits and Variance Branch, stated that because the entire hearing was being deferred, it would have to be re-advertised, and if the postponement was for less then a month, staff would have to send out first class letters. She requested that the application be deferred to May 23, 2006, to allow staff time to send out the letters.

Vice Chairman Ribble called for speakers to address the question of a deferral.

Suzanne McCormick, 8131 Edmonton Court, Springfield, Virginia, came forward to speak. She stated that she represented John Cooley, the President of the Civic Association of West Springfield Village, who had been unable to attend the hearing. She indicated that he should be able to attend the hearing on May 23rd.

Mr. Hart moved to defer SPA 67-S-519-02 to May 23, 2006, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 3-0. Mr. Hammack recused himself from the hearing. Chairman DiGiulian, Mr. Beard, and Mr. Byers were absent from the meeting.

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~ ~ ~ May 9, 2006, Scheduled case of:

9:30 A.M. DANIEL T. AIDE, A 2005-LE-059 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 6705 Elder Av. On approx. 21,784 sq. ft. of land zoned R-1. Lee District. Tax Map 90-2 ((10)) 97. (Continued from 2/7/06)

Cynthia Porter Johnson, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in a memorandum dated May 2, 2006. She stated that the Board had held a public hearing on February 7, 2006, at which time the appeal had been continued to the current date to allow the appellant time to remove debris from the property, complete the design for the proposed addition, and apply for a building permit. An inspection of the property had been conducted by Zoning Enforcement staff on April 25, 2006, which revealed chairs, trashcans, recycling bins, flowerpots, and buckets in addition to the timber frame that was to be used for the proposed addition. Staff had been informed by the appellant that the design proposed for the timber frame addition had not been completed, and an application for a building permit had not been submitted.

The appellant said he had stored too many materials on his property, but since the notice of violation had been issued, he had cleaned up as much as he could and placed it in the garage. He stated that he had been accumulating materials to build an addition on his house, and the major portion of it would be a 1,200-square-foot timber frame structure that was 175 years old that came from a historic Baptist Church which had been disassembled, labeled, and trucked down to Virginia from upstate New York. He stated that he was a member of the Timber Framer Guild of America, and there were approximately a dozen timber framers in the area who were interested in helping him build the addition. He stated that he had attempted to design the addition himself, but since he was not a designer, he had to hire a design professional to assist him in the effort. He said he had a signed contract and a preliminary design to show good faith and was

pursuing the completion of the design so that he could proceed with the addition and eliminate the storage of the timber frame.

Vice Chairman Ribble asked whether the appellant intended to submit a copy of the contract and preliminary design for the record. Mr. Aide stated that he had one copy, and at the Vice Chairman's request, he provided that copy to the Board for its perusal.

The appellant stated that there appeared to be a two-edged sword with respect to the notice of violation which cited a junkyard establishment and a storage yard. He said he thought that he had successfully eliminated the junkyard portion. The appellant referenced the items listed by the zoning inspector at his last inspection and said it was his opinion that he had addressed the issues, and the remaining items were items that every household had. Mr. Aide said he had explained to the zoning inspector that the items located in the front of the driveway were items he had placed there, and they would be hauled away. He called attention to one of the pictures that had been taken by the inspector showing a stack of pallets which had since been removed. He said he had mentioned several times that the pictures the inspector had taken of the driveway were of items that he had placed there for disposal. He said 20 years of accumulation could not be disposed of within two to three months, and he thought he had done a tremendous job in removing the items since he had received the notice of violation. He cited several obstacles that he had to overcome, including the death of his mother-in-law, before he could put his whole effort into the cleanup. He said he wanted to continue the design process of the addition and build it.

Ms. Gibb asked when the appellant was going to apply for the building permit. Mr. Aide stated that he would do so when he had a completed design. He said his designer's name was VEC Design and Construction, and the architect was Kamal Risk (phonetic). He said the architect was out of the country for at least two weeks, and had indicated to him that he would have the design completed within six weeks to two months maximum.

In response to questions from Ms. Gibb, Leo Conrad, Jr., Zoning Inspector, Zoning Enforcement Branch, Zoning Administration Division, stated that he had done a field inspection approximately a week prior and had determined that the appellant had removed a lot of materials from the property, but there had been some other materials that he had noticed had been added. He indicated that when he observed the items located in front of the garage, he had assumed they were part of the accumulation of additional materials the appellant had brought onto the property.

In his rebuttal, Mr. Aide said no new materials had been brought onto the property, and in the process of reorganizing and getting rid of things, it appeared that there were different materials on the property.

Ms. Gibb asked Mr. Conrad if there was any way to determine where the materials came from that appeared in the driveway. Mr. Conrad stated that a determination could not be made because much of the material in the driveway had been covered by tarps, and he had not been sure where it came from. Ms. Gibb asked the appellant what the length of time was between his moving the items to the driveway and their removal from the property. Mr. Aide said it was usually not more than a week. He explained that he had access at times to his company's truck, and he usually removed the materials on weekends.

Ms. Gibb asked how long it would take the appellant to remove and dispose of all the materials from the rear of the property. Mr. Aide responded that it would take approximately two to three weeks to reduce the junk that needed to be thrown out, and he would reorganize the building materials into one stack rather than three or four stacks. Ms. Gibb said she was not talking about reorganizing. She was referring to getting the stuff out. Mr. Aide said some of the materials were intended for the addition, and that was the storage part of the violation. He said the junkyard part of the violation pertained to things he intended to throw out, but he had to sort through everything before he did that. Ms. Gibb commented that the situation had been ongoing for a long time.

Mr. Hart said he had hoped to see more progress. Referring to the color photographs that had been attached to the recent staff update, he asked staff whether the appellant had taken care of the violations within the last few weeks. Mr. Conrad responded that the photographs depicted what he had seen when he had visited the property on April 25, 2006. Mr. Hart stated that the Board had given the appellant 90 days in which to clear up the violations, and he requested that the photograph depicting the basketball hoop be displayed on the overhead projector and stated that he could not determine why it would take three months

to remove the junk that was shown in the photograph. He said he did not consider that reorganization was the problem. Mr. Hart stated that the purpose of the three-month deferral had been to get rid of the junk. He said he could understand a delay regarding the design and getting the building permit, but he did not see why it was taking so long to reorganize. He also did not understand what the delay with the designer had to do with clearing away the items shown in the photographs. Mr. Hart said the debris was beyond the point of normal household items. He asked Mr. Aide if it was correct that he needed two months to reorganize the stuff in the driveway. Mr. Aide said the remaining items in the back of the garage consisted of a large stack of two-by-fours and other building materials that were to be used for interior wall partitions, which he intended to consolidate with a few other miscellaneous stacks of building materials that were intended for the addition. He said there was minor cleanup to be done in the back of the garage, the driveway needed to be straightened up, the recycle bin needed to be moved from the driveway to its normal location behind the house, and he needed his company's truck to remove the trash items from the premises.

Mr. Hart asked how the absence of a deferral would preclude the appellant from going forward with the design of the project or the application for a building permit. Mr. Aide stated that he had applied for a deferral because he was unfamiliar with the process and thought the purpose of the notice of violation was to tell him to get rid of everything on his property within 30 days. Because of that, he had assumed that he had to appeal because he had a great deal of money tied up in the timber frame material, and it would be necessary to move and restack it so that it was unobtrusive and acceptable to County staff. He said it was his opinion that the notice of violation had stated that he had to get rid of the timber frame material within 30 days, and there was no way he could work on the structure because he had to make many repairs to allow him to build it. Mr. Aide said one of the options offered to him by staff was to take the material to an area where there was open storage. He explained that it would be impossible to build the addition that way. It would be economically unfeasible, and he would not have the time to take his tools to such a site every day or to have the equipment to move the timbers back and forth. He said it was a project that had to be done next to the slab once it was poured, and it would require bringing the timbers out in the correct order of pieces, repairing them, putting them together, lifting them up, and bracing them, and then bringing out the next set of timbers that had to be pieced together.

Vice Chairman Ribble asked staff what had to be removed from the property and what could stay. Mr. Conrad said he had not seen everything under the tarps to really know. He said there were other things on the property such as piles of potting plants and other items. He stated that from what he knew about the building permit process, if the appeal was deferred, it would give the appellant 30 days to remove the junk, which would coincide with his letter. He said if the appellant obtained a building permit and got his plans approved in the meantime, he thought it would become a construction site at that point, which could hold off enforcement, but that would need to be checked because he was not positive about that.

Mr. Hammack asked whether the storage of materials was permitted on a construction site during construction. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that she was not aware of anything that would preclude the storage of the supplies. Mr. Hammack said that the other side of that problem was that before a building permit would be granted, the appellant would have to comply with the zoning requirements, and only those items allowed by the Ordinance could be stored outside, which was approximately a 10x10 area, so obtaining the materials before a permit was granted put things in reverse order. The appellant stated that he had been unaware of the Ordinance requirement of 100 square feet for outdoor storage. He said it was his intent to build the addition earlier, but he had many delays that prevented him from doing so.

In response to a question from Mr. Hammack as to how long the appellant had the building materials stored on his property, Mr. Aide said the timber frames had been delivered in November of 2003. He said he did not think the notice of violation had been issued because of the timber frames. He felt that it had been issued because of what he had in the driveway.

In answer to a question from Mr. Hammack, Mr. Aide explained how he had acquired and began storing the vehicle parts cited in the notice. He said he had since gotten rid of most of that material, and if given a week, he could clear off his driveway; however, the items he had to disassemble and stack would take a few more weeks.

In response to a question from Ms. Gibb, Mr. Conrad stated that a complaint had been lodged with the County against the appellant. Ms. Gibb said she did not have a real problem with what was stored in the

~ ~ ~ May 9, 2006, DANIEL T. AIDE, A 2005-LE-059, continued from Page 297

backyard. It was everything else that was visible to the street and neighbors. She said that the fact that the appellant recycled was laudable, but leaving all of that material in the driveway caused a mess, and if she was his neighbor, she would be furious.

In answer to a question from Mr. Hammack, the appellant indicated that he had seen the colored photographs that had been taken by staff two weeks prior that were attached to the update memorandum.

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

Mr. Hammack said he might be sympathetic to the storage of the wood timbers if they were stored in a little more organized fashion. Large areas that appeared to be several hundred square feet in length, which covered a lot of the yard in the back, were covered with tarps, and he assumed that was some of the building materials. Mr. Hammack said that the appellant admitted that the photographs of the driveway and garage were accurate as of two weeks prior. He said a building permit should have been obtained before building materials were stored, but the appellant admitted the materials had been there for over two years. The violation was issued on October 17, 2006, and it had been over six months. Mr. Hammack said he thought there would have been a more concerted effort to clean up and get things done. He said that in the photographs he could see air-conditioning units, all kinds of things that were not necessarily related to the building itself, a lot of recyclables, plastic things, chairs, bicycles, and a camper top. Mr. Hammack said that although the appellant had said some had been removed, he could not find that the Zoning Administrator had erred in the notice of violation. Mr. Hammack said that although some things may have been a little out of the appellant's control, if he knew he was going to add to the house, he was probably well aware that a building permit was needed to put a big addition onto the house. He said the appellant may have gotten his priorities in the wrong order. Mr. Hammack moved to uphold the determination of the Zoning Administrator. Mr. Hart seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Byers were absent from the meeting.

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~ ~ ~ May 9, 2006, Scheduled case of:

9:30 A.M. DONALD R. ROSE AND DEBBE A. ROSE, A 2006-MV-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have erected a stone fireplace and a wooden roofed patio cover, which exceed seven feet in height and which do not comply with the minimum yard requirements for the R-3 District, without valid Building Permit approval, and have installed accessory structures and uses which exceed the 30 percent maximum permitted coverage of the minimum required rear yard, all in violation of Zoning Ordinance provisions. Located at 7922 Journey La. on approx. 9,418 sq. ft. of land zoned R-3C. Mt. Vernon District. Tax Map 98-2 ((6)) 273.

Vice Chairman Ribble noted that A 2006-MV-008 had been administratively moved to May 16, 2006, at 9:30 a.m., at the appellants' request.

Mavis Stanfield advised the Board that the appeal had been subsequently administratively withdrawn because the notice of violation had been rescinded and reissued.

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~ ~ ~ May 9, 2006, After Agenda Item:

Request for Reconsideration
Henry R. Torrico, SP 2006-LE-011

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the applicant was present, if the Board wished him to speak.

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ May 9, 2006, continued from Page 298

Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Cooper, Virginia Equity Solutions, and Lee litigation, by-laws, and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Byers were absent from the meeting.

The meeting recessed at 10:10 a.m. and reconvened at 11:29 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian, Mr. Beard, and Mr. Byers were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

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

Approved on: June 13, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 16, 2006. The following Board Members were present: Chairman John DiGiulian; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack Jr. V. Max Beard was absent from the meeting.

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

~ ~ ~ May 16, 2006, Scheduled case of:

9:00 A.M. WASHINGTON SQUARE HOMES ASSOCIATION, SPA 81-L-082 Appl. under Sect(s). 3-803 of the Zoning Ordinance to amend SP 81-L-082 previously approved for tennis courts to permit site modifications. Located 350 ft. W. of the intersection of Pohick Rd. and Waldren Wy. on approx. 12,960 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 108-1 ((8)) A pt. (In association with PCA-C-403-02).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lella Amiss E. Pape, Rees, Broome & Diaz, P.C., 8133 Leesburg Pike, 9th Floor, Vienna, Virginia, agent for the applicant, replied that it was.

St. Clair Williams, Staff Coordinator, made staff's presentation as contained in the staff report. The existing site was the common area of the community and contained community recreation facilities, which included one tennis court and one multi-purpose court containing two stationary basketball hoops and one combination tennis/volleyball court. The facilities were limited to the use of the Washington Square Homes Association and their invited guests, which consisted of 225 townhomes. The applicant sought a special permit amendment to amend S-81-L-082, previously approved for two community tennis courts, to permit a tennis court and the multi-purpose sports court to remain. Staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of SPA 81-L-082, subject to the proposed development conditions.

Mr. Williams advised the Board that on May 11, 2006, the Planning Commission recommended to the Board of Supervisors approval of PCA-C-403-02 which was filed in association with the subject special permit application. The Planning Commission added a proffer that the homeowners association amend the homeowners association documents to improve the monitoring and policing of the recreational courts to enforce the rules and reduce the improper use or abuse of the privilege. The Planning Commission also recommended to the Board of Zoning Appeals approval of the special permit amendment.

Ms. Gibb said that homeowners association documents was pretty broad language. She asked whether the applicant would speak to what that meant. Ms. Pape said she would.

In response to a question from Ms. Gibb regarding whether the sport court was currently being used, Mr. Williams said the basketball hoops had been removed while the applications were pending.

Ms. Pape presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the application was basically a request for a modification of previously approved development and proffer conditions which limited the association to a community recreational facility consisting of two tennis courts. The community was composed of 225 townhouse lots run by a non-stock company with a board of directors elected by the membership. The directors were ordinary Fairfax County citizens who were not aware of zoning laws, zoning ordinances, or the development conditions placed on the property.

Ms. Pape said that in 2000 the board of directors considered resurfacing the two tennis courts and had been approached by members regarding concerns about children in the community not using the facility and using the streets for recreational activities. Without understanding the ramifications, the board of directors modified one of the tennis courts to be a multi-purpose sports court which contained a volleyball playing surface, a tennis playing surface, and two basketball hoops.

Ms. Pape said that through the years the issue of basketball on the court had been raised by the members, and the board of directors had attempted to direct that. She showed a photograph of the rules currently posted on the basketball court and said the rules had been posted on the multi-purpose court since 2000. In 2003, the board of directors passed a policy resolution that addressed sports court behavior, which was

similar to the rules posted at the court. They recently had filed an amendment with the County to amend their documents to further enhance their ability to enforce the rules and agreed to modify their existing policy resolution to enable them to address the adverse impacts that some members of the community perceived from the basketball hoops. The applicant was requesting the Board's approval so it could move forward with enforcing rules that would make the multi-purpose sports court an amenity the community could live with and enjoy.

Ms. Pape said that in November of 2002 the board of directors had held an official member vote, and 114 members responded out of 225. 68 members voted to retain the two existing basketball hoops, 4 members voted to have only one hoop, and 38 members voted for no hoops. At a member meeting in 2005, 64 lots approved the board of directors to move forward with the special permit and proffer condition amendments, and 17 members disapproved the board of directors moving forward.

Ms. Pape said that while at the Planning Commission meeting, the board of directors had agreed to modify their documents with a strongly worded policy rule which would allow them to be flexible should what they determine not be workable. The board of directors would also consider a by-law amendment to increase their ability to govern member behavior on the common area facility. She said the amendment the Board was being asked to approve would not result in any increased parking requirements or a greater or lesser use of the facility than was envisioned for a 225-member association, would not adversely affect the community, and was in compliance with the Zoning Ordinance and the Comprehensive Plan.

In response to a question from Ms. Gibb, Ms. Pape explained the requirements to amend the association's declaration, which was a different document than the previously referenced documents, the former requiring a 90 percent majority members' vote. Because of the lack of resident participation in homeowner association issues, a 90 percent vote was essentially impossible, preventing the board of directors' ability to implement any of the residents' requested actions to maintain the multi-sports court with the basketball hoops. She clarified that the Planning Commission's issue was whether there were rules in place that addressed inappropriate behavior on the courts. She explained that the current rules could not be enforced because of a lawsuit filed by one disgruntled homeowner against the association regarding the basketball hoops. Counsel had advised the homeowners association that until the matter was settled, the rules could not be enforced and the case was suspended until the County Boards' decisions. Ms. Pape said the by-laws gave the board of directors the power to pass reasonable rules and regulations governing the common areas. Infractions were enforced through a hearing process, and under the Virginia Property Owners Association Act, the board of directors could impose $50 sanctions for rule violations or a $10 per day up to a $900 sanction for a continued violation. Enforcement was through liens, followed with enforcement through an injunction suit in the Circuit Court. Ms. Pape said the board of directors agreed that the current rules were not specific enough to address the issues that were raised before the Planning Commission, and the Washington Square Homes Association wanted to address those issues.

Responding to a question from Chairman DiGiulian concerning enforcing the rules of conduct, Ms. Pape explained that the volunteer members of the sports court committee would monitor the courts, and through the due process procedures provided by the Virginia Property Owners Association Act, the member cited came before a hearing and was given an opportunity to dispute any rule violations. The board of directors sought to amend its rules to permit the immediate banning of the infractor from using the court and would consider amending its by-laws, if required, or if it was determined that a set of sports court rules should be inserted into the by-laws.

Responding to a question from Mr. Hammack, Ms. Pape said there was nothing in the declaration or the by-laws prohibiting the change in use of the courts. No member vote was required when the change was made, and the reason the applicant was before the Board was because of the notice of violation. The reason four years had passed before the applicant took action was because the association consisted of all volunteers, and it was difficult for board members/homeowners to implement changes, even with advice of counsel. She said it was a proffer change that obligated the homeowners' association to amend its documents to incorporate rules for the sports court, and the rules would be undertaken upon completion of the special permit amendment process. She explained that if the required 90 percent vote was not attainable, the board of directors could still pass its sports court rules with a 51 percent vote by the directors and be able to revise the rules if they proved ineffective. If members were dissatisfied with a rule or regulation, they could call for a members' meeting to consider the item and vote to overturn it.

~ ~ ~ May 16, 2006, WASHINGTON SQUARE HOMES ASSOCIATION, SPA 81-L-082, continued from Page 302

In response to a request from Chairman DiGiulian for a breakdown of the homeowners immediately surrounding the courts who were in opposition in 2002, Ms. Pape indicated that eight opposed two basketball hoops, three requested one basketball hoop be retained, and two requested that two basketball hoops remain. She added that on the other side of a treed area, one lot opposed the hoops and three lots approved of two hoops.

Mr. Hammack said he understood the Board was being asked to add an additional development condition. Mr. Williams clarified that a proffer had been added as a result of a motion made during the Planning Commission's public hearing, and the BZA needed to do nothing with the special permit amendment development conditions.

Ms. Pape stated that, as the courts currently existed, there was one tennis court, and on the other side was a volleyball/tennis/basketball court combination. The applicant sought an amendment to allow the current use subject to the proffer condition that the board of directors implement increased rules and regulations regarding member behavior. The applicant sought approval in order to move forward without changing the configuration of the current use.

In response to a question from Mr. Byers, Ms. Pape explained the association's procedure when it sent its notices and how it determined a mandate/majority vote.

Ms. Pape concurred with Mr. Hart's comments that the board of directors could change the sports court rules with a board of directors' vote, but at the present time it was unsure whether it needed to be raised to the level of a by-law amendment which would require 51 percent of a quorum. She said the board of directors would form a committee to determine the amended rules, and at a monthly board of directors meeting, the sport court rules would be proposed for community members' comments, and a vote for adoption of the amended rules would be taken. The amended rules would be published to the members and become effective 30 days after the board of directors approved its policy resolution. And once the policy resolution was approved, it was the law of the community, and the board of directors and the sports court committee were obligated to enforce the rules.

At Mr. Hart's request, the new proffer wording was displayed on the overhead, and Ms. Langdon said the Board could choose to adopt the language as a development condition.

Mr. Hart asked Ms. Pape to explain how the access to the court was controlled. Ms. Pape said there was a keyed lock entry to the sports court, and the members of the community paid a fee to obtain a key to have access. She said the association had spent a large amount of money trying to ensure that only members with keys could obtain access to the courts. There was regular monitoring to ensure the lock was functioning. She was recently informed that in conjunction with the revision to the policy resolution regarding the sports court rules, the board of directors would investigate a heightened security system that identified when the courts were accessed and by whom. Trash from the on-court receptacle was emptied bi-weekly by the sports court committee, and loose trash was picked up regularly.

Addressing a question from Mr. Hart concerning additional landscaping, Ms. Pape said in 2003 the association's landscape contractor's attempt to add additional landscaping to deal with noise transmission issues failed. Upon advice from counsel, a professional landscaper's proposal was obtained, and a $10,000 landscaping plan would be implemented within the next five to seven years.

Responding to a question from Mr. Hart concerning what a resident should do when they observe something they believe is a violation, Ms. Pape said they could e-mail the management company or contact a member of the board of directors or the sports court committee. As a member of the community, they also had the ability to request that the person who was violating the rules remove themselves from the sports court.

Ms. Pape concurred with Mr. Hammack's comment that under the proffered condition amendment, the board of directors would be precluded from going back to two tennis courts without going through a similar process.

Chairman DiGiulian called for speakers.

Leslie Darden, 8904 Waites Way, Lorton, Virginia, came forward to speak. He was a 20-year resident whose

lot was located toward the rear of the basketball court, and he served on the board of directors numerous times over the years and was the current president since October of 2006. He said he supported the modification to a multi-use court because not everyone played tennis and it gave the children something to do that kept them off the streets. Mr. Darden said that although it did add noise, it also added beauty to the area and allowed a diversified playground area.

In response to a question from Ms. Gibb regarding the ages of people who used the courts, Mr. Darden said there were youngsters with parents and older children/teens, some of whom may not be members of the community. He said that unauthorized use was a problem, and the locked entrance gate was not always a deterrent as some children would climb the fence.

Patricia Graninger, 8950 Waites Way, Lorton, Virginia, came forward to speak. As a member of the community for over 22 years, she had over the years seen the deterioration and non-use of the courts as tennis courts and abuse by those who did not play tennis, such as those with dogs. She said the current configuration should be kept because it could be used for other than just tennis. Children could ride tricycles. Mothers could bring baby carriages while their other children were playing. Ms. Graninger said she was disappointed that there had been some discontinued use because of one citizen who had made those who wanted to use the court not use it, and a lot of the parents had prohibited their children from going to the courts because of the confrontational situations that had arisen. As an adjacent neighbor to the courts and a member of the sports court committee, she said she monitored the trash, and at times non-court users had used the receptacle for their own personal uses. Ms. Graninger said whenever she asked someone to curtail the noise or leave because it was dark, there never had been a problem. She said she had witnessed numerous times the noise level raised because of Mr. Orenstein's insinuation into the activities, and at times she had refrained from going to the court to avoid a confrontation. She said children had come to her and asked why Mr. Orenstein was doing this and making it unpleasant for them to play, and she had spoken with them and told the children to speak with their parents. Ms. Graninger said that although there were issues that needed to be addressed and there had been a lot of interference from one resident, it was a good situation for the community.

In response to a question from Mr. Hart regarding the number of people on the sports court committee, Ms. Graninger said she was not sure, but estimated between three and seven on a floating basis. She said that when there had been confrontations with Mr. Orenstein, the parents of the children involved would go out, and other community members who passed by had intervened if they witnessed a confrontation with Mr. Orenstein even if they did not have children on the court.

Anthony M. Bennett, 7722 Wolford Way, Lorton, Virginia, came forward to speak. He said he was the previous president and the current vice president of the homeowners association. He said when he joined the board of directors in 2001, there had been a lot of resentment and bad feelings towards the board of directors and anger about the decision that had been made regarding the courts. It was a challenging time because he had to consider the request of one very outspoken person and balance that towards the greater good of the entire community. He said that although he was not a parent, there were a lot of children in the community, and he found it amazing that the children were so eager to be caged in on the sports court. He said he thought it was wonderful that they wanted to be in one location where they could enjoy themselves and felt children needed a place to play. The two tot lots in the community were more for babies and did not satisfy the older children. With problems with youth obesity, he said being outside was great rather than playing on a computer all day. Mr. Bennett said it was not easy to attract members to serve on the board of directors because it was a voluntary position with no compensation, and often the board of directors was looked upon in a negative way. He said he personally monitored the sports court. He said repairs were made whenever financially feasible, and landscaping had to be balanced with cost and safety issues because surrounding the entire sports court with trees would create safety problems because the children could not be seen from various angles.

Kim Lee, no address given, came forward to speak. She said she had been the community manager for Washington Square for approximately a year, and the main focus of her position had been the sports court issue. She said she had received several complaints from homeowners regarding why their children did not have a place to play and inquiries concerning when the sports court issue would be resolved. Ms. Lee said that when she had visited the property on several occasions, she had observed children, including small children, running in the streets, and it was a very dangerous situation for them not to have a place to play.

Ms. Lee stated that the sports court surface was sturdy and designed to last a lifetime. She said that if the sports court was not approved, the association did not have the funds to convert it back to two tennis courts, so an approval was in the best interest of the Washington Square homeowners.

Michael Orenstein, 8927 Waites Way, Lorton, Virginia, came forward to speak. He said he did not have time to address the lies, omissions, and misleading statements made by all the previous speakers, and knew the speakers would portray him as a villain. He said he had a videotape from December of 2005 which showed the same trash remaining inside the sports court receptacle. He said he had submitted a petition from 80 Washington Square residents who did not want the basketball courts. He showed a five-pound rock which had been thrown through his bay window. He said no one had mentioned that 20- and 30-year-olds from other communities and other parts of the county drive up in their cars and curse, and he had to hear it all day every day in front of his home. Mr. Orenstein said that after six years of living with the lies and inaction, he was forced to take the issue into the legal system. He said a 2002 survey was ignored where more residents chose to have both basketball courts removed than any other option. He said Anthony Bennett had accused him in a public venue of being a pedophile because of his videotaping activities when Mr. Bennett knew he was videotaping under orders of an attorney as evidence. Mr. Orenstein said a no trespassing sign that had been on the courts forever had been taken down within the prior year to interfere with police efforts to monitor.

Mr. Orenstein said the courts had become an unmonitored public playground and a haven for loud and obnoxious behavior by constantly rotating groups of older teens and men in their 20s and 30s who did not live in the community. He said that although it was said that residents had the right to go out and request people to stop the cursing or pull up their pants, there were complaints when he did that. He said he was not rude to people, but went out with his video camera and would say, excuse me, are you a resident of Washington Square or a guest, and many times the people had said they were not and were unaware of the rules, even though they had been warned many times. Mr. Orenstein said he was not given enough time to present most of his case.

Ms. Gibb assured Mr. Orenstein that the Board had received and read all the materials he had submitted.

Mr. Hammack said he understood that the litigation filed by Mr. Orenstein against the association was in abeyance pending a decision by the Board of Zoning Appeals, and if that was the case, the decision made by the Board would resolve the issue. If the rules were amended, Mr. Orenstein would be, as would all the homeowners, able to enforce the rules as a homeowner. He asked Mr. Orenstein whether that would effectively resolve a good part of the situation. Mr. Orenstein said it would not. He said if he attempted to enforce the rules, vandalism to his property would again happen. He said tennis players or volleyball players did not behave the same as the aggressive people who participated in basketball. He said the volleyball net was much higher and could not be adjusted down for tennis, so to say there were two tennis courts was a disingenuous statement. Mr. Orenstein said any new rules promulgated by the association would be unenforceable, and it would be left up to him or the few other individuals in the area who had actually been assaulted by individuals on the courts. He said he had neighbors who were afraid to come out and let their children play on the court because while their children were present, they had asked individuals to stop cursing, and the teens had responded with more profanities directed at them. Mr. Orenstein said that making a public playground for this type of sport was not appropriate. Tennis was a more gentile, individual sport, but basketball had attracted crowds of 15 to 25 people at a time.

In response to a request by Mr. Hammack, Mr. Orenstein indicated on the overhead viewer where his property was located.

Mr. Hammack asked Mr. Orenstein why he had dropped his litigation or agreed to hold it in abeyance pending the Board of Zoning Appeals' decision if he was so adamantly opposed to any change in the use of the recreational facilities. Mr. Orenstein said it was a strategic reason made by his attorney at the trial in May of 2005 to take a voluntary non-suit of the case, and the attorney had recently refiled.

In her rebuttal, Ms. Pape said that in checking numerous times with the installer, it was confirmed that the volleyball net could be lowered to be used as a tennis net, although it was currently set up as a volleyball net to prohibit full-court basketball.

~ ~ ~ May 16, 2006, WASHINGTON SQUARE HOMES ASSOCIATION, SPA 81-L-082, continued from Page 305

Chairman DiGiulian closed the public hearing.

Mr. Hammack said the issue before the Board was whether a homeowners association could change its uses of its recreational land, and although important, the other issues regarding the appropriateness of language and noise were collateral from the Board's point of view. He said he did not see any real land use issue connected with changing a tennis court into a basketball/multi-purpose court. Through personal experience as a board member of several similar homeowners associations, he said he knew some of the problems associated with the use of recreational facilities, which required a lot of monitoring, rules, and sign-ups.

Mr. Hammack moved to approve SPA 81-L-082 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WASHINGTON SQUARE HOMES ASSOCIATION, SPA 81-L-082 Appl. under Sect(s). 3-803 of the Zoning Ordinance to amend SP 81-L-082 previously approved for tennis courts to permit site modifications. Located 350 ft. W. of the intersection of Pohick Rd. and Waldren Wy. on approx. 12,960 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 108-1 ((8)) A pt. (In Association with PCA-C-403-02) 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 May 16, 2006; and

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

1. The applicant is the owner of the land.
2. There is no real land use issue connected with changing a tennis court into a basketball court and multi-purpose court.
3. The issue of the Proffered Condition Amendment will be resolved.
4. The Association is taking steps and will be required to take steps to implement appropriate regulations on the use of the court. It may require more than they are doing now, but that could be done.
5. Inasmuch as it does not involve changing the declaration or covenants that are recorded, by-law changes are a whole lot easier to implement.
6. Having heard testimony that the Board is willing to go forward with modifying its operational documents to apply and to implement appropriate conduct, there is no reason why the change should not be permitted.
7. Recreational tastes change over time, and changes have to be allowed to take place sometimes.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-803 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Washington Square Homes Association, only and is not transferable without further action of this Board, and is for the location indicated on the application, Tax Map 108-1 ((8)) A pt., and is not transferable to other land.

~ ~ ~ May 16, 2006, WASHINGTON SQUARE HOMES ASSOCIATION, SPA 81-L-082, continued from Page 306

2. This Special Permit Amendment is granted only for the purpose(s), structures and/or use(s) 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. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance at the discretion of the Director of Urban Forest Management, DPWES.

5. The membership shall be restricted to the residents of the 225 dwellings.

6. The hours of operation shall be daylight hours only.

7. Adequate parking shall be provided.

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.

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

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~ ~ ~ May 16, 2006, Scheduled case of:

9:00 A.M. TOTAL ADHERENCE SPORTS, LLC, SPA 79-A-164-02 Appl. under Sect(s). 5-603 of the Zoning Ordinance to amend SP 79-A-164 previously approved for a racquetball court to permit a change in permittee. Located at 5505 Cherokee Ave. on approx. 24,568 sq. ft. of land zoned I-6. Mason District. Tax Map 80-2 ((1)) 52.

Chairman DiGiulian noted that SPA 79-A-164-02 had been administratively moved to June 27, 2006, at 9:00 a.m., for notices.

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~ ~ ~ May 16, 2006, Scheduled case of:

9:00 A.M. IKHMAYYES J. JARIRI, SP 2006-MA-013 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 accessory storage structure to remain 1.4 ft. with eave 1.2 ft. from rear lot line and 1.5 ft. with eave 1.0 ft. from side lot line and deck to remain 8.3 ft. from side lot line. Located at 3513 Washington Dr. on approx. 15,411 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (F) 502.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ikhmayyes J. Jariri, 3513 Washington Drive, Falls Church, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions to the minimum yard requirements based on error in the building location to permit an accessory workshop/storage structure to remain 1.4 feet with eave 1.2 feet from the rear lot line and 1.5 feet with eave 1.0 feet from the side lot line and a deck to remain 8.3 feet from the side lot line. Tax records indicated that the applicant purchased the property in 1992 and that the lot contained a single-family home constructed in 1954 and a workshop/shed. In 2000, the shed was demolished to reconstruct a larger workshop/shed, measuring 320 square feet, in the same location, and 120

square feet was utilized as a workshop. On November 23, 2005, a notice of violation was issued to the applicant, citing that an accessory structure intruded into the side and rear yards.

In response to questions from Mr. Hart regarding the deck, Mr. Varga said a building permit was required, but he was unable to find a building permit for the deck in the street files. He said he believed one had been issued, but would defer to the applicant for confirmation of that.

In response to questions from Mr. Hart regarding the shed, Mr. Varga said a building permit was required for the shed, which was based upon the size of the shed, but he was unsure whether the applicant had pursued obtaining one. He said there was electricity in the shed.

In response to a question from Mr. Hart regarding whether the application originated as a result of a complaint, Mr. Varga said there was a notice of violation issued, but he had no information regarding any written complaint, and there had been no correspondence submitted by any neighbors in opposition throughout the course of the application.

Mr. Hart asked whether the deck needed to be 12 feet from the side lot line. Mr. Varga replied affirmatively. Mr. Hart asked whether the deck needed to be further away from the lot line than the corner of the house since the corner of the house appeared to be 11-foot-something from the lot line. Mr. Varga said the house had been constructed in 1954, and the deck had been built much later. The house could be closer than 12 feet because it predated the requirement, but the deck did not, so 12 feet was required for the deck.

Mr. Jariri presented the special permit request as outlined in the statement of justification submitted with the application. He said the deck had been built with a permit, was approved through Zoning Administration, and the location was allowed because it was not higher than a certain height. He said there had been a shed previously in the same location as the existing shed, which he had removed and replaced, and at the time he was unaware there were requirements concerning the size and height of the shed. Mr. Jariri said he visited the permit section and explained what he intended to do, but had not been asked about or discussed any details regarding the dimensions, and he asked whether a permit was required to build the shed and was told there were no permits for sheds. He said he had advised his immediate neighbors of his plans, and none had any objections to the location of the shed.

In response to questions from Mr. Hart regarding the size of the new shed compared to the old shed and the features of the new shed, Mr. Jariri said the new shed was approximately twice as large and taller. He said there was a garage door on the new shed, and a vehicle could be driven into it, but it was not used in that manner. He said he had made the door larger for easy access with his riding lawnmower. When asked whether there was an attic or upper level because there appeared to be a second door above the garage door, Mr. Jariri said he stored a ladder or long pieces of lumber there above the rafters. He said there was electricity, but no plumbing in the shed. He said he built the shed himself, and there was no contractor involved. When asked whether there was some reason the shed could not be shifted closer to the house, Mr. Jariri said locating it in the corner was more useful because it allowed room in the yard for his three children to play and space for growing vegetables.

In response to questions from Mr. Hart regarding the deck, Mr. Jariri said he did not have a copy of the permit for the deck, but could research and find it. He said there was a building permit for the deck in the records. He had obtained the permit and built the deck himself.

Chairman DiGiulian called for speakers.

Hasan Ghousheh, 3525 Tyler Street, Falls Church, Virginia, came forward to speak. He said he had no problems with the shed, that it was beautiful, and the applicant kept many items inside the shed.

Mr. Varga advised the Board that a copy of the building permit application for the deck had been located, and he provided the Board with the copy.

Susan C. Langdon, Chief, Special Permit and Variance Branch, explained that the problem with the deck was the height was 4.5 feet in height. She said if a deck was no taller than four feet in height, it could extend five feet into the minimum required side yard.

~ ~ ~ May 16, 2006, IKHMAYYES J. JARIRI, SP 2006-MA-013, continued from Page 308

Mr. Hart noted that on the plat, which was stamped approved, there were some dimensions shown, and although they were not really clear, the deck was obviously closer than 12 feet. Ms. Langdon said there was a note that talked about up to 48 inches in height. Mr. Hart said there was a note on the permit that said deck open at 48 inches above grade, but there was no note on plat about the height. The plat showed where the deck and steps were located, but had no reference to 48 inches on the plat. Ms. Langdon agreed that there was no note on the plat, just on the building permit itself, which would have allowed the deck as close as seven feet from the lot line if it was no higher than 48 inches.

Mr. Hammack asked whether it was known where the height measurement had been taken and whether the deck had met the requirements when it had been originally built. Ms. Langdon replied that the measurement would have been taken from the furthest point from the ground, and the measurement on the plat was submitted by the applicant, which was done by a surveyor, and showed 4.5 feet in height. Mr. Hammack commented that he had a deck, and he believed that the grade along the drip line was currently several inches lower than it had been when it was constructed. Ms. Langdon said that when the shed application had been received, staff looked at everything else, and when it was seen that the height for the deck was 4.5 feet, it was determined that it had to meet and could not extend into the minimum required side yard, which was why the deck was added to the building in error special permit application.

Chairman DiGiulian closed the public hearing.

Mr. Hart asked whether the applicant agreed that the deck was more than four feet high. Mr. Jariri said that from the ground to the floor of the deck, it was less than four feet right next to the house, but the ground was sloped, and at the end of the deck, it could be more than four feet high.

In response to questions by Mr. Hart regarding how a deck was measured, Ms. Langdon said it was measured from the lowest point of the ground up to the floor level, and the railing was not included.

In response to a question by Mr. Hart concerning whether it was due to the note on the plat that it was being said the deck was more than four feet, Ms. Langdon said the engineer had certified that it was. He had put all the measurements on the plat and had certified that the deck was 4.5 feet in height.

Mr. Byers moved to deny SP 2006-MA-013 with the following findings of fact and conclusions of law:

1. The applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.
2. The error does exceed ten percent of the measurement involved.
3. The non-compliance was not done in good faith, not only with regard to the deck, but what is particularly troubling is the fact that the size of the original shed was 120 feet, the new one 320 feet, and at least from the pictures, it is relatively large. Even though someone perhaps at the County may not have discussed specific measurements with regard to it, that is something that any owner would probably explore further from the standpoint of the size.
4. The granting of this special permit will impair the intent and purpose of the Zoning Ordinance, and it will it be detrimental to the use and enjoyment of other property in the immediate vicinity, although the Board does not know the season specifically for the notice of violation.
5. It could create an unsafe condition with respect to both other properties and public streets, and forcing compliance with the setback requirements would not cause an unreasonable hardship upon the owner.

Mr. Hart seconded the motion for discussion. He said he would support the motion on the shed because he thought the shed was much too big, too close, and too high, and he agreed that the standards were not met. On the deck, he said getting a building permit indicated that he tried, and the plat did not really say how high the deck was. Although there was a note on the application, there was nothing on the plat, and it was not really clear. He said he thought the deck could have been built in good faith in reliance on the permit, and there was nothing really saying that it would not be the way it was. It was also confusing from the photographs where exactly the more than four feet would be. Whether the deck was a few inches up or down one way or the other would not have any impact on anyone as opposed to the shed.

Mr. Hart made a substitute motion to approve-in-part the application, to deny the shed for the reasons stated by Mr. Byers and to approve the deck because the applicant had gotten a building permit and satisfied

~ ~ ~ May 16, 2006, IKHMAYYES J. JARIRI, SP 2006-MA-013, continued from Page 307

Standard B regarding good faith. Chairman Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

IKHMAYYES J. JARIRI, SP 2006-MA-013 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 accessory storage structure to remain 1.4 ft. with eave 1.2 ft. from rear lot line and 1.5 ft. with eave 1.0 ft. from side lot line and deck to remain 8.3 ft. from side lot line. **(THE BZA APPROVED THE DECK ONLY.)** Located at 3513 Washington Dr. on approx. 15,411 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (F) 502. 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 16, 2006; and

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

1. The applicant is the owner of the land.
2. The error does exceed 10 percent of the measurement involved.
3. The size of the original shed was 120 feet and was rebuilt to the size of 320 feet. It appears in the pictures as relatively large.
4. Even though someone perhaps at the County may not have discussed specific measurements, that is something that any owner would probably explore further from the standpoint of the size.
5. The shed could be detrimental to the use and enjoyment of other property in the immediate vicinity and could create an unsafe condition with other properties and public streets.
6. The deck's building permit was obtained although the plat did not indicate the deck's height, and the deck could have been built in good faith on reliance of the permit.
7. The Board does not know the reason specifically for the Notice of Violation.
8. The shed is much too big, close, and high.
9. With regard to the shed, the standards were not met.
10. On the deck, the applicant got a building permit.
11. The plat does not say how high the deck is, and although there is a note on the application, there is nothing on the plat, and it is not really clear.
12. The deck could have been built in good faith in reliance on the permit.
13. It is confusing from the photographs where exactly the more than four feet would be.
14. Whether the deck was a few inches up or down would not have any impact on anyone as opposed to the shed.
15. The shed should be denied for the reasons stated, but the deck should be approved because the applicant got a building permit, and they would satisfy the Standard B about the good faith.
16. The different measurements where the deck is more than four feet in height is confusing from the photographs.
17. Whether the deck is a few inches higher or lower should have no impact on anyone else as opposed to the shed.
18. The shed should be denied for the reasons stated, but the deck should be approved because the building permit was obtained and they satisfied the good faith standard.

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

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

~ ~ ~ May 16, 2006, IKHMAYYES J. JARIRI, SP 2006-MA-013, continued from Page 310

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 granted for the location of the deck as shown on the special permit plat prepared by Patrick A. Eckert, Alexandria Surveys, dated February 8, 2006, as submitted with this application, and is not transferable to other land.

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

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~ ~ ~ May 16, 2006, Scheduled case of:

9:00 A.M. TRUSTEES FOR KNOLLWOOD COMMUNITY CHURCH, SPA 82-S-028-05 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 82-S-028 previously approved for church and nursery school to permit an increase in enrollment, building additions and site modifications. Located at 10000 Coffer Woods Rd. on approx. 5.00 ac. of land zoned PRC. Braddock District. Tax Map 78-3 ((1)) 40. (Decision deferred from 3/21/06 and 4/25/06)

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

Stephen Varga, Staff Coordinator, said the application was deferred for decision to allow the applicant sufficient time to address staff concerns. The applicant had requested approval of a special permit to amend SPA 82-S-028-04, previously approved for a church and nursery school, to permit building additions, site modifications, and an increase in enrollment of the nursery school. In the staff report dated March 14, 2006, staff recommended that the application be denied and strongly urged the applicant to provide additional tree save to buffer along Burke Centre Parkway, preserve more vegetation to more closely match surrounding properties' wooded frontage, provide underground stormwater management on site in favor of tree preservation, and reduce or relocate the building envelope to break up the building façade and provide more

~ ~ ~ May 16, 2006, TRUSTEES FOR KNOLLWOOD COMMUNITY CHURCH, SPA 82-S-028-05, continued from Page 311

area between the proposed building and the northern lot line. The applicant submitted a revised plat dated May 9, 2006, which depicted an increase in the width of the tree save buffer along the Burke Center Parkway frontage from 25 feet to a minimum of 50 feet. The 50-foot buffer helped to ensure that the frontage along Burke Centre Parkway would remain wooded, as were other properties in this area. The applicant also proposed a tree save area of approximately 12,600 square feet, which replaced a stormwater management pond in the northwestern portion of the site, and in place of the pond, an underground detention area was proposed to be located within the parking lot. This significantly increased tree preservation on site. The revised plat depicted a more restrictive building envelope, which eliminated the possibility that the proposed church would offer a solid wall facing neighboring townhouses along the northern lot line. The revised envelope featured a large recession in the center of the church's north-facing side. Additional changes to the plat included the relocation of a rain garden, the provision of an additional island located in the center of the parking lot, and reorientation of some parking spaces. The proposed use as a church, number of seats of 400, building square footage of 42,000 square feet, and FAR of 0.193 all remained identical to the earlier proposal. Parking spaces had increased by one to 171. Staff concluded the subject application was now in harmony with the Comprehensive Plan and applicable Zoning Ordinance provisions and recommended approval with the adoption of the development conditions contained in the staff report addendum dated May 15, 2006.

Mr. Hart; Susan C. Langdon, Chief, Special Permit and Variance Branch; and Benjamin F. Tompkins, the applicant's agent, Reed Smith LLP, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, discussed stormwater management issues, and Mr. Tompkins explained that the maintenance obligation for stormwater management was traditionally an owner's responsibility addressed at the time of site plan approval.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SPA 82-S-028-05 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES FOR KNOLLWOOD COMMUNITY CHURCH, SPA 82-S-028-05 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 82-S-028 previously approved for church and nursery school to permit an increase in enrollment, building additions and site modifications. Located at 10000 Coffer Woods Rd. on approx. 5.00 ac. of land zoned PRC. Braddock District. Tax Map 78-3 ((1)) 40. (Decision deferred from 3/21/06 and 4/25/06) 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 16, 2006; and

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

1. The applicants are the owners of the land.
2. The applicant has presented evidence satisfying the required standards for a Special Permit.
3. The rationale in the Staff Report Addendum is adopted.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 6-303 of the Zoning Ordinance.

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

~ ~ ~ May 16, 2006, TRUSTEES FOR KNOLLWOOD COMMUNITY CHURCH, SPA 82-S-028-05, continued from Page 312

limitations:

1. This approval is granted to the Applicant only, Trustees for Knollwood Community Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 10000 Coffer Woods Road, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Steven E. Gleason of William H. Gordon Associates, Inc., dated December, 2005, as revised through May 9, 2006.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. Upon issuance of the applicable Non-RUP, the seating capacity in the main area of worship shall not exceed 400.

6. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.

7. Upon issuance of the Non-RUP for the Phase I construction as indicated on the special permit plat, the total maximum daily attendance of children in the nursery school shall not exceed 99, with no more than 50 on site at any one time.

8. The hours of operation for the nursery school shall be limited to 8:30 a.m. to 5:30 p.m., Monday through Friday.

9. Existing vegetation shall be preserved along all lot lines as shown on the SP plat.

   - Additional plantings shall be provided along the entire northern and western lot lines. Plant selection, including the size, species, and location of plantings shall be coordinated with Urban Forest Management (UFM); however, all supplemental plantings shall be a mix of evergreen and deciduous trees tolerant to the specific growing conditions on site.

10. Foundation plantings and shade and ornamental trees shall be provided around the proposed buildings to soften the visual impact of the structures. Plant selection, including the size, species, and location of plantings shall be coordinated with UFM.

11. The barrier requirement shall be waived along the northern, southern, and eastern lot lines, and the northern portion of the western lot line in favor of that shown on the special permit plat.

12. The limits of clearing and grading shall be as shown on the special permit plat. Prior to any land disturbing activity, a grading plan, which establishes the limits of clearing, and grading necessary to construct the improvements shall be submitted to DPWES, including UFM, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the Applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading (including any potential field reductions in the amount of such clearing and grading); areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for

super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fence types shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFM, and DPWES and the District Supervisor shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFM, DPWES. The demolition of existing features and structures shall be conducted in a manner that does not impact on individual trees and/or groups of trees that are to be preserved as reviewed and approved by UFM, and DPWES. Methods to preserve existing trees may include, but not limited to the use of super silt fence, welded wire tree protection fence, root pruning, mulching as approved by the UFM.

13. Any proposed new lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. All downward directed lighting shall be full cut-off luminaries and shall be controlled by timers (except for security lighting) and shall be turned off when the site is not in use. No new uplighting of landscaping or buildings shall be provided along the northern and western elevations. Any uplighting of landscaping and buildings along the southern and eastern elevations shall comply with the provisions of Sect. 14-902.2.C of the Zoning Ordinance.

14. The Applicant shall obtain a sign permit for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.

15. The architecture of the church shall be generally as depicted in the elevation and cross-sections included on pages 7 and 8 of the special permit plat, dated December, 2005, as revised through May 9, 2006.

16. An underground facility shall be provided rather than a surface pond to provide stormwater detention for the site. The underground facility may consist of pipes, a vault, a manufactured system such as Storm Tech or a functional equivalent, a gravel infiltration trench, or other method determined during final engineering, or any combination thereof, to provide the required detention for the project, and may be located anywhere within the parking lot area shown on the special permit plat. The Applicant will provide water quality controls through the use of tree save areas as protected by limits of clearing and grading shown on the special permit plat to receive 100% phosphorous removal efficiency credit. Additional BMP measures will be provided in the form of rain garden(s), Filterra(s), infiltration, manufactured system, or other method determined during final engineering, or any combination thereof. Water quality measures may be combined with the detention facility within the parking lot area shown on the special permit plat, or may be located independently throughout the site within the limits of clearing and grading. In addition to providing the required detention and phosphorus removal for the proposed development, additional storage volume as may be required shall be provided to demonstrate either (1) a proportional improvement to the work done on the existing outfall channel using shear stress analysis or (2) extended detention of the 1-year 24-hour storm. The limit of downstream analysis will be to a point downstream of the site as defined by the outfall narrative and overall drainage divide map in the special permit plat. By providing additional storage volume for the 1-year 24-hour storm or sufficient volume to demonstrate proportional improvement to the downstream channel using the shear stress method, all the requirements for adequate outfall shall be considered met for site plan approval. The applicant will be responsible for maintenance of the underground facilities in a manner acceptable to DPWES to be determined at the time of site plan approval.

17. On site traffic management, in the form of painted stop bars, stop signs, traffic signs, and crosswalks shall be provided and installed prior to the issuance of the Non-RUP associated with the phase that includes the parking and/or drive aisle requiring such traffic management, and shall be subject to approval by the Department of Transportation.

~ ~ ~ May 16, 2006, TRUSTEES FOR KNOLLWOOD COMMUNITY CHURCH, SPA 82-S-028-05, continued from Page 314

18. Prior to the issuance of a Non-RUP for the Phase I construction as shown on the special permit plat, the Applicant shall install curb and gutter along the entire frontage of Coffer Woods Road, subject to approval by the Department of Transportation.

19. Prior to the issuance of a Non-RUP, the applicant shall provide a connection running along the eastern boundary of the new play area to connect the trail to the sidewalk along the southern perimeter of the church. The Applicant shall also provide a sidewalk connection from the sidewalk along Coffer Woods Road north of the new entrance to connect with a sidewalk on site as shown on the special permit plat.

These special permit 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 Phase 1 construction has commenced and been diligently prosecuted. Commencement of Phase 1 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. Byers seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ May 16, 2006, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, 9/20/05, and 2/7/06 at appl. req.)

Chairman DiGiulian noted that A 2003-SP-002 had been administratively moved to July 25, 2006, at 9:30 a.m., at the appellants' request.

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~ ~ ~ May 16, 2006, Scheduled case of:

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, 9/20/05, and 2/7/06 at appl. req.)

~ ~ ~ May 16, 2006, ROBERT DEANGELIS, A 2003-SP-003, continued from Page 315

Chairman DiGiulian noted that A 2003-SP-003 had been administratively moved to July 25, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ May 16, 2006, Scheduled case of:

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, 9/20/05, and 2/7/06 at appl. req.)

Chairman DiGiulian noted that A 2003-SP-004 had been administratively moved to July 25, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ May 16, 2006, Scheduled case of:

9:30 A.M. DONALD R. ROSE AND DEBBE A. ROSE, A 2006-MV-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have erected a stone fireplace and a wooden roofed patio cover, which exceed seven feet in height and which do not comply with the minimum yard requirements for the R-3 District, without valid Building Permit approval, and have installed accessory structures and uses which exceed the 30 percent maximum permitted coverage of the minimum required rear yard, all in violation of Zoning Ordinance provisions. Located at 7922 Journey La. on approx. 9,418 sq. ft. of land zoned R-3C. Mt. Vernon District. Tax Map 98-2 ((6)) 273.

Chairman DiGiulian noted that A 2006-MV-008 had been withdrawn.

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~ ~ ~ May 16, 2006, After Agenda Item:

Additional Time Request
Dulles Gateway Kennels, (Rita Powell), SPA 94-Y-059

Mr. Ribble moved to approve 12 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was February 14, 2007.

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~ ~ ~ May 16, 2006, After Agenda Item:

Consideration of Acceptance – Application for Appeal
Carol Burke and Joseph Athey

Diane Johnson-Quinn, Senior Assistant to the Zoning Administrator, presented staff's position as noted in her memorandum dated May 8, 2006. The item was a consideration of acceptance of an appeal submitted by Carol Burke and Joseph Athey, who owned and resided at the property adjacent to property owned by Raymond and Patty Hubbard. The Hubbards had applied for a special permit for an error in building location, SP 2006-MA-004, for a free-standing accessory structure. The appeal related to a staff

~ ~ ~ May 16, 2006, After Agenda Items, continued from Page 316

determination concerning the designation of yards on the Hubbards' property as contained in the special permit staff report dated March 21, 2006. A decision was made by the Deputy Zoning Administrator for the Zoning Enforcement Branch on November 30, 2005, that the lot came to a point in the rear, and, therefore, the rear yard was in the southeastern corner of the lot, as depicted in Attachment C of Ms. Johnson-Quinn's memorandum. On March 9, 2006, the Zoning Administrator determined that the Deputy Zoning Administrator's determination was incorrect. However, as more than 60 days had elapsed since the rendering of the Deputy Zoning Administrator's decision, the Zoning Administrator could not reverse that position. The special permit staff report was published March 21, 2006. The actual decisions on appeals were made by the Deputy Zoning Administrator on November 30, 2005, and by the Zoning Administrator March 9, 2006. The appeal was filed April 18, 2006, and in order to be considered as timely filed, the appeal had to be filed within 30 days of the November 30th date and the March 9th date, resulting in filing deadlines of December 30, 2005, and April 10, 2006, respectively. It was the judgment of staff that the appeal did not satisfy the requirements of Virginia Code Sect. 15.2-2311 and Sect. 18-303 of the Zoning Ordinance, and staff recommended that the Board of Zoning Appeals not accept the appeal.

Chairman DiGiulian noted that the staff report was published March 21, 2006. He questioned how the appellants could have known the Zoning Administrator's determination before the staff report was published. William E. Shoup, Zoning Administrator, explained that conceivably if the appellants were in contact with staff, they would have been aware of when the determination was made. He conceded there would be no direct notice to the appellants about the position. He said that was the same issue from time to time that confronted staff on decisions made by Zoning Administration as there were no broadcasts of the decisions, and not everyone was going to know when a decision was made. Mr. Shoup said staff believed the appellants were aware of the Hubbards' special permit application.

In response to a question from Ms. Gibb of where it left the appellants if their appeal application was not accepted, Mr. Shoup explained that the Hubbards' special permit application for an error in building location remained based on the November 30th determination of the yard coming to a point in the rear.

Responding to a question from Mr. Hammack concerning the 60-day rule, Mr. Shoup said he considered the fact that the determination was made November 30th and the Hubbards then had a plat prepared for an error in building location to reflect that position. The Hubbards expended money to engage an engineer to revise their plat to properly reflect the determination, and the crux of the issue was that staff believed the decision was a judgment call concerning the lot coming to a point in the rear, and, therefore, it was a discretionary decision that should be considered under the 60-day limitation rule. He said that construction had commenced several years prior to the discovery of the error in building location, and then how to proceed from that point with the public hearing process was determined. Mr. Shoup said an example of a discretionary versus a non-discretionary decision was the scenario of a permit counter technician signing off on a building permit and plat that erroneously approved a structure for an incorrect setback. He said his position was that was a non-discretionary error, and Zoning Administration could and should reverse its decision. He clarified that a discretionary decision must be made that could go one way or the other, and then the 60-day provision would apply. Mr. Shoup said he was unaware whether there was a definition in the Code for discretionary and non-discretionary.

Mr. Shoup responded to several questions posed by Mr. Hart concerning the requirement for a plat with an error in building location for the accessory structure, the 30 percent coverage issue which required a variance, staff's review of swimming pool and deck permits, the yard's assessment, and the subsequent changes to setbacks.

Stephen K. Fox, Esquire, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, representing the Hubbards, presented justification for the error in building location special permit application. He said there were facts overlooked, one of which was that Dr. Burke and Mr. Athey were the people who originally complained about the pool house/accessory structure's location, and they were fully apprised of the fact that the Hubbards were pursuing a process from the beginning. He listed the series of actions that he said effectually mushroomed the matter. Upon receipt of the notice of violation of the pool house setback from the lot line, an application was filed for an error in building placement. Staff's checklist of its review of the plat and application was received August 15, 2005, indicating there was a 30 percent yard coverage issue. Mr. Fox researched the 30 percent coverage rule and submitted a request for interpretation that the Zoning Evaluation Division, Applications Acceptance Branch, refused and instructed him to resend his letter to Mr. Shoup. His letter questioning the 30 percent applicability was couriered August 18, 2005. He was reluctant

to engage in seeking a variance solution because of the difficulty in obtaining an approval. He then filed an appeal. Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, rendered an opinion October 17, 2005, rejecting the appeal's 30 percent basis. On November 14, 2005, Mr. Fox appealed that determination under A 2005-MA-056, with the hearing scheduled before the BZA January 31, 2006. A second notice of violation was received regarding the 30 percent rear yard coverage. The appeal was pending, and the special permit for the error in building location was not yet accepted. In response to Mr. Fox's request for clarification, Michael R. Congleton, Senior Deputy Zoning Administrator for Zoning Enforcement, made a site visit November 30, 2005, during which he made the determination that the rear yard ended in a peak and that the previously considered rear yard was a side yard. Preparation was then made to submit another plat depicting the area as a side yard and to rework the lot coverage percentages. On December 1, 2006, Mr. Fox wrote to staff requesting time to submit a revised plat for the lot coverage and side yard issue, which was received by staff December 14th. Senior Zoning Inspector, Susan Epstein's December 28th letter, which was based on the ruling of the revised plat and rescinded the notice of violation regarding the 30 percent issue, was received. The pertaining appeal was scheduled for January 31, 2006, and Mr. Fox pointed out that in demonstrating reliance, he wrote the County withdrawing the appeal. Mr. Fox stated that he and the Hubbards, who expended significant funds on the matter, evidenced significant reliance by withdrawing the appeal that he believed had merit. Mr. Fox said he received another letter from Ms. Tsai on January 4, 2006, acknowledging receipt of and accepting his appeal withdrawal request. Also on January 4th, he received a letter from Virginia Ruffner, Applications Acceptance Branch, acknowledging the resolution of the 30 percent issue, and a January 18th letter accepting the special permit application for error in building location was received. Mr. Fox said all issues were determined in writing well prior to the staff report's publication, and all were public record available upon request. He said the staff report was a compendium of letters, reports, opinions, appendices, addendums, attachments, references, and was a report that contained attachments and references of things that previously occurred. Mr. Fox submitted that for Carol Burke and Joseph Athey to now appeal things that were ongoing for months, well before the publication of the staff report, violated the 30-day rule, the finality of the Zoning Administrator's decisions, the 60-day rule, and it seriously affected his clients. Mr. Fox said that never in his 30 years of experience with Fairfax County had an opinion by the Zoning Administrator involved anyone other than he and the Zoning Administrator. He acknowledged that there was notification of public hearings, but no notification was required to any of those who may conceivably have an interest in a matter. He said to carve out a new rule on that would invite appeal of every staff report that came before the Board of Zoning Appeals and Board of Supervisors. Every staff report contained information that had been developed over months and up to a year with opinions and determinations rendered by other administrative officials of many different County departments. Mr. Fox requested that the Board not accept the appeal based on the 60-day and 30-day rule and because ample reliance was evidenced.

Mark G. Westerfield, Johnston & Westerfield, PLLC, 8000 Towers Crescent Drive, Suite 1350, Vienna, Virginia, representing Carol Burke and Joseph Athey, presented the justification for his clients' position. He said before Mr. Shoup's and Mr. Congleton's determinations, the yard line was determined as a rear yard lot line, and the series of correspondence between Mr. Fox and zoning staff referred to it as such. Mr. Westerfield said that on July 1, 2005, Mr. Fox submitted a plat that showed a 25-foot rear lot line, which was not contested or appealed, and that was the basis of the violation. He said that on that basis and as evidenced on the plat, it was determined there was 70 percent coverage of the rear yard area. Mr. Westerfield said a revised plat was submitted six weeks later that also showed a 25-foot rear yard area, and if one applied the 60-day rule, it should be applied equally because at the time Mr. Congleton became involved, 60 days had long passed. Mr. Westerfield said Mr. Congleton's determination that it was a side yard was incorrect as the Zoning Administrator previously determined it to be a rear yard. Mr. Westerfield said there was reliance on the determinations that predated Mr. Congleton's as well as reliance on Mr. Congleton's determinations. Plats were submitted. Appeals and special permits were filed. Mr. Westerfield explained staff's interpretation of an appeal decision as it pertained to the Code's 30-day rule, noting that the Code's provision regarding the 30 days after a decision had to include some provision for notification so when someone received notice of a decision, they could assert their right to appeal. Mr. Westerfield said his client, being the next-door neighbor, was an aggrieved party as well as the complainant because the structure was basically built in her back yard. He said Ms. Burke initiated the complaint and was informed of the status of the violation by Susan Epstein, Senior Zoning Inspector, but Ms. Burke was never informed that the matter was resolved by Mr. Congleton's subsequent determination that it was a side yard. Mr. Westerfield said Ms. Burke received no notice of the determination until the staff report's publication, and she filed an appeal within 30 days after the publication. As a complainant and as a matter of due process, his client was entitled to some notice, and as far as his client knew, there was a zoning violation based on

structures located too close to a rear lot line and too much coverage of the backyard.

Discussion followed between Mr. Hart and Mr. Shoup concerning the timeline of staff's letters regarding the violation, the rear yard determination, and approximately when the yard was determined a rear yard.

Discussion followed among Mr. Hart, Mr. Shoup, and Mr. Westerfield concerning the timeline of the surveyor's reports, the engineer's report, the filing of the appeal, the determination of the rear yard lot line, the pertaining July and August plats, and the surveyor's notes concerning the 70 percent coverage of the rear yard.

Mr. Fox stated that his clients met with the Deputy Zoning Administrator and resolved the rear yard coverage issue with the purchase of 5.5 feet of the adjoining property and committed $10,000 for the acquisition.

Discussion ensued regarding staff's position on and clarification of the 60-day rule, and processing pertinent correspondence.

Ms. Gibb said she was reluctant to make a decision on the case because it was based on an erroneous decision that the Board was requested to let stand because of the 60-day rule. She said now the 60-day rule was in question. Ms. Gibb suggested deferring the decision to allow time to consider the facts.

Ms. Gibb moved to defer decision on the Consideration of Acceptance to June 6, 2006. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding by-laws and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

The meeting recessed at 11:42 a.m. and reconvened at 12:24 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb and Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Minutes by: Paula A. McFarland / Kathleen A. Knoth

Approved on: March 28, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 23, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:02 a.m. He asked whether there were any Board Matters to come before the Board.

Mr. Ribble noted the passing of Master Police Officer Michael Garbarino and Detective Vicky Armel, who had given their lives in the line of duty earlier in the month. He said the Board was saddened by this tragedy. Mr. Ribble also stated that a former member of the Board of Zoning Appeals, John Yaremchuk, had passed away recently. He said Mr. Yaremchuk had been the Director of County Development in the early 1950s, had been a tank commander under Generals George Patton and Creighton Abrams in World War II, and had received many medals.

Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no further Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ May 23, 2006, Scheduled case of:

9:00 A.M. VILLAGE WEST, INC./NEW CINGULAR WIRELESS PCS, LLC, SPA 67-S-519-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 67-S-591 previously approved for a community swimming pool to permit site modifications (telecommunications tower). Located at 7008 Elkton Dr. on approx. 2.59 ac. of land zoned R-2. Springfield District. Tax Map 89-4 ((5)) A. (In association with SE 2005-SP-033). (Deferred from 5/9/06)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Michael, the applicant's agent, Jackson & Campbell, P.C., 1120 20th Street, NW, Washington, D.C., replied that it was.

John David Moss, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SPA 67-S-519-1, previously approved for a community swimming pool, Springvale Village West Community Pool, to permit the construction of a 120-foot tall candelabra monopole with 12 antennae and a related 2,250-square-foot equipment cabinet. He noted that on May 3, 2006, the Planning Commission recommended approval of SE-2005-SP-033. Staff recommended approval of SPA 67-S-519-02 subject to the proposed development conditions.

Mr. Michael presented the special permit amendment request as outlined in the statement of justification submitted with the application. He noted that the application was the third one to be presented to the Board with respect to the installation of a telecommunication facility at a swim club in the County. He stated that the two previous ones were at the Brandywine Swim Club in the Braddock District and the Broyhill Swim Club in the Mason District. He said they had been supported by the community and had been well received. Mr. Michael said that early in the process the applicant had presented its proposal to the community to try to ascertain their sense of the proposed facility and the type of design they might like to see. He stated that of all the types of monopoles they had suggested, the community supported a design similar to the one located at the end of the George Washington Parkway at the Beltway, which was the candelabra type pole that was a steel pole with support arms coming out from the pole and a cylindrical cover over the antenna so they were hidden. Mr. Michael said the Pohick Stream Valley Park was located at the rear of the swim facility and provided a large tree buffer while the leaves were out; however, when the leaves were gone, some homes would have a view of the monopole. He stated that the community wanted effective wireless service in the area, where none currently existed. He said he had received a letter from the Bethlehem Woods Homeowners Association in Mount Vernon supporting the application and offered to give a copy of the letter to the Board. Mr. Michael said the facility would be a passive one with no traffic other than a service truck performing maintenance once a month. He said the equipment was silent and would consist of cabinets that would enclose the equipment, it would be an asset to the swim club, and there would be no adverse effects.

Chairman DiGiulian called for speakers.

John Cooley, 8131 Edmonton Court, Springfield, Virginia, President of the West Springfield Village Civic Association came forward to speak. He said the proposed site for the monopole would be beneficial to the neighborhood, and the lease revenue from Cingular Wireless would be a financial asset and would allow the directors of the swim club to begin paying down outstanding debt. He stated that cellular communications

were spotty, and many service technicians for other communications companies had to drive out of the village to access their offices or use a land line. He listed the various ways they had contacted their neighbors and said the vast majority had expressed a desire for improved signal strength. He said comments made by the residents, both pro and con, as well as a statement from the County's Department of Tax Administration stating that they had never seen any negative impact on values within neighborhoods located near cell phone towers, could be found in the letter he had submitted to the Board dated May 1, 2006. He said the civic association had contacted other swim clubs concerning complaints they may have received about health issues or any loss in membership because of the towers, and they had replied that they had not suffered any loss in membership or had any complaints. Mr. Cooley said the pool would get much needed revenue from the lease, and the residents of West Springfield Village would be able to use their cellular phones in their homes.

Elaine Gallagher, 7710 Royal Azalea Court, Springfield, Virginia, Vice President of the Board of Directors of Village West Pool, came forward to speak. She said that besides improved cellular service, there was another important benefit the tower would bring to the community, and that was monthly revenue to a pool that currently carried a $47,000 debt and was in need of costly capital and cosmetic improvements. She said that at the end of each season, they were left with less than $100 in their bank account, and the board members were currently paying bills from their own pockets to ensure that the neighborhood children had a safe place to play and an opportunity to swim on a team. Ms. Gallagher stated that the monthly income would allow the pool to keep its doors open and operating for the neighborhood in the future.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SPA 67-S-519-02 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VILLAGE WEST, INC./NEW CINGULAR WIRELESS PCS, LLC, SPA 67-S-519-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 67-S-591 previously approved for a community swimming pool to permit site modifications (telecommunications tower). Located at 7008 Elkton Dr. on approx. 2.59 ac. of land zoned R-2. Springfield District. Tax Map 89-4 ((5)) A. (In association with SE 2005-SP-033). 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, 2006; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

~ ~ ~ May 23, 2006, VILLAGE WEST, INC./NEW CINGULAR WIRELESS PCS, LLC, SPA 67-S-519-02, continued from Page 322

1. This approval is granted to the applicant only, West Village, Inc./New Cingular Wireless PCS, LLC, and is not transferable without further action of this Board, and is for the location indicated on the application, 7008 Elkton Dr. (2.59 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 Clark-Nexsen, dated August 4, 2005, as amended through March 10, 2006, 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, 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 and the approved Special Permit Plat. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. There shall be fifty-one (51) parking spaces provided on-site.

6. The barrier requirement shall be modified, provided the existing fences are retained.

7. The transitional screening requirement may be modified provided that the existing vegetation is retained and supplemental plantings similar to existing plantings shall be maintained along the screen fence north of the swimming pool, as determined by Urban Forest Management of DPWES.

8. All lighting shall be directed on-site.

9. The hours of operation shall be 11:30 a.m. to 9 p.m., daily.

10. After hour parties for the 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.
    - Shall request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.
    - Request shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after hours party.

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

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

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack recused himself from the hearing.

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~ ~ ~ May 23, 2006, Scheduled case of:

9:00 A.M. KINGDOM HALL OF JEHOVAH'S WITNESSES MOUNT VERNON CONGREGATION, SPA 99-V-013 Appl. under Sect(s). 3-503 of the Zoning Ordinance to amend SP 99-V-013 previously approved for a place of worship to permit a reduction in land area. Located at 7920 Holland Rd. on approx. 3.98 ac. of land zoned R-5. Mt. Vernon District. Tax Map 102-1 ((1)) 38A. (Admin. moved from 11/15/05, 12/13/05, 2/7/06, and 4/11/06 at appl. req.)

Chairman DiGiulian noted that SPA 99-V-013 had been indefinitely deferred.

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~ ~ ~ May 23, 2006, Scheduled case of:

9:00 A.M. CARLOS H. ZUNIGA, SP 2006-PR-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13 ft. with eave 12 ft. from front lot line of a corner lot. Located at 2923 Meadow La. on approx. 5,627 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((9)) 20. (Admin. moved from 4/4/06 and 5/2/06 for notices)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carlos Zuniga, 2923 Meadow Lane, Falls Church, Virginia, replied that it was. Mr. Zuniga requested that Monica Lobo, the applicant's interpreter, assist him with presenting his case.

Susan Langdon, Chief, Special Permits and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions to minimum yard requirements based on an error in building location to permit a dwelling to remain 13 feet with eave 12 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, reductions of 17 feet and 15 feet, respectively, were requested.

In response to a question from Mr. Hart, Ms. Langdon confirmed that the building permit had been issued on September 12, 2005, and the Zoning Office had signed off on the permit on August 11, 2005. Ms. Langdon also confirmed that the stop work order had not been sent out until sometime after November 18, 2005. Mr. Hart asked if anything had been sent to the applicant between the approval of the building permit on September 12th and whenever the stop work order had been sent. Ms. Langdon said she was not aware of any communications during that time period. In response to another question from Mr. Hart, Ms. Langdon said it was the requirement of the Zoning Ordinance that the County issue stop work orders for construction projects after the 60 days and because it was not permitted without a special permit or variance. Mr. Hart said it appeared to him that the building permit application was very detailed with respect to what they were doing and asked if there was any contention that something was missing or misrepresented. Ms. Langdon said she was not aware of any, and she believed that it had not been known or realized at the time that this was a corner lot and, therefore, where the addition was going to be built was actually a front yard.

Mr. Hammack asked why the 60-day rule did not apply in this case and why the applicant had to get a special permit if he relied on the issuance of a permit for 60 days and had put his money into the project. He also called attention to the fact that the violation had not been issued until well after the 60 days. Ms. Langdon stated that she did not think she was qualified to answer the question, but she believed the answer was that it was called a nondiscretionary action. The Zoning Ordinance was very specific that the front yard was 30 feet, and someone from Zoning could not approve an addition or dwelling that did not meet that setback, and, therefore, the 60 days did not apply. Mr. Hammack asked if there was a definition of what was nondiscretionary in the Ordinance. Ms. Langdon said she did not know and did not feel qualified to answer the question. She pointed out that the Board had that discussion with the Zoning Administrator. Mr. Hammack said it was his opinion that defeated the whole purpose of the 60-day rule. Ms. Langdon said she did not know if Zoning Enforcement was involved because this was a stop work order. She said she believed it had been issued by Leslie Johnson, Deputy Zoning Administrator, Zoning Permit Review Branch.

Ms. Lobo, interpreting for Mr. Zuniga, presented the special permit request as outlined in the statement of justification submitted with the application. She said Mr. Zuniga had done some research before he purchased the house with respect to the property and the improvements he wanted to make and then presented his application for a permit to the County. She said staff had explained to him what he would be

allowed to do, and he then purchased the property and applied for all the necessary permits that he would need. He had all the permits with him today that had been issued to him, including electricity and plumbing, along with the inspections that had already been done on the property as he was building it. Ms. Lobo said Mr. Zuniga sold his primary residence two months before he was ready to move because construction was proceeding on schedule, and after he had sold his home and the contract had been ratified, he received the notice to stop all work. She said the house in Falls Church was already half way completed, and the roof was in place. She said the action had caused the applicant financial hardship, and it was an inconvenience to him and his family because they had to stay with friends and rent his old home for a period of time, which had been explained in his letter. Ms. Lobo said Mr. Zuniga did not think that he had committed any error in applying for the permit and that he had followed all the County rules.

Replying to a question from Mr. Hart, Mr. Zuniga said he had received the stop work order on November 20, 2005. Referring to the construction visible in his photographs, Mr. Hart asked if that had been done prior to the stop work order. Mr. Zuniga said it had. In response to another question posed by Mr. Hart, Mr. Zuniga said he had not received any other communication between the issuance of the building permit and the date of the stop work order.

Chairman DiGiulian called for speakers.

Rafael, no last name or address given, came forward to speak. He said he had known the applicant for a long time as the applicant had done work for him and knew exactly what he was doing. Rafael had helped the applicant by doing the lawn, had offered his support if he needed it, and the applicant had not broken any rules.

In answer to a question from Mr. Beard, Rafael said the applicant would have completed work on his home a few months after the roof was put on. He said he interpreted the stop work order for him and told him that it was unfair because the notice had been received after he was almost done with the house. He confirmed to Mr. Beard that the notice had been received in the latter part of last year. He concurred with Mr. Beard's assumption that had the applicant not been issued the stop work order, he anticipated that he would have been able to move into the house in January of 2006.

Bruce Allison, 2842 Brooke Drive, Falls Church, Virginia, representative of the Greater Hill Wood Civic Association, came forward to speak. He said that the project did not meet the Zoning Ordinance as referenced in the special permit standards, that such a reduction would not impair the purpose and intent of the Ordinance, that since October of 2004, the ability to get a reduction in minimum yard requirements had not been made available to anyone in the County to include several residents who had been waiting for the County to approve the procedure to allow such reductions and that to allow one permit in this process was unfair to the neighbors. The Zoning Ordinance was on the website, and it was clear that a corner property had two front yards and what the required setbacks were. It was not clear to the neighbors that the house was not being built for development because there was a sale sign on the property. It was their understanding that the applicant did not intend to live in the house and that after the stop work order had been issued, the applicant continued to work on the house. Mr. Alison presented photographs displaying the house and the sign.

Mr. Beard asked if Mr. Allison felt this was intentional on the part of the applicant. Mr. Allison said he could not speak to his intentions, but the neighbors did believe that it was. He said the neighbors were not convinced that this was a legitimate mistake. Mr. Beard asked Mr. Allison what he would have the applicant do at this stage. Mr. Allison said it was a difficult question to answer, and unfortunately there were numerous ways to get around it. He said he believed that since November there had been a significant cost restraint, but that was up to the County to decide. He said the Planning Commission would be hearing the Zoning Ordinance Amendment concerning side lot lines in June of 2006, and the Board of Supervisors would hear it in July. He said the applicant should have to wait until then, which would only be fair to the other members of the neighborhood. Mr. Beard said the applicant was here because of an error in building location and noted that the plat that was presented to the County clearly showed that it was a corner lot.

In his rebuttal, Mr. Zuniga referred to the sign Mr. Allison had referenced. He said that because of Rafael's help, he had agreed to allow him to post a sign on his property to advertise his loan office business. He said he did not think he had committed any error in allowing that to be done. Mr. Zuniga stated that he was paying his mortgage every month.

~ ~ ~ May 23, 2006, CARLOS H. ZUNIGA, SP 2006-PR-007, continued from Page 325

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2006-PR-007 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CARLOS H. ZUNIGA, SP 2006-PR-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13 ft. with eave 12 ft. from front lot line of a corner lot. Located at 2923 Meadow La. on approx. 5,627 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((9)) 20. (Admin. moved from 4/4/06 and 5/2/06 for notices.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 2006; and

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

1. The applicant is the owner of the land.
2. The current zoning is R-4, HC.
3. The area of the lot is 5,627 square feet.
4. The building permit applied for by the applicant is much more specific than many building permits the Board sees where it shows an addition with a two-car garage at the basement level, addition of entire second floor, enlargement of first floor, relocating kitchen, updating studio and attic, with the setbacks shown on the right side of the page.
5. The plat attached to the building permit clearly shows a corner lot location and was signed off on by DPWES for a second story, basement, and another addition on August 11, 2005.
6. A one-foot administrative yard reduction was granted by the Zoning Permit Review Branch on August 11, 2005, which was approved by the Zoning Administrator on the same day.
7. Perhaps there is a problem with the approval process, but the applicant got all his permits and commenced construction based on that.
8. It is an appropriate case to grant relief.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

~ ~ ~ May 23, 2006, CARLOS H. ZUNIGA, SP 2006-PR-007, continued from Page 326

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 dwelling as shown on the plat prepared by ACE, Inc., dated November 22, 2005, as certified January 31, 2006, as submitted with this application and is not transferable to other land.

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

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

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~ ~ ~ May 23, 2006, Scheduled case of:

9:00 A.M. CHRISTOPHER POILLON, SP 2006-DR-012 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 9208 Jeffery Rd. on approx. 4.0 ac. of land zoned R-E. Dranesville District. Tax Map 8-2 ((1)) 26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan Friedlander, the applicant's agent, Earman, Friedlander, Friedlander and Earman, 1364 Beverly Road, McLean, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an accessory dwelling unit. The 304-square-foot cabin contained one bedroom, a kitchenette, living area, and bathroom, which comprised approximately 12 percent of the total square feet in the dwelling. The occupant would have access to parking spaces located directly adjacent to the cabin and use of the grounds for recreational purposes. No additional structures were proposed with the application. Staff recommended approval of SP 2006-DR-012 subject to the proposed development conditions.

In answer to a question from Mr. Hammack concerning the disposition of the other units on the property, Mr. Varga said one unit was proposed for an accessory dwelling unit and the other for servant's quarters, which were allowable under the statute. Mr. Varga said staff had asked the applicant to submit a letter, which was included in the staff report as Appendix 5, to the Zoning Administration office asking what would be required to establish a servant's quarters. Mr. Hammack asked if the applicant could have two separate servant's quarters in addition to the accessory dwelling. Mr. Varga said he would have to defer the question to Zoning Administration.

Mr. Hart stated that he could not find the building permits for the house or the two cabins, even though they appeared to be new and had been built in 2004. Susan Langdon, Chief, Special Permit and Variance Branch, said staff had seen the building permits and would determine whether staff had copies with them. Mr. Hart asked what happened when an applicant submitted an application for a building permit showing a large house and two smaller houses on the application. If it was approved, he said he wanted to know what was approved and wanted to see the application.

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Ms. Earman presented the special permit request as outlined in the statement of justification submitted with the application. She said she would look for the building plat in the documents she had with her and noted that she had included the building permit with the stamp on it in the documents she had submitted to the County. She said that although the applicant had purchased the property in 2004, he had resided there for the past nine years. She said the applicant had been unaware that any of the uses by the previous owner were not in accordance with the code, and he had continued to rent the house to people he had been sharing the main house with. Ms. Earman stated that as soon as the applicant had been made aware that he was not in compliance, his lawyer filed all the necessary documentation. She stated that only one servant's quarters would be allowed, and that was all Mr. Poillon intended to have.

Ms. Earman said staff had requested that the applicant ensure that all health and parking requirements were met and to confer with the Department of Housing and Urban Development to determine affordable rent, and the applicant had done so. She said she doubted that there would be any Section 8 use, but the evaluation of fair market value as far as affordability was the full intention. She also stated that the purpose of the application was to provide affordable housing for someone 55 or older or for someone with a disability, which was within the confines of the Comprehensive Plan and the Board of Supervisors' policies on accessory dwelling units.

Ms. Earman stated that members of the civic association had asked her and the applicant to attend a meeting to discuss the application, and since they could not be present, Mark Friedlander had attended and fielded the questions. She stated that she had just received the association's questions the morning of the hearing and would address some of them regarding security, traffic, and noise from pets. She said the applicant had one dog, and all other pets had been removed from the property. She said he would be happy to stipulate that unless someone had a work dog, there would be no other pets allowed other than his own. She said any traffic that had been seen was probably due to contractors that the applicant had hired, and the servant would attend to that. With respect to security issues, Ms. Earman said the applicant had a top secret government security clearance for intelligence, and he had installed a security gate as well as cameras and monitors, and whoever he would allow to use the accessory dwelling unit would have to have a background and criminal background check performed before being accepted.

Ms. Earman referenced e-mails that had been submitted in the case and indicated that many of them were based on misinformation. She stated that John Ulfelder, a member of the civic association, had requested that the applicant limit the accessory dwelling unit to one occupant and not to increase the size of the accessory dwelling unit, because it could be made bigger. She said that was acceptable to the applicant. Ms. Earman said there was only one home between the applicant's driveway and Jeffrey Road, and there was also a park, so there could be some traffic issues related to the park, but they were unaware of any. She said the applicant was not running a boarding house; however, there were renters in the main house. He was in full compliance, and there was nothing contrary to the code or to what had been occurring there for the past decade, except that he was in full compliance and the former owner was not. She said staff supported the application. The applicant had complied with all of staff's requests. He would agree to the conditions set forth by staff, and he would also agree to the conditions suggested by the civic association. Ms. Earman requested a favorable vote by the Board.

Ms. Gibb said that this was the first time since she had been on the Board that a case such as this had come up where an affordable dwelling unit was an accessory dwelling unit. She asked Mr. Earman to explain it. Ms. Earman said the application had been submitted for an accessory dwelling unit because the County's policies said that if the intention was to serve 55 or older adults and to make it affordable as well, such a request would be supported Ms. Gibb asked Ms. Earman what the applicant's intent was. Ms. Earman explained that staff had asked for an approximation of the cost of rent, and he had given them a figure. After that they went to the Housing Department, where they had reviewed a chart for Section 8 vouchers. She stated that although this would not be a Section 8 unit, those actual rents were in conformance with what the accessory dwelling unit would rent for. Ms. Gibb asked whether the unit would be an affordable dwelling unit. Ms. Earman said the application had been made for an accessory dwelling unit, but it would be used for 55 and older and/or disabled persons pursuant to the policies. In reply to a comment made by Ms. Gibb concerning the difficulty a disabled person would have climbing the stairs, Ms. Earman replied that there were other disabilities such as deafness.

Ms. Gibb asked what the servant's duties would be. Ms. Earman stated that what had been required of the applicant to enable him to resolve the violation was to submit a letter setting forth the proposed duties. She

referred to her letter dated March 10, 2006, to William Shoup, Zoning Administrator, outlining those duties as landscaping, gardening, painting, and general overall handyman. She said the letter was an addendum to the contract establishing those duties. Ms. Earman said that she had advised the civic association that whenever a new servant was hired, the applicant would submit a copy of the affidavit and contract to them.

In response to a question from Ms. Gibb, Ms. Earman stated that a working dog would be one that would assist a disabled person. She said any pets would be restricted to the owner and not to anyone else residing on the premises.

With respect to the number of renters in the house, Ms. Earman said there would be two to three at any one time, and the regulations stated no more than four unrelated people.

The applicant, Christopher Poillon, came forward to speak. He stated that he had lived on the premises as a renter for five years prior to purchasing the property. In response to questions from Ms. Gibb regarding vehicles and parking, Mr. Poillon said all the residents had a car, and there would be three or four for the people at the main house, one for the servant, and one for the person living in the accessory unit, for a total of six cars on the premises at any given time. Ms. Earman responded to a complaint that had been made concerning a large parking area. She said there would not be any increase in impervious space.

In answer to questions from Mr. Hart concerning kitchenettes being in both cabins, Ms. Earman said there were permits for a wet bar, and then a kitchenette was put in. She said the applicant did not know that was contrary to code, and only the one in the servant's quarters was in use. She said the servant's quarters could be a separate dwelling, and it was in full compliance. Ms. Earman said the applicant had done the installation, and a permit had been obtained by the previous owner. Mr. Hart quoted from the permit granted in 2004 that stated there could be no second dwelling and no kitchens, servant quarters and guesthouse, and that the permit is approved with the understanding that the wet bar will not contain permanent cooking facilities and will not be used in conjunction with a bedroom, bathroom, and other living space in a manner that would constitute the establishment of a separate dwelling unit. Ms. Earman said the applicant had not been aware he was not permitted to do it. They existed for a very short time before he was cited with a violation, and once the applicant knew he was in violation, he boarded up the kitchens so they could not be used. She said they now knew that the servant's quarters could be a separate dwelling unit, the applicant had abided by all requests from the County, and no other permits could be granted until everything concerning the violation was cleared up.

In response to a question from Mr. Hart concerning inspections of the kitchens, Mr. Poillon said he did not think they were real kitchens even though they were by definition of Zoning. He said the only addition was a miniature oven and electricity. The wet bar consisted of a small sink with a small refrigerator. He said they were not full kitchens. Leslie Johnson, Deputy Zoning Administrator, Zoning Permit Review Branch, said that based on the permit that was reviewed by her assistant branch chief, there was specific discussion about what those accessory structures were for. She said a guesthouse was permitted in the zoning district, but with no kitchen. She said it was specific in the Ordinance, and she thought that was why it said guesthouse. Ms. Johnson said she did not know about the servant's quarters issue, but the bottom line was that if the Board approved the special permit application, the applicant needed to get building permits to add the kitchens and get them inspected. She said staff had seen many cases where people wanted to finish their basement and just add a stove, and they come in and get a building permit.

Mr. Hart questioned whether the limit of unrelated people allowed applied to the entire lot or was associated with each structure and how many would be too many with the three structures. Ms. Johnson said she thought it was based on each unit. She said the servant's quarters and the accessory dwelling unit were accessory to the principal dwelling. The main dwelling would be allowed to have four unrelated people, including the owner. She said the servant's quarters and the accessory dwelling unit had to be accessory structures, so if they had applied for something with two or three bedrooms and a kitchen, staff would have looked at it and likely not approved it. She said the applicant had indicated that one person would live in the servant's quarters, and she assumed that an elderly couple could live in the accessory dwelling unit.

Ms. Earman stated that only one person would be living in the servant's quarters if the accessory dwelling unit was approved. She confirmed Mr. Hart's statement that there would be four people in the main house and one each in the other units, for a total of six people living on the premises.

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In answer to a question from Mr. Hart concerning expanding the accessory dwelling unit, Ms. Langdon said Condition 5 limited the accessory dwelling unit to what existed, with a maximum of 304 square feet, so if the applicant wanted to expand, he would have to amend the special permit.

Mr. Beard noted that one of the neighbors had claimed that the servant's quarters was not brought into being until this issue came up, and he asked for clarification. Ms. Earman stated that it had been permitted by the previous owner as a servant's quarters, and she thought that perhaps the writer was misinformed. She said that when staff issued the notice, it cited the sections that were in violation, and the applicant had taken steps to correct all of them and was now in full compliance because he had done everything that staff had asked of him, and that consisted of writing a letter setting forth the details of the contract and affidavit, submission of a covenant in the County's deed books so that if anyone did a title search of the property, they would know that particular unit had an exclusive use as set forth in the County's requirements. Ms. Earman said the building had not been used as a servant's quarters. She said the applicant had owned the property for a short period of time, and as soon as the violation was issued, he had issued all the required notices and had the premises vacated immediately.

Mr. Beard said that the theme of some of the letters of opposition was that the neighbors were concerned that over time the servant's quarters would revert to a rental subsequent to any approval. Ms. Earman stated that she appreciated the neighbors' concerns and said she would be happy to speak with them and address their issues if they were present. She assured the Board that the applicant's position was to be in full compliance, and if there was a transition to a different gardener or landscaper, he would submit additional documentation so that if at any time there was another inspection, he would have the correct person's name. She again called attention to the letter in the staff report concerning the servant and the contract he had signed. Mr. Beard said he doubted that information would run to an individual and that every time the applicant changed personnel, he would submit updated information. Ms. Earman said that it was not a problem for Mr. Poillon, and if anything changed, he would submit the new information to the Zoning Administrator. She said that would not harm him because it indicated that he was trying to abide by the full intent of the Zoning Ordinance and was trying to be a good neighbor.

In answer to a question from Mr. Beard, Ms. Johnson said that if she received such a notice it would be filed, and she would probably send out a zoning inspector to ensure that it was being used in the manner in which it was supposed to be used. She pointed out that servant's quarters were a hard thing to monitor. Mr. Beard asked if it was a requirement of the issues being discussed today. Ms. Johnson stated that when staff received requests for servant's quarters, their policy was to require that the applicant submit documentation similar to what the applicant had already submitted, and they also record it in the land records as an appendix to the deed. She said staff would be concerned about the transfer of the property because the subsequent owner would know that they could only use that unit as a servant's quarters even if they had no need for a gardener. She said they could not rent it out as a separate dwelling unit, and that became a fine line. Ms. Johnson said that was why staff required an applicant, as part of this process, to record on the deed a statement that said that the dwelling was for use as a servant's quarters only and that any other use of the accessory structure had to be approved by the Zoning Administrator. For the transfer of title, she said that when subsequent owners did a title search, they would know what the limitations were on that structure. Ms. Johnson confirmed to Mr. Beard that staff would not have to be notified on an individual change, but if an applicant wanted to submit such a statement, they would put it in the record, and it would cover them if a complaint was filed.

Mr. Byers asked for an explanation of the difference between a servant's quarters and an accessory dwelling unit. Ms. Johnson said that under Article 10 of the Zoning Ordinance, the servant's quarters were a permitted accessory use with certain restrictions. Those restrictions were that there had to be two acres or more, and it was only permitted in certain zoning districts. She said it was by right, and as a part of the administration, staff required documentation, such as a contract with a person to provide domestic or gardening help. Ms. Johnson stated that an accessory dwelling unit required special permit approval. She said one of the units had to be owned and occupied by someone who was elderly or disabled, and there were specific limitations on an accessory dwelling unit.

In response to a question from Mr. Beard concerning whether the servant's position was required to be full time or not, Ms. Johnson said she assumed the servant would supply services in exchange for rent; however, there was nothing in the Ordinance that addressed the full or part time issue.

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Chairman DiGiulian called for speakers.

John Ulfelder, 9151 Old Dominion Drive, McLean, Virginia, Co-chair of the Great Falls Citizens Association Land Use Committee, came forward to speak. He had been made aware of the application three weeks before the hearing when a neighbor had informed him about it. He said many changes had been made to Mr. Poillon's property since he bought it, such as building two cabins in 2004. There did not seem to be any specific restrictions on the use of the servant's quarters, and there were three dwelling units now on the property. He believed the requirements may be difficult to enforce if a subsequent owner changed the uses and was not in conformance with the Zoning Ordinance. Eleven parking spaces were too many, and it was the neighbors' opinions that the applicant was attempting to maximize the number of renters on his property.

Chairman DiGiulian noted that the Board had received nine e-mails in opposition to the application.

Edward Tobin, Zoning Enforcement Branch, Zoning Administration Division, stated that there was an error in the staff report with respect to the site history. He said the three structures on the site had not been constructed in 2004. The main house had been built in 1976 and the two accessory structures in 2004.

Jeffrey Warrington, 270 Goldenwoods Court, McLean, Virginia, came forward to speak. He said that in March zoning officials were not able to access the Poillon property because the security gate had been installed earlier that month and that part of the gate was in his easement. Until he had spoken to the inspectors who had to park on his property because they could not gain access to the property, he knew nothing about the County's Zoning laws. He believed the applicant was not obeying the rules, and discussions had been held between himself, the prior owner, and Mr. Poillon concerning the reasons why an adjacent property owner was not in compliance with the Zoning Ordinance. He was surprised at the applicant's assertion that he was unaware of his violation, and if the Board denied the application, it would not prevent the applicant from enjoying his property or his rights as an owner. It would just limit the number of renters that he could legally support. Approval of the application would be an example of how little the objectives and the purpose cited in the Zoning Ordinance really meant; the neighborhood was zoned R-E; and he wanted to ensure the preservation of the character and value of the properties in the neighborhood.

In her rebuttal, Ms. Earman stated that she had a copy of the file concerning the servant's quarters which was not included in the staff report. She said she was disheartened to hear the neighbors' objections to the application because the property was a four-acre lot and was heavily wooded. She said the applicant was doing everything he could to enjoy the use of his property and to permit others to do the same. Ms. Earman said she would take guidance from the Board as to whether they thought she and the applicant should meet with the neighbors and should have the case deferred, but it was her opinion that the applicant was permitted to use his property in full accordance with the Zoning Ordinance, and that was what he was doing. She said the prior owner had not done that because she had a barn, two renters, and five people in the house, and that was what the applicant thought was permitted, and it was unfortunate that he was mistaken and was cited for that. She said he had done everything he could to be in full compliance and would continue to do so, and his efforts showed his intent to fully utilize his property pursuant to the Zoning Ordinance. Ms. Earman said she did not think the applicant should be prohibited from doing that just because some of the neighbors did not fully understand the use of the property, what was permitted, and how he had been trying to improve it. She expressed regret that she and the applicant had been unable to meet with the citizens association members. She stated that having an accessory dwelling unit that fit the parameters of housing someone 55 or older or with a disability was a great thing to do, and it further enforced the policies of the County. She asked for the Board's support of the application or guidance on whether they supported a deferral to allow more time to discuss the application with the neighbors.

Chairman DiGiulian asked Ms. Earman if she was requesting a deferral. She said she was seeking guidance from the Board to determine if they thought it might help the situation for her and Mr. Poillon to meet with the neighbors. She said the applicant was not requesting a deferral, but would agree to one if the Board thought it appropriate to do so.

Referring to Item 4 of the agreement that stated a servant understood and agreed that he or she had exclusive use of the servant's quarters on the property being served, Mr. Beard asked if that was payment for the job. Ms. Earman replied that there should be no other person in that unit and compensation would be $20 per hour. Ms. Earman stated that the person living in the servant's quarters would have to work full time, and his or her duties were specified in her March 10, 2006 letter to Mr. Shoup. She confirmed that as part of

that person's compensation, he or she would not pay rent on the unit. Ms. Earman stated that the servant's quarters was not a rental property. Mr. Varga said that staff understood that the unit was not a rental property and that the work would be reciprocated by use of the servant's quarters.

In answer to a question from Ms. Gibb, Ms. Earman confirmed that the accessory dwelling unit would be occupied by only one person. She said that was not a requirement, but it had been suggested, and the applicant agreed to it.

Ms. Langdon clarified that staff did not get involved in the issue of rent, and there was nothing in the Zoning Ordinance that said that a servant could not pay rent for where he was living. Mr. Beard asked if that would change the use of the unit because it was in the agreement. Ms. Langdon stated that there was nothing in the Zoning Ordinance that would involve staff. Mr. Beard asked what the difference was between paying rent and not paying it. Ms. Johnson said applications were looked at on a case- by-case basis, and an applicant would have to provide documentation that would make staff comfortable that they were acting as a servant. She said she thought that perhaps employment would involve the person being paid a salary versus paying rent and have free room and board for providing services. She said that was why staff asked for employment contracts and whatever documentation staff could get that specified the unit was a servant's quarters because, by definition, the person would be employed by the homeowner.

Mr. Beard and Ms. Johnson discussed what could happen with respect to any payment of rent by the servant. Ms. Johnson stated that staff did not get involved with whether rent would be paid or not. Mr. Beard said that could be a ruse, and Ms. Johnson agreed that could happen; however, staff would not know that. Ms. Earman stated that she had advised the applicant that the unit was a servant's quarters, and that's what the land records indicated. She reiterated that it was not a rental unit. In response to a statement from Mr. Beard that it would run with subsequent owners, Ms. Earman said there was a covenant in the land records to prevent that.

Responding to a question from Mr. Hart, Ms. Earman said there were two septic fields on the property. Mr. Hart asked whether there was a requirement to show that on the plat. Ms. Earman indicated that the applicant had been required to file supplemental septic information to staff, and it had been determined by the Department of Health that all the buildings were sufficiently serviced. Mr. Hart pointed out that the plat in the staff report was different from the plat before the Board and asked if it was correct. Ms. Langdon replied that with the Department of Health's information, there was a plat and information the applicant had submitted to the Health Department that showed the septic fields, and they had approved everything on the site as being under septic.

Mr. Hart said the Board would not require a meeting with the neighbors, but the more explanation there was, the easier it would be for everyone to get along as neighbors. He said he thought that some tightening up of the development conditions would benefit both the neighbors and the applicant. He said the applicant had expressed a willingness to commit to some things which the conditions did not address, and he thought it would be difficult to draft additional conditions at the hearing. Mr. Hart said that if there was a short deferral, a few things could be addressed in the conditions with respect to there being a maximum of four people residing in the main house and a maximum of one person in each of the accessory units. The applicant had agreed to resubmit the agreement within a certain period of time when the occupant changed. Mr. Hart referred to the pavement and parking spaces that had been objected to by the neighbors and suggested that the applicant add a condition that he would not increase the number of parking spaces.

Mr. Hammack asked whether the servant's quarters, by definition, was an accessory dwelling unit. Ms. Johnson said yes, because there was a separate definition for an accessory dwelling unit in the Zoning Ordinance. In answer to another question from Mr. Hammack, Ms. Johnson said servant's quarters was a permitted accessory use under Article 10.

Chairman DiGiulian closed the public hearing.

Mr. Hammack asked staff to submit a definition of servant's quarters to the Board. Ms. Johnson responded that there was no specific definition for a servant's quarters and stated that it was just one of the permitted accessory uses referred to in Article 10. She said she would provide a copy of the article to the Board. Mr. Hart noted that the building permit application that had been circulated at the hearing did not have a plat attached to it. Ms. Earman said the document was hers, and she would submit copies to the Board.

~ ~ ~ May 23, 2006, CHRISTOPHER POILLON, SP 2006-DR-012, continued from Page 332

Mr. Hart moved to defer decision on SP 2006-DR-012 to June 27, 2006, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 7-0.

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Chairman DiGiulian recognized and welcomed former Board of Zoning Appeals member, James Pammel, who was in the audience.

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

The meeting recessed at 10:50 a.m. and reconvened at 12:14 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Byers were not present for the vote.

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~ ~ ~ May 23, 2006, Scheduled case of:

9:30 A.M. M SCRAP CORPORATION T/A M SCRAP AS LESSEE OF 6304E GRAVEL AVENUE, A 2006-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a recycling business on property in the I-4 District in violation of Zoning Ordinance provisions. Located at 6304E Gravel Av. on approx. 10.626 ac. of land zoned I-4 and NR. Lee District. Tax Map 91-1 ((1)) 36B. (Admin. moved from 4/4/06 at appl. req.)

Chairman DiGiulian noted that A 2006-LE-001 had been administratively moved to June 27, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ May 23, 2006, Scheduled case of:

9:30 A.M. RICHARD WILLIAM HORNER AND MARGARET DRAFFIN HORNER, A 2006-DR-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an amendment to Variance VC 85-D-061 is not required to construct a second story addition on a portion of an existing detached garage, and that the addition meets the minimum side yard requirements for the R-3 District, under Zoning Ordinance provisions. Located at 1426 Colleen La. on approx. 20,701 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-1 ((9)) 208. (Decision deferred from 4/25/06)

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

CHAIRMAN DIGIULIAN: So we'll go to Richard William Horner and Margaret Draffin Horner, Appeal 2006-DR-005. Ms. Stanfield.

MAVIS STANFIELD: Yes, Mr. Chairman, thank you. Ms. Tsai will be presenting the staff's position.

MARY ANN TSAI: Good afternoon, Mr. Chairman, Members of the Board. This is an appeal of a determination that an amendment to Variance VC 85-D-061 is not required to construct a second-story addition on a portion of an existing detached garage and that the addition meets the minimum side yard

requirements for the R-3 District under Zoning Ordinance provisions. The subject property is located at 1426 Colleen Lane in the Potomac Hills Subdivision, which is northwest of Kirby Road, south of the Potomac Hills Park, and east of the Potomac School. The property is zoned R-3 Residential District, three dwelling units per acre, and is developed with a single-family detached dwelling unit on a -- with a detached garage that is approximately 24 feet by 24 feet in area with a second-story study above containing approximately 408 square feet of space and a bathroom. The second-story addition is located within the side and rear yards and does not encroach into any minimum required yards.

By way of background, on November 7th, 1985, Patrice and Madeline Guilmard, the owners of the subject property, applied for and were granted a variance to allow construction of a detached garage five feet from the side lot line on the south side of the subject property. The R-3 District -- in the R-3 District, the minimum required side yard is 12 feet. As the BZA may recall from its April 25th, 2006 meeting, the Board requested the presence of Barbara Byron, Director for the Zoning Evaluation Division, at today's public hearing. It is also noted that at the -- that the property owners should have the opportunity to address the BZA at today's hearing. Unfortunately, Ms. Byron is not able to attend the meeting; however, Leslie Johnson, Deputy Zoning Administrator for Zoning Permit Review Branch, who consulted with Ms. Byron on the zoning determination, is present. It is also staff's understanding that Mr. Guilmard -- Mr. and Mrs. Guilmard are at today's meeting. Staff received a fax on Friday from the Guilmards' attorney requesting a deferral to allow him more time to review the issues of this appeal.

Since the last BZA meeting, staff has received additional letters with information which is erroneous and should be clarified. First, there was a question raised about a residential use permit as required for a change in the residential use permit previously issued for the garage. Section 113.8 of the Virginia Uniform Statewide Building Code states in relevant part that the approval of a final inspection shall be permitted to serve as the new certificate of occupancy required by Section 116.1 in the case of additions or alterations to existing buildings or structures that already have a certificate of occupancy. Therefore, a new residential use permit is not required. This information was provided by the Deputy Director for Building Plan Review.

Second, an argument has been made that the garage and second-story addition are one structure. From a zoning perspective, this is irrelevant. The portion of the garage that was the subject of the variance has not exceeded the area approved for the variance. The1985 variance was granted for the garage to be located five feet from the side lot line, which it does, and remains in the same location as in 1985; however, the second-story addition located above the garage is not located in any minimum side yard requirement, but solely in the side and rear yards. Further, the determination was made that the second-story addition does not require an amendment to the variance since it is not located in any minimum required side yard.

Third, a question has been raised on the distance of the garage from the side lot line. A certified plat dated March 7, 2006, indicates the distance from the garage to the side lot line is 5.6 feet. As noted in the staff report, based on a long stor- -- based on longstanding practice, staff has routinely approved additions to properties where a variance has been granted provided that the proposed addition meets applicable Zoning Ordinance provisions and does not further exacerbate the need for a variance. The proposed second-story addition on appeal does not encroach into any minimum required yard and is located wholly in the side and rear yards; therefore, the determination was made in consultation with the Zoning Evaluation Division that an amendment to VC 85-D-061 is not required.

Staff recommends that the BZA uphold the Zoning Administrator's determination, finding that an amendment to the variance is not required to construct a second-story addition on a portion of an existing detached garage and that the addition meets the minimum side require -- side yard requirements for the R-3 District under Zoning Ordinance provisions. Thank you, Mr. Chairman.

CHAIRMAN DIGIULIAN: Before I ask for questions of staff, could we hear from the Guilmards' attorney, who's requested a deferral.

BARNES LAWSON, JR.: Mr. Chairman and Members of the Board of Zoning Appeals, for the record, I am Barnes Lawson, Jr. I've discussed it with my client, and they'd like to go ahead and proceed this morning if that's still acceptable to the BZA.

CHAIRMAN DIGIULIAN: Okay. Okay, now questions of staff?

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you. Ms. Tsai or Ms. Stanfield, I take it that staff was unable to identify any court cases on the question of whether a structure that had a variance before could be modified later.

MS. STANFIELD: I -- we don't really have the -- Mr. Hart, we really don't have the resources to do extensive research on this. We did, however, ask the County Attorney's Office if they were aware of any such court cases, and they were not aware of any.

MR. HART: Okay. The -- we were given the one interpretation from Mr. Varney responding to Ms. Strobel's questions in 2002. Were there any other written interpretations again on the question of whether a structure that had a variance could be later modified? I guess that was -- I don't remember who wanted Barbara Byron to be here, and I -- okay, I guess the question that's obvious is staff has taken the position that this is a longstanding interpretation, that we've done this many times, that we have to give great weight to this long-settled practice of whatever, but there doesn't seem to be any -- it doesn't seem to have been tested in any way. I mean, it doesn't seem like it's resulted in any cases with this Board or that anyone remembers or a court case, and the only interpretation that we've got, it dealt largely with other issues, was the one from Mr. Varney. What I was hoping was that -- and maybe Mr. Byers had a different issue also, but that somebody could show us that this really is a longstanding practice instead of an isolated interpretation in 2002, the only time it's ever come up, or that it has never come up, it's never come to the BZA, it's never come to the Circuit Court, because I think I agree that if there really is a longstanding practice of doing this, that that -- we really ought to be taking that seriously, but there just didn't seem to be a whole lot of substance if we scratch the surface. That's a whole -- that's a mouthful, but that's kind of what my question was and did we find anything else besides Mr. Varney's interpretation in '02.

LESLIE JOHNSON: Mr. Hart, the problem I think that we're having is that because it has been such a longstanding process, that when, you know, permits -- when somebody comes down to the second floor to obtain a building permit to, you know, put an addition on or a deck on or something like that, if there was a variance, I know that the staff looks very carefully at the -- you know, what the variance was for, but because of the fact that as long as it wasn't -- that the addition was in conformance with the Zoning Ordinance, we would approve the permit, so there wouldn't be any, quote, record of it. Do you see what I'm saying? Because unless there was a complaint or an appeal or we said no because we felt that it wasn't in conformance and then they had to come up for a special permit, so that's why I think it's hard for us to come up with specific examples without combing through all of the variance files over the last 20 years.

MR. HART: That's fair enough if that's the answer. I just -- I think we had hoped that there would be more of a -- more to it than just something happening at the counter. Thank you.

CHAIRMAN DIGIULIAN: Further questions? All right. Mr. and Mrs. Horner, the Horners.

RICHARD HORNER: Should I reaffirm my application? Is that the process?

CHAIRMAN DIGIULIAN: No, that's not necessary in an appeal.

MR. HORNER: I wasn't really clear what the process was here.

CHAIRMAN DIGIULIAN: Just state your name and address for the record, sir.

MR. HORNER: Richard William Horner, I reside at 1428 Colleen Lane, McLean, Virginia.

CHAIRMAN DIGIULIAN: Okay, thank you. Now you can proceed.

MR. HORNER: Well, the -- I thought we were going to hear from the Guilmards, but the -- just to reaffirm, I just want to make sure, did you get my letter of May 12th, 14 pages with analysis of the 1985 variance resolution brief? I just want to make sure everybody got it and had a chance to read it. Is that affirmative?

CHAIRMAN DIGIULIAN: Yeah, we have one. I don't see a date on it, but it was received on May 15th.

MR. HORNER: Okay, and there's another one from May 19th from my wife, four pages, which is her contribution to the written brief that we submitted. Anyway, this is, you know, again, we're back to reworded, we do this all the time, Mr. Horner. We do it all the time. What's the problem here? And the problem is do a little show me, okay, because I can read the Ordinance, and you can read the Ordinance, and the Ordinance is pretty clear. The Ordinance says this is a new structure, a new structure that's materially different from the structure that was described in an application and submitted on a plat in 1985, 24 by 24 by 12, a garage. Okay? This is in dif- -- this structure is different in location. It's different in character, and it's different in other features. It's a different structure.

Secondly, granting a variance, granting a variance is a process. It starts with an application and hardship. You have to show hardship. You submit an application, and you have to meet nine standards. Okay? This garage guest house doesn't meet the nine standards. It was never vetted. How can someone say you can use this variance? This was never submitted for a variance.

Secondly, conditions, the conditions are clear. Section 404 says that the BZA is the only one that can grant a variance, and you can only grant a variance for the minimum structure that was applied for. You can't give it any -- you can't give it any -- you can't them anything more, and they applied -- and the variance says -- it's clear. It's for the structure and the use, not that portion of the structure that's located in the side yard setback. It's very clear, the words.

Third, you know, we're very disappointed that staff -- we're very por- -- disappointed that the staff in none of their reports has ref- -- have been able -- have referenced the Ordinance. Okay, we're talking about an Ordinance. Before you start jumping into we do it all the time, I think you need to step back and look at the Ordinance and read the Ordinance and say let me take this case, let me apply it to the Ordinance and take the facts, and does it meet the test or not? It's clear that staff has not done that. Rather they rely on arguing precedent using analogies that are neither based on law nor common in fact with this case. The first case they use is this Walsh case, which is in a different district, R-2 versus R-3. It involves the subdivision of lots. It has noth- -- lots that were created back in 1909 or 1919, something like that, and it deals with the addition of living space to a dwelling, not the addition of living space to an accessory structure, a garage.

The second, as we heard today, deals with the decks. Okay. You know, if someone wants to put a deck on a dwelling that was subject to a variance, I don't think -- unless that deck sits in the setback area that was subject to the variance, I don't think anyone's going to argue with that, but this is a material change, okay? And I know Mr. Hammack questioned me in the past on this, and I think the subject is -- the word is "material." This is a material change, a material change in character, location. This is apples and oranges.

Third, we're also extremely disappointed that Mrs. Byron isn't here today, as requested by the Board. We were hoping that Mrs. Byron would clarify the process in which the Zoning Administration Division interacts with the Zoning Evaluation Division on matters such as this one. You will recall that Lisa Feibelman of the Zoning Evaluation Division advised us in December that this building permit required a referral to the Building Evaluation Division prior to any approval and that this would have to be referred to the Board of Zoning Appeals because it involved a variance. This was not done. They violated that process.

In closing, there's one other thing that I'd like to bring to your attention, and that has to do with House Bill 918, which is very new, and a section -- I'll read you a section of House Bill 918 that specifically is on point. Notwithstanding any other provision of the law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the use or the structure permitted by a variance may not be expanded. This is clearly in violation of this House Bill.

And in closing, the facts are clear. A building permit within a 12-yard setback requires a variance. Only the BZA has the authority to grant a variance. The only variance issued by the BZA at 1428 Colleen Lane was in 1985, and that was for a garage with a side yard setback of five feet. That garage met the standards for a variance. The building permit issued on January 3rd, 2006, for a structure that is materially different in character, location, and other features from that structure was not subject to the 1985 variance application. This new and materially different structure would not meet the standards for a variance as required in the

Ordinance. The 1985 variance resolution also had conditions that clearly applied to the entire structure and not just that portion of the structure situated within the 12-yard setback. The new structure clearly violates those conditions. Accordingly, it is clear this building permit was issued in error, and the Zoning Administration Division had usurped the authority of the BZA by granting a variance without authority. The Zoning Administration Division made an error. We are -- we were hoping that they would admit it and accept responsibility. Since they are unwilling to be held accountable, we respectfully request the BZA fulfill your duties under the Ordinance and find, as is required under Section 18-114 of the Ordinance, that this building permit be declared null and void and of no effect. Thank you very much.

CHAIRMAN DIGIULIAN: Thank you. Questions?

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you. Mr. Horner. One of the papers that we received during the deferral was a letter from Mr. O'Brien, who is an architect, I guess, supporting you. I'm not sure what exactly his relationship to all this is, but the issue that he raised is one that we haven't spent a lot of time with. We have, on the one hand, I think, a certified plat showing the garage 5.0 feet from the side line. Mr. Horner -- excuse me. Mr. O'Brien is saying in this letter that it's not five feet, it's four feet, nine inches, according to measurements taken at the site, but we don't have any -- I don't think we have anything other than that. If we're supposed to decide something like whether it's five feet or four feet, nine, do you have anything else to show us that it isn't five feet or is it just Mr. Horner's letter?

MR. HORNER: Mr. O'Brien's letter.

MR. HART: I'm sorry. Mr. O'Brien's letter. Excuse me.

MR. HORNER: I don't know. I have not had this surveyed. I will say one thing, my wife may be -- she -- I wasn't present, but my wife told me that there was actually a surveyor on our property surveying the lot when the construction was going on, and she asked the surveyor specifically -- he was on our lot -- how far -- what was the distance from the side lot to the garage. And I think he mentioned 4.9 inches, but whether that was, in fact, the truth or -- and whether Mr. O'Brien got his information from that source, I don't know.

MR. HART: Okay. Thank you.

CHAIRMAN DIGIULIAN: Okay. Further questions? Thank you. Is there anyone else to speak to the appeal?

MARGARET HORNER: I would like to take this opportunity, please, to read a letter to you that I submitted on May 19. My name is Margaret, nickname Peggy, Draffin Horner, and it's to you all. And I think it speaks for itself. Dear Members of the Board of Zoning Appeals, I would like to supplement my husband's letter of May 12, 2006. I apologize for getting it to you so late, but I've been out of town for over a week due to the death of my 90-year-old mother on Saturday, May 13, 2006. I've had an opportunity to review the staff report by Fairfax County dated May 16, 2006, and Barbara Byron's letter of May 15, 2006.

Barbara Byron's absence, it is too bad that Barbara Byron, Director of Zoning Evaluation Division, Department of Planning and Zoning, can't be here to attend this May 23, 2006 Board of Zoning Appeals public hearing for which you specifically requested her presence at the April 25th BZA public hearing. We, as appellants, are extremely disappointed that she is unavailable to answer to you. We want to know the process that Fairfax County follows to approve a building permit. Had she actually read the November 7, 1985 variance for the new structure that was issued for 1426 Colleen Lane, McLean, Virginia, in January 2006? Was she influenced by the fact that the Fairfax County had already issued a building permit and that Leslie Johnson temporarily halted Bowers Builders for a day-plus and that the existing structure was already torn down, demolished by the time she was notified? Her report does not cover the sequence of any decision by her, and that is troubling.

Barbara Byron's letter, we are offended by Barbara Byron's suggestion to you, the BZA, that in the future you might want to be more specific in your decision making for variance approvals. Her statement clearly shows that she's not read and also does not understand the conditions of variances in the Zoning Ordinance of Fairfax County. The law is quite clear in the Zoning Ordinance, Sections 18-404 and 18-40 -- excuse me -- 405. How can you, the BZA, have been more specific than you were on November 7, 1985? You don't need to say any more because the BZA can only grant the minimum of what was asked for. We really do not understand how Barbara Byron could even pose that question to you to consider. What she needs to do is go back and read the Zoning Ordinance of Fairfax County, and she will learn that the BZA can only grant the minimum, nothing more. If a later request for a material and substantial change in a variance comes to the Zoning Administration Division, each case must be carefully reviewed against a new request. Any existing variance that applies to it may be -- must be evaluated carefully, and then a review must be made of the Zoning Ordinance to see if all of its conditions are still met for the pending new building permit. Since this permit was for a building completely different in size, scope, et cetera, from the original structure granted by the variance as well as the fact that the entire new structure was in violation of R-3 zoning in our neighborhood, the permit should have immediately gone to the Zoning Evaluation Division for their review and to ensure the adherence to due process and the law. This clearly was not the case in this particular building permit for 1426 Colleen Lane, McLean, Virginia, or we would not be here.

Lisa G. Feibelman, Planner of the Day, Staff Coordinator, who works for Barbara Byron in Zoning Evaluation Division, told me on December 19, 2005, and then again in early 2006 that the per- -- excuse me -- that no new building permit could be issued for the types of significant major changes the Guilmards were proposing to the garage at 1426 Colleen Lane, for which a variance was approved by the BZA November 1985 and built within short time afterward without the request coming to the Zoning Evaluation Division from the Zoning Administration Division to let due process take its course. She was the one who specifically cited the 12-foot height limit for the entire structure. Since the Guilmards' proposed new structure was so different, she said don't worry, we would be notified about a public hearing because we are one of the adjacent neighbors.

On December 20, 2005, she kindly sent me her business card with a copy of the November 7, 1985 variance with a copy of the plat with a specific height of 12 feet and a 24-by-24-foot footprint. As of early 2006, this building permit request had still not been logged in to the Zoning Evaluation Division for consideration and appropriate action. The 1985 variance was extremely specific in its footprint, its height, its use, and the Guilmards were given exactly what they applied for approximately 20 years ago. This new structure, with a larger footprint, expanded use of an office/study/second dwelling/commercial garage/place to take a shower after gardening and working on cars, and a large outcry from us as well as the majority of the adjacent neighbors in 15 personal letters to the BZA and over 40 neighbors who signed a petition prove that the new variance for the new structure would never be granted now.

The Guilmards knew we were strongly opposed to any change to their garage, and we were told numerous times by various County employees that the Guilmards would never get a variance granted because the Cochran decision in April 2004 by the Virginia Supreme Court. That is why we are convinced this building permit was squeezed through Zoning in Fairfax County, and by the time it was fully built, everyone would think it was too late to reverse a horrible error. That is why we have a Board of Zoning Appeals, to correct errors if the County can't seem to do it themselves and to make tough decisions to ensure that building permit meets the spirit and the letter of the law.

Staff report of Fairfax County dated May 16, 2006, Mary Ann Tsai uses an analogy of a deck onto a dwelling and thinks somehow this case is applicable to our appeal. It is the difference between apples and oranges. A 12-foot high, 24-by-24 double-car garage is certainly not the same thing as a new multipurpose second-story structure with a complete second-floor dwelling with a marble bathroom.

CHAIRMAN DIGIULIAN: Excuse me, Ms. Horner. Your red light has been on for some time.

MS. HORNER: Yes, sir.

CHAIRMAN DIGIULIAN: Would you please sum up.

MS. HORNER: Yes, sir. Basically, we feel that the due process has not taken place in this case and that the County clearly made a decision that was wrong. And they had an opportunity to stop it three days after

the building permit was issued, and they chose not to. And the fact that we do it all the time is not a good excuse or reason. Thank you, sir and ma'am.

CHAIRMAN DIGIULIAN: Questions? Thank you. Is there anyone else to speak to this appeal?

MR. LAWSON: Thank you, Mr. Chairman, Members of the BZA. For the record, my name is Barnes Lawson, Jr., and I represent the owners of the property subject to this appeal. The first thing I would state, I did have an opportunity to review the tape. The first thing that I would tell -- share with you is that we are perfectly willing to put a covenant on that this will never become an accessory dwelling unit, that nobody will live there, nobody will reside there, and so forth. So we wanna -- that's kind of a red herring, and we certainly would like to put that to rest by a covenant or whatever appropriate means we can do.

I want to take just a moment and read to you from the Fairfax Zoning Ordinance, discussing special permits, and what it says is except as may be permitted under paragraphs 3 and 4 below, no use shall be enlarged, expanded, increased in intensity, or relocated, and no condition of the special permit shall be modified unless an application is made and approved. What that means is that when you process a special permit, you get an approval. You're stuck with that. You cannot enlarge it. You cannot modify it unless you come back to the BZA. There's no similar section for variances. There is for special exceptions, but there is not for variances. So there is no language in the Code that prohibits an otherwise legal addition to a structure approved by a variance.

So then you gotta go look at the condition, and the condition that was imposed, this variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land. And I wanted to share with you that I think there are three concepts of statutory interpretation we need to keep in mind. One concept is is when you say it specifically in one place and then you don't say it specifically in another place, then you maybe didn't really mean it, and I guess what I'm saying is that if you wanted to say you cannot enlarge this, then you would have said and you cannot enlarge this because in other areas of the Ordinance, that's exactly what it says. It says you shall not be expanded or enlarged, so if the BZA had meant that, then it should have been so worded.

The second concept, again, is when one gives up a legal right, that has to be very clear, so if we're going to say to someone who gets this variance, you know, we want you to know you're giving up the right to enlarge it in a way that complies with all the other provisions of the Ordinance, then, again, you have to say it specifically. You know, a concept or something similar might be, you know, some kind of a contract that we might enter into and the contract says, you know, you'll go to arbitration. Well, unless it says and you can't go to court, then I think you still have the right to go to court.

And then the third -- the third thing I would share with you on statutory construction is there is a line of cases, and they say that when something is not crystal clear, you have to go with the way the staff has administered the Ordinance. And it's called a Segaloff line of cases. It was cited in the Occoquan down zoning, that is, that, you know, there's all this stuff out there that we can't come back to the BZA for every single decision, and so we have a staff that administers the Ordinance. And that staff has to be given deference when they've been doing it for a long time and that's the way they've been doing it.

The last thing I'll say is this, the condition is referencing a specific addition, and, you know, I've read it, and I've read it, and I've looked at the plat, and I don't know exactly what is meant by the addition. Is it talking about the garage in totality? Is it talking about the part of the garage that enters into the prohibitive setback? And so I think there is some unclarity as to what was meant, and it would just be a tragedy if these folks had to tear it down what they just built based upon what I think is ambiguous and their good faith interaction with the Zoning officials. Thank you very much.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Mr. Lawson.

MR. LAWSON: Yes, sir.

MR. BEARD: Would you help me again with your analogy. Being a layman, your analogy about arbitration, if it says go to arbitration, then you -- I think I heard you contend that if it doesn't say not to go to court, that after arbitration you can go to court. Is that what you said?

MR. LAWSON: Yeah, what I was -- the point I was trying to make, perhaps not very well, is that if you're gonna give up a legal right, then you have to come right out and say you're giving up your legal right. So the BZA referenced a set of plans, and you all referenced a plat, and -- but you didn't come out and say and upon the grant of this variance, you have lost your right to add onto this structure, even if the addition complies with the Ordinance. That's the point I was trying to make.

MR. BEARD: And your analogy about arbitration was the fact that arbitration is mentioned doesn't negate the fact that you can go elsewhere.

MR. LAWSON: Still go to court.

MR. BEARD: Although one might say, well, why was arbitration even inserted.

MR. LAWSON: Right, and the answer is because there's a concept in the law that if you're gonna give up a legal right, you have to specifically give up your legal right.

MR. BEARD: So we're talking about implication.

MR. LAWSON: Yeah.

MR. BEARD: Thank you.

CHAIRMAN DIGIULIAN: Further questions? Thank you.

MR. RIBBLE: Excuse me. I have one question. Mr. Lawson, why wouldn't they apply for an amendment to the variance pure and simple?

MR. LAWSON: You mean right now?

MR. RIBBLE: Yeah.

MR. LAWSON: We certainly could. I've been -- I guess I would be reluctant to do so given the hesitancy on the part of the Board to grant variances, but if that would be a way out, certainly.

MR. RIBBLE: If you presented a good case, we wouldn't be so hesitant.

MR. LAWSON: The answer is normally with a situation like this, I would file for a variance, but I haven't been doing so since Cochran.

MR. RIBBLE: But that's your choice, I mean.

MR. LAWSON: Yes, sir.

MR. RIBBLE: Okay.

MR. LAWSON: I guess, in the very beginning, had they been told this five feet is a problem, then they could have chosen that route to go down.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you. Mr. Lawson, just following up on Mr. Ribble's question, why wouldn't you -- rather than apply for a variance, why not apply for -- assuming we -- if we upheld the appeal, why wouldn't you apply for a special permit for mistake in building location? Why wouldn't you say we built it? We relied on the building permit. What would prevent that? It seems to me that would be much easier

standards than an amendment to the variance.

MR. LAWSON: We haven't looked into that. Certainly if, you know, the appeal is upheld, then we'll have to explore that.

MR. HART: Okay. I mean, there's not some procedural reason why they couldn't do that, Ms. Stanfield? I mean, they could if they wanted to?

MR. LAWSON: They can't get a relief for height, I don't think, for the building in error location.

MS. STANFIELD: That's correct. Right. That's correct. The -- it would be applicable in this case.

MR. HART: It would or it wouldn't?

MS. STANFIELD: It would.

MR. HART: They could apply for that?

MS. STANFIELD: Sure, they could apply.

MR. HART: Okay.

CHAIRMAN DIGIULIAN: Okay. Further questions? Thank you.

MR. LAWSON: Thank you.

CHAIRMAN DIGIULIAN: Is there anyone else to speak to the appeal?

PATRICE GUILMARD: Mr. Chairman, my name is Patrice Guilmard, and I am, with my wife, Madeline, a owner of the house at 1426 Colleen Lane. Since we did not have an opportunity to address the Board at the last hearing, I will try to be as concise as possible, but I may be slightly longer than three minutes. I beg for your indulgence.

Mr. Chairman, Members of the Board, first I would like to apologize to you for not having been present at the last hearing, but unfortunately a very serious health situation in our family prevented us from coming back home until last week. And I do apologize for that. I would also to thank the Board to give us this opportunity to take the floor and to give me an opportunity to provide my own answers to questions that had been asked at the last hearing.

Our concern from day one was to do everything by the book because we are not American born and not that familiar with modern procedures. Bowers Design Build, our construction company, totally understood this concern and supported us. Throughout the whole process, we have fully relied on the County to provide guidance and instruction on the project, and we had total faith in their (inaudible) professionalism. Our house is small, especially by today's standards, and we wanted to have a bit more space. We did consider several alternatives. For better or for worse, we chose an alternative which combined the needed restoration of our garage with the construction for study over a portion of that garage. This alternative has added only some 400 square feet to -- of living space to our home, including the small bathroom, has 140 square feet of deck, which was required to provide access to the second floor. And this addition is much smaller than many of the Potomac additions which have been made around us.

The footprint of the garage, Mr. Chairman, has not changed by one inch. The portion of the garage within the 12 feet setback zone is strictly identical, as required by the building permit. The study on top of the separate area is a separate area which does not communicate with the garage and which is -- which had its own deck entrance that's been built fully in the by-right area beyond the 12-foot setback line, as required by the building permit. Now, if we had been told that a structure built under the variance could not be refined without an amended variance, we would have asked for one or we would have chosen a different solution. May I be allowed to continue, Mr. Chair.

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CHAIRMAN DIGIULIAN: Quickly, sir

MR. GUILMARD: Thank you. When the Horners first complained, Mrs. Johnson requested that we suspend work, and we did so immediately. On January 9, we -- she sent an e-mail to Bowers Design Build stating that she had reviewed the building permit, the proposed building plans, along with the approved variance plat, with Mrs. Barbara Byron, Director of Zoning Evaluation Division. Their decision was that the building permit was approved correctly. This language is clear to me. The building permit was approved correctly. Nonetheless, Mr. Horner accused us and Bowers to rush work to try to present the County with a fait accompli, a most serious accusation, I must say, which cannot be further from the truth. But we heard nothing, nothing more from the County or the Horners. For there is a January 9 decision taken by the staff, we naturally assumed that there were no more issues, and we pursued work as per our contract. We were informed on February 17, 39 days after the January 9 decision, that an appeal had been filed.

A lot was discussed about the use of this addition, and the Horners are trying to convince us that we need to have a guest room or servant quarters or what have you. This is total nonsense, Mr. Chairman, I'm sorry to say. We are no longer gainfully employed, my wife and I, and this is our retirement home where we intend to spend eventually most of our time. There was never any intention whatsoever to rent, lease, or let the space above the garage, which is strictly for personal use. There is no plumbing, rough-in, pipes, et cetera, to allow for future features like installing a kitchen, but paramount this would be illegal. So the space is not a dwelling. It has no closet, and a kitchen or even a wet bar is strictly forbidden, as the stamp of approval by the Zoning Administration clearly shows. We have never broken the law, and we don't intend to start now.

We were astounded to see that people which whom we have never discussed our project, people who never approached us, like Mrs. Somers at the last hearing, describe how we intended to use the space. On the other hand, we have forwarded to the staff a fair number of letters from people who know us, who know our character, and with whom we have discussed the project and the various alternatives since day one, and they all clearly underline the intended personal use of the space. Yes, we may have used the words somewhat loosely or interchangeably, office, study, storage area, whatever, but we didn't think it was a big deal. I am work- -- I am not working anymore, and the space will be used as a study. Besides, any reasonable person would conclude that the huge windowed area in the study makes it a space designed for day and not for night living. May I show a picture, Mr. Chairman? Who would like to sleep in such a fishbowl? Moreover, the proximity and location of the two structures would make renting or housing servants or nannies simply unbearable. This would be, as they say, too close for comfort.

Mr. Chairman, I have a kidney condition, and I wish to have a small bathroom not too far away. The shower was an afterthought. I understand it was a concern of the Board, so I want to just say a word about it. The significant expense is in bringing water and hooking up to the sewer line. Once you have done so, adding a small fiberglass shower cabin, $319, plus faucet is not significant. I simply thought it would make sense to be able to wash up after work in the garage or in the yard.

Regarding the environment, I would say that all constructions are bound to have an impact on other properties. We had a forest next door to us on the right. And then they built four houses, and we now face a three-story high blind wall. This is what we see now instead of the forest from our living area in the main house. Also, Mr. Du said at the last hearing that his privacy had been invaded and that he might get a lower price for his property; however, pictures taken from the park next to Mr. Du's house makes this difficult to believe. This is a picture which shows -- which is next to the Du's house and which shows our addition on top. On the other side, which is the left side, the Horners' addition is now blocking our view, and their new deck, which is facing ours, removed all privacy that we had before enjoyed. This is what we see on the other side instead of being able to look at -- to the top of the hill. So that's a fact of life. When you build something, you are going to modify somebody's line of vision, somebody's environment. Even if you grow tall trees, you are going to have the same type of impact.

In conclusion, Mr. Chairman, I would say that from the discussion which took place on this issue, it would seem that the rules governing the conditions under which a structure built with a variance can be modified in the by-right area may need to be clarified in the future to prevent other innocent people like us to face a similar ordeal. Even though we proceeded with our construction project with due care, openly, legally, in good faith, without cutting any corners, we have had already to bear a significant emotional and financial burden. Thank you, Mr. Chairman. If you want me to answer any questions or react to any other

statement --

MR. BEARD: Mr. Chairman.

MR. GUILMARD: -- I would be glad to do so.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Mr. Guilmard, why do you have a 220 electric line roughed in to the garage?

MR. GUILMARD: Well, we are going to -- well, the garage is a place where it's useful to have a 220 outlet if you want to use some tools. Some tools do require 220. There was 220 coming into the building, so we thought it might be useful to just have an outlet.

MR. BEARD: There was 220 existing there?

MR. GUILMARD: No, 220 was brought in for the air-conditioning in the upper unit, and since 220 was coming there in the structure, we thought we could just add another outlet to use it for some tools.

MR. BEARD: So you're telling me there's a 220 outlet on the upper floor?

MR. GUILMARD: Sorry. On what?

MR. BEARD: In the upstairs?

MR. GUILMARD: No.

MR. BEARD: There's not.

MR. GUILMARD: No.

MR. BEARD: Okay. Well, you understand my concern, and I had expressed it to your son the last time. You just stated that the expense of plumbing was bringing the sewer and the water, and so adding the shower stall for three-hundred-and-some dollars wasn't a big deal. Well, you can understand the concern because adding a sink and tying into those lines would not be a concern at all, and with a 220 line, you could run it up there for a stove. So that's why I'm pointing out that there's some concern that this could be made into a -- if you will, a small residence or outbuilding, if you will, accessory structure, so that's why I was inquiring about why the necessary -- the expense and so forth of bringing out a 220 line to the facility.

MR. GUILMARD: Mr. -- sir, according to the builder, there was a need to bring 220 for the air-conditioning unit. As long as we had the 220 line coming into the building, we thought it might be -- just make good sense to have a 220 outlet in the garage. But --

MR. BEARD: So you have central air-conditioning, is that it?

MR. GUILMARD: On the upper part, yes.

MR. BEARD: Central.

MR. GUILMARD: Well, it's only one room, so there is one unit.

MR. BEARD: It's in a -- it's a window unit?

MR. GUILMARD: No. And anyway 220 can be derived very easily from two 110 outlets, so, I mean, anybody could install anywhere a 220 outlet. It's very simple to do, but since we have (inaudible) already --

MR. BEARD: Well, well, well, excuse me a second. I'm not an electrician, but that -- you don't get 220 out of a 120 outlet. You have to run a special line.

MR. GUILMARD: Well, you could derive it from two 110 plugs.

MR. BEARD: No, you can't.

MR. GUILMARD: Well, anyway, I'm not an electrician myself, but that was the reason why we wanted to have a 220.

MR. BEARD: Anyway, you understand the concern.

MR. GUILMARD: But regarding your concern about a kitchen, as I said, this would be totally illegal, and then I would be breaking the law should I be -- install a kitchen -- installing a kitchen or anything like that or make a secondary dwelling. And as our lawyer say, we would be ready to sing -- to sign a covenant to that effect, absolutely, no question, no question about that. It was not even -- never crossed our mind.

MR. BEARD: Thank you.

CHAIRMAN DIGIULIAN: Okay. Further questions?

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you. Mr. Guilmard, the -- one issue that you mentioned, I thought your son had said something differently before, and I just want to understand. I believe you testified that the footprint had not expanded, but I thought your son said the last time that the porch area was not within the footprint of the original structure. In looking on the drawings, it looks to me like if you took the width of the structure from -- including the porch and the roof above it, it would be 29 feet, nine inches going the north/south direction rather than 24 feet. Did I misunderstand something?

MR. GUILMARD: Sir, what I said was that the footprint of the garage has not changed. It is exactly the same. It was a slab, and it has not been destroyed. We used the frame, so the garage is exactly as it was. What has been added is the porch to the --

MR. HART: The porch and the roof over it is what --

MR. GUILMARD: And the roof over it. It is an overhang over the deck. It's a deck with an overhang from the roof, but the second floor wall aligns exactly on top of the garage wall, so it's exactly at the same distance. What has been added is simply a deck, which is covered by an overhang from the roof, and that extends to the north side, but the garage is exactly the same, 24 by 24.

MR. HART: The point being that the porch is not within the original footprint, it's next to it.

MR. GUILMARD: Yes.

MR. HART: Okay.

MR. GUILMARD: That is correct.

MR. HART: Thank you.

CHAIRMAN DIGIULIAN: Further questions? Thank you. Is there anyone else to speak to this appeal?

MADELINE GUILMARD: I am Madeline Guilmard. First, I would like to thank you for letting me speak. I would like to also apologize to the Board for not having been able to attend the previous hearing. My father is an invalid. My mother was getting extremely exhausted, and we had a crisis situation which demanded our presence overseas at that time.

In 1985 when we applied for a variance, we did speak with all our neighbors. For this project, we did not

require a variance. The second floor was within the by-right. We did not feel we had to consult our neighbors. I cannot recall that any of the neighbors who constructed additions, including the Horners, committed us -- consulted us on their project. We did tell the Horners that we were considering raising the garage as early as when they were about to break ground for their own addition. They raised no objection at the time, but this was not the only time when we talked about the garage. Mrs. Horner said at the last hearing that I refused to talk about our project. This is simply untrue. The topic came up again, but there was never any discussion of the variance as this was not an issue. In fact, there nev- -- the Horner never asked us what precisely we were planning to build over the garage. Instead they chose to talk to the County.

When we invited them to see the plan on January the 4th, they did say that the building would be too high for their liking, but they did not inform us that they would try to have the permit withdrawn. They never mentioned their extensive discussion with the County. They simply wished us good luck with our project, and we parted good friends.

On January the 5th, Mr. Horner sent a letter to Mrs. Johnson requesting that our zoning approval be immediately withdrawn. Instead of talking to us directly, in an e-mail to Mrs. Johnson dated January 6, 2006, he further proposed that the project be cited of this 12-foot setback and stated that the footprint of 24 by 17 would still create garage space commensurate with what is normal in our subdivision. It would have been more rational to come to us.

We love this neighborhood. We lived there almost 30 years. That's where we raised our kids. We like it because the housing is diverse, and, you know, there are different types of architecture. And that's why we like it, and we like the parks as well. Fortunately, a number of neighbors have supported us in this ordeal, and we have communicated -- can I still go on?

CHAIRMAN DIGIULIAN: Quickly, ma'am.

MS. GUILMARD: Excuse me?

CHAIRMAN DIGIULIAN: Would you sum up quickly, please.

MS. GUILMARD: Yeah, very fast. What I want to say is that I could never have imagined that a building permit legally issued and confirmed could become questionable. We believe that it would be unfair and unjust if we were further penalized because of decisions which are totally beyond our control. As a goodwill gesture, we offer to plant tall trees to hide the side of the garage, to landscape around it, as we have done with our neighbors on the right when their house was built. This would be a good opportunity to work together and hopefully make peace with our neighbors. Thank you for listening.

CHAIRMAN DIGIULIAN: Questions? Thank you. Is there anyone else to speak to the appeal?

SEBASTIAN GUILMARD: Mr. Chairman, Members of the Board, I'm Sebastian Guilmard. Mr. Chairman, Members of the Board, I would like to thank you for this opportunity to speak again since at the last hearing I did not have a chance to answer the many statements made. Last time I gave address in McLean as I was representing my parents. I would like to clarify that I'm living in D.C. and buying a condo there. I was surprised by the recent letter by the Horners where they comment about the amount of time I spend at my parents' house. I don't understand why people should not be able to take care of their parents' property -- properties in their absence or why I wouldn't -- why I would want to live above a garage when I have the whole house to myself.

I found it interesting that the marble floor is mentioned since we ourselves did not know about it. The plans call for quarry stone, and the marble was delivered in error. They let us keep it for the price of $71, not an extravagant expense, assuming this is relevant. And I never mentioned that this would be a mudroom, but simply a place to wash up. The nearest bathroom we currently have access to is the master bathroom and the guest vanity upstairs.

There has been considerable discussion about my parents -- what my parents might do in their garage addition, that they might add a kitchen and convert the space into a living quarters. If the County applied the same flawed logic on a regular basis, no building permits would ever be approved because the homeowners

might do something that is not allowed at the Zoning Ordinance. Nobody would be able to build a house in the County because they might allow too many people to live there or it might be illeg- -- it might host illegal par- -- poker parties, et cetera. At no time during this entire process did my parents ever offer even a hint to anyone that they are trying to circumvent the requirements of the Zoning Ordinance.

We feel that our reputation had been tarnished by the petition campaign which was introduced in violation of the association by-laws. In an e-mail to Mrs. Johnson dated January 6, Mrs. White took a position as president of the association, saying that she had viewed the construction site and that she was terribly concerned that the building might -- was being allowed. She said she would organize a meeting of the entire association requesting that the construction be halted immediately. This meeting took place on February 23rd; therefore, Mrs. White or the Horners had 48 days to inform us that our construction project would be discussed at the meeting, but failed to do so, thereby denying our -- us due process and depriving the members of the association of their right to form an independent opinion or conclusion. Our privacy was also invaded, especially when the Horners discussed in the document made public where my parents reside in Europe and how much time they spend here and there. Actually my parents would rather be spending more time here at this stage. Or when they hint- -- may I finish? Just concluding.

CHAIRMAN DIGIULIAN: Quickly, sir, don't take a lot of time.

MR. GUILMARD: I'm almost done. Or when they hinted that I might have run commercial activities with non-residence friends. My friends are resident, non-resident, U.S. citizens or not, black or white. What difference does it make? Are we not allowed to help each other on our car projects? Thank you.

CHAIRMAN DIGIULIAN: Is there anyone else to speak? Is this the last speaker now?

RALPH CRAFTS: Mr. Chairman, Members of the Board, I'm Ralph Crafts. I'm the Director of Construction for Bowers Design Build. In the latest communiqué to the Board, the appellant claims that the Guilmards and Bowers Design Build proceeded with this project with the presumption that if we could get it completed before a hearing was conducted, we could get away with pursuing a high-risk strategy. That's so far from the truth as to be absurd.

On February 1st of last year, I went to the Zoning Office with copies of the plat, the variance, the proposed designs and asked them what we would be allowed to do. At least three levels of management at the Zoning Office got involved in that review and discussion, and we were told that the interpretation of the Ordinance would allow us to proceed.

In November of 2005, I did the same thing. I took the materials back, the plat, the variance, the proposed plans, and the same process took place. At least three levels of managers in the Zoning Office got involved in providing the interpretation.

When the County asked us to stop work in early January, we did so immediately. We didn't resume until the review of the building permit was completed, and we proceeded. As you already heard, we retained the services of a professional surveyor so that we could ensure that the existing structure and that the variance requirements and that all of the new work we did was well within the 12-foot setback. This project involves issues of such complexity that you cannot effectively address them over the phone or via mail, which is why I personally took all the documents to the Zoning Office and reviewed them in person. I did not phone the office and ask them can we do an addition as long as we stay within the 12-foot setback. In a prior career, I was a tactical jet pilot in the U.S. Marine Corps. I learned the value of following procedures, especially flying jets on and off an aircraft carrier steaming at 40 knots. In that environment, if you don't follow the proper procedure, somebody can get hurt or killed. In my current career, if you don't follow proper procedures, it might not resolve or result in the loss of life, but the toll to the homeowner can be enormous. Bowers does not conduct business that puts our clients at risk, and I will not put my clients and their homes at risk.

As noted by this Board at the 25th April hearing, the Guilmards did everything that they were supposed to do. They negotiated in good faith, and their conduct has been above reproach. They should be allowed to enjoy their addition and their property without further interference. The Zoning Administrator and staff are responsible for interpreting your -- the Ordinance, which means their job is to explain and apply the meaning of the Ordinance. An error is defined by definition as a mistake caused by ignorance or carelessness. In this

case, due process was applied. There was no ignorance. There was no carelessness on the part of the Zoning Office. They interpreted the Ordinance correctly, and they applied it appropriately. Thank you.

CHAIRMAN DIGIULIAN: Questions?

MR. RIBBLE: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Ribble.

MR. RIBBLE: Yes. Have you applied for many variances here in the County?

MR. CRAFTS: No, sir.

MR. RIBBLE: That answers that.

CHAIRMAN DIGIULIAN: Further questions? Thank you.

MR. CRAFTS: Thank you.

CHAIRMAN DIGIULIAN: Is there anyone else to speak? Ms. Stanfield, Ms. Tsai -- no, wait a minute.

MR. BEARD: Wait a minute.

CHAIRMAN DIGIULIAN: We've got one more.

MR. BEARD: Yeah.

MR. RIBBLE: (Inaudible.)

CHAIRMAN DIGIULIAN: Yeah. We got some more coming.

DON RASMUSSON: Chairman, Board, we're neighbors of the Guilmards.

CHAIRMAN DIGIULIAN: Would you state you name and address for the record, please.

MR. RASMUSSON: I'm sorry. This is Don Rasmusson and my better half, Julie. We've been in Potomac Hills for 25 years or so, and we've known the Guilmards for many years. And we're just here to state he's an honorable gentleman, wants to do things the right way. He's not trying to cut corners or rip anybody off. There's been a lot of smoke that would maybe lead you to believe he's a -- you know, a scoundrel or something, and it's not true. We've known him for many years.

JULIE RASMUSSON: I'd like to note also that we are members of the Potomac Hills area. We live in the Potomac Home- -- Potomac Hills Association area, but we were not aware of the citizens' association meeting which was called to discuss this issue. Had we been, we would have been there.

MR. RASMUSSON: Thank you.

CHAIRMAN DIGIULIAN: Okay. Thank you. Is there anyone else to speak?

MARIE FRANCE DILLAIS: Sorry. My name is Marie France Dillais, and I am a friend of Mr. and Mrs. Guilmard. My husband and I have known Mr. and Mrs. Guilmard for eight years now, and they have often talked to us about the project and showing us their project design and keeping -- always keeping in mind the legal aspect of it. Mr. Guilmard wanted to have more space and a quiet place to do his research and -- project and to do his hobbies. He wanted to move his model trains to this place, and my husband was very happy about it. And so this is what he wanted to do with this room. He never -- they never talked, never thought of renting this, this room above the garage, and the house and the garage have an L-shape, and it would have been very, very uncomfortable for people to live in the new structure. Thank you.

CHAIRMAN DIGIULIAN: Thank you. Is there anyone else to speak?

IWONA REICHENBACH: Excuse me. Iwona Reichenbach, 1405 Colleen Lane, we live cattycorner from the Guilmards. First of all, I'd like to say that it's a very sad day that we meet as neighbors in this room where we barely talk to each other on the street, but I came here as a peacemaker and hoping that the people can come to their senses and look from different perspective and say with a little bit of imagination when we see the pictures of the building -- I'm an architect by training. I would like to add that, but when you see the pictures of the new addition, any building, no matter how beautiful, looks bare in the landscape. It looks like it's imposing, but with a little bit of imagination, with the beautiful landscape that one can get, you can truly almost not see the building anymore. So it's just a matter of change and accepting that change happens, and it's not -- from a perspective of an architect, it's a very pleasing structure. With landscape, it will be softened, and it's been done in a professional way by professional designers who have -- by the way, my kitchen overlooks the street, so I'm at the window sink all the time almost with three little kids, so I see they've done it in a very professional manner with no disturbance to the community. And I would be tempted to hire them for my hoping addition in the future.

Anyway, basically that's what I want to say from architectural point of view. It's not an eyesore. It just looks like it, and especially if you take pictures at certain angles, you can -- as a photographer in the past, I also know you can exaggerate things. Unless you see it within the context, it's hard to see. And also to talk about the neighbors who talked last week -- last month, I feel it's a little bit unfair because there is so much vegetation. Basically, you cannot see the structure. You can't -- you can -- we have a house overlooking us from another street. In the summertime when you do use the yard, you don't even know they're there. So this area is heavily wooded, and it's not -- it's not -- basically, we are not on oceanfront or on golf course where we can guarantee that we'll always have the same view. Thank you.

CHAIRMAN DIGIULIAN: Is there anyone else to speak to this appeal? Ms. Stanfield, Ms. Tsai, additional comments?

MS. STANFIELD: Thank you, Mr. --

CHAIRMAN DIGIULIAN: One moment, sir.

MS. STANFIELD: Thank you. My understanding from talking to Mr. Guilmard was that the 220-volt was required for some of his tools that he brought from Europe. Now, I could be wrong, but that was my understanding.

With regard to the legislation that was passed recently, it is our understanding that this law is prospective. It is not retrospective, and it will not take effect until July 1st of this year, so it would not be applicable in the case of the approval of this building permit. Thank you, Mr. Chairman.

CHAIRMAN DIGIULIAN: Okay.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: One other thing, the height in that area is by right, correct?

MS. STANFIELD: Yes, sir, that's correct.

MR. BEARD: Thank you.

CHAIRMAN DIGIULIAN: Okay. Mr. or Mrs. Horner.

MR. HORNER: I just want to respond to a couple of things. One is I think the attorney's suggested that once you have a variance, you can't do anything more. Well, you can do something more. You get another variance, okay, and that's why we're here today.

Secondly, talked about the screening, we're gonna screen this building. Well, there's only five feet of setback in which you can work with, and if you notice, there already are bushes planted. The problem is, is when you go as high as they've gone, you cut out the light, you cut out the air, and things don't grow very quickly, and they don't grow directly upwards. So they don't really have any -- they haven't left any room to screen this building.

Thirdly is the whole cost of this building. We -- they've gone to exorbitant measures to complete this structure at exorbitant cost. Well, if you go back to the building application, it says this building cost $43,000. Well, we did meet with the Guilmards, and the Guilmards told us it cost over $200,000, so I'm really kind of curious as -- how much did this building really cost, and if it cost something more than $43,000, why isn't that shown on the building application? Okay? This isn't personal, okay? This is about the Ordinance. It's about the words, and it's about a clear interpretation. And it's -- believe me, I can't find anything here to support staff's recommendation that this building permit should be issued, and, therefore, it must be declared null and void. Thank you.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Sir.

CHAIRMAN DIGIULIAN: Mr. Horner.

MR. BEARD: I just want to understand. You talked about the height, but I'm of the impression that there was -- there's been no height change in that portion of the garage that extends into the minimum setback. Is that not correct?

MR. HORNER: I haven't measured it, so I can't tell you that, but it appears to be the same height at the 12-foot as it was before.

MR. BEARD: Thank you.

MR. HORNER: And the -- one last thing I'd like to add is just the, you know, notice, that we never said anything about this. In your package, you have an itinerary of every conversation we had with the Guilmards, and they said, well, they didn't hear anything 'til they received notice. Well, according -- about the appeal. Well, they received a letter from our attorney, Bill Daly. I think it was sometime in early January, expressing our opposition to this and the fact that we were proceeding to take this case further. Thank you.

CHAIRMAN DIGIULIAN: I'm sorry, ma'am. You've already spoken. No, ma'am. Are there questions or comments? The public hearing is closed.

MR. BEARD: Take it.

MR. RIBBLE: Go ahead if you feel like it.

MR. BEARD: You want it?

MS. GIBB: No.

MR. HAMMACK: Well, it's Mr. Ribble's motion, isn't it?

MR. RIBBLE: I'd be happy to take it. Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Ribble.

MR. RIBBLE: In Appeal A 2006-DR-005, which is an appeal of the determination an amendment to Variance VC 85-D-061 is not required to construct a second-story addition on a portion of an existing detached garage and that the addition meets the minimum side yard requirements for the R-3 District under

the Zoning Ordinance provisions. Mr. Chairman, we've heard a lot of testimony. A lot of it sounds like we're dealing with a variance to me about how this is going to be screened and that sort of thing. I would incorporate all the written submissions and the verbal testimony into this motion. And I would say that it seems to me like over the years, as we grant variances, we grant them for a specific location and use, and I feel like with all the testimony I've heard, I'm going to support the appellants in this and overturn the Zoning Administrator. And I think that the -- this is no reflection on the Guilmards whatsoever. I believe, you know, they're acting in good faith probably, but there are other ways to approach this, and I think that the special use permit as suggested with a building in error might be the way to go. So that's my motion.

MR. HART: Second.

CHAIRMAN DIGIULIAN: Second by Mr. Hart. Discussion?

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you.

MR. BEARD: Oh, I'm sorry.

MR. HART: I -- I'm going to support the motion although I want to make some observations about it. I don't think that the Guilmards did anything wrong, and if we had the same record before us on an SP for building in error, I don't -- I think this would meet that. I would be very reluctant to tell them they had to tear it down. And I really don't know where this all is heading, but I think we have to decide not necessarily what's always fair or what we want to do. I think we have to decide the issue that's been given to us. Usually in these situations, I think the appeal gets deferred, and we deal with an SP first, although in this case, because they were appealing a staff determination that granted the permit, it's come to us the other way around. I think I would not be -- I'm not giving any weight really to the issues about what might happen or what could happen with the structure in that maybe it'll be rented out or something. I think this boils down to a very, very simple issue. I don't think it's -- I don't think it could be extrapolated to every single variance or every single structure that had a variance, but, in fact, it deals with one development condition and one plat.

What I believe is that Development Condition Number 1 is very specific. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land. The plat included with the application was a drawing. It was a house location survey with some modifications made to it later. There were some numbers that were printed. There were some numbers that were added in handwriting. The addition to the house location survey, as I see the drawing, included a note that showed an existing dwelling, which apparently had been the subject of the house location survey, but also a handwritten note proposed 24-by-24 garage, height 12 feet, five foot off side property line, rear wall on easement line. And there's an arrow, and then there's the structure depicted. I would read Development Condition 1 and the note on the plat together. I don't see any ambiguity in that. I think the specific addition shown on the plat included is the 24-by-24 garage with a height of 12 feet at that location. It could have been worded differently, and I think we would take these one at a time depending on what the development condition said or what the note on the plat said. But we have a clear condition, a clear note on the plat.

I think what was approved was a 24-by-24 garage, 12 feet high, not a garage that's 24 by 29 with an upstairs to it, if that's the question we're being asked, and I would stress that I think this is limited to that question only, not the impact of the passage of time or the owners' reliance on a building permit or whether this all can be mitigated with bushes and development conditions or something else or whether they want to make some modification to make it by right. We don't reach any of that today. The only question is was that determination correct. Under this development condition and this plat, I think it was incorrect. This approval was quite specific for that structure, and I would suggest those as additional findings of fact and conclusions for the motion. I don't take this step lightly. In fact, I really didn't -- I was hoping we weren't going to have to go down this trail because it seems to me it ultimately may lead nowhere, but if that's the question, I think we're constrained to follow that.

CHAIRMAN DIGIULIAN: Further discussion?

~ ~ ~ May 23, 2006, RICHARD WILLIAM HORNER AND MARGARET DRAFFIN HORNER, A 2006-DR-005, continued from Page 350

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: I'm -- I can't support the motion. It's interesting, after listening to all this, I think we're confronted here with a little, if you might, European flavor to what's been done here. I would like to quote, if I might, the communication between Leslie Johnson, of course, our deputy -- the Deputy Zoning Administrator, to Mr. Colburn at Design Build, and the crux of it being, and, again, I quote, because I think this sums up my feelings entirely after hearing this voluminous amount of information. Since there is -- since there will be no change in height or location of that portion of the existing garage that extends into the minimum required side yard for which the variance was approved, the proposed second-floor addition to the portion of the garage which meets the minimum required side yard setback of 12 feet may be permitted without amending the variance. This is consistent with previous determinations that have been made. So, to me, that says it all. And, again, I think my questions have been answered forthrightly. I was concerned about the -- this 220 situation and the plumbing, that at some point they might be wanting to slip a studio type apartment in there, but the -- I think the question, again, was answered most forthrightly by Mr. Guilmard, and I'm happy with it. So, therefore, I will not be supporting the motion. Thank you.

CHAIRMAN DIGIULIAN: Mr. Hammack.

MR. HAMMACK: Mr. Chairman. Likewise, I can't support the motion either. I've wrestled with this since the last hearing. I think it's a narrow issue. Again, we're asked to make a determination about whether the Zoning Administrator is correct in their interpretation and application of this Ordinance. The -- I think Mr. Hart mentioned sometimes we have to do things that aren't always maybe the most favorable thing to do or -- but I think the Zoning Administrator applies the Ordinance in a logical and rational way. That isn't to say that if you took a different argument and approached it a different direction, that you might not get some other kind of result, but I think that as long as I've been on this Board, we granted a lot of variances and to setback lines for garage enclosures, for little additions to all sorts of things. And we've never had people come back and have to get a -- an amendment to the variance to put on something that it would otherwise be a legal structure.

Now, that might sort of undermine the variance that we granted back in 1985. And I would note that I was on the Board at that time, but I didn't vote on that particular variance. But I think as long as the Zoning Administrator applies the Ordinance in a rational way and does it consistently and nobody's raised this issue before, that that's really what we're being asked to look at, and I can't say that -- I mean, I have no legal authority to say that the Zoning Administrator has not acted correctly. It may -- you know, this kind of result, either way you do it is -- either way we vote is going to make somebody unhappy, but I think that I have to support the interpretation as applied by the Zoning Administrator.

MR. BYERS: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Byers.

MR. BYERS: I'm not going to support the motion either. I -- in referencing, there are three things. First, the staff report, which essentially says that they have routinely approved additions to properties where a variance has been granted provided that the proposed addition meets applicable Zoning Ordinance provisions, does not further exacerbate the need for a variance. The proposed second-story addition on appeal does not encroach into any minimum required yard and is located wholly in the side and rear yards. I think it's a correct interpretation by the Zoning Administrator.

The other thing I -- that I do take at face value is the builder saying that he didn't pick up the phone and call and ask the question. I think he went in probably, and on the several occasions that he has indicated, he talked with three levels of people within the -- within Zoning and was acting in not only his clients' best interest, but also in the interest of the County from the standpoint of receiving their expert advice, and that's upon -- and that's the way he proceeded. So, therefore, I'm not going to support the motion, Mr. Chairman.

CHAIRMAN DIGIULIAN: Further discussion. All those in favor of the motion to overrule the Zoning Administrator?

~ ~ ~ May 23, 2006, RICHARD WILLIAM HORNER AND MARGARET DRAFFIN HORNER, A 2006-DR-005, continued from Page 351

MR. HART, MR. RIBBLE, CHAIRMAN DIGIULIAN: Aye.

CHAIRMAN DIGIULIAN: Opposed?

MR. BEARD, MR. BYERS, MS. GIBB, MR. HAMMACK: Nay.

CHAIRMAN DIGIULIAN: Okay. That motion fails.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: You need a motion now, right?

CHAIRMAN DIGIULIAN: Yes.

MR. BEARD: Okay. In Appeal Application A 2006-DR-005 at 1426 Colleen Avenue (sic), Tax Map Reference 31-1 ((9)) 208, I move that for the afore-stated reasons that we uphold the determination of the Zoning Administrator.

MR. BYERS: Second.

CHAIRMAN DIGIULIAN: Second by Mr. Byers. Discussion. All those in favor of the motion?

MS. GIBB, MR. BEARD, MR. BYERS, MR. HAMMACK: Aye.

CHAIRMAN DIGIULIAN: Opposed?

MR. HART, MR. RIBBLE, CHAIRMAN DIGIULIAN: Nay.

CHAIRMAN DIGIULIAN: Motion carries by a vote of 4 to 3, and the determination of the Zoning Administrator is upheld.

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~ ~ ~ May 23, 2006, After Agenda Item:

Request for Additional Time
Zoroastrian Center and Dar E. Mehr of Metropolitan Washington, D.C., SP 00-H-026

Ms. Gibb moved to approve 48 months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 7-0. The new expiration date was January 24, 2010.

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~ ~ ~ May 23, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Fairfax Ridge Development LLC

Mr. Byers disclosed that Holland and Knight represented the parent of a company that he was the president of under a proxy agreement that was monitored by the Defense Security Service. He said there were no financial aspects, it had nothing to do with land use, and he did not believe it would preclude him from making a decision on the appeal if it came before the Board.

William Shoup, Zoning Administrator, Zoning Administration Division, said the background on the appeal was set forth in the May 15, 2006 memorandum that he sent to the Board. He said staff believed that the appeal was partially complete, had been partially timely filed, and got complicated depending on how it was looked

at. He said the appeal purported to appeal two separate decisions which were a notice of violation dated March 2, 2006, and a letter dated March 8, 2006, from Suzanne Gilbert, Zoning Administration Division, the person responsible for the intake and processing of appeals. He noted that the letter from Ms. Gilbert involved returning a previous appeal of a February 1, 2006 notice of violation that was subsequently rescinded. He said one of his issues with the appeal submission was the suggestion by the appellant that Ms. Gilbert had altered the document. He said that was not true. What had been returned was an appeal submission that did not have a date stamp on it; however, not all the submissions had been date stamped, and there was nothing that Ms. Gilbert had done that was improper. Staff did that all the time. He said from time to time notices of violation may be rescinded for one reason or another, and in this case the February 1st notice of violation was rescinded because incorrect tax map references had been identified. When that notice was rescinded and the new one issued, he said the first appeal was deemed moot and sent back to the appellant.

Mr. Shoup stated that to the extent the appellant wanted to challenge that letter, they could do that, but he thought they would have to make a choice in this case because they could either appeal the letter from Ms. Gilbert or the notice of violation, but not both in this submission. He indicated that this appeal would be timely with respect to both determinations, but he thought the appellant had to make that choice. He said that if they chose to appeal the notice of violation, the tax map references identified on the appeal were incorrect and did not include one of the properties that were at issue, and he thought that if that was what they were choosing to appeal, they could only appeal it to the extent of the two properties that were correctly identified. Mr. Shoup said it was staff's recommendation to the Board of Zoning Appeals that they only accept the appeal as being an appeal of one determination or the other and suggested that the appellant be given the opportunity to choose which one they wanted to have heard, and then staff would process it in that manner. He said he was not suggesting that the appeal was totally unacceptable. It just had to be limited in the way that he had set out in his memorandum.

In answer to a question from Ms. Gibb concerning his statement about two issues having to be considered, Mr. Shoup said the Board should consider either the March 2, 2006 notice of violation, and if that option was chosen, it had to be limited to two of the three properties, or the appellant could choose to appeal the letter from Ms. Gilbert dated March 8th stating that the first appeal was moot. Ms. Gibb asked what Mr. Shoup would have done if Ms. Gilbert's letter referenced the correct tax map number. Mr. Shoup stated that the submission had to be correct. Ms. Gibb said she found the parentheses at the end of the tax map numbers, which were parcel numbers, to be confusing because that was not the way they were listed on the tax maps. Mr. Shoup agreed and indicated that was because they dealt with a condominium project; therefore, a double circle number was always used, and the single circle number identified the building. Ms. Gibb asked what the issue was. Mr. Shoup responded that staff knew what had been noticed; however, he took the position that when staff specifically rescinded the first notice because it contained incorrect reference numbers as cited in the appeal, it had been rescinded to ensure that the properties were properly identified, and it was incumbent upon the appellant to reflect the actual numbers. Ms. Gibb said the appellant had probably copied the numbers incorrectly rather than to just pick them out in error. Mr. Shoup stated that if the numbers had been taken from the most recent notice, they would have been correct. Ms. Gibb inquired about staff's assertion in the report that the appellant could not allege Proffer Condition 17. Mr. Shoup said staff was trying to be technically correct, and the appellant could argue that she was appealing the Sign Ordinance.

In response to a question from Mr. Hart, Mr. Shoup said he was correct in his assumption that Attachment A, which had been date stamped on March 31, 2006, and Mary Theresa Flynn's letter with the same date stamp went together. Mr. Hart noted that there were three parcels referenced, but the seven was misplaced and should have been placed after the eleven instead of after the four; however, on the next page Ms. Flynn's letter listed them correctly. Mr. Shoup said he was correct, and staff had based its decision on the fact that the numbers were not properly identified on the form. Mr. Shoup said he was willing to back off on that position since the identification was correct in the reference line of the appellant's statement.

Mr. Hart asked where staff got the authority to return a duly filed document to an applicant with the comment that the subject was moot without first having the Board of Zoning Appeals address it. He also questioned whether it was within the purview of the Board to either accept a withdrawal or dismiss an appeal because notices were not sent out. Mr. Shoup said he could not point to anything in the state code, but what he assumed was that the system had evolved over the years. He said that approximately ten years prior there was a process change on the subject of appeals. He noted that all appeals, even if they were filed on time,

had to be brought to the Board of Zoning Appeals to be accepted, and staff at that time thought the process needed to be streamlined. The Board adopted a policy granting staff the authority to accept appeals when they considered them to be acceptable. Mr. Shoup agreed with Mr. Hart's comment that if the Zoning Administrator were to reject an appeal, it had to go to the Board to be discussed as an after agenda item. Mr. Shoup said that when a notice of violation had been rescinded and then reissued, the same circumstances would be presented to the Board of Zoning Appeals in a new appeal that would have to be filed. He said that whether they were right or wrong, staff had taken the position that if a notice of violation had been rescinded, there was no longer a determination to be appealed. He said declaring something to be moot was a good way to process it quickly so a new appeal could be filed. Mr. Hart said it was his opinion that such appeals should be presented to the Board for a denial.

Mary Theresa Flynn, the appellant's agent, Holland & Knight LLP, 1600 Tysons Boulevard, Suite 700, McLean, Virginia, came forward to speak. She said Mr. Hart was correct because there was no support for staff to make a decision as to whether or not they would accept an appeal because there was state statutory and County Ordinance authority that required those appeals be sent to the Board. She said staff had done the opposite of what they were statutorily required to do. She stated that the tax map number on the appeal letter was correct and reflected what Susan Epstein, Zoning Evaluation Branch, Zoning Administration Division, had put in her notice of violation, and her letter to the appellant also referenced it. Ms. Flynn explained that the incorrect number had been written in by her assistant during her extended absence from the office. She said she found the argument that she needed to file two different appeals to be very curious. She pointed out that everything arose from the same set of circumstances and the same alleged sign violation. She said the Zoning Administrator was attempting to put her in the difficult position of choosing between the two things she had appealed. She said he had done that because of certain Brady material requests the appellant had made.

Ms. Flynn explained that Brady material arose out of the U.S. Supreme Court case Brady vs. Maryland that required that the County turn over to them any exculpatory information, or alternatively any impeachment information, that dealt with the notice of violation. She offered to show the Board a copy of the Brady material. Ms. Flynn said she had required the County to preserve that material, and she had stopped short of asking the County to provide that information because if it got to that stage, the County would have a great deal of difficulty, and she did not want to put staff in that position. She said she was hoping to resolve the case without requiring staff to provide the meta-data on the letters that would show when they were actually drafted.

With respect to Ms. Gilbert's letter, Ms. Flynn said it went to the heart of the counts of both appeals, the first and second that had been filed. She pointed out that in the second appeal it was Count 4 that stated that once an appeal was filed under the Code of Virginia, Section 15.2.2311, the County was prohibited from taking any further action on the violation, including rescinding it and issuing a new one correcting the property description. She stressed that once the notice of violation was sent out and the moment she sent the appeal, the County was stuck with it and could not do anything, such as removing a file stamp, which was an evidentiary issue. She said she had personally filed the appeal, and she did not leave any documents at the counter without a file stamp on them. She said Ms. Gilbert's letter referenced the second notice of violation. Ms. Flynn said the two were inextricably entwined to each other. She said Section 18-305 of the Zoning Ordinance, under processing, required the Zoning Administrator to send her appeal to the Board immediately, not the next day, or when they changed the property description, and not until a decision had been made on whether they would accept it or not, nor after the date stamp had been physically removed. Ms. Flynn said she took issue with the portion of the appeal in Ms. Gilbert's letter that dealt with how staff treated their violation since they could not be separated. She said it was important to notice that the May 2, 2006 Notice of Violation occurred after the Zoning Administrator's obligation to send it to the Board had long passed.

Referring to a question asked earlier by Mr. Hart, Ms. Flynn said that under the Code of Virginia, Section 15.2.2311, staff was prohibited from rescinding the appeal and correcting the notice of violation and prohibited from retaining the appeal in limbo while they made an unauthorized decision as to whether or not to accept it. She said they were statutorily mandated to transfer the appeal to the Board of Zoning Appeals immediately and to use the statute's language, and they did not do what they were required to do. She said the first and second notice of violation and Ms. Gilbert's letter all arose out of the same set of circumstances, and after sitting on the appeal for one and a half months, staff suddenly gave it to the Board, saying that they had better take a look at it. She said if Mr. Shoup was correct that they should appeal these County actions

in two separate appeals, they would have to have two separate hearings on separate dates. She stated that the appellant would be arguing Count 1 and Count 4 of the same appeal on the same signs for the same violation, but on days other than when the Board heard the rest of the appeal. Ms. Flynn stated that res judicata applied to criminal and civil procedures, and there was nothing in the Code or in previous decisions that would either require or permit the Zoning Administrator to decide that he had to split a cause of action. She said she should not be made to try both parts to the same appeal, the same course of action, and the same set of circumstances in two different hearings.

In answer to a question from Ms. Gibb, Mr. Shoup said the appeal had been filed in a timely manner, but they could not be heard together and needed to be two separate, distinct decisions.

Ms. Gibb moved to accept the appeal application. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Chairman DiGiulian noted that, in light of there being no meeting the following week, staff had asked whether the letter regarding the appeal should be held until June 6, 2006, or sent out. Susan Langdon, Chief, Special Permit and Variance Branch, said staff sends letters concerning special permits out right away, but the Board had asked them to hold the letters on appeals until the following meeting. Mr. Hammack stated that time began when the Board made its decision, so the letter should be sent out immediately. Ms. Langdon said what Mr. Hammack had said was true, but when the eight-day wait period was no longer used, the Board had decided that staff should still hold the appeal letters so the Board could review them before they were sent out. She said the Board had approved special permit and variance letters being sent out right away. She said if there was to be a change, it could be changed on today's case or permanently, depending on what the Board wanted. Chairman DiGiulian stated that appeal letters should be held until the next Board meeting. Mr. Beard said an exception could be made for today's appeal, and there was unanimous approval by the members of the Board.

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As there was no other business to come before the Board, the meeting was adjourned at 2:11 p.m.

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

Approved on: September 12, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 6, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian asked if there were any Board Matters to bring before the Board.

Mr. Ribble announced that William E. Shoup, Zoning Administrator, was retiring from the County. He complimented Mr. Shoup on being a true gentleman and thanked him for his excellent service as the Zoning Administrator whose conduct was always preceded by an acute sense of propriety. Mr. Ribble then moved that the Board of Zoning Appeals, on behalf of Fairfax County, present Mr. Shoup with a plaque recognizing his service over the years.

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

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

~ ~ ~ June 6, 2006, Scheduled case of:

9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05, 12/6/05, 1/24/06, and 2/7/06)

9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05, 12/6/05, 1/24/06, and 2/7/06)

Chairman DiGiulian announced that these two cases were for decision only. He called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John E. Carter, 4103 Chain Bridge Road, Suite 101, Fairfax, Virginia, agent for the applicants, replied that it was.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She explained that the two applications included a variance to permit construction of a fence greater than four feet in height in the front yard and greater than seven feet in height in the rear yard, and a storage structure exceeding 200 square feet in size. In addition, the special permit was for a building in error to permit a deck and a dwelling to remain 2.5 feet with eave 1.5 feet from the side lot line, and accessory structures to remain 0.0 feet and 1.0 feet from the side lot line. These cases had been deferred numerous times and Mr. Carter would speak to the issue of the easement, and offer a reason for the deferrals.

Mr. Carter said that when last they were before the Board, matters were raised that required a Commissioners hearing to alleviate or determine and remove the alleged easement from the property. He added that a quiet action title was currently pending with the County. He explained that the Commissioner whom he originally contacted to conduct the hearing for Hatcher v. Turner, et al., Fairfax County Circuit Court Chancery No. 192838, was unavailable due to family and health matters, but he had recommended another Commissioner in his stead. Mr. Carter informed the Board that Mr. Hatcher only recently went back to work after serious surgery and a rather lengthy convalescence. He pointed out that the applicant was short of funds due to medical leave. When sufficient funds were available, Mr. Carter said the court case could go forward and the outstanding issue be resolved. Also, because of his health, Mr. Hatcher was not physically able to move the sheds, and intended, during the summer, to hire help to relocate them. He pointed out that a review of the file found that actually it was not an easement but a Reservation of a Right to Acquire an Easement along a section of the property. Mr. Carter maintained that there was no easement on the

~ ~ ~ June 6, 2006, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 357

property. He believed a majority of the acreage was Park Authority property, and any reservation for the right of that property and the successors to request and acquire an easement would never occur because now there was a golf course there. He stated that, from a legal standpoint, he saw no impediment for the BZA to make its ruling, and that Mr. Hatcher wanted to proceed; resolve the issue of the quiet title decree from the court; remove the reservation to grant an easement; and therefore, assure there was no cloud on the title if he were to sell the property. Mr. Carter requested a 90-day deferral in order to resolve the issues.

Mr. Hart commented that he believed a 90-day deferral was rather optimistic because he did not think it sufficient time for the court to complete its action. As he understood it, the right to acquire the easement by the dominant estate was not held by the people who owned it a long time ago, but rather the successors in interest or the title owners of whatever the residue of the 83 acres may be. He said he was unsure whether it corresponded with the Park Authority property or some combination of it or a combination of other parcels or the lots in the back. Mr. Hart said figuring out who may have an interest in those parcels would require a determination of the boundaries of the 83 acres and for those parcels then figuring out who may still have an interest of record. He noted that if subdivision had occurred, the matter may become even more complicated, and with the determination of those matters, there would be another list of owners or defendants who would be owners of record of the land today that corresponded to the residue of the 83 acres from 1928. Mr. Hart said that identifying those people, and having each served, often became quite a project because of people relocating, etc., and if an 'Order of Publication' were required, it would take even longer to get all the parties ready for court. Mr. Hart stated that he believed all of that could not be resolved in 90 days.

Mr. Carter clarified that the 83 acres under discussion, known as the Cunningham property, were clearly the Park Authority's property, which in the 1960s was turned into a golf course. He concurred with Mr. Hart that 90 days probably was not sufficient time.

There were no further speakers, and Chairman DiGiulian called for a vote.

Mr. Hammack moved to continue Variance VC 2003-PR-194 to September 19, 2006, for a status report or action taken. He said he thought the reservation of the easement was complicated, and he wanted it resolved before making his motion because the outcome of that issue may be an influence on the way he voted. He noted that the structures were there for a long time, and he saw there being no impact on anyone. Although the case was in violation, the outstanding issues needed to be straightened out and he would find that helpful. It was his belief that if the Park Authority had to be served, a 90-day deferral would probably not allow sufficient time for resolution, but it was Mr. Carter who had requested a 90-day deferral in order to resolve the issues.

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

Mr. Hammack moved to continue SP 2003-PR-054 to September 19, 2006, for a status report or action for the reasons stated for the concurrent variance case.

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

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~ ~ ~ June 6, 2006, Scheduled case of:

9:00 A.M. LINDA PRESTON, SP 2006-SU-016 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 27.9 ft. from front lot line. Located at 15320 Jordans Journey Dr. on approx. 15,736 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 77.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda Preston along with her husband, Tom Preston, 1530 Jordans Journey Drive, Centreville, Virginia, replied that it was.

~ ~ ~ June 6, 2006, LINDA PRESTON, SP 2006-SU-016, continued from Page 358

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant was requesting a special permit to permit modification to the minimum yard requirements for certain R-C lots to permit construction of a second floor addition above an existing garage to be located 27.9 feet from front lot line. A minimum front yard of 40 feet is required; therefore, a modification of 12.1 is requested. The addition meets the minimum yard requirements of the R-2 Cluster District, which were applicable to this lot on July 25, 1982. In the R-2 Cluster District, a minimum front yard of 25.0 feet is required.

Mr. Preston presented the special permit request as outlined in the statement of justification submitted with the application. The addition was requested because he needed bedroom space for their two children. There were three options they considered but only one was feasible. The plan submitted required a special permit; his neighbors supported the proposal, and their homeowners association gave its approval. Mr. Preston said they were before the Board that morning for approval of their special permit.

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

Mr. Byers moved to approve SP 2006-SU-016 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDA PRESTON, SP 2006-SU-016 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 27.9 ft. from front lot line. Located at 15320 Jordans Journey Dr. on approx. 15,736 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 77. 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 6, 2006; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This Special Permit is approved for the location of a second story addition as shown on the plat prepared by Peter R. Moran, dated December 11, 1993, and signed by Linda M. Preston, dated March 24, 2006, as submitted with this application and is not transferable to other land.

~ ~ ~ June 6, 2006, LINDA PRESTON, SP 2006-SU-016, continued from Page 359

2. All applicable permits shall be obtained prior to any construction, and approval of final inspections shall be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.

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

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

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~ ~ ~ June 6, 2006, Scheduled case of:

9:00 A.M. ALEX R. CASTRO, SP 2006-MA-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to the minimum yard requirements based on error in building location to permit addition to remain 5.8 ft. with eave 2.0 ft. from side lot line. Located at Admin 7206 Sipes Ln. on approx. 10,000 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((7)) (A) 4.

Chairman DiGiulian announced that this application was moved to 7/11/06 for notices.

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~ ~ ~ June 6, 2006, After Agenda Item:

Consideration for Appeal
Carol Burke and Joseph Athey

William E. Shoup, Zoning Administrator, noted that the agent for the property owners, Stephen K. Fox, Esquire, was not present, and he was unsure whether Mr. Fox intended to be at the hearing. At the Chairman's suggestion, Mr. Shoup concurred that it was appropriate to hear the matter at the end of the agenda.

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~ ~ ~ June 6, 2006, After Agenda Item:

Request for Additional Time
Trustees of the Berea Church of Christ, SPA 79-D-141

Mr. Ribble moved to approve 12 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was January 9, 2007.

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~ ~ ~ June 6, 2006, After Agenda Item:

Request for Additional Time
Trustees of the Seoul Presbyterian Church, SPA 95-S-029

Mr. Ribble moved to approve 12 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was March 30, 2007.

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~ ~ ~ June 6, 2006, After Agenda Item:

Request for Reconsideration
Richard William Horner and Margaret Draffin Horner, A 2006-DR-005

Chairman DiGiulian announced the request for reconsideration. The Board made no motion; therefore, the request was denied.

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~ ~ ~ June 6, 2006, Scheduled case of:

9:30 A.M. MCLEAN BIBLE CHURCH, A 2006-DR-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a proposed religious education program is considered a college/university use and, therefore, requires an approved amendment to Special Exception SEA 78-D-098-2. Located at 8879, 8925 and 9001 Leesburg Pi. on approx. 42.60 ac. of land zoned R-1. Dranesville District. Tax Map 28-2 ((1)) 10, 11, and18. (Decision deferred from 4/18/06)

Chairman DiGiulian announced the case.

Mr. Byers said he had not attended the April 18, 2006, public hearing, but had reviewed all the associated materials. He said he believed he could make an impartial decision, and he would participate in the proceedings. He made three disclosures.

William E. Shoup, Zoning Administrator, noted that at the April 18, 2006, public hearing, the BZA requested additional information on McLean Bible Church, which staff responded to in the May 23, 2006, memorandum from the Staff Coordinator, Jayne M. Collins. He pointed out that in staff's memorandum the concern that was raised regarding staff's past determinations had been addressed, and copies of a few of those cases were distributed, although there were several others researched. Copies distributed that morning were the determinations of Stratford University in 2003, Phoenix University in 2004, and Virginia International University in 2004, as each was considered relevant. Staff's rationale for its 1988 determination that Strayer College was a school of special education was because the component for computer training was a distinct and targeted instruction. Mr. Shoup acknowledged that there were inconsistencies with the XO Communications' and Virginia International University's determinations. Staff initially deemed XO Communications as a school of special education, but when reviewing it in 2006, was not confident that that decision was correct. He noted that the decision changed because the College of William and Mary had provided MBA instruction at XO Communications, and because William and Mary College was a State institution, it was considered a public use. With regard to the definition of Christian education, Mr. Shoup said he disagreed with the appellant's contention that the seminary was part of MBC's Christian education program; that it was a de minimis activity on the site; that it should be allowed as part of MBC's special exception amendment approval; and, that no further approvals should be required. There was discussion concerning whether staff should consider other churches and their education programs, however, staff determined that it was not proper or necessary to question other Christian education classes; they were Christian education classes, conducted at a place of worship, and permitted as part of the use. Mr. Shoup noted that in the Zoning Ordinance, MBC's situation was considered a separate and distinct use, a college/university. He pointed out that if one followed the appellant's logic there was no need to do a separate approval for other separately designated uses such as child care centers or schools of general or special education. He noted that it was common for churches and places of worship to seek approval of those other components, just as MBC had with respect to child care. Mr. Shoup said there was nothing to support the contention that it was common knowledge that the activity was on-going when the SEA was approved; there was nothing in the application regarding a seminary activity. He said the level of control over the courses was also an issue as MBC assured they were solely controlling the course work, however, Capital Bible Seminary must be in control of its course content in order to receive accreditation. Mr. Shoup stated that he struggled with the case, and arriving at a determination was not easy; however, the facts remained that the activity was for credit; it could lead to a degree; it would be provided on a continuous basis, semester after semester; that McLean Bible Church was serving as the branch campus of Capital Bible Seminary; and there was nothing to suggest that with the proposed reduction in activity anything would change. Mr. Shoup stated that it was staff's conclusion that Capital Bible Seminary and their function at MBC was a college/university and SE approval was needed.

~ ~ ~ June 6, 2006, MCLEAN BIBLE CHURCH, A 2006-DR-002, continued from Page 361

Mr. Shoup addressed several issues in Mr. Mendelsohn's May 25, 2006 memorandum. He referenced the first page regarding prior determinations, noting that Mr. Mendelsohn charged that there were only two previous determinations issued by staff that deemed something a college/university; however, Mr. Shoup pointed out there were an additional two which were distributed that morning. Regarding the comparison of XO Communications with Virginia International University's determination and that of MBC's use, XO Communications was deemed to be a school of special education because staff focused on the fact that their master's program was very narrowly tailored. He said the comparison appeared not to be all that advantageous for MBC in that XO was deemed a school of special education, and that remained a separately designated use in the Zoning Ordinance, as well as the fact that on an R-1 District property, it remained a special exception use. MBC still needed a special exception amendment because they had not applied for a school of special education with their SEA application. Referencing page 4, Mr. Shoup assured that next time staff would provide copies of every determination reviewed before making its determination on a subject application. He stated that staff continually looked at and considered precedence, which was true with this case, and he disagreed with Mr. Mendelsohn's assertion that little research was done. Mr. Shoup stated that all determinations were looked at and many staff meetings were held to discuss the matter. Addressing several e-mails referenced on page 6, Mr. Shoup explained that he initially considered the use de minimis, but after discussing other key elements, reviewing everything in context of the definition, and returning to the fact that the program was 'for credit', the reason for changing his mind was that the activity was continuous. He submitted that most of the staff had not concurred with his initial opinion; that there was much discussion with each position argued and the reasons why; and, citizen input was considered as well. Noting page 7, Mr. Shoup stated that it simply was not true the accusation of Mr. Mendelsohn's that staff specifically selected MBC and that it was singled out while other churches that offered seminary classes were not required to obtain special exceptions. The only church fitting the criteria was Emmanuel Baptist Church which also was affiliated with the seminary, and staff could find no other churches. Mr. Shoup said that a former County employee, David Hunter, now in the private sector assisting religious organizations with required permits, was contacted to ask if he may be aware of other churches that offered such religious studies. Mr. Hunter told staff that other churches ". . . do it under the radar," which was interpreted as avoiding detection perhaps because it was not legal. Mr. Hunter said the churches do it and do not ask permission. Mr. Shoup submitted that although Mr. Mendelsohn relied on Mr. Hunter's experience, Mr. Hunter's explanations were not particularly supportive of the appellant's position, but rather that of staff's. Mr. Shoup said that it was a ridiculous accusation of Mr. Mendelsohn when he said that staff's determination was arbitrary and capricious. Mr. Shoup affirmed that it was a preposterous notion that there could be a conspiracy as the County's system allowed for citizens to raise questions to the County Supervisor, the Supervisor will look into the matter, and then staff will be questioned. After meetings with the Supervisor and citizens, Mr. Shoup said his initial consideration of the de minimis argument was discarded, and he then agreed that it was a college/university. Mr. Shoup stated that he took issue with the characterization that he may have succumbed to political pressure as that certainly was not the driving force in his analysis. He maintained that his decision was made after considering all the factors. Another disturbing suggestion concerning the discrimination factor that Mr. Mendelsohn made was that staff would make one determination for a secular use and something entirely different for a religious use. Mr. Shoup referenced the Stratford University's determination and Virginia International University determination, which illustrated that secular activities were considered college/university uses, and they had gone through the process. He pointed out that Phoenix University went through the Special Exception process after it was deemed a college/university. Mr. Shoup addressed the Religious Land Use and Institutionalized Persons Act (RLUIPA) issue stating that staff's position was set out in its May 23, 2006 memorandum. Mr. Mendelsohn's issue that staff was treading upon dangerous ground when staff characterized typical, customary, standard religious practice; however, that characterization was justified when responding to Mr. Mendelsohn's assertion that other churches were doing it as part of their Christian education ministry, and MBC was doing it as part of its Christian education ministry. Mr. Shoup stated that it was not improper for staff to consider what was customary or typical, i.e. were there a number of churches affiliated with colleges? Mr. Shoup stated that there was no reason to believe it customary. Concerning Ms. Collins' e-mail where she indicated her initial reaction when seeing the church's size and scope, Mr. Shoup said that was not a prejudiced or biased remark, as claimed by Mr. Mendelsohn, and it was unfortunate that her comment could be misconstrued as such because he had a similar reaction when he first drove into the parking lot and said it was an impressive site. Referencing another statement of Mr. Mendelsohn's when he said it was clear that other congregations engaging in virtually identical adult religious education have not been categorized as colleges or required to obtain special exceptions, Mr. Shoup said there was no question a Christian education program was part of a use and the course work in some of these churches did have formal programs for Christian education; that was allowed as it was not a college or university. However, when it was a distinct use, as a seminary level

activity was, staff thought it fell within the parameters of what was a college/university. Mr. Shoup said staff agreed with one of Mr. Mendelsohn's statements, that the letter of the law and the Zoning Ordinance was what mattered, and that was what staff's analysis was based on. He noted that the Zoning Ordinance stated that a college/university was an SE use on R-1 property, and that it was a separate and distinct use. He clarified that the use provided the opportunity for people to gain credit for college degrees semester after semester and served as a branch campus and staff believed it arrived at the correct decision.

Before making his rebuttal comments, Mr. Mendelsohn expressed his appreciation and respect for Mr. Shoup; he found him an honest and forthright person, and it was unfortunate that with Mr. Shoup's impending retirement, this case was so contentious. Mr. Mendelsohn then proceeded with his rebuttal stating that MBC sought a determination based on the its proposed set of facts, yet staff spent an inordinate amount of time reviewing what the church was doing and not what it proposed to do. He said staff's focus and subsequent analysis and determinations were evident in all the materials and documents submitted for consideration. He stated that staff and the appellant had a fundamental disagreement, that the program was an integral part of the church's education and ministry and was not a college or university. The appellant continued to disagree with staff that attaining college credits made it a college or university. He noted that these religious education practices were on-going throughout the County and throughout the country because it was considered part of the ministry and the Christian education program. He pointed out that for staff to consider the program at William & Mary to be Christian education, but to consider MBC's program that taught less than 100 students to be a college or university was an inconsistent argument. Mr. Mendelsohn said he viewed the past seven months as staff trying to justify its position to say 'no', as evident by the majority of testimony that day. In summary, Mr. Mendelsohn said he believed McLean Bible was singled out and treated differently than other churches; that what was proposed was not considered; and, staff's focus was what the church did previously. Mr. Mendelsohn stated that the appellant found that improper and he requested that the Board overturn the Zoning Administrator's determination.

Ms. Gibb stated that she could not find any part of McLean Bible Church's activities that were not part of its mission if they involved people. She said she thought Development Condition 10 must be taken at face value and nothing more could be read into it. Ms. Gibb said she did not believe the condition could be as open-ended as Mr. Mendelsohn professed.

Mr. Mendelsohn responded that he did not think his interpretation was quite as broad as Ms. Gibb was assuming, but it was clear that Christian education, the reaching out and the educating of people about Christ, was an integral part of the church's mission. He said that Development Condition 10 was intended to be broad because those type classes were going on at other churches at the time of MBC's approval, and never was it considered that there was a need for a particular thing to be singled out because it was part of the education program.

Ms. Gibb noted that with Mr. Mendelsohn's logic, any part of the church's mission would not have to be spelled out. She said she recalled a newspaper article that discussed issues such as the neighbors' fear about traffic and their concerns on limiting it. Ms. Gibb said that she could not see how Condition 10 would solve the issue, and MBC could read it as broadly as they wanted. She said she could not understand how it was such a disfavor, discriminatory and unfair to the appellant that they be required to come in for a special exception amendment.

Mr. Mendelsohn said that with the community, there was not unanimity on the decision, but the Board of Supervisors had unanimously adopted the current language, the plain reading of which allowed exactly what the church was doing today. He stated that it was improper for the BZA or Zoning Administrator to understand the BOS's approval but say they just did not agree and then rule that the church should be required to redo it. He reiterated that to educate people about Christ was an integral part of the church's mission, and Ms. Gibb's or staff's examples of activities such as dog training classes to bring in people were out of the ordinary.

Mr. Hammack commented that the BZA and the Zoning Administrator did not disapprove of nor find objectionable Christian education, given during the normal course of activities, but the issue at hand was the Website that advertised a separate institution conducting classes that led to degrees. Whether one could bring in a third party was the sole issue before the BZA, not the fact of offering religious education. Referencing the comment made by David Hunter about 'every church was doing it', Mr. Hammack reminded Mr. Mendelsohn that the only evidence of a church known to offer such degree courses taught by Capital

Bible Seminary was Emanuel Baptist and two others. He asked if there was any other church that Mr. Mendelsohn knew of that sponsored a third party seminary, of any denomination, that advertised degree courses held in their church, and had not applied for a special exception.

In response to Mr. Hammack's question, Mr. Mendelsohn said he was aware of one church in Fairfax City that sponsored a third party seminary to teach degree courses, and there was another in Falls Church whose name he did not know, but he was sure there were others.

Mr. Hammack said he was not completely convinced that other churches actually gave degree classes that were advertised that way to the public. He submitted that the language that stated seminaries were associated with churches was probably true; however, no seminary classes were taught from a remote university in a different state. He said he was troubled that MBC still felt that that was appropriate. He also said that he was unsure whether the figures Mr. Mendelsohn presented regarding the number of class attendees throughout the Nation were accurate.

Mr. Shoup advised Mr. Hammack that staff checked with Fairfax Baptist Temple and they indicated they had no affiliation with any seminary, but that they did have a very active Christian education program.

Mr. Mendelsohn stated that it was common in the area and across the Country. He submitted that the churches who gave testimony before the BZA were comfortable doing so because they were not in this jurisdiction. He reiterated that the practice was common yet staff made the judgment that it was not common, and whether ten specific examples in Fairfax County were named was not the issue. The issue, he said, was whether it was common in the Country and this area, and the answer was 'yes'. Capital Bible Center, he maintained, was not the only seminary; that there were probably over 100 seminaries who taught classes in churches across this Country. Staff's question, from a land use point of view, was whether this was de minimis; MBC clearly believed it was de minimis. He said that if perhaps there were 130 students registered, that that was actually a duplication, explaining that when it appeared that 130 individuals attend class, due to overlaps, there actually were less than 100 individuals because students often attended other classes than just one. Mr. Mendelson pointed out that the same would be true of the 7,000 attendees because that would be counting each time an individual took a class without trying to separate whether someone was doing so twice a week or once a week.

Mr. Hammack said that with all due respect, to say that it was common was a conclusion, but citing seminaries who operate in churches was a far more satisfactory level of proof. It seemed as if neither MBC nor the Zoning Administrator had contacted any seminaries to find out if they operated in churches in Fairfax. Mr. Hammack said that that, to him, created a different issue from a zoning point of view that he must reconcile when deciding whether the Zoning Administrator was correct or not.

Chairman DiGiulian asked if there was anyone present to speak only to the issue discussed today.

There being no response, Chairman DiGiulian asked whether staff had closing comments.

Mr. Shoup had no further comments.

Chairman DiGiulian then closed the public hearing.

Mr. Hart identified the property location as 8879, 8925 and 9001 Leesburg Pike and Tax Map number 28-2 ((1)) 10, 11, and 18. He noted that the application was for an appeal of a determination that the proposed modified program of college level courses for academic credit offered in conjunction with Capital Bible Seminary was considered a college/university use and, therefore, required an approved amendment to Special Exception SEA 78-D-098-2. Mr. Hart moved that the Board adopt the following resolution and the following findings of fact and conclusions of law. He said he recognized that churches were an important part of the Fairfax County Community and that there were many important programs offered under church umbrellas. He noted that in residential districts churches were not by-right uses; they were subject to special permits and special exceptions and that development conditions were usually imposed to mitigate the impact on other properties. He added that many churches had some associated educational use, some of which were regulated, such as schools, or to a lesser extent, child care facilities. Some seemed to be implicated in the church's approval, such as adult bible study groups or Sunday school classes. He noted that historically the Board of Supervisors and the BZA had not wanted to regulate the details of worship activities but have

imposed general constraints on the entire package. Mr. Hart stated that the BZA, throughout this process, was presented with many questions, and he did not think they all could be resolved that day. He said that he believed the appeal boiled down to one narrow question; that of whether the proposed program of college level classes for credit in conjunction with Capital Bible Seminary required a special exception amendment. He noted that during the period of deferral, additional information was received from the appellant, the Zoning Administrator, and concerned citizens whose material was thoroughly prepared. He commented that he thought the interpretations were the most important component of the issue and that they were helpful both in the particulars of the background and the process, but it was not necessarily dispositive of the narrow question. He also noted that it appeared there were no court cases exactly on-point. Mr. Hart said the Board was forced to turn to the language and to Development Condition 10, of which the latter he did not believe covered squarely the issue there. He said his interpretation of the paragraph was that it dealt primarily in the special events and their constraints, and although there was discussion over whether the first sentence could be read so open ended as to allow any activity which was consistent with ministry objectives, he did not believe that reading was appropriate. He stated also that he did not believe that a development condition as broad as that condition was argued would be consistent with other requirements in the Zoning Ordinance. Mr. Hart said he did not believe the Board had any authority for the proposition that that reading of the first sentence of Development Condition 10 would obviate any other special exception requirements or other approvals contemplated by the Ordinance. There were other uses, he submitted, which could be consistent with ministry objectives for a large church such as those related to retail sales or broadcasting or other activities that would require some other layer of approval in an R District, and he did not believe a condition like that would automatically approve those in advance if they were not contained in the original application or were not advertised. He pointed out that from the records before the Board, a college or university use was not described or mentioned in the original application nor was it referenced in the advertising. He said he thought it could have been referenced in the advertising back in 1999 or 1998 if it was squarely presented at that time, and it would have been documented albeit, even if slightly. Mr. Hart said he believed that the use standing alone in an R District would require a special exception. Addressing the question of the interpretation of the term college/university use, Mr. Hart said the definitions of all terms used were not always spelled out and that the Board must turn sometimes to dictionary meanings or common sense. He said the Board at times also looked at consistent interpretations by the Zoning Administrator. Mr. Hart said he believed that the proposed college level classes for credit went far beyond the plain language and the plain interpretation used there. He noted that the activity was fairly limited and the use relatively modest in comparison to the overall church activities, and the relative proportions of the two would not eliminate the requirements for a special exception. He pointed out that the package of development conditions was also extensive and detailed. He stated that the application had been heavily reviewed but was silent about whether those courses would be offered. He noted that a special exception would apply to this sort of activity whether it was in conjunction with a church or not. Mr. Hart said that on the record before the Board, he did not believe there was a basis to conclude that the application was not being consistent. This type of activity, he said, appeared to be a conceivably approvable use but that was not for the Board to decide that day. Mr. Hart noted that the Board could not impose conditions on the use as some of the correspondence had urged; that was up to the Board of Supervisors. Mr. Hart said that he would not be necessarily considering or getting into the particulars of the website as he would separate that issue from this particular determination. He noted that it may have been unfortunate that the website promotions of the activity had continued after the previous case, but that was not a part of today's determination on the proposed use. He said that he also would not get into the process and particulars of the details of the e-mails received during the deferral. Mr. Hart clarified that the question before the Board was whether the determination of the Zoning Administrator was correct, not necessarily the staff deliberations or dialogue leading up to that, and which, in his view may not have been polished into the final format. He further noted that the timing question was not necessarily dispositive either. Mr. Hart conceded that the process probably took longer than anyone would have liked but the Board was given no authority regarding where that length of time left us in terms of the correctness of the decision. Mr. Hart said that it boiled down to the question of whether a special exception amendment was required for the proposed activity. He said that he would conclude that the Zoning Administrator was correct; that the activity was not covered within the special exception approval, whether in Development Condition 10 or Development Condition 2, which referenced the uses shown on the plat or otherwise provided in the conditions. Mr. Hart stated that he would adopt the rationale in the staff report, Ms. Collins' memorandum of May 23rd and Mr. Shoup's remarks that morning and move that the Zoning Administrator be upheld.

Mr. Ribble seconded the motion.

~ ~ ~ June 6, 2006, MCLEAN BIBLE CHURCH, A 2006-DR-002, continued from Page 365

Mr. Hammack noted that what the Board was to decide that day was narrow; it was whether the Zoning Administrator was correct. He said that more than one argument could be made that could support the application and the Ordinance. He said if the Zoning Administrator's rationale was strong, then the Board should uphold his interpretation rather than trying to impose an interpretation of its own. He pointed out that in this case, which Mr. Mendelsohn was aware of as well, the original application was heard by the Board of Supervisors, and a Special Exception was granted, and that the Zoning Ordinance clearly reserved the right for the County Board to interpret special exceptions, but not the BZA. The BZA may interpret special permits and if this application were an SP, the BZA could interpret the original development conditions. He said that he thought this case was one that should go back to the Board of Supervisors for interpretation, and that the Ordinance was clear on that. However, the applicant chose to come before the BZA, in essence, to apply an alternative interpretation. Mr. Hammack stated that he did not think it was proper that the BZA do that when the Ordinance reserved that right to the Board of Supervisors. Concerning Mr. Mendelsohn's statement that the church had no recourse, Mr. Hammack said he disagreed as the church could apply for a special exception amendment or have appealed to the County Board, if that option were still available, or filed an appeal with the Circuit Court. Mr. Hammack said he was unconvinced that other churches were operating seminary level courses for credit, and of course, the 'credit' was the issue, although offering religious education classes was common. Mr. Hammack stated that he would support the motion.

Chairman DiGiulian called for a vote. The motion to uphold the determination of the Zoning Administrator carried unanimously, by a vote of 7-0.

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~ ~ ~ June 6, 2006, Scheduled case of:

9:30 A.M. CHRISTOPHER POILLON, A 2006-DR-011

Chairman DiGiulian announced that this case was administratively moved to 7/25/06, at the applicant's request.

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~ ~ ~ June 6, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Carol Burke and Joseph Athey

William E. Shoup, Zoning Administrator, Zoning Administration Division, referenced his June 1, 2006, memorandum in which he explained that after discussion with the County Attorney, he had changed his determination. He said he had the authority to reverse the determination that the lot came to a point in the rear, which rendered the issue of the appeal mute, and that resolution was indicated to the appellants and the property owner. The appeal's issue was now moot and Mr. Shoup said he had asked the appellant to withdraw the appeal.

Chairman DiGiulian asked if there was anyone present who wished to speak to the appeal.

Mark Westerfield, the attorney for Carol Burke and Joseph Athey, said they were in agreement with the new determination. The basis for the new determination was the fact that the decision was not a matter of discretion, and the appellants may have disagreed with how the decision came about, but had no quarrel with the decision itself. He said that the rear yard characterization, which was the first issue of the appeal, would be withdrawn. One of the two remaining issues, that of the building height which was misrepresented in the staff report, was discussed with staff and would be corrected as part of the special permit application, and, therefore, that issue will be withdrawn. The third issue, that the plat had not shown the Resource Protection Area (RPA) that covered a large portion of the rear yard, would soon be mute because they were assured a revised plat would soon be received. Mr. Westerfield said that because all three issues of the appeal were addressed, the appeal would be withdrawn. He thanked Mr. Shoup for reviewing the matter and making his revised determination, and he thanked the Board for considering the application.

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~ ~ ~ June 6, 2006, continued from Page 366

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Virginia Equity Solutions case, correspondence, BZA By-Laws, Hollin Hall, and the Cooper case, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Before the Board entered into Closed Session, Mr. Shoup addressed the Board and thanked them for their kind comments about him. He said several of the Board members had as lengthy tenures on the BZA as he had with the County. He also noted that throughout most of his career much of his time was spent making presentations and handling cases before them, and although on occasion they did not see eye-to-eye, the exchanges were always healthy and respectful. He thanked them for their kindness and the patience afforded him over the years and he wished the Board the best of luck in the future.

The meeting recessed at 10:40 a.m. and reconvened at 11:07 a.m.

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

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As there was no other business to come before the Board, the meeting was adjourned at 11:08 a.m.

Minutes by: Paula A. McFarland

Approved on: September 12, 2006

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 13, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr., was absent from the meeting.

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

~ ~ ~ June 13, 2006, Scheduled case of:

9:00 A.M. BOK YI KIM, TRADING AS CAFE MARTINI, INC., SP 2006-SU-014 Appl. under Sect(s). 4-603 and 4-803 of the Zoning Ordinance to permit a billiard hall. Located at 13840-F Braddock Rd. on approx. 15.89 ac. of land zoned C-6, C-8, HC, SC and WS. Sully District. Tax Map 54-4 ((28)) 124.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy Jo Cranmer, the applicant's agent, Peciulli, Simmons and Associates, Limited, 11212 Waples Mill Road, Fairfax, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an eating establishment to function as a billiard hall by allowing the installation of up to six billiard tables. Staff recommended approval of SP 2006-SU-014 subject to the proposed development conditions.

Mr. Hart referred to revised Condition 6 that the Board received at the hearing which he said he thought meant that the number of seats and employees would be subject to the Ordinance requirements depending on the number of parking spaces, but it was not clearly stated. Mr. Varga said Condition 7 addressed the parking tabulation revision. Mr. Hart asked whether the number of billiard and dining tables had been finalized. Mr. Varga said they had and referenced the parking tabulations that specifically addressed the billiard tables and the number of booths or seats for dining. He said the applicant had requested up to six billiard tables; however, they had requested some flexibility with respect to that number. Mr. Varga stated that the computation for the number of seats for dining and the number of parking spaces for the billiard tables would not eclipse the 18 parking spaces the applicant had a right to in the shopping center. Mr. Varga confirmed for Mr. Hart that the number of billiard tables would be between one and six.

Ms. Cranmer presented the special permit request as outlined in the statement of justification submitted with the application. She said that because the use of billiard tables had been decreasing, the applicant was requesting the flexibility of a maximum of six tables. She stated that if the applicant could obtain more parking spaces from the management of the shopping center, they would like to increase the density of the seating in the dining area. She said that one of the concerns expressed at a meeting between the applicant and the Western Fairfax Citizens Association dealt with the café's signage, and it was requested that part of the sign be in English. Ms. Cranmer stated that there were no Korean words on the current sign nor was it lighted in neon, so the applicant was already in compliance with the association's request. She listed the number of dining and bar seats in the establishment and indicated that there was one billiard table currently that was a permitted accessory use.

Mr. Beard asked whether the applicant had a full service liquor license. Ms. Cranmer said there was a bar located in the café, and she believed they had a full service liquor license; however, the applicant was not present at the time to confirm.

Mr. Byers referred to the revised development conditions and asked whether the applicant would be amenable to changing Condition 6 to read as follows: A maximum number of billiard tables within the use shall not exceed six. The maximum number of dining tables, bar seats, and employees shall be subject to the retention of the current 18 parking spaces allocated to Café Martini or as may be allocated by the shopping center management. Ms. Cranmer agreed to the suggested change.

Mr. Byers referred to Condition 9 and asked whether the applicant would also be amenable to including the following: Any signage erected on the building shall be of a size and material which are compatible with existing signage in the shopping center as determined by DPZ (Department of Planning and Zoning) and shall be subject to the regulations in Article 12 of the Zoning Ordinance. In addition, signage shall not include neon, and 50 percent of the signage shall be in English. Ms. Cranmer agreed to the inclusion

suggested by Mr. Byers.

Mr. Byers referred to Condition 10 and stated that he wanted to delete the wording of additions of expansion to the billiard hall or eating establishment and replace it with the following: No additional billiard tables shall be permitted without approval of an amendment to the special permit. Ms. Cranmer agreed to the replacement language.

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

Mr. Byers moved to approve SP 2006-SU-014 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Mr. Ribble suggested an amendment to the motion to revise Condition 9 to read that a minimum of 50 percent shall be in English. Mr. Byers accepted the revision.

Mr. Beard asked staff whether the Board could require such a thing. Susan Langdon, Chief, Special Permit and Variance Branch, said that any conditions the Board considered relevant to the case could be imposed on the applicant. She noted that there were regulations in the Zoning Ordinance for signs regarding the size, the number of, whether they could be in neon or backlit, et cetera; however, there was nothing in the Ordinance that addressed language.

Mr. Hart stated that he had attended the citizens association meeting Ms. Cranmer had referred to and said it was his impression that the shopping center was large and that many of the stores had changed over to Korean-owned businesses. He noted that some of the signage was entirely in the Korean language, and the citizens had expressed concerns because they did not know what the businesses were, and it would be helpful to have that information. He noted that most of the stores in the shopping center were by right.

Mr. Beard said he understood why the citizens had requested the signage be partially in English, but he questioned whether that could be required.

Mr. Byers indicated that other businesses had made accommodations in offering bilingual information to their customers and stated that it was a reflection of the demographics of the area. He said it was his opinion that no one should object to bilingual signs because the knowledge could bring more business into the establishments.

Mr. Hart seconded the amended motion, which carried by a vote of 6-0.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BOK YI KIM, TRADING AS CAFE MARTINI, INC., SP 2006-SU-014 Appl. under Sect(s). 4-603 and 4-803 of the Zoning Ordinance to permit a billiard hall. Located at 13840-F Braddock Rd. on approx. 15.89 ac. of land zoned C-6, C-8, HC, SC and WS. Sully District. Tax Map 54-4 ((28)) 124. 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, 2006; and

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

1. The applicant is the owner of the land.

~ ~ ~ June 13, 2006, BOK YI KIM, TRADING AS CAFE MARTINI, INC., SP 2006-SU-014, continued from Page 370

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 4-603 and 4-803 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Bok Yi Kim, trading as Café Martini, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 13840-F Braddock Road, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat prepared by Peter J. Rigby dated March 6, 2006, as revised through May 18, 2006, 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 hours of operation of the billiard hall shall be limited to 11:00 a.m. to 2 a.m., daily.

6. The maximum number of billiard tables within the use shall not exceed 6. The maximum number of dining tables, bar seats, and employees shall be subject to the retention of the current 18 parking spaces allocated to Café Martini or as may be allocated by the shopping center management.

7. Prior to the issuance of a Non-RUP, the applicant shall prepare a parking tabulation revision for the review and approval of DPWES and Zoning Permit Review Branch reflecting all current uses on site to verify that adequate parking does exist on the site to accommodate the billiard hall and the maximum number of seats for the eating establishment.

8. All alcoholic beverage control laws of the State of Virginia shall be complied with.

9. Any signage erected on the building shall be of a size and material which are compatible with existing signage in the shopping center as determined by DPZ and shall be subject to the regulations of Article 12 of the Zoning Ordinance. Signage shall not include neon, and a minimum of 50 percent of the signage shall be in English.

10. No additional billiard tables shall be permitted without approval of an amendment to the special permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

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

~ ~ ~ June 13, 2006, BOK YI KIM, TRADING AS CAFE MARTINI, INC., SP 2006-SU-014, continued from Page 371

explanation of why additional time is required.

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

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~ ~ ~ June 13, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF MT. VERNON UNITARIAN CHURCH AND FORT HUNT PRESCHOOL, SPA 82-V-069-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-P-069 previously approved for church with nursery school, to permit building addition, increase in seating, increase in land area and site modifications. Located at 1909 Windmill Ln. on approx. 7.95 ac. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((1)) 10B and 93-3 ((18)) A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Clontz, the applicant's agent, 8308 Crown Court Road, Alexandria, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 82-V-069, previously approved for a church with nursery school, to permit building additions, an increase in seating, an increase in land area, and site modifications. The building additions consisted of an addition to provide an improvement to the entrance and gathering location at the front of the church and the addition of space for classroom and office functions that were currently being conducted in the existing manor house on the site. The additions would increase the size of the existing building by 6,290 square feet, from 21,769 square feet to 28,019 square feet, in three phases. The number of seats approved in the sanctuary as granted by SPA 82-V-069 was 350. On July 27, 1994, the BZA approved SPA 82-V-069 to allow a nursery school with a 50-student capacity. At that time the development conditions changed to reflect the number of seats reflected on the special permit plat that stated the number of sanctuary seats as 250. The actual number of seats had always been 350. A small increase in land area was also proposed, which corrected the size of the property from the previous application by slightly over 1,000 square feet. Additionally, six new parking spaces were proposed. Staff recommended approval of SP 82-V-069-03 subject to the proposed development conditions.

Mr. Ribble made a disclosure and indicated that he would recuse himself from the public hearing, stating that he had recently done some work for the church.

Mr. Hart noted that the first sentence in Development Condition 9 said parking shall be provided as depicted on the special permit amendment plat. He indicated that the Board had received a letter at the hearing from Mr. Minnis who had complained that the church had overflow parking along the driveway which was on-site and in the County's opinion was probably within the scope of the second sentence of Condition 9 that said all parking shall be on-site. Mr. Hart asked whether parking along the driveway was authorized by Condition 9. Mr. Chase responded that the reference to as depicted referred to the striped parking area within the site. He said the Office of Transportation had not expressed any issue with parking along the driveway, and based on that, he presumed that it was allowed and fit in with the condition. Mr. Hart indicated that the house located at the end of the court appeared to belong to Mr. Minnis, and it looked as if his patio was approximately ten feet from the lot line. He asked staff whether they had contemplated that there would be parking at that proximity to an existing house. Mr. Chase said no, not that close. He said that if the Board desired, a condition could be added to address the issue.

Mr. Clontz presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the application before the Board represented several years of planning in an effort to improve and expand the facilities to meet church requirements, to do so in a manner that minimized the impact on the environment and the neighborhood, and to do it in a manner that was affordable to the church. He said the applicant's intent was to build in phases, with half being completed in 2007, and the second phase, which was allocated for the education wing and the gathering room, would be deferred until financing could be obtained. Mr. Clontz said the church sat inside an island in the center of the

parking area, and when the entire project was completed, the church would still be inside the island. There would be no expansion outside of the central building area, no building along the perimeters, and no higher roofline for the church. He said the applicant had been working with the neighborhood association for the past two years. With respect to the parking issue raised by Mr. Minnis, Mr. Clontz said that the first third of the driveway was not accessible for parking cars. He said parking occurred on the shoulder on both sides of the driveway when the church had big events, but it was located on the top two-thirds of the driveway. He said the applicant had no objection to the Board adding a condition concerning parking on the shoulder, as suggested by Mr. Hart.

Mr. Hart asked Mr. Clontz to confirm that the applicant would have no objection to a condition specifying that there would be no parking permitted on the shoulder of the driveway. Mr. Clontz said that was correct.

In response to a question from Mr. Hart, Mr. Clontz said he had not seen Mr. Minnis' letter, but he had spoken to him and was familiar with the issue. Mr. Hart said that Mr. Minnis had complained about noise after midnight, people partying in the parking lot, and car horns being blown. Mr. Clontz said the church property was rented out for weddings. He said none of the other neighbors had complained about noise, and if there had been an event that ran past 10:00 p.m., it was by exception. He said that as a condition of the rental agreement, the events had to terminate on time, and there was a site manager on the property to enforce the rules.

Mr. Hart asked whether staff was agreeable to the church renting its facility out for weddings. Susan Langdon, Chief, Special Permit and Variance Branch, stated that there was no specific condition and normally there were not any for uses such as weddings. Because they were located in the middle of a neighborhood, she said there had been some conditions imposed on some places of worship with respect to rentals and how late facilities could be open; however, staff had not specifically imposed those restrictions in this case. She said staff was not aware of any issues being raised on the subject.

Mr. Hart asked what the noise ordinance permitted with respect to early morning mowing of lawns. Ms. Langdon stated that she was not positive, but she thought that it was 6:00 or 7:00 in the morning. Mr. Hart stated that the applicant would have to comply with the noise ordinance no matter what the conditions specified. Ms. Langdon said that was true, unless more restrictive conditions were placed on an applicant by the Board.

Chairman DiGiulian called for speakers.

Thomas Frank, 2000 Mason Hill Drive, Alexandria, Virginia, came forward to speak. He said the church and the neighbors had a good rapport, there was some noise and traffic emanating from the church grounds, and he objected to any increase in seating.

Michelle Rioux, 2005 Windmill Lane, Alexandria, Virginia, came forward to speak. She said she had poor drainage at one end of her property which was near the church's daycare facility that had been mitigated by her planting lots of shrubs and vegetation, and because of that, she no longer had any problems. She said deteriorating screening on the property caused by dying Leland Cyprus trees which separated the two properties was causing a lack of privacy, and the preschool was too close to her property. Ms. Rioux stated that even though staff had indicated that they had not found any information on her easement, she did have one. She said that at the time she purchased her property, she had received a letter from the former owner of the Mt. Vernon Unitarian Church granting her a permanent easement between her property and the church to allow for the Leland Cyprus trees to be planted between the two properties as a buffer zone. Ms. Rioux said she would place a copy of the easement letter in the County's records. She said Steve Aitcheson, Director, Stormwater Planning Division, had recently visited her property on a rainy evening to determine if there were any drainage problems. She said Mr. Aitcheson had informed her that the church was proposing to dig some type of trench behind the fence line to catch the water, and once they did that, she would no longer be allowed to keep her tree line on her own property because the County did not want any roots growing into the trench. She said she had been told that there would be a 25-foot screening area along the property line so she would not have to deal with that type of problem. Ms. Rioux said her rights would be violated if that happened, and she wanted an explanation from the County with respect to what they were planning to do.

In answer to a question from Chairman DiGiulian, Ms. Langdon said staff was not aware of anything specifically in the area of Ms. Rioux's property. She said that some stormwater management upgrades were taking place in another area of the applicant's property. She referenced Condition 9 that addressed improvements to Little Hunting Creek that would upgrade the storm detention pond and other things that could be required by the Department of Public Works and Environmental Services (DPWES). She said that was not in the vicinity of Ms. Rioux's property, and staff was not aware of what the applicant was proposing to do in that area.

Mr. Clontz stated that the project was a separate one that related to stormwater management. He said, as was indicated in the application, stormwater management on the property needed to be improved, separate from the construction that would be done. He said County staff had looked at the applicant's and neighbor's properties and was putting together a set of suggestions for ways the applicant could prevent runoff from the hill and to ensure that what ran off was clear and in smaller quantities than at the present time. Mr. Clontz said they did not have an immediate plan of recommendations even though they had looked at several options where such management could be improved on the hill. He said no one was trying to initiate eminent domain or cut any trees down. He said the applicant was trying to manage the stormwater that came off the hill and would do that on its side of the property. He said if there were issues of easement, they would have to be worked out with the surrounding neighbors. Mr. Clontz said that with respect to the question of the easement in the letter referenced by Ms. Rioux, the applicant had a different interpretation of the document she had, and that was a separate legal process they would have to pursue.

Steven Dressing, 1799 Rampart Drive, Alexandria, Virginia, came forward to speak. He said the church was looking into the issues raised by Ms. Rioux concerning stormwater runoff and attempting to determine if a rain garden could be installed to capture the runoff before it left the property. In order to do that, it would require an under drain and access to the storm drain under the street. He said Mr. Aitcheson was trying to determine the options for draining from the rain garden to the storm drain. Mr. Dressing said it had been determined that the shortest distance from the rain garden to the storm drain was on Ms. Rioux's property, and using that route would cost the applicant the least money. He said the approval for such an easement had not been obtained, so the church had dropped that option, and it was no longer part of its plan.

Mr. Hart asked if it was correct that the stormwater management proposed with the application would be an underground tank in the parking lot. Mr. Chase said that was correct. It would be underground detention with a potential increase in capacity depending on what drainage studies indicated. Mr. Hart asked whether the applicant would have to demonstrate that they were handling the stormwater on their site and not on the neighbors' properties at the time of site plan. Mr. Chase said that was a condition of the application. He said that any increase in runoff would be picked up by the increase in size of the detention facility on site. Hart asked whether everything would be done within the boundaries of the applicant's site and there would not be any activity or encroachment on Ms. Rioux's property in terms of construction, limits of clearing and grading, and removal of trees or disturbance. Mr. Chase said that was correct.

Ms. Rioux stated that the area being discussed was a sliver of property that ran where the preschool and her house were located. She said there was not a lot of room to dig a drainage ditch that the applicant was proposing because of her retention wall and trees. Mr. Hart said the drawing showed no excavation in that area, no removal of trees, and the only thing he saw was a small extension for a proposed sanitary sewer lateral which would reach the fence, but not the property line. He asked staff to confirm that along the strip there did not appear to be any tree removal, excavation, structures or changes shown on the plat. Ms. Langdon said he was correct. Mr. Hart asked whether the applicant would have to return for a special permit amendment if changes in that area were to be made. Ms. Langdon said that if the applicant were to make changes on the site, they may have to come back for an amendment or at least an interpretation. She qualified that by saying that there were off-site easements, such as two sanitary sewer easements, and it was possible the County could approve something to happen within those easements because other projects could be proposed, which may or may not go along with what was proposed for the church. She explained that the plat showed nothing going off-site to connect to any of those easements for the current project. Mr. Hart asked whether those other projects were currently before the Board. Ms. Langdon said no, but if there was a sanitary or storm easement that went to the County, they had the right to enter and do work on the easements, similar to the right the power companies had with respect to the easements.

Ms. Rioux said she was looking for an answer as to whether or not she would be allowed to replace the

damaged Leland Cyprus trees that had died on her property. She said she wanted a guarantee from the church that she could replant her trees and would never have the problem of the church removing the screening and lose the privacy that the trees afforded her from the applicant's entire project.

Ms. Gibb said the problem was that the Board did not know what the status of Ms. Rioux's title was. She said the Board knew what the applicant was applying for because it was on the plat and in the staff report; however, they did not know what Ms. Rioux's easement document contained. Ms. Gibb stated that it was something that an attorney would have to interpret, and the Board could not tell her what her rights were with respect to the church. Ms. Rioux stated that she was not asking to plant trees on the easement. She said she wanted to know that she could plant trees on her property line in her backyard and the church would not put in a drainage ditch at the back of it which would require the removal of or prevent her from planting trees on her property.

Mr. Hart said Ms. Rioux may need to obtain her own counsel to answer her questions concerning what she could or could not do. He said the Board would not approve anything that would go on her property or make any changes in that area except for a very narrow area of disturbance. He said the area shown on the plat was the only area that the applicant could disturb if the Board approved the application, which was a location where a sanitary sewer lateral could go. He said that everything outside of the dashed line on the plat would be unchanged insofar as the amendment was concerned. Mr. Hart said that it appeared that Ms. Rioux's fence was several feet onto the church property and there was also something that appeared to be a concrete pad, and those issues would have to be worked out between neighbors. Ms. Rioux asked Mr. Hart to explain what would happen with the small strip on the plat that he had pointed out to her, and Mr. Hart said that if the applicant wanted to, they would be allowed to dig within the line shown on the plat to install what appeared to be a connection for a toilet or sink.

In answer to a question from Mr. Hart as to whether the applicant could go outside the limits of clearing and grading, Ms. Langdon said the limits were supposed to be determined by what the applicant felt needed to be done; however, there could be times when minor adjustments needed to be made at site review, and if they got to be too large or would affect other development conditions such as screening, then usually an interpretation was requested. She said the Ordinance allowed for minor modifications for related projects on-site, and staff would look at those on an individual basis. Ms. Langdon said the County could require that screening be put back if the applicant were to make a minor modification, especially if trees were to be taken down.

In his rebuttal, Mr. Clontz said that with respect to the stormwater issue, the applicant wanted to look at all their options to determine the pros and cons of the proposed efforts. He said the applicant had an ongoing issue with Ms. Rioux with regard to the property line, but that was separate from the amendment application. In terms of the water runoff, he said the applicant had pledged in writing to the neighborhood association that when the applicant had a set of plans that were complete, they would hold a public meeting with them and would bring in the experts to explain the details the plans. He said the church wanted to be a good neighbor and would work closely with them.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SPA 82-V-069-03 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF MT. VERNON UNITARIAN CHURCH AND FORT HUNT PRESCHOOL, SPA 82-V-069-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-P-069 previously approved for church with nursery school, to permit building addition, increase in seating, increase in land area and site modifications. Located at 1909 Windmill Ln. on approx. 7.95 ac. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((1)) 10B and 93-3 ((18)) A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ June 13, 2006, TRUSTEES OF MT. VERNON UNITARIAN CHURCH AND FORT HUNT PRESCHOOL, SPA 82-V-069-03, continued from Page 375

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 2006; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the requirements for a special permit.
3. The rationale in the staff report is adopted.
4. There are some issues often presented by a church that is embedded in a residential neighborhood, and there often are impacts from a non-residential use on surrounding residences, but in staff's judgment, the development conditions adequately address those impacts.
5. In general, the applicant is going to have to otherwise comply with the noise ordinance or other requirements.
6. The parking is limited to being on-site.
7. If there is noise outdoors at an hour that is not appropriate, that would be governed by the noise ordinance.
8. Likewise, it seems as though there may be other possible public works projects in the neighborhood or around this site, but the application the Board is currently considering is not addressing those one way of the other.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicants only, Trustees of Mount Vernon Unitarian Church and Fort Hunt Preschool and is not transferable without further action of this Board, and is for the location, 1909 Windmill Lane, indicated on the application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by R. C. Fields and Associates, dated November 14, 2005 signed February 22, 2006 and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The church and related facilities shall continue to use the existing ingress/egress from Windmill Lane and ingress/egress to the property shall be prohibited from Mason Hill Drive.

6. The maximum seating capacity for the main area of worship shall be limited to 350.

7. The maximum daily enrollment of the nursery school shall not exceed fifty (50) students.

~ ~ ~ June 13, 2006, TRUSTEES OF MT. VERNON UNITARIAN CHURCH AND FORT HUNT PRESCHOOL, SPA 82-V-069-03, continued from Page 376

8. The maximum hours of operation of the nursery school shall be limited to 9:15 a.m. to 12:00 noon, Monday through Friday.

9. Parking shall be provided as depicted on the special permit amendment plat. There shall be no parking along the shoulders of the access driveway. All parking shall be on-site.

10. The existing on site vegetation shall be maintained and shall satisfy the transitional screening requirement for all lot lines. Any vegetation removed along the northeastern lot line adjacent to lots 44 and 45 for the installation of stormwater related facilities, shall be replaced to provide screening equivalent to what was removed, as determine feasible by Urban Forest Management (UFM).

11. The barrier requirement shall be waived along all lot lines, provided that the fence located adjacent to the northwestern lot line remains.

12. An outdoor recreation area which provides 100 sq. ft. of play area for each child on the playground at any one time shall be located to the interior of the site. Plantings shall conceal the play area from the view of adjoining residential lots as approved by UFM.

13. Stormwater management and Best Management Practices facilities shall be provided as determined by DPWES. The applicant shall coordinate with DPWES to provide for improved water quality of the Little Hunting Creek Watershed by increasing the capacity of the detention pond on site if any element of the pond is upgraded and by the use of porous pavement systems to replace existing surfaces proposed to be replaced under this application. These projects shall be completed as directed by DPWES. The applicant shall also dedicate storm drainage easements over the storm system which conveys off-site runoff upon site plan approval or within 30 days of the request of the director.

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 Phase 1 use has been established or construction has commenced and been diligently prosecuted. Commencement of Phase I shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ June 13, 2006, Scheduled case of:

9:30 A.M. ANTHONY TEDDER, A 2004-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing a dwelling to be constructed and has allowed a land area in excess of 2,500 square feet to be filled and graded, both occurring in the floodplain and the Resource Protection Area without an approved permit, in violation of the Zoning Ordinance provisions. Located at 2862 Hunter Rd. on approx. 4.74 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-2 ((7)) (44) D. (Admin. moved from 7/13/04, 10/12/04, 1/18/05, 4/5/05, 6/14/05, and 9/13/05 at appl. req.) (Deferred from 3/14/06)

~ ~ ~ June 13, 2006, ANTHONY TEDDER, A 2004-PR-011, continued from Page 377

Chairman DiGiulian noted that A 2004-PR-011 had been administratively moved to December 19, 2006, at 9:30 a.m., for notices.

Chairman DiGiulian commented that this was the eighth time the application had been rescheduled.

Mavis Stanfield, Deputy Zoning Administrator, said Chairman DiGiulian was correct in that it had been a long process. She said Mr. Tedder had to obtain various exceptions, including a special exception and a resource protection area exception, which he had been able to do. She stated that staff had asked him to withdraw his appeal because there was no outstanding violation, but Mr. Tedder had asked that his appeal be maintained until he could get a residential use permit for his house.

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~ ~ ~ June 13, 2006, Scheduled case of:

9:30 A.M. GOOD STAR CONSTRUCTION COMPANY, INC., A 2006-PR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a single family dwelling under construction exceeds the maximum building height of thirty-five feet in the R-1 District. Located at 3000 Apple Brook Ln. on approx. 36,000 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((15)) 8. (Admin. moved from 4/18/06 at appl. req.) (Deferred from 5/2/06 at appl. req.)

Chairman DiGiulian noted that A 2006-PR-003 had been administratively moved to October 17, 2006, at 9:30 a.m., for notices.

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~ ~ ~ June 13, 2006, After Agenda Item:

Memorandum dated June 13, 2006, from Mavis Stanfield regarding
Richard William Horner and Margaret Draffin Horner, A 2006-DR-005

Chairman DiGiulian noted that Information Item 7 included two letters that were relevant to the Horner appeal that had not been available at the time a decision had been made on the appeal. He stated that he did not think they would have materially affected the decision, but he would defer to the Board.

There was no further discussion on this item.

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Mr. Hart moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Lee, the Virginia Equity Solutions, and the Cooper litigation, by-laws, and correspondence; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

The meeting recessed at 10:02 a.m. and reconvened at 11:03 a.m.

Mr. Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Beard and Mr. Ribble were not present for the vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 13, 2006, continued from Page 378

As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

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

Approved on: June 13, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 20, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble, III; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr. was absent from the meeting.

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

~ ~ ~ June 20, 2006, Scheduled case of:

9:00 A.M. DORA RODRIGUES, AS AGENT FOR JOSE RODRIGUEZ AND AURORA RODRIGUEZ, TRUSTEES OF THE DORA RODRIGUEZ BENEFICIAL TRUST, SP 2006-DR-018 Appl. under Sect(s). 8-916 of the Zoning Ordinance to permit modifications to the regulations on permitted extensions into minimum required yards to permit deck 13.2 ft. from side lot line. Located at 1063 Silent Ridge Ct. on approx. 37,957 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-4 ((29)) 129A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dora Rodrigues, 1063 Silent Ridge Court, McLean, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a modification to the regulations on permitted extensions into minimum required yards to permit construction of a deck to be located 13.2 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a reduction of 6.8 feet was requested.

Mr. Hart asked why the area was considered a side yard as opposed to a rear yard. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the Zoning Ordinance interpretation was that there could only be one rear yard, and the rear yard was generally the yard most opposite the front street line, and everything else was considered to be a side or front yard. Pointing out that the lot zigzagged and the back meandered, Mr. Hart asked why all the zigzags were not considered to be the rear line. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, explained that with the subject property there was a rear yard that was the entire rear area of the house, but there could only be one rear lot line, and the one rear lot line was not in the area where the applicant had the deck, so it became a side lot line and took the side minimum required yard. Mr. Hart said he did not understand the explanation and thought there was something wrong and perhaps the issue needed to be added to the Work Program. Ms. Stanfield said it was already on the Work Program. Mr. Hart stated that many lots had zigzaggy backyards that should be considered rear lines if the administration was to be consistent.

Heidi Fitz Harris, the applicant's architect, Ponte Mellor & Associates, 7220 Wisconsin Avenue, Bethesda, Maryland, presented the special permit request as outlined in the statement of justification submitted with the application. She explained that she had contacted the County at the onset of the project to determine what the official rear yard and setbacks were. She said she had been told by County staff that they had determined the rear yard area to be the rear yard, the setback was 25 feet, and a deck could encroach 12 feet into that area. Ms. Harris stated that at that time they began the design process and filed for and received a permit; however, a day later the permit was rescinded. She said they learned there was only one rear property line segment at that time. She said meetings had been held with County staff, and the scale had been reduced. The massing of the piers supporting the deck had been reduced to ensure that it would be defined as a deck structure, and it would extend less than 50 percent into the side yard and met zoning setbacks for a rear yard. She said the new design would not adversely impact the adjacent properties. She called attention to the entire property as shown on the plat and pointed out that the applicant had a hardship because of the way the developers had designed the subdivision. She pointed out that the lot was a long, thin lot, and because of the topography, the majority of the land was used for the driveway going up to the house. She called attention to the photographs attached to the staff report that showed large stone retaining walls. Ms. Harris said the side yard was the existing septic field, and the house had been located in the only feasible place on the lot and was impinged by the jagged side lot lines that she considered to be the rear yard.

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

Mr. Byers moved to approve SP 2006-DR-018 for the reasons stated in the Resolution.
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~ ~ ~ June 20, 2006, DORA RODRIGUES, AS AGENT FOR JOSE RODRIGUEZ AND AURORA RODRIGUEZ, TRUSTEES OF THE DORA RODRIGUEZ BENEFICIAL TRUST, SP 2006-DR-018, continued from Page 381

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DORA RODRIGUES, AS AGENT FOR JOSE RODRIGUEZ AND AURORA RODRIGUEZ, TRUSTEES OF THE DORA RODRIGUEZ BENEFICIAL TRUST, SP 2006-DR-018 Appl. under Sect(s). 8-916 of the Zoning Ordinance to permit modifications to the regulations on permitted extensions into minimum required yards to permit deck 13.2 ft. from side lot line. Located at 1063 Silent Ridge Ct. on approx. 37,957 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-4 ((29)) 129A. 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 20, 2006; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-916 of the Zoning Ordinance.

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

1. This special permit is approved for the location of a deck as shown on the plat prepared by Ponte Mellor & Associates, dated April 4, 2006, as submitted with this application and is not transferable to other land.

2. All applicable permits shall be obtained prior to any construction, and approval of final inspections shall be obtained.

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

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

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~ ~ ~ June 20, 2006, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-MA-176 to permit fence greater than 4.0 ft. in height to remain in front yard and greater than 7.0 ft. in height to remain in side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (Admin. moved from 6/15/04, 10/19/04 and 12/20/05 at appl. req.) (Moved from 3/1/05 for notices) (Admin. moved from 4/19/05, 5/24/05, 7/12/05 and 8/9/05.)

~ ~ ~ June 20, 2006, CONNIE J. REID, VCA 2002-MA-176, continued from Page 382

Chairman DiGiulian noted that VCA 2002-MA-176 had been administatively moved to November 7, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 20, 2006, Scheduled case of:

9:00 A.M. HERITAGE FELLOWSHIP UNITED CHURCH OF CHRIST, SPA 84-C-045 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 84-C-045 previously approved for church to permit building additions and site modifications. Located at 2505 Fox Mill Rd. on approx. 5.08 ac. of land zoned R-2. Hunter Mill District. Tax Map 25-2 ((5)) 51 and 52. (Associated with RZ 2006-HM-001)

Chairnan DiGiulian noted that SPA 84-C-045 had been administratively moved to September 26, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 20, 2006, Scheduled case of:

9:00 A.M. CLYDE AND AUDREY CLARKE, SP 2006-MA-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.9 ft. with eave 8.0 ft. from side lot line. Located at 3444 Rock Spring Ave. on approx. 8,250 sq. ft. of land zoned R-3, CRD, HC and SC. Mason District. Tax Map 61-2 ((22)) 12.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynn Primo, the applicants' agent, 1200 Prince Street, Alexandria, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit an addition, consisting of the enlargement of the second story, to remain 8.9 feet from the side lot line, with an eave 8.0 feet from the side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, reductions of 3.1 feet and 1.0 feet, respectively, were requested.

In answer to a question from Mr. Hart, Susan Langdon, Chief, Special Permit and Variance Branch, said the applicants had shown the expansion on the original application for a building permit. Mr. Hart asked if the issue concerning the modification to the second floor involved any changes to the plans. Ms. Langdon said the application had originally been an appeal, and at that time the Clarkes had proposed to increase the upper floor from one and one half to two stories. They had been told that they could not do that because it was an expansion of the use, and it would be too close to the lot line. At that time the applicants had indicated that they would only do interior renovations and not change the roofline or raise it, and based on that, the interior renovations had been approved. Mr. Hart said his question was not about the roof, but whether the applicants had made any changes to the original plans at any time throughout the process. He said he thought the applicants had submitted a set of plans that the Board had looked at the first time they were presented, and he asked if they were the same plans being presented today, and if not, why not.

Mr. Varga stated that, to the best of his knowledge, the second submission was an application for interior renovations made to that area, which he thought were different from the original proposal of a second floor addition within the side lot line requirement.

Mr. Hart asked Mr. Varga to show him what had happened to the original plans. Mr. Varga responded that the plans as submitted had not changed; however, the intent of the applicants, as represented in the history located in one of the appendices, indicated that their intention had changed in terms of what they were proposing to construct.

Mr. Hart said he did not understand how the first plans that had been submitted did not correspond to the

second submission. Ms. Langdon referred to page 4, bullet 2, of Appendix 4 to the staff report. She quoted from the document and stated that the history concerning the application with respect to Code Enforcement's involvement and what had been found on the site was included. Mr. Hart stated that in looking at Attachment 5 to the staff report, it was not clear to him whether there was a set of plans or not, and he was talking about the drawings that showed changes to the second floor. He said the Board had reviewed them once, and he was confused because the plans had not been attached to the staff report, but he was trying to understand why the current building permit with the inner lineations did not correspond to the set of architectural drawings that had been included the first time. Ms. Langdon said staff did not have a copy of the architectural plans with them. She said that when the applicants applied for the building permit, staff realized that the applicants were proposing to raise the roof and advised them that the permit had not been issued for that purpose. She said the permit had been issued for interior renovations only and pertained to what existed on the site at the time.

Mr. Hart asked if the plans were in the file and whether the applicants had to submit plans even if they were doing interior renovations only. Ms. Langdon said the applicants would probably have had to provide plans if they received a building, electrical, or plumbing permit, but staff did not have a copy, and what staff had been dealing with was the building permit itself that showed what was required for zoning, such as the distances from the lot line and the footprint. She said she had not been present at the appeal hearing and was not sure about what had been shown at that time or whether it came from staff or the applicants. Ms. Langdon said the plans Mr. Hart asked about would not be in the special permit zoning file.

Mr. Beard asked staff whether they knew who had suggested that the applicants submit an application for a special permit while the appeal was still pending. Ms. Langdon said staff thought the Board had suggested it when the applicants were at the appeal hearing.

At the Chairman's request, Ms. Primo presented a copy of the approved plans to the Board.

Mr. Hart said he did not understand the chronology with respect to the set of drawings Ms. Primo had submitted. He asked if they had been submitted the first or second time or on both occasions. Ms. Primo stated that the drawings were the only plans ever submitted. She said they had been submitted the first time with the application for the building permit, they had never been changed, nor had the applicants been asked to change them. Mr. Hart said the permit had been marked denied, stating that it did not meet 12-foot side yard setback, that it has been crossed out and at a later date had been approved with a notation stating interior alterations to existing second floor. He asked when the set of plans had been approved, with the denial the first time or the approval the second time. Ms. Primo said the drawings had been approved when they were originally submitted and that they had been submitted one time only. She said she did not know why someone would approve a set of plans and then deny the building permit.

Chairman DiGiulian stated that he did not see an approval stamp on the plans. Ms. Langdon said she did not want to speak directly to the plans as staff had not looked at them; however, after having heard what was read, it appeared that the application had been denied, and the applicants had been told that they could not raise the second floor. She also noted that the plans were for interior renovations only. Ms. Primo said the applicants had been told that because there was an existing second floor on the house, the renovations were to be considered an alteration to the second story.

Mr. Hart noted that the approval signature on the sheet that was stapled to the front cover of the plans was Audrey C. Clark. He asked whether that was the signature of a County employee rather than the applicant's signature, and Ms. Primo said it was. Mr. Hart stated that he could not read the reviewer's initials, but the date was May 18, 2005, and he asked if that was the first or second review. Ms. Primo said it was the second time the plans had been reviewed. She said the applicants had built according to what was shown on the plans.

In answer to a question from Mr. Beard, Ms. Primo said there was only one set of plans, and it was the only set ever drawn by the architect and submitted to the County. Mr. Beard asked the applicant to respond to the permit that stated it was for interior alterations to the second floor.

The applicant, Audrey Clarke, presented the special permit request as outlined in the statement of justification submitted with the application. She said her architect, who had drawn up the floor plans, had provided her with four copies of the plans, and he had presented the plans to the Board at the public hearing

for the appeal in January of 2006. She said she had taken two copies of the plans to the County on May 8, 2005, along with a building permit application and a copy of the plat. She said she had not understood the questions posed to her, and it was suggested that she return with her architect so he could answer the questions. She said she returned to the County office on May 16, 2005, with her architect who spoke to the County engineers, and then they waited to get the permit. Ms. Clarke said she had given Daryl Varney, Zoning Administration Division, copies of the plans, the application, and the plat. In answer to his questions, she said she had told him that the home was a cape, and there were two bedrooms and some storage on the second floor. She said Mr. Varney asked if she planned to install a kitchen on the second floor, and she had said no. She said he took the information she had provided and left, returning approximately 20 minutes later with the documents and told her to take everything to Plan Review. She stated that she had no reason to review what Mr. Varney had written on the plans because she did not expect anything to change. She said that the person she then spoke to asked if she was planning to install bathrooms on the second floor and said that if she was, the rafters had to be checked to ensure that they were sturdy enough to hold the load of the bathrooms. Ms. Clarke stated that she had taken the information to a structural engineer who had done the calculations, and she returned to the County office and was issued the permit to begin construction, which she did.

Ms. Clarke said that on June 21, 2005, she had received a letter stating that she had to cease the construction. She said that on June 23, 2005, she met with Ray Pylant, Audrey Clark, and another young lady, not on June 24th as was stated in the staff report, and she had been told that she would be allowed to put the trusses on, but not the roof. When she stated that it had been raining too hard and for too many consecutive days and she needed to have the roof in place, she was instructed by Mr. Pylant to put the tarp back over it. She said the letter dated June 24, 2005, had not been sent until July 11, 2005, and she received it on July 16, 2005.

Ms. Clarke stated that she had been to court twice. She said that on September 23rd, the judge had ruled that they had violated a stop work order because the roof was put on and imposed a fine on them. She said that with the deluge of rain every other day in June, the ceilings in her bedroom, the living room, and two lower bedrooms had collapsed, her children had to sleep next door with her neighbors, and she had to dispose of all her mattresses. She stated that she had cashed in her 401-K in order to make her house livable, and she put the roof on. She said she had not defrauded the County in any way. Ms. Clarke stated that the court case was thrown out on December 12th based on the testimony and all the discrepancies.

Referring to Attachment 5 to the staff report, Mr. Hart asked Ms. Clarke if the signatures on the left side of the application and at the bottom were hers. She confirmed that both of them were her signatures. Mr. Hart called attention to the notation of a new second floor in the description of work information and asked who had crossed it out. Ms. Clarke said she had put that description on the form, and it had been crossed out by Mr. Varney, but she had not realized that he had done that until after she received the revocation letter. She said that when she had spoken to Mr. Varney about it, his comment was that he must have misunderstood her. Ms. Clarke said that the reference to interior alterations to existing second floor had been written by Mr. Varney, and his initials were shown below that. She said she asked Mr. Varney why he had changed the description when the existing second story had been 504 square feet, and there was no way 1100 square feet of space would fit in that area.

Mr. Beard said he thought that Ms. Clarke had stated that she did not look at the application when Mr. Varney brought it back to her. Ms. Clarke said she had spoken with Mr. Varney on June 30, 2005, after she had received the June 21st letter. She said she had met with Mr. Varney on several occasions even though he had said he had never met her.

Ms. Langdon said Daryl Varney and Lynne Snyder had been at the public hearing for the appeal and had addressed many of the issues now being raised. She said staff had not asked Mr. Varney or Ms. Snyder to attend this hearing because they had already addressed the issues. She said that if the Board wanted to hear from them, she would call to see if they were available and ask them to come to the Board Auditorium to answer any additional questions the Board had as well as go over testimony they had given at the appeal hearing. Chairman DiGiulian requested that Ms. Langdon make that request. Ms. Langdon indicated that Jane Collins, Staff Coordinator, Zoning Administration Division, had written the staff report concerning the appeal and was present if the Board wanted to ask questions of her.

Mr. Hart referred to the zoning review portion of the application and asked who had crossed out the words

"build second story addition over existing dwelling" as well as the information written below it. Ms. Clarke said she did not know, none of the writing in the second column was hers, and she had not seen those deletions or additions until she received the letter on June 21, 2005. Ms. Clarke stated that the words "denied, does not meet 12-foot side yard setback," which had been crossed out in the remarks section had not been written by her, and she did not know who had done it. In response to a question from Mr. Hart regarding the original plan number being crossed out at the top of the column, Ms. Clarke said that she had not crossed out or written anything in the second column, and she thought that a second plan number had been written in after her architect and the County's engineer had discussed the plans. She stated that she had written in the job location, owner information, estimated cost of construction, building area, and signed at the bottom.

Mr. Hart asked staff whether the reference to 1,000 square feet of building area corresponded to the set of plans the Board had been given at the hearing. Ms. Langdon said she did not know because staff in her branch had not seen the plans. Mr. Hart asked if the number that began with W-05-02 was a reference number for a set of drawings or something else. Ms. Langdon said she could not answer that question and suggested that perhaps Mr. Varney could when he arrived.

Mr. Hart said the question he wanted answered was whether the plan number corresponded to the set of drawings that the Board had been looking at, and if not, what it referred to.

Chairman DiGiulian called for speakers.

Michael Graham, 3442 Rock Spring Avenue, Falls Church, Virginia, came forward to speak. He referred to a petition of support that had been signed by the applicants' neighbors. He said they had no problem with the construction. He had taken in the applicants' children during the chaos. He said the applicants were good neighbors, and he requested the Board approve the application.

Clyde Clarke, 3444 Rock Spring Avenue, Falls Church, Virginia, came forward to speak. He stated that he had three children and needed extra bathrooms to accommodate the family. He said there had been no changes to the plans, and everything had been built to code. He said the first court ruling had been against them, and they were ordered to pay a fine. Mr. Clarke said they had appealed the judgment and won based on testimony given by County staff. He stated that three days after the ruling, County staff came to the premises and measured everything, and after that they received the letter that stated they had to reduce the size of the house by three feet. He said the work they were having done did not bother Mr. Graham and that Mr. Graham had been willing to give the Clarkes a portion of his property if they needed it. Mr. Clarke said they had not built out, but had built up as the plans indicated. He said everything was done according to plan, and he did not know the permit had mentioned anything about the interior. When they received the permit, they placed it in the window and began the work. Mr. Clarke said he and his neighbors had to constantly go up on ladders to push the rainwater off the tarp so it would not collapse into the house. He stated that he had exhausted all his funds trying to prepare a good home for his family and asked the Board to approve the application.

Mr. Beard asked whether a copy of the petition Mr. Graham had mentioned had been given to the members of the Board. A copy was provided to him.

In response to a question from Chairman DiGiulian, Ms. Langdon stated that Ms. Snyder and Mr. Varney were on the way to the Board Auditorium.

The meeting recessed at 9:45 a.m. and reconvened at 9:57 a.m.

Mr. Byers referred to Attachment 9 of the staff report that indicated the applicants had paid a $190 application fee. He asked the applicants if they had spoken to or been advised by anyone in the Mason District Supervisor's Office. He also asked what the rationale was for the revitalization and wanted to know if the site was zoned partially commercial in a residential area. Ms. Primo stated that when Ms. Clarke filled out the paperwork, she did not have any assistance, and she did not know what she was doing. Ms. Primo said the application had been rejected. Mr. Byers asked whether the County had kept the money even though they had rejected the application, and Ms. Clarke answered yes.

Referring to the right-hand column of Attachment 5 to the staff report, Mr. Hart asked what Plan Number

W-05-02389 corresponded to. Lynne Snyder, Department of Public Works and Environmental Services, stated that the number would correspond with the plans that were reviewed for approval. She said the R number was the original set of plans, which meant it was residential. She said permits for second-story additions could not be done on a walk-through basis. They had to have a full review with respect to items such as load bearing for the existing structure. When the application was changed from a second-story addition to interior alterations to an existing second floor, it was assigned the new number referenced by Mr. Hart, and it could be reviewed on a walk-through basis because there were no requirements for load bearing. Mr. Hart asked if the plan number corresponded to a specific plan or package of drawings. Ms. Snyder said that it did. Mr. Hart asked if the number coincided with the set of plans Mr. Varney had. Ms. Snyder said the plan number that began with W-02 did correspond. Mr. Hart said the plan number he was referring to began with W-05. Ms. Snyder said the W-05 reference did not appear to correspond. Mr. Hart said the last five digits of the plan number were 02389, and he asked if that was pertinent to the question he had asked. Ms. Snyder said the date on the plans did correspond. She said the initials Mr. Hart pointed out would have been done when the walk-through had been approved, and a walk-through could only be done for interior alterations and not for additions. Ms. Snyder said staff had no reason not to believe that the set of plans staff had were not the set that coincided with the number on the permit application. She said it was her understanding that the plans staff had were the ones which were originally submitted, and when the applicants were told they could not do a second-story addition, DPWES staff reviewed the existing original plans for the interior renovations only, but not for any type of addition.

Mr. Beard asked Mr. Varney if he had written the word "storage" on the upper level in red ink on the second page of the plans. Mr. Varney said that on the copy of the plans he had, the word "storage" was written on the second floor demolition plan, but it was not in red and was not handwritten. Mr. Beard asked if Mr. Varney had struck out "new second floor" under the description of work on Attachment 5, which was the building permit, and substituted it with "interior alterations to existing second floor." Mr. Varney said he had. He said he had also scratched out the references to a 12-foot setback and the note about the second-story addition and put in interior alts, which meant interior alterations to add bedrooms and baths.

Mr. Beard said if he recalled what Mr. Varney had said at the prior hearing, once it was understood that the applicants could not do a second-story addition, Mr. Varney made the revisions under the guise of it being interior work and it would be a walk-through and he used the existing plans for that. Mr. Varney said yes, that was basically what had happened. He said one of the technicians at the counter had originally denied the application because the applicants did not meet the minimum required side yard. He said the applicant then left the counter and later the same day returned and informed Mr. Varney that they were going to do interior alterations to an existing second story only. He said he assumed that there had been a misunderstanding regarding what the applicants were doing. He stated that he had told them that was okay if that was the case, but the work description needed to be changed to read interior alterations to existing second floor, and that was why he had crossed out the original work description on the permit application. He said he wanted to ensure that the technician at the permit application center re-logged the application in to read interior alterations to existing second floor. Mr. Beard asked whether Mr. Varney had been comfortable working with the existing plans with that notation. Mr. Varney said yes. He said staff did not review building plans in intimate detail. He said he checked the floor plans to ensure that the applicants were not proposing to add a second kitchen or to create a second dwelling unit, and at that point he was satisfied. Mr. Varney indicated there had been no problem having a bathroom, but there would have been a problem if a wet bar or kitchen had been proposed.

Mr. Beard asked Mr. Varney whether it would have been considered an addition if he had understood the applicants intended to build up and put in storage space above the peak of the existing roof. Mr. Varney stated that he would not have approved anything that would have encroached into the minimum required side yard; however, a dormer or something in that space that did not encroach into the side yard requirement could have been approved. He said his assumption had been that the applicants were working within the existing space since that was what he had been told.

In her rebuttal, Ms. Primo said that based on Ms. Snyder's testimony, there seemed to be a second set of plans somewhere, and that was not correct. She said that if the Board wanted confirmation of that, she would call the architect and ask him to come to the hearing to testify. She said the plans had never been changed. With respect to Mr. Varney's testimony, she said the current house as it stood encroached into the side yard and was built that way in 1954 or 1964, and at the time it had been built, it met all the zoning requirements. She said that after the Zoning Ordinance had been changed to reduce the side yard, the

house was nonconforming.

Chairman DiGiulian noted that a letter in opposition to the application had been received from Jeri Lynn Bynaker.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2006-MA-015 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CLYDE AND AUDREY CLARKE, SP 2006-MA-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.9 ft. with eave 8.0 ft. from side lot line. Located at 3444 Rock Spring Ave. on approx. 8,250 sq. ft. of land zoned R-3, CRD, HC and SC. Mason District. Tax Map 61-2 ((22)) 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 20, 2006; and

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

1. The applicants are the owners of the land.
2. This is a difficult situation to resolve, but the BZA is governed by Ordinance standards and has to find that they are satisfied.
3. This case's most difficult standard is whether the non-compliance was done in good faith or through no fault of the property owner or was a result of an error in the location of the building subsequent to the issuance of the building permit, if such was required, under Sect. 1-B of 8-914.
4. Although there has been miscommunication and confusion, the conclusion is that the applicants have satisfied the standard.
5. The applicants applied for a building permit in advance.
6. The applicants engaged a professional to draw up a set of plans.
7. In hindsight, the plans probably should not have been approved, and, in fact, in the first go-round, the building permit was denied.
8. The changes in the second go-round were the result of miscommunication rather than an intentional deception.
9. The handwritten change on the building permit that was most significant was not done by Mrs. Clarke, but instead was done by staff on their understanding of what the change was.
10. The application refers to a building area with a footprint of 1,000 square feet, which was correctly shown on the set of drawings that appears to correspond with the plan number.
11. Although staff's explanation that an approval with a 'W' corresponds to a walk-through and perhaps those plans are not given the same level of review is understandable, on the plans before the Board, there does not appear to be any prohibition or restriction on the applicants' doing exactly what was depicted in those plans.
12. Although there are a few changes that were handwritten in red, it does not seem to preclude anyone from doing anything.
13. The stamp on the document tells the applicants not to do a second kitchen or wet bar, which it did not seem the applicants were going to be doing anyway.
14. It could have been clearer. If there was some restriction on the applicants doing what was shown on the plans, perhaps those plans should not have been approved or there should have been some notation not to do the second floor as shown.

~ ~ ~ June 20, 2006, CLYDE AND AUDREY CLARKE, SP 2006-MA-015, continued from Page 388

15. Where there is an application for a building permit that gets approved with a set of plans drawn by a professional with a plan number that seems to incorporate those and there is no notation to not do what is on the plans, the applicants have acted in good faith.
16. In hindsight, it should not have gotten as far along as it did, but given the set of facts, we play the hand that we are dealt, and it does meet the criteria for a special permit for a mistake in building location.
17. Having been built in 1954, the house already had problems in that it does not comply with the 1978 Ordinance regarding side yard setbacks, and that would have been a problem anyway.
18. The proposed design is for straight up rather than encroaching further into any yard.
19. The Board received a petition in support from most of the neighbors.
20. Based on the evidence before the Board, there will not be a significant negative impact on anybody.
21. The applicants have complied with the required standards.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This special permit is granted for the location of the dwelling as shown on the special permit plat prepared by George M. O'Quinn, Dominion Surveyors, Inc., dated August 1, 2005, as submitted with this application, and is not transferable to other land.

2. All required building permits and final inspections shall be diligently pursued within 30 days, and obtained within 90 days of final approval of this application or this special permit shall be null and void.

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

~ ~ ~ June 20, 2006, CLYDE AND AUDREY CLARKE, SP 2006-MA-015, continued from Page 389

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

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~ ~ ~ June 20, 2006, Scheduled case of:

9:00 A.M. MOST REVEREND PAUL S. LOVERDE, BISHOP FOR CATHOLIC DIOCESE OF ARLINGTON, VA & HIS SUCCESSORS IN OFFICE, AND ST. ANTHONY CATHOLIC CHURCH, SPA 00-M-012 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 00-M-012 previously approved for a church and private school of general education with an enrollment of 100 or more students daily to permit a columbarium and site modifications. Located at 3305 Glen Carlyn Rd. on approx. 13.12 ac. of land zoned R-3, CRD and HC. Mason District. Tax Map 61-2 ((1)) 8, 8A and 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Father Tuck Grinnell, Pastor, St. Anthony's Church, 3305 Glen Carlyn Road, Arlington, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to amend SP 00-M-012, previously approved for a church and private school of general education with an enrollment of 100 or more students daily, to permit construction of a wall for a columbarium with 500 niches.

Father Grinnell presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the columbarium would be located in a beautiful garden, and other churches in the area had columbaria on their properties. He requested approval of the application.

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

Ms. Gibb moved to approve SPA 00-M-012 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MOST REVEREND PAUL S. LOVERDE, BISHOP FOR CATHOLIC DIOCESE OF ARLINGTON, VA & HIS SUCCESSORS IN OFFICE, AND ST. ANTHONY CATHOLIC CHURCH, SPA 00-M-012 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 00-M-012 previously approved for a church and private school of general education with an enrollment of 100 or more students daily to permit a columbarium and site modifications. Located at 3305 Glen Carlyn Rd. on approx. 13.12 ac. of land zoned R-3, CRD and HC. Mason District. Tax Map 61-2 ((1)) 8, 8A and 10. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 20, 2006; and

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

1. The applicant is the owner of the land.
2. There is a staff report that suggests that there are no land use issues involved with this application.
3. Staff has recommended approval of the columbarium and the site modifications.

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

~ ~ ~ June 20, 2006, MOST REVEREND PAUL S. LOVERDE, BISHOP FOR CATHOLIC DIOCESE OF ARLINGTON, VA & HIS SUCCESSORS IN OFFICE, AND ST. ANTHONY CATHOLIC CHURCH, SPA 00-M-012, continued from Page 390

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Most Reverend Paul S. Loverde, Bishop for Catholic Diocese of Arlington, VA & His Successors in Office (St. Anthony's Catholic Church) and is not transferable without further action of this Board, and is for the location indicated on the application, 3305 Glen Carlyn Road, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Charles F. Dunlap (Walter L. Phillips, Inc.) dated August 3, 1998 through May 3, 2000, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit 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 total maximum daily enrollment for the private school of general education shall not exceed 800 students.

6. The maximum hours of operation for the school shall be 7:00 am and 6:00 pm, Monday through Friday.

7. The maximum number of seats in the main area of worship for the church shall be 1,150.

8. The maximum number of niches in the columbarium shall not exceed 500.

9. Any new outdoor lighting of the site shall be in accordance 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,
   - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use,
   - Up-lighting of buildings or signs shall not be permitted on the site.

10. A maximum of 404 parking spaces shall be provided in the locations shown on the special permit plat. All parking for the church, columbarium, and private school of general education shall be on-site.

11. The barrier requirements shall be waived. Transitional screening requirements shall be modified along the northern, eastern, and western property boundaries as shown on the special permit plat. Existing landscaping shall be maintained in a healthy condition. Dead, dying, and hazardous plant material shall be removed and replaced with like kind, subject to the review and approval of the Urban Forest Division of DPWES.

~ ~ ~ June 20, 2006, MOST REVEREND PAUL S. LOVERDE, BISHOP FOR CATHOLIC DIOCESE OF ARLINGTON, VA & HIS SUCCESSORS IN OFFICE, AND ST. ANTHONY CATHOLIC CHURCH, SPA 00-M-012, continued from Page 391

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

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

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

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~ ~ ~ June 20, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications including changes in parking layout, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, 4/19/05, 6/7/05, 6/14/05, and 8/9/05 at appl. req.) (Decision deferred from 9/13/05, 10/11/05, 11/1/05, and 5/2/06)

Chairman DiGiulian noted that SPA 75-S-177 had been deferred for decision only.

Mr. Ribble said there had been a flurry of activity on the case, and both sides had been requested to provide information to the Board. He said that had been done, and new development conditions had been submitted by the applicant. Mr. Ribble said he wanted to defer the decision for three weeks because he wanted to review the information and also allow everyone else to do the same. He recommended that the Board give both sides ten minutes to express their views at the future meeting and limit the speakers to two on each side.

Lynne J. Strobel, the applicant's agent, Walsh, Colucci, Lubeley, Emrich & Terpak, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, requested that everyone who was present in support of the application stand and be recognized. Members of the audience complied.

At the request of an unidentified member of the audience, the neighbors who had taken time off from work to be present also stood to be recognized. Members of the audience complied.

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

Mr. Ribble moved to defer decision on SPA 75-S-177 to July 11, 2006, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 20, 2006, Scheduled case of:

9:30 A.M. VIRGINIA HULKE, A 2004-BR-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has installed an accessory structure (garden box) in the minimum required front yard of a property in the R-3 District in violation of Zoning Ordinance provisions. Located at 5004 Lone Oak Pl. on approx. 9,688 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-3 ((7)) 4. (Decision deferred from 12/21/04)

~ ~ ~ June 20, 2006, VIRGINIA HULKE, A 2004-BR-034, continued from Page 392

Chairman DiGiulian stated that staff had recommended an indefinite deferral of A 2004-BR-034.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that was correct. She said the violation had been cleared, and staff was anticipating a Zoning Ordinance amendment with respect to dismissals and would bring the case back to the Board at that time to request a dismissal.

Mr. Byers moved to indefinitely defer A 2004-BR-034. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 20, 2006, Scheduled case of:

9:30 A.M. IKHMAYYES J. JARIRI, A 2005-MA-063 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has erected an accessory storage structure, which exceeds eight and one-half feet in height and 200 square feet in floor area and which does not comply with the minimum yard requirements for the R-3 District, without a valid Building Permit, in violation of Zoning Ordinance provisions. Located at 3513 Washington Dr. on approx. 15,411 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (F) 502. (Admin. moved from 3/14/06 at appl. req.)

Elizabeth Perry, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated June 13, 2006. She said the appeal was of a determination that the appellant had erected an accessory storage structure which exceeded eight and one half feet in height and 200 square feet in floor area which did not comply with the minimum yard requirements for storage structures in the R-3 District and had been constructed without a valid building permit, all in violation of Zoning Ordinance Provisions. In response to a complaint that a shed on the subject property was being used as a dwelling unit, staff conducted inspections of the property between May 9 and November 22, 2005, which revealed an accessory storage structure approximately 13 feet in height and approximately 320 square feet in area had been constructed in the rear yard located approximately two feet from the rear and side lot lines. The inspection had not revealed any indication that the storage structure was being used as a dwelling unit. Ms. Perry requested that the Board uphold the Zoning Administrator's determination.

Ikhmayyes J. Jariri, 3513 Washington Drive, Falls Church, Virginia, presented the arguments forming the basis for the appeal. He said that before erecting a new shed approximately five years prior to replace an old one, he had called the permit office and asked if a permit was needed. He said he had been unaware of the requirements for building the shed and had presumed that it was all right for him to build a shed that was larger than what was on the property at the time. He said that at a later date he found out that it was in violation of the codes. Before he built the new shed, he had consulted with his neighbors on both sides of his property to ask if they had any objections to the size he was proposing, and they told him that they had none. He said he had also consulted with other neighbors in the near vicinity of his home, and none of them had expressed any objections to his proposal. Mr. Jariri said that James Ciampini, Senior Zoning Inspector, Zoning Administration Division, had visited the property approximately a year prior to inspect the shed. He stated that it was his opinion that the complaint that had been lodged against him by one of his neighbors had to do with hatred and blackmail, not out of any concern for the Ordinance or the codes. He acknowledged that the shed was large, but it was well built and was next to the garage. He said he did have a permit to build it so that he could house gardening equipment and use it as a workshop. He requested that the Board allow him to keep the shed without making any alterations to it. He said it was not causing any problems insofar as his neighbors were concerned, he had built it over six years prior, and there were no safety problems associated with it.

Mr. Beard asked if the appellant had considered moving the shed to come into conformance and was there electricity in the shed. Mr. Jariri stated that it would be difficult to do so because of its size and the fact that it had a concrete floor. He said that he had thought that putting the shed in the corner of his lot would allow for space to have a small garden and for his children to play outside. Mr. Jariri confirmed that there was electricity running to the shed.

Mr. Beard asked whether there was a special permit application pending for the subject property. Ms. Perry responded that the special permit application had been heard on May 16, 2006, and the shed had been

denied.

Mr. Hart asked whether it would be permissible for the appellant to obtain a building permit if he lowered the height of the shed to below eight and one half feet. Ms. Perry said there were several modifications that could be made, such as applying for a building permit after the fact if the structure met the Zoning Ordinance requirements. She said the shed could remain in its current location if Mr. Jariri decreased the size to 200 square feet to meet the size of an accessory storage structure and lowered the height of the structure. Mr. Hart asked whether the appellant could keep the shed if he kept it the same size, obtained a building permit, and lowered the height. Ms. Perry concurred with Mr. Hart's comment that a height of eight and one half feet would be allowed if the shed was less than 200 square feet in size. Mr. Hart asked whether it would be legal for the appellant to disassemble the shed and relocate it in the area behind the garage if he had a building permit for it. Ms. Perry said she had not scaled out how much space was behind the garage, but Mr. Jariri would be allowed to set it back. Mr. Hart asked whether the line beside the garage was a side or rear lot line. Ms. Perry said staff considered that to be a side lot line, but on a corner lot, a minimum required yard that was the same as the minimum required side yard would be allowed. She said the provision for the accessory storage structure was consistent with that, and the shed would have to be located 12 feet from both the rear and side lot lines. Ms. Perry said the shed could be placed closer to the side lot line than the garage was. Mr. Hart asked whether the area behind the garage was a legal area to build on if the appellant received a building permit. Ms. Perry said it appeared that would be okay.

The Chairman called for speakers; there was no response.

Ms. Perry said that there were a few options for relocating or modifying the shed so that the appellant could keep an accessory storage structure on the property, and the only other remedy that would bring it into compliance would be the application for a special permit, which had already been exercised and denied.

Mr. Jariri said the shed was not causing problems to anyone, and it had been there for over six years. He acknowledged that he had made a mistake and should have had more knowledge concerning what he would have been allowed to build. He said the neighbor that had lodged the complaint was not in attendance at the hearing, nor were any of his neighbors, which indicated to him that there should be no problem with the shed staying as it was.

In answer to a question from Mr. Byers, the appellant said he had a copy of the appeal. Mr. Byers asked Mr. Jariri if he was willing to resolve all the violations noted in the notice of violation dated November 23, 2005, by complying with any of the options offered to him. Mr. Jariri stated that if at all possible, he wanted to retain the shed as it was; however, if his appeal were to be denied, he would have to do whatever was needed to correct the situation.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. He said the violations of the subject property had a means for resolution, and the appellant's contentions had no bearing on the applicability of the Zoning Ordinance. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 20, 2006, After Agenda Item:

Consideration of Acceptance
Appeal filed by Nancy C. and Mark T. Welch

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

CHAIRMAN DIGIULIAN: Item Number 1, Consideration of Acceptance, application for appeal filed by Nancy C. and Mark T. Welch. Ms. Stanfield. Ms. Collins.

JAYNE COLLINS: Good morning. In the current appeal, the appellants have presented a generic scenario to the Zoning Administrator and asked for his concurrence with regard to their interpretation of provisions set

forth in Sections 1-200 and 2-405 of the Zoning Ordinance. The Zoning Administrator made a general, non-property specific determination with regard to their request. Neither their request nor the Zoning Administrator's response cited a specific property. The appellants then applied that advisory, non-property specific opinion to their own property and filed the appeal. As noted in the staff report, the Zoning Ordinance states that any person aggrieved by any decision may appeal that decision to the BZA, but advisory opinions are not subject to appeal given that it's not possible to be aggrieved by an advisory opinion or decision. As such, we contend that the appellants have no standing to appeal the Zoning Administrator's April 21st advisory opinion.

And even if it was possible to appeal an advisory opinion, the issue raised by the appellants in the current appeal was the subject of a prior determination and appeal in which the current appellants were a party in interest, and the BZA has already concluded that the Zoning Administrator's determination that the original platted abutting lots in Hollin Hall Village previously joined by a building permit are each separate lots once the structure adjoining them is demolished. The appellants should not have the right to revisit the same issue a second time. They were a part of the original appeal, and one of the appellants actually spoke at that public hearing. Thank you.

CHAIRMAN DIGIULIAN: Questions?

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you. Ms. Collins, then the last point that -- I don't have the papers in front of me for the case that's in court now, and I thought that the appellant was like Concerned Citizens of Hollin Hall Village or something like that. You're saying these applicants were -- or these appellants were -- were they parties appealing the -- they were parties in the first appeal? You say they're parties in interest. I mean, does that mean because they live in the neighborhood or they spoke at the hearing or what is it --

MS. COLLINS: They were actually a part of -- their lot was listed as one of the lots in that original appeal. Their property was actually one of the properties -- part of that appeal, the original appeal, the Concerned Citizens of Hollin Hall Village. They were considered an appellant because their property was listed in the appeal, so they were an appellant in the original appeal that you heard several months ago.

MR. HART: Okay, and are they parties in the court case now?

MS. COLLINS: I believe that court case has been resolved within the last couple of weeks. I believe the Circuit Court --

MAVIS STANFIELD: Were they part of the (inaudible).

MR. HART: Well, they wanted some kind of injunction, which the court denied, but I don't know if that means that the case is over. I mean, I don't know, but -- you think the case is over?

MS. COLLINS: I wouldn't swear to that. I had heard that it was, yes, sir, but I'm -- I don't know that that's fact.

MR. HART: Okay. The second question, in the June 13 memo, in the second sentence, it says I note there is no specific property address associated with this appeal application. And then I was looking at the application form, and it looks like they have five lots or -- and several tax map numbers. Is that -- am I correct that what you're saying is they -- well, I don't know what you're saying. You're saying that there's no specific property address associated with the appeal application, but then on the application form, it looks like there are several addresses. Can you explain that?

MS. COLLINS: What I was saying was that the letter which precipitated the appeal was a generic, non-property specific letter that the appellant sent to the Zoning Administrator asking a general question about the application of those two Zoning Ordinance --

MR. HART: Okay.

~ ~ ~ June 20, 2006, After Agenda Items, continued from Page 395

MS. COLLINS: -- sections to any lot. When they filed the appeal, they wrote the addresses in, but the letter that they are appealing has no property address associated with it.

MR. HART: Okay. The -- I'll stop there. Thank you.

CHAIRMAN DIGIULIAN: Okay. Further questions? Mr. and Mrs. Welch, would you like to speak to the question of acceptance?

MARK WELCH: Good morning. My name is Mark Welch, and I live at 8036 Washington Road in Alexandria, Virginia. The County position is that we're not aggrieved persons. The meaning of an aggrieved person is pretty settled in Virginia law. It's a person who must show he has an immediate or direct interest in the proceeding at hand. It's aggrieved -- the concept of aggrieved person contemplates a substantial grievance and meets the denial of some property or personal rights, legal or equitable, or a position of a burden or obligation different from that suffered by the public generally. We are clearly aggrieved parties as the five of the six adjoining properties of ours have been bought by a developer. The Zoning Administrator determination that we are appealing would allow those five houses to be demolished and ten houses be replaced in place of those five, which would double the density around our immediate house, and also there are other houses on our street where the same issue is at hand, so that would double the density in our immediate neighborhood. For us that would result in more traffic, less adequate public facilities, less open space, less light due to the additional house on each existing parcel, and thus remove the quality of life that we have had in our house for over ten years since we bought it in 1996. These rights I've mentioned are not esoteric things that I've pulled out of thin air, but these are the things that specifically are covered by the Zoning Ordinance under Section 1 -- under Article 1 of the Ordinance. I think the bottom line here is that the Zoning Ordinance itself, the standard says that any aggrieved person may have their appeal heard by the BZA, and I think it's clear that we are aggrieved parties. We do not -- we do have a direct impact to the proceeding at hand, and we're not just doing this for the public good.

In terms of the cases that the County raises, I'd like to spend a few minutes talking about those. First of all, the Code and -- the Virginia Code and the Ordinance does not distinguish between types of Zoning Administrator decisions, whether they're advisory or not. The standard is solely whether the party's aggrieved or not, and I think we clearly are.

In terms of their cases, our situation is contrary to the cases they reference. First of all, the Virginia Beach Beautification Commission case, in that case the Beautification Commission was not aggrieved because they were protesting a billboard that was being established, and they had no direct property rights associated with that billboard. They are a public service commission, if you want to call it that.

In terms of the Vulcan case, that is not on point in our situation either. Vulcan resulted from an oral communication of a County planning official regarding a plan of operation for restarting a quarry. It was not Zoning Administrator decision resulting from a request for interpretation, which is specifically out -- allowed for under the Zoning Ordinance. Moreover, the crux of the issue before the Virginia Supreme Court under Vulcan was whether Vulcan could be heard in the Circuit Court. The Supreme Court said they could since they had no adequate or available administrative remedy. In fact, if I can quote the beginning of that Virginia Supreme Court opinion, it starts off with the narrow question we decide, and if I could repeat that for emphasis, the narrow question we decide if it's land use controversy is whether the trial court erred in ruling that a landowner was precluded from mounting a court challenge to the authority of a county governing body to act in a zoning matter because the landowner had failed to exhaust administrative remedies before resorting to court action. That's not our situation. We're trying to -- we're not trying to mount a court challenge. We're simply trying to pursue the administrative remedy that's available to us under the Zoning Ordinance.

In terms of the argument that we're appealing the same issue, we're not appealing the same issue. First of all, we made a separate request for interpretation, to which the Zoning Administrator responded to. If he didn't think that was a -- if he didn't think that was a new argument, he shouldn't have responded to it. Since he did respond, I think we have the right to appeal or else offer up that that decision from the Zoning Administrator did not say anything about it being an advisory opinion or whether we could appeal or not. I also find it a bid ironic that the County's memorandum to you states we can't appeal the same issue on the same property when they're also saying we're not aggrieved parties because our request for interpretation wasn't specific to a particular property. I mean, if they don't know where our property is, how do they know

we've propo- -- we're appealing the same issue. The reason -- the main reason our appeal is different is that, as the County says in their memorandum to you, the Concerned Citizens of Hollin Hall appeal pertained to the issue of whether the referenced properties were valid buildable lots. Our appeal does not address the validity of the lots, but whether the maximum density can be exceeded. That's the separate issue.

The bottom line is that the Virginia Ordinance, the standard of the Ordinance says that aggrieved parties can appeal a Zoning Administrator decision to the Board of Zoning Appeals. I think we clearly are aggrieved parties, and pursuant to the Ordinance, we have the due process rights to appeal his decision to you as a body. Thank you.

CHAIRMAN DIGIULIAN: Questions?

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Mr. Welch, you have one of these dual lots, if you will?

MR. WELCH: Yes.

MR. BEARD: And have you done a boundary adjustment or are you considering a boundary adjustment so this never happens to your property in the future?

MR. WELCH: I am considering it, yes.

MR. BEARD: You're considering it?

MR. WELCH: I'm considering it, right.

MR. BEARD: Okay. Thank you.

CHAIRMAN DIGIULIAN: Okay. Thank you. Is there anyone else to speak to the acceptance of the appeal? Okay. Ms. Collins, any additional comments?

MS. COLLINS: I would just reiterate that the issue is basically the same as it was in the original appeal. With regard to the maximum density comment, that's addressed in Section 2-308 of the Ordinance, which says that the maximum density can be exceeded if they meet all other provisions of the current Zoning Ordinance.

MS. GIBB: Mr. Chairman.

CHAIRMAN DIGIULIAN: Ms. Gibb.

MS. GIBB: Do you ever answer -- do you ever respond to these requests by saying we've already answered these?

MS. COLLINS: No, we try to answer everybody's requests individually, and everyone gets letters with -- even if we have to say the same thing to six different people, everyone gets the same letter.

MS. GIBB: Well, might you be rethinking it if -- because you could end up with a letter from every homeowner in a subdivision and everyone appealing.

MS. COLLINS: That's possible, yes, ma'am.

MS. GIBB: Have you ever used the answer that this is an advisory opinion. Have you ever had that -- have you ever said that before? Because it seems like that's really what -- if you wanted to characterize the Zoning Administrator's opinion, they are sort of advisory.

MS. COLLINS: I don't -- I don't know --

~ ~ ~ June 20, 2006, After Agenda Items, continued from Page 397

MS. GIBB: Area.

MS. COLLINS: -- whether the Zoning Administrator has ever said that in his letters, that this is an advisory opinion. We answer general type questions all the time. There are -- people will ask non-property specific questions. Could they put this, that, or the other thing in a particular district with no specific property address. Does that answer your question?

MS. GIBB: Yeah, yeah.

MS. COLLINS: Okay.

MS. GIBB: All right. Thank you.

CHAIRMAN DIGIULIAN: Okay. Mr. Welch, additional comments briefly.

MR. WELCH: Just in terms of that last discussion, again the Ordinance does not talk about advisory decisions or non-advisory decisions. All it says is that aggrieved parties may appeal the decision. The County is throwing in this Vulcan case and -- which I don't think is on point, and trying to use that as a basis for showing that we're not aggrieved, and I'm -- I clearly think we have a direct impact on this decision, and we are an aggrieved party.

CHAIRMAN DIGIULIAN: Okay. Questions? Okay. Ready for a motion, I think.

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you. With respect to the application for appeal by Nancy C. and Mark T. Welch, I'm going to move that we accept the appeal. I do this reluctantly because I really agree largely with most of what's in the memorandum from Ms. Stanfield, but at the same time, I think our charge under the State Code requires us to hear any appeal from an aggrieved person affected by any decision of the Zoning Administrator or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of this article or any ordinance adopted pursuant thereto. That's a very broad scope. I don't think that the State Code makes a distinction between property-specific determinations and determinations which don't apply or apparently don't apply to a particular property or a distinction between advisory or some other category of opinions, and I tend to think most of the -- or many of the adminis- -- many of the Zoning Administrator's opinions could be characterized as advisory anyway. The statute doesn't draw those lines and instead allows anybody who is aggrieved to appeal from any decision. It may be a dumb appeal.

And I know -- I mean, in answer to Ms. Gibb's question, I know or I think I know on Davis Store there were a series of attempts by neighbors or some of the same people to keep asking the same or similar questions, and after a while my recollection is -- I don't know if it was Ms. Gwinn or Mr. Shoup or who was in at that point, but some of the letters in response were to the effect that this question has already been answered, please refer to the determination two or three determinations ago that you've got already, or something like that, that at some point the Zoning Administrator stopped answering the same question, so there really wasn't anything to appeal in that case. Here there's a similar argument being made. I don't -- I mean, I won't get into the merits of it, but if they pay their money, if they fill out the form, if they file it within 30 days, if they've got a letter from the Zoning Administrator that's making a determination of some sort and that they're aggrieved by it, I think we have to hear it. That doesn't mean that it's necessarily going anywhere, but at least as a threshold matter, I don't see anything in the Ordinance or anything in the State Code that would allow us to pitch it at this stage even if staff is largely right on the rest of it. So that's my motion, and I think we should accept it.

MS. GIBB: Second.

CHAIRMAN DIGIULIAN: Second by Ms. Gibb. Discussion?

MR. BEARD: Mr. Chairman.

~ ~ ~ June 20, 2006, After Agenda Items, continued from Page 398

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: I'll defer to the legal prowess of my two attorney colleagues here, but I think this particular case has played itself out or it's in the courts where it's gonna play itself out, so, again, I'll support the motion in deference to, as I say, their legal knowledge. Thank you.

MR. BYERS: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Byers.

MR. BYERS: I was thinking about this from a theoretical sense. There could be an appeal heard on a property in the Reston area of Virginia that would be denied. I'm sitting in Burke, Virginia, and I send a letter to the Zoning Administrator asking for an advisory -- or asking for an opinion. He would send something back to me, and I literally could appeal 25 miles away that I'm an aggrieved person. What concerns me about this is I think we're opening this up. I wouldn't have a problem with this appeal, for example, if it was property specific. If there had been a letter from Mr. Welch that said this is where I live, give me an opinion, I would support this, but given the fact that it is nonspecific, I'm not going to support the appeal -- or the request.

CHAIRMAN DIGIULIAN: Okay. Further discussion?

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Let me -- I'll leave it at that. Never mind.

MR. BEARD: That's a good point.

CHAIRMAN DIGIULIAN: Okay. All those in favor of the motion?

MR. BEARD, MS. GIBB, MR. HART, CHAIRMAN DIGIULIAN: Aye.

CHAIRMAN DIGIULIAN: Opposed?

MR. BYERS: Nay.

CHAIRMAN DIGIULIAN: Mr. Ribble?

MR. RIBBLE: I'm abstaining on it.

CHAIRMAN DIGIULIAN: Okay. The motion carries by a vote of five to one with one abstention, and the appeal is accepted.

MR. HART: Four to one.

MS. GIBB: Four to one.

MR. BEARD: Four to one.

CHAIRMAN DIGIULIAN: Four to one. I'm sorry. Four to one, with one abstention.

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~ ~ ~ June 20, 2006, After Agenda Item:

Request for Intent to Defer
Fairfax Ridge Development LLC; Crescent Heights of America, Inc., A 2006-PR-015

~ ~ ~ June 20, 2006, After Agenda Items, continued from Page 399

Mr. Hart moved to approve the request for an intent to defer to July 18, 2006, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Mr. Hart moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation or probable litigation with regard to the Lee case and legal correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002), and legal correspondence. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

The meeting recessed at 11:11 a.m. and reconvened at 11:19 a.m.

Mr. Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:20 a.m.

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

Approved on: September 12, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 27, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. John F. Ribble III was absent from the meeting.

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

~ ~ ~ June 27, 2006, Scheduled case of:

9:00 A.M. MARK TURNER, III, VC 2005-DR-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure to remain 6.8 ft. with eave 5.3 ft. from rear lot line. Located at 10607 Georgetown Pk. on approx. 1.28 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 24A1 pt. and 12-2 ((1)) 47 pt. (In Association with VC 2005-DR-010) (Continued from 12/20/05)

Chairman DiGiulian noted that a request for a continuation to December 12, 2006, had been received.

Mr. Beard moved to continue VC 2005-DR-011 to December 12, 2006, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 27, 2006, Scheduled case of:

9:00 A.M. FAIRFAX COUNTY PARK AUTHORITY, VC 2005-DR-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 7.0 ft. with eave 3.0 ft. from side lot line. Located at 925 Springvale Rd. on approx. 18.75 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 24A1 pt. and 12-2 ((1)) 47 pt. (In Association with VC 2005-DR-011) (Continued from 12/20/05)

Chairman DiGiulian noted that a request for a continuation to December 12, 2006, had been received.

Ms. Gibb moved to continue VC 2005-DR-010 to December 12, 2006, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 27, 2006, Scheduled case of:

9:00 A.M. SAMUEL P. ACKERMAN AND ELIZABETH S. DIXON, SP 2006-SP-020 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 17.0 ft. from side lot line. Located at 7231 Archlaw Dr. on approx. 1.02 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-1 ((04)) 2. (Admin. moved from 6/27/06 at appl. req.)

Chairman DiGiulian noted that SP 2006-SP-020 had been administratively moved to July 11, 2006, at 9:00 a.m., at the applicants' request.

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~ ~ ~ June 27, 2006, Scheduled case of:

9:00 A.M. CHRISTOPHER POILLON, SP 2006-DR-012 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 9208 Jeffery Rd. on approx. 4.0 ac. of land zoned R-E. Dranesville District. Tax Map 8-2 ((1)) 26. (Decision deferred from 5/23/06)

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an accessory dwelling unit. Mr. Varga reported that on June 6, 2006, the applicant had met with neighbors, and the meeting resulted in a revision to the proposed development

conditions, copies of which were distributed at the hearing. Staff recommended approval of SP 2006-DR-012 subject to the proposed development conditions.

Referring to the last sentence of Condition 5, Mr. Hart asked if there would be a maximum of one resident living in the accessory dwelling unit. Mr. Varga replied in the affirmative.

Susan Friedlander Earman, the applicant's agent, Friedlander, Friedlander & Earman, 1364 Beverly Road, Suite 201, McLean, Virginia, said the meeting with the applicant's neighbors went well. She referenced a letter she had written on June 26, 2006, and noted that she had been anticipating documentation from the citizens association; however, they had remained silent. Ms. Earman said the applicant had agreed to change two conditions and did not have a problem with limiting the occupancy of the servant's quarters or the accessory dwelling unit to one resident each as a maximum.

Mr. Hammack referred to Condition 6 which stated that the western cabin would be used as a servant's quarters or other use in conformance with the Zoning Ordinance regulations, and he asked what other use it could be put to. Ms. Earman said that if for some reason the dwelling ceased to be used as a servant's quarters, the applicant would have to submit another application for any other purpose. She said the applicant was proceeding under the assumption that the dwelling may not always be used as a servant's quarters and could possibly revert to a guesthouse. Mr. Hammack questioned whether some other use could bypass the limitation of a one-person occupancy. Ms. Earman said the dwelling could only be used as a servant's quarters at this time. She agreed with Mr. Hammack's suggestion that language be added to Condition 6 to require resubmission of a special permit application if another use was proposed. Mr. Varga stated that staff was in agreement with the added language.

Mr. Hart referred to the pavement and parking concerns that had been raised at a previous hearing, and referring to Condition 2, he asked if the applicant would be committed to what was on the plat. He asked staff whether the applicant could pave more of the site and put in more parking spaces under Condition 2 or would he have to apply for a special permit amendment to amend the condition related to the drawing. Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that the condition locked the applicant into the paving and parking commitments.

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

Mr. Hammack moved to approve SP 2006-DR-012 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER POILLON, SP 2006-DR-012 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 9208 Jeffery Rd. on approx. 4.0 ac. of land zoned R-E. Dranesville District. Tax Map 8-2 ((1)) 26. (Decision deferred from 5/23/06) 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, 2006; 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

~ ~ ~ June 27, 2006, CHRISTOPHER POILLON, SP 2006-DR-012, continued from Page 402

Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Christopher Poillon, and is not transferable without further action of this Board, and is for the location indicated on the application, 9208 Jeffrey Road (4.00 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 Peter L. Rinek, dated March 7, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

5. The accessory dwelling unit (centrally-located cabin) shall contain a maximum of 304 square feet, including a maximum of one bedroom. The unit shall be occupied by a maximum of one resident.

6. The western cabin shall be used as a servant's quarters or other use in conformance with Zoning Ordinance regulations, as determined by the Zoning Administrator. While used as a servant's quarters, it will be occupied by one servant. If the western cabin is used other than as a servant's quarters, a special permit amendment shall be required for its use.

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, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

10. Prior to any occupancy of the accessory dwelling unit and the servant's quarters, a Residential Use Permit shall be obtained from the Department of Public Works and Environmental Services.

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

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

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

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~ ~ ~ June 27, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF ALL SAINTS EPISCOPAL CHURCH-SHARON CHAPEL, SPA 2002-LE-041
Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 2002-LE-041 previously approved for a church to permit building additions and site modifications. Located at 3421 Franconia Rd. on approx. 5.95 ac. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 49 and 82-4 ((1)) 40.

Wilfred R. Delbridge, the applicant's agent, 6127 Redwood Lane, Alexandria, Virginia, presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the applicant had submitted a request to be allowed to build a second floor to the Sunday school building. He said that prior to beginning construction of the sanctuary, which had been approved by the special permit, the congregation and vestry had decided that a more appropriate use of the money was not to expand the sanctuary, but to expand the space used for the education of the children and adult members. He said he had conducted a survey and had met with a majority of the adjacent property owners over the last few weeks, and they had no problem with the proposed amendment and had signed a petition to that effect.

Mr. Delbridge introduced the engineer, Patrick Kessler with GJB Engineering, Inc., Fair Oaks, Virginia, and indicated that he was available to answer any questions the Board had regarding two of the development conditions which were included in the June 20, 2006 staff report. One of the conditions referred to the outfall narrative which had been submitted to staff. He said that when the applicant had received notice that they would be required to submit the information, which was in addition to what had already been submitted, he indicated that there had been no time to review it. Mr. Delbridge indicated that it was being held in abeyance until the site plan stage of the process had been completed. With regard to Condition 7 and the planting of evergreen trees along the eastern property line adjacent to where the second floor construction was going to be, he said the applicant had a problem with the condition because that side of the building often served as access to the cemetery. He said that the trees that would be planted, according to the development conditions, would probably take up 30 to 40 feet of contiguous boundary with the eastern neighbor on Lot 15. Mr. Delbridge stated that he thought three or four trees would have to be planted to meet the intent of the condition, but there was a six-foot stockade fence that prevented the congregation and neighbor from seeing each other. Insofar as boundary and barrier were concerned, he asked the Board to consider the appropriateness and value of planting three or four evergreen trees when one considered the fact that it would cause access problems to the cemetery.

Chairman DiGiulian asked the applicant to reaffirm that the affidavit before the Board of Zoning Appeals was complete and accurate. Mr. Delbridge replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to amend SP 2002-LE-041, previously approved for a church, to permit a second-story building addition with an enclosed elevator and staircase, installation of a temporary trailer, and additional parking lot islands. Staff recommended approval of SPA 2002-LE-041 subject to the proposed development conditions.

At Mr. Hammack's request, Mr. Varga displayed on the overhead viewer the area on the plan that was proposed for planting the evergreen trees. Mr. Varga said that was the only transitional screening that would be available along that lot line. Mr. Varga showed where the church's cemetery was located and confirmed that the trees would be planted adjacent to the building. Mr. Varga said staff had been unaware that was how the church members accessed the cemetery, and if the Board agreed that the transitional screening was adequate without the inclusion of the evergreen trees, staff would not have an issue with it.

Mr. Hart asked how digging equipment or a backhoe that would be required to dig a grave would gain access to the cemetery if the bushes were in the way. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the issue had not been raised during the review of the application. She said 25 feet of transitional screening was required, but if the Board wanted to delete the condition, staff would be agreeable. She said that if the transitional screening was deleted, there would be no transitional screening in that area. Ms. Langdon confirmed that there was a fence located along that side of the cemetery, and it was sufficient to screen the lower level from the adjacent property. In answer to a question from Mr. Hart concerning an alternative access to the cemetery, Ms. Langdon indicated that the agent would have to address that.

Using the overhead viewer, Mr. Delbridge showed where a grave dating back to the Civil War was located, the portion of the cemetery that was highly populated, and an area in the middle that contained regular tombstones and monuments. He said there was access through the cemetery from the western side, but

getting equipment into some of the areas would be difficult because the equipment would have to be maneuvered around the tombstones. He said the area proposed for the planting of the evergreen trees had been used for access in many cases, and because there was an existing stockade fence and heavy vegetation, the neighbors on the eastern side had no view of activities at the church or cemetery.

Mr. Kessler said his firm had been asked, as a result of the new adequate outfall policies, to look at the adequate outfall from a lengthy position of 100 times the site area. He stated that he had added a number of sheets to the plan which showed adequate outfall for the site even though what they had done was offset the amount of impervious area that they were increasing. Mr. Kessler said the staff report had indicated the applicant was increasing the outfall area by 255 square feet from what was there now; however, they were taking out impervious area and putting in landscape islands to satisfy what would eventually be on the minor site plan, which were the interior parking lot landscaping requirements, and offsetting that 255 square feet by taking out the impervious area. He said there would be no net increase in runoff or impervious area for the application, and having to prove adequate outfall for a no net increase for 100 times had added a significant amount of effort to the application, as shown by all of the added information that had been included with the report. He stated that he had no problem with the condition to address adequate outfall at the minor site plan stage.

Mr. Kessler requested a change to Condition 15 that would place the word "generally" between the words "shall" and "be." He indicated that the request was being made so that when the applicant arrived at the minor site plan stage and was working with the Department of Public Works and Environmental Services (DPWES), they would not request some minor modifications be made, and the applicant would not be required to submit an interpretation as to whether they would be in substantial conformance.

Mr. Hart explained to Mr. Kessler that the Board did not waive conditions concerning adequate outfall, and that determination would be made by DPWES at a later date. He stated that the problem with the conditions was that if something happened later with respect to stormwater outfall and the applicant had to make some accommodation onsite for detention which was not indicated on the drawing, the applicant was adding a structure that the Board had not seen or approved. He said the wording of the condition was not definite because it contained the word "may." Mr. Hart said that if the paperwork was done now, it would not demonstrate adequate outfall, and as a result of that, there would need to be some redesign to detain the outfall onsite, causing the Board to have to look at the application again. He asked staff whether that was their intention with respect to Condition 15. Ms. Langdon said that was correct. She said there could be some minor changes that staff could interpret, but if the applicant had to provide a large stormwater detention pond that would be in either a tree save or transitional screening area, then it would have to be looked at again.

Mr. Hart asked if the reason for the condition was that in order to satisfy the adequate outfall, there would have to be some onsite detention or other revision to the methodology for dealing with whatever the stormwater runoff was that would change things like transitional screening, tree save, or parking. Ms. Langdon stated that staff would have no objection to adding the word "generally" to Condition 15. She said it would give a little more leeway in this case. Mr. Kessler stated that the quandary he was in was that for an application such as this, the applicant had demonstrated and made the effort not to increase the runoff from the site in order to help minimize the effort for the application because it was not proposing significant improvements in the light of just popping a top of a structure. He said he was looking at the amount of effort that would need to be expended to prove that the outfall was adequate. He asked how far the applicant would have to go. Mr. Kessler said he could prove adequate outfall on this site.

Mr. Hammack asked whether there was an Ordinance requirement that adequate outfall be computed at a 100 times the volume expected of the site and who set it. Mr. Kessler said that it was actually 100 times the site area, and it was a new code amendment for the adequate outfall and drainage of the site. Mr. Kessler indicated that 100 times the site area had been in the Northern Virginia Adequate Outfall Manual for decades and had been haphazardly enforced, but now it was being very stringently enforced. He stated that the new code amendment laid down the groundwork, and what was seen in the application was an effort to meet that site area requirement. He said that fortunately there was information on the outfall because if there was not, he would have had to expend more effort than he had on the applicant's behalf.

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

~ ~ ~ June 27, 2006, TRUSTEES OF ALL SAINTS EPISCOPAL CHURCH-SHARON CHAPEL, SPA 2002-LE-041, continued from Page 405

Mr. Byers moved to approve SPA 2002-LE-041for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF ALL SAINTS EPISCOPAL CHURCH-SHARON CHAPEL, SPA 2002-LE-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 2002-LE-041 previously approved for a church to permit building additions and site modifications. Located at 3421 Franconia Rd. on approx. 5.95 ac. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 49 and 82-4 ((1)) 40. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 27, 2006; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees of All Saints Episcopal Church – Sharon Chapel, and is not transferable without further action of this Board, and is for the location indicated on the application, 3421 Franconia Road, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Gregory J. Budnik (GJB Engineering, Inc.) dated March, 2006, revised through June 13, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of seats in the main area of worship shall be one-hundred and fifty-six (156).

6. Parking shall be provided in the areas shown on the special permit amendment plat. All parking for the church shall be on site.

7. Except as noted in Condition 7, transitional screening shall be modified along all lot lines in favor of the existing vegetation on site.

8. The barrier requirement shall be waived along the northern and southern lot lines. As depicted on the SPA plat, a barrier shall be provided along the southern portion of the eastern and western lot lines.

9. Interior and parking lot shall be provided in accordance with Article 13 of the Zoning Ordinance and as determined by DPWES.

10. Any proposed new lighting on the site shall be in accordance with the following:
    - The combined height of the light standards and fixtures shall not exceed 12 feet and shall be full cut-off lights.
    - The lights shall be of a design which focuses the light directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
    - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use, except for security lighting directly adjacent to the building.
    - There shall be no up-lighting of the proposed addition.

11. Adequate outfall shall be provided to the satisfaction of DPWES. If such cannot be achieved in substantial conformance with the special permit plat and these conditions, an amendment to this special permit may be required.

12. Tree cover shall be provided pursuant to in Article 13 of the Zoning Ordinance. Final determination regarding compliance with these requirements shall be as determined by DPWES at the time of site plan review.

13. All signs on the property shall conform to the provisions of Article 12.

14. The limits of clearing and grading shall generally be no greater than shown on the special permit amendment plat.

15. The temporary trailer shall be removed upon issuance of a Non-RUP for the second story addition, or within 5 years from the approval date of the Non-RUP for the trailer, whichever occurs first.

16. The architecture of the church addition shall be consistent with the existing 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 a new Non-Residential Use Permit (Non-RUP) has been approved. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

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~ ~ ~ June 27, 2006, Scheduled case of:

9:00 A.M. TOTAL ADHERENCE SPORTS, LLC, SPA 79-A-164-02 Appl. under Sect(s). 5-603 of the Zoning Ordinance to amend SP 79-A-164 previously approved for a racquetball court to permit a change in permittee. Located at 5505 Cherokee Ave. on approx. 24,568 sq. ft. of land zoned I-6. Mason District. Tax Map 80-2 ((1)) 52. (Admin. moved from 5/16/06 for notices)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joseph Fortuna, the owner of Total Adherence Sports, LLC, 5505 Cherokee Avenue, Alexandria, Virginia, replied that it was.

~ ~ ~ June 27, 2006, TOTAL ADHERENCE SPORTS, LLC, SPA 79-A-164-02, continued from Page 407

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 79-A-164 (S-164-79), previously approved for a racquetball court, to permit a change in permittee from Cherokee, LLC, to Total Adherence Sports, LLC. Staff recommended approval of SPA 79-A-164-02 subject to the proposed development conditions.

Mr. Fortuna presented the special permit amendment request as outlined in the statement of justification submitted with the application. He requested that the special permit amendment be accepted. He said he had applied for the special permit amendment in October of 2002 and was not sure what had caused the delay.

In response to a question from Chairman DiGiulian, Mr. Fortuna stated that he was in agreement with the proposed development conditions contained in Appendix 1 of the June 20, 2006 staff report.

Mr. Hart stated that he thought that the application had been filed in 2006 and asked if there had been something pending since 2002. Mr. Chase stated that the application had been filed in 2002, and there was a request for a waiving of the special permit plat. He said the application had gotten stalled somewhere within the system, and when it was noticed that the application had not had any activity on it for a while, the applicant was contacted and informed that it needed to move forward. Mr. Hart said that he hoped there were no other cases pending that were as old, and if anything like that occurred again, a notation of when the application was filed should be in the staff report.

Referring to the information indicating that the application had been moved for notices, Mr. Hart asked if they had been resolved. Ms. Langdon said they had.

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

Mr. Hart moved to approve SPA 79-A-164-02 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TOTAL ADHERENCE SPORTS, LLC, SPA 79-A-164-02 Appl. under Sect(s). 5-603 of the Zoning Ordinance to amend SP 79-A-164 previously approved for a racquetball court to permit a change in permittee. Located at 5505 Cherokee Ave. on approx. 24,568 sq. ft. of land zoned I-6. Mason District. Tax Map 80-2 ((1)) 52. (Admin. moved from 5/16/06 for notices) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 27, 2006; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the requirements for the special permit.
3. The staff report recommended approval.
4. This is a very straightforward case.
5. There would be no effect on anyone if all that is done is changing the approval of the permittee.

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

~ ~ ~ June 27, 2006, TOTAL ADHERENCE SPORTS, LLC, SPA 79-A-164-02, continued from Page 408

Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 5-603 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Total Adherence Sports, LLC, only and is not transferable without further action of this Board, and is for the location indicated on the application, 5505 Cherokee 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) 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 granted for the buildings and uses indicated on the plans submitted with the special permit amendment. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board (other than minor engineering details) whether or not these additional uses or changes require a Special Permit, shall require approval of this Board.

5. The hours of operation shall be from 6 a.m. to 1 a.m., 7 days a week.

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 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 was required.

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

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~ ~ ~ June 27, 2006, Scheduled case of:

9:00 A.M. BUSH HILL PRESBYTERIAN CHURCH, SPA 99-L-024 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 99-L-024 previously approved for church with nursery school and child care center to permit increase in enrollment, building addition and site modifications. Located at 4916 Franconia Rd. on approx. 3.29 ac. of land zoned R-3. Lee District. Tax Map 82-3 ((2)) (1) A and 82-3 ((3)) (B) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth Ellis, PE, the applicant's agent, ADTEC Engineers, Inc., 3251 Old Lee Highway, Fairfax, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 99-L-024, previously approved for a church with nursery school and child care center, to permit a change in development conditions, a building addition, and site modifications. Staff recommended approval of SPA 99-L-024 subject to the proposed development conditions.

Referring to the drawings contained in the staff report, Mr. Hart asked for clarification of the arrow pointing to the play area. Susan Langdon, Chief, Special Permit and Variance Branch, explained that it indicated that the limits of clearing and grading could be brought in if the parking was reconfigured approximately to the area. She said that part of the play area could be within the treed area. She also said that the arrows indicated that the parking spaces designated on the drawing could be moved, and possibly one or two could be moved to two other areas on the site. She stated that it was staff's belief that the applicant was considering the area to be a drop-off area for the child care center; however, as she pointed out on the drawing, if vehicles pulled up there, they would have to do a U-turn to leave the property. Ms. Langdon indicated that by moving the parking spaces to the area under discussion, people could pull in, back out, and exit, and by moving the spaces, it would allow for approximately 45 feet of additional tree save.

Mr. Hart asked for clarification regarding whether there would be no grading, but things would be put in the trees rather than the size of the playground area being changed. Ms. Langdon responded that the applicant could clear out underneath the larger trees, but the play area portion of it could be within the treed area. She said the fence could still be located where it was currently. Mr. Hart expressed concern about the play area being in a tree area where there were bugs. Ms. Langdon indicated that staff had originally discussed with the applicant another location for the play area, and she indicated the alternative site on a drawing.

Mr. Hart asked how the drop-off of children would work. Ms. Langdon suggested that Mr. Hart talk to the applicant about what they proposed to do and what they were doing with the child care center currently. She said different schools handled the situation in different ways.

Referring to the drawing, Mr. Hart asked what would be located at the very top of the parking lot that showed a fence and a box. Ms. Langdon said the box was a dumpster. Mr. Hart asked how vehicles would be able to turn around if that was the case. Ms. Langdon said there was a small area to allow vehicles to turn around, back up, and leave through the area she had indicated on the drawing. She pointed out where the parking space was and indicated that the area she was showing on the map was not designated for parking spaces.

Mr. Hart asked whether there were any conditions that specified that the applicant could not have an outside seminary teach classes on the site. Ms. Langdon stated that the applicant had not requested that, and staff had not included a development condition relating to that use. Ms. Langdon confirmed Mr. Hart's statement that if an applicant did not include that type of outside use on the application, they could not do it, even if the conditions did not specify the use.

Mr. Ellis presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the applicant had several versions of the staff report, and the one that was available to the public and the church online was not the same as the one the Board had in its possession at the hearing. He said he wanted to ensure that the applicant had a clear understanding of which staff report they were working with. Ms. Langdon said that staff could not include attachments online, so only the basic text could be viewed. Mr. Ellis said that was not the case and indicated that the development conditions included in the online staff report were dated June 7, 2006, and the staff report before the Board was dated June 20, 2006. He also indicated that the staff report received by his office, which was also dated June 20th, had a different set of development conditions which were dated June 20th. Mr. Ellis stated that the applicant wanted to be clear about which set of development conditions they were to be working with. Ms. Langdon stated that the staff report did include the original development conditions dated June 20th, and the revised conditions were distributed at the hearing. She said staff would have to review the information on line because she was at a loss on how development conditions dated June 7th would have been posted. Mr. Ellis said the applicant was asking for an increase in the day school enrollment, a building addition, and site modifications. He introduced Frederic Kuntz, the architect and a member of the church congregation, and asked that he be allowed to address the Board.

Frederic K. Kuntz, Kuntz & Associates, Architects, 7906 Andrus Road, Alexandria, Virginia, said he was the architect of record for the church. He stated the church wanted to develop a facility that complied with the current regulatory requirements of the County. He referred to page 1 of the staff report which stated that nine new parking spaces would be added to the site, but he said that by his count, there would be seven new parking spaces. He said that if the applicant made the changes that were shown on the new drawing, that could amend the number again.

Mr. Kuntz said that page 2 of the report under waiver and modifications indicated that the applicant had requested that the transitional screening and barrier requirements be modified and waived in favor of the existing vegetation. He said the applicant's request for modification was for the barriers at the north end, and the waivers had been previously granted by the special use permit currently in effect for the area, as well as at the south end of the property. He said the applicant was requesting a modification of the transitional screening planting in favor of maintaining the existing vegetation at the north end of the property and with additional tree cover as had been indicated on the plat. He requested that the applicant be allowed to retain the conditions as previously granted by the existing special use permit for the areas to the west, south, and east property lines. He said that was particularly important at the south and east property lines where there had been a recommendation that the applicant add additional planting along those lines. Mr. Kuntz said the church had been in operation since 1958 without plantings in those areas and with no complaints from its neighbors. He said that when a portion of the property was taken by the Virginia Department of Transportation (VDOT) to widen Franconia Road, it was VDOT that had created the condition that existed there.

Mr. Kuntz said page 4 of the staff report and Condition 9 suggested that existing trees on the northern boundary would be reduced significantly from its current state to a 25-foot landscape transitional screening area. He also noted that the plat showed a reduction at the north end of the property, but maintained far greater than the 25-foot retention of existing trees that were indicated in the staff report. He stated that the applicant had suggested nearly 130 feet of existing forested area on the northeast corner of the property to the edge of the play structure area and 40 feet from the east property line. Mr. Kuntz said the 25-foot area referenced in the staff report was only the minimal area at the southwest corner of the site. He noted that as designed the applicant retained 24 percent site tree cover for nearly 35,000 square feet of tree cover onsite as compared with the Ordinance requirement for 20 percent tree cover or only 28,639 square feet. He said he was not sure why the applicant should be held to a higher standard than the Ordinance required.

Mr. Kuntz said page 5 of the staff report stated that the proposed expansion would eliminate a large portion of the tree cover, but it was the applicant's intent to maintain as much tree cover as they could. He referred to Condition 12 on page 5 of the staff report that recommended the redesign and alignment of the parking lot to the north, extending that area and maintaining the tree cover well into the church's recreation or child play area. Mr. Kuntz said the recommendation was presented too late for the applicant's response and correction. He said the concept did not consider the applicant's drop-off and pickup requirements for the day school operation. Since the school's inception in 1959, teachers and aides had come out of the building to pick up the students along a sidewalk, and they were brought into the classrooms individually. The modification suggested by staff did not consider the topography of the site because there was an eight-foot drop-off in the area of the tot lot, and children between the ages of two and four were not allowed to play in the area. Mr. Kuntz said the applicant was trying to put a more gentle sloping area in the site and maintain the trees to the north. He said there would have to be some slight retaining features in the area to ensure that the tot lot would be more level and tolerable for children's play, and the tree root area was not safe for children to play around.

Mr. Kuntz said Condition 14 on page 5 of the staff report suggested the use of a porous pavement system to replace existing surfaces, but prior to receipt of the comments distributed at the hearing, there had been no discussion on the subject between the applicant and the County. He said the proposed development was in full compliance with all requirements for stormwater management, and porous pavers would not be suitable for the facility due to the high maintenance and the frequent use by elderly and handicapped patrons and individuals wearing high-heeled shoes. Mr. Kuntz said the design met the quality requirements, and he was not sure why such additional measures would be necessary. He said a waiver of quantity control had been requested, but if adequate outfall or a means to achieve adequate outfall could not be determined, the applicant would not request a waiver of quantity control, and an onsite detention system may be required. Mr. Kuntz said that attempts to obtain information from the Department of Public Works and Environmental Services (DPWES) with respect to specific locations of the identified inadequacies had not been forthcoming.

Mr. Kuntz said staff had recommended that the northern parking lot be redesigned to save the trees, but the applicant did not know why that request had been made. The staff report also requested maintaining existing trees as well as additional plantings at the east and south boundaries of the property to mitigate potential headlight glare issues. He said the applicant was not proposing any modifications to those areas. The lots had been adequate, functioning, and there had been no complaints or modifications requested regarding glare by the neighbors since the inception of the church. Referring to page 10 of the staff report

that indicated that approval had been recommended only with the adoption of the proposed development conditions, Mr. Kuntz said it was the applicant's opinion that the standards required by the Zoning Ordinance had been met without the adoption of the conditions, and they were unsure why the church should be required to exceed the requirements of the Ordinance as the only condition for approval.

Mr. Beard asked staff to address the applicant's comment that they were being held to a higher standard with respect to the trees. Ms. Langdon said the Comprehensive Plan recommended saving as much vegetation as possible. She said the tree cover required was a minimum requirement by the Zoning Ordinance, which was 20 percent on the subject site. With the tree save area and possible other trees planted on the site, it would be over 20 percent, but it would still be in conformance with the recommendations of the Comprehensive Plan. She said there were other areas of the site where the Zoning Ordinance required a minimum transitional screening of 25 feet, but there was nowhere else on the site that was provided, nor were barrier requirements along all sides provided in most areas and were proposed to be waived or modified. Ms. Langdon said it was a give and take situation, and the proposed new additions were significant. The parking lot would be changing considerably, and those were things staff took into consideration when they were looking at modifications and waivers, and what they were asking the applicant to look at in designing the site.

Mr. Beard asked Mr. Kuntz if the applicant could or could not live with the development conditions. Mr. Kuntz said the development conditions that stated "only" were outside of their ability to fully accept at this time. He said the applicant had met the requirements and had asked for the waivers they previously had for the site, but no additional waivers. He stated that there had not been an opportunity to discuss the recommendations for additional trees to the south and east and modifications to the parking lot, but they were contrary to the program at the church.

Ms. Landon stated that there were no development conditions that said "only." She said staff had stated that staff only supported the approval with the development conditions. Condition 12 that referred to reconfiguration did not limit it specifically to what staff had done in the drawing, but something similar to that. She said the stormwater management and porous pavement had been suggested by the Department of Stormwater Management, but the condition did not require it. She said there was no stormwater management shown on the site, so there would have to be some consideration of that, and staff was attempting to allow some flexibility by DPWES and yet not impinge on transitional screening or tree save areas.

Mr. Beard asked Mr. Kuntz if he thought more discussion between the applicant and County agencies was necessary. Mr. Kuntz replied that the applicant would welcome the opportunity. He said they had received no response to e-mails and phone calls and had been unable to speak with the people who had written comments, with the exception of Greg Chase.

Mr. Hammack stated that it was his opinion that the application was not ready for the Board's decision, and he asked whether the applicant was requesting a deferral of the decision and, if so, how much time they would need to review the development conditions and staff's recommendations. Mr. Kuntz stated that they would be ready within a month. Mr. Hammack said he thought Mr. Kuntz had made some good points in his presentation, but staff's argument with respect to tree save and some reconfiguration might have some merit. He stated that he was confused about the new proposed development conditions, had compared them to the ones attached to the staff report, had a hard time following them, and did not want to rewrite them at the hearing. He suggested that if the applicant found staff's conditions were not to their liking, they should prepare an alternative set and bring it with them to the next hearing so the Board could make an easier comparison and decide which conditions it wanted to impose.

Ms. Gibb asked Mr. Kuntz if it was the applicant's engineer who had difficulty receiving return calls. Mr. Kuntz deferred to Mr. Ellis for a response.

Mr. Ellis responded that he, as well as Mr. Kuntz, had difficulty getting responses from County staff with respect to comments that had been provided by the staff coordinator. One example was that they had been notified that there were two properties downstream of the site that had some erosion problems that they would probably need to take a look at. Mr. Kuntz stated that as a part of their initial investigation and survey for the project, they had surveyed approximately a half mile down to the outfall from the application site because they knew that information was required in the special permit application process. The applicant

~ ~ ~ June 27, 2006, BUSH HILL PRESBYTERIAN CHURCH, SPA 99-L-024, continued from Page 412

was then told that there were additional erosion problems noted at several properties beyond that outfall, but within the area. He said they had tried to follow up with DPWES to determine the specific locations of those two properties so they could look at and address them, and they had never been able to obtain the information. Mr. Kuntz said it was his understanding the information was on file with the County because the complaints had been registered. When he finally received a return phone call, he had been left a message that narrowed it down to 48 lots, and he thought it was an undue burden on the applicant to look at all those lots on such short notice. Mr. Beard asked if it was DPWES to which Mr. Ellis was referring, and Mr. Ellis said yes.

Ms. Langdon stated that this situation pointed out how hard it was at times to get cases ready in 90 days, and unfortunately with the time constraint, sometimes the staff coordinators were unable to work between other reviewers and the applicants, and staff put the applicants directly in touch with some of the other reviewers, such as DPWES or Transportation. She said it was obvious that the staff did not want that to happen because it was not the ideal way to process an application, but they were moving very quickly to get applications through the process in that period of time.

Mr. Hart said the Board had not received the development conditions until the hearing, and he agreed with Mr. Hammack that the Board was not ready to make a decision. He said it was his opinion that it would not take much to minimize the impact of the parking lot on the tree area, and he suggested that the applicant look at that. He asked for an explanation of how the drop-off worked insofar as where the cars stopped, where the stacking area was, and where they would turn around. Referring to the plan on the overhead viewer, Mr. Ellis showed what parents would do when they dropped off and picked up the children. He said there would be approximately four cars waiting at one time to drop off the children, and at the end of the day the same process would be used to bring the children out. Mr. Hart asked whether there would be another area for the drop-off if a couple of parking spaces were put in that area. Mr. Ellis stated that the applicant had included a canopied area in anticipation that the drop-off would be under cover. He pointed out where the canopied area was and indicated that information had been revised since the original plan. Mr. Hart asked where a stormwater pond would be located on this site if they were required to put one in. Mr. Ellis stated that if onsite detention were to be required for the site, an open stormwater pond would not be feasible due to the lack of available land. He said they would have to resort to underground storage underneath the existing front parking lot on Franconia Road. He said there would not be an adequate drop to locate the facility to tie into the public storm system, and that area was the only location that would be feasible for the site.

Chairman DiGiulian called for speakers.

Neil Sampson, 5209 York Road, Alexandria, Virginia, Chairman of the Bush Bill Presbyterian Church Building Committee, came forward to speak. He stated that the plan before the Board had taken several years and a lot of money to get organized within the confines and guidance of the Ordinance and other relevant state and federal laws. He agreed that a deferral would be desirable to allow the applicant an opportunity to determine what could be done. He said the applicant needed an opportunity to consult with staff, and he would not want a repeat of lack of response from the County as they had experienced over the last several months. He asked, on behalf of the congregation, that the Board approve the application, or if it would be deferred, that they request staff communicate with them so they could get an approvable application that everyone could understand.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to defer decision on SPA 99-L-024 to August 8, 2006, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 27, 2006, Scheduled case of:

9:30 A.M. NICHOLAS AND MARY CHEROK, A 2006-HM-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing property to be used as a storage yard, that no grading plan was approved for land disturbing activity, and no erosion and sediment control measures have been installed, all in violation of Zoning

~ ~ ~ June 27, 2006, NICHOLAS AND MARY CHEROK, A 2006-HM-013, continued from Page 413

Ordinance provisions. Located at 2633 Centreville Rd. on approx. 1.8465 ac. of land zoned C-5 and R-1. Sully District. Tax Map 25-1 (91)) 19.

Chairman DiGiulian noted that A 2006-HM-013 had been withdrawn.

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~ ~ ~ June 27, 2006, Scheduled case of:

9:30 A.M. BETTY A. ROYSTER, A 2006-LE-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has constructed an open deck with stairs which does not meet the bulk regulation as it applies to the minimum rear yard requirement for the R-5 District in violation of Zoning Ordinance provisions. Located at 7113 Latour Ct. on approx. 2,325 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((9)) 384.

Chairman DiGiulian noted that A 2006-LE-016 had been administratively moved to October 3, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ June 27, 2006, Scheduled case of:

9:30 A.M. M SCRAP CORPORATION T/A M SCRAP AS LESSEE OF 6304E GRAVEL AVENUE, A 2006-LE-001 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a recycling business on property in the I-4 District in violation of Zoning Ordinance provisions. Located at 6304E Gravel Av. on approx. 10.626 ac. of land zoned I-4 and NR. Lee District. Tax Map 91-1 ((1)) 36B. (Admin. moved from 4/4/06 and 5/23/06 at appl. req.)

William Thomas, the appellant's agent, Fagelson, Shonberger, Payne & Deichmeister, P.C., 11320 Random Hills Road, Fairfax, Virginia, identified himself.

Elizabeth Perry, Zoning Administration Division, presented staff's position as set forth in the staff report dated June 27, 2006. She said the appeal was of a determination that the appellant was operating a recycling center in violation of Zoning Ordinance provisions. In response to a complaint, staff from the Zoning Enforcement Branch conducted an inspection of the property on November 17, 2005, which revealed that the appellant was operating a business for buying and storing scrap metals. During the inspection, staff of the facility had told Zoning Enforcement staff that a recycling center was being operated at the property, and metals were stored until shipped to another company in Rockville, Maryland. Ms. Perry said the Zoning Ordinance defined a recycling center as a facility for the collection of nonputrescible recyclable materials which have been separated at their source prior to shipment to others who will use those materials to manufacture new products. She said a recycling center was a use permitted by right in the I-5 and I-6 Industrial Districts; however, the subject property was located in the I-4 District, which did not allow for a recycling center by right or with special exception or special permit approval.

In response to questions from Mr. Hart, Ms. Perry confirmed that three notices of violation had been issued. Mr. Thomas' client was the tenant, and Security Capital Industrial Trust in Aurora, Colorado, was the owner, and had also received a notice, but had not appealed. She said staff had noticed the property owner and the management company, Prologis, and no one else had appealed.

Mr. Thomas presented the arguments forming the basis for the appeal. He said the appellant had initiated a dialogue with staff with respect to the notice of violation to determine what could be done to make the operation a workable use. The appellant had moved in believing that the recycling facility would be allowed, and they were unaware of the restrictions. He said the landlord had represented to the appellant that the site was a split zone I-4/I-5. Mr. Thomas stated that there was I-5 property on the site, but it was not in the location of this particular use. He requested that the Board defer the appeal because at the end of the discussions with staff, they had not reached an agreement concerning the uses that the appellant believed they were most similar to. He stated that the appellant thought they could make the business function as either a motor freight terminal or as a warehousing establishment with limited retail because they did buy

~ ~ ~ June 27, 2006, M SCRAP CORPORATION T/A M SCRAP AS LESSEE OF 6304E GRAVEL AVENUE, A 2006-LE-001, continued from Page 414

scrap metal from various sellers. Mr. Thomas stated that the appellant had not received a letter of response from staff until the hearing had been noticed. He said his client needed time to relocate the business and thought that there would be no harm in allowing them additional time because they were very similar to uses that were allowable in the I-4 District. Staff had worked diligently with the appellant to try to come up with a viable solution to allow them to be a motor freight terminal or warehousing establishment because they fit those definitions as easily as they did recycling. Mr. Thomas said that if a deferral was not possible, he wanted to make a presentation of the merits of the appeal itself.

In response to a question from Chairman DiGiulian regarding the length of the deferral requested, Mr. Thomas said the appellant could make a September 12, 2006 date. He also said there was a possibility that the appellant would withdraw the appeal.

Mr. Beard said the appellant had admitted that they were in the recycling business, as was stated in the staff report and as Mr. Thomas had alluded to in his presentation. He asked if Mr. Thomas intended to present reasons to support that there was a technicality issue if the appeal was not deferred. Mr. Thomas stated that the uses were very similar, and the applicant fit the multiple definitions for the districts. He said the appellant was currently in the negotiation stage on a new location, had submitted financial documentation, and the appeal could become moot. He said they needed breathing time to allow them to retain their viable business. The current use was a good service for the County, and more of it was needed with respect to recycling of scrap metals.

Mr. Beard said he had no objection to deferring the appeal.

In answer to a question from Mr. Hart, Ms. Perry said the nature of the complaint was based on the specific use of the site, not on noise or a specific complaint that someone suspected there was a use of the facility that was not permitted under the Zoning Ordinance. She said the persons who had called in had based their complaints on issues pertaining to the area.

In answer to a question from Mr. Beard, Mr. Thomas stated that a deferral to September of 2006 would be acceptable to the appellant.

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

Mr. Beard moved to continue A 2006-LE-001 to September 19, 2006, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 27, 2006, Scheduled case of:

9:30 A.M. FAIRFAX RIDGE DEVELOPMENT LLC; CRESCENT HEIGHTS OF AMERICA, INC., A 2006-PR-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing the display of two rooftop signs and a banner sign on property in the PDH-20 District in violation of Zoning Ordinance provisions and a determination that an appeal filed on March 2, 2006, was rendered moot when the Notice of Violation being appealed was rescinded. Located at 11320, 11326, 11350, 11352, 11389, 11391, 11393, 11395, 11397 and 11399 Aristotle Dr. on approx. 2.1927 ac. of land zoned PDH-20 and HC. Providence District. Tax Map 46-4 ((19)) (4) and 56-2 ((27)) (7) and (11).

Chairman DiGiulian noted that on June 20, 2006, the Board had issued an intent to defer A 2006-PR-015 to July 18, 2006.

Mr. Hammack moved to defer A 2006-PR-015 to July 18, 2006, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 27, 2006, After Agenda Item:

Approval of January 31, 2006 Minutes
Concerned Citizens of Hollin Hall Village, A 2005-MV-055
for inclusion into the Return of Record

Mr. Hart pointed out two misspellings in the Minutes.

Mr. Hammack moved to approve the Minutes with the corrections. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 27, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by T. William Dowdy, Trustee, Shirley M. Hunter, Trustee.

Michael Congleton, Senior Deputy Zoning Administrator, Zoning Administration Division, said the basic issue of the appeal was that the notice of violation had been issued on May 4, 2006, and the appeal had not been received until June 5, 2006. He stated that in accordance with Virginia Code Sect. 15.2-2311 and Sect. 18-303 of the Zoning Ordinance, an appeal must be filed within 30 days from the date of the decision. Mr. Congleton said staff did not believe that the appeal was timely filed.

Ms. Gibb stated that she had not realized that the appeal had to be sent to two different places. One had been stamped received on June 5, 2006, by the Zoning Evaluation Division of the Department of Planning and Zoning, and the other had been stamped received on June 6, 2006, by the Zoning Administration Division of the Department of Planning and Zoning. Mr. Congleton said it was necessary to submit appeal applications to the Zoning Administrator and the Clerk to the Board of Zoning Appeals.

Chairman DiGiulian stated that he was concerned that the letter attached to the appeal had been dated May 18, 2006.

Mr. Hammack noted that the staff report stated that the certified mail documents showed that at least one of the letters had been delivered on May 8, 2006, and that would put the June 5th date within the 30-day period. Mr. Congleton said the 30 days began with the date on the letter, and according to the State Code and the Zoning Ordinance, the 30 days began running on the date of decision.

Mr. Hart asked if Mr. Dowdy knew that the case was being heard. Mr. Congleton said staff's memorandum dealing with the consideration of acceptance was sent to Shirley Hunter and T. William Dowdy, who were both the appellants and the property owners. Mr. Hart said the Board had not received the memorandum until two hours prior, and he thought that it was odd that Mr. Dowdy was not in attendance. In response to a question from Mr. Hart regarding when the memorandum had been mailed, Mr. Congleton stated that he could not provide the exact date and suggested that the consideration of acceptance be deferred until July of 2006 to enable him to provide answers to the Board.

Mr. Hammack said he suspected that Mr. Dowdy thought he had filed within 30 days of receipt of the notice. He said he did not understand the County's argument that it could sit on a notice and not send it and it would still be a good notice. He said the Zoning Administrator could make a decision in the office, let the 30 days run, and then state that the appeal period had expired.

Mr. Beard referred to the second page of the memorandum to the Board dated June 27, 2006, that said that in accordance with the policy of the Board of Zoning Appeals, the appellant had been notified of staff's recommendation and advised of the opportunity to respond to staff's position when the Board would be considering acceptance of the appeal on July 11, 2006. He said he agreed with Mr. Hammack that the appellant did not know the appeal was being brought before the Board today based on the July date in the memorandum. Mr. Congleton said that was the reason he had requested that the Board defer consideration of the appeal. He said he would ensure that the property owners were notified of the July 11th consideration date.

Ms. Gibb pointed out that the notice of violation letter had a stamp on it that said received May 8, 2006. Mr. Congleton said the notice was sent by certified mail, and the green receipt from the post office that staff had

in its possession indicated the date the letter had been received by the appellant. In answer to a question from Ms. Gibb, Mr. Congleton said a notice of violation letter could be sent to a post office box.

Mr. Beard asked for clarification that the Board could defer the decision as to whether to accept or not accept the appeal. Mr. Congleton stated that based on the July date in the letter, it would appear that bringing it before the Board today was premature.

Referring to Mr. Congleton's earlier comment that when a person filed an appeal, four copies of the application had to be sent to the Zoning Administration Division office, Mr. Byers asked where they were delivered. Mr. Congleton explained that one copy went to the Zoning Administrator's office, one to the Clerk to the Board of Zoning Appeals, and he did not have knowledge of where the other two copies went. He said it was the responsibility of the appellant to file an appeal with the proper office, and he thought that the fourth copy would be stamped and given back to the appellant.

Mr. Hammack asked if Mr. Congleton had brought any legal authority that would support his position that the 30-day appeal period ran from the time the decision was made and not from the time that the notice of violation was actually served on an individual. He said he knew what the Zoning Ordinance indicated, but it was his thought that the 30 days ran from the date the notice was actually given. He said that if there was legal authority to the contrary, he wanted to be advised of it by the July 11th date. Mr. Congleton said staff would research the issue and bring back what they could. Mr. Hart requested that any documentation on the subject be given to the Board in advance of the date for consideration.

Noting that there were three owners listed on the notice of violation dated May 4, 2006, Mr. Hart asked why only two persons had been noticed. Chairman DiGiulian stated that the third person, Henry S. Clay, was deceased.

Mr. Hammack moved to defer the consideration of acceptance to July 11, 2006. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Horner litigation, by-laws, and correspondence, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

The meeting recessed at 11:04 a.m. and reconvened at 11:41 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Mr. Hart moved that the Board authorize Ms. Gibb to send the letter to the County Executive that was discussed in Closed Session. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Mr. Beard moved to approve the amended by-laws. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ June 27, 2006, continued from Page 417

As there was no other business to come before the Board, the meeting was adjourned at 11:43 a.m.

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

Approved on: September 12, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 11, 2006. The following Board Members were present; Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:03 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 DiGiulian called for the first scheduled case.

~ ~ ~ July 11, 2006, Scheduled case of:

9:00 A.M. SAMUEL P. ACKERMAN AND ELIZABETH S. DIXON, SP 2006-SP-020 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 17.0 ft. from side lot line. Located at 7231 Archlaw Dr. on approx. 1.02 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-1 ((04)) 2. (Admin. moved from 6/27/06 at appl. req.)

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

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elizabeth S. Dixon and Samuel P. Ackerman, 7231 Archlaw Drive, Clifton, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The subject property and surrounding properties were zoned R-C and within a Water Supply Protection Overlay District developed with single-family detached dwellings. The applicants requested a special permit to permit a modification to the minimum yard requirements for certain R-C lots to permit construction of a deck to be located 17 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 3.0 feet was requested. The addition met the minimum yard requirements of the R-2 Cluster District which was applicable to this lot on July 25, 1982. In the R-2 Cluster District, a minimum side yard of 8 feet with total side yards of 24 feet is required.

Mr. Ackerman presented the special permit request as outlined in the statement of justification submitted with the application. The deck was preexisting and deteriorated when they purchased the home three years prior. A contractor was hired to rebuild it within the same footprint, as they planned no expansion, and when seeking the building permit, they were informed that the deck was built out from the bottom of a stairwell, and at 17 feet, the structure encroached within the minimum side yard setback of 20 feet. They sought only to replace the deck and diligently pursued a design that met zoning requirements, but the complication due to the stairwell portion rendered any possible modifications unfeasible as the cost would be increased and the deck substantially reduced.

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

Mr. Hammack moved to approve SP 2006-SP-020 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SAMUEL P. ACKERMAN AND ELIZABETH S. DIXON, SP 2006-SP-020 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 17.0 ft. from side lot line. Located at 7231 Archlaw Dr. on approx. 1.02 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-1 ((04)) 2. (Admin. moved from 6/27/06 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

~ ~ ~ July 11, 2006, SAMUEL P. ACKERMAN AND ELIZABETH S. DIXON, SP 2006-SP-020, continued from Page 419

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 11, 2006; and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This Special Permit is approved for the location of a deck as shown on the plat prepared by Sam Whitson, L.S./Land Surveying, dated May 5, 2003, as revised by Samuel Ackerman and Elizabeth Dixon on April 7, 2006, as submitted with this application and is not transferable to other land.

2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

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~ ~ ~ July 11, 2006, Scheduled case of:

9:00 A.M. TONY AND MAUREEN KEENAN, SP 2006-MV-021 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 9.1 ft. from rear lot line and 5.9 ft. from side lot line. Located at 9101 Ayden La. on approx. 2,209 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 107-1 ((4)) 62A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, Sack, Harris & Martin, P.C., 8270 Greensboro Drive, Suite 810, McLean, Virginia, the applicants' agent, replied that it was, and the oath was administered to him.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The subject parcel was located at 9101 Ayden Lane, in the Laurel Crest Subdivision, in the Mount Vernon District. The subject property and surrounding properties were zoned R-20 and developed with single-family attached dwellings. The applicants requested a reduction to minimum yard requirements based on error in building location to permit a deck to remain 5.9 feet from the side lot line. A minimum side yard of 10 feet is required;

therefore, a modification of 4.1 feet was requested.

Mr. Martin informed the Board that Ryan Homes built the home and deck and retained him to represent the applicants. He presented the special permit request as outlined in the statement of justification submitted with the application. He said the unusual shape of the lot's rear angle ultimately resulted in the deck's erroneous placement within the minimum required side yard. Mr. Martin pointed out that since the deck was construction four years prior, there had been no complaints. Apparently an inspector noticed it while conducting a site inspection. Mr. Martin said the application met the special permit standards for error in building location and requested the Board's approval.

In response to Mr. Hart's question, Mr. Martin confirmed that the deck was built consistent with the permit's approval.

Mr. Hart commented that he had no problem with the application's submission as a mistake in building location; however, he would make the following observations: a building permit was issued; more than 60 days passed since construction completion; the construction conformed exactly with the permit; no violation was issued within 60 days; and, he thought that the error in this case was not an error in building location, but that a permit was issued initially. Mr. Hart said he thought these type of situations should not be enforced and people should not have to spend money to attain approval for something that was approved at the beginning and was now built.

Chairman DiGiulian called for speakers.

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

Brian Broadhead, 8262 Phelps Lake Court, Lorton, Virginia, came forward to speak. He referenced the point Mr. Hart had made, concurring that it was well past the 60-day limit. He also questioned why a violation was issued and why one must incur such costs.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2006-MV-021 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TONY AND MAUREEN KEENAN, SP 2006-MV-021 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 9.1 ft. from rear lot line and 5.9 ft. from side lot line. Located at 9101 Ayden La. on approx. 2,209 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 107-1 ((4)) 62A. 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, 2006; and

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

1. The applicants are the owners of the land.

~ ~ ~ July 11, 2006, TONY AND MAUREEN KEENAN, SP 2006-MV-021, continued from Page 421

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This Special Permit is approved for the location of the deck as shown on the plat prepared by The Engineering Groupe, Inc., dated December 19, 2001, as recertified through March 28, 2006, as submitted with this application and is not transferable to other land.

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

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

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~ ~ ~ July 11, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF MEDITATION CENTER OF D.C., SP 2006-LE-019 Appl. under Sect(s).3-203 of the Zoning Ordinance to permit a place of worship. Located at 3325 Franconia Rd. on approx. 2.67 ac. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 55.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jason B. Heinberg, Walsh, Colucci, Lubeley, Emrich & Terpak, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, the applicant's agent, replied that it was.

~ ~ ~ July 11, 2006, TRUSTEES OF MEDITATION CENTER OF D.C., SP 2006-LE-019, continued from Page 422

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

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Colonial Baptist Temple Church had operated on the site for many years before the applicant submitted an application for a special permit. The applicant proposed to establish a church on the site which contained two two-story buildings and a gravel parking area. The western structure, which was 1,140 square feet in size, would serve as a rectory, while the eastern structure, which was 1,978 square feet in size, would serve as a sanctuary that contained 60 seats. The parking area contained 16 spaces, resulting in a parking ratio of 3.75 to 1. Access into the site was provided by a gravel driveway leading from Franconia Road to the rectory and terminating into the gravel parking lot to the east of the sanctuary. The site was adequately screened from surrounding residential uses with existing vegetation, and due to the size of the buildings in relation to the setbacks, they were comparatively well-screened from neighboring uses. Staff recommended approval of the modification of the transitional screening requirements along the northern, eastern, and southern lot lines, and a waiver of barrier requirements along the northern and a portion of the eastern lot lines in favor of existing vegetation.

In response to Mr. Hart's question, Mr. Varga explained the church's proposed overflow parking area.

Responding to Mr. Hart's question concerning dustless surfaces, Susan C. Langdon, Chief, Special Permit and Variance Branch, explained the requirements.

Mr. Heinberg presented the special permit request as outlined in the statement of justification submitted with the application. He quoted Ordinance Sect. 3-203 that permitted places of worship as a special permit use. He said the applicant proposed to replace the existing Colonial Baptist Church and proposed no additional site modifications or intensification of use on the subject property. He noted that the floor area ratio was well below that permitted in an R-2 District for non-residential uses. Addressing Mr. Hart's aforementioned concerns, Mr. Heinberg said that the applicant would apply for a dustless surface waiver as part of the site plan review process and that there would be additional capacity for more parking spaces. He submitted that there should not be a problem with overflow parking as Buddhist services were not traditional in that there were no scheduled services, but one could visit the site throughout the day. Mr. Heinberg requested the Board's approval.

Responding to Mr. Hart's question, Mr. Heinberg said the church agreed with the latest development conditions before the Board that morning.

Ms. Langdon clarified Development Condition 10 concerning the present and future lighting.

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

Mr. Hart moved to approve SP 2006-LE-019 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF MEDITATION CENTER OF D.C., SP 2006-LE-019 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 3325 Franconia Rd. on approx. 2.67 ac. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 55. 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

~ ~ ~ July 11, 2006, TRUSTEES OF MEDITATION CENTER OF D.C., SP 2006-LE-019, continued from Page 423

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 11, 2006; and

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

1. The applicant is the owner of the land.
2. The staff report recommends approval, and its rationale is adopted.
3. Although originally concerned about the amount of parking provided, with the explanations and the limitations in the development conditions to require that the parking remain on-site, any impact on surroundings can be mitigated.
4. Overflow parking for special events is a particular concern, but it appears that there is enough flat open area in proximity to the existing gravel to accommodate it.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees of Meditation Center of D.C., and is not transferable without further action of this Board, and is for the location indicated on the application, 3325 Franconia Road, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by George M. O'Quinn dated February 17, 2006, revised through June 3, 2006, 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. Any plan submitted to the Department of Public Works and Environmental Services 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 60.

6. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.

7. Transitional screening shall be modified along the northern, eastern, and southern lot lines to permit existing vegetation and landscaping as shown on the special permit plat to meet the transitional screening requirements.

8. The barrier requirement shall be waived along the northern and eastern lot lines.

9. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

10. Any new lights that may be installed on the site shall be limited to a maximum of twelve (12) feet in height from the ground to the highest point of the fixture, and shall be provided in accordance with the performance standards contained in Par. 9, Outdoor Lighting Standards, of Art. 14 of the Zoning Ordinance.

~ ~ ~ July 11, 2006, TRUSTEES OF MEDITATION CENTER OF D.C., SP 2006-LE-019, continued from Page 424

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

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

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

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~ ~ ~ July 11, 2006, Scheduled case of:

9:00 A.M. ALEX R. CASTRO, SP 2006-MA-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to the minimum yard requirements based on error in building location to permit addition to remain 5.8 ft. with eave 2.0 ft. from side lot line. Located at 7206 Sipes Ln. on approx. 10,000 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((7)) (A) 4. (Admin. moved from 6/6/06 for notices)

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Alex R. Castro, 7122 Galesville Place, Annandale, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The subject parcel was located at 7206 Sipes Lane, in the Fairdale Subdivision, in the Mason District. Property to the north was zoned C-2 and developed with a school. The applicant requested a permit to allow a reduction to minimum yard requirements based on an error in building location, to permit an addition to remain 5.8 feet with eave 2.0 feet from a side lot line. A minimum side yard of 10 feet is required; therefore, a modification of 4.2 feet was requested.

Mr. Castro presented the special permit request as outlined in the statement of justification submitted with the application. He purchased the property without knowledge of the error in building location. In response to Mr. Hart's question, Mr. Castro said he understood he must obtain a building permit for the existing structure.

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

Mr. Ribble moved to approve SP 2006-MA-017 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALEX R. CASTRO, SP 2006-MA-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to the minimum yard requirements based on error in building location to permit addition to remain 5.8 ft. with eave 2.0 ft. from side lot line. Located at 7206 Sipes Ln. on approx. 10,000 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((7)) (A) 4. (Admin. moved from 6/6/06 for notices). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 2006; and

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

1. The applicant is the owner of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This special permit is granted for the location of the addition as shown on the permit plat prepared by Patrick A. Eckert, Alexandria Surveys, dated February 17, 2006, as submitted with this application, and is not transferable to other land.

2. All required building permits and final inspections shall be diligently pursued within 30 days and obtained within 90 days of final approval of this application or this special permit shall be null and void.

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

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

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~ ~ ~ July 11, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF THE ANTIOCH BAPTIST CHURCH, SPA 90-S-057-03 Appl. under Sect(s). 3-103 and 3-C03 of the Zoning Ordinance to amend SP 90-S-057 previously approve for church to permit increase in land area, building addition and site modifications. Located at 10901 and 10915 Olm Dr., 6525 and 6531 Little Ox Rd., 6340 Sydney Rd. and 6400 Stoney Rd. on approx. 20.91 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 77-3 ((3)) 27, 30 and 34; 87-1 ((1)) 2, 2A, 5 and 6.

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

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert A. Lawrence, Esquire, Reed Smith LLP, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, the applicant's agent, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The subject properties were generally located on the east side of Ox Road (Route 123) and on the north side of Little Ox Road. Lot 6, which was developed with the existing church, was located between Little Ox Road and Stoney Road, and was zoned R-C and WS. All other lots associated with the application were zoned R-1. Lots 2, 2A, and 5 were located across Stoney Road from the existing church with Lot 2 abutting Ox Road to the west. Lot 5 was located to the east of Lot 2A and to the north of the existing church. Lot 34 was located to the north of Lots 5 and 6 and abutted Sydney Road to the east. Lots 27 and 30 were located north of the other parcels and abutted the south side of Olm Drive. Surrounding Properties to the north were zoned R-1 and planned for residential development at .5 to 1 dwelling units per acre. Surrounding properties to the east, south and west were zoned R-C and planned for residential development at .1-.2 dwelling units per acre. The applicant requested to amend SP 90-S-057, previously approved for a church, to permit an increase in land area from 13.61 acres to 20.91 acres, an increase in sanctuary seats from 400 to 1250, an increase in building area from 7,100 square feet to 79,195 square feet and an increase in parking spaces from 101 paved spaces and 88 overflow parking spaces to 514 spaces. Other site modifications included the provision of an eight-foot-wide trail along Little Ox Road, rain gardens, cisterns and other low-impact design water quality techniques, as well as possible underground stormwater detention facilities, sidewalks and a septic drainfield. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval.

Mr. Byers stated that it was important to know the four primary or basic planning objectives for the Pohick District. He listed these as the protection of the Occoquan Reservoir and South Run watershed; the preservation of the rural and semi-rural character of the Occoquan Reservoir watershed through careful review of non-residential uses requiring special exception or special permit approval; the preservation of stable residential areas through infill development of a character and intensity and density that was compatible with the existing residential areas; and, the preservation of significant heritage resources.

Mr. Lawrence presented the special permit amendment request as outlined in the statement of justification submitted with the application. He noted that since the initial submission two years previous, the applicant had substantially reduced the project's intensity, among other things, by increasing the land area and reducing the building area and the number of sanctuary seats. He referenced the handout he had submitted, pointing out the tabulated Section 1 that showed a 36 percent reduction in seating, and that the Tab 2 section evidenced a 25 percent reduction in the proposed new construction. He noted the proposed Activities Room, Building B1, was redesigned from three to two levels, with the first floor placed into the ground which lowered the building's profile to one consistent, straight line and also deleted 9,540 square feet of useable space. Tab 3 depicted the site area, showing a 35 percent increase in land area, and the floor area ratio was addressed in Tab 4 and showed a 31 percent reduction. Mr. Lawrence said the building height would be 40 feet, except the Building B1 section, pointing out that a height of 35 feet for single-family residential units was permitted by right in the R-1 District, and 60 feet was permitted by right for non-residential units. He submitted that a five-foot height difference was not a substantial difference, especially for a church. Tab 5 addressed the matter of open space, noting the almost 36 percent increase of undisturbed open space and that the site's actual open space increased by 70 percent, which was of

substantial benefit to the watershed and Burke Lake. As requested by staff, the applicant would provide a substantial amount of low-impact development activities utilizing innovative techniques beneficial to the preservation of water quality. Calling attention to Tab 6, Mr. Lawrence said that it evidenced the nearest residence to the church was 384 feet, the average distance of homes was 481 feet, and, therefore, the church was set back considerably and was not immediately adjacent to any existing residences. The applicant concurred with staff's recommendation for the barrier waiver because it would not serve its purpose if a 46-inch high barrier were placed among the trees. Mr. Lawrence said that it was logical and effective to have a development condition that the Urban Forester visit the site and advise the applicant of the vegetation to be supplemented. He explained the traffic study as outlined in Tab 7, noting that Ox Road's realignment had reduced the average number of vehicular traffic by 98 percent, which had a substantial bearing on safety issues and traffic flow. He pointed out that the church's peak hour activities were well below the Level of Standard of Design and that the roadway was capable of handling the applicant's traffic as well as the several other church facilities in the area, which were included in the analysis. Mr. Lawrence said the septic field issue was addressed in that the permit required the review and approval of the Health Department, and the church was required to provide groundwater monitoring wells and a flow equalization tank or the septic permit would be denied. The applicant was confident all requirements would be met, and a preliminary approval had already been received from the Health Department. Mr. Lawrence said the citizen suggestion that church activities attendance be monitored was not feasible, and the important matter was to monitor the amount of sewage flow to assure proper functioning of the septic field, of which the Health Department would authorize the appropriate capacity on a quarterly basis. Tab 11's condition assured the BZA and Health Department of the applicant's strict adherence to the development conditions and for two years provision of monthly monitor reports, and thereafter, the Health Department would determine the frequency of the reports. Mr. Lawrence said the applicant would provide adequate outfall because their drainage study methodology was already approved by the Department of Public Works and Environmental Services. He noted that years prior the Virginia Department of Environmental Quality had approved the applicant's wetlands proposal, and the Corps of Engineers would make its determination after approval of the special permit. Mr. Lawrence voiced his confidence that the Corps would approve the wetlands proposal because state and federal parameters had not changed since the applicant previously went through the process, and at that time the Corps had determined the wetlands delineation. That determination was good for five years, and it had not changed. Mr. Lawrence requested that the church members present stand. He assured the Board that their testimony would be cumulative of those speaking.

In response to a question from Mr. Hammack, Mr. Lawrence said he reviewed the proposed development conditions as outlined in the staff report, and they were acceptable as written. He reminded the Board that the applicant wanted to add a condition that addressed the septic system concern.

Responding to Mr. Hart's question, Steve Gleason, William H. Gordon Associates, said the size of the rain garden was 220 feet long and 40 feet deep.

Susan C. Langdon, Chief, Special Permit and Variance Branch, stated that she was unable to provide Mr. Hart with another example of a rain garden for a non-residential development as large as the church's as she was unfamiliar with rain garden sizes and special exception applications which included rain gardens.

Mr. Hart commented that if there were other gardens to compare with this proposal, there may be information on how well they worked or of certain problems or considerations.

In response to Mr. Hart's question concerning the drainage divide, Mr. Gleason explained the drawing, peak flow, contours, and the drainage. He added that besides the underground detention system, the rain garden was an additional benefit.

In response to Mr. Beard's questions concerning other similar non-residential drainage fields in the County, Mr. Lawrence said the applicant's was not the largest, and it was the equivalent to that for three residential units.

Christopher Pricci, Engineer, Fairfax County Health Department, said he did the preliminary evaluation for the site's proposed septic system. He explained the concept of flow equalization as to size versus distribution. He noted that a typical flow equalization system septic tank was 50 percent larger than a regular septic tank, and the flow equalization tank, the pump chamber, was three times larger, which took care of

individual spikes or scenarios such as power outages during which the church could function for a short period of time. He pointed out that the original report had an error, which since was corrected, and the water usage would never go beyond 2,265 gallons in four dosage cycles to surge out into the septic system. Mr. Pricci said the water usage would never be more than an 87 percent design capacity over an average of a 30-day period. He said that for the occasions of usage spikes, the system could handle it, and the probability of the system surging beyond its capacity was very, very small. He also pointed out that the monitoring issue was a required standard procedure as well as protocol, especially in the Occoquan watershed.

In response to Mr. Beard's question, Mr. Pricci said there were churches and other much larger institutions in the County with like systems that had functioned for years with no problems. He listed six examples.

Mr. Beard clarified that with the known activities and raw data submitted by the applicant, the proposed system would handle 2,265 gallons.

Mr. Pricci said he would not recommend the system be any larger than it was already, and for a safety margin, he recommended a cutback, which the church accepted. To further explain, he said most systems were designed for a maximum potential in which extreme situations could be handled, and there would also be a built-in safety margin.

In response to Mr. Byers' question of the life expectancy of the field, Mr. Pricci said one could last as long as 30 or 40 years, if properly maintained. He explained the septic field's operation, that it was an enhanced flow system dependent on electricity, not a gravity flow system, and without electricity the system could not be overloaded. He said the church must be accountable for the number of attendees to an event that it accommodated.

Mr. Byers submitted that a maximum capacity for a special event should be established, and Mr. Pricci concurred. Regarding enforcement of the development conditions that Mr. Byers questioned, Mr. Pricci said the Health Department would monitor the activities, track the flow, and take action if the church exceeded the allowed and agreed upon numbers by giving notice to the church that it was compromising the integrity of the system.

Chairman DiGiulian called for speakers.

Marshall Ausberry, Senior Pastor of Antioch Baptist Church, came forward to speak. He preceded his testimony with an assurance that during power outages or similar circumstances, the church would have no services. He said he had been the pastor during the church's 17-year existence. Because there were only six to nine staff members arriving to work at 9:00 a.m., there would be no adverse impact to the neighborhood with additional traffic. He added that the facility accommodated special needs people, of whom his daughter was one, and that the congregation had simply outgrown the church. Pastor Ausberry urged the Board to approve the application because County staff had recommended approval, and the church had made significant and substantial adjustments to address concerns. He pointed out that they had accepted numerous conditions of development and that the facility and grounds were attractive and well-maintained. He said that all church activities would be executed with excellence. He explained the church's outreach programs, pointing out that none generated additional traffic.

Responding to Ms. Gibb's question concerning the number of Sunday attendees, Pastor Ausberry said there was an average of 950, and the once-a-month fellowship event for new members welcomed an average of 40 people. For a banquet event, the church accommodated about 500 people, which would not change because that was the maintained maximum. He said that regular events held around 150 attendees, and many of the functions were held off-site.

Ms. Gibb pointed out that a development condition that limited numbers could be difficult to enforce as it would be hard for the church to turn someone away.

Pastor Ausberry said the fellowship hall held additional attendees, and when there was not adequate parking, because of the inconvenience, many would turn away and perhaps attend another service. He said

the church was limited to 1,250 seats per service and that it was unable to accommodate the huge number of Easter service attendees, therefore, for years made arrangements to rent an off-site facility.

At Mr. Beard's request, Pastor Ausberry stated that there were no plans for a kindergarten or Montessori/elementary school. The church's mission statement was to adequately educate its congregation's children.

In response to Mr. Hammack's question, Pastor Ausberry said the church accepted the fact that the church had limitations on the possibility of adding future amenities because of the soils and septic system. He submitted that if such a need became apparent in later years, the church would consider purchasing an abandoned school to set up its programs. Pastor Ausberry maintained that the church would always be considerate of the residential neighbors.

Debra Gives (phonetic), no address given, came forward to speak. She said she was one of the five co-founders of Antioch Baptist Church and had resided in Fairfax County for over 50 years. Eighteen years ago, her now deceased husband had shared his vision of founding the Antioch Baptist church that would live out biblical principles, be a place of worship, support its members, and render extensive community service. She listed many ministries they performed over the years when there was no church, including visiting the incarcerated, delivering meals, and administering to the homeless. She affirmed her support of the project, stating that she knew in her heart that her husband would fully endorse it, and the expansion would allow the church to continue its ministries. She concluded her testimony with the reminder that Antioch Baptist Church had been before the BZA in 1990 and enjoyed its favorable decision. She urged that again the BZA recognize the church's merit and approve the application.

Keitha Johnson, the director of Antioch's church operations, came forward to speak. She listed the daily logistical challenges the administrative staff encountered because their offices were off-site. She noted that frequent travel to and from the church was mandated to perform many of the administrative tasks such as routine maintenance, opening and closing rooms, pickup of goods that required signage, delivery of church materials for services, and pickup of the church's utility vehicle. Ms. Johnson stated that the current restroom facility was inadequate and requested that the Board render its favorable decision so that Antioch could continue its mission for the Lord.

Marguerite Mott, no address given, came forward to speak. She voiced her support of Antioch Baptist Church as a community-based church that welcomed all people, noting that many times it had administered to her during her times of need. Ms. Mott said the church purchased additional acreage to allow for its expansion, and now it needed the Board's approval to commence development. She requested that the Board approve the application.

Tim Hall, no address given, came forward to speak. He said he was one of the two Sunday school teachers for the high-school aged children, that he substituted for several other age groups, and he facilitated the men's Wednesday night Bible study. The church's current facility was inadequate to accommodate its programs, the rooms crowded and conditions uncomfortable, and some programs had to be held off-site. Mr. Hall said that the facility undermined efforts to illustrate the vital role Christian education played in the church's mission to educate and train young people as tomorrow's teachers and leaders. Mr. Hall said he believed it was God's will that Antioch continue to provide its services towards the education and needs of people, and he requested that the Board give its approval.

Joshua Mann, no address given, came forward to speak. He identified himself as a 14-year-old church member and introduced his six-year-old sister who stood at his side. He said he enjoyed participating in the church's numerous activities, such as, the youth choir, attending Sunday school, being a member of the youth ministry, and enjoying many of the youth activities, such as, ski trips and mountain retreats. He pointed out that the current facility could not accommodate many of the activities, forcing them to be moved off-site. Mr. Mann noted that there also was a safety issue when children were separated from parents and an emergency arose, such as his sister's food allergy.

Toni Townes, no address given, came forward to speak. As a member and neighbor of the church, she said she understood others' concerns because twice previously, when two other religious facilities were built close to her, she also had similar feelings about her children's safety, adverse impact on her elderly parents,

and traffic congestion along Ox Road. Ms. Townes submitted that she had a unique position of being able to see both sides of the equation, and she understood peoples' reluctance to embrace progress and change. She said her greatest fears about a church were wrong, and she realized benefits she had never considered. Ms. Townes said the neighboring temple was an exceptional neighbor who paved roads, beautified the grounds, cleared snow, and provided the benefit of traffic control police to enable her to access and exit her driveway during services. She said she actually felt she and her children were safer with the presence of the temple, and she enjoyed the good relations she had with them. Ms. Townes said her property value had doubled over the last ten years, and her unfounded fear of depreciation she assumed churches caused was not realized.

Rick Jenkins, no address given, came forward to speak. He said he concurred with Joshua Mann's testimony, that having to drive his children to different locations to attend church functions was inconvenient and time consuming. He said the congregation had outgrown its present facilities, and an expansion to allow all church functions on-site warranted consideration.

William Von Holle, 6603 O'Keefe Knoll Court, Fairfax Station, Virginia, came forward to speak. His line of work dealt in risk assessments and other safety issues. He represented Little Ox Coalition and called attention to a petition with 166 signatures in opposition. He said reasons for opposing the proposal were environmental engineering issues, traffic, and building and construction design. He said there would not be opposition to a reasonable expansion, but the proposal's size and scope were not harmonious with the surrounding residential neighborhoods. He pointed out that traffic congestion was inevitable because of the increased vehicular travel on Ox Road and that accidents were bound to occur. Mr. Von Holle also noted environmental and septic concerns and the fact that the church's record was poor concerning maintenance, parking violations, and light pollution. He said that there was no clear definition for "basement" or "cellar," which was critical for construction and were omitted from the application. He said that additional expansion was inevitable because the church's membership would only increase over the years. Mr. Von Holle concluded his testimony with the request that the Board defer its decision until the neighbors had time to review the revised development conditions.

Responding to Mr. Hammack's question, Mr. Von Holle said an expansion to 21,000 square feet was reasonable, and a 300 percent increase in the number of seats was acceptable.

David Gunnarson, 10707 Ellies Court, Fairfax Station, Virginia, came forward to speak. As an engineer, his issue concerned the septic system and the calculated water consumption because his determination was that the proposed system could not handle the anticipated usage. He said he took exception with the staff report stating that there were no environmental issues. He urged denial of the application.

William Wiehe, 12321 Popes Head Road, Fairfax, Virginia, came forward to speak. His concern was the environmental impact because the project was too large, and he believed there were watershed issues that were not considered. He pointed out that the pond was spring-fed, which was not calculated into the flow rate of the drain system and that the elevation of the facility over the drainfield would create serious problems. Pointing out the 30-foot grade change, he said part of the basement should also be calculated into the floor area ratio. Mr. Wiehe said staff should revisit the site and the issues, and the church should be scaled appropriately for the site's environmental conditions.

Christopher Kim, 10623 Donovan's Hill Drive, Fairfax Station, Virginia, came forward to speak. He had no objections to the church's ministry as it did provide commendable services to nurture people in their faith. However, the proposal was not harmonious with the neighborhood. He pointed out ensuing safety issues with the traffic that Little Ox Road could not accommodate. Mr. Kim urged the Board to consider whether the proposed facility was in harmony with the surrounding neighborhood.

Parker Normann, 6237 Sydney Road, Fairfax Station, Virginia, came forward to speak. He stated that he found the church to be a wonderful neighbor, and he actually did not have a problem with the proposal as he did not think there would be a negative impact on him. His one issue was the Transportation Department's proposal to complete Sydney Road, which would cause serious traffic and cut-through issues through the residential neighborhoods where currently there was virtually no traffic.

Peggy Golden, 6548 Little Ox Road, Fairfax Station, Virginia, came forward to speak. Her profession was a commercial interior designer who dealt with large commercial construction projects over the past 30 years that consisted of hundreds of thousands of square feet. She said the Little Ox Coalition supported a maximum of 800 seats. She pointed out that the adjacent residential parcels were two to five acres, and the septic and well systems could not support this size facility. She said the applicant's statement of justification should reflect the exact daily usage figures of each week, and Saturday was not even considered. She maintained that the septic system could not support such a large facility. Ms. Golden pointed out that a 1990 Virginia Department of Transportation (VDOT) report indicated that the road would be changed for low-density development and that it would not support a church of 400 seats; however, staff's analysis indicated that the same road would support a church of 1,250 seats. She pointed out numerous problems generated by the use, including congestion, neighborhood bottlenecks, inadequate access and egress from the site onto a major thoroughfare, and that both Little Ox Road and Woodfare Road did not meet VDOT's width standards. She said the Health Department's calculation of potential septic and sewage utilization was incorrect because the church provided incorrect numbers of potential attendees. Ms. Golden called the Board's attention to the binder her neighbors and other concerned citizens submitted for the record that listed concerns, issues, inconsistencies, documented activity, potential violations, environmental impacts, incompatibility issues, traffic problems, congestion, safety concerns, and wetlands impact.

In response to Ms. Golden's concern over the church's proposed hours of operation, Mr. Hart explained that the Board generally made no restrictions on a church's worship services, but occasionally restricted operation hours of other uses, such as daycare or education classes, associated with the church.
At Mr. Hart's request that he address Ms. Golden's comment that his report had erroneous data, Mr. Pricci repeated that as had been noted in his presentation, there had been errors in the transposition of raw data in his initial report, and all had been corrected.

Ved Gupta, 10719 Ox Croft Court, Fairfax Station, Virginia, came forward to speak. His issues were those of traffic congestion and accompanying safety concerns. He pointed out that the conditions were particularly dangerous on Sundays during church services and that there were two other churches in the close vicinity. Mr. Gupta suggested that the church relocate to a commercial area if it sought to expand.

Sylvie Van Acker, 6824 Jeremiah Court, Fairfax Station, Virginia, came forward to speak. She concurred with the other speakers who voiced concern about the wetlands, the pond, the traffic, the parking lot, the location of such a large church in a small residential neighborhood and the narrow, rural roads over which the increased traffic would traverse. She pointed out that a neighbor's improvement that resulted in the paving of an area of his property had created severe runoff and erosion problems, and she worried about the negative impact the church's construction would have. Ms. Van Acker said if the church wanted to expand, they should go somewhere that could accommodate such a facility that was near a major thoroughfare and not where currently proposed, in the middle of a small, quiet, wooded, peaceful residential area.

Rose Gingry (phonetic), 6700 Browns Pond Landing, came forward to speak. She said she was an avid cyclist and runner, but did not do either on Little Ox Road because of the blind curves and hills. She voiced her concern over the drainage system, runoff, and the fact that without electricity, there was no backup system to the septic system.

Gary Pisner, 6439 Little Ox Road, Fairfax Station, Virginia, came forward to speak. Stating he had prior experience with environmental issues, he voiced his concern over the Burke Lake watershed and the wetlands because the church's septic field had a non-permeable layer under the ground's surface that he learned of when he, assisted by the Health Department, had tried to get his property to perk. He said that a spring, the perk capacity, and the site's hydraulics were not factored in and that there was a very real danger that the site's septic contaminates would leach out of the soil and pour into Burke Lake. Mr. Pisner listed the ineffectiveness of a rain garden, warning that without proper maintenance, the result would be anaerobic pools of water that smelled like a sewer and were filled with debris, from which there could be runoff into the stream leading to Burke Lake.

Elizabeth Von Holle, 6603 O'Keefe Knoll Court, Fairfax Station, Virginia, came forward to speak. She said she was concerned about the enormity of the church which was not harmonious with the neighborhood and that the small local roads were not able to carry the generated traffic. Utilizing the overhead, she explained a graph she prepared calculating the total building floor area ratio (FAR) of the six churches in the vicinity. She

pointed out the disproportionate FAR of Antioch's proposal, whose size would be more than twice that of the other churches. She maintained that Antioch's request for a 123,000-square-foot facility was unreasonable for the community and preposterous for a small local road. She asked that the Board deny the request.

Ms. Von Holle concurred with Mr. Hart that she had included basement space rather than cellar space to arrive at the 123,000 figure, and she used that same formula with the other compared churches.

James Jackson, 6537 Little Ox Road, Fairfax Stations, Virginia, came forward to speak. He pointed out the church was in violation concerning its lights, that they were too high at 20 versus 12 feet. Mr. Jackson voiced his concern about his well becoming contaminated and questioned who would be responsible. He said he requested the County's Zoning Enforcement Branch look into the matter of the church's violations and litter/debris and was assured it would be scheduled, but to date nothing had been done.

Cliff Krug, 10831 Olm Drive, Fairfax Station, Virginia, came forward to speak. He acknowledged that he and the church were good neighbors although presently his concerns were his children's safety because of the increased traffic and possible contamination of his well. He was apprehensive over the huge size of the church and its impact on the neighborhood, and he did not believe the project's scale was harmonious with the Comprehensive Plan. Mr. Krug submitted that a compromise could be reached as the community was not opposed to the church's growth, but a smaller facility should be considered. Mr. Krug pointed out that future adverse impacts could arise that would forever negatively affect him, and those scenarios could not be foreseen at this time. He urged the Board to deny the application.

Kathy Krug, 10831 Olm Drive, Fairfax Station, Virginia, came forward to speak. She concurred with the previous speakers' issues. She said the church had told them they would not purchase any more land in the neighborhood. She asked the Board to reject the application.

Adrian Murray, 10905 Olm Drive, Fairfax Station, Virginia, came forward to speak. He spoke of the area's loss of rural character, flooding that occurred behind his house which carried in and left behind debris that he spends considerable time cleaning up, and the environmental hazards generated from such a large facility.

Michel Schute, 10909 Olm Drive, Fairfax Station, Virginia, came forward to speak. He stated that he believed in religious freedom and welcomed the church, but with a scaled down design. He was worried about the environment, the safety of residents due to the traffic increase, water runoff from the expansive impervious surface, pollution, and loss of the neighborhood's character. Mr. Schute urged that the Board preserve the neighborhood's identity, character, and the safety of the neighborhood and its inhabitants.

Meghan Dougherty, 10925 Olm Drive, Fairfax Station, Virginia, came forward to speak. She said she was 14 years old, and on Sundays the current church traffic made it very dangerous to walk along Little Ox Road. She pointed out that her neighborhood would be used as a cut-through avenue if the church expanded, which made her neighborhood extremely dangerous for pets, bicyclists, and pedestrians, as well as endangered wildlife, and would lower property values.

Sarah Gunnarson, 10707 Ellies Court, Fairfax Station, Virginia, came forward to speak. She said that after reading the staff report, there were several conclusions under the General Standards she believed were based on faulty logic. General Standard 3 claimed the church expansion was compatible with the neighborhood's low density character because of the addition of lots that would buffer the development. She pointed out that there was only one small lot added, which did not buffer the development and, in fact, would effectually decrease buffer because of its potential clearing for overflow drainage. The pedestrian traffic, General Standard 4, would utilize new sidewalks between the existing facility and the proposed new sanctuary, but that would not address the surrounding neighborhood pedestrian traffic. Ms. Gunnarson said a sidewalk was needed along the entire length of Ox Road because of the anticipated volume of vehicular traffic generated by the church. Ms. Gunnarson also disagreed with staff's conclusion on page 14 that the proposal was in harmony with the low density residential neighborhood. She requested the Board deny the application.

Diane Schute, 10909 Olm Drive, Fairfax Station, Virginia, came forward to speak. She respectfully

requested that the BZA decline the church's application, particularly noting her concern over stormwater runoff.

Janie Switzer, 10604 Donovans Hill Drive, Fairfax Station, Virginia, came forward to speak. Referencing a 1990 staff report on Antioch, she read, once Ox Road is realigned, the subject property will be surrounded by local residential streets that are not designed to carry a great magnitude of traffic; thus, amounts of traffic in excess of that generated by the residential uses recommended by the Comprehensive Plan could be damaging to the low-density character of the area. She pointed out that a great deal of residential development had occurred since 1990 and that the 1990 report confirmed the assessment that Little Ox could not carry a great magnitude of cars, of which VDOT predicted to be 4,000 on Sundays. She pointed out numerous vehicular accidents at several areas along Little Ox, that there was not access or egress to accommodate the trip generations, and the inevitable cut-through traffic would create additional problems.

Robert Lanoue, 6408 Jumet Court, Fairfax Station, Virginia, came forward to speak. Dangerous traffic over the narrow rural roads was his concern. He pointed out the Springfield traffic problems generated by St. Bernadette's Catholic Church, noting that church utilized a four-lane roadway and was substantially smaller than Antioch's proposal. Mr. Lanoue said he thought the proposal was larger than what was needed, could not be supported by the existing infrastructure, and was not in harmony with the surrounding community. He urged the Board to deny the application.

Mary Rosato, 6404 Jumet Court, Fairfax Station, Virginia, came forward to speak. She acknowledged that the church had been a good neighbor and had no complaint with its existing size. She stated that an increase in the church's size would affect property values and would not fit in with the character of the neighborhood. Ms. Rosato said a moderate growth was acceptable as the community wanted them to have what they needed, but not that much.

Katie Hottell, 6416 Jumet Court, Fairfax Station, Virginia, came forward to speak. She said the church was a gracious and hospitable neighbor, but on Sundays her family's activities were curtailed off Little Ox Road because of the dangerous traffic. She encouraged the Board to consider something with less of an impact on their neighborhood.

Tamara Karas, 10701 Ox Croft Court, Fairfax Station, Virginia, came forward to speak. There was community concern over the increased probability of automobile accidents along Little Ox Road when parishioners entered and exited the church parking lot. She informed the Board that she was the victim of a very serious car crash and then listed accident report statistics. She pointed out that there would be 5,000 vehicular generated trips to the church services. Ms. Karas suggested that the church vary its schedule to attract a greater number of attendees to the earlier services, and if there were better utilization of each service's capacity, the church might require a much smaller expansion to accommodate its needs. Ms. Karas requested that the BZA deny the special permit request.

Matthew Karas, 10701 Ox Croft Court, Fairfax Station, Virginia, came forward to speak. His issues concerned environmental impact to the wetlands with polluted runoff. He concurred that the proposal was just too large for the area and that he hoped they could come to a good agreement.

Kitty Karas, 10701 Ox Croft Court, Fairfax Station, Virginia, came forward to speak. She explained that the church's runoff eventually emptied into the Chesapeake Bay and affected thousands of animals and plants. Ms. Karas said that limiting the church's size would limit the amount of runoff emptying into South Run and eventually into the bay.

Pat Ronay, 6606 O'Keefe Knoll Court, Fairfax Station, Virginia, came forward to speak. Her comment was as a walker how dangerous it was to bike or walk Sunday mornings. She referenced a 2000 staff report memorandum from Ms. Nee to the BZA that recommended the church reduce its size to reduce the impervious surface. She read that the intensity of the proposed development would likely result in further degradation of the water quality in the area, and the removal and/or reduction of the impervious surface areas could be employed with this proposal to improve potential runoff issues related to the proposed development on the subject property.

Christine Magenheimer, 10704 Ellies Court, Fairfax Station, Virginia, came forward to speak. She said there

was tremendous concern over the septic field matter. Her system had failed several years ago, there was no explanation why, and it was she who dealt with it. She questioned who would be accountable down the line if there were problems, and she and her neighbors would all have to contend with it.

In his rebuttal, Mr. Lawrence addressed the testimony concerning Burke Road, noting that as a result of the application there would be a better safety situation than currently. He explained the routing of the proposed access points, noting that each met adequate sight distance standards. He said there were substantial changes, and the accident statistics the citizens cited were from the years before Ox Road's realignment, and since the realignment, Little Ox Road was not an unsafe road as compared with any other two-lane road in Fairfax County. He maintained that the average daily traffic was reduced by 98 percent, and referencing the information the Office of Transportation provided, the level of services would be well above the threshold design requested by VDOT and County staff. Mr. Lawrence clarified several matters noted in staff's 1990 report that were corrected, the road improvements and capability of the septic and sewer. He explained how the septic field's capacity was not determined by the number of attendees and that the Health Department would monitor the usage. He explained the wetlands impact concerns and its preservation. He noted that the applicant's architect correctly delineated it, which was verified and confirmed by the Corps of Engineers. He pointed out that the methodology developed by the applicant to address the drainage situation was reviewed and confirmed by DPWES. He added that there was also stormwater detention underground. He submitted a letter supporting the site's stormwater management procedures from the Virginia Department of Game and Inland Fisheries. Mr. Lawrence said that they were not pushing the envelope for the FAR permitted in the district, that the land added was proposed to remain in conservation, that additional evergreen trees were planted to mitigate visual impact from the adjacent neighbors, that the development conditions met the required standards, that there were no safety adverse impacts created, and that the septic system would be monitored by an independent consultant approved by the Fairfax County Health Department.

Mr. Lawrence responded to Ms. Gibb's question regarding the proposed size of the church, listing several comparisons that were located in the R-1 District. He further explained the cellar issue. Ms. Langdon stated that staff compares similar applications and their recommendations.

In response to a question from Mr. Hart, Ms. Langdon said the engineer at the time of building approval would show the cellar and basement areas which determined FAR. Addressing Mr. Hart's question on compatibility, she said staff could add a development condition regarding the architectural materials being compatible and that an architectural rendering was included in the staff report.

Mr. Lawrence suggested language which specified the architectural materials to ensure compatible design and that the applicant had no objection to adding such a development condition.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SPA 90-S-057-03 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE ANTIOCH BAPTIST CHURCH, SPA 90-S-057-03 Appl. under Sect(s). 3-103 and 3-C03 of the Zoning Ordinance to amend SP 90-S-057 previously approve for church to permit increase in land area, building addition and site modifications. Located at 10901 and 10915 Olm Dr., 6525 and 6531 Little Ox Rd., 6340 Sydney Rd. and 6400 Stoney Rd. on approx. 20.91 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 77-3 ((3)) 27, 30 and 34; 87-1 ((1)) 2, 2A, 5 and 6. 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, 2006; and

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

1. The applicant is the owner of the land.
2. The four or five issues of concern were thoroughly briefed by both sides and there was sufficient time to review the well-documented information submitted from either side.
3. The citizens' concern about the wetland issue is appreciated, but the Corp of Engineers had passed on it, and they are entrusted to have properly looked at it.
4. The Department of Public Works and Environmental Services (DPWES) has passed on it, and there probably will be another review and a number of iterations on it by the County.
5. The outfall issue is a concern for all in Fairfax County, and DPWES has adopted stringent new standards to determine and figure outfalls, and there are many engineers working on it, which should address the neighbors' concerns.
6. The church will be held accountable and must monitor its stormwater management system and rain gardens.
7. The traffic issue is a problem especially on Sundays, and one sympathizes with the neighbors, but a community church has the right to exist.
8. The County's expert traffic engineer, Angela Rodeheaver, performed traffic counts; her Department thoroughly assessed it; the determinations were passed on; and although the situation is not ideal, there are other areas in Fairfax County that are not ideal on Sundays; it is part of the County's urbanization.
9. The septic system was thoroughly assessed by a Fairfax County Health Department engineer expert who testified at length about its functions, capabilities, and reliability. It was noted that there are other larger septic fields functioning for years in the County.
10. The church is tasked with the system's continual monitoring and any possibility of a power outage, and several development conditions were added to address the matter.
11. Although it is a rather subjective view of the proposed expansion's compatibility with the residential surroundings, staff, who are professionals, have determined that it is compatible.
12. New lots were added that will have conservation easements, and the trees cannot be razed. There should be sufficient buffering.
13. It is regrettable that there will be disappointed people regardless of this case's resolution.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 and 3-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Antioch Baptist Church and is not transferable without further action of this Board, and is for the location indicated on the application 6525 and 6531 Little Ox Road, 10901 Olm Drive, 10915 Olm Drive, 6400 Stoney Road and 6340 Sydney Road and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by William H. Gordon Associates , Inc., dated January 2006, as revised through June 28, 2006 sheets one (1) through seven (7) 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.

~ ~ ~ July 11, 2006, TRUSTEES OF THE ANTIOCH BAPTIST CHURCH, SPA 90-S-057-03, continued from Page 436

4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of seats in the main area of worship shall be 1,250.

6. There shall be no worship services in the building located on Lot 6; prior to issuance of a Non–RUP for the new sanctuary, the church pews shall be removed and this building shall be converted to a multipurpose ministry building with ancillary support uses.

7. Parking shall be provided as depicted on the special permit plat. All parking shall be on site. There shall be no overflow parking permitted along adjacent subdivision streets. The applicant shall make all members aware of this restriction. In addition, the applicant will encourage car-pooling among its members and shall designate a person within the church administration to act as a point of contact for neighbors with traffic concerns.

8. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be supplemented as shown on the plat, with the following additions:

   - In the event that a storm sewer easement is not required on adjacent Lots 28 and 29, the easement area shown on the plat shall be planted with shrubs along the northern lot line as shown on the Landscape Plan. If an easement is required and obtained to allow a drainage swale in lieu of a storm sewer pipe, a barrier shall be installed on the subject property across the cleared area within the plantings, subject to approval of DPWES, on the north side of the barrier to minimize the view of the subject property.

   - Transitional screening consisting of a minimum of 25.0 feet in width shall be provided on the southern edge of the proposed septic drainage, along Little Ox Road to shield the view of the parking area and buildings from the road.

   Notwithstanding that which is shown on the plat, the extent of tree preservation shall be the greatest extent possible on-site, as determined by the Urban Forest Management (UFM), DPWES, and supplemental plantings over and above that which is shown on the plat as determined by UFM. The size, species and location of all supplemental and transitional screening plantings shall be determined in consultation with UFM and shall provide at a minimum Transitional Screening 1 along the northern and southern lot lines of Lot 2 and 2A and the northern lot lines of Lots 5 and 34.

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

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

9. Foundation plantings and shade trees shall be provided around the church building to soften the visual impact of the structures. The species, size and location shall be determined in consultation with UFM.

10. The barrier requirement shall be waived, except for Lot 6 and as qualified by these conditions.

11. Interior and peripheral parking lot landscaping shall be provided, at a minimum, in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be determined in consultation with UFM, at the time of site plan review.

12. The limits of clearing and grading shall be no greater than as shown on the SP Plat or as modified by these conditions and shall be strictly adhered to. A grading plan which establishes the final limits of clearing and grading necessary to construct the improvements shall be submitted to UFM, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including UFM, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.

13. Stormwater management and Best Management Practices facilities shall be provided as determined by DPWES. Low Impact Design (LID) facilities shall be provided as described on the plat, and as approved by DPWES. The underground Stormwater Management/Best Management Practices facility may be reduced in size or removed if it is determined by DPWES that the LID facilities can adequately accommodate stormwater volume and quality requirements. The applicant shall enter into an agreement with DPWES, in such a form as required by DPWES, at the time of site plan approval that sets forth a maintenance schedule and procedure for the underground detention facility.

14. Right-of-way dedication shall be provided as depicted on the plat, or as determined by the Department of Transportation and the Virginia Department of Transportation (VDOT). The right-of-way shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first.

15. Any proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Outdoor lighting fixtures shall not exceed twelve (12) feet in height from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property. Parking lot lighting shall be turned off one-half hour after any event held at the church. Outdoor building-mounted security lighting shall be shielded to prevent off-site glare.

16. The applicant shall obtain a sign permit for the proposed sign, which shall comply with the provisions of Article 12 of the Zoning Ordinance.

17. The applicant shall exercise diligent attempts as determined by VDOT to abandon Stoney Road, where it bisects the subject application property, subject to approval of VDOT. Should the abandonment be approved, the applicant shall scarify the existing road pavement and revegetate the area, while allowing unimpeded pedestrian traffic from Lot 6 to the adjacent application properties. The applicant shall scarify and revegetate the roadway in accordance to procedures approved by UFM.

18. In order to ensure safe and expedient access to and from the church during Sunday morning church services, the applicant shall provide police assistance for traffic control. The police shall direct traffic at the main entrance to the Church. Additionally, the applicant shall install directional signs on site to assist motorists entering and existing the property.

19. The dwelling on Lot 27 shall be used only as a residence and occupied only by an employee or member of the church and his/her family.

20. The proposed septic drainfield shall be subject to review by the Fairfax County Health Department. Groundwater mounding and nitrate loading calculations shall be conducted and shall meet the required standards of the County and the State. Groundwater monitoring wells shall be provided in the areas shown on the special permit plat or in areas designated by the County. Pretreatment of effluent shall be provided. Finally, an equalization tank shall be utilized to mitigate peak flows. If the proposed septic drainfield cannot accommodate the application proposal, the applicant shall be required to apply for a special permit amendment.

21. If determined necessary by VDOT at the time of site plan approval, to provide storage capacity, the applicant shall design and construct a left turn lane on Little Ox Road, within the existing right-of-way, into the main entrance of the property.

22. The applicant shall conduct a Phase I Archaeological Study of the application property, and provide the results of such studies to the Cultural Resource Management and Protection Section (CRMPS) of the Fairfax County Park Authority. If deemed necessary by CRMPS, the Applicant shall conduct a Phase I Archaeological Study of the application property, and provide the results of such studies to the Cultural Resource Management and Protection Section (CRMPS) of the Fairfax County Park Authority. If deemed necessary by CRMPS, the Applicant shall conduct a Phase II and/or Phase III Archaeological Study on only those areas of the application property identified for further study by CRMPS. The studies shall be conducted by a qualified archaeological professional approved by CRMPS, and shall be reviewed and approved by CRMPS.

23. The applicant will have septic field monitoring reports prepared by an independent consultant approved by Fairfax County Department of Health. Said monitoring reports shall be prepared in writing by the consultant and submitted to the Health Department on a monthly basis for a period of two years commencing on the issuance of the occupancy permit for the new sanctuary. Thereafter, monitoring reports will be submitted periodically as required by the Health Department.

24. The applicant shall notify the Health Department immediately when the septic system exceeds capacity or fails.

25. In the event of failure of the septic system, the applicant shall discontinue its operations immediately until it can bring the septic system into compliance with applicable Health Department standards and obtain the approval of the Health Department before resuming operations.

26. The building construction shall be generally consistent with the architecture presented in the revised concept elevation in the staff report (Attachment 1). The building will utilize residential type materials such as brick, siding, and asphalt shingles or metal roof or other building material, residential in character, to complement the surrounding community. The design shall incorporate elements such as hip roofs in segmented masses so as to reduce the apparent scale.

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

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

Mr. Ribble seconded the motion, which carried by a vote of 4-3. Mr. Beard, Mr. Byers, and Mr. Hammack voted against the motion.

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~ ~ ~ July 11, 2006, continued from Page 439

The Board recessed at 1:34 p.m. and reconvened at 1:42 p.m.

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~ ~ ~ July 11, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications including changes in parking layout, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, 4/19/05, 6/7/05, 6/14/05, and 8/9/05 at appl. req.) (Decision deferred from 9/13/05, 10/11/05, 11/1/05, 5/2/06, and 6/20/06)

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

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

Chairman DiGiulian called the applicant's representative to the podium.

Lynne Strobel, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, said that to address the issues raised by the Board in November 2005, the applicant reevaluated its needs on its long-term mission to concentrating on its existing congregation's needs. The fellowship hall, religious education classrooms, and office/storage space were redesigned to fit into approximately 7,000 square feet of current building area. She noted that a series of citizen meetings were held with all questions, comments, and suggestions recorded for serious consideration, which was to attain a neighborhood consensus instead of individual concerns. She indicated that the applicant requested a deferral of the May BZA hearing so that the neighbors' comments could be received, distributed, and considered. It was unfortunate that a consensus was not achieved between the church and neighbors. The current proposal was the church's best effort to address community concerns and represented a significant compromise of its original proposal. She named the numerous concessions made, including parking, safety, congregation size, access-egress, construction, pavement materials, development conditions, and the elimination of the proposed Montessori school, memorial wall, and the columbarium. Ms. Strobel stated that despite the church's concessions and compromises, the community did not support the proposal. She also noted that some citizen letters submitted June 20th opposed any expansion, which directly contradicted original testimony to the BZA.

Ms. Strobel requested the Board consider the fact that the church's acquisition of additional land logically preceded its request for an increase of building square footage; the proposed expansion was modest and the proposed FAR remained below that permitted within this zoning district; the proposed improvements were of an appropriate scale to the existing improvements in height, architecture, and size; the improvements had no impact on the visual character of the area; and, the neighborhood's character was established by the church, not by the subsequent housing developments. She noted that staff continued to recommend approval and found the application met all standards and requirements of the Ordinance and Comprehensive Plan. Ms. Strobel pointed out that based on a conversation with Vice Chairman Ribble, two development conditions were added, Condition 29 regarding the hiring of a police officer, and Condition 30, a commitment to adjacent property owners for the provision of additional landscaping. She noted that the section of curb and gutter the Department of Transportation proposed was not compatible with the character of the neighborhood.

Ms. Strobel responded to Mr. Hart's questions and suggestions concerning Development Condition 29.

In response to Mr. Hart's question regarding whether staff had seen the proposed development conditions submitted by the applicant, Susan Langdon, Chief, Special Permit and Variance Branch, said staff had and had no objection.

Larry E. Dawes, 4312 Ferry Landing Road, Alexandria, Virginia, chairman of the church's building committee, attested that over the past three years he worked at determining the program requirements that resulted in the plan currently before the Board. He said the plan met County zoning requirements and had staff's recommendation for approval. He listed the church's numerous concessions, commenting that they also were discussed by Ms. Strobel. Mr. Dawes pointed out that these significant changes mandated the project's reshaping and were made primarily to address community concerns. The citizen letters accusing the church of duplicitous actions were untrue, and he described his personal involvement during the process and with the many community outreach meetings. Every involved family was apprised of each meeting's outcome and any progression. The applicant deferred the public hearing process to allow the community to submit a consensus plan they supported, but instead individual planning recommendations were received, some of which were contradictory and mutually exclusive. Each plan was considered and received a response in writing. He referred to the proposal before the Board, reiterating that it was laboriously crafted, met zoning requirements, had the support of staff, met the church's program needs, retained the neighborhood's character, addressed parking, traffic, and safety concerns, and he requested the Board's approval.

Chairman DiGiulian called for speakers.

Michael Bechtold, 9004 Volunteer Drive, Alexandria, Virginia, came forward to speak. At the Board's suggestion during the November hearing, the neighbors formed an ad hoc committee to work with the church, and the church had not diligently worked with them. He said the church was not compatible with its historic surroundings and did not conform to the Comprehensive Plan. The most important issue was the substantial adverse impact on the community. He pointed out that 72 families immediately surrounding the site found the proposal unacceptable. Mr. Bechtold said that although the proposal was scaled back, that did not make it now acceptable. He pointed out the site's access/egress and parking issues and the fact that the church had not addressed the neighborhood's concern with on-street parking from large church events. Mr. Bechtold stated that the plan was not in keeping with the Comprehensive Plan, not consistent with the intent of the special permit because of its unacceptable impact on its neighbors, and failed to resolve existing traffic and safety issues caused by the use. He recommended that the special permit application be denied.

Mr. Bechtold concurred with VDOT's proposal that the installation of a 30-foot-wide curb and gutter section would provide a better and safer access to both sides of the site. He also stated that a waiver was required for a dustless surface, using gravel pavers. In response to a question from Mr. Beard, Mr. Bechtold said that for years the neighbors had issues with traffic and safety generated from the church use and, therefore, were concerned with any expansion.

Chairman DiGiulian asked if Ms. Strobel had rebuttal comments.

Ms. Strobel said she had nothing further to add except to restate that the church had significantly scaled back its proposal. She believed the applicant had done everything it possibly could on the case, and there was a recommendation of approval. At Mr. Beard's request, she clarified each stage of the applicant's proposal and site modifications beginning with the land acquisition.

Mr. Beard moved to approve SPA 75-S-177 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications including changes in parking layout, an increase in land area and the addition of a columbarium **(THE SCHOOL AND COLUMBARIUM REQUEST WERE WITHDRAWN).** Located at 3921 Old Mill Rd. on approx. 2.38 ac. of

land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, 4/19/05, 6/7/05, 6/14/05, and 8/9/05 at appl. req.) (Decision deferred from 9/13/05, 10/11/05, 11/1/05, 5/2/06, and 6/20/06) 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 11, 2006; and

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

1. The applicant is the owner of the land.
2. The church has made major concessions pursuant to its original desires.
3. The Montessori school was done away with, and if after five years they wish to pursue it, it must come before the Board for consideration.
4. The church has done away with the columbarium, which seemed to be out of the public eye.
5. The church has done away with its memorial wall.
6. The underlying contention from the neighborhood has been something that has been on-going from years back, and the church has made major concessions to obtain its special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees of Washington Farms United Methodist Church and is not transferable without further action of this Board, and is for the location indicated on the application, 3921 Old Mill Road and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat prepared by Cad-Con Consulting incorporated, dated September 10, 2003, revised through June 1, 2006, pages C-1 through C-3 and L-1,and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of seats in the main area of worship shall be 126.

6. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site.

7. Transitional screening shall be modified along all lot lines to permit existing vegetation supplemented as shown on the plat to satisfy the requirements.

   Notwithstanding that which is shown on the plat, the extent of tree preservation shall be the greatest extent possible on-site, as determined by Urban Forest Management, DPWES and supplemental

plantings over and above that which is shown on the plat shall be provided as determined necessary by Urban Forest Management to meet the intent of Transitional Screening 1 along the lot lines adjacent to the proposed fellowship hall and play area. Additional plant material shall also be added within the 10 foot wide screening area around the northeastern parking lot as deemed feasible by Urban Forest Management to fill in remaining open areas. The size, species and location of all supplemental and transitional screening plantings shall be determined in consultation with Urban Forest Management.

A tree preservation plan shall be submitted to Urban Forest Management for review and approval at the time of each site plan review. This plan shall designate, at a minimum, the limits of clearing and grading as delineated on the special permit plat in order to preserve to the greatest extent possible individual trees or tree stands that may be impacted by construction. Trees identified on the special permit plat to be removed may be saved if deemed feasible by UFM. Both 10 inch Hollies in the existing cemetery shall be preserved. The walkway from the existing building to the proposed fellowship hall shall be realigned if necessary to insure preservation of the eastern holly.

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

8. The barrier requirement shall be waived.

9. Interior and peripheral parking lot landscaping shall be provided, at a minimum, in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be determined in consultation with Urban Forest Management, at the time of site plan review.

10. The limits of clearing and grading shall be no greater than as shown on the special permit plat or as modified by these conditions and shall be strictly adhered to. A grading plan which establishes the final limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including Urban Forest Management, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including Urban Forest Management, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. 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.

11. Stormwater management and Best Management Practices facilities shall be provided as determined by DPWES. Low Impact Design (LID) facilities shall be provided as depicted on the plat, and as approved by DPWES. The applicant shall enter into an agreement with DPWES, in such a form as required by DPWES, at the time of site plan approval that sets forth a maintenance schedule and procedure for the underground detention facility.

    The stormwater management system designed for the property shall ensure that stormwater discharged from the application property shall not exceed current volumes.

    Subject to the approval of DPWES (including Urban Forest Management), an additional swale shall

be installed at the time of building construction along the southeast property line in the proximity of the transitional screening proposed on the special permit plat. The swale shall assist in managing the stormwater runoff from the property and shall be designed in accordance with the requirements of the Public Facilities Manual. However, the swale shall be designed and located so that it does not impact any existing trees designated to be preserved.

12. All pipes and bins associated with the roof drainage system shall be cleaned on a regular basis to ensure proper function. A maintenance schedule shall be available for review at the church by Fairfax County inspectors. Cleaning shall be performed a minimum of once a year to ensure that downspouts are adequately draining water from roof gutters into the closed pipe system proposed in conjunction with building improvements.

13. The final location of the brick/hatched crosswalks shall be as determined by DPWES.

14. Right-of-way dedication shall be provided as depicted on the plat, or as determined by VDOT. The right-of-way shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple at the time of site plan approval.

15. If warranted at time of site plan, and approved by the Virginia Department of Transportation 9VDOT), the applicant shall design and construct a right turn lane on Old Mill Road at its intersection with Mount Vernon Memorial Highway, within the existing right-of-way.

16. As determined by the Virginia Department of Transportation 9VDOT), the entrance radii shall be increased at the proposed 30 foot entrance to the northeastern parking lot.

17. The occupancy of the fellowship hall shall be limited to 160 adults.

18. In accordance with the United Methodist tradition and upon the recommendation of the Social Creed, no alcohol is allowed on the Church premises.

19. All events in the fellowship hall, except for overnight "lock-ins", shall be completed by 11:00 p.m.

20. The fellowship hall shall not be rented for commercial uses.

21. Any proposed new and/or replacement exterior lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Outdoor lighting fixtures shall utilize full cut-off fixtures which focus directly on the subject property. Parking lot lighting shall be turned off one-half after any event held at the church. Outdoor building-mounted security lighting shall be shielded, directed toward the building and not directed outward from the property to prevent off-site glare.

22. The construction of the addition shall be generally consistent with the architecture, materials and colors presented in the attached elevations (Attachment 1).

23. The maximum building height of the addition shall be 28 feet per Fairfax County Zoning Ordinance definition of building height.

24. The dwelling on site shall be used only as a residence and occupied only by an employee or member of the church and his/her family.

    Should this dwelling be removed, the area shall remain as open space unless there is a further amendment to this special permit and the development conditions.

25 With the exception of religious education, there shall be no school operated on the property for five years. Any school would require BZA approval.

26. The lower level of the building addition shall be depressed approximately one half of its clear height into the ground during final architectural design to minimize building height and bulk. If this results in

the lower level being defined as cellar space, the square footage of the rest of the building shall be reduced in direct correlation to the amount of cellar space incorporated in any final building design.

27. The site plan and final architectural drawings for the building addition shall be administratively reviewed by the Board of Zoning Appeals prior to final approval by DPWES. The Board of Zoning Appeals shall review the final drawings to ensure compliance with the special permit plat and these conditions.

28. A police officer shall be hired to direct traffic and parking during special events with increased traffic volume, such as weddings and funerals, including the semi-annual yard sale.

29. As demonstrated to DPWES at time of site plan submission, the Applicant shall coordinate with adjacent property owners on the south and east boundaries to select locations and plant materials to be installed within the transitional screen yard in addition to the landscaping shown on the SP plat. The plantings are intended to screen the proposed improvements and shall be reviewed and approved by a representative of Urban Forest Management.

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

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

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

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~ ~ ~ July 11, 2006, Scheduled case of:

9:30 A.M. NORMA VIDAURRE, A 2006-MA-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a home child care center has been established on property in the R-2 District without an approved Special Permit, in violation of Zoning Ordinance provisions. Located at 4106 Mason Ridge Dr. on approx. 16,403 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((15)) 59. (Admin. moved from 5/2/06 at appl. req.)

Chairman DiGiulian noted that A 2006-MA-006 had been administratively moved to November 24, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ July 11, 2006, After Agenda Item:

Request for Additional Time
Ajey Bargoti, SP 97-Y-014

Commenting that this had been ongoing for nine years, Mr. Hart moved to deny the request for additional time consistent with the staff recommendation. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 11, 2006, After Agenda Item:

Request for Additional Time
Novus, LLC, SPA 80-C-091-2

Mr. Hammack moved to approve 12 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was March 17, 2007.

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~ ~ ~ July 11, 2006, After Agenda Item:

Request for Additional Time
Trustees of Church Friends Meeting of Langley Hill, SP 2003-DR-013

Mr. Hammack moved to approve 12 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was March 16, 2007.

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~ ~ ~ July 11, 2006, After Agenda Item:

Consideration of Acceptance - Application for Appeal
T. William Dowdy, Trustee, Shirley M. Hunter, Trustee

Chairman DiGiulian asked if anyone was present who wished to address the appeal.

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

Bruce Smith, representing the appellants, explained that there had been illegal dumping on the appellants' property, of which some was removed, and to prevent future trespassing, a barrier was erected. They were informed by the Zoning Inspector, Leo Conrad, of additional materials constituting the violation, and they were pursuing its resolution. Mr. Smith stated that the barrels, drums, and containers of environmental contaminants cited in the violation were not on the appellants' property, and that was the reason for the appeal. It was since recognized that the items were on a different property, but his clients requested a written recordation of the environmental hazards removal to ensure no future difficulties for the appellants. Mr. Smith submitted that the appeal was timely filed, that both appeals were mailed the same day, but the envelopes arrived at the County on different days, of which he had no explanation.

Mr. Smith responded to Mr. Hammack's questions concerning notices.

Mr. Hammack stated he strongly felt that the 30-day timeframe should commence the actual date the Notice of Violation was received by the individual. Mr. Hammack moved to accept the appeal. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Horner case, the McLean Bible Church v. BZA case, Cooper versus BZA, Concerned Citizens of Hollin Hall, Virginia Equity Solutions, the Lee case, and correspondence, pursuant to Virginia Code Ann. Sect. 2.2-3711(A)(7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The Board recessed at 10:39 a.m. and reconvened at 11:24 a.m.

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

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~ ~ ~ July 11, 2006, continued from Page 446

Mr. Hart moved that the Board authorize Mr. McCormack to take the action discussed during Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-1. Mr. Byers voted against the motion.

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Mr. Hart moved that the Board authorize Ms. Gibb to send the letter to County Executive that was discussed during Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Mr. Hart stated that notwithstanding the Board's approval of the Antioch Baptist Church application, he requested that staff follow up on several of the citizen concerns that were raised during the public hearing, including issues with the light poles, the trash, and the rain garden maintenance.

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As there was no other business to come before the Board, the meeting was adjourned at 2:55 p.m.

Minutes by: Paula A. McFarland

Approved on: October 27, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 18, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers. Paul W. Hammack, Jr., was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:15 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ July 18, 2006, Scheduled case of:

9:00 A.M. KAREN TURNER, SP 2006-LE-022 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 3.3 ft. and 2.4 ft. from side lot line. Located at 6917 Ben Franklin Rd. on approx. 24,500 of land zoned R-1. Lee District. Tax Map 90-1 ((5)) 16.

Chairman DiGiulian called the case and recused himself from the hearing. Vice Chairman John Ribble assumed the Chair.

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

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elizabeth Turner, 7143 Barry Road, Alexandria, Virginia, the applicant's agent, and Karen Turner, the applicant, 6917 Ben Franklin Road, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on errors in building location to permit accessory structures to remain 3.3 feet and 2.4 feet from a side lot line. A minimum side yard of 20 feet was required for the vinyl garage; therefore, a modification of 16.7 feet was requested. A minimum side yard of 3.0 feet was required for the brick garage; therefore, a modification of 0.6 feet was requested. All other violations on the property had been cleared.

Elizabeth Turner presented the special permit request as outlined in the statement of justification submitted with the application. The applicant was completely unaware that a building permit was required for the detached garage and shed structures when they obtained a permit for their basement renovation. James Turner built the garage in 2003 and since had developed arthritis, which rendered him incapable of performing such work. Elizabeth Turner said to remove the garage posed a particular financial hardship because the applicant's income had reduced dramatically, and to contract the work was not feasible. The garage was used for storage and a workshop for Karen Turner's hobby of refinishing antique furniture, and the garage was not visible from the street. She stated that the error was done in good faith and respectfully requested that the Board approve the special permit.

In response to Mr. Beard's question, Ms. Hedrick noted that a complaint to the Zoning Enforcement Branch brought the matter before the BZA. Addressing Mr. Byers' reference to an e-mail dated August 14th, Ms. Hedrick acknowledged receipt of the Franklin Commons Homeowners' Association's e-mail and that the applicant would address it.

Concerning the e-mail, Elizabeth Turner relayed the applicant's relationship with the sender, who was a member of the adjacent development's homeowners association. There were numerous complaints lodged by that neighbor, which began quite some time prior, regarding the Turners' dog barking. Although Karen Turner made every effort to address the complaints, the neighbor continued to call police, made complaining phone calls to Karen's daughter, and then filed this complaint.

In response to Mr. Hart's question, Elizabeth Turner confirmed that neither Karen nor James were contractors.

In response to Mr. Hart's question, Ms. Hedrick said the gravel surface, considered impervious, had not figured into the percentage of yard coverage. She further explained the sheds' height compliance, and that both were permitted to remain.

~ ~ ~ July 18, 2006, KAREN TURNER, SP 2006-LE-022, continued from Page 449

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

Mr. Byers moved to approve SP 2006-LE-022 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KAREN TURNER, SP 2006-LE-022 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 3.3 ft. and 2.4 ft. from side lot line. Located at 6917 Ben Franklin Rd. on approx. 24,500 of land zoned R-1. Lee District. Tax Map 90-1 ((5)) 16. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 18, 2006; and

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

1. The applicant is the owner of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

~ ~ ~ July 18, 2006, KAREN TURNER, SP 2006-LE-022, continued from Page 450

development conditions:

1. This Special Permit is approved for the location of the accessory structures (garages) as shown on the plat prepared Paul A. Garcia, Land Surveyor, dated March 22, 2006, as submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the accessory structure (vinyl garage) shall be diligently pursued within 30 days and obtained within 90 days of final approval or this Special Permit shall be null & void.

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

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

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Chairman DiGiulian resumed the Chair.

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~ ~ ~ July 18, 2006, Scheduled case of:

9:00 A.M. SUZANNE WOODFINE, SP 2006-BR-025 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 5510 Talon Ct. on approx. 1,440 sq. ft. of land zoned R-12. Braddock District. Tax Map 77-2 ((19)) 122.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Suzanne Woodfine, 5510 Talon Court, Fairfax, Virginia replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a modification to the limitation on the keeping of animals to permit the keeping of a maximum of four dogs. Two dogs would be permitted by right on the applicant's property. The applicant was mailed a Notice of Violation (NOV) on April 21, 2006, from the Zoning Enforcement Branch, advising her she was not in conformance with County Zoning Ordinance regulations because she was housing four dogs over six months of age. Mr. Varga said the applicant had indicated that measures had been taken to decrease noise associated with the dogs, such as barking inhibition units and letting them outside only when she was home.

Ms. Woodfine presented the special permit request as outlined in the statement of justification submitted with the application. She said she owned the four dogs, three of whom she raised from puppies, when she moved into the County in November of 2004 and was unaware it was a zoning violation. Their ages were 11, 6, 5 ½, and 5 years old. To resolve the NOV complaint about the noise, she said she no longer let them out unless she was at home, the curtains were kept closed so they did not get excited with anything outside, and a dog trainer was hired who schooled her on several techniques that discouraged barking. Ms. Woodfine said that all the dogs were licensed, current with vaccinations, and spayed. To facilitate effective waste cleanup, pavers were professionally installed, she daily picked up waste, and weekly she washed down with bleach solution as well as sprayed the ground. Ms. Woodfine said she could not imagine having to choose which dogs she would have to find homes for and requested that the Board approve the application.

In response to Mr. Hart's question, Ms. Woodfine said she read and accepted all the proposed development conditions.

~ ~ ~ July 18, 2006, SUZANNE WOODFINE, SP 2006-BR-025, continued from Page 451

Chairman DiGiulian called for speakers.

Carol Martin, Vice President of the development's homeowners association, came forward to speak. She said she had known Ms. Woodfine for 20 years and that their association never had any complaints regarding the dogs. This complaint was recent, and Ms. Woodfine had resolved the matter.

Laura Stradda (phonetic), 5508 Talon Court, Fairfax, Virginia, came forward to speak. She said the dogs did not bark excessively, and Ms. Woodfine kept her yard clean and was diligent about keeping her dogs trained and under control. Ms. Stradda submitted that it was sad to have burdened the Board with the matter and that whoever had a problem had not addressed Ms. Woodfine directly.

Sharon Ward, a contiguous neighbor, said that she had known for 20 years Ms. Woodfine, who had wonderful dogs that were well-cared for and that were loved as if they were her children. Ms. Ward said she, too, was a dog owner and wished the applicant good luck.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2006-BR-025 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUZANNE WOODFINE, SP 2006-BR-025 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 5510 Talon Ct. on approx. 1,440 sq. ft. of land zoned R-12. Braddock District. Tax Map 77-2 ((19)) 122. 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, 2006; and

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

1. The applicant is the owner of the land.
2. There has not been any opposition expressed to the Board today.
3. There are several neighbors in support.
4. Although it appears that it may have been a complaint about noise in the past, in my judgment, there would be plenty of noise in this neighborhood anyway whether there were two dogs or four dogs because the house backs up to Roberts Road, just the other side of the applicant's back fence; less than a block from the corner of New Guinea and Roberts Road, and a block away from the Virginia Railway Express railroad tracks.
5. I don't believe the difference between two dogs and four dogs, particularly under the constraints in the development conditions limiting the times the dogs can be outside, as well as the applicant has explained about the dogs' training, would impose a negative impact on the neighborhood.
6. Although four dogs in a townhouse would be a lot, the impacts have been sufficiently mitigated with this application.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

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

~ ~ ~ July 18, 2006, SUZANNE WOODFINE, SP 2006-BR-025, continued from Page 452

limitations:

1. This approval is granted to the applicant only, Suzanne E. Woodfine, and is not transferable without further action of this Board, and is for the location indicated on the application, 5510 Talon Court (1,440 sq. ft.) 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 four (4) dogs. If any of these specific animals die or are given away, the dogs shall not be replaced, except that two (2) dogs may be kept on the property in accordance with the Zoning Ordinance.

4. The yard areas where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.

5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

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

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

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~ ~ ~ July 18, 2006, Scheduled case of:

9:00 A.M. GEORGE D'ANGELO, VC 2006-DR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a fence greater than 4.0 ft. in height in the front yard and an addition 15.0 ft. from front lot line of a corner lot. Located at 7800 Magarity Rd. on approx. 8,521 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 39-2 ((6)) 2.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George d'Angelo, 7422 Howard Court, Falls Church, Virginia, replied that it was.

Gregory Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a fence greater than four feet in height in the front yard and construction of an addition 15 feet from the front lot line of a corner lot. The applicant proposed to construct a single-family home.

Mr. d'Angelo presented the variance request as outlined in the statement of justification submitted with the application. Besides being a barrier to noise and pollution, Mr. d'Angelo said a matter of safety also warranted the wall as numerous accidents occurred at that location with vehicles occasionally flipping into his yard. He explained the development's history, saying that subsequent to land being taken for roadways, his lot was originally an interior lot, but now was a corner lot which affected the setbacks. He said his lot was extremely narrow, and to comply with both front and side setback requirements, his lot was reduced to barely 12 to 13 feet in width. Mr. d'Angelo proposed to construct a single-family home to be attached to a cinderblock building, formerly utilized by AT&T and now abandoned, that itself was uninhabitable and an eyesore. The variance was necessary to allow any reasonable structure because of the required setbacks. Mr. d'Angelo submitted that his lot was designed for residential use, and to deny the variance would effectually render his property unusable. He stated there was no opposition from the neighbors and that he would do additional plantings and would not remove existing trees.

~ ~ ~ July 18, 2006, GEORGE D'ANGELO, VC 2006-DR-003, continued from Page 453

Discussion followed between Mr. Hart and Mr. d'Angelo with the applicant responding to questions regarding when the lot was purchased and its current size. Mr. Hart pointed out that there had been a recently adopted Ordinance amendment regarding fences and to apply for a special permit. Mr. Hart also pointed out that the plat showed the house approximately 70 feet long which was different than what Mr. d'Angelo proposed.

Addressing Mr. Hart's questions, Susan C. Langdon, Chief, Special Permit and Variance Branch, said there should be no zoning impediment to Mr. d'Angelo obtaining a residential use permit. The concrete structure was grandfathered, and an addition outside the 10-foot minimum side yard and 25-foot rear yard requirements was permitted without a variance. The lot's buildable area was adjacent to the structure and was very narrow, approximately 15 feet. There was a 10-foot setback from one side lot line and a 30-foot front yard setback, and the new addition could be up to 35 feet tall.

In response to Mr. Hart's question, Mr. d'Angelo said he would pursue a special permit process although, if required to comply with the setbacks, he thought his addition was acceptable but certainly not ideal.

Mr. Ribble concurred that the unit would be odd looking, but he believed the applicant should reevaluate and redesign his proposal. He suggested a short deferral.

Mr. d'Angelo submitted that any design he could imagine that met Ordinance regulations seemed impractical, would look strange, and he believed his neighbors would be displeased. He suggested reducing the length from 70 to 55 feet by foregoing the deck, but maintained that the house should be square and not long and narrow like a trailer.

Mr. Beard said that he agreed that certain designs made no common sense. However, Mr. Beard said the applicant should take another look at it.

Ms. Gibb suggested new drawings be submitted for the Board's consideration and that Mr. d'Angelo justify his conclusion that his proposal was the minimum necessary to make, as previously discussed, a common sense approach to the property. She pointed out that Magarity Road was one of the physical boundaries of Pimmit Hills, and across the road there were not little houses. Her concern was not whether the proposal was compatible with Pimmit Hills, but because of the variance standards, what was the minimum required. Ms. Gibb pointed out that with the new special permit process, one was limited to 150 percent of the original building's size, and because of that restriction, she understood why the applicant would not care to pursue the special permit avenue.

Mr. Hart clarified the new special permit standards. He agreed the lot was narrow, that it probably would have a narrow house on it, but there were also many other homes in the County 16 feet wide, and he believed that the minimum that afforded relief was not a 30-foot width house, but something narrow. Mr. Hart commented that he was not necessarily persuaded that the Ordinance interfered with the applicant's reasonable use of the property and whether the proposal was the minimum required to afford relief. He noted that many homes in Pimmit Hills were the minimum size. Mr. Hart said everyone from the beginning was aware that the subject lot was a problem lot that had constraints. Mr. Hart said that the hut had some use with the potential for an addition, although the finished unit probably would not be ideal as it would be long and narrow. Mr. Hart suggested that the applicant reconsider his plan and redesign his proposal to closer comply with Sect. 18-405 of the Ordinance.

Mr. Ribble moved to continue VC 2006-DR-003 to September 19, 2006, 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.

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~ ~ ~ July 18, 2006, Scheduled case of:

9:30 A.M. ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO LARIOS, A 2006-LE-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a carport and a dwelling do not comply with the minimum yard requirements for the R-3 District, in violation of Zoning Ordinance provisions. Located at 7320 Bath St. on approx. 10,062 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (34) 20. (Admin. moved from 5/2/06 at appl.

~ ~ ~ July 18, 2006, ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO LARIOS, A 2006-LE-007, continued from Page 454

Chairman DiGiulian noted that A 2006-LE-007 had been administratively moved to October 3, 2006, at the appellants' request.

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~ ~ ~ July 18, 2006, Scheduled case of:

9:30 A.M. FAIRFAX RIDGE DEVELOPMENT LLC; CRESCENT HEIGHTS OF AMERICA, INC., A 2006-PR-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing the display of two rooftop signs and a banner sign on property in the PDH-20 District in violation of Zoning Ordinance provisions and a determination that an appeal filed on March 2, 2006, was rendered moot when the Notice of Violation being appealed was rescinded. Located at 11320, 11326, 11350, 11352, 11389, 11391, 11393, 11395, 11397 and 11399 Aristotle Dr. on approx. 2.1927 ac. of land zoned PDH-20 and HC. Providence District. Tax Map 46-4 ((19)) (4) and 56-2 ((27)) (7) and (11). (Deferred from 6/27/06 at appl. req.)

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

Before staff's presentation, discussion ensued between the Board and Mary Theresa Flynn, agent for the appellants and an attorney with the firm of Holland & Knight L.L.P., 1600 Tysons Boulevard, Suite 700, McLean, Virginia, concerning an attorney representing a case before the BZA whose firm was involved in ongoing litigation with the BZA. Ms. Flynn said, in fact, that matter was the gist of the appeal, that the BZA was not the appropriate tribunal for a criminal proceeding because the BZA was not a court "Not of Record," and the Virginia Constitution stated that only courts "Not of Record" could hear misdemeanors.

Mr. Hart stated that the issue was not whether the appeal's matter was a misdemeanor or whether the Board could hear zoning violation cases that might lead to misdemeanors, but that the appellants' case was represented by an agent whose law firm had an unrelated case in federal court against the BZA that alleged a number of unrelated things. To simplify, Mr. Hart questioned whether there was a conflict created by that other litigation.

Ms. Flynn stated, on behalf of her client, that she waived any conflict, but that she did preserve her right of appeal with regard to whether the BZA had the right to hear the matter.

Elizabeth Perry, Staff Coordinator, presented staff's position as set forth in the staff report. This was an appeal of the determination that the appellants were allowing the display of two rooftop signs and banner signs in violation of Zoning Ordinance provisions and a determination that an appeal filed March 2, 2006, was rendered moot when the Notice of Violation (NOV) being appealed was rescinded. The subject property was zoned PDH-20, Planned Development Housing District, 20 Dwelling Units/Acre and Highway Corridor Overlay District. The property had a lot area of approximately 2.2 acres and was developed with multiple family dwelling units. Zoning Enforcement staff conducted site inspections December 2005 and February 2006 in response to a complaint. The inspections revealed installation of rooftop signs that were not permitted by the Zoning Ordinance. Concerning the appeal of the determination that the appeal filed March 2, 2006, was rendered moot when the NOV was rescinded, the Zoning Administer acted within his authority and as mandated by law. The appellants' statement of appeal did not deny that they were in violation. A July of 2006 inspection revealed that the rooftop signs were removed, but portable sign remained; therefore, the appellants remained in violation. Staff recommended that the BZA uphold the Zoning Administrator.

In response to Mr. Hart's question, Susan Epstein, Property Maintenance/Zoning Enforcement Inspector, Zoning Enforcement Branch, said she cited two rooftop mounted signs and the banner sign in the NOV.

Mr. Hart said that the notice letter was confusing in that it cited an appellant with a violation yet there was no instruction on how to clear it. He suggested that staff review the letter's drafting to assure clarification of its instructions.

In response to Mr. Beard's question, Ms. Perry explained the actions that transpired after the initial notice

was rescinded due to a tax map error. She said the corrected notice was reissued the same day the appellants filed the appeal, March 2, 2006. Ms. Perry clarified that it was the same letter that rescinded and reissued an NOV.

Ms. Flynn presented the arguments forming the basis for the appeal. She said that the U.S. Constitution, Virginia Constitution, and the State enabling legislation permitted, but did not require the County to adopt a Zoning Ordinance, and that fact was the basis for the appeal. Referencing her handout and quoting Code language, she presented her justification of the determination that the County relied on fundamentally unsound State enabling legislation. Ms. Flynn quoted points of law supporting the appellants' contention that neither the Zoning Administrator nor a County employee had jurisdiction or authority to review an appeal to determine its acceptability or to declare an appeal moot once the appeal had been filed. She explained her reasoning that the Zoning Ordinance and the enforcement of its provisions were unconstitutional and that its administration violated due process. In her determination, Ms. Flynn stated the NOV was unconstitutionally vague, therefore, was void, unenforceable, without efficacy, and a violation of due process. Quoting Virginia Code Sect. 15.2-2311, she said the appellants further asserted that the County was prohibited from seeking action through the Commonwealth Attorney, that because the County refused to fund the legal fees for the BZA, that was a violation of due process, and that State enabling legislation that made most Zoning Ordinance provisions a criminal act prevented the BZA from hearing appeals of zoning violations and rendered enforcement of the Zoning Ordinance unconstitutional.

Discussion followed between Mr. Hart and Ms. Flynn regarding, with an NOV and an ensuing appeal, what one could conclude was a criminal act, the definition of what was considered land development, and the authorization of a staff person other than the Zoning Administrator to issue an NOV, thus rendering the notice invalid.

At Mr. Beard's request, Ms. Flynn clarified that the basis for the appeal being before the BZA was because it was their determination that the appellants were cited for what technically was considered a criminal violation.

Mr. Byers referenced Virginia Code 15-2209 in Ms. Flynn's handout. He stated that he found the matter a specified violation of the Zoning Ordinance; therefore, it was his perception that the Zoning Administrator had the capability to enforce such violations. He stated that he believed Ms. Flynn's argument should not be heard by the BZA, but in court. The issue was whether or not the appellants were in violation. If they were, the Zoning Administrator would be upheld. If not, the Zoning Administrator would not be upheld. Further action on Ms. Flynn's part, he suggested, was that she take the matter or appeal the matter someplace else. Mr. Byers stated that he thought Ms. Flynn should argue the merits of the case on the basis of the case and not deliberately confuse the issue.

In closing staff comments, Ms. Perry restated that none of the appellants denied there was a zoning violation based on on-site Zoning Enforcement staff visits, and there remained a banner sign in violation of Ordinance provisions. She said staff recommended that the Board uphold the Zoning Administrator.

In her rebuttal, Ms. Flynn stated that the provision cited by Mr. Byers prohibited the BZA from considering the matter as anything except a criminal prosecution. She noted that the County had not withdrawn its NOV or any portion of it and that the appellants were entitled to argue the U.S. Constitution, which was the matter before the Board and the issue requested that it consider.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said she adopted the report of staff and the Board members' comments. She specifically found that the appellants were not exposed to criminal misdemeanor under Sect. 15.2-2209, as it was her belief that the matter had not come within that provision, that it was not an activity related to land development. Although the rooftop signs were removed, the appellants had not removed the banner nor had the appellants presented convincing arguments that the banner was in compliance and should be allowed to remain, and although there was reference to vagueness of pertaining Ordinance language, she said she had not found that persuasive. Mr. Ribble seconded the motion.

~ ~ ~ July 18, 2006, FAIRFAX RIDGE DEVELOPMENT LLC; CRESCENT HEIGHTS OF AMERICA, INC., A 2006-PR-015, continued from Page 456

Mr. Hart said that he agreed with most of Ms. Gibb's comments and that most of the issues were a matter for the courts rather than the BZA. He said to the extent of the Board's review of the Zoning Administrator's determination or a violation issued by the Zoning Administrator, he concluded that under Sect. 15.2-2209 referencing placement of a banner sign on the side of a building was not within that subsection for activities related to land development. Mr. Hart said it was his belief that the exclusion of enabling authority dealt with different activities than the placing of advertisement signs on the side of a building. It was also his conclusion that the activity complained of in the notice was within Sect. 18-903, Sub Sect. 1, and it would be in lieu of criminal sanctions and would preclude the prosecution of any such violation as a misdemeanor. Mr. Hart said he also concluded that the banner and rooftop signs would be illegal whether or not it was a corner lot and that the Board had no authority that a zoning inspector could issue a violation letter, and before he was persuaded that a zoning inspector could not sign such letters, a judge would have to say so. Mr. Hart said that the letter mailed was directed to one party while it directed a different party to do something. He questioned whether the letter should have been rewritten and then reissued because it directed Crescent Heights of America, Inc., to clear the violation and had not directed any action of Fairfax Ridge Development, LLC. He asked staff to apprise the Board of who was the owner of the property, why there were two entities involved and their relationship, and he was not certain that the paperwork was entirely correct.

The motion to uphold the Zoning Administrator carried by a vote of 5-0-1. Mr. Hart abstained from the vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ July 18, 2006, Scheduled case of:

9:00 A.M. GEORGINA E. PRICE-SPENCER, SP 2006-SU-023

Chairman DiGiulian noted that SP 2006-SU-023 had been administratively moved to August 1, 2006, at 9:00 a.m., at the applicant's request.

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Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation or probable litigation; McLean Bible Church v. BZA, the Lee case, Concerned Citizens of Hollin Hall Village case, legal correspondence, correspondence with the County Attorney regarding litigation pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

The meeting recessed at 11:28 a.m. and reconvened at 12:13 p.m.

Mr. Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Mr. Hart moved that the Board authorize Ms. Gibb to send a letter to the County Executive regarding issues discussed during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Mr. Hart moved that Mr. Ribble and Mr. Beard be authorized to take the action discussed during Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ July 18, 2006, continued from Page 457

As there was no other business to come before the Board, the meeting was adjourned at 12:14 p.m.

Minutes by: Paula A. McFarland

Approved on: October 6, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 25, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ July 25, 2006, Scheduled case of:

9:00 A.M. ERNEST W. LAWRENCE III AND ALISON E. LAWRENCE, SP 2006-MA-026 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit an accesory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.4 ft. from rear lot line and 1.0 ft. from side lot line. Located at 6058 Wooten Dr. on approx. 8,707 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (A) 12A.

Chairman DiGiulian noted that SP 2006-MA-026 had been administratively moved to September 26, 2006, at 9:00 a.m., at the applicants' request.

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~ ~ ~ July 25, 2006, Scheduled case of:

9:00 A.M. FREEDOM FITNESS, LLC, SPA 87-S-088-03 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 87-S-088 previously approved for health club to permit increase in size and number of patrons. Located at 14290 Sullyfield Ci. on approx. 5.2 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3 ((5)) D2.

Chairman DiGiulian noted that SPA 87-S-088-03 had been administratively moved to September 12, 2006, at 9:00 a.m., for ads.

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~ ~ ~ July 25, 2006, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, 9/20/05, 2/7/06, and 5/16/06 at appl. req.)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, 9/20/05, 2/7/06, and 5/16/06 at appl. req.)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved

~ ~ ~ July 25, 2006, RONALD AND LETA DEANGELIS, A 2003-SP-002; ROBERT DEANGELIS, A 2003-SP-003; and GEORGE HINNANT, A 2003-SP-004, continued from Page 459

Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, 9/20/05, 2/7/06, and 5/16/06 at appl. req.)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to October 3, 2006, at 9:30 a.m., at the appellants' request.

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~ ~ ~ July 25, 2006, Scheduled case of:

9:30 A.M. CHRISTOPHER POILLON, A 2006-DR-011 (Admin. moved from 6/6/06 at appl. req.)

Chairman DiGiulian noted that A 2006-DR-011 had been administratively moved to September 26, 2006, at 9:30 a.m., at the appellant's request.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the McLean Bible Church cases; the Horner case; the Lee case; the Hollin Hall Village case; RLUIPA; and correspondence; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 9:03 a.m. and reconvened at 10:23 a.m.

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

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Mr. Hart moved that the Board authorize the hiring of Bernard J. DiMuro and his law firm to take the actions that the Board discussed in closed session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Mr. Hart moved that the Board direct the clerk to assemble a copy of the file on both of the McLean Bible Church appeals and videotapes of each of the hearings that the Board had and provide them to Mr. DiMuro. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:25 a.m.

Minutes by: Kathleen A. Knoth

Approved on: September 12, 2006

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 1, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ August 1, 2006, Scheduled case of:

9:00 A.M. HECTOR F. CACERES, SP 2005-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck (open porch) to remain 27.2 ft. and dwelling 22.6 ft. with eave 22.5 ft. from front lot line of a corner lot. Located at 5530 Janelle St. on approx. 1,266 sq. ft. of land zoned R-4. Lee District. Tax Map 82-2 ((2)) (B) 25. (Decision deferred from 12/13/05)

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Noemi LaGuardia, the applicant's agent, 20639 Oakencroft Court, Ashburn, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The application was deferred for decision from the December 13, 2005, public hearing, and the Board indicated the applicant may wish to wait for the Ordinance amendment regarding the reduction to yard requirements. However, it was determined that because the structure was constructed without a building permit, the applicant did not meet Standard 3 under Sect. 8-922 that stated the special permit shall only apply to those lots that contain a principal structure and use that complied with the minimum yard requirements in effect when the use or structure was established. The applicant requested a reduction to minimum yard requirements based on an error in building location to permit a dwelling to remain 22.6 feet with eave 22.5 feet from the front lot line of a corner lot. A minimum front yard of 30 feet with permitted eave extension of 3.0 feet is required; therefore, modifications of 7.4 feet and 4.5 feet were requested.

Ms. LaGuardia said the applicant was very regretful about his mistake and had not been aware he had to meet setback requirements. He had enclosed an existing carport, and because it was a pre-existing structure, he did not think that setback regulations applied. Because the front porch structure was not an inside living space, the applicant was also unaware that setbacks applied to porches. She said the applicant would not have done the construction if he had known about the setback requirements. Ms. LaGuardia said the addition had not created an unsafe condition with regard to the surrounding homes. She said the situation had been difficult on the applicant's family relationships, caused uncertainty with regard to his family's well-being, and it would be a financial hardship on his family to demolish his home to meet the setback requirements.

In response to a question from Mr. Hammack regarding whether the application would fall within the anticipated changes to the Code on the minimum yard requirements, Ms. Hedrick said the changes to the Fairfax County Zoning Ordinance would not apply because the applicant did not have an approved building permit so it would not meet Standard 3 under the new Ordinance amendment, and the applicant had to proceed with the error in building location application. Setting aside the building permit issue, the measurement was less than 50 percent, so it would have fallen within the Ordinance amendment. Ms. Hedrick said the matter was also under Code Enforcement with the Department of Public Works and Environmental Services, with whom she had recent discussions, and because the applicant could not obtain a building permit because of the yard requirement, Code Enforcement had postponed its court hearing until the issue was resolved. Ms. Hedrick stated that there was no other section of the Ordinance the applicant could meet except the error in building location because a building permit had not been obtained, and the applicant could not get a building permit without the error being corrected.

Mr. Hart said that he found Appendix 4 in the staff report confusing. He asked staff whether it was not having a building permit for the principal structure or for the porch that made Mr. Caceres ineligible for the 50 percent reduction. Ms. Hedrick said it was for any structure, that the error was caused by the addition that

was attached to the principal structure, for which the applicant did not have a building permit.

Mr. Hart said the reason he was confused about Appendix 4 was because he thought what had happened was not that the applicant did not have a building permit, but rather that a building permit had been approved with different dimensions on the drawing than had actually existed. Ms. Hedrick said the addition in Appendix 4 was a different addition, one that had been previously constructed. The applicant had later increased the addition's size without building permit approval, which made it go beyond the setback limits, and that was why Code Enforcement issued a stop work order.

Discussion ensued between Mr. Hart and Ms. Hedrick concerning the measurements of the principal dwelling, the original addition, the subsequent larger addition, and the pertaining yard requirements.

Mr. Hart commented that the plat in the file was confusing because of the handwritten notes and cross-outs. He said that if the plat was the memorialization in the file of what had been submitted and approved and he could not understand the information, few people would be able to understand what had been approved or denied.

In response to questions from Mr. Hammack, Ms. Hedrick said the permit, which had been approved on June 30, 2000, and the plat that were in the file were for a one-story addition, but what the applicant had done was enclosed an existing carport into an addition without a building permit. When the stop work order had been issued, the applicant had to prepare a new plat which showed all the structures on the property. The new plat reflected that the closest point to the lot line was 22.6 feet.

In response to questions from Mr. Beard, Mr. Ribble, and Mr. Hammack, Ms. LaGuardia said the garage was a single-story that had an area like an attic above the garage, but it was not used because the ceiling was low. She said her client had done the construction work himself. He presently worked in a restaurant, but had previously worked in construction. Ms. LaGuardia said the building permit issued in 2000 had been approved, and all inspections had passed. The reason the applicant had added 10 feet to the addition in 2003 without a permit was because the person who drew the plans for him had told him to do it without a permit, that there probably would be no problem because he would just be enclosing, and setbacks had not been mentioned.

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

Mr. Hammack moved to deny SP 2005-LE-038 for the reasons stated in the Resolution. Mr. Hart seconded the motion.

Mr. Hart said he would support a denial although he found this an unfortunate case because he thought there was some hardship on the owner. He said it was difficult to find the applicant met the provision that the noncompliance was done through no fault of the property owner. He said the applicant had already come in for a building permit for an addition, which clearly depicted the building restriction lines, and then several years later built something else without a permit.

Mr. Beard said he would not support the motion because it was a human element that the Board was dealing with, and although he would not want to establish a precedent, he did not see that it was that large of an error. He pointed out that there had been no complaints, no one had attended the hearing to protest, and there was a reasonable amount of hardship involved. He said he was willing to give the applicant the benefit of the doubt that it had not been done in bad faith.

Mr. Byers asked what the sequence of events would be for the applicant if the application was denied. Ms. Hedrick responded that the case was currently in General District Court and had been postponed pending the Board's decision. She said she had been informed by Code Enforcement that the General District Court would not force the applicant to remove the structure, and the case would have to go before the Circuit Court to enforce the removal of the structure. She noted that the initial zoning violation, which had been cleared, was for a fence that was too high in the front yard of a corner lot. The case was then turned over to Code Enforcement because the structure was built, the carport was enclosed without a permit, and it was too close to the lot line.

Ms. Gibb said she would not support the motion because it was not unusual for people to enclose carports,

~ ~ ~ August 1, 2006, HECTOR F. CACERES, SP 2005-LE-038, continued from Page 462

thinking that they could do so without a permit, and perhaps there had been a language issue. It would be very detrimental to the applicant to have to remove such a large structure. Ms. Gibb stated that she was willing to give the applicant the benefit of the doubt concerning the good faith issue.

Chairman DiGiulian called for the vote. The motion carried by a vote of 4-3. Mr. Beard, Mr. Byers, and Ms. Gibb voted against the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HECTOR F. CACERES, SP 2005-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck (open porch) to remain 27.2 ft. and dwelling 22.6 ft. with eave 22.5 ft. from front lot line of a corner lot. Located at 5530 Janelle St. on approx. 11,266 sq. ft. of land zoned R-1. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 2006; and

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

1. The applicant is the owner of the land.
2. The Board determines that the error exceeds 10 percent of the measurement involved.
3. The non-compliance has not been found to be in good faith through no fault of the property owner.
4. The applicant got a building permit for an addition in 2000, which clearly identified the building restriction lines on the front and side.
5. It is difficult to believe that the applicant could ignore the fact about his initial construction requiring a building permit and that one would not be required for the extension.
6. The applicant has been in the construction business.

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

That the applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.

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

Mr. Hart seconded the motion, which carried by a vote of 4-3. Mr. Beard, Mr. Byers, and Ms. Gibb voted against the motion.

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~ ~ ~ August 1, 2006, Scheduled case of:

9:00 A.M. SIMIN HAYATI-FALLAH, VC 2005-SU-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line. Located at 6220 Hidden Canyon Rd. on approx. 10,688 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) 49. (Decision deferred from 12/13/05)

Chairman DiGiulian noted that VC 2005-SU-012 had been indefinitely deferred.

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~ ~ ~ August 1, 2006, Scheduled case of:

9:00 A.M. GEORGINA E. PRICE-SPENCER, SP 2006-SU-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure (barn) to remain 16.3 ft. with eave 15.6 ft. from side lot line. Located at 10628 Hunters Valley Rd. on approx. 2.01 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((2)) 2. (Admin. moved from 7/18/06 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Spencer, husband of the applicant, 10628 Hunters Valley Road, Vienna, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Records indicated Ms. Price-Spencer's dwelling was constructed in 1959. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure, a barn, to remain 16.3 feet with eave 15.6 feet from the side lot line. A minimum side yard of 40 feet is required, with permitted eave extensions of 3.0 feet; therefore, modifications of 23.7 feet and 21.4 feet, respectively, were requested.

Mr. Spencer presented the special permit request as outlined in the statement of justification submitted with the application. He said that after years of use in inadequate space and dilapidated conditions, the stable needed renovation, the addition of storage space, and a corral to allow the older horses to move about freely for their health and circulation. The stable had already been on the property when it was purchased, and Ms. Price-Spencer contacted the County to inquire whether a permit was required for an extension to the barn. County staff determined that because the property was considered a horse farm, no permit was necessary. Mr. Spencer said he constructed most of the project himself with completion the end of October of 2005. When they received notice that a permit was necessary, the barn was already in use, and the permit application they submitted was rejected because of a side yard setback violation. The confusion was apparently initiated when they learned that properties termed "horse farm" required five or more acres, and those were the properties that did not require permits. Mr. Spencer stated that the error was done in good faith as they had no idea a permit was required.

Mr. Spencer gave measurements of the original stable, the extension, the setbacks, and the placement of the barn. He pointed out that the property was densely wooded, and that even in winter, the stable was inconspicuous. Great care had been taken to retain the character of the original structure. Because they were fully aware of the number of horses allowed, no more horses were added. The extension was not built for their riding instruction business, but for improved conditions for their horses and for the much needed additional storage space. He said they were very aware of any adverse impact on adjacent properties and twice weekly would truck out manure. Mr. Spencer said the extension had the support of many of his neighbors; it was harmonious with its surroundings; and, there was a letter of support in the record from the Hunters Valley Civic Association. He said that the riding lessons his wife provided were a valuable service to the community; most of the students were within a five-mile radius; it was not an easy business; and, if they were forced to shut down the equine lessons, it would be a financial hardship.

In response to a question from Mr. Hammack about her conversation with the zoning department, Ms. Price-Spencer said she told the County staff person that she wanted to add onto an existing stable/barn, and after staff made the determination that the structure was an existing stable/barn and the property was considered a horse farm, she was told no permits were necessary. Only after a complaint did she call the County back and it was then realized that her property was too small to qualify as a horse farm.

In response to a question from Mr. Hammack of whether there was Ordinance language that allowed extensions onto farm buildings without the necessity for a permit, Ms. Hedrick said she had researched, but was unable to find anything. She said there was a formula to determine how many "animal units" were allowed on different sized acreages, and the number of horses the applicant had on the property was not an issue.

Mr. Hart said that most of the barn and its extension appeared to be within a resource protection area (RPA). Ms. Hedrick said that with an approved building permit for an accessory structure, one could go through a RPA exception review; however, without an approved building permit, one must go through the public hearing process for an accessory structure so as to meet current Chesapeake Bay Ordinance standards.

Discussion ensued among Mr. Hart, Ms. Hedrick, and Ms. Price-Spencer concerning the floodplain, an

easement that ran through the property, the requirements for an RE District, and the required setback of 40 feet for barns.

In response to a question from Mr. Hart, Mr. Spencer said he was a retired electrical engineer and was not in the construction business. Ms. Price-Spencer clarified that they put on the current addition, not a 1990 addition.

Responding to a question from Ms. Gibb, Susan C. Langdon, Chief, Special Permit and Variance Branch, explained that certain things could be located in an RPA, and possibly there were certain things that could be located in a floodplain. She noted that in cases in the past, the uses were too close to the lot line, and conditions were then made that if the zoning portion was approved, the applicant would have to go through the Department of Public Works and Environmental Services' (DPWES) process. She said a certain amount of clearing was permitted without a special exception.

In response to a question from Mr. Byers, Ms. Price-Spencer said she did not understand what a floodplain easement meant or to whom it belonged. She said a professional from the Environmental Department came out to the Hunter Valley Riding Club to give a talk. He then came out to her property to discuss the creek and its preservation, and it was he who advised her on gravel corrals and terracing.

Ms. Langdon stated that those type site visits and advice were usually conducted by Soil and Water Conservation District personnel. She said she was unsure whether they were County or State employees. She stated that staff was under the impression that the structure was not within a floodplain, and a previous plat showed the structure outside the floodplain.

Chairman DiGiulian stated that the floodplain line shown on the plat was an easement line probably recorded with the original subdivision and probably before there was a floodplain study.

As requested by Mr. Hammack, Ms. Hedrick explained grandfathered structures and the issue of adding onto a grandfathered structure. She said any addition would have to meet current standards.

Ms. Langdon explained that if the original structure was legal, then it would remain legal as long as it remained in that form, but once it changed, then the entire structure must meet the minimum requirements.

Ms. Hedrick said the applicant did not have a history of when the original barn was constructed. She said, in reviewing building permit history, in 1968 a 16-by-16-foot horse shed with a grooming and tack area was placed on the property; however, there was no permit for the original barn to show when or if it had been legally built. She said her research revealed that all the structures that showed up on different plats over the years had 20-foot setbacks, but a 40-foot setback was required for an accessory structure that housed horses or ponies.

In response to a question from Mr. Hart, Ms. Langdon said that the part that was the subject of the current application was advertised as the accessory structure, that it was the whole structure, not an addition to an existing structure.

Ms. Hedrick said the applicant had eight horses, but two of the horses were kept off the property. She said three horses equaled one animal unit, and with two acres, a total of six horses were allowed. Ms. Hedrick said she had discussed the requirements with the applicant, and Ms. Price-Spencer knew the requirements.

Ms. Price-Spencer explained the history of the acquisition of her horses. She said she regularly rotated them from the subject property to a 20-acre property in the near vicinity, and the foals would be pastured for several years until the time when they would be gentled to be handled. Ms. Price-Spencer said that no more than six horses were on the subject property, and usually there were less than six.

In response to a question from Mr. Hart concerning the floodplain, Ms. Langdon said staff was under the impression when it read the plat that the structure was not in a floodplain or RPA, but was just outside. She said if it had been determined that the structure was within the floodplain, the plat would have been sent to DPWES for its input, and staff would have imposed a development condition that the applicant go through any process required by DPWES to allow the structure to remain.

Mr. Byers voiced his concern over specific liabilities the County could incur if such an application as the subject one was approved. He said that he believed the RPA issue could be worked out, but his concern was the floodplain.

Ms. Langdon said that if the Board deferred its decision, staff would send the information to DPWES because staff was unaware that a portion of the property was in a floodplain. She pointed out that another plat depicted the parcel outside the floodplain.

Chairman DiGiulian called for speakers.

Linda Byrne, 2801 Oakton Manor Court, Oakton, Virginia, came forward to speak. She had lived in the area for 25 years and owned horses, and 20 of those years her horses were kept on Hunters Valley Road. She served on the community's riding club board, gave out ribbons at annual horse shows, sat on the Board of Fairfax for Horses, and was appointed by Governor Warner to the Virginia Equine Center Foundation. Horseback riding and keeping horses was an integral foundation of the Hunters Valley area, and it was a horse community. People like Ms. Price-Spencer helped to keep the tradition thriving by cultivating equine activities with riding lessons and teaching proper care of the animals. Ms. Byrne said Ms. Price-Spencer should be allowed to continue and voiced her support of the minimum reduction to the yard requirement, pointing out that the original stable had been there for over 20 years. Ms. Byrne said horse stabling in Hunters Valley was an appropriate use. She urged that the application be approved.

Johnny W. Wilson, 10464 Hunters Valley Road, Oakton, Virginia, came forward to speak. He said the barn had existed since he bought his property in 1963. He said the stable was kept very clean, and for a barn it could not be kept any cleaner. Mr. Wilson stated that, in his opinion, the applicant performed a public service by conducting her riding classes.

Stephanie Almquist, 10627 Hunters Valley Road, Oakton, Virginia, came forward to speak. She had lived directly across from the subject property for 20 years, and the barn was there when they moved in. She found the barn aesthetically pleasing, and her children enjoyed seeing the horses.

John A. Walck, 10620 Hunters Valley Road, Oakton, Virginia, came forward to speak. He stated that it was his property where the barn set 16 feet from the property line. He said that both the barn and the addition were in violation of the 40-foot setback requirement. He said Mr. Spencer constructed the addition with only a verbal affirmation predicated on the assumption that the property was considered a horse farm. The project should have been more thoroughly researched, and an inspector should have come on-site before commencing construction. Mr. Walck said that if a permit to build would have been denied had proper procedures been followed, failure to follow proper procedures should not be rewarded with an approval. Mr. Walck complained about noise generated from the young people who played in the pool after the riding lessons. As the most affected neighbor, he did not want to see growth of this type business, and the addition to the stable more than just encouraged growth, it rather foretold it. He urged that the application be denied.

Dianna Myrah, 10700 Hunters Valley Road, Oakton, Virginia, came forward to speak. Ten years prior she and Ms. Price-Spencer were friendly neighbors. During those years, she built her own shelter/shed for her horses, and because she was unaware of zoning rules, permits, variances or setbacks, County staff came out, made the measurements, and informed her of the 40-foot setback requirement. Ms. Myrah claimed that Ms. Price-Spencer was aware of zoning ten years ago.

In response to a question from Ms. Gibb, Ms. Myrah said the Spencers built the first extension to the barn which faced towards the west about five years prior. The second extension was attached along the entire north side of the barn. Ms. Myrah said that Ms. Price-Spencer had the option to build the additions onto the other side of the barn, which would not have encroached onto adjacent property, but chose not to.

In response to a question from Mr. Hammack, Ms. Myrah said Ms. Price-Spencer conducted equestrian business on her property, held summer camps, sleepovers, hunter-seat riding lessons, and dressage lessons. She said that twice daily rotating six students with six horses followed by ten to twelve girls playing in the pool generated a lot of noise.

In response to a question from Mr. Hammack of whether a business license or special permit was required, Ms. Langdon said staff would look into the matter, whether either was necessary to operate an equestrian

~ ~ ~ August 1, 2006, GEORGINA E. PRICE-SPENCER, SP 2006-SU-023, continued from Page 466

school and day care facility.

In her rebuttal, Ms. Price-Spencer said she would address several points raised by Ms. Myrah and Mr. Walck. In 1996 the first addition to the barn was constructed by a builder, and prior to that the flat roof had been changed to a pitched roof. Riding lessons were held at Hunter's Valley Riding Club, not her property. She said that during the summer she held five-day camps over two weeks for six students ranging in age from 11 to 14. The morning class worked three horses for one hour, and afterward the students swam in her pool. The second group took its one-hour riding lesson in the afternoon and upon completion also enjoyed the pool. Her students were invited to swim for an hour and then attend an education program on equine care and maintenance. Ms. Price-Spencer said she had a business license, but voiced her surprise that Ms. Myrah even brought up the business license matter as Ms. Myrah conducted her own business from her home without obtaining a license. Ms. Price-Spencer stated that she wanted on the record the fact that twice Ms. Myrah physically assaulted her.

In response to a question from Ms. Gibb, Ms. Price-Spencer said that in 1996 she contracted a local builder who worked on barns in the vicinity to put on the first addition; however, she was unsure whether there was a permit involved, but she would check her records for the contract and the contractor's name.

Chairman DiGiulian closed the public hearing.

Mr. Byers said he would recommend the decision be deferred on SP 2006-SU-023 to allow staff to check with DPWES for implications of the floodplain and the RPA, for the applicant to obtain the building permit that would have been executed in 1996 and a copy of the contract, for research on whether a special permit was required for the activities on the property, and for a written report documenting the appropriateness for the BZA to hear cases involving a floodplain, and under what circumstances.

In response to a question from Ms. Gibb concerning the circumvention of the Chesapeake Bay Preservation Act, Ms. Langdon said there were federal and state requirements, and the County had its procedural sequence as well. She noted that one could not get around addressing the act because it was the law, and any approval was contingent upon an approval of each subsequent step.

Mr. Hart requested that staff provide the Board with every pertaining plat, the floodplain easement and its beneficiary, and the recorded deed. He also requested the original or copies of the builder's contract.

Mr. Hammack requested staff to put in writing the fact that a valid building permit was issued, if in fact that information became available.

Mr. Byers moved to defer decision on SP 2006-SU-023 to September 19, 2006, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ August 1, 2006, Scheduled case of:

9:00 A.M. NORMA VIDAURRE, SP 2006-MA-024 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 4106 Mason Ridge Dr. on approx. 16,403 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((15)) 59.

Chairman DiGiulian noted that SP 2006-MA-024 had been administratively moved to October 3, 2006, at 9:00 a.m., for notices.

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~ ~ ~ August 1, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF THE MCLEAN KOREAN PRESBYTERIAN CHURCH, SPA 73-D-150-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 73-D-150 previously approved for church to permit building additions, increase in seating and parking and site modifications. Located at 7140 and 7144 Dominion Dr. on approx. 2.64 ac. of land zoned R-

~ ~ ~ August 1, 2006, TRUSTEES OF THE MCLEAN KOREAN PRESBYTERIAN CHURCH, SPA 73-D-150-03, continued from Page 467

3. Dranesville District. Tax Map 30-1 ((1)) 75 and 83A pt.

Chairman DiGiulian noted that SPA 73-D-150-03 had been administratively moved to September 12, 2006, at 9:00 a.m., for ads.

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~ ~ ~ August 1, 2006, Scheduled case of:

9:30 A.M. JOANNE LOISELET, A 2005-SP-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory storage structure, an accessory structure, and a fence in excess of four feet in height, which are located in the front yard of property located in the R-C District, are in violation of Zoning Ordinance provisions. Located at 5138 Pheasant Ridge Rd. on approx. 25,529 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 56-3 ((9)) 9. (Decision deferred from 12/13/05)

Chairman DiGiulian noted that A 2005-SP-045 had been indefinitely deferred.

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~ ~ ~ August 1, 2006, Scheduled case of:

9:30 A.M. MILTON AND MIRIAM MONTECINOS, A 2006-MA-021 Appeal of determination that appellants have paved a portion of the front yard on property located in the R-1 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 3211 Annandale Rd. on approx. 24,263 sq. ft. of land zoned R-1. Mason District. Tax Map 60-2 ((1)) 9.

Chairman DiGiulian noted that A 2006-MA-021 had been administratively withdrawn.

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~ ~ ~ August 1, 2006, Scheduled case of:

9:30 A.M. DONALD R. ROSE AND DEBBE A. ROSE, A 2006-MV-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have constructed an accessory structure, a stone fireplace and a wooden roofed patio cover, which exceed seven feet in height and which do not comply with the minimum yard requirements for the R-3 District, without valid Building Permit approval, and have installed accessory structures and uses which exceed the 30 percent maximum permitted coverage of the minimum required rear yard, all in violation of Zoning Ordinance provisions. Located at 7922 Journey La. on approx. 9,418 sq. ft. of land zoned R-3C. Mt. Vernon District. Tax Map 98-2 ((6)) 273.

Chairman DiGiulian noted that A 2006-MV-022 had been administratively moved to August 8, 2006, at 9:30 a.m., at the appellants' request.

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~ ~ ~ August 1, 2006, Scheduled case of:

9:30 A.M. NANCY C. AND MARK T. WELCH, A 2006-MV-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that there is no conflict between Sect. 1-200 and Sect. 2-405 of the Zoning Ordinance because language contained in the Comprehensive Plan is a guide, whereas Zoning Ordinance provisions are specific regulations, as qualified by Sect. 2-308, and property subdivided prior to the effective date of the Zoning Ordinance must meet current regulations, which may be modified as specified in Sect. 2-405. Located at 8033, 8037 and 8040 Washington Rd. and 8059 and 8063 Fairfax Rd. on approx. 1.537 ac. of land zoned R-3. Mount Vernon District. Tax Map 102-2 ((3)) 77,

~ ~ ~ August 1, 2006, NANCY C. AND MARK T. WELCH, A 2006-MV-019, continued from Page 468

102-2 ((3)) 79, 102-2 ((3)) 88, 102-2 ((3)) 112, and 102-2 ((3)) 114.

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

CHAIRMAN DIGIULIAN: So we go to Nancy C. and Mark T. Welch, Appeal 2006-MV-019.

MR. RIBBLE: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Ribble.

MR. RIBBLE: Again, I think I handled some of the settlements on the properties in question here, so I'm going to recuse myself.

CHAIRMAN DIGIULIAN: Okay. Thank you, Mr. Ribble. Ms. Stanfield.

MAVIS STANFIELD: I beg your pardon, sir. I was in the midst of a conversation. What is the question?

CHAIRMAN DIGIULIAN: I would like you to pro- -- start.

MAVIS STANFIELD: I'm sorry. We are -- are we starting with Welch case? I --

CHAIRMAN DIGIULIAN: Yes.

MAVIS STANFIELD: I'm sorry. I apologize. Yes, that would be presented by Ms. Collins.

JAYNE COLLINS: I apologize, too. Good morning.

CHAIRMAN DIGIULIAN: One minute. Anyone who intends to testify in this case, please stand, face the clerk on my right, raise your right hand.

MR. BEARD: Don't leave the property.

PAULA MCFARLAND: Do you swear or affirm that your testimony will be the truth under penalty of the law?

(Participants responded affirmatively.)

CHAIRMAN DIGIULIAN: Okay. Now, Ms. Stanfield or Ms. Collins.

MS. COLLINS: Good morning. This is an appeal of a determination that there is no conflict between Section 1-200 and Section 2-405 of the Zoning Ordinance because language contained in the Comprehensive Plan is a guide, whereas Zoning Ordinance provisions are specific regulations as qualified by Section 2-305, and property subdivided prior to the effective date of the current Zoning Ordinance must meet current regulations, which may be modified as specified in Section 2-405. The lots listed on the appeal application are located in Hollin Hall Village and are zoned R-3 Residential District, three dwelling units per acre. The ten originally platted lots were created as part of Hollin Hall Subdivision, Section 1. At that time they were zoned Urban Residence District, and all of the lots met the zoning requirements for that district at the time they were recorded.

At the request of Supervisor Hyland on September 1, 2005, the Zoning Administrator determined that the ten originally recorded underlying lot lines for the subject lots in Hollin Hall Village met the zoning requirements at the time of their recordation and are buildable lots. The Concerned Citizens of Hollin Hall Village appealed this determination, and on January the 31st, 2006, the BZA upheld that determination. With the exception of Lots 88 and 89, all of the lots that are a part of the current appeal application were included in the earlier appeal application.

The basis for the appellants' current appeal is their belief that there is a conflict between the provisions of Sections 1-200 and 2-405 of the Zoning Ordinance as that provision relates to an action pursuant to a building permit such as a -- pursuant to a legislative action such as the construction of a new dwelling on a lot recorded prior to the effective date of the current Ordinance. Section 1-200 of the Zoning Ordinance

states the purpose of the Ordinance, which is to promote the health, safety, and general welfare of the public and to implement the Comprehensive Plan for the orderly and controlled development of the County. Among other things, Section 2-405 provides that if a lot was recorded prior to the effective date of the current Ordinance and that lot met the zoning requirements in effect at the time of recordation, the lot may be used either as a single lot or in combination with other lots for any use permitted in the zoning district in which located, even if it does not meet the current requirements for minimum lot width or minimum lot area, provided all other provisions, regulations of the current Ordinance can be satisfied.

In accordance with the provisions of Section 2-405, the lots associated with the appeal are subject to the regulations in effect in 1943 when they were originally recorded. When the original owners purchased their lots in the 1940s, they purchased two separate, individual lots, and they chose to construct their homes straddling the lot lines to provide a larger lot area -- or yard area. They did not subdivide the lots or adjust the lot lines to combine those two separate lots into one large lot. They obtained the approval of a building permit for the construction of a dwelling straddling the lot lines between two lots under the same ownership. Approval of a building permit does not constitute a subdivision of land. It simply allows the construction of a structure. Once that structure is removed, the building permit allowing its construction is no longer valid, and the originally platted lot lines remain in effect.

There is no conflict between Sections 1-200 and 2-405 because the language of the Comprehensive Plan is meant to be a guide for future development, whereas the provisions of the Zoning Ordinance are specific regulations. Language found on page 1 of the introduction to the land use section of the Policy Plan clearly states that the objection -- objectives and policies presented in that section provide guidance for an appropriate pattern and pace of development. In addition, there is no enabling authority to apply the recommendations of the Comprehensive Plan to development that is not subject to a legislative action.

With regard to density, the recommendations of the Comprehensive Plan are consistently applied in the evaluation of applications which undergo a public hearing process. Section 2-308 of the Ordinance provides guidance with regard to density and states that density cannot be exceeded except as permitted by the provisions of Section 2-405. The appellants believe that the Zoning Administrator's determination increased the density of their subdivision. This is just not true. The density of Hollin Hall Village was established when the subdivision was originally created in 1943, and those original lot lines remain valid until they are changed through the subdivision process.

Finally, the appellants contend that when a conflict exists, the Zoning Administrator is required by the Ordinance to interpret it in a way that imposes a greater requirement or a higher standard in accordance with Section 1-400 of the Zoning Ordinance. In arriving at this conclusion, the appellants are relying on their belief that the Comprehensive Plan is a statute, ordinance, or regulation when, in fact, it is merely a guide, a tool for staff and applicants to use when evaluating special exception, special permit, or variance applications. The Zoning Administrator's determination of April 21st, 2006, is not contrary to the purpose and intent of the Zoning Ordinance, and staff asks that you uphold that determination. Thank you. I'll be happy to answer any questions.

CHAIRMAN DIGIULIAN: All right. Questions of staff?

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you. Question either for Ms. Collins or Ms. Stanfield, do we have a green card or other proof of notice showing that the new owners of these lots got notice of this?

MS. COLLINS: I can get copies of that for you. I don't have them with me here.

MR. HART: I don't need to see the copies. I mean, I just -- I want to be satisfied that whatever happened that the -- whoever bought these lots got notice that this was happening.

MS. COLLINS: Are you talking about the developer that bought the lots or the owners -- the current owners of the -- or the people that are actually living on that street? I'm not sure who you're asking was noticed.

MR. HART: Inside the front cover of the staff report, there is a number of lots which are outlined in black. Mr. Ribble said something about settlements, and it's occurred to me that there may have been recent transactions with all of these lots if that's -- this is what's happened, and I wanted to understand if the purchasers had notice of the appeal and the public hearing that might be affecting these properties.

MS. COLLINS: I can't answer that.

MR. HART: Mr. Emrich is here.

MS. COLLINS: Mr. Emrich is representing --

MR. HART: Maybe he knows the answer.

MS. COLLINS: -- the developer.

JERRY EMRICH: Yeah, I can respond. My name is Jerry Emrich, and I represent the three entities that are the owners of at least -- each is the owner of at least one of these lots. We waive any issue of notice. We received notice when the plaques were put up on the property, but we'll waive any concern about notice. We're here to respond.

MR. HART: Mr. Emrich, are your folks -- they're all -- all of these lots are your clients. There's not someone else involved?

MR. EMRICH: That's correct.

MR. HART: Okay. Thank you.

CHAIRMAN DIGIULIAN: Okay. Further questions of staff? Mr. and Ms. Welch.

NANCY WELCH: My name is Nancy Welch. First let me thank you for considering us as aggrieved parties in this case and giving us the opportunity to speak today. When my husband and I bought our home ten and a half years ago, we knew it was the area for us because of its older modest homes, large lots, trees, and no traffic, or as described in the Comprehensive Plan, its low density, stable residential neighborhoods. While we are by no means an affordable housing neighborhood, we do live in an area where a family can find a comfortable home for less than $500,000 and not have to live in one of the very distant counties to find a reasonable amount of space.

We never knew of anything called the Comprehensive Plan or how it worked with regard to the Zoning Ordinance when we moved here, but we do know now. After reading relevant parts of the Fairfax County Comprehensive Plan, we do not see how it is possible that the language set forth in Section 2-405 of the Fairfax County Zoning Ordinance, when applied in our case, gives any reasonable consideration whatsoever to the vision laid out in Objectives 8 and 14 of the Comprehensive Plan and as required by the Code of Virginia at 15.2-2284. This part of the state Code says that Zoning Ordinances shall be drawn and applied with reasonable consideration for the existing use and character of property and the Comprehensive Plan. Looking at the Comprehensive Plan land map, the future for my neighborhood is clearly two to three dwelling units per acre. I purchased a copy of the comprehensive land map, and I have copies available for you to review.

The Plan specifically calls for land use policies that should maintain an attractive and pleasant quality of life for its residents and that densities and heights in excess of those compatible with these goals should be discouraged. It further states that Fairfax County should encourage a land use pattern that protects, enhances, and maintains stability in established residential neighborhoods by ensuring that infill development is of compatible use and density. So after hearing what the Planning Commission, Board of Supervisors, and citizens associations have worked to create for the orderly and controlled development of the County, I ask you to envision what is being allowed in my neighborhood under Zoning Ordinance 2-405 and tell me that zoning -- that the Zoning Administrator is giving reasonable consideration to the Comprehensive Plan by allowing density to double in my neighborhood.

Fairfax Road, and 8059 Fairfax Road all were individual 2,000-square-foot homes surrounding my home. According to the Zoning Administrator's decision, all six of these homes can be replaced with twelve houses in the same footprint, and each will be 4,000 square feet. Under no circumstances can this be considered compatible density. If anything, this is a complete disregard for the Code of Virginia and the significance of the Comprehensive Plan. As such Zoning Ordinance
2-405 is not being applied with any consideration for the Comprehensive Plan.

I've described the ramifications of giving no consideration to the Plan. Now my husband would like to present the specific regulatory and legal arguments as to why the Zoning Administrator's decision should be overturned. Thank you.

MARK WELCH: I certainly don't profess to be an expert on land use rezoning; however, I don't think you have to be an expert to understand why the County has a Zoning Ordinance. The County needs a mechanism to balance the economic use of land with promoting the quality of life for its citizens and protecting their health and safety. It seems to me one of the most important elements of the Ordinance to achieve this goal are the regulations on density. Obviously excessive density is one of the primary factors influencing the quality of life and health and safety of citizens. Therefore, it would seem to me that upholding the density regulations of the Ordinance would be a default position of the Zoning Administrator administering the Ordinance, and deviating from these regulations should be done only in a most extreme of circumstances when there is no other alternative. My wife and I are here today because the Zoning Administrator's response to our request for interpretation did not uphold the current density regulations, did not provide a clear and convincing rationale as to why.

Section 2-308 does not allow maximum density of a district to be exceeded except as may be permitted by other provisions, one of which being Section 2-405; however, Section 2-405 applies only when all other regulations of the Ordinance can be satisfied. Section 1-200 states a purpose of the Ordinance is to implement the Comprehensive Plan. For the reasons outlined in our appeal, we believe that a conflict exists within the Ordinance. In other words, Section 2-405 allows density to be exceeded while Section 1-200 requires that it be maintained. The Virginia Code and the Ordinance itself are clear as to a requirement in case of conflicting language, namely that the conflict should be interpreted in a way that imposes a higher standard or greater requirement, which in this case would be less density. The Zoning Administrator's determination did not find a conflict. We believe there clearly is one, and now I would like to address the points raised in the staff report.

A key issue is whether the Virginia Code confers authority on the Plan beyond guidance. Section 15.2-2232 provides that whenever a local planning commission recommends a Comprehensive Plan and such a plan has been approved and adopted by the governing body, it shall control the general or approximate location, character, and extent of each feature shown on the Plan. The staff report states the use of the words "general" and "approximate" appears to be words which imply guidance rather than enforceable regulations. I don't agree. One of the features of the Plan is the land map which specifically designates our geographic area as having density of two to three dwellings per acre. Based on this language, this density prescribed in the land map should be controlling for this general location.

The staff report references Board of Supervisors of Loudoun County versus Lerner as precedence in providing discretion to the Board in adhering to the standards of the Comprehensive Plan in rezoning cases, then argues it follows that the Board has the authority and discretion to adopt the provisions of the Zoning Ordinance, namely sections 2-308 and 2-405. I would flip this argument and ask if you have that discretion, why would you not interpret the Ordinance to support the Comprehensive Plan. But actually I think it's beyond discretion. It's a requirement to consider the Comprehensive Plan. Section 15.2-2284 of the Virginia Code states Zoning Ordinances shall be drawn and applied, key word there being "applied," with reasonable consideration for the existing use and character of property and the Comprehensive Plan. By taking the position that the Comprehensive Plan is guidance in his determination, the Zoning Administrator, in essence, provided no consideration to the Comprehensive Plan in arriving at his determination, let alone reasonable consideration, contrary to this section of the Virginia Code.

I'd also like to note that in the case of the Town of Jonesville versus Powell Valley Village Limited Partnership decided by the Virginia Supreme Court in 1997, the Court voided the Town's 1989 Zoning Ordinance pursuant to the Code because the Town had not adopted a Comprehensive Plan prior to the Ordinance. I think one could safely make the leap that since the Supreme Court has held Zoning

Ordinances must be drawn with reasonable consideration for the Comprehensive Plan, they must also be applied with reasonable consideration to the Comprehensive Plan.

Finally, I would like to address one of the main arguments of our appeal which is completely ignored in the staff report. That is the Ordinance itself requires the implementation of the Comprehensive Plan. In discussing the relevance of 15.2-2232 of the Virginia Code, the staff report states the use of the words "general" and "approximate" appear to be words which imply guidance rather than enforceable regulations. Even if you were to accept this argument, it ignores the fact that the Ordinance itself requires implementation of the Comprehensive Plan so that it is enforceable as much as Section 2-405 of the Ordinance is. Section 1-200 states the purpose of the Ordinance is to implement the Comprehensive Plan, does not qualify the implementation in any way such as to say to use the Comprehensive Plan as guidance. The plain and unambiguous language of the regulation is to implement the Comprehensive Plan. There is no language in the Ordinance to even suggest that Section 1-200 is superseded by or subordinate to Section 2-405. Thus, the Zoning Administrator made an interpretation contrary to the plain language of the Ordinance. As stated in our appeal, the principle that plain language is to be relied upon is well established in Virginia law.

Even if there were such language, it would violate the Virginia Code. Section 15.2-2224 of the Virginia Code states, the Comprehensive Plan shall recommend methods of implementation and shall include a current map of the area covered by the Comprehensive Plan. It goes on to say any methods of implementation may include a Zoning Ordinance and zoning district maps. So the Ordinance, as reflected in Section 1-200 pursuant to this section of the Virginia Code, is a method if implementing the Comprehensive Plan, yet the Zoning Administrator's determination is that the Comprehensive Plan is guidance only. The Comprehensive Plan designates the Fort Hunt Community Planning sector, which includes our geographic area, as a low density residential area and includes -- if I may have 30 more seconds.

CHAIRMAN DIGIULIAN: Proceed, quick, yeah, quickly.

MR. WELCH: -- and includes a let -- a low density residential area and includes a land map which specifically designates a geographic area as having density of two to three dwellings per acre. The Comprehensive Plan is not implemented if density within that area is allowed to double; therefore, there's a conflict. In the case of a conflict, the Ordinance is clear that it should be interpreted to require the greater requirement, that being lower density. I respectfully request that you move to overturn the Zoning Administrator's determination. I thank you for agreeing to hear our appeal and for allowing me to present our position.

CHAIRMAN DIGIULIAN: Questions? Thank you. Is there anyone else to speak to this appeal?

CATHERINE VOORHEES: I have a bunch of binders for each of you. Good morning, Mr. Chairman and Members of the Board. My name is Catherine Voorhees. My address is 8029 Washington Road, Alexandria, Virginia, 22308. I have provided each of you with a binder with exhibits. Behind Tab 1 is a map of Hollin Hall Village from the My Neighborhood section of Fairfax County website which shows the existing use of the land. The properties in question next to 8029 Washington Road are shown as a single-house on a single parcel of land. Grid 102-2 of the Fairfax County's zoning map follows. The lower left-hand corner corresponds to the parcels shown in the My Neighborhood map. Why do both Fairfax County maps show the houses on one parcel? It is because the original divisions of land were abandoned by at least the 1950s.

Table 2 shows the profile and sales information for each parcel in question. Each parcel of land is about 13,000 square feet and described as buildable wood lot. The Virginia Code limits a vested right to five years. That's Section 15.2-2261C, Tab 4, and the continuation of a grandfathered use, and that's in Section 15.2-2307. In 1998, Richard Robertson, et al., versus the City of Alexandria, Tab 3, public failure to diligently pursue development of a 1946 recorded plat within a reasonable time precluded the present owners and their predecessors in interest from developing a recorded division of land decades later contrary to the current zoning regulations. The Virginia Code also sets forth a number of factors upon which zoning ordinances and districts shall be drawn in Section 15.2-2284. That's in Tab 4. Nowhere is an old recorded plat mentioned. There is no enabling legislature that gives either a local governing body or the zoning administrator the power to revive abandoned divisions of land. As the Circuit Court for the City of Alexandria stated, the absurdity and chaos that would result if a half-century old approval gives rise to a vested right to develop old recorded plats is self-evident. The Virginia Code requires diligent pursuit, and without it, the divisions of land are abandoned to their existent or current use. Virginia Code Section 15.2-2285C, that's in

Tab 5, requires a public hearing in the case of a proposed amendment to the zoning map. In order to build two houses where Parcel 112 is, the zoning map would have to be changed to show two parcels where one currently exists. According to the Virginia Code, the public notice advertising the public hearing shall state the general usage and density of a Comprehensive Plan; thus, there is no by-right development as the zoning map needs to be changed, and the Virginia Code requires a public hearing and the Comprehensive Plan to be considered. I ask that you uphold the Welches' appeal. Thank you very much.

CHAIRMAN DIGIULIAN: Questions? Thank you. Is there anyone else to speak?

MR. EMRICH: Mr. Chairman, Members of the Board of Zoning Appeals, my name is Jerry Emrich. I represent Hollin Hall, LLC; PFK, LLC; and PJB, LLC, each one of which of which own at least one of the lots that are involved in this case. We have reviewed the Zoning Administrator's explanation of the basis of his ruling. We believe he's correct. We have a few additional points we'd like to make. Before I start with those, I'd like to bring the Board up to speed on what has occurred in -- as a result of your last decision. That case was appealed to the Circuit Court. The appellants -- you recall that you upheld the Zoning Administrator's determination in that case. The appellants in the Circuit Court sought a restraining order, and that was denied by Jud- -- the Circuit Court after a full hearing on the basis that they were not likely to prevail on the merits.

The positions taken by Ms. Voorhees are the same positions that were taken earlier on which the BZA rejected and which the court, at least on a temporary basis, has also rejected. There's no such thing as abandonment of a subdivision and particularly when both the state law and the Ordinance provide for them. The -- what they're basically -- what she's basically also arguing is the Board of Zoning Appeals should declare that portions of the Zoning Ordinance are invalid. Of course, as members of the Board of Zoning Appeals know, that the BZAs do not have jurisdiction to declare ordinances invalid.

Let me address the arguments of the Welches. They state that the Zoning Administrator has not responded to their argument with regard to Section 1-200 of the Zoning Ordinance, and they state that that creates a conflict. If you look at 1-200, it is a statement of what the Board of Supervisors said they were considering when they adopted the Ordinance. It does not state that a subdivision or a decision of the Zoning Administrator must comply with the provision of the current Comprehensive Plan which talks about density, and it has been stated very clearly the Comprehensive Plan is advisory only. The Lerner case that was cited had to do with the Board of Supervisors engaging in legislation in approving or denying a rezoning. It's irrelevant to the issues before the Court. Section 1-200, as I stated, does not provide regulations. It does not tell anybody what to do when an issue like this comes before them. It's merely a statement of what the Board of Supervisors had in mind.

If there is a con- -- even if there were a conflict, as the Welches claim today, certainly you must apply the general rules of legislative construction, and there are two primary ones that have been -- that they are ignoring. One is that the specific -- a specific provision controls over a general provision. Section 2-405 is -- couldn't be more clear, as the Board of Zoning Appeals determined earlier, and Section 2-308 relat- -- that they cite relating to the maximum density that is permitted expressly provides that Section 2-405 is an exception to the provision about the maximum density stated in the Ordinance.

Also one must look at another rule of legislative construction, as you obviously must look at the entire Ordinance and come to a reasonable conclusion, a reasonable interpretation. One would have to ignore express provisions of the Ordinance to come to the conclusion that the Board of Supervisors intended that the provisions of the Ordinance would be overruled by someone's interpretation of the Comprehensive Plan. That would be a clear rewriting of the Ordinance, and as I've stated, as the BZA board -- BZA members know, that that's not a matter within the purview of the BZA.

They have cited Section 1-400 as -- for the proposition that the most stringent rule applies. That section, of course, talks about ordinances and codes. The Comprehensive Plan is not an ordinance, and it does not apply as an ordinance. And in addition, you must look at the entire Ordinance, and if one does look at the entire Ordinance, then there's no question. There's no merit to the appeal.

Section 15.2-2232, as the BZA knows, applies solely to the determination that certain public facilities are consistent with the Comprehensive Plan, and that does not apply.

We also believe that the fact that the prior adjudication by the Board of Zoning Appeals specifically related to Section 2-405. The Welches are simply taking another attack on that, but they are attacking the validity of that provision. That has been litigated already, and the -- both the enabling legislation and the Ordinance provide that when you appeal, you must state the grounds. They did not state the -- if they -- the grounds that they stated earlier are the grounds that apply, and they cannot come in now and say, oh, we've got new grounds, although in essence they're very similar to the prior ones. We'd respectfully ask you to uphold the Zoning Administrator.

CHAIRMAN DIGIULIAN: Questions? Okay. Is there anyone else to speak to the appeal, anyone else to speak? Mr. and Ms. Welch, a brief rebuttal.

MR. WELCH: If I could address several of the points raised by Mr. Emrich, first of all, the update on the prior case I don't believe is relevant. We're appealing a different issue. The prior case really involved more of the validity of the lots. We're specifically addressing density and whether you can increase the density pursuant to the Comprehensive Plan.

He mentioned that 1-200 is -- it's sort of an introductory regulation and is only used in considering how the Zoning Ordinance is to be established. I think that ignores Section -- Virginia Code Section 15.2-2224 which states that the Zoning Administrator is required to give reasonable consideration to the Comprehensive Plan.

Mr. Emrich also stated that in case of a conflict, specific language controls over general language, but also as we said in our appeal, in the case of a conflict, Virginia law is well established that plain language is to be used in interpreting ordinances and regulations. And again, as I stated, the plain language is that the Comprehensive Plan is to be implemented. It doesn't say that the Plan is to be implemented as guidance or the purpose of the Ordinance is to implement the guidelines of the Comprehensive Plan. It simply says to implement the Comprehensive Plan.

He also mentioned that in the case of a conflict, you look at the entire Ordinance, and I would agree with him there. You do look at the entire Ordinance, and if you look at the entire Ordinance, the purpose of the Zoning Ordinance is to regulate growth and protect the health and safety of its citizens. And critical of -- critical to that are the density regulations. So I think if you look at the entire Ordinance, then the conflict should be interpreted the way we're asking that it be interpreted.

Mr. Emrich didn't bring up the sections of the Virginia Code at all that we cited. I think those are very strong. It's very strong language that supports our argument where it says that you must give reasonable consideration to the Comprehensive Plan and that it says the Comprehensive Plan -- or that the zoning ordinances are methods of implementing the Comprehensive Plan.

And, finally, he said that the -- we're basically appealing the same grounds. As I said at the beginning, we're not. We're not appealing the same grounds. It's a totally different issue, and we have our -- we -- it's within our due process rights to be able to do that. I believe my wife has a rebuttal, too.

MRS. WELCH: Okay. I just have one brief clarification. In the County's opening arguments, they said that density is not being increased in our neighborhood because of what is going on, and I have to refer you to the definition of density in the Comprehensive Plan which is dwelling acres per unit, not number of lots as they were using. Thanks.

CHAIRMAN DIGIULIAN: Okay. Thanks. Questions? Mr. Hammack,

MR. HAMMACK: I have one question for Mr. and Mrs. Welch. Either one may want to answer. Lots in Hollin Hall are generally around 7,000, six, seven, 8,000 square feet, so you get four or five per acre, maybe even more. Do you contend that the Comprehensive Plan has invalidated -- since you're saying two to three per acres under the Comprehensive Plan, that half the units in Hollin Hall are now invalid homes or void in some con- -- as the result of the adoption of the Comprehensive Plan that would impose a two to three dwelling unit per acre on your subdivision?

MR. WELCH: First of all, the lots in Hollin Hall are -- let me back up. There's kind of two sections of Hollin Hall. There's -- the first part of Hollin Hall Village, the lots there are approximately -- the parcels of land are approximately 13,000 square feet. Our house sits on a parcel of land of 13,000 square feet. The older

section of Hollin Hall, they run eight to 10,000 square feet. My argument is that the Comprehensive Plan has a land map which specifically designates our area as having two to three dwelling units per acre. I'm saying I don't know how you can implement the Comprehensive Plan when that land map specifically designates our area as having two to three dwelling units per acre. If the developers are allowed to buy a house, knock it down, and put up two, then we'll have six dwelling units per acre.

MR. HAMMACK: Yeah, but if that applied, then where you have small lots, some of those lots, by definition or by your application, would be invalid --

MR. WELCH: No, I --

MR. HAMMACK: -- because it would be inconsistent with the Comprehensive Plan.

MR. WELCH: I'm not arguing that the lots would be invalidated. I'm saying that you can't -- the lot -- let me back up a bit. The lots are valid. You can, you know, put additions on them. You can put decks on them, which I think was the intent of 2-405. I'm arguing that whether you want to consider those double lots or single lots, you cannot increase density, that the Comprehensive Plan has that land map which designates density as two to three dwellings per acre, and, therefore, you gotta abide by that.

MR. HAMMACK: Do you -- are you on one lot or two lots?

MR. WELCH: I'm on one parcel of land. I consider it one lot, but I know others have different opin- -- different interpretations.

MR. HAMMACK: I would note that some of the material handed up by Ms. Voorhees where she says land area is 13,200 square feet, the site -- the legal description is shown as Lots 112 and 113 all the way through. They carry them as legal descriptions --

MR. WELCH: Okay.

MR. HAMMACK: -- in these --

MR. WELCH: Could repeat that. I didn't hear it.

MR. HAMMACK: Well, the -- in the material she hands up to support the appeal, it shows a land area of the parcel as being 13,200 square feet. I'm looking at 8033 Washington Road.

MR. WELCH: Uh-huh.

MR. HAMMACK: But on that same page, the County carries the legal description as Lots 112 and 113 of Section 1, so the County is recognizing those are still lots, as far as I'm concerned.

MR. WELCH: The County is. That's correct.

MR. HAMMACK: Thank you.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Mr. Welch, so you would feel no need to, if you will, readjust your boundary line or anything because you feel you're on one lot?

MR. WELCH: Correct. I mean, we -- I have no -- to be honest, you asked that question last time. I haven't really -- we haven't really focused on that yet. We've been focusing on this appeal. We have -- I can say, for the record, we have no plans of selling. We have no plans of moving, but the problem is -- the issue is we're going to find ourselves as an island in a sea of 35-foot-high houses around us, or at least I hope they won't be more than 35 feet.

MR. BEARD: Thank you.

~ ~ ~ August 1, 2006, NANCY C. AND MARK T. WELCH, A 2006-MV-019, continued from Page 476

CHAIRMAN DIGIULIAN: Okay. Further questions? All right. The public hearing is closed.

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Thank you. In application number A 2006-MV-019 by Nancy C. and Mark T. Welch, regarding 8059 and 8063 Fairfax Road, 8040, 8033 and 8037 Washington Road, for an appeal of a determination that there is no conflict between Section 1-200 and Section 2-405 of the Zoning Ordinance because language contained in the Comprehensive Plan is a guide whereas Zoning Ordinance provisions are specific regulations as qualified by Section 2-305 and properties subdivided prior to the effective date of the Zoning Ordinance must meet current regulations which may be modified as specified in Section 2-405, I move that the Board adopt the following Findings of Fact and Conclusions of Law. I'm going to move that we affirm the determination of the Zoning Administrator, although I don't agree with every single thing in the staff report and specifically I would conclude that even though the paper trail is somewhat inartful, that the appeal application itself contains specific property addresses and specific tax map numbers and that because the scope of what may be appealed in both the Fairfax County Ordinance and the statute is so broad, the appeal is proper. I would find also that these appellants, on the record before us, would be sufficiently aggrieved by a determination relating to these parties if for no other reason than their proximity to those lots.

Having said that, I think staff -- the Zoning Administrator is correct on the basic issue. There is no conflict between the Comprehensive Plan and the effective density yielded by development of the smaller lots. The Zoning Ordinance expressly provides for protection of the lots which are the subject of this case under 2-308, which is the section dealing with density. In no instance shall the maximum density specified for a given district be exceeded, except as may be permitted by the provisions of Section 405 below, and then 2-405 goes on to deal with these what we've referred to as grandfathered lots or these older lots which are protected. Because 2-308 creates an exception for 2-405 and 2-405 expressly protects lots like this, these lots are consistent with the specific Ordinance requirement.

There are many areas of Fairfax County where there are older lots from the '40s or earlier or areas in which the current Comprehensive Plan provides for something different and less intense than what is there now, but, in general, the Comprehensive Plan is not germane to by-right development, which if we're following the determination about the buildability of the older lots, then the Comprehensive Plan doesn't really kick into that. If we were dealing with applications for uses, such as, non-residential uses or applications for rezonings, at that point these kinds of things kick in. It's, I think, an unfortunate conflation of subdivision type of issues and use type of issues which I think is present again in this particular case.

Let me address specifically the legal argument. We've been given again this Robertson case from Alexandria, which is interesting, but the dispositive difference I think between Alexandria and Fairfax is pointed out by the judge at the beginning of the case. Alexandria had a grandfather provision for these older lots, which was repealed in 1974, that I think takes this case out of a situation like that. If these lots were located in the City of Alexandria, maybe the result would be different, but in Fairfax County, the Board of Supervisors has put in the Ordinance that these types of lots are going to be grandfathered. I think there would be chaos if land records somehow expired after a period of time with the divisions of land in the land records that were older than a certain number of years were no longer valid. To the contrary, we have many, many lots in this County which are older than the 1940s and certainly back into the Nineteenth Century even. Not all of those properties have been developed. There is no conflict between the Comprehensive Plan and what's been concluded here by the Zoning Administrator. The determination on those Ordinance provisions was correct and should be upheld.

Oh, I -- let me say one other thing, too. Sorry. The underlying issues here, I think, remain policy issues for the Board of Supervisors. Things such as stormwater and drainage requirements which may be impacting this neighborhood, regulations pertaining to by-right development, those types of things are things that the Board of Supervisors may or may not address, but that's the kind of avenue, I think, that would be appropriate to deal with the types of concerns that have been raised, the grandfathering of lots as well. The Board of Supervisors has the ability to amend 2-405 if for some reason they wanted to take away the status of these lots. I don't think they would want to do that, but the neighbors certainly can lobby the Board of Supervisors relating to these policies. That kind of policy discussion, however, whether these are good or bad ideas, doesn't change the current Ordinance, and it doesn't render the Zoning Administrator's

determination in any way invalid. So for those reasons and with those Findings of Fact and Conclusions of Law, the Zoning Administrator should be upheld.

MR. BYERS: Second.

CHAIRMAN DIGIULIAN: Second by Mr. Byers. Discussion?

MS. GIBB: Mr. Chairman.

CHAIRMAN DIGIULIAN: Ms. Gibb.

MS. GIBB: I'd just like to say, I think I said this in the last hearing on this issue, was that as far as I know as a real estate lawyer, I don't know of any concept of abandonment of recorded subdivisions. I mean, I deal with subdivisions that are as old as 1890s. There's one in McLean that I'm still dealing with, that unless you vacate a subdivision of record, one that is recorded is still there and viable, and I would adopt Mr. Emrich's arguments and then that of the staff report in my support of the motion.

CHAIRMAN DIGIULIAN: Further discussion. All those in favor of the motion?

MR. BEARD, MS. GIBB, MR. HART, MR. BYERS, MR. HAMMACK, CHAIRMAN DIGIULIAN: Aye.

CHAIRMAN DIGIULIAN: Opposed? The motion carries unanimously, and the determination of the Zoning Administrator is upheld.

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~ ~ ~ August 1, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Fairfax County Board of Supervisors

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

CHAIRMAN DIGIULIAN: Item Number 1, Consideration of Acceptance, Application for Appeal by Fairfax County Board of Supervisors.

MS. GIBB: Mr. Chairman.

CHAIRMAN DIGIULIAN: Ms. Gibb.

MS. GIBB: I'm going to recuse myself on this matter. I represent the applicant, Whitestone Investments.

CHAIRMAN DIGIULIAN: Okay.

MR. HART: If I bail, does that kill the quorum?

CHAIRMAN DIGIULIAN: (Inaudible.)

MS. GIBB: Here comes Mr. Ribble.

MR. HART: Well, if he's gonna do it, then I think I will. Mr. Chairman, I'm going to recuse myself as well. Thank you.

CHAIRMAN DIGIULIAN: Thank you, Mr. Hart. Okay, Ms. McLane (inaudible).

EILEEN MCLANE: Good morning, Mr. Chairman. Eileen McLane, Zoning Administrator, Fairfax County. This is a little bit of an unusual circumstance for this acceptance of a pending appeal. To my right is John Foote, and he is -- been retained on my behalf and will be speaking for me in this matter. Thank you.

~ ~ ~ August 1, 2006, After Agenda Items, continued from Page 478

CHAIRMAN DIGIULIAN: Okay. Mr. Foote.

JOHN FOOTE: Mr. Chairman, I am John Foote with Walsh, Colucci. And as Ms. McLane said, because of the conflict possessed by the County Attorney in this matter, other counsel have been brought in for the Board of Supervisors and for the Zoning Administrator, and that explains my presence here before you today.

I -- the -- what has been filed here, of course, is an appeal filed by the Board of Supervisors through Mr. Stoner, my good friend, who is -- whom you all know. The challenge is to the acceptance of an appeal. The issue before you is with respect to the acceptance of an appeal by this BZA of a grading permit. That is, as far as I understand from the staff and from what I know of this organization, something that's not been brought to you before. The issues have been laid out by all the parties in the written materials that have been proved to the BZA, but I believe it's possible to cut to a bit of a chase here with respect to what's actually presented. The -- perhaps the most important part of this is the essential contention by the Board of Supervisors that when the Department of Public Works, DPWES, made a determination here with respect to the permit, it had to make a zoning determination, and, indeed, as you'll see the materials provided to you, there's a citation to the provision of the Ordinance which is involved. The question that's presented really to the BZA is whether that provision relates to a determination of an engineering question by DPWES or whether there is explicit or implicit in that provision an authorization for DPWES to second-guess and overrule the Zoning Administrator.

The -- in this circumstance, the facts that are before you are that the Board of Zoning Appeals -- or excuse me -- the Zoning Administrator had determined that the use of these lots were proper, and if this sounds like a familiar case to you, of course, I know what the odds are, Mr. Chairman, but this involves the same question that was presented to you in the appeal before with respect to the use of old existing lots and their ability to be reconfigured and redeveloped. The Zoning Administrator determined that the applicant in this case, Whitestone -- I'm sorry -- that Whitestone Investments could, in fact, construct two houses where one had been. Then DPWES has issued the grading permit, approved the grading permit. And the Board of Supervisors is saying, well, he must have made a determination that this is consistent with the Zoning Ordinance, and, therefore, we get to appeal that to the BZA. The Zoning Administrator's position here is fairly clear that that is not a matter that can be properly appealed to the BZA for any number of reasons, the least of which -- perhaps the most important of which actually would be that the Zoning Administrator is the person in charge of the interpretation of the Zoning Ordinance, not DPWES. And while you can, in fact, take appeals to the BZA from other determinations made under the Ordinance, the Zoning Ordinance, this is a situation in which we'd have to conclude that DPWES can, in fact, second-guess the Zoning Administrator. We think that's not what the Ordinance means.

So I'd be happy to answer any additional questions you may have from the materials presented to you, but it seems to us that that's the crucial question. We believe not. We believe that there's no appeal that lies here, and the BZA would be in error to accept the appeal because it is not, in fact, a proper question involving the interpretation of the administration of the Zoning Ordinance.

CHAIRMAN DIGIULIAN: Questions? Mr. Stoner.

DAVID STONER: Thank you. I'll move up here since there's a mike, and I don't seem to have a mike back there. Thank you. My name is David Stoner of Walton and Adams. I'm here today representing the Board of Supervisors, the applicant in this appeal. I appreciate Mr. Foote's cutting to the chase. I'll try to do the same.

There's no question here that the Board's appeal met all submission requirements. There's no question that it's timely with respect to the grading plan. Grading plan was approved at the end of April. The appeal was filed in May. No question it was filed within 30 days.

As to the BZA's jurisdiction to hear this as an appeal from the approval of a grading plan, I would refer you to the language of Section 2-601 of the Ordinance, and I submit that the Zoning Administrator is simply running from the explicit language of the Ordinance. It says in Subsection 3 -- I won't read the whole thing -- the Director shall determine -- in other words, is required to determine -- that the amount of soil removal or fill and proposed grading is necessary -- that's an engineering determination, I agree, but is necessary for the establishment of a use permitted in the zoning district in which located. To read this the way the Zoning

Administrator would have you read it, you have to ignore that latter portion, the reference to the use being permitted in the zoning district. To read it as the Zoning Administrator, Mr. Foote would have you read it, as simply an authorization for the Director to make some engineering determination, that language would be wholly unnecessary. It would simply say the Director shall make the determination that the proposed work is necessary for the establishment of the use or the proposed use. There'd be no reference to permissibility of the use in the zoning district. So clearly this is a mandate to the Director to make a zoning determination. The Director is mandated to make zoning determinations in other parts of the Ordinance with respect to site plans. The Director is the principal administrative officer with respect to those, and as Mr. Foote acknowledged, clearly there can be appeals to this body from decisions of officers other than the Zoning Administrator, so there is simply no basis for you to determine that you don't have jurisdiction to hear this.

Now, I'm not about to prejudge how you will decide it on its merits, and I'm sure that you haven't prejudged the matter since we're here just on a procedural issue. But we are entitled to have you hear this on its merits, and I submit that to do anything otherwise, number one, would be an abdication of your responsibility. You were constituted to hear and decide appeals of this sort. This appeal meets all requirements to get before you on the substance. And as a practical matter, if you were to decide as the Zoning Administrator would have you decide, the effect would be to send these parties into a round of costly, perhaps lengthy litigation that I believe would end with them -- all of us back before you for a decision on the merits when a decision by you today to let this matter go forward will let you decide it on its merits probably within the next month or two. And I submit that that's what you should do, and I ask that -- that you do that.

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Let me get this straight. We just got this today, correct? This just -- right. Now this one we have --

CHAIRMAN DIGIULIAN: We've had it, yes.

MR. BEARD: Well, then I'm trying to understand. So basically the Board of Supervisors is in disagreement with their Zoning Administrator, so they're coming to us and they're saying, okay, you should decide this matter between us and our Zoning Administrator.

MR. STONER: The Zoning Administrator and more principally the Director of DPWES, who was the one who approved the grading plan, but obviously the Zoning Administrator shares that position with the Director, so, yes, you are constituted to hear matters involving the interpretation and the administration of the Ordinance. That's what this involves.

MR. BEARD: Well, very respectfully, on its surface -- and, again, I'm a layman. I'm not an attorney, but this -- this looks to me that it should go the costly litigation route. That's what I see on the surface. Thank you, Mr. Chairman.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hammack.

MR. HAMMACK: Mr. Stoner, why was that determination not made? It's -- I'm looking at Exhibits 5 and 6 that are attached to the appeal where there are -- there's signoffs, approvals by the County of Fairfax Land Development Services in Exhibit 6, Department of Public Works, DPWES, July 11th, '05, where this subdivision is signed off by these folks, and nobody appealed that within 30 days. Why didn't -- why isn't that a thing decided? And Number -- if I might refer also to Number -- Exhibit 5 where Mary Ann Tsai, Assistant to the Zoning Administrator, writes a letter very clearly specifying why this is grandfathered and with some sympathy to the appellants, but saying that it had been reviewed, and also I would note that a meet- -- in the second page of her letter, she says a meeting was held that included myself, Hani Fawaz from DPWES, Pat Harty from DPWES, you, and explained the intent of the grandfathering provision in the 1941 Zoning Ordinance, and staff from DPWES addressed concerns of the mon- -- minor lot line adjustment. And then there was a deed signed off on behalf of the Board of Supervisors. Why isn't that binding on the Board? Nobody appealed that back then, over a year ago.

MR. STONER: Sure, that's a fair question although let me say I think that's a question that goes to ultimately the merits of the case, and I understand your asking questions like that. That's why you're here. But I don't think that's the proper question for today because we are appealing a decision that was taken less than 30 days before the appeal was filed, but let me address your question nonetheless.

There are a number of reasons. And I wasn't present in all the goings on at that time, so I can't speak firsthand to it, but I think there are a variety of reasons why it wasn't appealed, at least by the Board of Supervisors. Number one, to my knowledge, the Board of Supervisors wasn't aware of this. The Board of Supervisors, as a body, was not aware of these events, and, number two, the grading plan is the first concrete instance where there is a determination that on its face states that this property is susceptible to being developed with two dwelling units.

MR. HAMMACK: You say the deed of re-subdivision doesn't say it's susceptible to being developed into two dwelling units? Not the grading plan, the deed of re-subdivision was --

MR. STONER: No.

MR. HAMMACK: -- put on record a lot earlier.

MR. STONER: No, no. For example, this was platted as three lots, and I -- let's -- one of the things that's confusing in this is the term "lots." The Zoning Ad- -- Zoning Ordinance has a particular definition of "lot." This property has been developed as a single lot since 1952, but even going back before that, Lot 111 was never able to be developed independently. Because of its narrowness, no house could ever meet the setbacks. The setbacks overlapped. So that's one example where simply because a lot is platted doesn't mean that it's a buildable lot.

Let me add that the matters that we are challenging here, number one, I don't think that ultimately the BZA necessarily needs to override any of these earlier decisions, but even if it found that it needed to, I submit that the errors that occurred earlier on are nondiscretionary errors. The Zoning Administrator, for example, doesn't have the authority to make a judgment call that a lot can have two dwelling units when the Zoning Ordinance explicitly prohibits two dwelling units on that lot in an R-1 District. That's just one example.

MR. HAMMACK: Well, let me ask, though, you have a deed of subdivision recorded in Deed Book 17,635 at page 0553, dated May 19, 2005, in which an Assistant County Attorney and the Assistant Director of Land Development Services signed off on behalf of the Board of Supervisors, and it's -- and this miscellaneous provision attached says this deed shall be governed by and construed in accordance with the laws of the Commonwealth. The deed may be executed counterparts -- and skip a little bit, blah, blah, blah. This deed is in accordance with the Statutes of Virginia and the Ordinance as enforced in Fairfax County governing the platting and subdivision of land and is approved by proper authorities as evidenced by their endorsement hereto and the plat, and then it says executed and approved on behalf of the Board of Supervisors of Fairfax County, Virginia, by the authority granted by a board. And that has the Assistant County Attorney's name. I can't read it, and it has Michelle Brickner's name, and the Assistant County Attorney is -- I'm not sure. I still -- I don't see the acknowledgement, but Michelle Brickner signs it as Assistant Director. Now, that was recorded in -- doesn't have the -- sometime in June, I think, over a year ago, and you're saying that that isn't a determination within the language here of a use permitted in a zoning district?

MR. STONER: No.

MR. HAMMACK: Because I read this Statute 2-601, Sub. 3, it -- that he makes a -- determines that the proposed work is necessary for the establishment of a use permitted in the zoning district, but I didn't think that DPWES made determinations of use as permitted in the zoning district. I thought that was under a different section of the Ordinance, that that was Planning and Zoning, and DPWES worked on the construction end of things.

MR. STONER: Well, this is a situation where, in the specific instance of grading plans, the Ordinance gives the Director -- not -- well, not only gives him that authority, it requires him to make that determination.

And with respect to the minor lot line adjustment, I have a couple of things to say. First, the mere fact that there is a minor lot line adjustment that results in two platted lots does not necessarily mean that each of

those lots can, under the Zoning Ordinance, have a single-family dwelling on it at that time. As far as I know, it's still the case. Certainly up to the time we filed this appeal, there was one house on this lot subject to a building permit that showed --

MR. HAMMACK: Three, three lots.

MR. STONER: No, it's one lot. I respectfully would say it's one lot. If you read the Zoning Ordinance definition of a lot and you look at that building permit -- we've included it as an attachment -- that building permit shows that the building lot or the zoning lot is the entirety of the three platted lots. That was the case from 1952 up to 2006.

MR. HAMMACK: Well, I -- the plat of re-subdivision certainly shows Lot 111, 112, and 113 being re-subdivided into Lot 111A and 112A.

MR. STONER: Right, that's right.

MR. HAMMACK: (Inaudible) clear.

MR. STONER: But for zoning purposes, those remained a single lot because they were still subject to one building permit that has not been amended to date that shows the entirety of the original three or the re-platted two plots, the entirety of this subject property being a single lot developed as a single unit.

MR. HAMMACK: Do you have any legal authority that supports that argument that what -- that a issuance of a building permit automatically invalidates lot lines and re-subdivides whatever lots are into a aggregate lot?

MR. STONER: Well, let me say this, it doesn't invalidate the platted lot lines, that act of approving the building permit, but I would cite the Zoning Ordinance itself first and foremost. We've included that definition at -- I believe it's Tab 10, and the third page of that tab, page 20-28 of the Ordinance, for the purpose of this Ordinance, a parcel of land that is designated at the time of application for a Special Permit, a Special Exception, a Building Permit or Residential, Non-Residential Use Permit as a tract, all of which is to be used, developed or built upon as a unit under single ownership, that is this situation. These three platted lots -- and we've obviously raised some question as to whether they are even valid because, referring back to a comment by Ms. Gibbs (sic) in the prior matter, there was a vacation of the original subdivision here, and the rerecording didn't occur until there was a Zoning Ordinance, and the newly recorded lots did not comply with the Ordinance at the time. But setting that aside, these three platted lots, since 1952 at least, have been one lot under the Zoning Ordinance, one lot.

And there's a recent case I would add, too, out of the Supreme Court. I haven't cited it here, I don't believe. I'd be happy to -- I believe it supports the same principles, the Cherrystone case out of North Hampton, but I'd be happy to go back and look at that and get that to you --

MR. BEARD: Yeah.

MR. STONER: -- if that would be helpful. I'm dredging my recent recollection, and I think that supported this same construction, obviously dealing with a different ordinance, different locality. And I don't think you need to go there.

MR. HAMMACK: Well, I've had -- I'm familiar with the Cherrystone case, and it had problems with setback lines and also a Che- -- part it was the Chesapeake Bay Ordinance, I think --

MR. STONER: Uh-huh.

MR. HAMMACK: -- that required setback lines --

MR. STONER: Right.

MR. HAMMACK: -- to the point where you couldn't build. There was no building envelope.

MR. STONER: Right, but the principle I recall there that Supreme Court acknowledged was that even

though there were multiple parcels, they could be treated as a single unit. The owner, as I recall, was complaining that there had been a taking of his land as a result of the enforcement of Ches Bay and perhaps other regulations, and the Court said wait a minute, you -- we don't look at this as individual parcels because they were capable of being developed as a unit, similar to here.

MR. HAMMACK: There was something funny about the way they re-subdivided that, though. I don't remember all the details, but --

MR. RIBBLE: Talked of beneficial use.

MR. HAMMACK: Yeah. Let me ask you another question. For years we've been told by the County Attorney that we don't have the authority to hear appeals of DPWES in this area.

MR. STONER: Yeah, I --

MR. HAMMACK: What do you -- what's your response to that? I don't have the Ordinance in front of me, but --

MR. STONER: Sure.

MR. HAMMACK: -- when you read what -- when you read that under 15-2, whatever it is, 2314, it says we have the authority to hear about determinations, blah, blah, blah, under the administration of this Ordinance and DPWES is under a different section --

MR. STONER: Uh-huh.

MR. HAMMACK: -- and the County has argued vigorously that we have no jurisdiction over DPWES except in the tiniest -- perhaps tiniest, narrowest area.

MR. STONER: Well, and I believe this is that. Let me explain, and obviously I'm not privy to exactly what advice you might have been given. I don't need to know that, I think. If you look at the enabling authority for appealing matters relating to subdivision plans, site plans, and such, the things that DPWES typically administers, the appeal provisions there involve appeals from either disapprovals or refusals to act. This is an odd duck. This is an approval, but, remember, we're not challenging the engineering determination made by the Director. What we're challenging is the zoning determination, and whether the Zon- -- whether the Director himself is the ultimate source of that determination or whether he's relying on advice of the Zoning Administrator, the Ordinance says he, the Director, ultimately makes the determination, is responsible for the determination in this context.

MR. HAMMACK: Yeah, but if these are approved uses and he's approved a grading plan consistent with these uses and these former uses were not appealed timely, as they apparently weren't, why isn't this grading plan perfectly valid? Why is there any appeal?

MR. STONER: Well, a couple of reasons. Number one, none of those prior decisions said you can build more than one dwelling unit here. Also to the extent that they were just wrong, and I submit that there were errors in some of these earlier decisions, they were nondiscretionary errors. They were the sorts of things that can be revisited now if they need to be. There again, of the nature of saying erroneously it's okay to put an apartment building in this R-1 District or to put a second dwelling unit on a single lot, those are things the Zoning Administrator doesn't have the authority to conclude. They're just wrong.

MR. HAMMACK: Well, let me ask -- let me just ask this. I mean, let's say suppose we accepted this appeal and taking it one step further, held that the -- I mean, I don't see where we're going with this because the grading plan has been prepared in compliance with actions taken by the County staff that weren't appealed, so how do we have the ability to overrule and say that the grading plan ultimately is invalid when all of these other actions are non-appealable and would appear, at least on the surface, to be binding, and having said that, where are we going from there? This Board doesn't have the right to rescind or take any action to void a deed of re-subdivision that's been recorded. We don't have the authority to do almost -- just a lot of things. So where are we going with this if we took it forward?

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MR. STONER: Well, number one, I don't think vacation of the deed of -- the latest deed of re-subdivision is absolutely essential in this. Now, the property owner might want to vacate it, and I might note that vacation does have meaning, one of our arguments in this case. But, again, the grading plan was the first instance where the landowner showed and proposed the development of a second dwelling unit on this property. Now, it might be common that people do re-subdivisions, do some of these other actions for the purposes -- purpose of developing another dwelling, but that's not always the case. It was not obvious from the minor lot line adjustment that that was the intent. It wasn't obvious at any stage with any of these prior decisions that that was the ultimate aim.

MR. HAMMACK: You don't have any -- you're not arguing that the minor lot line adjustment was not validly done.

MR. STONER: I -- well, I think it depends on what you mean by that. Under the Subdivision Ordinance, it appeared to meet the terms of a -- of the Subdivision Ordinance because you had th- -- on their face, three platted lots being reduced to two. And that -- I haven't focused so much on the Subdivision Ordinance aspect, so I don't want to go on record as saying absolutely it complied in every respect with that, but here the concern is whether the minor lot line adjustment would cost the owner the protections, the grandfathering of 2-405 because the general rule under 2-405 is if you re-subdivide, you lose the protection. Now, there's a carve out for certain matters if there's a dedication or certain kinds of minor lot line adjustments that meet certain narrow criteria, and the question then is did this minor lot line adjustment meet those criteria? And let me say, we're really getting into the meat of this, and I think the fact that you're asking these questions is indication that you really should accept this appeal and let's have it out on the merits.

MR. HAMMACK: Well, I understood you to say just a moment ago that you're really not appealing the grading plan as such, but it's because the grading plan would apparently allow two houses that were shown on the grading plan, but which, as I understand it, were approved when it was resubbed. Let me ask why would a person that had a single-family house on a lot, even though three sub-underlying lots, bother to re-subdivide into two lots and go to all that expense and everything if all he wanted to do was build one lot, build one house back on it again? I mean, I can't believe that the intention to do something further with consolidation or re-subdivision wasn't known to the County. I mean, you just don't go through and go to that expense and take that time and effort and have everybody sign off to change three lots into two different shapes and go through the minor lot line adjustment so you can build a single hou- -- family house where one already exists. You know, what would be the purpose of that?

MR. STONER: Well, I don't know what got -- I don't know what any particular individual's purpose might be. Obviously, here the ultimate aim was to build a second house. It could be a desire to carve up the property in a manner that was more amenable to division for a family member or conveyance to someone else. It just made for a more convenient and agreeable layout of the property. Truly that could be the reason. I don't know. Obviously, here again, there was a gra- -- a further purpose, but it was not apparent on the face of these earlier applications or the one earlier application, I suppose, for the minor lot line adjustment. It didn't depict two houses. And -- not that it was required to, but it didn't, and so it -- to go where you would have me go would ask DPWES personnel to put themselves inside the head of the subdivider.

MR. HAMMACK: Well, I can tell you about two years ago DPWES supported a -- one of the most convoluted lot shapes you've ever seen on a minor lot line adjustment about a block from this. And they said it met all of the subdivision requirements, and I -- so there could be two -- I think two houses built.

MR. STONER: And I would submit that regardless of what happened back then --

MR. HAMMACK: Uh-huh.

MR. STONER: -- it doesn't bind you in considering this appeal.

MR. HAMMACK: Okay, thank you. I don't want to hog the --

MR. BYERS: Mr. Chairman.

CHAIRMAN DIGIULIAN: Okay, further questions? Mr. Byers.

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MR. BYERS: Mr. Stoner, I'm reading from a couple of things from Ken Sanders --

MR. STONER: Uh-huh.

MR. BYERS: -- who represents Whitestone Investments. The first one is in -- it's a letter dated the 31st of July, 2006. Do you agree or disagree with this? Virginia Code Sections 15.2-2286 (4) and Sections 18-103 of the Zoning Ordinance gives the Zoning Administrator the exclusive power to interpret the Zoning Ordinance.

MR. STONER: I would disagree with that. The State Code and the Zoning Ordinance explicitly acknowledge that appeals to you from interpretations and administration -- remember, when -- in the administration of the Ordinance, it necessarily involves some degree of interpretation, so you hear appeals from determinations made by others than the Zoning Administrator. And the Code and the Ordinance explicitly acknowledge that that can happen, and we know that it does happen.

MR. BYERS: Then in the th- -- okay, go ahead. Well, I was going to ask, and then in the third paragraph, the second sentence, the Zoning Administrator, the agent of the Board of Supervisors, in January 2005 issued a lot validation determination for the property which was not appealed on July 12, 2005. DPWES, the Board of Supervisor agent for plan approvals, after approval by the Zoning Administrator, approved a minor lot line adjustment plat for the property for two single-family lots. No appeal of this approval was taken. On August 12, 2005, after review and approval by the County Attorney, the Board of Supervisor agent for this purpose, the deed of re-subdivision for the two lots was recorded. No appeal of this approval was taken. The deed of subdivision is executed and approved on behalf of the Board of Supervisors, and that's what we have. The -- I guess my -- and when we go back and I'm looking at one other thing, and, again, this is from Mr. Sanders from the standpoint of transparency, Whitestone's rights are also vested by the terms of Code of Virginia Sections 15.2-2307, in parentheses, good faith, reliance, and expenditure and reliance upon official government acts, and 15.2-2311C, no reversal of Zoning Administrator's rulings after 60 days. There are five separate agencies or agents for the Board of Supervisors in a period of approximately 18 months that have approved this, and what you're telling me is these -- they're are all wrong. And we are -- and now we're going back and we're second-guessing them, which is -- I mean, I'm assuming that's the basis for the appeal.

What we're also saying is I don't know what Whitestone's investment total -- what their total investment in this is, but, for example, let's say that I come in and I expend five or ten million dollars based the full faith and reliance of not one office within Fairfax County, but five, and then 18 months later, I find out that that investment may go down the tubes because there's been a -- there's been some change. I mean, I don't -- there is a disconnect. I'm having hard -- a hard time believing, frankly, that in all of this period of time, and I think Mr. Hammack said that, that someone at the legislative level of this government didn't understand all of this was going on and could not have put their oar in the water at that point. I mean, I'm not trying to make a -- I'm just trying --

MR. STONER: Sure.

MR. BYERS: -- to understand, and I agree with my colleague. I'm not under the impression that we're under -- that we have any authority to get down to the level of DPWES. I mean, we have to believe the Zoning Administrator. Yes, we do hear appeals, but, I mean, initially the Zoning Administrator is the preeminent authority from the standpoint of the interpretation of the Ordinance. And if we don't have that, then we have how many different offices do we have interpreting the Zoning Ordinance?

MR. STONER: But it does happen.

MR. BYERS: True.

MR. STONER: And, again, we're dealing with a specific Zoning Ordinance provision that explicitly empowers and requires the Director to make that determination. Again, he might well do it based on the advice of or determinations by the Zoning Administrator, and perhaps that's typically how it happens. Perhaps that's what happened here, but the fact is that under the Ordinance it is the Director who is charged with that determination. It is his decision that is, under this Ordinance, appealable.

I understand there's a history here, and I would disagree with Mr. Sanders' assertions about the legal ramifications. There are no vested rights implicated here. Vested rights, under 15.2-2307, are a matter of vesting against changes in the Zoning Ordinance. We're not talking about that here. It's the same Ordinance. We submit that there have been errors in the interpretation and application of that Ordinance, but the Ordinance has not changed, nor has the definition of lot changed. This is -- getting back to it, this has been one lot.

MR. BEARD: Mr. Chairman. I'm -- not to cut him off. One quick question, do you agree that the Zoning Administrator is an agent of the Board of Supervisors?

MR. STONER: In certain respects, yes, yes, absolutely. I mean, the Zoning Administrator acts as --

MR. BEARD: Fine.

MR. STONER: But --

MR. BEARD: He's a -- that -- the Board of Supervisors is the Zoning Administrator's principal.

MR. STONER: Loosely, I don't want to carry it too far in terms --

MR. BEARD: Well, I mean --

MR. STONER: I know that the Supreme Court has acknowledged that the Zoning Administrator is the Board's agent, acts as the Board's agent.

MR. BEARD: Fine, that's all I wanted. Thank you, thank you, Mr. Stoner.

MR. STONER: Sure. Let me do -- add to that, though, that I don't think you can carry it to the extreme of saying that the Board is bound by a decision of the Zoning Administrator. Obviously, if the Board differs with the Zoning Administrator as the legislative body --

CHAIRMAN DIGIULIAN: (Inaudible) Circuit Court.

MR. STONER: -- that adopted the Ordinance and presumably has its own ideas about how the Ordinance should be interpreted, it's entitled to assert those ideas.

MR. BEARD: You've answered my question, Mr. Stoner. Thank you.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hammack.

MR. HAMMACK: Yeah, Mr. Stoner, a couple of other questions. Under this Ordinance 26013 --

MR. STONER: Uh-huh.

MR. HAMMACK: -- does every house or every site require a grading plan?

MR. STONER: Yes, I believe so.

MR. HAMMACK: Are you -- do you know so? Do you know whether that's true?

MR. STONER: Well, if there's grading of at least -- grading of more than 2500 square feet.

MR. HAMMACK: What if it's a flat lot?

MR. STONER: Sorry?

MR. HAMMACK: What if it's a flat lot and there's just no basement, slab house.

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MR. STONER: Yeah, well, I mean, I think the Ordinance itself draws a distinction between where there will be -- the real cutoff is will there be land-disturbing work of at least 2500 square or more than 2500 square feet. If there won't be, then I'm not sure that the Ordinance requires a grading plan, but --

MR. HAMMACK: Well --

MR. STONER: -- I haven't -- that hasn't been my focus here, so --

MR. HAMMACK: Well, I understand, but, see, I read this section 30- -- 6013 different from the way you do because it says it requires the Director of DPWES, before approving a grading plan, to determine that the proposed work, which I assume is shown on the grading plan, is necessary for the establishment of the use permitted in the district. And, see, so I'm reading that as just saying that the Director, before he requires a grading plan, has to determine that one is necessary in the development of the property, not that he's making a determination that the Zoning Administrator, in their exercise of their authority, has either exercised the authority correctly or incorrectly. You see, that's --

MR. STONER: Uh-huh.

MR. HAMMACK: I don't know. I could be wrong on that, but --

MR. STONER: Well, I think you're partially right. I think that he does have to make that engineering determination, is the amount of fill or grading required or being proposed necessary for this proposed use.

MR. HAMMACK: Uh-huh.

MR. STONER: But it does go further. It does say for the establishment of a use permitted in the zoning district. If it were strictly limited --

MR. HAMMACK: A use permitted, and we have uses permitted all the way down the line before it gets to this grading plan. Does he have the right to overrule the Zoning Administrator?

MR. STONER: I believe that given the language of this provision, if the Director were convinced that the use being proposed was not permitted, then he would have an obligation to say, no, I'm not going to approve this.

MR. HAMMACK: Then he shouldn't have approved the grading plan.

MR. STONER: He shouldn't have. I agree. That's why we're appealing it.

CHAIRMAN DIGIULIAN: Do you think -- can we move this along?

MR. STONER: Okay.

MR. HAMMACK: That's -- thank you very much.

CHAIRMAN DIGIULIAN: Further questions? Thank you.

MR. STONER: Thank you.

CHAIRMAN DIGIULIAN: Is there anyone else to speak to this appeal?

H. KENDRICK SANDERS: Mr. Chairman, and I will start with I will try to be very brief in this matter because you've heard from two lawyers and you have, I think, some fairly lengthy written materials. I'm Ken Sanders. I am a potted plant or my client is the potted plant in this matter. He's the owner of the property.

Now, very briefly, two things need to be said for the record. Mr. Stoner spent a lot of time, and he thinks for reasons probably -- I shouldn't presume this, but that only us lawyers can understand, he wants to make this one lot. The house has been demolished. Demolition permit was issued by the County. The one house that was on the lot lines is gone. So I think Mr. Stoner -- I would like you to ask him does that not mean, Mr.

Stoner, the three lots are back again. So let's forget that issue about one lot. I think his answer will be that's correct. All right, so let's take that off the list.

The next question is really what is happening here, of course, is that the Board of Supervisors dropped the ball for their own reasons, and we don't know why, and are now trying to appeal a determination that was made several times in several contexts. And I will admit that Mr. Stoner has come up with -- and I -- when we heard the Board -- my client heard through the grapevine that the Board of Supervisors' going to try to get some sort of appeal going on this project this year, that I wondered how they could come up -- but I -- us lawyers are very imaginative people, as you know. And so what they're doing now is saying we don't care if a lot validation determination was made in January of 2005 which was not appealed by -- you heard the name Mr. Wheeler. He's a neighbor who has been complaining throughout and probably here today. That was not appealed by anyone. Thirty days passed. That was an official determination by the Zoning Administrator, signed by DPWES.

My client, Whitestone, upon issuance of that and only upon that -- and I'll say curiously I had no involvement in any of this process until this came up because Mr. Amen tried to follow the rules, Whitestone. He applied on his own for a lot validation determination. He got it, and only then prudently he settled on the property. Then he hired an engineer at great expense to prepare the re-subdivision plan. That went through the process. Admittedly, there was some -- an aura about it like someone didn't like what was going on, but he couldn't figure out what the matter was. But it took extraordinary long for him to get that approved, but it was approved. I prepared the subdivision documents for County Attorney review, which Mr. Hammack noted were duly approved after intensive review and signed by the Board of Supervisors and recorded in August of 2005, was the actual recording date of the subdivision plan. So Whitestone has gone this is good. Now I'll start paying for architecture and all the other things we have to do, move along. Get down to the point next thing is put a grading plan in. The County sits on the grading plan and sits on it, sits on it. Eventually some inquiries are made. The grading plan is approved as meeting all criteria. And as we know now, then an appeal was filed.

The appeal is really an attempt to try to get back to square one on decisions that were made by the final decider under the Zoning Ordinance. The Zoning Administrator has determined that what we are doing is legal under the Zoning Ordinance. It is gone. It's past. It's done. To argue, to parse words in an Ordinance that says -- excuse me -- Mr. Hammack's exactly correct on interpretation of that grading plan. And I know Mr. Stoner is an advocate as we all are and must advocate for his client, but let's be reasonable and sensible. Do you really think that's what that section says in the Zoning Ordinance, that DPWES, that Jimmie Jenkins or Bruce Nassimbeni can overrule the Zoning Administrator of the County as to whether the use is permitted in the Zoning Ordinance? That's ridiculous. I'm sorry. It is ridiculous argument. It is sophistry. As Judge Bryan said to my opponent once to my great delight, that argument is sophistry, sir, and he turned to me and said what's that mean? I said it's not good. It is sophistry.

It says that the grading plan -- you can't disturb soil, right, unless it's necessary. Then it says you can only disturb the soil that's necessary for the use permitted. Obviously, you can't approve a grading plan for a use that is not permitted in the Zoning Ordinance, and obviously he can't let you grade more than is necessary for any use. But it does not and does not intend in any reasonable reading, in my view, to say that the DPWES, despite having in front of him a stamped plan, stamped by the Zoning Administrator and signed that says approved for, you know, zoning and say that's a dumb ruling. I'm just going to rule the contrary and not approve the plan.

Now let's assume that happened. How -- where would we go with our appeal? It's interesting, isn't it, that the Board of Supervisors is here? Mr. Stoner says there'd be expensive litigation otherwise. Bring it on. As someone said once, bring it on. I don't think there will be very expensive litigation. I think this will be very brief litigation, and I don't know why this -- and I'm sorry if I'm -- well, you can read my words that I wrote, and I tried to remain calm. But you can understand that Mr. Amen and Whitestone are not very calm right now. Much like the last case where all of the steps were followed to a tee, absolutely to a tee, and all the rulings were obtained and this simply comes too late to appeal the real zoning issue, it's a bootstrap argument, and it can't get anywhere because the determination has already been made. If Guinn v. Alward means anything, which is used constantly against the landowners who are late with appeals, then it's -- this is the case that it means that, too. It just comes -- it simply does come too late, and forgetting the unfairness of it, it is simply beyond the jurisdiction of this Board to properly hear it. It goes against the law of Virginia, well-established law of Virginia. Thank you.

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CHAIRMAN DIGIULIAN: Okay. Questions? Thank you. Is there anyone else to speak to this appeal?

CATHERINE VOORHEES: Hello, my name is Catherine Voorhees. I don't live in this particular neighborhood, but I'm living in an established neighborhood that is being picked apart by developers. I live at 8029 Washington Road, Alexandria, Virginia, 22308.

What Mr. Sanders speaks to and Mr. Foote speaks to is what I would call procedural due process. There's something else. It's called substantive due process. Homeowners in an established neighborhood deserve the right to be heard. It is very difficult for homeowners to follow the laws because they don't have the ability to go to counsel or basically, in my -- what I found out is that counsel was very hard to find because the developers have all the decent counsel in their back pockets, so we are learning to do this step by step.

Now, concerning the case at issue, we do have a permit that was timely appealed by the Board of Supervisors. Under Article 18, Section 114 of the Zoning Ordinance, no County employee, Board of Supervisors, whatever, shall issue a permit that not -- that is not in full complyment -- compliance with the Zoning Ordinance. Further, no County employee, officer, Board of Supervisor, BZA member, whatever, can validate that action. So the question is shall these people be given the opportunity to be heard by the Board of Zoning Appeals to determine whether or not the Department of Planning or Public Works grading thing was in proper -- was in full compliance with the Zoning Ordinance. I don't think it was in with Zoning Ordinance because I believe there's a misapplication of 2-405. Both the definition of the word "lot" under Article 20, Section 300 of the Zoning Ordinance, and the definition of the word "zoo" -- "use" under Article 20, Section 300, are required to be used in defining Article -- excuse me -- Regulation 2-405. From what I've seen, that has not been done, and I think that the people deserve to be heard. Thank you.

CHAIRMAN DIGIULIAN: Is there anyone else to speak to this appeal? Anyone else to speak? Okay, Ms. McLane, Mr. Foote, additional comments?

MR. FOOTE: I will also be brief, Mr. Chairman. I had a philosophy professor back at the distinguished institution of Louisiana State University once said if you accept my assumptions, you will accept my conclusions. Well, you can't accept the assumptions that the appeal is based on. If you look at Section 2-601, I think that Mr. Hammack's interpretation is not entirely that which the Zoning Administrator takes, but it's a very sound interpretation. You can't quit reading this, the Ordinance, as Mr. Stoner, my good friend, does. It goes on to talk about -- after talking about establish a use permitted in the Zoning Ordinance and that the grading plan shall provide for even finished grades which meet adjacent properties, et cetera, and includes soil erosion and sedimentation control measures. That Ordinance is explicitly an engineering ordinance. If you look at Exhibit 7, which has been provided to you in the appeal, what you'll find is a buildable lot determination, which I believe, and Ms. McLane can correct me on this, is -- it just predates the minor lot line adjustment. This is a document that is executed both by the zoning office, Mary Ann Tsai, and somebody from the Office of Site Development Services --

ELAINE MCLANE: Thomas Nelson.

MR. FOOTE: -- Thomas Nelson. This is a determination of several things, all of which clearly indicate a zoning office determination as to the permitted -- permissibility of the use and then a subsequent determination that subdivision can be based upon it, and then, of course, everything that's flowed has flowed from this even if it didn't flow from the letter that was written to Mr. Wheeler. So what we would simply summarize to say is there is no zoning determination that is validly in question before this Board of Zoning Appeals. We concur with the position that's been taken by Whitestone in these circumstances. The Zoning Administrator's ruling we believe to be correct, and we believe that it's not appealable, sir.

CHAIRMAN DIGIULIAN: Okay, thank you. Questions? Okay. Mr. Stoner.

MR. STONER: Thank you. Let me just respond to some of the comments by Mr. Sanders, but let me draw a quick distinction between this case and the prior one involving Hollin Hall. This case involves at least a couple of aspects that set it apart from that one. Number one, in this case to achieve what the developer wanted to do required a minor lot line adjustment, not so with Hollin Hall. That's a huge distinction under 2-405. There's also the question of whether the lots were validly recorded. I'm not aware that that's an issue with Hollin Hall.

Obviously, there's a history here, but let me say this, if that history is one of error, nondiscretionary error, the State Code says we're not bound by that. Section 15.2-2311, the one that sets out the procedures for appealing a decision to you, says essentially notwithstanding the other provisions to protect against changes in opinions and determinations by the Zoning Administrator, if there has been a nondiscretionary error, that's an exception, and that is the case here. Neither you nor the Board of Supervisors is bound by decisions that admittedly were taken that were taken in error. The Zoning Ordinance is very, very clear about what constitutes a lot when there is a building permit. There's absolutely no judgment in that when there's a building permit that says these three platted lots are the building lot, and that hasn't changed. I understand perhaps that's changed as of today, but it had not changed at the time of any of the actions that are at issue in this appeal all the way through the grading plan. There was one lot on this property. It was not susceptible of a second dwelling unit, and the -- any reading of the approvals that would read them otherwise, either the reading is wrong or the approval's wrong.

The lot validation or buildable lot determination that Mr. Foote referred to, and I believe Mr. Sanders referred to it as well, that occurred in January 2005 at a time when there was no permit, no application pending. There's a case out of the Supreme Court from a number of years ago, the Vulcan Materials case, that says in that context what you have is an advisory opinion, one where there is no appeal. Gotta have some application pending. Now, admittedly there were applications pen- -- there was an application pending later for a minor lot line adjustment, but at the time of this determination, there was nothing truly to appeal. It also doesn't say that one, two, or three single-family dwellings may be built on this property. Under their reading, supposedly one could have built a single-family dwelling on Lot 111, which wasn't even wide enough to support the setbacks. Clearly, it can't be read to that extent. No -- at no time until the grading plan was there any approval of any work that would facilitate a second dwelling unit.

What I'm proposing to you is not sophistry. I take some exception to that. If I knew exactly what the word was, I would take even greater exception probably, but 2-6013, I'm not parsing words. I'm not the one parsing words. I'm reading the words that are there. There's a principle of statutory construction that says you give meaning to all of the language, all of the words. The Zoning Administrator, Mr. Sanders, Mr. Foote they are asking you to ignore some of the words. There's no other way to look at it. It's convenient for them, and I understand why they're wanting you to look at it that way, but that is not the way you read the Ordinance. You read it completely.

And I -- Mr. Sanders referred to the fact that the Zoning Administrator's involved in the review of the grading plan. Well, I submit that, as a matter of course, I suspect that the Director does follow the Zoning Administrator in that. He doesn't actually exercise independent judgment to say this is or is not a permitted use. I think, on the face of it, the Ordinance does allow him to do that. I think, as a practical matter, he doesn't , but what's appealable is the ultimate decision on the grading plan, not the intervening or underlying internal decision or determination by the Zoning Administrator that's not made public until the grading plan is acted on. Until that point, that is advisory really because we don't know what the ultimate action of the grading plan is going to be.

Just in closing, let's remember what the purpose is here and now today. Should you accept this appeal? I'm not convinced actually that it's your authority to accept it as opposed to the Zoning Administrator's authority, but since she had presented it to you, I would ask that you do accept it. Let it go to a hearing on the merits and let's have a determination by you rather than have you shift it to the courts only then, I suspect, to have it shifted back to you ultimately. Let's get to a decision by you and let's find out what that is.

MR. BEARD: I'm sorry. Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Would you just repeat what you said. She put it before us that they didn't -- how -- what did you say?

MR. STONER: The Zoning Administrator is asking you today not to consider this on its merits. She's asking you to vote not to accept this appeal, but if you do accept it, then to set it for a hearing at some later date. They haven't briefed -- they haven't submitted to you a staff report that addresses all of the substance of our argument, although it's been touched on obviously in this hearing today or in this proceeding.

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MR. BEARD: Okay, got it. Thank you.

MR. STONER: Thank you.

CHAIRMAN DIGIULIAN: Questions? Public hearing is closed. Mr. Hammack.

MR. HAMMACK: Mr. Chairman, I guess I'll make the motion. I think Mr. Stoner makes some interesting arguments on behalf of the County Board, but I think that the arguments made by Mr. Foote and Mr. Sanders on behalf of the Zoning Administrator and Whitestone Investments LLC are more compelling. It's my feeling that BZA doesn't really have jurisdiction to hear appeals over DPWES' issuance of grading permits under the Ordinance, which would seem to limit our appeal authority over anything DPWES does to things involving -- I'll say more directly involved in zoning. I don't think this is really a zoning issue, the issuance of a grading permit And, indeed, the County admits that the appeal of the grading permit is really an attempt to reach the underlying decisions made on a number of occasions, sometimes over a year ago, that were never appealed. I don't necessarily agree with everything in Mr. Foote's memorandum or with Mr. Sanders, but for reasons stated in the Zoning Administrator's staff report position and Mr. Sanders, I'm going to move that we not accept the application for appeal filed by the Fairfax County Board of Supervisors, and that would be my motion.

MR. BYERS: Second.

CHAIRMAN DIGIULIAN: Second by Mr. Byers. Discussion?

MR. HAMMACK: Mr. Chairman, I'm going to make a comment on that. (Inaudible) Circuit Court, we practice over there. One of the judges we used to appear before said, well, that's why they have appellate courts. Well, we can be wrong on this, but if we are, then the Circuit Court can send it back to us, and I think that's the way this one ought to go.

CHAIRMAN DIGIULIAN: Okay. Further discussion? All those in favor of the motion?

MR. BEARD, MR. RIBBLE, MR. BYERS, MR. HAMMACK, CHAIRMAN DIGIULIAN: Aye.

CHAIRMAN DIGIULIAN: Opposed? The motion carries unanimously, and the appeal is not acceptable.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Horner case, McLean Bible Church, both at the federal court and the Circuit Court level, Concerned Citizens of Hollin Hall, Cooper, and correspondence, pursuant to Virginia Code Ann. Set. 2.2-3711(A)(7) (LNMB Supp. 2002). Mr. Beard seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 12:19 p.m. and reconvened at 1:29 p.m.

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

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As there was no other business to come before the Board, the meeting was adjourned at 1:30 p.m.

Minutes by: Paula A. McFarland / Kathleen A. Knoth

Approved on: October 17, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 8, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ August 8, 2006, Scheduled case of:

9:00 A.M. CHARLES A. COLLIGAN, JR. & ELIZABETH B. COLLIGAN, VC 2005-DR-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. and deck 0.8 ft. from the side lot line. Located at 12211 Windsor Hall Wy. on approx. 25,443 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 6-3 ((13)) 13. (Decision deferred from 1/10/06)

Chairman DiGiulian noted that VC 2005-DR-013 had been withdrawn.

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~ ~ ~ August 8, 2006, Scheduled case of:

9:00 A.M. HENRY R. TORRICO, SP 2006-LE-027 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit carport 2.5 ft. from side lot line. Located at 6414 Dorset Dr. on approx. 10,003 sq. ft. of land zoned R-4. Lee District. Tax Map 82-3 ((5)) (27) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Henry Torrico, 6414 Dorset Drive, Alexandria, Virginia, replied that it was.

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

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to certain yard requirements to permit construction of a carport 2.5 feet from a side lot line. A minimum side yard of 10 feet is required; however, carports are permitted to extend five feet into the minimum side yard; therefore, a 50 percent reduction of 2.5 feet was requested. Staff recommended approval of SP 2006-LE-027 subject to the proposed development conditions.

Ms. Hedrick stated that subsequent to the publication of the staff report, staff discussed the application with Building Plan Review and had been informed that if a residential structure was five feet or closer to a lot line, it must have a one-hour fire resistive rated wall. She said that without the wall, Building Plan Review had indicated that a building permit could not be approved for the structure. She explained that under the Zoning Ordinance, a carport must have three open sides; however, to meet the fire resistive rating, the end wall closest to the lot line must be closed in. Ms. Hedrick said that notwithstanding the published staff report, staff recommended that the Board defer the hearing or decision to allow the applicant an opportunity to meet with Building Plan Review to discuss the carport proposal. She said she and the applicant had agreed upon a date of September 26, 2006, if the Board wished to defer the application. Chairman DiGiulian asked whether it was acceptable to the applicant, and Mr. Torrico responded that it was.

Mr. Hammack noted that the building code was dated 2003. He said the Board had never had the information on other carport applications that had come before them and asked if the code would apply to everything in the future. Ms. Hedrick replied that staff had never received a carport request at 2.5 feet from the side lot line. Mr. Hammack indicated that the Board had heard cases on garages that were 2.5 feet from the side lot line. Ms. Hedrick responded that staff had been informed by the Department of Public Works that as of 2003 fire resistive walls were required. She noted that between three and five feet, the language changed if there were openings or solid walls.

Mr. Hart said the word "safety" had been added to Standard 8 in Sect. 8-922 of the Zoning Ordinance. He

~ ~ ~ August 8, 2006, HENRY R. TORRICO, SP 2006-LE-027, continued from Page 493

thought that had been done in response to a citizen complaint concerning detached houses in P Districts that had caught fire and caused damage to the next-door neighbor. He said that with the building code, fire resistive issues were a background. He said that it seemed to him that if there was one structure in proximity to another, that was one more issue staff had to look into now. Mr. Hart said there was an explanation in the narrative about the other house on the carport side being approximately 11 feet away, but it was difficult to determine from the illustrations where the house was in relation to the carport because all that was depicted pertained to the lot in question. He said that with respect to items dealing with light, air, and safety, an essential piece of information was the context or proximity of the structures, and if that information was not provided, it was very difficult to understand what the Board needed to do with respect to those kinds of criteria. He stated that the Board needed to be able to determine what the potential relationship between the structures was with respect to the location of the next-door neighbor, whether the carport blocked the light, or whether there was a potential for a fire to jump from one structure to the other.

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

Mr. Hammack moved to defer SP 2006-LE-027 to September 26, 2006, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Torrico said he had photographs of the many carports in his neighborhood that were less than two feet from their neighbor's property line. He said it appeared that they had received approval and wanted to know why there was a question about his application. Chairman DiGiulian said that if Mr. Torrico wanted to give the photographs to Susan Langdon, Chief, Special Permit and Variance Branch, he could, and if he wanted to file a complaint, he could do that also; however, the Board had to look at the aspects of his carport under the Ordinance.

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~ ~ ~ August 8, 2006, Scheduled case of:

9:00 A.M. A. DANE BOWEN, JR., VC 2004-MA-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling 6.7 ft. with eave 6.3 ft. from the side lot line. Located at 6330 Hillcrest Pl. on approx. 10,515 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 74. (Deferred from 11/2/04, 4/12/05, and 7/12/05 at appl. req.) (Decision deferred from 1/10/06)

Chairman DiGiulian noted that VC 2004-MA-113 had been withdrawn.

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~ ~ ~ August 8, 2006, Scheduled case of:

9:00 A.M. BUSH HILL PRESBYTERIAN CHURCH, SPA 99-L-024 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 99-L-024 previously approved for church with nursery school and child care center to permit increase in enrollment, building addition and site modifications. Located at 4916 Franconia Rd. on approx. 3.29 ac. of land zoned R-3. Lee District. Tax Map 82-3 ((2)) (1) A and 82-3 ((3)) (B) 8. (Decision deferred from 6/27/06)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth Ellis, PE, the applicant's agent, ADTEC Engineers, Inc., 3251 Old Lee Highway, Fairfax, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 99-L-024, previously approved for a church with nursery school and childcare center, to permit changes in development conditions, a building addition, and site modifications. The applicant proposed to demolish selective portions of the original buildings originally constructed in 1958 and 1967 and to construct a new building addition which would unify the building structures. The existing buildings were not connected and did not meet current accessibility requirements. The existing church sanctuary building would remain and would be attached to the retained portions of the original buildings by the construction of a new building addition which would house the Christian education

and fellowship functions of the church as well as providing general office space to support the programs and mission of the church. The addition would increase the size of the existing buildings by 7,245 square feet, from 23,791 square feet to 31,036 square feet. The number of seats approved in the sanctuary was 432 as granted by SP 99-L-024. The approval of SP 99-L-024 also allowed a nursery school with a 68-student maximum daily enrollment. No increase in the maximum daily enrollment was proposed with the application. Additionally, the northern parking lot would be reconfigured, and a total of nine new parking spaces would be added to the site. Staff recommended approval of SPA 99-L-024.

Frederic K. Kuntz, Kuntz & Associates, Architects, 7906 Andrus Road, Alexandria, Virginia, presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the applicant had met with staff since the previous hearing, and the applicant was pleased with the status of the application; however, they had a few changes to suggest to the revised proposed development conditions dated August 1, 2006.

Mr. Kuntz said Conditions 1 through 8 were acceptable; however, with respect to Condition 9, the applicant asked that the portion of the condition be stricken that required supplemental trees and shrubs be planted to provide additional screening and tree cover on the site, because they could not determine where those supplemental plantings could be placed. Mr. Kuntz indicated that staff was talking about a two-and-a-half-foot area between the sidewalk along Franconia Road and their parking lot. He said that area had remained as it was originally designed and as it was put together when there was a taking of the property by the Virginia Department of Transportation for the widening of Franconia Road. He stated that the area was grassed, and the applicant saw no ability to put additional trees and shrubs there without impacting either the sidewalk or the parking as it existed, and they had no intent to make any changes in that portion of the property.

Additionally, Mr. Kuntz referenced the statement that said foundation plantings shall be provided adjacent to the southern and western sides of the building. He said every area to the south and west had already been fully planted with foundation plantings, and there should be no need for additional plantings. He said the applicant had no intent to change that significantly, but he did concede that there would be some need to modify a little at the front entrance where there would be a need to obtain an ADA handicap entrance. He stated that he would be pleased to show the Board photographs of the full plantings if they wanted to look at them.

Referencing the last sentence in Condition 11 that stated all parking would be on-site, Mr. Kuntz said the site had enough parking so that they were exceeding the amount of parking spaces required. He said the applicant had additional street parking available on Jane Way adjacent to the church, and they did not want to cause any problems with parking availability if there was a special meeting or church service that would cause a parking overflow on-site. He requested that sentence be deleted. With those changes, Mr. Kuntz said the applicant felt that everything was acceptable, and they would be pleased to move forward with the application.

Chairman DiGiulian stated that the requirement that all parking shall be on-site was a special permit requirement. Mr. Kuntz said the applicant did not take exception to that because they had all parking on-site with more spaces than were required. He was pointing out that they had street parking available to them, and they were concerned that the sentence could be interpreted to mean that if anyone parked on Jane Way, they could be found not in compliance with the regulations. He said the applicant wanted to ensure that if their congregants were parked on Jane Way, they would not be ticketed. Chairman DiGiulian said that could not be guaranteed.

Mr. Byers asked staff whether they had any objection to the proposed changes to Condition 9 dealing with size, location, or species. Susan Langdon, Chief, Special Permit and Variance Branch, said staff thought that since they had said to the greatest extent possible to provide additional screening, that there may be some places along the lot line that additional screening could be provided. Staff intended that the applicant would work with the Urban Forester to determine whether there was anything that could be provided in that area because there were single-family residences across the street, and there was a large addition going in.

Mr. Byers asked for staff's input concerning the requested deletion of Condition 10. Ms. Langdon said that perhaps "southern" was misleading and that it should probably say "northern." She said staff's intent was that there be foundation plantings around the new addition. In response a question from Mr. Byers as to

whether the applicant would be agreeable to changing "southern" to "northern," Mr. Kuntz said the applicant intended to have the northern exposure landscaped appropriately and consistently with what was currently at the site.

Mr. Hart asked Mr. Kuntz to explain again what the applicant's problem was with the last sentence in Condition 9. Mr. Kuntz responded that the only problem they had with the sentence was that they had not been able to talk to the Urban Forester to determine what was desirable. He said that without talking to him, the applicant did not know what the extent of size, location, and species was and did not know what they were encumbering the church with in terms of total costs of planting. He said the applicant was showing trees on the plat, and they intended that they be in accordance with the Ordinance. He said the applicant was above the limits that were required by the Ordinance. He said nothing had been defined specifically, and they did not know what would be requested of them.

Mr. Hart stated that the intent was not to increase the cost, but to discourage the applicant from planting certain types of plants in areas that were not appropriate to the species. He said he thought that was a sentence that was routinely put into this type of application because everything had to be addressed by staff. Ms. Langdon concurred with his statement and said the intention was that this was a condition that would go to site plan if the special permit was approved, and that was generally when the discussion would occur. She said that could be why the Urban Forester did not want to talk to the applicant at this point, because they were waiting to see what was approved.

Mr. Hart asked about the last sentence in Condition 11, indicating that he did not believe that the worshipers would get a ticket if they parked on Jane Way. He said that he thought that what would happen was that if the neighbors across the street complained, the zoning inspector would send someone out to determine whether the church was violating a development condition. Mr. Hart said it was not a police matter. Mr. Kuntz said the applicant wanted to ensure that they were not putting anyone using the facility in a negative situation. Ms. Langdon said that whether it was on a special permit (SP) use or a special exception (SE) use, staff's intention was that the uses should be able to contain everything needed on-site, and if they could not, perhaps the site was not the correct one for the use. She said that previous Boards had usually adopted that same reasoning, but it was up to the Board. She said that Jane Way was a public street, and if there were no signs that prohibited parking on the street, people could park there, but the intention was that usually everything was contained on-site for SP and SE uses.

Mr. Beard stated that if the last sentence of Condition 11 was removed, he would not support the application.

In answer to a question from Mr. Ribble concerning Condition 10, Ms. Langdon stated that staff's intention was that the new structure would have foundation plantings. Mr. Ribble said he thought Mr. Kuntz had stated that it was the eastern side. Ms. Langdon said staff was talking about the northern and western side of the addition. Mr. Kuntz indicated that would not pose any problem to the applicant, and that was their intent.

Mr. Hart asked why it would not be the east if east backed up to a residential lot on the long side of the addition. Mr. Kuntz said the eastern side faced a number of adjacent residential properties, and they were fenced off with a six-foot high wooden fence. Mr. Ribble asked if the residents would be able to see the foundation plantings. Mr. Kuntz explained that the building in that location was approximately 14 feet to the eave line, and foundation plantings would be lower. He said he did not think that any of the windows on that side were high enough to allow the residents to see into the property. He said that as a matter of course, the applicant would be planting against the foundation and did not see that as an issue. Ms. Langdon agreed with Mr. Kuntz's comments.

Referring to size, location, and species being determined in consultation with the Urban Forest Management office, Mr. Hammack noted that Ms. Langdon had indicated that would come up at site plan. He asked if that would come up without the inclusion of that sentence in the development condition. Ms. Langdon said Urban Forestry would review the plan and would be making suggestions. She also said she did not know that the Urban Forester could make the applicant change the species if those specifications were not written into the conditions.

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

~ ~ ~ August 8, 2006, BUSH HILL PRESBYTERIAN CHURCH, SPA 99-L-024, continued from Page 496

Mr. Byers moved to approve SPA 99-L-024 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BUSH HILL PRESBYTERIAN CHURCH, SPA 99-L-024 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 99-L-024 previously approved for church with nursery school and child care center to permit increase in enrollment, building addition and site modifications. Located at 4916 Franconia Rd. on approx. 3.29 ac. of land zoned R-3. Lee District. Tax Map 82-3 ((2)) (1) A and 82-3 ((3)) (B) 8. (Decision deferred from 6/27/06) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 8, 2006; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicants only, Trustees of Bush Hill Presbyterian Church, and is not transferable without further action of this Board, and is for the location, 4916 Franconia Road, indicated on the application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat prepared by Adtek Engineers, Inc., dated July 2006 revised to July 14, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The seating capacity for the main sanctuary shall not exceed 432 seats.

6. The maximum daily enrollment in the nursery school/child care center shall not exceed a total maximum daily enrollment of 100 students. There shall be no more than 40 students on the playground at one time.

7. The maximum hours of operation of the nursery school/child care center shall be limited to Monday through Friday: 8:00 a.m. to 1 p.m.

~ ~ ~ August 8, 2006, BUSH HILL PRESBYTERIAN CHURCH, SPA 99-L-024, continued from Page 497

8. The barrier requirements shall be waived.

9. Transitional screening shall be provided as shown on the special permit plat. In addition, a row of evergreen trees shall be provided between the northern parking lot and the tree save area. Size, location, and species shall be determined in consultation with Urban Forest Management (UFM).

10. Foundation plantings shall be provided adjacent to the new addition to visually soften the appearance of the structure.

11. Parking shall be provided as depicted on the special permit plat. All parking shall be on-site.

12. All signs on the site comply with the provisions of Article 12, Signs.

13. Stormwater management and Best Management Practices facilities shall be provided as determined by DPWES. If above-ground stormwater facilities are provided, they must be located outside the transitional screening and tree preservation areas or an amendment to the special permit shall be required.

14. Any new or replacement lighting on site shall be provided in accordance with the Performance Standards contained in Par. 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. All lighting shall be full cut-off luminaries which include shields, if necessary, to prevent the light from projecting beyond the property and shall be controlled by timers and will remain off when the site is not in use, except for security lighting. There shall be no new up-lighting of landscaping, signage or architecture.

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 Phase 1 use has been established or construction has commenced and been diligently prosecuted. Commencement of Phase I shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ August 8, 2006, Scheduled case of:

9:00 A.M. TRUSTEES FOR LIVING SAVIOR LUTHERAN CHURCH, SPA 86-S-023-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 86-S-023 previously approved for church and nursery school to permit increase in seating capacity, building additions and site modifications. Located at 5500 Ox Rd. on approx. 7.74 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 50 and 50A.

Chairman DiGiulian noted that SPA 86-S-023-02 had been administratively moved to September 12, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ August 8, 2006, Scheduled case of:

9:30 A.M. A-1 SOLAR CONTROL, A 2005-DR-057 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a vehicle light service establishment on property in the C-5 District without approval of a Special Exception, a site plan, nor a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 2/14/06, 3/14/06, and 4/4/06)

9:30 A.M. CHARLES A. LANARAS, A 2005-DR-060 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a vehicle light service establishment on property in the C-5 District without approval of a Special Exception, a site plan, nor a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 2/14/06, 3/14/06, and 4/4/06)

Chairman DiGiulian noted that the Board had received a withdrawal request from Charles A. Lanaras.

Chairman DiGiulian asked whether anyone was present to address the A-1 Solar Control appeal and received no response.

Mary Ann Tsai, Zoning Administration Division, stated that she had not heard from Mr. Bellinger from A-1 Solar Control. She said staff recommended the Zoning Administrator be upheld with regard to A 2005-DR-057.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to accept the withdrawal on A 2005-DR-060. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Hart moved to uphold the determination of the Zoning Administrator on A 2005-DR-057 with the adoption of the findings of fact and conclusions of law from the most recent memorandum that dealt with the issue of the vehicle service use not being within the criteria of a subordinate accessory use. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ August 8, 2006, Scheduled case of:

9:30 A.M. DWIGHT AND CECELIA JONES, A 2005-PR-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure and a fence in excess of four feet in height, which are located in the front yard of property located in the R-4 District, are in violation of Zoning Ordinance provisions. Located at 2048 Madrillon Rd. on approx. 8,978 sq. ft. of land zoned R-4. Providence District. Tax Map 39-2 ((45)) 1. (Decision deferred from 12/20/05)

Chairman DiGiulian noted that A 2005-PR-039 had been indefinitely deferred.

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~ ~ ~ August 8, 2006, Scheduled case of:

9:30 A.M. MARCELO ZULETA (TOROS TRUCK CENTER), A 2006-MV-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is occupying property located at Tax Map 107-4 ((1)) 72 without an approved site plan or a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 9400 Gunston Cove Rd. on approx. 1.224 ac. of land zoned I-6. Mt. Vernon District. Tax Map 107-4 ((1)) 72.

Chairman DiGiulian noted that A 2006-MV-023 had been administratively withdrawn at the appellant's request.

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~ ~ ~ August 8, 2006, Scheduled case of:

9:30 A.M. DONALD R. ROSE AND DEBBE A. ROSE, A 2006-MV-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have constructed an accessory structure, a stone fireplace and a wooden roofed patio cover, which exceed seven feet in height and which do not comply with the minimum yard requirements for the R-3 District, without valid Building Permit approval, and have installed accessory structures and uses which exceed the 30 percent maximum permitted coverage of the minimum required rear yard, all in violation of Zoning Ordinance provisions. Located at 7922 Journey La. on approx. 9,418 sq. ft. of land zoned R-3C. Mt. Vernon District. Tax Map 98-2 ((6)) 273. (Admin. moved from 8/1/06)

Chairman DiGiulian noted that A 2006-MV-022 had been administratively moved to October 3, 2006, at 9:30 a.m., at the appellants' request.

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~ ~ ~ August 8, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by C.J.'s Towing and Mr. Carroll C. Hall

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said this was an appeal with a tenant on a piece of property, and the tenant had been the subject of a previous appeal. She said staff would recommend the Board not accept the appeal because there currently was a consent decree associated with the tenant.

In response to a comment from Mr. Beard, Ms. Stanfield said he was correct that the case had to do with the timing of the appeal, and that was why staff was recommending the Board not accept it.

Mr. Hammack noted that the appellant was C.J. Hall, and the Zoning Administration Division had served the owner of the property, but not the tenant. Ms. Stanfield stated that was correct. Mr. Hammack asked how staff knew that C.J. Hall had received a notice of the determination of the notice of violation. Ms. Stanfield replied that staff did not know whether anything had been officially handed to them, but presumably they were aware of the notice if they appealed it. Ms. Stanfield said the response to the notice of violation had been received on July 13, 2006, which was 13 days after the deadline. Mr. Hammack asked if the deadline had been determined based on the notice given to the owner. Ms. Stanfield said that was correct. Mr. Hammack stated that he could not conclude that the owner was given notice or that the tenant had notice, and it could not be presumed that they had received notice.

Mr. Ribble asked whether staff knew who the principals were of C.J.'s Towing, Inc., and if it was Carroll J. Hall. Ms. Stanfield replied that she did not currently have that information, but could obtain it if the Board wanted it.

Chairman DiGiulian said that on the top of page 2 of the staff report, Carroll J. Hall was listed as the owner of C.J.'s Towing, Inc. Ms. Stanfield said that was correct, but she did not know if there were any other principals involved in the operation.

Mr. Hammack noted that the notice had been issued to Andrew Fenton and Penn Daw Properties, Limited Partnership. Ms. Stanfield said that was correct, and the staff report noted that the reason why it was noticed to that property owner was because staff did not know if there were multiple tenants on the property, and Mr. Hall may just be one of the tenants. Mr. Hammack stated that staff had indicated that Mr. Fenton had sent the letter of appeal on June 14, 2006, and 30 days from the time Mr. Fenton retransmitted the letter, July 13, 2006, would be within 30 days. He said that personally he did not think a notice could be sent to a third party and have it accepted and considered non-appealable. Ms. Stanfield said that Mr. Hall was familiar with the process, and he would know that it was 30 days from the date of the notice. Mr. Hammack said he understood that, but he was talking about legal requirements.

Mr. Hart asked what would happen if staff did not send a notice to both the owner and the tenant. He said he was looking at the provision in the state code under 15.2-2311A. He said it seemed to him that this consideration would be closer in the state code to what Mr. Hammack had said, and he thought it was directed more to a person, particularly with the running of the 30-day period, which seemed to him was linked

in the state code to the recipient of the letter rather than strangers to it. Specifically, he said, in the second sentence that said any written notice of a zoning violation dated on or after July 1, 1993, shall include a statement informing the recipient, which he said he thought was a specific term, that he may have a right to appeal the notice of a zoning violation or written order within 30 days in accordance with this section. The appeal period would not commence until the statement is given. Mr. Hart said he thought that when the language was used, shall include a statement informing the recipient that he may have a right to appeal, was a mandatory requirement that dealt with the recipient of the letter and that using "he" in the singular was not informing the world or third parties. He said that in a situation like this, the Board had a copy of a letter that went to Andrew Fenton as the agent for Penn Daw Properties, and there was no way to know if there was an interrelationship between the landlord and the tenant, or these particular people.

Mr. Hart stated that the letter was addressed to Penn Daw Properties and stated that you may have the right to appeal. He pointed out that the state code he had referenced earlier would indicate that the notice was directed solely to Penn Daw Properties. He said that he did not think, for the purpose of 15.2-2311A, that the Board could conclude that the General Assembly meant that the commencement of the 30 days applied to anyone other than the recipient. He said he did not think staff could extrapolate from that, but perhaps the answer was that if the Board was going to be issuing violations about tenant activities, the better practice would be to send the violation letter to multiple addressees. Staff would then be informing the recipient as the state code required, and staff would be telling he or they that they may have a right to appeal. To do otherwise, he said he did not think the County was complying with what the General Assembly had said in the code he had referenced. He said that when the County did not match up with the statute, they were skating on thin ice.

Mr. Hart asked if Mr. Pettit knew about the hearing today. Ms. Stanfield stated that insofar as she knew, he did because the memorandum dated August 1, 2006, was addressed and sent to him. She said she had not spoken to Mr. Pettit, so she was not aware of whether he had received it or not.

Mr. Stanfield said Mr. Beard was correct, that the violation had been sent to the owner of record of the property, that he had responded, and that he had tried to remedy the situation by informing the tenant that he must vacate the property. Mr. Beard asked whether Mr. Fenton had sent a letter to Mr. Hall on June 14, 2006, informing him that he must vacate the property. Ms. Stanfield said that was correct. Mr. Beard asked if the Board was to consider whether to accept an appeal from the tenant. Ms. Stanfield replied in the affirmative. Mr. Beard said that it seemed to him that the County had done what it should by informing the owner of record and that it was the owner of record's responsibility to protect his property pursuant to his tenants. Mr. Beard said he would not support acceptance of the appeal.

Mr. Hammack said the County should determine whether or not Mr. Hall had vacated the property, which would render the case moot. He said he did not think that C.J.'s Towing, Inc., had been properly noticed.

Mr. Beard moved to not accept the application for appeal filed by C.J.'s Towing and Mr. Carroll C. Hall. Mr. Byers seconded the motion.

Mr. Hart made a substitute motion to defer decision on the consideration of acceptance of the appeal filed by C.J.'s Towing and Mr. Carroll C. Hall to September 12, 2006. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the McLean Bible Church, the Concerned Citizens of Hollin Hall, and the Lee litigation, and correspondence; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

The meeting recessed at 9:56 a.m. and reconvened at 11:52 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard,

discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Mr. Hart moved that the Board authorize Mr. Hammack to send the letter to Mr. Griffin that the Board had discussed in closed session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Mr. Hart moved that the Board authorize Mr. McCormack to take the actions discussed by the Board in closed session. Mr. Ribble seconded the motion, which carried by a vote of 4-2. Mr. Byers and Mr. Hammack voted against the motion. Ms. Gibb was absent from the meeting.

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Chairman DiGiulian stated that the Board had a requirement of staff to give the Board copies of the letters on final decisions on appeals, but because the Board would not be meeting for a month, he asked whether the Board wanted to waive the requirement for A-1 Solar Control.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that staff had been asked not to send letters on final decisions on appeals until the Board viewed them, but if the A-1 Solar Control letter was held, it would not be sent until after September 12, 2006, which would be beyond the appellant's 30-day appeal period.

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

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As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

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

Approved on: June 13, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 12, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack Jr. John F. Ribble III was absent from the meeting.

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

~ ~ ~ September 12, 2006, Scheduled case of:

9:00 A.M. ROBERT E. AND MAUREEN D. CARPENTER, SP 2006-SU-030 Appl. under Sect(s).8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 34.88 ft. from the front ot line. Located at 3001 Fox Den La. on approx. 2.06 ac. of land zoned R-1. Sully District. Tax Map 36-4 ((3)) 56.

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

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith C Martin, the applicants' agent, Sack, Harris & Martin, P.C., 8270 Greensboro Drive, Suite 810, McLean, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction to the minimum yard requirements based on error in the building location to permit an accessory structure, specifically a barn with a tractor shed, to remain 34.88 feet from the front lot line. A minimum front yard of 40 feet is required; therefore, a modification of 5.12 feet was requested.

In response to a question from Mr. Hart, Ms. Hedrick explained that the line drawn on the tax map was a storm drainage easement. The structure was built in 1995 by a building permit which allowed it 40 feet from the lot line.

Mr. Martin presented the special permit request as outlined in the statement of justification submitted with the application. He outlined the sequence of events regarding construction of the barn and the fact that subsequent to its completion, Mr. Carpenter realized that an enclosed area was needed to park his tractor. He stated that Mr. Carpenter believed no additional permit was required because the enclosure was part of the original barn, the structure was an accessory structure permitted in the zoning district in 1995, and it was not higher than seven feet. There was confusion over whether the area was considered a front or side yard. Mr. Martin said the structure was not a detriment to the neighbor, and Mr. Carpenter had received numerous compliments on the structure. The error was done in good faith, and it would be a significant financial hardship if required to tear it down.

In response to a question from Mr. Beard, Ms. Hedrick said there was no notice of violation. A permit was denied when Mr. Carpenter applied for a permit to build the principal structure and it was noticed that the tractor shed was too close to the front lot line.

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

Mr. Byers moved to approve SP 2006-SU-030 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT E. AND MAUREEN D. CARPENTER, SP 2006-SU-030 Appl. under Sect(s).8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 34.88 ft. from the front lot line. Located at 3001 Fox Den La. on approx. 2.06

~ ~ ~ September 12, 2006, ROBERT E. AND MAUREEN D. CARPENTER, SP 2006-SU-030, continued from Page 503

ac. of land zoned R-1. Sully District. Tax Map 36-4 ((3)) 56. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 2006; and

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

1. The applicants are the owners of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This special permit is approved for the location of the accessory structure (barn / tractor shed) as shown on the plat prepared by Robert E. Carpenter, Jr., dated June 7, 2006, submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the accessory structure shall be diligently pursued within 30 days and obtained within 90 days of final approval or this Special Permit shall be null & void.

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

~ ~ ~ September 12, 2006, ROBERT E. AND MAUREEN D. CARPENTER, SP 2006-SU-030, continued from Page 504

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

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~ ~ ~ September 12, 2006, Scheduled case of:

9:00 A.M. KAREN ROBEY, SP 2006-MA-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.8 ft. with eave 7.7 ft. from side lot line. Located at 3708 Rose La. on approx. 12,891 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((3)) 177.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Karen L. Robey, 3708 Rose Lane, Annandale, Virginia, said she had made a typographical error on the second affidavit she submitted. She said it erroneously stated that she had known that a building permit was required, but in reality, she had not known.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit the enclosure of an existing deck into a screened porch to remain 8.8 feet with eave 7.7 feet from the side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, modifications of 3.2 feet and 1.3 feet were requested.

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

Ms. Robey presented the special permit request as outlined in the statement of justification submitted with the application. She explained that the County advised her that the deck she had built in 2000 did not require a permit because it was not constructed aboveground. Her mother resided with her, was in declining health, and enjoyed being outside on the deck; however, because bugs were a problem and Ms. Robey had earlier been informed that no permit was necessary for the deck, she screened the porch. She said the house was originally owned by her mother and had been in the family for years. The porch was continuously enjoyed by family and friends, and it would be a hardship to take it down.

In response to a question from Mr. Beard regarding how the application came before the BZA, Ms. Hedrick said it was referred by Code Enforcement although there was no notice of violation. She said she was unsure how it came to their attention, and Ms. Robey had been working with them in order to have it permitted.

Responding to a question from Mr. Hammack, Ms. Robey said her husband had installed ceiling lighting.

In response to a question from Mr. Hart, Ms. Hedrick said the applicant could have applied under the new Ordinance amendment category for the reduction in minimum yard requirements if the deck had not yet been built.

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

Mr. Hammack moved to approve SP 2006-MA-029 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KAREN ROBEY, SP 2006-MA-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.8 ft. with eave

~ ~ ~ September 12, 2006, KAREN ROBEY, SP 2006-MA-029, continued from Page 505

7.7 ft. from side lot line. Located at 3708 Rose La. on approx. 12,891 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((3)) 177. 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, 2006; and

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

1. The applicant is the owner of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This special permit is approved for the location of the screened porch addition, as shown on the plat prepared by Huntley, Nyce & Associates, Ltd., dated September 23, 2005, as revised through June 21, 2006, submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the screened porch addition shall be diligently pursued within 30 days and obtained within 90 days of final approval or this Special Permit shall be null & void.

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

~ ~ ~ September 12, 2006, KAREN ROBEY, SP 2006-MA-029, continued from Page 506

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

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~ ~ ~ September 12, 2006, Scheduled case of:

9:00 A.M. DOLLAR WORLD +, INC., SP 2006-MA-028 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 6464-A Lincolnia Rd. on approx. 1.6 ac. of land zoned C-6 and HC. Mason District. Tax Map 61-3 ((1)) 16A.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark G. Jenkins, the applicant's agent, 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The subject property was located within an existing shopping center totaling 1.6 acres in size, located at the southeast intersection of Lincolnia Road and Old Columbia Pike in the Mason District. It comprised 5,334 square feet and was zoned C-6 and HC. County records indicated that the subject property was developed by right in 1982, and no conditions or proffers encumbered the property. The center contained 15,325 square feet of gross floor area and 88 parking spaces. The center contained several other retail and commercial tenants, which were zoned C-6 and comprised of commercial uses. The property to the west was zoned R-12 and developed with townhouses. The applicant requested approval of a special permit to establish a billiard hall by allowing the installation of up to 11 billiard tables and an ancillary eating establishment. The subject property operated as a dollar store. The applicant proposed the installation of a maximum of 11 billiard tables arranged throughout the interior, with approximately 12 dining tables along the walls. No changes were being proposed to the exterior of the property. The property contained 88 parking spaces total, and the applicant's parking requirement for the use was 37 of the spaces. Five employees were proposed for the use, with the hours of operation 11:00 a.m. to 12:00 a.m. Sunday through Thursday, and 11:00 a.m. to 2:00 a.m. Friday and Saturday. Staff recommended approval of SP 2006-MA-028 subject to the proposed development conditions.

In response to questions from Mr. Hart, Susan C. Langdon, Chief, Special Permit and Variance Branch, explained that the staff person reviewing the permit application gave her specific language for Development Condition 7 concerning parking. She said the applicant would be required to do a "Parking Study" which would lay out the tenants and each tenant's parking requirements. At the time the applicant applied for a non-residential use permit, staff would then review the study to determine whether the site met those requirements. The Department of Public Works and Environmental Services (DPWES) preferred the term "Parking Study" instead of "Tabulation," and at the present time only the number of spaces were to be determined, not the number that each of the shopping center's uses required.

Ms. Langdon said the agent who had proposed changes to Condition 1 would address Mr. Beard's question concerning who the applicant was.

Mr. Jenkins confirmed that Dollar World was the applicant, the existing tenant, and the operator of the proposed facility, if it were approved. He said Dollar World was committed to a seven-year lease and with the present competition, sought another use to augment its costs. Mr. Jenkins said the use was within a well-established shopping center a good distance away from residential development and located in a small space, as were several other like uses such as Fast Eddies. He said there were two separate parcels of land, with the subject parcel the smaller portion, and the applicant would apply for an ABC license. He stated that at the suggestion of staff, the hours of operation were reduced from 2:00 a.m. to 12:00 a.m. for certain days. Mr. Jenkins said the applicant would keep the site clean in response to neighbor concerns, and he would draft development conditions to address the matter if necessary. He did not agree with staff's language that required a parking study instead of a tabulation, as the former seemed to require much more documentation such as field studies and such things, and he understood that only the number of parking

spaces to be provided were required and that the development condition's language seemed to ask for unnecessary things. He clarified that the entity would not transfer, and the BZA's policy did not apply for a successor tenant.

Mr. Beard said that throughout the permit and site plan process, there may be many particulars that were imposed on the tenant for the use, such as the number of restrooms.

As requested by Mr. Hart, Ms. Langdon again explained that the term "study" was requested by DPWES instead of "tabulation" and that staff sought regularly to keep apprised of preferred language when crafting development conditions.

Mr. Hart commented that perhaps the Ordinance needed to be changed because throughout it, the term "tabulation" was used.

As requested by Mr. Hammack, Ms. Langdon and Mr. Jenkins explained the landlord's authorization of being aware of the proposed use, that it was in compliance with the lease agreement, and the landlord's name was not required on the application, but their letter of authorization was a submission requirement.

Chairman DiGiulian called for speakers.

Virginia Fletcher, 6331 Barcroft Mews Drive, Falls Church, Virginia, came forward to speak. She said she represented the Barcroft Mews Homeowners Association, and all of the 48 townhomes were opposed to the proposed pool hall coming to their neighborhood. She said that in the immediate vicinity there were several children's recreational and school establishments, and a pool hall with alcohol was not a healthy environment. She said there were also parking concerns because of several religious facilities in the area.

Mr. Beard requested that Ms. Fletcher provide documentation from all 48 townhouse residents confirming that they opposed the use. He said that such a declaration of unanimous opposition must be carefully considered so as to be fair to the applicant. Ms. Fletcher agreed to do so, explaining that their homeowners association only recently became aware of the proposed use because the notice signs were posted on an opposite street and were not seen.

Mark Herrin, 3907 Barcroft Mews Court, Falls Church, Virginia, came forward to speak. He concurred that the homeowners association only learned of the hearing the Friday evening before the public hearing. He was concerned about how the hearing had progressed and how the application had been processed. An issue of safety was foremost to the residents as there was concern over what elements the use would attract because over the last six months the shopping center area had become a gathering spot for gang activity.

Chairman DiGiulian noted for the record that seven letters in opposition had been received.

In his rebuttal, Mr. Jenkins confirmed that the required legal notification was done, but because Barcroft Mews was not an adjacent or contiguous property, individual notification letters were not required. He said they had not known of safety issues, but that it was obvious such concerns were serious. He said today's pool halls and billiard parlors were far different establishments than those of the past and catered to middle aged couples and families for recreational outings. He added that the ABC license would take into consideration those factors. Mr. Jenkins said the parking issue was already validated, and the building permits would require compliance to all pertaining health and building codes.

In response to a question from Ms. Gibb concerning the posting of the notice of public hearing sign, Ms. Langdon said the sign would have been posted along Lincolnia Road, and there were pictures of every posting in the records if the Board cared to look at them.

Ms. Gibb commented that she was not sure what to think about the use as she had previous experience with only a few, and there never was information about ramifications and problems subsequent to the approval that came back to the Board. She said there were several other family restaurants and establishments in the shopping center, and she was concerned over the fact that there would be children out and about and the pool hall would be serving alcoholic beverages. She also noted that a 7-Eleven store already appeared to be a congregation area for loiterers.

~ ~ ~ September 12, 2006, DOLLAR WORLD +, INC., SP 2006-MA-028, continued from Page 508

Mr. Jenkins said the applicant could ensure that the area in front of its establishment would not allow congregating. They would restrict anyone under the age of 18 from entering without being accompanied by an adult, and the establishment was not a bar, but served only beer, wine, and food. Mr. Jenkins referenced the ABC licensing, which took into account impacts and effects of such things on a neighborhood, and the use would be controlled by the ABC licensing standards.

Mr. Hart said more time might be required before the Board made its decision. He noted that the impacts of something like a pool hall on a neighborhood were difficult to assess, but Ordinance standards were satisfied at least from a technical standpoint. He recollected some activities and circumstances of a former establishment, the Shark Club, that had to go before the ABC Board because of its raucous activities with efforts afterwards to tone down their activities, and the subsequent development conditions were more detailed than those proposed for this application. Mr. Hart requested that staff review the Shark Club's development conditions for comparison, and perhaps the Board could prevent unsavory activity associated with this application and address all the neighbors' concerns.

Mr. Byers voiced his concern over gang activity once the use was established, although Mr. Jenkins had stated there was no empirical evidence to suggest that there was gang activity associated with a pool hall. Mr. Byers said that once the pool hall was established, then it was too late. He said he was also concerned over the 2:00 a.m. hours being conducive to the residential neighborhoods, the school and park, and that there was a significant number of neighbors opposed to the use. Mr. Byers requested that staff obtain from DPWES the definitions of and differences between "study" and "tabulation."

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer the decision on SP 2006-MA-028 to October 17, 2006, at 9:00 a.m., with the record remaining open for written comments. Mr. Hammack and Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ September 12, 2006, Scheduled case of:

9:00 A.M. TRUSTEES FOR LIVING SAVIOR LUTHERAN CHURCH, SPA 86-S-023-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 86-S-023 previously approved for church and nursery school to permit increase in seating capacity, building additions and site modifications. Located at 5500 Ox Rd. on approx. 7.74 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 50 and 50A. (Admin. moved from 8/8/06 at appl. req.)

Mr. Hart made a disclosure, but stated that he did not believe it would affect his ability to participate in the case.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benjamin F. Tompkins, the applicant's agent, Reed Smith LLP, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

Gregory Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant proposed to amend SP 86-S-023, previously approved for a church and nursery school, to permit an increase in seats from 200 to 400, building additions, parking spaces, and site modifications. The applicant proposed the construction in three phases. Staff recommended approval of SPA 86-S-023-02 subject to the revised proposed development conditions dated September 12, 2006.

Mr. Tompkins presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the application was relatively straightforward. It was to permit a

phased expansion with the church's goal to expand as the surrounding community had expanded. He said the application was consistent with the Comprehensive Plan and the R-C zoning requirements, and that at final build-out, the church would still have a floor area ratio (FAR) below the requirement. He said the site also met the goal of the Comprehensive Plan in the Occoquan Watershed by providing 41 to 46 percent undisturbed open space. To inform the neighbors of the proposal, Mr. Tompkins said the applicant held a community outreach meeting, sent several hundred invitations, and met with individual neighbors as well. He said the site, the layout and architectural design, was compatible with the low density residential surroundings; it had appropriate vegetative screening and buffers; the infrastructure to serve the development was in place; the access would be from Ox Road and not through surrounding communities; and, the applicant would dedicate additional right-of-way.

In response to a question from Mr. Hart regarding the current policy of 50 percent or more undisturbed open space in the R-C District, Susan C. Langdon, Chief, Special Permit and Variance Branch, concurred with Mr. Hart's comment that although the site would not have 50 percent, at 46 percent it would have more than what it previously had. Ms. Langdon said the church had been built before the policy for the 50 percent undisturbed open space had been implemented. She said the church currently had 45 percent, and with re-vegetation, they would end up with approximately 46 percent, so it was an increase over what was existing. She confirmed for Mr. Hart that was the rationale behind staff's recommendation and that there was no change in staff's policy. Staff still preferred to have 50 percent undisturbed open space and had explored ways to increase it with the applicant.

Chairman DiGiulian called for speakers.

John Murphy, 11126 Flora Lee Drive, Fairfax Station, Virginia, came forward to speak. He said he had resided at that address since 1981, and although not directly opposed, as the church was a good neighbor, he proposed three development conditions which addressed his concerns over light, noise, and traffic. With regard to the lighting, he believed it should be controlled by a timer and the fixtures remain the same height and type as those that existed. Regarding construction phasing, Mr. Murphy said he was concerned that any future requests for waivers of transitional screening or barrier be denied. Concerning the parking issue, he requested that the approved permit be specific, that it clearly state that there shall never be parking opened to Fourstairs Court or into the Barton Place development.

In response to a question from Ms. Gibb, Mr. Murphy said the applicant had indicated there were no problems with his suggested conditions.

Ms. Langdon said she believed staff had addressed each of Mr. Murphy's concerns. She noted that Development Condition 15 stipulated the lighting operation and restrictions; the transitional screening and fencing would not be adjusted; and, Development Condition 18 denied any access way, as a proposed pond would physically separate the parking area from the cul-de-sac.

Stating that he appreciated staff's detail, Mr. Murphy said he would not want anything to change in the future, and he wanted assurance that his suggestions and concerns were on the record.

Ms. Gibb said that currently there was not a condition for the lighting timer, and Mr. Murphy should be aware of that fact.

Mr. Beard informed Mr. Murphy that although his suggested conditions were on the record, they were not enforceable.

Mr. Murphy said he understood the process. He said he was just a citizen whose requests made sense, but he also realized the Board may or may not choose to consider them.

In his rebuttal, Mr. Tompkins said that Mr. Murphy's concerns were heard, and each was addressed in the development conditions. He noted Condition 15 addressed the parking lot lighting, and Condition 18 stipulated access from Ox Road and no access be provided from Fourstairs Court. He said staff had addressed the screening and barrier concerns which were reflected in the conditions. He submitted that if ever there was a change entertained, it required coming before the BZA or would be in violation of the conditions.

~ ~ ~ September 12, 2006, TRUSTEES FOR LIVING SAVIOR LUTHERAN CHURCH, SPA 86-S-023-02, continued from Page 510

Responding to a comment from Ms. Gibb about regulating the lighting, the project manager, Kenneth C. Harding, Decision Planning Group, Inc., P.O. Box 1822, Centreville, Virginia, explained that various events would complicate usage of an automatic timer, and the solution was that a responsible person would physically turn the lights off after an event. Mr. Harding stated that Condition 11 stipulated that the barrier requirement would be modified along the southern and western sides in order to allow the existing board-on-board fence to remain in its current location inside the property line and the barrier requirement be waived along the eastern and northern property boundaries.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SPA 86-S-023-2 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES FOR LIVING SAVIOR LUTHERAN CHURCH, SPA 86-S-023-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 86-S-023 previously approved for church and nursery school to permit increase in seating capacity, building additions and site modifications. Located at 5500 Ox Rd. on approx. 7.74 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 50 and 50A. (Admin. moved from 8/8/06 at appl. req.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 2006; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees for Living Savior Lutheran Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 5500 Ox Road, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by William H. Gordon Associates, Inc., December 2005, revised through August 9, 2006, signed September 11, 2006, sheets one (1) through ten (10), and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. Upon the issuance of a new Non-RUP, the seating capacity of the main worship hall shall not exceed 400. During the first phase of construction the sanctuary seating may increase to 304 seats. The seating may increase to 400 only with construction of the new parking area bringing the total parking to 179 spaces. Notwithstanding the depiction on the SP Plat of the three phased expansion of the improvements of the property, one or more phases may occur simultaneously.

6. There shall be a maximum attendance at any one time of (ninety-nine) 99 children in the nursery school.

7. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.

8. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be supplemented as shown on the plat as variety, size and location of supplemental plantings shall be determined in consultation with the Urban Forest Management (UFM), DPWES.

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

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

   The trees designated for replanting on the southern portion of the property will be field located as determined in consultation with UFM. If the trees fail to survive within one year they will be replaced as determined necessary by UFM.

10. Foundation plantings and shade trees shall be provided around the church building to soften the visual impact of the structures. The species, size and location shall be determined in consultation with UFM.

11. The barrier requirements shall be modified along the southern and western sides in order to allow the existing board on board fence to remain in its current location inside the property line. The barrier requirement shall be waived along the eastern and northern property boundaries.

12. Interior and peripheral parking lot landscaping shall be provided, at a minimum, in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be determined in consultation with UFM.

13. Stormwater management and Best Management Practices (BMP) facilities designed to protect the Occoquan Watershed shall be provided as shown on the Special Permit Amendment Plat. Additional

measures such as Low Impact Development (LIDS) methods may be provided as determined by DPWES. The applicant shall enter into an agreement with DPWES, in such a form as required by DPWES, at the time of site plan approval that sets forth a maintenance schedule and procedure for the underground detention facility.

14. Right-of-way dedication shall be provided as depicted on the plat, or as determined by the Department of Transportation and the Virginia Department of Transportation (VDOT). The right-of-way shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first.

15. Any new proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property. Parking lot lighting shall be turned off one-half hour after any event held at the church except for building mounted security lighting which shall be shielded to prevent off-site glare.

16. An outdoor recreation area shall be provided in accordance with Sect. 8-305.

17. Access to the site shall be provided by Ox Road. No access to the site shall be provided from Fourstairs Court.

18. No outside speakers or public address systems shall be permitted.

19. With the inclusion of revegetated areas depicted on the SPA Plat the total amount of undisturbed open space and revegetated areas as shown on the SP Plat shall not be less than 46% of the total site area.

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

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

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

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~ ~ ~ September 12, 2006, Scheduled case of:

9:00 A.M. FREEDOM FITNESS, LLC, SPA 87-S-088-03 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 87-S-088 previously approved for health club to permit increase in size and number of patrons and change in permittee. Located at 14290 Sullyfield Ci. on approx. 5.2 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3 ((5)) D2. (Admin. moved from 7/25/06 for ads)

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

affected.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benjamin F. Tompkins, the applicant's agent, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

Gregory Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 87-S-088, previously approved for a health club, to permit an increase in the number of patrons. The applicant requested an increase in their lease space within an existing building from 20,235 square feet to 29,845 square feet and an increase in parking spaces from 51 to 77 spaces. The number of patrons permitted was proposed to increase from 100 to 150. The number of employees would increase from 18 to 20. The applicant also requested a change in permittee from Fimat, Inc., DBA Gold's Gym & Fitness Center to Freedom Fitness, LLC. No other site modifications were proposed. Staff recommended approval of SPA 87-S-088-03 subject to the proposed development conditions.

Mr. Tompkins presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the application was consistent with the Comprehensive Plan and current zoning for the property. He noted that the operation's peak hours were counter to most of the other commercial uses for traffic and parking, and that was a benefit to the surrounding communities. The applicant had no issues with only one exception, which concerned Development Condition 6. Although their civil engineer indicated 77 parking spaces on the plat, after further review Mr. Tompkins said only 70 spaces were necessary.

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

Mr. Beard moved to approve SPA 87-S-088-03 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FREEDOM FITNESS, LLC, SPA 87-S-088-03 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 87-S-088 previously approved for health club to permit increase in size and number of patrons and change in permittee. Located at 14290 Sullyfield Ci. on approx. 5.2 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3 ((5)) D2. (Admin. moved from 7/25/06 for ads) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 2996; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 5-503 of the Zoning Ordinance.

~ ~ ~ September 12, 2006, FREEDOM FITNESS, LLC, SPA 87-S-088-03, continued from Page 514

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

1. This approval is granted to the applicant, Freedom Fitness, LLC, only and is not transferable without further action of this Board, and is for the location indicated on the application, 14290 Sully Field Circle, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Patton Harris Rust & Associates, PC , dated February 28, 2006, approved with this application, as qualified by these development conditions. This approval shall only govern the 29,845 square foot area to be occupied by the approved health club.

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 amendment shall be in substantial conformance with these conditions. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of employees on site at any one time shall be twenty (20).

6. Upon issuance of a Non Residential Use Permit (Non-RUP), there shall be a minimum of seventy-seven (77) parking spaces or the minimum parking spaces required by the Ordinance. A parking tabulation shall be submitted to and approved by the Director, Department of Public Works and Environmental Services (DPWES) which shows that the required parking for all uses can be provided for Building 2 on Lot F1 as shown on the special permit plat or this special permit amendment shall be null and void. All parking for this use shall be on site.

7. Upon issuance of a Non-RUP, there shall be a maximum of 150 patrons on site at any one time.

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 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. Ribble was absent from the meeting.

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~ ~ ~ September 12, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF THE MCLEAN KOREAN PRESBYTERIAN CHURCH, SPA 73-D-150-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 73-D-150 previously approved for church to permit building additions, increase in land area and parking and site modifications. Located at 7140 and 7144 Dominion Dr. on approx. 2.64 ac. of land zoned R-3. Dranesville District. Tax Map 30-1 ((1)) 75 and 83A pt. (Admin. moved from 8/1/06 for ads)

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

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel, the applicant's agent, Walsh, Colucci, Lubeley, Emrich & Terpak, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Gregory Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 73-D-150, previously approved for a church, to permit a building addition, an increase in land area, an increase in seating, which was subsequently withdrawn, an increase in parking, and site modifications. Staff recommended approval of SPA 73-D-150-3 subject to the proposed development conditions.

In response to a question from Mr. Hart concerning a trail, Mr. Chase said the issue was addressed to staff's satisfaction in the latest plat, and at the time of site plan review, the Department of Public Works and Environmental Services would make the determination whether the trail was required.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the church proposed to increase its parking spaces, reconfigure the parking lot, and construct minor additions to the existing buildings. She said the subject property had been used as a place of worship for many years, and its original improvements were constructed prior to the requirement to obtain special permit or special exception approval. Ms. Strobel said the parking was the primary reason the application was filed. Although 233 parking spaces were originally approved, only 112 were constructed. The lot's configuration did not allow construction of additional spaces, so the applicant was unable to take advantage of the prior approval. Because the church held activities and services at various times, its members tended to come early or remain after their service, which created some overlap in activities that warranted sufficient parking. Ms. Strobel said she wanted to be sure there would not be a future safety concern of spillover parking out onto Old Dominion Drive. The church worked with staff and the community to ensure everyone was comfortable with the proposal. One example of the church's numerous community services was its Goodwill drop-off site. Ms. Strobel requested minor modifications to the proposed development conditions, which had been discussed with Mr. Chase. She said she had concerns about Development Condition 6 regarding encouraging carpooling and the enforcement of the condition. She said there had been no problems at the location, and she asked that the last sentence in Condition 6 be deleted. Ms. Strobel said Condition 7, which referred to providing tree preservation to the greatest extent possible, seemed to be open ended, and she did not have a problem with the concept, but did not want that to cause the number of parking spaces to be reduced. Ms. Strobel asked the members of the church who were present to show their support to stand.

In response to a question from Mr. Hart concerning an easement, Ms. Strobel said that matter would be addressed during the time of site plan.

Chairman DiGiulian called for speakers.

Jeong Woo Kim, Senior Pastor of McLean Korean Presbyterian Church, came forward to speak. He said there was a great need for additional parking spaces in order to accommodate members and allow after service mingles. He said there were two services, one in English and one in Korean. Pastor Kim requested that the BZA approve the application.

Mahan Shohrah, 7140 Old Dominion Drive, McLean, Virginia, came forward to speak. She said she did not oppose the application, but as an adjoining neighbor, her home shared the same driveway easement as the church. She explained that after purchasing the property, they learned that the church was granted a permit to park along one side of the driveway, but both sides of the driveway were used because of the inadequate parking on-site, and often her driveway was blocked. Ms. Shohrah voiced concern that her home would appear as if it were placed in the middle of a parking lot, and she wanted assurance that all the areas

depicted on the map as open space and vegetation would remain. She requested supplemental plantings for additional screening and buffering.

In her rebuttal, Ms. Strobel said there had been discussions with Ms. Shohrah, and the applicant agreed to provide plantings, save trees, build a split rail fence, place plantings on Ms. Shohrah's property, and not expand the existing travel way. Ms. Strobel said she believed all concerns had been addressed.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 73-D-150-03 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE MCLEAN KOREAN PRESBYTERIAN CHURCH, SPA 73-D-150-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 73-D-150 previously approved for church to permit building additions, increase in land area and parking and site modifications. **(THE REQUEST FOR INCREASED SEATING WAS WITHDRAWN)** Located at 7140 and 7144 Dominion Dr. on approx. 2.64 ac. of land zoned R-3. Dranesville District. Tax Map 30-1 ((1)) 75 and 83A pt. (Admin. moved from 8/1/06 for ads) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 2006; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, McLean Korean Presbyterian Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 7140 and 7144 Old Dominion Drive, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dewberry and Davis, LLC , Inc., dated May 2, 2006, as revised through August 15, 2006, sheets one (1) through three (3) and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of seats in the main area of worship shall be 294.

6. Parking shall be provided as depicted on the special permit plat. All parking shall be on site. There shall be no overflow parking permitted along adjacent subdivision streets. The applicant shall make all members aware of this restriction.

7. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be supplemented as shown on the plat, with the following additions:

   Notwithstanding that which is shown on the plat, the extent of tree preservation shall be the greatest extent possible on-site, as determined by the Urban Forest Management (UFM) so long as the total proposed number of parking spaces is not reduced. Supplemental plantings over and above that which is shown on the plat may be required as determined necessary by UFM to supplement existing vegetation in order to meet the intent of transitional screening requirements. The size, species and location of all supplemental and transitional screening plantings shall be determined in consultation with UFM.

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

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

10. The barrier requirement shall be waived, as depicted on the special permit amendment plat.

11. Interior and peripheral parking lot landscaping shall be provided, at a minimum, in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be determined in consultation with UFM, at the time of site plan review.

12. The limits of clearing and grading shall be no greater than as shown on the SP Plat or as modified by these conditions and shall be strictly adhered to. A grading plan which establishes the final limits of clearing and grading necessary to construct the improvements shall be submitted to UFM, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including UFM, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.

13. Stormwater management and Best Management Practices facilities shall be provided as determined by DPWES.

~ ~ ~ September 12, 2006, TRUSTEES OF THE MCLEAN KOREAN PRESBYTERIAN CHURCH, SPA 73-D-150-03, continued from Page 518

14. Any new proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Outdoor lighting fixtures shall not exceed twelve (12) feet in height measured from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property. Parking lot lighting shall be turned off one-half hour after any event held at the church. Outdoor building-mounted security lighting shall be shielded to prevent off-site glare.

15. The applicant shall obtain a sign permit for the proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.

16. If determined necessary by VDOT at the time of site plan approval, the applicant shall design and construct an asphalt or concrete trail eight feet or more in width along the Old Dominion Drive frontage of the property.

17. If the proposed trench is determined to be inadequate in capacity, the trench shall be redesigned to meet the capacity requirements as determined by DPWES.

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

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

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

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~ ~ ~ September 12, 2006, Scheduled case of:

9:30 A.M. CLYDE AND AUDREY CLARKE, A 2005-MA-054 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the enlargement of a nonconforming principal structure does not comply with current bulk regulations for the R-3 District in violation of Zoning Ordinance provisions. Located at 3444 Rock Spring Av. on approx. 8,250 sq. ft. of land zoned R-3, H-C, SC and CRD. Mason District. Tax Map 61-2 ((22)) 12. (Decision deferred from 1/31/06 and 4/25/06)

Chairman DiGiulian noted that A 2005-MA-054 had been withdrawn.

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~ ~ ~ September 12, 2006, Scheduled case of:

9:30 A.M. HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, 12/20/05, 1/31/06, and

~ ~ ~ September 12, 2006, HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042, continued from Page 519

3/14/06 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-042 had been administratively moved to December 19, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ September 12, 2006, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, 12/20/05, 1/31/06, and 3/14/06 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-040 had been administratively moved to December 19, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ September 12, 2006, Scheduled case of:

9:30 A.M. NVR, INC., A 2004-DR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordanc with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance Provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, 12/20/05, 1/31/06, and 3/14/06 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-041 had been administratively moved to December 19, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ September 12, 2006, Scheduled case of:

9:30 A.M. SUPERIOR 8500, LLC; COUTURE TEHMINA, INC. D/B/A MCLEAN FURNITURE GALLERY, A 2006-PR-025 Appeal of a determination that appellants have established a retail sales establishment on property in the I-5 District, in violation of Zoning Ordinance provisions and the conditions of their Non-Residential Use Permit, and of the subsequent revocation of the Non-Residential Use Permit by the Zoning Administrator. Located at 8500 Lee Hy. on approx. 2.21 ac. of land zoned I-5 and HC. Providence District. Tax Map .49-3 ((15)) 1 and 49-3 ((1)) 70.

Chairman DiGiulian noted that A 2006-PR-025 had been administratively moved to September 19, 2006, at 9:30 a.m., at the appellants' request.

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~ ~ ~ September 12, 2006, Scheduled case of:

9:30 A.M. THUAN TRAN, A 2006-MA-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing seven people or more, not necessarily related by blood or marriage, to occupy a dwelling unit in violation of Zoning Ordinance provisions. Located at 4406 Roberts Av. on approx. 32,436 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((5)) 59.

~ ~ ~ September 12, 2006, THUAN TRAN, A 2006-MA-026, continued from Page 520

Chairman DiGiulian noted that A 2006-MA-026 had been withdrawn.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation of McLean Bible Church, 06-8305 and 106CD769; Jackson, 06-10122; Welsh, 06-10954; Board of Supervisors vs. BZA, 06-10952; Lee; and Concerned Citizens of Hollin Hall; and correspondence in general pursuant to Virginia Code Ann. Sect. 2.2-3711(A)(7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

The Board recessed at 10:59 a.m. and reconvened at 11:57 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board of Zoning Appeals during the Closed Session. Mr. Byers seconded the motion which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

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Mr. Beard moved that the Board of Zoning Appeals approve the letter Mr. Hammack was directed to send. Mr. Byers seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

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~ ~ ~ September 12, 2006, After Agenda Item:

Additional Time Request
Shalom Presbyterian Church of Washington, SP 00-S-063

Mr. Hammack moved to approve 18 months of Additional Time. Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting. The new expiration date was March 13, 2007.

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~ ~ ~ September 12, 2006, After Agenda Item:

Additional Time Request
Holy Spirit Catholic Church, SPA 85-A-007-3

Mr. Beard moved to approve 18 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was October 7, 2007.

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~ ~ ~ September 12, 2006, After Agenda Item:

Additional Time Request
Salameh Brothers Construction Company, VC 01-V-187

Mr. Byers moved to approve 12 months of Additional Time. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was January 31, 2007.

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~ ~ ~ September 12, 2006, After Agenda Item:

Consideration of Acceptance - Application for Appeal
C.J.'s Towing and Mr. Carroll C. Hall filed by Gene C. Pettit

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appeal had been withdrawn, C.J.'s Towing had vacated the property, and no action by the Board was necessary.

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~ ~ ~ September 12, 2006, After Agenda Item:

Consideration of Acceptance - Application for Appeal
HBL, LLC

Mr. Hammack moved to accept the application for appeal. Mr. Hart seconded the motion for purposes of discussion.

Chairman DiGiulian asked whether anyone was present to speak to the question of the acceptance.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, introduced Chris King, Deputy Zoning Administrator for Ordinance Administration.

Ms. Stanfield referred to her September 1, 2006 memorandum, stating that staff's position was that the BZA did not have the jurisdiction to decide constitutional issues. She referred to the appellant's letter which claimed that the University Square Associates case was not pertinent; however, staff's position was that the University Square Associated case in the Supreme Court of Virginia clearly held that the BZA could not determine whether authority granted by a Zoning Ordinance was constitutional. Staff believed that the appellant's remedy would be to bring action directly against the local government in Circuit Court.

Mr. Hart said that if the question of whether a constitutional issue was something the BZA was going to reach was set aside, the threshold question was what could be appealed. He said, from his review of the documents, what had been done was a denial of an Ordinance requirement under Sect. 17-201, which was something an officer had done in the administration of the Zoning Ordinance, denying a waiver of a Zoning Ordinance requirement. Even if the Board might not agree with the reason being asserted by the appellant, he questioned whether the Board was required to hear a case where someone was appealing a determination from an officer who interpreted the Zoning Ordinance.

Ms. Stanfield said that because the basis of the appeal was constitutional issues, staff's position was that the appellant's remedy was to bring action directly against the local government in Circuit Court. She said she believed the Department of Public Works and Environmental Services held the same position.

Mr. Hart said that if one did not appeal the waiver denial under the Ordinance provision, it would be arguable that it would become a thing decided that someone had not appealed. He said that it sounded to him that the BZA was proceeding on the reason the appellant was asserting, if the constitutional issue were the only reason, rather than procedurally whether the BZA had to hear the case and make that decision later. Mr. Hart said even if staff were correct, the BZA would have to hear the case because the appellant was appealing a decision of an officer administering the Ordinance, and then later the BZA could decide whether or not it was a good reason. He said the BZA could not prejudge the case by considering it a dumb reason and, therefore, not hear the case.

Chairman DiGiulian called for speakers.

Tara Boyd, representing the appellant, HBL, said they believed the BZA had jurisdiction to hear the appeal, and there were multiple bases for the appeal. She said they were not challenging the constitutionality of the Site Plan Ordinance, but staff's action in imposing a condition to a waiver. She said staff was persuaded to grant the waiver for the requirement for dedication, but then attached a condition that effectually re-imposed it by stipulating that the applicant promise to dedicate in the future. Ms. Boyd said the applicant, a long-time tenant, would consent, but the property owner was not willing. Ms. Boyd said they were before the Board to preserve their right to appeal to the BZA to have the unlawful condition removed. The other issue of their appeal was that the applicant worked with staff to develop an alternative alignment for the proposed

~ ~ ~ September 12, 2006, After Agenda Items, continued from Page 522

extension of Greensboro Drive that met the intention of the Comprehensive Plan, of which staff was satisfied and indicated willingness to grant the waiver. However, staff then requested a reservation of an additional fifteen feet, which the applicant was not authorized to give, as well as the fact that the fifteen feet would be through a portion of parking. Ms. Boyd submitted that if that land were needed in the future, the applicant believed the correct procedure would be to condemn it, but it would involve taking down their proposed garage, which was noted on their site plan. Ms. Boyd said they believed the BZA had the authority to hear their appeal on the grounds presented, and staff was not empowered under Code provisions to require the aforementioned dedication pertaining to their site plan because the garage would store new vehicles, not generate a need for the road.

A colleague of Ms. Boyd, Brian Buniva, requested that the BZA recognize the fact that the site plan was initially filed 18 months prior, that the process had been ongoing for some time, and requested the Board expedite the consideration of the appeal on its merits.

Chairman DiGiulian called for a motion.

Mr. Hammack said the reasons for accepting the appeal had been stated by Mr. Hart. He said he believed the Board should accept the appeal and after hearing it, come to a decision on its merits. Mr. Hammack renewed his motion to accept the application. Mr. Hart seconded the motion.

Mr. Hart said his comments were not meant to prejudge one way or the other, but on the broad sweep of the statute and things that could be appealed, he believed this case fell within it, and one could not determine the merits of the case unless it were taken in the first place.

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

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~ ~ ~ September 12, 2006, After Agenda Item:

Approval of March 29, 2005; October 25, 2005; June 6, 2006; and July 25, 2006 Minutes

Mr. Hart made several corrections to the minutes. Mr. Hammack moved to approve the minutes for March 29, 2005; June 6, 2006; and July 25, 2006; and wait for a complete set of the October 25, 2005 minutes before moving on their approval. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:14 p.m.

Minutes by: Paula A. McFarland

Approved on: July 11, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 19, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ September 19, 2006, Scheduled case of:

9:00 A.M. CHERRY AND PETER BAUMBUSCH, VC 2005-DR-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line and 21.3 ft. from rear lot line. Located at 1436 Highwood Dr. on approx. 15,835 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-2 ((10)) 41. (Admin. moved from 2/14/06 at appl. req.)

Chairman DiGiulian noted that VC 2005-DR-015 had been indefinitely deferred at the applicants' request.

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~ ~ ~ September 19, 2006, Scheduled case of:

9:00 A.M. GEORGINA E. PRICE-SPENCER, SP 2006-SU-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure (barn) to remain 16.3 ft. with eave 15.6 ft. from side lot line. Located at 10628 Hunters Valley Rd. on approx. 2.01 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((2)) 2. (Admin. moved from 7/18/06 at appl. req.) (Decision deferred from 8/1/06)

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

Deborah Hedrick, Staff Coordinator, stated that the subject application had been deferred for decision only from the August 1, 2006 meeting. Staff provided the Board with a memorandum dated September 12, 2006, to address the Board's issues and questions raised from the original public hearing. She stated that the applicant was continuing to pursue the floodplain easement issue with the Department of Public Works and Environmental Services. A letter was distributed to the Board from Dominion Surveyors, Inc., dated September 18, 2006, that confirmed the progress was still ongoing. Ms. Hedrick said staff had provided revised development conditions which should address the issue of the floodplain and the structure within the floodplain, which still required the applicant to work with the Department of Public Works and Environmental Services to resolve the issue; however, staff proposed that the application move forward.

Chairman DiGiulian called the applicant to the podium.

James Spencer, the applicant's husband, stated that he had given the Board a comprehensive review of the application at the previous public hearing. He said both of his neighbors had a history of calling County inspectors to complain about them, and Steve Mason, Zoning Enforcement Branch, had a record of the complaints and had indicated to the applicants that he had considered those complaints to be a matter of harassment. Mr. Spencer stated that if they had thought a permit was necessary, they would have obtained one because they did not want to be in the current situation.

Mr. Beard asked how far away the other property was where the additional horses were kept. Mr. Spencer said the boundary line was 16 feet from the barn and the building itself was approximately 200 feet from the barn. Mr. Beard stated that he was talking about the piece of property where the applicants kept the extra horses. Mr. Spencer replied that it was about a mile away. In response to a question from Mr. Beard regarding the total number of horses, Mr. Spencer said they had a total of eight horses, with a maximum of six on their property, but currently there were only two because the other horses grazed in the leased big field when they were not working.

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

Mr. Byers moved to approve SP 2006-SU-023 for the reasons stated in the Resolution. Mr. Hart seconded

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

Mr. Spencer said that because the process was complicated by the floodplain issue, they had been given 30 days and 90 days to complete the permit process, and he was concerned that the issue could stretch beyond that and requested some leeway.

Chairman DiGiulian stated that Mr. Spencer would probably have to return to request an extension. He asked staff to confirm.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that Development Condition 2 gave the applicant 90 days to obtain final approval. She said that if they could not meet the 90-day requirement, they would have to return for a special permit amendment. She said staff had no objection to giving them more than 90 days. The applicant had to begin the process within 30 days, but if the Board wanted to go up to 120 days, that might be reasonable.

Mr. Hart asked if the applicant would have to go through a Chesapeake Bay or resource protection area process. Ms. Langdon said no, that there was the possibility of an exception for the floodplain issue, but not the resource protection area issue. Mr. Hart asked how long the floodplain exception would take, if it were necessary. Ms. Langdon replied that the applicant would have to apply for a special exception and go through a public hearing. Mr. Hart asked if the applicants would then have to return to the Board of Zoning Appeals. Ms. Langdon said that based on the development conditions, they would not have to do that.

Mr. Byers made a motion to increase the timeframe from 90 to 120 days. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGINA E. PRICE-SPENCER, SP 2006-SU-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure (barn) to remain 16.3 ft. with eave 15.6 ft. from side lot line. Located at 10628 Hunters Valley Rd. on approx. 2.01 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((2)) 2. (Admin. moved from 7/18/06 at appl. req.) (Decision deferred from 8/1/06) 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, 2006; and

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

1. The applicant is the owner of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

~ ~ ~ September 19, 2006, GEORGINA E. PRICE-SPENCER, SP 2006-SU-023, continued from Page 526

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This Special Permit is approved for the location of the accessory structure (barn) as shown on the plat prepared George M. O'Quinn, Dominion Surveyors, Inc., dated March 16, 2006, as submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the accessory structure (barn) shall be diligently pursued within 30 days and obtained within 120 days of final approval or this special permit shall be null and void.

3. A Hold Harmless agreement shall be executed with the County for all adverse effects which may arise as a result of the location of the accessory structure within a floodplain area, prior to approval of a building permit.

4. Disclosure of the potential flood hazards and of the Hold Harmless agreement due to the location of the accessory structure within the 100-year floodplain shall be made in writing to any potential home buyers prior to execution of a sales contract.

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

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

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~ ~ ~ September 19, 2006, Scheduled case of:

9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05, 12/6/05, 1/24/06, 2/7/06, and 6/6/06)

9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and

accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05, 12/6/05, 1/24/06, 2/7/06, and 6/6/06)

John Carter, 4103 Chain Bridge Road, Suite 101, Fairfax, Virginia, indicated that he was counsel for the applicants.

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

Deborah Hedrick, Staff Coordinator, said the Board had deferred the decisions on the subject applications from the June 6, 2006 meeting. She noted that the Board had been provided with a memorandum dated September 12, 2006, which indicated that the quiet title easement issue had been resolved. She said she had been advised in discussions with Mr. Carter that Mr. Hatcher had also proceeded to move Shed 3 from the property, but not Sheds 1 and 2. She said Shed 1 was the one that was in excess of 200 square feet and located on the Park Authority lot line, and Shed 2 was to the rear of the property, which Mr. Hatcher had discussed, moving in prior public hearings. She stated that no resolution concerning Shed 1 had been reached with the Park Authority concerning maintaining it on their property.

Mr. Carter presented copies of photographs of the sheds. He stated that the applicant had removed any cloud on the title with regard to the reservation of right of easement for 25 feet. He acknowledged that there were still issues concerning the two sheds that had to be addressed and could still be of contention. He said one shed appeared to be approximately 12 inches onto Park Authority land, although there was a fence located approximately 3 feet in from the lot line that had been placed there approximately 35 years ago by the Park Authority. Mr. Carter said the fence was on the edge of Hole 2 of the golf course property, and there was a power line easement that ran parallel to the property. He said the area was not a traveled area of the golf course, and it appeared that the Park Authority had allowed the area to become overgrown with natural vegetation in an attempt to redirect the hole. He indicated that the reason for Mr. Hatcher's filing was because of the damage that had resulted to his property caused by golf balls hitting his house, vehicles, and individuals in his yard. Mr. Carter stated that as part of the process of applying for a variance to permit a fence to be erected, the Park Authority had offered to put up the fence, but they had since withdrawn the offer, and the issues of the sheds came to light.

Mr. Carter said Mr. Hatcher, who had health problems and a recent surgery, had managed to move one of the sheds back off the lot lines. He said the larger shed, which had been in place for many years, was built on a concrete foundation, and it presented a hardship for Mr. Hatcher to move it. With respect to the second shed, it would also be difficult to move. He stated that the first group of photographs given to the Board showed three sheds along the property line, and the last set showed adjoining properties with large shed or garage type structures that were within inches or feet from the applicant's property lines. Mr. Carter said the neighborhood had been developed prior to World War II, and almost every house in the neighborhood had large shed-like structures that were very close to the property lines and were similar to the applicants' sheds, so it was the applicants' position that the sheds were not out of character for the neighborhood. He said one of the sheds was within the lot lines, but was 9.6 feet tall and was taller than what would be allowed to be so close to the lot line. Mr. Carter said Sheds 1 and 2 adjoined the Park Authority property and did not affect the neighbor because they were quite a distance from the back lot line of the neighbor's property. He said the applicant would prefer not to have to move the two sheds and understood that the technical legal issues involved were based on the property line there, but the applicants were asking for some consideration in that respect.

Forrest Hatcher, 2747 Oldewood Drive, Falls Church, Virginia, came forward to speak. Referring to the larger shed, Mr. Hatcher said he had spoken to the Park Authority several times in an attempt to get them to lease to him the property the shed stood on until he sold his property, at which time he would move the shed. He said he was told by the Park Authority that they did not have a mechanism in place to do that, and it was something they had never done before. He said it would be difficult to move the shed, and he was not sure that it would be possible to relocate it or build a new wall and tear it down. He said he was requesting he be given a reasonable amount of time and be allowed to remove the part of the shed that encroached into County property and build a new wall. The shed would then be zero feet from the property line after

removing the foot and a half that had inadvertently been built on County property. Mr. Hatcher said the original fence had been put up in 1978 and had been replaced since then in the same location. He said there had always been a building there, and he did not know the property had not been surveyed because it had been passed down through his family. Mr. Hatcher said that when the issue regarding a net had come up, he had the lot surveyed and side marked, and he found out that the shed was approximately a foot and a half on County property. He said he did not believe he would be able to move the shed. He stated that all the sheds shown in the photographs were within 100 feet of his shed, and they were only a few inches away from the property line, which was the standard in the neighborhood. He said the County had recognized that a structure had been there for 50 years, but they did not seem to be concerned about how long the shed had been there; only that he should correct the encroachment to make it legal as far as the Park Authority regulations were concerned.

Mr. Beard asked whether the Board had the authority to do what the applicant had requested. Susan Langdon, Chief, Special Permit and Variance Branch, stated that it was her understanding that if something was on someone else's property, the answer was no. The application was for the property that had been advertised, which was Mr. Hatcher's property. In addition, the Park Authority had indicated to staff that they would not allow it to remain on their property. Mr. Beard said he understood that the Park Authority's overall position was that they were quite aggressive about anything that encroached on their property, but they were quite lenient about things that abut. He asked if the Board had the authority to grant the request. Ms. Langdon said the Board had the authority to allow the shed to be located on Mr. Hatcher's property zero feet from the lot line. She reiterated that the property advertised was Mr. Hatcher's and not the Park Authority's property, and that would not be within the scope of the advertisement.

In answer to a question from Mr. Hart as to why Shed 3 was not an issue, Ms. Hedrick indicated that it was 8.13 feet in height and was under the height requirement. Mr. Hart asked if the shed had been shifted. Ms. Hedrick responded that in an e-mail from Mr. Carter, he had indicated that Shed 3 had been shifted or moved; however, it was not an issue because it was under the height requirement. Sheds 1 and 2 were the issues because they exceeded the height and were too close to the side lot line. Mr. Hart asked whether it was correct that Shed 3, which was low enough that it did not matter, had also been moved back onto the Hatcher property. Mr. Carter stated that it was the smallest shed, and Mr. Hatcher had been able to pull it in five or six feet to bring it inside the lot line. In answer to a question from Mr. Hart regarding whether it was correct that the variance was required in order to approve Shed 1, Ms. Langdon stated that he was correct, because the shed was over 200 square feet in size, actually being over 300 square feet in size.

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

Mr. Hart moved to deny VC 2003-PR-194 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05, 12/6/05, 1/24/06, 2/7/06, and 6/6/06) 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, 2006; and

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

1. The applicants are the owners of the land.
2. With respect to the requested variances, the applicants have not shown compliance with the required standards.
3. The problem goes back to the Cochran case, and to the extent that the Board has the power to grant a variance under the circumstances, it has to conclude that the Ordinance interferes with all reasonable benefit uses of the property taken as a whole.
4. Based on the evidence presented, it certainly is possible to have other uses of the subject property. Whether there is a variance for a fence or a shed, there is an existing house and has been a house for many years.
5. That's not to say that the applicants could not at some point in the future, if there was some further resolution with the Park Authority or some other scenario, come back for perhaps an application for a sports containment structure, which is something other than just a plain variance for a fence.
6. Under the state of the laws now, the Board does not have the power to grant a variance for tall fences or big sheds unless its concludes first that the Ordinance interferes with all reasonable beneficial uses of the property, and in the fact pattern on the evidence before the Board, the standard is not met.

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

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

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

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

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

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

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~ ~ ~ September 19, 2006, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 530

Mr. Hart moved to approve-in-part SP 2003-PR-054 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. **(THE BZA APPROVED THE DWELLING, DECK, AND SHED 2 ONLY AS SHOWN ON THE PLAT.)** Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04) (Decision deferred from 5/4/04, 11/2/04, 7/12/05, 12/6/05, 1/24/06, 2/7/06, and 6/6/06) 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, 2006; and

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

1. The applicants are the owners of the land.
2. The question with respect to the house and deck is the easiest component.
3. On the record before the Board, although the house is too close to the side, this is a problem that the applicants inherited and did not create.
4. The applicable standards have been met.
5. It would be a hardship to tear down the portion of the house that is too close.
6. The question of the easement for the road dedication has been resolved.
7. With respect to the house, this is an appropriate candidate for relief under the mistake section.
8. With respect to Shed 1, the big shed, the decision is somewhat easier because the variance was not appropriate, the shed is too large, and the variance has been denied.
9. If Shed 1 is too big, there is no reason to leave it in that location.
10. With respect to the encroachment issue and the way the application was advertised, it is unsure whether the Board has the authority to bless the current location.
11. Based on the photographs, the Board is not satisfied that the applicable standards were met.
12. There may be other sheds in the neighborhood that are close to the line, and some of those may be legal because they are lower than the height that would require some modification or they may have been grandfathered or maybe enforcement has not been out to look, but those sheds are not before the Board.
13. What is before the Board are the sheds on the plat.
14. The applicable standards have not been satisfied for Shed 1.
15. With respect to Shed 2, it is close enough in size to Shed 3, is not bothering anyone, is off of the Park Authority property, is in the back corner, and it has been there for many years.
16. Shed 2 is a close call, but in the big picture, there is not necessarily a good faith problem with all the confusion with respect to the property and where the boundary line was with the fence having been there for approximately 30 years.
17. It is appropriate to leave Shed 2 where it is, particularly if Shed 1 is going to be coming down.

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

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

~ ~ ~ September 19, 2006, FORREST & MARVA HATCHER, VC 2003-PR-194 and SP 2003-PR-054, continued from Page 531

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 dwelling and deck and Shed 2, as shown on the plat prepared by Charles E. Reed, dated September 20, 2001, submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the dwelling and deck shall be diligently pursued within 30 days and obtained within 90 days of final approval or this special permit shall be null and void.

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

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

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~ ~ ~ September 19, 2006, Scheduled case of:

9:00 A.M. PETER AND KATE GOELZ, SP 2006-MV-040 Appl. under Sect(s). 8-916 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 15.0 ft. from a front lot line of a corner lot. Located at 6060 Woodmont Rd. on approx. 15,058 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (4) 1.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Goelz, 6060 Woodmont Road, Alexandria, Virginia, replied that it was.

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

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

~ ~ ~ September 19, 2006, PETER AND KATE GOELZ, SP 2006-MV-040, continued from Page 532

staff report. The applicants requested a special permit to allow a reduction to certain yard requirements to permit construction of an addition to remain 15 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; therefore, a reduction of 15 feet was requested. Staff recommended approval of SP 2006-MV-040 subject to the proposed development conditions.

Mr. Goelz presented the special permit request as outlined in the statement of justification submitted with the application. He said the reduction had been requested to allow him to update the kitchen so that it would be harmonious with the neighborhood and to better utilize the house.

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

Mr. Ribble moved to approve SP 2006-MV-040 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER AND KATE GOELZ, SP 2006-MV-040 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 15.0 ft. from a front lot line of a corner lot. Located at 6060 Woodmont Rd. on approx. 15,058 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (4) 1. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 19, 2006; and

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

1. The applicants are the owners of the land.
2. The applicants meet the provisions of the new Ordinance as dated July 10, 2006, and spelled out more appropriately in the staff report.

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

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

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

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

2. This special permit is approved for the location and size (approximately 123 feet) of the proposed addition as shown on the plat prepared by Alexandria Surveys International, LLC, dated, July 6, 2006 and revised July 24, 2006, as submitted with this application and is not transferable to other land. All portions of the addition shall be located no closer than 15.0 feet from the front lot line (corner lot) abutting Vernon Terrace Drive.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. The maximum build-out of the dwelling whether approved by special permit, variance or by-right shall be no greater than 150% of the size of the existing structure, 3,490 square feet at the time of the

~ ~ ~ September 19, 2006, PETER AND KATE GOELZ, SP 2006-MV-040, continued from Page 533

approval of SP-2006-MV-040.

5. The addition shall be consistent with the architectural renderings included as Attachment 1 to the special permit conditions.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ September 19, 2006, Scheduled case of:

9:00 A.M. GEORGE D'ANGELO, VC 2006-DR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a fence greater than 4.0 ft. in height in the front yard and an addition 15.0 ft. from front lot line of a corner lot. Located at 7800 Magarity Rd. on approx. 8,521 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 39-2 ((6)) 2. (Continued from 7/18/06)

Chairman DiGiulian called the applicant to the podium and asked that he state his name and address for the record. George D'Angelo, 7422 Howard Court, Falls Church, Virginia, came forward and identified himself.

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

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. She stated that on July 18, 2006, the Board held a public hearing and deferred decision on the application to allow the applicant time to revise the variance plat in order to more accurately reflect the footprint of the proposed addition to the residential structure on the site. In the interim period, the applicant had also withdrawn the portion of the variance request pertaining to the construction of a fence greater than four feet in height in the front yard. She stated that a copy of a letter from the applicant and a revised plat had been distributed to the Board as well as revised proposed development conditions dated September 19, 2006.

In response to questions from Ms. Gibb, Ms. Langdon stated that the variance request was the same as far as the existing structures still shown on the plat. The addition had been originally advertised at 15 feet and then been moved to 20 feet, so it was less of a variance request, and the addition had been decreased in size. The front yard requirement was 30 feet, and the variance currently requested was 10 feet instead of 15 feet. Ms. Langdon stated that the fence request had been withdrawn. Ms. Gibb noted that the plat still showed a fence. Ms. Langdon said the Board could approve the application in part and not approve the fence. Ms. Gibb noted that development conditions had been added because of concerns regarding the age and condition of the building. Ms. Langdon stated that staff had discussed the condition of the structure with the applicant and advised him that the building could be taken down if necessary. She said the building had been used as a Verizon station for a while.

Chairman DiGiulian stated that the plat he had still showed the side setback as 13.4 feet from Magarity Road. Ms. Langdon said that would be the existing structure, which was legal, so the variance request was actually for the additional part of it which had now moved 20 feet from the lot line. The existing structure remained in the same place.

Ms. Langdon agreed with Ms. Gibb's comment that the Board's concern was with Magarity Road, not Lyle Avenue.

Mr. Hart stated that the problem he had when the application was first presented to the Board was whether the relief that was being requested was the minimum necessary, and he thought the Board and applicant were much closer to that, but it appeared that the house was still 25.7 feet deep. He asked the applicant if that was the minimum needed and why he needed a house that size. Mr. D'Angelo explained that part of the existing structure may not be useable and could only be used for storage, and he would let the architect make that determination if the request was not granted. He said the overall structure would be no longer than 45 feet, including any decks or other structures, and it would be up to 25 feet in width, which he thought was a reasonable structure as compared to other older structures in the neighborhood. He said that if he had to abide by the permissible width under the Ordinance, he would be down to 15 feet, which would essentially be the size of a trailer, and he thought a more regular home would be more livable and in harmony with the rest of the neighborhood and not be an eyesore. Mr. D'Angelo said the 25 feet in length on the outside, minus the walls, would be approximately 22 to 23 feet at the most and would be a reasonable construction.

Mr. Hart asked if the reason the applicant could not apply for a reduction to minimum yard was because of the location of the existing building, which was too close to begin with. He said what the applicant was asking for was less than 50 percent if the existing building was excluded. The applicant was asking for 20 feet and the requirement was 30 feet, which would be under 50 percent, and if it was not for the small hut on the property, it seemed to him that the Board could hear the case as a special permit application instead of a variance. Ms. Langdon said she would have to review staff's findings because there was some wording in the new Zoning Ordinance amendment that would prevent the applicant from applying for a special permit.

Mr. D'Angelo stated that it was his understanding that under the new amendment for special permits, an applicant would be allowed only 150 percent over the size of the original structure, and the original structure was approximately 340 square feet, the size of a toolshed. Ms. Langdon agreed that a special permit could not be granted because of the size of the building.

Mr. D'Angelo said his previous presentation had covered the hardship issues: the takings of portions of the property by the Commonwealth of Virginia which rendered the property a corner lot; that there was no other use for the property other than residential; no opposition had been expressed; the only adjacent neighbor had supplied a letter of support; and, he was requesting that he be allowed to build a reasonable, sensible home that would be in keeping with the neighborhood. He said he would be planting more trees and would not be taking any down. Mr. D'Angelo stated that he had decided to withdraw the application for the fence despite the fact that there had been a hit-and-run accident recently, during which a portion of the fence had been taken out. He said that seemed to happen on a regular basis, but it was more important for him to concentrate on obtaining the permits to build a normal house on the property.

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

Ms. Gibb moved to approve-in-part VC 2006-DR-003 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE D'ANGELO, VC 2006-DR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a fence greater than 4.0 ft. in height in the front yard **(THE BZA DID NOT APPROVE THE FENCE)** and an addition 15.0 ft. from front lot line of a corner lot. Located at 7800 Magarity Rd. on approx. 8,521 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 39-2 ((6)) 2. (Continued from 7/18/06) 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 19, 2006; and

~ ~ ~ September 19, 2006, GEORGE D'ANGELO, VC 2006-DR-003, continued from Page 535

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

1. The applicant is the owner of the land.
2. After revising his application, the applicant has met the very difficult standard currently for a variance.
3. It is a close case, but based on the applicant's testimony that the proposed home is consistent with the very small homes in Pimmit Hills and the new plat showing a small, modest home on the very small lot, the applicant is asking for a much smaller reduction in the side yard than in the earlier application.
4. The applicant does not qualify for the new special permit because of the very small existing hut on the property.
5. The applicant is making the most of the subject property, for which the only use is residential.
6. This will be a harmonious use of the property and will be consistent with the neighborhood.
7. The applicant has met the required standard that to deny the application would be to deny all reasonable beneficial use of the property as a whole.
8. The applicant has met the other required standards for a variance.

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

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

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

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

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

1. This variance is approved for the location of the addition and deck, as shown on the plat prepared by Alexandria Surveys, dated May 5, 2006, as revised through August 15, 2006, submitted with this application and is not transferable to other land. **(THE BZA DID NOT APPROVE THE FENCE.)**

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall

~ ~ ~ September 19, 2006, GEORGE D'ANGELO, VC 2006-DR-003, continued from Page 536

be obtained.

3. The applicant may maintain the existing structure, in whole or in part, provided, that the said structure will be demolished if: 1) it does not meet all the applicable building codes for a residential use or, 2) at the time of construction of the main dwelling, it is determined by an architect or structural engineer that it is not feasible or safe to incorporate the said structure into the main dwelling. In the event that the existing structure is demolished, it shall not be rebuilt and only the proposed rectangular perimeter shown on the Variance Plat shall be constructed.

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

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~ ~ ~ September 19, 2006, Scheduled case of:

9:30 A.M. MALCOLM TEN LIMITED PARTNERSHIP, A 2006-MV-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that as a result of the division of the appellant's property caused by condemnation one of the subsequent lots does not meet current minimum lot area requirements of the R-1 District and is not buildable under Zoning Ordinance provisions, however, the dwelling on said lot is not nonconforming, but may be enlarged, subject to the provisions of Par. 1 of Sect. 15-101 of the Zoning Ordinance. Located at 9406 Ox Rd. on approx. 5.21 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((1)) 52A.

Chairman DiGiulian noted that A 2006-MV-027 had been administratively moved to October 24, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ September 19, 2006, Scheduled case of:

9:30 A.M. OLD HIDEAWAY, INC. T/A MEXICO LINDO RESTAURANT, A 2006-MV-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a billiard and pool hall use without an approved Special Permit in violation of Zoning Ordinance provisions. Located at 8786 Richmond Hwy. on approx. 8.55 ac. of land zoned C-6, CRD and HC. Mt. Vernon District. Tax Map 109-2 ((1)) 24.

Mr. Hart indicated that he would recuse himself from the public hearing.

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

Mary Ann Tsai, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 12, 2006. She said the appeal was of a determination that the appellant had established a billiard and pool hall use without an approved special permit in violation of Zoning Ordinance provisions. An inspection had been conducted on May 4, 2006, which revealed that six pool tables had been installed, which constituted a billiard and pool hall use, and the non-residential use permit had previously been issued for an eating establishment and dance floor use only. Although a pool or billiard hall was not a defined use in the Zoning Ordinance, an interpretation dated December 18, 2000, determined that if the area occupied by the billiard tables did not exceed 10 percent of the floor area of the overall eating establishment, such tables would be considered an accessory use to the eating establishment use; however, if the area devoted to pool tables exceeded 10 percent of the overall floor area, the billiard tables would be considered a separate use

sharing space within an eating establishment, and would require the approval of a special permit. In an interpretation dated March 16, 2000, further elaboration was given on the 10 percent limitation on floor area devoted to billiard tables. It was determined that on a case-by-case basis, a review would be performed to warrant whether the amusement machines were an accessory use as defined, but in general the area occupied by such amusement machines could not exceed 10 percent of the overall floor area of the establishment. Given the area needed for a billiard table and circulation around the table, approximately 250 square feet is required per table. In the appellant's situation, 10 percent of the 8,100-square-foot overall floor area would be 810 square feet. The area the six pool tables comprised was approximately 1,482 square feet, approximately 18.3 percent of the overall eating establishment. The appellant had been advised that the violation could be cleared by removing three of the six pool tables.

Mr. Beard asked if the regulations specified 250 square feet per table or 10 percent of the overall square footage and whether it would be allowable if the appellant could functionally get six tables within the 810 square feet of floor area or would they be limited to 250 square feet per table. Ms. Tsai stated that if the appellant could get six tables in within 10 percent of the eating establishment, they could do that. Mr. Beard referred to the last paragraph on page 7 of the staff report which stated that staff recommended the BZA uphold the Zoning Administrator's finding that the appellant had established an accessory use in an eating establishment without an approved special permit in violation of Zoning Ordinance provisions, and he asked if staff meant that the appellant had established a separate use. Ms. Tsai indicated that portion of the staff report was incorrect and should say that the appellant has established a billiard and pool hall use without an approved special permit.

Jane Kelsey, the appellant's agent, Jane Kelsey and Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, presented the arguments forming the basis for the appeal. She introduced Wayne Diggs, the business and personal lawyer for the appellant, and Juan Miguel, the owner of the business. She said it was the appellant's position that the Zoning Administrator had erred in the determination. She noted that the notice of violation did not say 10 percent. It said more than three billiard tables constituted the principal use which would require a special permit. Ms. Kelsey said the Zoning Ordinance defined an accessory use as clearly subordinate to, customarily found, subordinate in purpose, area, or extent, and she thought only one criteria had been addressed, which was the area, but did not address the purpose or extent. As far as customarily found, she said the Zoning Administrator had made a decision that three tables were accessory, which established that it was customarily found, but the question was the number of tables that would be permitted as evidenced by the notice of violation. Ms. Kelsey said the notice did not contain criteria upon which three tables had been determined or what section of the Code governed that classification. She stated that she had asked the Deputy Zoning Administrator why three tables had been specified and had been told that prior interpretations had used 10 percent, and, therefore, staff used that as a rule or guideline. Ms. Kelsey said she did not believe it to be consistent with other accessory uses described in the Zoning Ordinance.

Ms. Kelsey referred to a document she had submitted to the Board at the meeting that provided examples of accessory uses, accessory service, secondary or associated uses, all of which were not primary uses and were limited by a percentage of the gross floor area in the Zoning Ordinance. She noted that all of those were in excess of 10 percent, and she said she was still trying to figure out how staff had arrived at the 10 percent figure. She said the staff report contained two previous interpretations, neither of which spoke to the criteria used except to say that each billiard table needed 250 square feet and only three tables would fit in the area. She said she agreed with Mr. Beard's comment that the appellant might be able to fit more tables within the 10 percent. Ms. Kelsey stated that she had done some research on the Web and spoken to some pool table companies and found that there was no regulation for a pool table size. She said she had been told that the amount of space needed was determined by the length of the pool cue, so if the appellant used 42-inch pool cues, only 165 square feet of space would be needed for an eight-foot table. She said the arrangement of the room would also come into play as far as whether there would be adjacent pool tables or counters that would allow for elbow room. Ms. Kelsey said the circumstances in each situation were different and should be considered on a case-by-case basis, and the reference in the staff report to an interpretation stated that. She said staff had referenced only size in the subject case and not the purpose and intent, and the intent of the appellant was to have a restaurant. The pool tables were there to draw people into the restaurant. She said the facility had 134 seats, a dance floor, and a stage for a live band as well as the pool tables, and she did not believe the establishment could be considered to be a billiard hall that would require a special permit.

~ ~ ~ September 19, 2006, OLD HIDEAWAY, INC. T/A MEXICO LINDO RESTAURANT, A 2006-MV-029, continued from Page 538

With respect to staff's interpretation concerning amusement machines, Ms. Kelsey noted that under Section 10-100, Accessory Uses and Structures, the first item listed was amusement machines. She said the Ordinance allowed those machines as accessory to any number of uses, including retail, provided it was in an establishment that was more than 5,000 square feet, and the appellant's establishment was larger than that and open to the general public. Ms. Kelsey said the Zoning Ordinance did not stipulate anything about 10 percent.

Ms. Kelsey said that in preparing for the hearing, she had asked to review all the interpretations made in the past pertaining to accessory uses and was told at the time there was only one and staff would look for the other pertinent ones and let her know, but she had heard nothing further until the staff report. Since there were only two references in the staff report, she assumed that was all staff could find that were pertinent, but she still wanted to know what the other accessory use interpretations were. Ms. Kelsey said the information was maintained in a database by the Zoning Administrator and was not available to the public. She stated that if an interpretation was requested, staff would provide the ones they believed were pertinent, and that was a problem. She wanted to read all of the interpretations, not just those staff felt were pertinent, because she felt some others might also be relevant even if they were not for a billiard hall. Because she was not given the interpretations she had requested, she looked at other billiard parlor applications that had been previously approved by the Board, and in the two that she found, the areas which contained the pool tables were 30 and 50 percent of the facilities.

Ms. Kelsey stated the appellant was appealing the notice of violation that limited the number of pool tables to three, and she believed that they should have the opportunity to review the interpretations concerning other accessory uses or related uses to see what percentage had been used and why. Unless the Board believed that they had all the information they needed to make a decision, the appellant was requesting that the appeal be deferred to enable her to ask staff again if she could read the other interpretations, and if she thought they were pertinent, she would bring them back to the Board either verbally or in writing.

Mr. Beard asked staff where the 10 percent figure came from. Ms. Tsai stated that she understood from the Zoning Administrator that the interpretation for 10 percent had come originally from the amusement machines, and from there came the limitation of that percentage for the billiard tables. Mr. Beard said that based upon what Ms. Tsai had stated, the figure was not in the Zoning Ordinance, and he stated that an amusement machine and a billiard table were two entirely different things. Based on the information provided by Ms. Kelsey, Mr. Beard said that different percentages had been applied to different uses.

Mavis Stanfield, Deputy Zoning Administrator, stated that Mr. Beard was correct. Ms. Stanfield said she recalled a case involving a window tinting business that the Board had heard where the applicant had proposed reducing the amount of area used for the window tinting to be accessory to a principal retail use. In that case, a figure of 20 percent had been discussed, and in that situation, if staff had limited it to 10 percent, there would have been no opportunity to have the accessory use at all because of the logistics involved, which was that a bay was a very large area, and whether it was accessory or not, it was simply that the utilization of the space would have encompassed more than 10 percent. She said that in the subject case where there was a less space intensive use, a threshold had to be reached where you would go from an accessory use to a primary use, and 10 percent was the percentage that was taken.

Ms. Gibb said she assumed that part of the analysis was the impact, and looking at a home business of an accountant and the impact it had on a neighborhood compared to billiard tables in a restaurant and how many people it would attract and how many parking spaces would be required was something entirely different. She said staff was left with making determinations on a case-by-case basis and trying to come up with rationale and consistent interpretations, and if billiard parlors and tables were not defined in the Code, then staff was stuck with what it had, but the applicant should have the benefit of staff's thought process, which would be the interpretations.

Ms. Tsai said staff did not have a problem with Ms. Kelsey coming in to look at the interpretation database. She apologized if there had been a miscommunication. She said the database was not something that staff opened up to the public, and it was difficult to pull all the information because of the way it was organized, and it was very labor intensive.

Mr. Byers stated that if Ms. Kelsey was given access to the entire database, at some point she would have to

return to the Board, and it still would be a judgment call because there was nothing in the Zoning Ordinance that said 10 percent was a finite figure. He said the question was whether it could be three, six, or twelve tables, and staff would have a different interpretation than the appellant, but at the end of the day, it would still be a judgment call. Mr. Byers said that it appeared what started the process was a fire marshal inspection on April 14, 2004, and the approval would have been predicated on a dance floor. He said that before voting on the appeal, he wanted to know whether there were any safety or fire issues associated with having six versus three tables, other than the zoning issue itself. Ms. Kelsey stated that she did not know the answer to that, but she did know that the fire marshal had inspected, the inspections were approved, and the non-RUP had been issued. She said she did not know whether the fire marshal specifically looked at the billiard tables, but she assumed that he did because it was shown on the plan that they were proposed, and they had been there since that time.

Mr. Beard read from the second paragraph on page 7 of the staff report, and he asked whether the floor plan included as Attachment 6 was accurate. Ms. Kelsey said that it was. Ms. Tsai said that as far as staff knew, it was, but the inspector was not present to confirm it. Mr. Beard said he would take issue with the statement on page 7 because it appeared from the plan that the patrons entered through a vestibule and went down a hallway, and the billiard area was a completely separate issue. Ms. Kelsey said the round items along the wall in the plan were eating counter spaces, and the items marked A were table seats. She said that when she was at the restaurant, there were two other tables located within the billiard parlor area, and there were people eating there. Mr. Beard said the patrons came in through a vestibule and did not come directly into the pool hall. Ms. Kelsey said that was correct. Mr. Beard said the pool hall area was a separate area with a 42-inch opening going into the billiard area. Ms. Kelsey replied in the affirmative and said there was another opening that went into the buffet area.

Ms. Kelsey said she had asked Mr. Miguel whether he made more money from the food or from the billiards, and his response was that he made more from the sale of food and beverages. She said the billiard tables were for entertainment purposes, just like dartboards, bands, and dance floors.

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

Mr. Beard said that he was troubled by the 10 percent issue, and it seemed to him that it was just a broad interpretation and did not relate. Given the uniqueness of the situation, he thought the Board had to look at the appeals on a case-by-case basis. Mr. Beard moved to overturn the determination of the Zoning Administrator. Mr. Byers seconded the motion.

Mr. Byers said he thought the points Mr. Beard brought up were valid. He said he looked at it from the standpoint of a doorway leading off to the left, and the billiards appeared to be an accessory use. He said he noticed there were 80 tables, and if there were 120 billiard tables and two dining tables, that would be a different circumstance, but this was totally different. He said he thought it was a judgment call, it was on a case-by-case basis, and in this case it was an accessory use, and he would support the motion.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

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~ ~ ~ September 19, 2006, Scheduled case of:

9:30 A.M. JOHN EVERETT AND CLAIRE EVERETT, A 2006-BR-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a contractor's office and shop, are allowing the parking of more than one commercial vehicle, and have erected an accessory storage structure that exceeds eight and one-half feet in height, does not comply with the minimum yard requirements for the R-3 District and was erected without a Building Permit, all in violation of Zoning Ordinance provisions. Located at 7601 Dunston St. on approx. 13,572 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (47) 1.

Chairman DiGiulian noted that A 2006-BR-030 had been administratively moved to November 14, 2006, at

~ ~ ~ September 19, 2006, JOHN EVERETT AND CLAIRE EVERETT, A 2006-BR-030, continued from Page 540

9:30 a.m., at the appellants' request.

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~ ~ ~ September 19, 2006, Scheduled case of:

9:00 A.M. VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05

Chairman DiGiulian noted that SPA 82-V-091-05 had been administratively moved to October 24, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 19, 2006, Scheduled case of:

9:30 A.M. M SCRAP CORPORATION T/A M SCRAP AS LESSEE OF 6304E GRAVEL AVENUE, A 2006-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a recycling business on property in the I-4 District in violation of Zoning Ordinance provisions. Located at 6304E Gravel Av. on approx. 10.626 ac. of land zoned I-4 and NR. Lee District. Tax Map 91-1 ((1)) 36B. (Admin. moved from 4/4/06 and 5/23/06 at appl. req.) (Continued from 6/27/06)

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

Elizabeth Perry, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 12, 2006. This was an appeal of a determination that the appellant was operating a recycling business in the I-4 District in violation of paragraph 5 of Sect. 2-302 of the Zoning Ordinance, which stated that no use shall be allowed in any district which is not permitted by the regulations for the district. A recycling center was not a use permitted by right or with special exception or special permit approval in the I-4 District. Ms. Perry said the Board had continued the appeal from June 27, 2006, because the appellant had been seeking an alternate location for the business. Staff understood that the appellant had not yet secured an alternate location. She noted that nine months had passed since the notice of violation had been issued.

William Thomas, the appellant's agent, Fagelson, Shonberger, Payne & Deichmeister, P.C., 1775 Jamieson Avenue, Alexandria, Virginia, presented the arguments forming the basis for the appeal. He introduced his client, Robert Millstone (phonetic). He stated that his client had wanted to move the business from its present location, but they had not been able to locate an industrial site. He said the appellant had submitted an offer for a site, but needed additional time because industrial sites were hard to come by.

Mr. Thomas said it was his opinion that the problem arose because the appellant had been asked what type of business was being operated and had responded that it was recycling. Mr. Thomas said that since that time they had been considered a recycling facility because they had said they were. He said that if the appellant had asked the County for a non-RUP as a warehousing facility or a freight terminal, he doubted there would have been any questions because it would have been issued, and there would not have been a problem with the location. He said the intensity of the location was low and consistent with other I-4 uses. He said it was clear from the photographs in the staff report that the items received at the facility came in trucks that unloaded inside the building, went into carts, were reloaded into other trucks, and moved out of the facility. He said that in most respects the facility was no different than one that shipped vegetables or auto parts, offloading and loading them back on trucks. Mr. Thomas said the business served approximately 10 to 15 vehicles per day and was not a high intensity use, which was not inconsistent with the kinds of uses that were contemplated for the I-4 zone. Mr. Thomas stated that the appellant's facility fit in as a motor freight terminal with warehousing.

Mr. Thomas said a recycling facility had cranes, conveyor belts, sorting machines, and similar items, and the subject facility had none of that. All the appellant did was offload, store, reload back onto trucks, and move the material on to a true recycling facility in Montgomery County which was owned by the appellant. He said

that in denying the appellant those definitions, it defied the plain meaning in the definitions themselves, which resulted in an unjust and discriminatory regulation out of the industrial zone which accepted by right and by special exception many uses which were more intense and defied a basic tenet of zoning which required that uses of like impact be treated equally. Mr. Thomas said he thought that discussions with staff would have resulted in a redefinition of the facility. He said it was true that at the beginning of the process the appellant had misidentified the business because the business in Montgomery County was a recycling facility, but the business in Fairfax County was not. Mr. Thomas asked that the Board recognize that the notice of violation was clearly wrong based on the parameters he had just spoken about.

Mr. Hart asked whether the scrap metal received at the site was loose or packaged. Robert Millstone, 4700 Chevy Chase Boulevard, Chevy Chase, Maryland, indicated that the majority of the scrap metal came in on trucks in laundry carts. The carts were removed from the trucks, reloaded onto a tractor-trailer, and shipped to the Rockville site. The empty carts were then returned from the Rockville site and put onto the small trucks that did pickups from the customers. In response to questions from Mr. Hart, Mr. Millstone said the carts did not have lids, and the packaging was an open cart. Some of the material came in loose, and his staff put it into carts. Mr. Millstone stated that the metal normally came from machine shops, plumbers, electricians, and construction or demolition sites. Mr. Millstone said no organizing or sorting of the scrap metal was done at the Fairfax facility, and there was nothing dangerous involved. The material bought consisted of copper, brass, and aluminum. He stated that the Fairfax facility was a nonferrous metal processing facility. Mr. Millstone said all the processing was done at the Rockville facility where there were cranes, conveyor belts, large balers, and a shredder.

In answer a question from Ms. Gibb regarding why the material was brought to the Fairfax facility, Mr. Millstone said the Fairfax facility was a place to store the material so more business could be done in Virginia where the company was looking to expand. It gave the company the opportunity to handle more material and make more pickups. Mr. Millstone said the trailer located at the Fairfax facility was picked up and taken to the Rockville facility two to three times a week.

Mr. Hart asked why the facility did not fit the definition of a facility for the collection of nonputrescible recyclable materials, things that did not rot, which have been separated at their source, source separated, prior to shipment to others who will use those materials to manufacture new products, regardless of whether it also fit as a warehouse or motor freight terminal. Mr. Thomas replied that in and of itself there was no problem with the definition, but he was contending that there were multiple definitions and other equal definitions, and the one referenced by Mr. Hart created a discriminatory result on the appellant. He said if the appellant had asked for a freight terminal, he felt there was no question that a permit would have been granted. Mr. Hart said he understood staff to be saying that if the facility was in an I-5 or I-6 District, it could be all three things, but because it was in an I-4 District, it could be a freight terminal delivering other types of items, but could not deliver or ship laundry carts of scrap metal. Mr. Hart said the I-4 District was closer to a mix with offices, and I-5 and I-6 were for messier, smellier, or bigger things. Mr. Thomas said he agreed with Mr. Hart's point about larger and smellier businesses, but none of the things attributable to recycling facilities were present in the Fairfax facility, no bailers, conveyor belts, sorters or loud noises. He said everything was offloaded into the building with no visible sign that the business was being conducted except for the truck pulled up to the loading dock. Mr. Thomas asked why a use that fit the other definitions should be cut out of the zone it fit simply because it fit one more definition. He said if that was not a discriminatory regulation, he did not know what was.

Mr. Hart said he did not agree with Mr. Thomas' opinion that the Ordinance definition was discriminatory, and it was up to the Board of Supervisors to decide what was appropriate in those districts. He said it was clear in the Ordinance that such uses as collecting material and shipping it out were limited to the I-5 or I-6 Districts. Mr. Thomas stated that he was not saying the Board of Supervisors was being discriminatory, but he did think that the way staff had interpreted the definition was.

Mr. Hart asked whether the Board of Zoning Appeals was allowed to consider a discriminatory application of the Ordinance or did the court have to do that. Mr. Thomas stated that what he thought the Board was allowed to do was to look at the appeal in the context of multiple definitions that fit and say that if it fit a definition in the Zoning Ordinance, it would be allowable. He said he thought this case was not that different from the restaurant case that Jane Kelsey had argued earlier at the meeting. His opinion was that there were two definitions that most assuredly fit the appellant's use, and the reality was that his client was having

a hard time finding industrial zoned sites. He noted that when the appellant had come to the Board, there was representation on this issue that indicated there was a combination of I-4 and I-5 uses on the property and indicated that his client was not aware that he was placing himself in jeopardy and indicated that since then he had been trying to make the best of the situation. He said that on the public policy side, it was clear that M Scrap Corporation was very popular with the solid waste people and emphasized that it was a facility that the County needed. Mr. Thomas said it seemed to him that this was a clear opportunity for the Board to say that there were definitions that could fit this situation, and he asked why they would restrict the use.

Mr. Beard stated that unlike the last case, he did not think this one was as ambiguous or nebulous or that the interpretation was that broad. He said he did not understand why it was like it was because it did not make a lot of sense to him; however, Article 20 defined a recycling center as a facility for the collection of nonputrescible materials. He said he thought the Ordinance was cut and dry with respect to this case, but, nevertheless, he said that no matter what he thought, the County considered M Scrap Corporation's facility to be a recycling center.

Mr. Hammack asked staff if a company such as Home Depot made a new product for use by others with metal products provided by a facility such as the appellants, would they be prohibited in this district if the product was sold to a plumber. Ms. Perry asked what Mr. Hammack meant. Mr. Hammack explained that he envisioned that the materials would be separated into various sizes of pipe at the source, shipped to a wholesaler, who would then send it to a facility such as M Scrap to be shipped to someone who would use them for the manufacture of new products. He said his question was whether that would be prohibited in an I-4 District because he thought the definition fit; however, he was trying to determine what the discriminatory issues were. Ms. Perry said that if the pipes were manufactured elsewhere and were not recovered materials, but were shipped as such, that would be considered to be in the realm of warehouse use. She said the issue of the recycling center was that the definition hinged on the materials that were being brought in and out, and because they were recyclable materials, they were considered to be recovered materials, which were a primary component of the definition and the use determination in this case. Ms. Perry said that a Home Depot was not considered to be a recycling center because they did not collect recyclable materials, but M Scrap was a collection facility. Ms. Perry said staff had worked with the appellant to try to explore some of the definitions. In response to another question from Mr. Hammack, Ms. Perry indicated that M Scrap would not be permitted as a warehouse use because they were a recycle center.

Referring to the information contained on page 7 of the staff report, Mr. Byers said he thought it was clear and not ambiguous. He pointed out that the Fairfax County Chamber of Commerce had specifically wanted to remove the words "and processing" from the Ordinance because that was not the intent of the amendment. He called attention to the last sentence of paragraph 1 which said the definition of recycling center was approved without a qualification that processing must take place, and the definition was amended with the intent of making the definition of recycling center inclusive of many components of a recycling process, including holding or storage of recyclables. He said he thought that was the difference. As to whether it was discriminatory, he indicated that the definition was made very clear by the Fairfax County Board of Supervisors in 1994 concerning what constituted a recycling center, and it would not be allowed in an I-4 District. He said that whether that was discriminatory or not was the Board's call, and he would defer to them because they were the legislative body which made the decision. He said he agreed with his colleagues that there were significant differences between the definition and what the Board of Zoning Appeals talked about with respect to the restaurant, where there was no clear definition.

Mr. Byers asked the appellant if he was in discussions with the City of Alexandria with respect to finding an alternate location and what the timeframe would be. Mr. Millstone said that if his company was allowed to move to Alexandria, they would be in the new facility by the beginning of November, which was 60 days from the hearing.

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

Mr. Byers moved to defer decision for 60 days to afford the appellant an opportunity to move into a new facility. The motion failed for lack of a second.

Mr. Byers moved to uphold the determination of the Zoning Administrator. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 19, 2006, Scheduled case of:

9:30 A.M. SUPERIOR 8500, LLC; COUTURE TEHMINA, INC. D/B/A MCLEAN FURNITURE GALLERY, A 2006-PR-025 Appeal of a determination that appellants have established a retail sales establishment on property in the I-5 District, in violation of Zoning Ordinance provisions and the conditions of their Non-Residential Use Permit, and of the subsequent revocation of the Non-Residential Use Permit by the Zoning Administrator. Located at 8500 Lee Hy. on approx. 2.21 ac. of land zoned I-5 and HC. Providence District. Tax Map 49-3 ((15)) 1 and 49-3 ((1)) 70. (Admin. moved from 9/12/06 at appl. req.)

Mr. Hart recused himself from the public hearing.

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

Elizabeth Perry, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 12, 2006. The appeal was of a determination that the appellants had established a retail sales establishment on property in the I-5 District in violation of Zoning Ordinance provisions and the conditions of their non-residential use permit (non-RUP), and the subsequent revocation of the non-RUP by the Zoning Administrator. The use of a 17,866-square-foot portion of the structure which was occupied by McLean Furniture was at issue in the appeal. Ms. Perry reported that Zoning Enforcement staff conducted an inspection of the property on March 14, 2005, in response to a complaint, which revealed that at least 80 percent of the total gross floor area was being used for the retail display of furniture and was totally accessible to the public, and only 20 percent of the gross floor area was devoted to warehouse use. The use constituted a retail sales establishment which was not permitted by right in the I-5 District. Ms. Perry said the approved non-RUP for McLean Furniture had been for a warehouse and associated retail sales use, which was subject to the Zoning Ordinance use limitation that a minimum of 60 percent of the gross floor area be devoted to warehouse use and no more than 40 percent of the gross floor area be devoted to retail. Visits to the property by staff in January and August of 2006 revealed that the conditions observed during the March of 2005 inspection still existed. Ms. Perry said McLean Furniture was operating a retail sales establishment without a valid non-RUP, which was a violation of Sect. 18-701 of the Zoning Ordinance. Pursuant to Sect. 18-707 of the Zoning Ordinance, the Zoning Administrator may revoke an approved non-RUP when it had been determined that the approval was based upon a false statement or misrepresentation of fact by the applicant or to terminate a violation. Mr. Perry said the Zoning Administrator determined that the appellants' failure to abide by the conditions of the non-RUP as observed in the inspections by staff constituted a misrepresentation of fact that the appellants were going to modify the business operations to come into compliance with the Zoning Ordinance, and the non-RUP had been revoked. Notwithstanding the issue of the non-RUP revocation, Ms. Perry said a violation of the Zoning Ordinance remained because the appellants were operating a retail sales establishment in the I-5 District without special exception approval. She said a Category 5 special exception for a retail sales establishment was not a viable option because the use of the property exceeded the use limitation, which was that no more than 60 percent of the gross floor area be devoted to retail and display.

Ms. Gibb asked whether pulling a non-RUP was a normal course of action, based on the inspection and determination that there was a violation. Roger Sims, Supervising Field Inspector, Zoning Enforcement Branch, stated that his office had on occasion done so when they attempted to work with a business or the occupant of a property to the extent that staff had in the subject case. He stated that because, in staff's opinion, the violations had become so egregious, the Zoning Administrator had made the decision. Ms. Gibb asked what the circumstances were that made the situation so egregious. Mr. Sims explained that the problems began in 2004 when the appellants first came in to talk to staff and problems had been discovered with respect to the establishment of the building and its use. He said staff had information as well as a statement from the architect who was involved at that time that indicated the appellants were attempting to circumvent the architect's recommendations insofar as plans went, and the occupant had requested that he try to determine how County processes could be circumvented in drafting the plans. He said that after staff received that information, they found that the appellants had developed and modeled the showroom to where approximately 80 percent of it was showroom facility, and they applied for a non-RUP and were ready to open. He said that William Shoup, the former Zoning Administrator, had several meetings with staff and the appellants in an attempt to find a way to facilitate the opening of the business and had agreed upon the idea of using curtains to separate the areas of the building. Mr. Sims said another inspection had been conducted in 2005, and at that time staff found the curtains were open, which were supposed to delineate the warehouse area from the showroom, and the public had unrestricted access.

~ ~ ~ September 19, 2006, SUPERIOR 8500, LLC; COUTURE TEHMINA, INC. D/B/A MCLEAN FURNITURE GALLERY, A 2006-PR-025, continued from Page 544

In response to a question from Ms. Gibb regarding why the inspection was done in 2005, Mr. Sims said the inspection had been done to determine whether the appellants were complying with the non-RUP conditions. He said staff realized that curtains were not a permanent fix, but wanted to find out whether they were standing by their representation in the non-RUP that stated that they would keep the warehouse area separate from the general public, and that was when staff had determined that the appellants were not complying with the agreement. Mr. Shoup decided at that time to give the appellants more time to determine whether the violation was a one-time occurrence. In 2006, staff inspected the appellants' premises twice and determined that the violation had not been rectified because the curtain had been moved out of the way, and the entire area was open to the public. He said that it was then that the Zoning Administrator determined that the notice of violation should be issued.

Mr. Hammack asked when the photographs in Attachment 7 of the staff report were taken and what part of the space they represented. Mr. Sims stated that the last page of Attachment 6 showed a layout of the showroom with crosshatches and numbers on it. He also referred to a copy of the January 18, 2006 inspection report. Mr. Hammack asked what the percentages were for determining allowable showroom/warehouse space. Mr. Sims said most of the photographs had been taken at the access points which were supposed to be restricted, and they showed that they were not. Ms. Perry said the photographs were also in Attachment 14, along with details contained in the inspection report, and she noted that Mr. Sims had set it up so the Board could walk through the diagram and determine what they were looking at. In answer to a question from Chairman DiGiulian, Mr. Sims said the layout of the building did not correspond with Attachment 7. At Mr. Hammack's request, Mr. Sims gave an explanation of where each of the photographs had been taken, the corresponding numbers on the layout, which ones were legal floor space and which were not. Mr. Sims indicated that Attachment 11 was a photograph of an audio/video room that was supposed to be restricted to employees.

Mark Jenkins, the appellants' agent, 2071 Chain Bridge Road, Vienna, VA, presented the arguments forming the basis for the appeal. He stated that there had been no official inspection prior to the Zoning Administrator's non-RUP position in December of 2004. He said the inspections in question took place in March of 2005 and January of 2006, and the reports were located in the staff reports. Mr. Jenkins said the Zoning Administrator revoked the non-RUP premised on what he contended was the most serious accusation that could be made in a civil context, which was that the appellants had misrepresented something on an official document to gain a non-RUP. He stated that the Zoning Administrator had done that based on two inspections spaced over 485 days. He noted that the first inspection had taken place approximately 13 months before he acted and the second approximately six months before he acted. Mr. Jenkins said there was never a basis for any misrepresentation. He referred to his memorandum of law and facts that he had submitted to the Board and stated that the core problem was the difference between a notice of violation and the revocation of the non-RUP, which he stated was inaccurate. Mr. Jenkins referred to a letter dated May 8, 2006, written by Mr. Shoup that stated that he had revoked the appellants' non-RUP and had indicated the appellants were in violation. He said the two reports did not lead to any notice of violation. He stated that his clients were never given the substance of the report, a copy of the report, or a demand that they cure it, and they had never been given an opportunity to rectify the problems cited by the County. He also said he believed the Zoning Administrator had no right to revoke the non-RUP, even if he had any evidence, because before he could act, he had to first give notice and allow a landowner to appeal that as well as to appeal the threat of a revocation of a non-RUP. Mr. Jenkins stated that it was the responsibility of the Board to act before the Zoning Administration Division could execute a remedy by taking away a property right.

Mr. Jenkins discussed the history of the business that dated back to 1980. He showed building plans and a chart for the space that had been approved by the by the County. He said that every feature that was currently in the space had been depicted in the plans, and the appellants had created a series of operating conditions to ensure the separation of the warehouse and showroom areas. He said the appellants had complied with staff's requests to install curtains and heavy wooden doors. Mr. Jenkins indicated that he had 12 photographs showing the physical condition of the entire store that had been taken on December 20, 2004, which he was sure had not been seen by the Board. He submitted for the record an e-mail dated December 21, 2004, from the Deputy Zoning Administrator that stated that based on discussions and site visits, a copy of the conditions were listed that eventually became a part of the non-RUP. He indicated that his clients believed that certain retail customers could not go into the warehouse area; however, wholesale customers could, such as embassy employees or interior design services personnel. He said the condition

was accepted and incorporated into the conditions which were signed on December 22, 2004.

With respect to the March, 2005 inspection, Mr. Jenkins said that a comparison of the photographs showed that some of the conclusions drawn by Mr. Sims were incorrect. He agreed that on that day the curtains were open; however, he submitted letters from patrons and former employees indicating that the curtains were closed as required, and only two days out of 485 were in question. He stated that as outlined in his memorandum, the decision that was made could not support an argument that there was a previous misrepresentation with respect to the issuance of the non-RUP. He said the failure to comply with an agreement was not a misrepresentation of fact 90 days before, and if it was, why had staff not acted on it. Mr. Jenkins read from Sect. 18-903 of the Zoning Ordinance, that upon becoming aware of any violation of any provisions of the Ordinance, the Zoning Administrator shall serve a notice of such violation on the person committing or permitting the same, which notice shall require such violation to cease within such reasonable time as is specified in such notice. He said that essentially the rest of the section indicated that if the violation was not ceased, that was when the range of remedies of a Zoning Administrator may be implemented. He asked why the notice was not sent in 2005 or at any time thereafter. Mr. Jenkins stated that if staff had worked with his client on other matters, that was laudable; however, he asked whether that excused them from accusing the appellants of misrepresentation a year later. He said he wanted to know why they did not use the ordinary method to start getting the appellants to comply.

Mr. Hammack pointed out that in Mr. Jenkins' memorandum concerning Sect. 18-707, he had acknowledged that the Zoning Administrator may revoke an approved residential or non-residential use permit when it was determined that such an approval had been based upon a false statement or misrepresentation of fact by the applicant. He said Mr. Jenkins had stated that the Zoning Administrator had relied on that section, but it was clear that he could revoke the non-RUP if he thought there was misrepresentation of fact. He said the paragraph said "or as provided" in Part 9, which Mr. Jenkins had argued. Mr. Hammack said that to him that appeared to be an alternative remedy, and he did not think there was an issue concerning which direction the Zoning Administrator chose to pursue. Mr. Jenkins said his argument was not which position the Zoning Administrator chose to pursue. Mr. Hammack said that was what Mr. Jenkins' memorandum portrayed. Mr. Jenkins said his argument was that this was the first step in a series of actions in which eventually in May of 2006 the Zoning Administrator had stated that a misrepresentation or a hint of it occurred in March of 2005. He asked why that was not expressed in the staff report. He noted that the information concerning the inspection was e-mailed to the Zoning Administrator and his Deputy, and nothing had happened. He said that if the Zoning Administrator understood that he was beginning to develop evidence that someone had misrepresented something on an official document 90 days before, that it would be expected that action would have been taken, and there had been no action. Mr. Jenkins said the key word in the language of the Ordinance was "shall," and he asked why the Zoning Administrator had not acted then.

Mr. Hammack said that it was the alternative provision, and it was not up to the Board to second guess the Administrator. He said the Board needed to determine whether what was done was done under the Ordinance and whether it seemed to be justified. He said that Sect. 18-707 allowed an approved non-RUP to be revoked when it was determined that the approval was based on a false statement and misrepresentation. He said that brought him to the issue of the 20 percent versus 80 percent as opposed to the 60/40 in terms of division or allocation of floor space. Mr. Jenkins indicated that he was not sure about the 80 percent, and he referred to the chart he had shown earlier. He said it spoke for itself with respect to the build-out as of December of 2004, which was the premise for the conditions and was accepted by the Zoning Administrator. He said it was his understanding that because the curtains were open, the additional area constituted the 80 percent figure. Mr. Hammack said the Board had heard similar cases in the past, and he agreed that the allocation may not have changed; however, he asked if a violation would occur if the curtains were opened and the business allowed the space and warehouse area to be used for retail sales. Mr. Jenkins said the big difference was that because the Zoning Administrator had chosen to act under Sect. 18-707, there had to be evidence at the time he made his determination of a misrepresentation of fact and that it was a misrepresentation upon which the non-RUP was based. He said it logically had to be a misrepresentation that allowed the issuance of a non-RUP, which had to have been made in December of 2004. Mr. Hammack said there had been issues before the six conditions were agreed to. Mr. Jenkins said there was not a single identification of anything constituting a misrepresentation. It was not in the staff report, Mr. Shoup's letter, or in either of the two inspection reports. He said this was a classic example of merely asserting something rather than proving it, and especially with allegations as serious as this, there

needed to be an obligation and burden of proof.

Mr. Hammack asked whether Mr. Jenkins had photographs that had been taken on December 20, 2004, showing the layout exactly as it was now. Mr. Jenkins said that he had originally obtained the photographs through a FOIA request and subsequently through Mr. Sims. The photographs he displayed were of the warehouse and showroom areas. Mr. Sims agreed with Mr. Jenkins' statement that the appellants had been advised that the curtains had been purchased as recommended by staff. Mr. Jenkins said the evidence to prove such allegations as misrepresentation was nonexistent, and if that was the case, action should have been taken immediately, not after staff had been working with the appellants. He pointed out that there was no relation between the first and second inspection, and the issuance of the revocation had been connected to another zoning issue. He said that as a result of an inquiry by Congressman Tom Davis, the Deputy Zoning Administrator had asked for an inspection of the furniture store as a matter of routine. He said the importance of the evidence was to see how disconnected the two inspections were. He said that at that time there was no hint of any misrepresentation. He said a two-day lapse in no way justified the action of the Zoning Inspector or Zoning Administrator. Mr. Jenkins stated that, in his opinion, the Zoning Administrator did not have the legal power to revoke a non-RUP contemporaneously with a notice of violation or without giving the appellants an opportunity to be heard by the Board of Zoning Appeals.

Ms. Gibb asked Mr. Sims whether he agreed with Mr. Jenkins' assertion about the distinction between the general public and a retail customer being a different person. Mr. Sims stated that he had taken part in the discussion, and his recollection was that the Zoning Administrator had problems with distinguishing between a retail customer and an interior designer. He said that after the discussion, the decision was that no customers of any type would be allowed in the warehouse area. Ms. Gibb said she did not understand why furniture would be arranged in a living room type setting if it was called a warehouse because that was supposed to be the storage area. She said that if a zoning inspector were to enter that area and saw it in a room type arrangement, he would think that it was a glaring violation and the appellants were allowing retail customers to view the furniture in that setting; however, allowing an interior designer to view such a setting would be appropriate.

Mr. Jenkins agreed with Ms. Gibb's view that retail customers were different from interior designers, and he indicated that his clients understood that. He said that was why he disagreed with Mr. Sims' statement that the distinction was rejected, because that was precisely the opposite and had been accepted. He said that it was part of the history and an important part of the case; however, in a sense it was secondary because the real issue was that the Zoning Administrator was without power to act under any basis as he had done in this instance.

Ms. Gibb stated that if an inspector returned to the facility on several occasions and observed the curtains were parted, exposing the settings displayed in the warehouse, they would automatically come to the conclusion that the appellants had misrepresented themselves from the beginning and that they had always intended to do it that way. Mr. Jenkins disagreed. Ms. Gibb said that in the inspector's mind, what he or she saw was a misrepresentation. Mr. Jenkins said the Ordinance language stated that there had to be a misrepresentation of fact, and the inspector did not allege a false statement. He said Mr. Shoup's memorandum did not say anything about a false statement. He specifically spoke about a misrepresentation of fact. Mr. Jenkins said the law of misrepresentation in Virginia was precisely a principle that had to be distinguished from a simple breach of contract, and the Virginia Supreme Court had repeatedly said that no one could try to contort or elevate simple disagreements concerning a contract into a misrepresentation. That was why there was a higher burden of proof, and the Zoning Administrator had to identify a specific identifiable misrepresentation of fact at the time of the issuance of the non-RUP. He referred to the March of 2005 report and the possible inferences that could be drawn. He said the report indicated some compliance and alleged violations with photographs. He said two inferences could be drawn from the report, which was that someone had fallen down on the job that day and that someone had lied 90 days before, which, in his view, was an extraordinarily weak inference and would not meet a preponderance of evidence standard. Looking at the other surrounding circumstances, Mr. Jenkins said the Board needed to watch the loose inference that staff wanted to sustain become obliterated. He stated that there was nothing to indicate the Zoning Administrator had specific actual notice of the violation on March 15, 2005.

Mr. Hammack asked Mr. Jenkins whether he disagreed that his clients were having problems with respect to the floor area and had negotiations with the Zoning Administrator and his staff before the conditions were

entered into. Mr. Jenkins replied that it was a fair characterization. Mr. Hammack referred to an agreement which said that as a condition to obtaining a non-RUP, the owner agreed to the operational conditions, and the principal use of the space would be a warehouse was contained in paragraph 1. Paragraph 2 said no part of the warehouse area may be used, designed or arranged for the display of furniture, and the warehouse area shall not be accessible to retail customers. Mr. Hammack pointed out that at the bottom of the page, it said the owner agreed to the above operating conditions. Mr. Hammack said the owner had agreed to the 60/40 split and that no part of the warehouse area could be used for the display of furniture and other things that were in the inspector's report. He asked why that would not be a misrepresentation of fact in order to get his non-RUP, because the owner did not follow it. Mr. Jenkins responded that a promise in the law was not a legal fact, and there was case law which indicated that. Mr. Hammack replied that it did not appear to him to be a promise because the document said I agree. Mr. Jenkins said the argument converted a breach of promise that occurred later into a misrepresentation previously, and that was not what the law was. He said the law related to a misrepresentation of fact that was in existence at the time of the relevant factor through the non-RUP, and what was missing from Mr. Hammack's question were the photographs establishing the physical conditions that were accepted by the Zoning Administrator at the time the document was signed. He said nothing in the agreement could change the fact that the Zoning Administrator did not have any authority under the Ordinance, and because Virginia was a Dillon Rule state, he had no authority to issue a revocation under Sect. 18-707, which was based upon a misrepresentation of fact, and that did not occur. Ms. Jenkins said the law was clear that mere breaches of promise could not be converted at a later time into a previous misrepresentation of fact. The obligation of the Zoning Administrator was to produce evidence that at the time of signing the persons involved had such intentions, and no evidence had been produced. He said staff had not collected evidence to prove misrepresentation.

Mr. Hammack referred to paragraph 6 which said that for purposes of conducting periodic inspections to ensure compliance, the owner shall grant the Zoning Administrator and his designated agents the right to access all parts of the space during normal business hours, and he said there had clearly been some thought that there were compliance issues with the application from the very beginning. He referred to the zoning inspector's testimony that he had access to the warehouse area on several occasions, and he asked how many times he had to do an inspection. Mr. Jenkins responded that two occasions in 485 days was not enough to make an accusation of misrepresentation. He said he continued to believe that the premise of Mr. Hammack's question was incorrect because it seemed to be that if there was a violation, the Zoning Administrator had the legal authority to revoke, which he did not. He said the Zoning Administrator had to have made a finding in May of 2006 that there had been a misrepresentation in fact in 2004, and all the action taken by the Zoning Administrator and his professional staff and all other surrounding circumstances showed that no such belief was in existence and no such statement had been made. He said no one in the Zoning Enforcement Branch would point to any particular fact that was supposedly misrepresented.

Mr. Hammack noted that on page 8 of the staff report, it mentioned that staff did not agree with the appellants' contentions, and it was noted that the appellants did not refute that McLean Furniture was operating as a retail sales establishment or that 80 percent of the gross floor area was devoted to retail and display areas. He said he thought that staff had laid out some fairly good reasons, and he cited their comments concerning the layout of the space as well as the square footage that was to be devoted to warehouse and retail uses. He said staff also mentioned that the appellants were using 80 percent of the space for retail, and Mr. Jenkins had not addressed that. Mr. Jenkins disagreed with Mr. Hammack's conclusions and stated that he had addressed the issues. He said staff was arguing that because the curtains were open, that yielded the 80 percent; however, they had never mentioned that the existence of wall-to-wall carpeting in the back was a violation, and they could not because in 2004 they had indicated that it was acceptable. He said that what Mr. Hammack was arguing was that staff had identified things they believed violated the Ordinance, but his contention was that on May 8, 2006, Mr. Shoup acted to invoke Sect. 18-707 and stated that he was revoking the appellants' non-RUP. Mr. Jenkins stated that by that action, Mr. Shoup was required to only act and staff could only proceed with the appeal by proving a misrepresentation of fact. He said staff did not comply with part 9, which stated that if only that procedure was revoked, the Zoning Administrator shall send out a notice of violation and shall wait 30 days. Mr. Hammack stated that it was an alternative provision. Mr. Jenkins said he understood that, and staff was not working under that section only under 18-707; therefore, the framework for the case was a misrepresentation.

Responding to a question from Mr. Beard, Mr. Sims acknowledged that, as referred to in Development

Condition 2, each entrance to the warehouse had permanently affixed signs near the exit signs that said "Warehouse Entrance - Employees Only." Mavis Stanfield, Deputy Zoning Administrator for Appeals, indicated that during her inspection, the sign she had observed was partially obscured by furniture. Mr. Jenkins stated that the two inspection reports did not reference that as a violation.

Mr. Beard asked Mr. Jenkins whether what he had said was that Mr. Shoup thought that he was authorized to unilaterally revoke a non-RUP based upon his own belated conclusions. He asked whether it was Mr. Jenkins' position that the Zoning Administrator was supposed to consult with the Board as to whether a non-RUP violation or revocation should be imposed. Mr. Jenkins said that to act at all, the Zoning Administrator had to prove misrepresentation of fact, not a simple zoning violation, and the Zoning Administrator may not revoke unilaterally until the matter was presented to the Board of Zoning Appeals and the appellants were allowed the right of appeal. He said he was not implying that the Board should direct the Zoning Administrator's actions, just to make an evaluation that he had proved his case to justify revocation. Mr. Beard said it was his opinion that the Zoning Administrator and members of his staff had attempted to work things out with the appellants. Mr. Sims said the reason the initial violation was not issued was that from the very beginning during discussions, Mr. Khan was aware that he had 40 percent showroom area, and he had continuously advised staff that he was going to apply for a special exception (SE). He said Mr. Shoup had set aside any initial decision because he was going on the good faith representation that they were going to apply for an SE for the additional part. Mr. Beard said he could see that staff, under the direction of the Zoning Administrator, had attempted to work with the appellants. He said that when the Zoning Administrator had decided to issue a citation, that was his prerogative. Mr. Jenkins stated that he was not contesting the Zoning Administrator's right to issue a citation. He was contesting his right to revoke the non-RUP in advance of the appeal. Mr. Jenkins said his clients had also tried to work amicably with staff. With respect to Mr. Sims' comment that the appellants had promised to apply for an SE, it had never appeared in any of the submitted documents. He said the heart of the case was not a mere technicality, and he thought there were terrible implications for what was happening to his clients.

Ms. Gibb asked Mr. Jenkins how his clients had gotten into such a mess and what had happened when they purchased the property, because it seemed to her that this was a zoning issue that should have been determined at the time of purchase. Mr. Jenkins stated that at the time the appellants bought the property, they did not have specialized zoning counsel, and most of the work was to have been done by Leo Daley (phonetic), who was the architect and their advisor. Ms. Gibb stated that she wanted to hear testimony from Mr. and Mrs. Khan.

Tehmina Khan, 1005 Union Church Road, McLean, Virginia, came forward to speak. She said her business address was 8500 Lee Highway, McLean, Virginia. She said the business had been in existence for 22 years, and the gallery represented some of the best manufacturers in the country. She explained how she and her husband had purchased the property and spoke of the death of her husband prior to the opening of the gallery. She said they had no experience with zoning or commercial property. Ms. Khan said Mr. Sims had kicked down a sign on the grass which said the gallery would be coming soon and said he would close them down if the sign was not removed. She said the neighboring businesses had numerous signs which had not been addressed by inspectors. She said staff members had been in adversarial combative positions since long before the property had been improved from the rat-infested dump with no utilities they had bought and the non-RUP had been applied for. Staff had informed them there could be no parking in the rear of the building unless eight feet of the building was chopped off. Ms. Khan said she was sued by her tenant for $600,000 for two years of rent abatement because the site plan was not ready and parking could not be provided even though the original maps at Fairfax County showed 11 parking spaces at the rear of the building. She said that when she met with the Zoning Administrator to ask for help because of the dire financial predicament caused by not being able to provide parking for the tenant, she was told by the Zoning Administrator that the non-RUP had been cancelled, and when she asked why, she was told by Leslie Johnson, Zoning Administration Division, that it had been canceled because Ms. Khan had involved politicians.

Mr. Byers stated that County staff was prohibited from responding in a public forum with respect to comments that were made during testimony. He said he knew how difficult staff's task was in dealing with Fairfax County constituents, and he assured everyone present that there were two sides to the story and that the decision by Mr. Shoup, regardless of what was said at the hearing, had not been taken lightly. He said Mr. Shoup did, in fact, work with the Khans from December 23, 2004, until his letter dated May 8, 2006, and

that there were other issues with the property. He said that from his perspective, it would be better if the Board was a bit less pejorative and a little more fact based which would help them make their decisions.

Mr. Jenkins stated that in his dealings with Mr. Shoup, he thought Mr. Byers' comments were a fair and accurate characterization, and he hoped that his memorandum had been fact and law based.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak: Dan Selario, 8518 Quaint Lane, Vienna, Virginia; Ali Khan, 1005 Union Church Road, McLean, Virginia; Amina Khan, 1005 Union Church Road, McLean, Virginia; and Jess (no last name given), 3534 Yuma Street, Washington, DC. Their main points dealt with their belief that there was no basis for the ruling; the inspections by the Zoning Enforcement Branch were unlawfully executed; the appellants should be allowed to continue the use; other retailers within close proximity to the gallery used their whole facilities as a retail type establishment; the appellants had improved the property and had a beautiful showcase; the appellants should not be singled out; all furniture dealers should be treated alike; the appellants' ability to stay in business should not be impaired; the parking lot in the rear was a major factor in staff's decision; there had been no misrepresentation of fact by the appellants; and, the reason the word "retail" was used was specifically to accommodate their embassy and designer customers.

Responding to comments from Mr. Selario, Ms. Gibb said that the question before the Board was how this particular property was zoned and not how other stores were zoned. Mr. Selario said the other stores in the area were zoned I-5, and the point was that if the County was going to enforce zoning, it should be done uniformly, and one particular retailer should not be singled out. He said that the fact that the appellants were allowed to open their doors indicated to him that someone compromised. He said that the reason businesses were going overseas was because government was making it very difficult for them to do business in the United States, and if what Ms. Khan was doing was wrong, she should be given an opportunity to correct it. Mr. Selario suggested that a zoning attorney be present during cases such as this one to help alleviate any questions and concerns citizens may have.

Mr. Beard stated that the appellants had sought a building permit in 2003 for some internal petitioning work for a future tenant. Leslie Johnson, Deputy Director, Zoning Administration Division, said that a building permit was missing from the staff report, and the future tenant permit referenced by Mr. Beard did not have a use on it. She said the appellant returned in 2004 to obtain building permits to do the tenant fit-outs for the McLean Furniture space and the auto body shop, and as part of that, staff had obtained a floor plan along with the building permit. She said the permit said it was a warehouse use at that time. She said staff had the floor plan that was signed with that permit number, and it showed all of the areas in the rear on the 60/40 separation. She said the areas had been labeled as storage warehouse areas on the floor plan that the zoning office received in order to sign off on the permit. She said that was why staff thought it was a warehouse use. She said the permit had been misplaced; however, she thought the 2004 permit number had been issued sometime in May of 2004. Mr. Beard stated that the residual effect of the permit was the issuance of a non-RUP for a warehouse establishment, which was issued on February 24, 2004, and that was the first non-RUP. Ms. Johnson said that when the appellants had taken over the property from Nabisco, the first non-RUP for a warehouse took place before there was any change to it. Responding to a question from Mr. Beard, Ms. Johnson indicated that the first non-RUP had been issued in February of 2004 after the building was purchased by the appellants, and it had been for the total building as it stood before the appellants came in to split the building into two separate uses. She said the 37,500 square feet represented the entire Nabisco building, which was previously a warehouse use, and the non-RUP had been requested because of a change in ownership. She said that during that spring the appellants had submitted building plans to do the tenant fit-out for both the McLean Furniture store and the auto body shop. She said the permit that staff signed in May of 2004 was for a warehouse storage use by McLean Furniture based on a floor plan they had submitted that showed all of the areas as depicted in the photographs. She said the areas appeared to be showrooms with archways, molding, designer light fixtures, and painted murals. She said that when Mr. Khan applied for the non-RUP, it was for that warehouse. Staff had an opportunity to look at the space prior to the issuance of the non-RUP because of other issues, and it was at that point they felt that the area had not been designed as warehouse space. Mr. Beard asked whether Ms. Johnson was saying that the building permit said nothing about retail space under the use section. Ms. Johnson said the building permit had been misplaced, and staff had lost track of it. She said the Department of Public Works and Environmental Services did not retain copies of building permits for more than three years, and staff had

been unable to obtain a copy. She said the permit may have said 60 percent warehouse, 40 percent with associated retail.

Mr. Jenkins produced a copy of the building permit and stated that the specifications for all the permits were in the plans from the beginning. Ms. Johnson stated that staff did not review those plans. Mr. Jenkins said he understood that, but perhaps that was the origin of the problem. He stated that the original permit the appellants had submitted to the County showed columns, lighting plans, carpeting, et cetera, and that if anyone was trying to suggest that it was a misrepresentation, that was not the case. He said that when Ms. Johnson inspected the property on December 14th, it was all built out, and the photographs given to the Board dated December 20th showed that everything had been placed "on the table." He agreed that the explanation may have been that one office may not have received a copy of the permit; however, his clients had submitted everything required of them.

Mr. Hammack said that still did not explain how the facility was being operated. Mr. Jenkins said that with the exception of the curtains, it was his understanding that there was no allegation that the physical layout had been altered in such a way as to expand the retail area, and those physical conditions had remained essentially the same since the approval in December of 2004. He said he believed the argument was that because the curtains were open on the two days referenced by staff that had to indicate that the back area was a full retail use establishment, which might result in 80 percent, and that was what he understood to be the accusation. Mr. Hammack said that was his understanding, and he did not think the appellants had refuted that very well. Mr. Jenkins said that was because there seemed to be a real disagreement as to what mattered legally, and that if on two out of some 400 days the curtains were open, he wanted to know what the Zoning Administrator was entitled to do about that. Mr. Jenkins said, in his view, the Zoning Administrator did not have the right to revoke the non-RUP.

Ms. Gibb asked staff what the misrepresentation of fact was. Ms. Johnson stated that the notice that was sent out in May of 2004 was a combined notice of violation and revocation of the Non-RUP because the occupant was not complying with the conditions. She said the non-RUP had been issued with Mr. Khan's signature indicating that he agreed to abide by the requirements that the County set forth. She said that in hindsight zoning staff should never have signed that agreement or issued the non-RUP. She said she had numerous conversations with Mr. Shoup, and they had tried to deal with a difficult situation in that the applicants were getting ready to have a grand opening sale, had put a lot of time and effort into building out their space, and staff had issued a building permit based on representations that were made on the floor plan. She stated that the appellants had assured staff that the use would be for warehouse and storage use, and based on that, her staff had issued a building permit to allow the appellants to do the construction. Ms. Johnson noted that as a result of going into the store prior to the issuance of the non-RUP and seeing what they saw, it was very clear that it was not designed as a warehouse. She said the space was not designed as a warehouse, and only a very small portion of the property was truly a warehouse because there were cement floors and walls in the area where the furniture would be brought in, stacked, and unloaded. She said the appellants had argued that they dealt in high-end furniture, did not keep furniture in boxes, and when it arrived, they had to unwrap it. She indicated that staff had no dispute with that; however, to see the items in the space she had referenced earlier, the rooms had been designed as individual showrooms, and that was obvious when one walked into the store. She said that rather than make them tear out all of the painting and carpeting, the appellants had been requested to close off the areas to make it a true warehouse space. Ms. Johnson indicated that after much negotiation with the Khans, they had offered up a solution of installing heavy-duty curtains with ropes in front as well as language for the signs. She stated that in hindsight staff probably should not have agreed to that, but they had been hopeful.

Ms. Johnson said staff also had numerous discussions with the appellants indicating that if they really wanted to utilize the store the way it was designed, they should apply for a SE because otherwise they were not going to be able to utilize the store as they had intended. She said she had drafted the agreement, and several drafts of it had been sent to the appellants. She said the original language she had did not reference retail customers. It said all customers. Ms. Johnson stated that after much pleading, argument, and discussion by the Khans and staff, Mr. Shoup made a determination to accommodate them and move the case forward, and the appellants had complied with several of the conditions by installing the doors and the curtains. Ms. Johnson said staff had included language concerning the inspection because they felt that perhaps the store would not be operated that way, and Mr. Sims went out to the site again in March and found that the curtains had been pulled back, the signage was obscured because of that, and no ropes were

visible. Other circumstances intervened, and staff did not issue a violation at that time. She said Mr. Sims was correct that Mr. Shoup thought that perhaps the situation Mr. Sims had come across was a fluke, and staff had been trying to give the appellants the benefit of the doubt. She said staff had to respond to Supervisor Connolly's letter concerning other issues which were not related to the operation, but had impact. Ms. Johnson stated that the chronology of that had been included in the appeal application. Two other inspections were held in January and March, and it had been determined that the appellants were continuing to operate as they had when the violations were first discovered by staff. She said that in the meantime she had several conversations with Mr. Khan, and unfortunately the family had some personal problems which came into play. She said staff was not trying to put them out of business; however, after the last investigation, staff took action.

In answer to a question from Mr. Beard, Ms. Johnson stated that the appellants had received a letter from Mr. Shoup that notified them of the notice of violation and the revocation of the non-RUP.

Mr. Hammack said he was bothered by the fact that the business had not come into compliance with the 60/40 agreement. Ms. Khan, daughter of the appellant, said it was her belief that they had, and she pointed out that what the Board was looking at were two inspection reports. She referred to the time of day noted on Mr. Sims' last inspection that indicated the curtains had been pulled back. She said the store did not have many customers during the week, and that may have been a time that was convenient for her mother and whoever was on staff at the time to move the furniture back and forth. Ms. Khan said Mr. Sims did not see any customers walking behind the curtains. She said the store was very high end and did not attract the traffic other furniture stores did. She stated that her family was in attendance at the hearing because their license had been revoked, and they were not being given an opportunity to fix the purported problems.

Mr. Hammack said the agreement that had been attached to the non-RUP did not reference wholesale use, but indicated that the use would be warehouse or retail. He said he did not accept the fact that an embassy employee would buy a household full of furniture because then the operation would be placed in a wholesale category. Ms. Khan said the distinction that had been made by staff was between retail and non-retail. She said non-retail included embassies, builders, and designers, and that was the appellants' understanding when the documents were signed. She explained that embassies leased entire homes of furniture, and they were non-retail customers. She said that had been made very clear to the Zoning Administrator during the conversations with him and staff. Mr. Hammack stated that what Ms. Khan had said may be true; however, the conditions attached to the non-RUP did not make any reference to those subjects. The non-RUP said, subject to conditions and agreement letter dated February 23, 2004, a minimum of 60 percent warehouse shall be provided and no more than 40 percent retail allowed. Ms. Khan acknowledged that the non-RUP did not make reference to those kinds of clients walking through the building, but that was what had been discussed at the appellants' meetings with staff. Mr. Hammack said Condition 2 said no part of the warehouse area may be used, designed, or arranged for the display of furniture, and from the testimony heard this morning, he said that was exactly what was happening. Ms. Khan said there were many nuances that had been a part of their conversations with staff that were not visible. She said, in her opinion, the appellants had not been given an opportunity to be heard.

Ms. Stanfield said she had visited the store on the weekend of August 19, 2006. She displayed on the overhead projector a photograph of a small room that appeared to her to be used for storage. She said that during the visit she was able to walk freely from one end of the building to the other, found that a portion of the "Employees Only" sign was obscured, and she had been met by a sales lady who encouraged her to walk further back into the store. In answer to a question from Mr. Beard, Ms. Stanfield said her visit to the store was in August of 2006, subsequent to the May 8th letter of revocation that had been sent to the appellants by the Zoning Administrator.

Ms. Perry said the Zoning Ordinance set forth conditions under which the Zoning Administrator could revoke a non-RUP, and one of those authorities was exercised in this case. She said the appellants had obtained a non-RUP and approvals to occupy the subject property under the premise that they were operating a warehouse, and staff had determined that they were operating a retail sales establishment. She said that when the non-RUP conditions had been approved, Mr. Shoup did not say that everything was okay at the property, but indicated that this was how the use would have to be operated to ensure that it did meet the Zoning Ordinance requirements at the time. She said that perhaps some of the remedies were difficult to enforce because there were some people who stated they had been prevented from entering the rear area of

the store and statements from staff indicating they had been able to walk through the store unfettered. Ms. Perry stated that staff had been working with the appellants in an attempt to reach a resolution, and one of the things they had worked on was the pursuit of a special exception so that if the appellants obtained an approval for a 60 percent gross floor area space for retail, the space would not have to be destroyed until an approval of a special exception had been obtained and would allow them to agree to conditions to operate as a warehouse while working out zoning and other issues as mentioned during the hearing. She said that would allow the appellants to come into compliance with all County regulations, but because the appellants had been unable to come into compliance, staff was requesting that the Board of Zoning Appeals uphold the Zoning Administrator in making a determination that the appellants were operating a retail sales establishment without the appropriate approvals and that the Zoning Administrator had the authority to revoke the non-RUP.

In his rebuttal, Mr. Jenkins stated that there was nothing in the conditions that indicated that the appellants were required to apply for a special exception. He said staff was imposing silent, unarticulated conditions as justification for pulling the non-RUP. With respect to compliance, he said that Ms. Stanfield's August visit to the store was after the fact. He acknowledged that the appellants misunderstood Mr. Shoup's comment that the non-RUP was no longer in effect, and they thought he had indicated that they could do anything they wanted to do. Mr. Jenkins said the appellants were in compliance, and there was a bad inference that somehow they had continuously pulled back the curtains, and that was not the case. He read from a decision handed down by the Virginia Supreme Court that said a mere promise to perform an act in the future is not, in a legal sense, a representation, and a failure to perform it does not change its character. He said that the decision indicated that a mere breach of an agreement was not a misrepresentation in the law, just as it was not here. Mr. Jenkins stated that if staff had grounds, that was one thing, but they did not have any grounds to reach back and create. He said that Ms. Johnson's testimony was candid and confirmed that. He said that Ms. Johnson had outlined that by the time the non-RUP came into being, they knew everything because they had visited the site, saw all the physical features, were aware of everything there, and they had entered into the conditions. He said he thought staff regretted doing that, and that was what Mr. Shoup had told the Khans when he met with them in May. He said that was the underlying reason that went to the issue of showing that the County did not believe that they had the evidence of a misrepresentation, besides the fact that objectively speaking it did not exist. Mr. Jenkins said the notice of violation and a revocation were two separate things. In looking at the Ordinance section concerning the notice of violation, he said it clearly provided that staff could act only after the period of time for a possible cure, and that had not been done in this case because staff had acted first. He requested that the Board reverse the action of the Zoning Administrator.

Chairman DiGiulian asked Mr. Jenkins to explain how the appellants complied with the first sentence of Condition 2. Mr. Jenkins replied that the photographs showing the back areas of the store were ones he and staff had submitted, and he thought they were similar. He said a warehouse was defined in the Zoning Ordinance in terms of a principal use, and it did not preclude non-retail customers. He said the fact was that the Zoning Administrator had allowed what was there then and now. Chairman DiGiulian stated that Mr. Jenkins had told the Board that they could not rely on a verbal statement that the appellants had promised to get a special exception, but the Board was supposed to rely on an idea that they saw the pictures and agreed that everything was okay. He said he did not see anything in writing that expressed that. Mr. Jenkins noted that in paragraph 2 a reference had been made to a photograph, but he had never seen it because it was not attached to the staff report. He said that if the issue was as simple as that, the appellants should be able to mix up the furniture in the back of the store in order to come into compliance, and he thought that should be an issue that could easily be solved.

Mr. Beard said he had problems with the fact that Mr. Jenkins was arguing law to the extent that he had at the hearing, and he had trouble understanding it. He said there were many cases that came up in the County where citizens had trouble understanding that they could not promise anything in their need to open their business, knowing that they did not have any intention of fulfilling those obligations, and then when they were called on it, argued that it was not really a misrepresentation. He said he had an issue with such thinking. Mr. Beard asked what Mr. Jenkins thought about applying for a special exception. Mr. Jenkins said that had been discussed, and he and the appellants had participated in a meeting with Kristen Abrahamson, Chief, Rezoning and Special Exceptions Branch. He said that even though a special exception appeared to be an easy one to pursue, there were some complicated issues that could lead to a possible dedication of right-of-way along the frontage of the road and various other technical factors. He said that had not been

precluded. After conferring with staff, the idea was to see if the appellants could resolve the violation, and there would be a parallel track. He said Ms. Abrahamson had recommended that the notice and revocation be resolved first before applying for a special exception. He referred to a letter he had written that was attached to the staff report that indicated what the appellants had proposed, without prejudice and reserving all rights, to board up some of the openings with drywall and install doors in the other ones that would allow a better separation between the warehouse and showroom areas. He said that had gotten bogged down because he and County staff could not come to a resolution. He said his clients were still amenable to doing that.

Mr. Beard asked Ms. Johnson if the notice had been sent out requesting that the appellants come into conformity and if everything would have been resolved had they done so. Ms. Johnson replied in the affirmative. She said the appellants still had the opportunity to come into conformance. In answer to a question from Mr. Beard, Ms. Johnson said discussions had been held concerning what the appellants had to do to get their non-RUP reinstated. In response to Mr. Beard's comment concerning what could happen if the appellants were to comply with the statements in the December 22, 2004 letter, Ms. Johnson said that at this time that was not acceptable, that staff was looking for the ability to issue a non-RUP without conditions. Mr. Beard said that what he was saying was that had staff sent the notice of violation to the appellants prior to the suspension, they could comply based on the December 22nd document. Ms. Johnson said the appellants had 30 days from that date to remedy the notice of violation. The non-RUP had been revoked, and staff had conversations with the appellants. Chairman DiGiulian said Ms. Johnson had not answered Mr. Beard's question. Mr. Beard said he was asking that for purposes of discussion the two issues be separated. He asked if that would have been the end of the situation had the appellants come into conformity with the reasons stated in the notice. Ms. Johnson stated that Mr. Beard was correct. Mr. Beard said the appellants never had the opportunity to come into conformance with the December 22nd document because the non-RUP was suspended simultaneously with the notice of violation. Ms. Johnson said the appellants still had an opportunity to correct the violation, and if the violation was corrected, staff would reissue the non-RUP. Ms. Johnson agreed with Mr. Beard's comment that staff did not want any more conditions.

Mr. Jenkins said that if the notice was read carefully, Mr. Beard was correct. He said the option to cure in conformance with the December 22nd agreement was not available, and that specifically outlined the only ways they could be cured and did not include the special exception and reconstruction.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer decision for one week to allow the members of the Board an opportunity to look at the building plans. Ms. Gibb seconded the motion, which failed by a vote of 3-2. Mr. Ribble was not present for the vote. Mr. Hart recused himself from the hearing.

Mr. Hammack stated that much of the testimony heard was not particularly applicable to the narrow issue before the Board. He said that when there was an appeal of the Zoning Administrator's notices of violation and their decisions, which were narrow, he thought that the applicable law said that the Board had to find that the Zoning Administrator applied a reasonable interpretation to the Ordinance, and the burden was on the appellant to show that the Zoning Administrator had erred in the determinations that were made. In this case, he said he could not find that the Zoning Administrator had erred. Mr. Hammack stated that he thought there was a history of what was going on with the subject property, but what he had to look at, which was part of the record, was that the Board had a non-RUP before them that was for a proposed use as dated December 22, 2004, for warehousing and associated retail sales. He said the remarks said subject to conditions and agreement letter dated December 23, 2004, a minimum of 60 percent warehouse shall be provided and no more than 40 percent retail allowed. At the bottom of that letter, he said there was a line that said I hereby certify that I have authority to make this application, that the information is complete and correct, and that the use will be in conformance with the Zoning Ordinance and other applicable laws and regulations. Mr. Hammack said the conditions that had been attached indicated that as a condition to obtaining a non-RUP for the warehouse establishment, the undersigned owner has reviewed and agrees to the following operational conditions. He stated that paragraph 1 said that the principal use of the space shall be warehouse, and as depicted on the attached floor plan, a minimum of 10,719 square feet, depicting 60 percent, shall at all times be devoted to warehouse use, which is not display area, and the remaining 40 percent of the space may be devoted to the retail sales of furniture and interior design services.

~ ~ ~ September 19, 2006, SUPERIOR 8500, LLC; COUTURE TEHMINA, INC. D/B/A MCLEAN FURNITURE GALLERY, A 2006-PR-025, continued from Page 554

In paragraph 2, which Mr. Hammack indicated was harder to get around, it read that no part of the warehouse area may be used, designed, or arranged for the display of furniture, and the warehouse area shall not be accessible to retail customers. The entrances shall be roped off. Mr. Hammack said the conditions had been signed by Ali Khan, who agreed to the conditions, and was accepted by William Shoup, the Zoning Administrator. He said those conditions had been incorporated by reference into the non-RUP, and it was clear to him that 60 percent of the space had to be warehouse and 40 percent retail. He noted that the staff report had also stated that in their investigation and review, up to 80 percent of the space was being used for retail. Forty percent directly and another 40 percent indirectly was being used for the display of furniture in a way that was not in conformance with the referenced letter agreement. He said that as much as he would like to support the appellants, he could not. Mr. Hammack said that the photographs clearly showed furniture arranged for display purposes in the warehouse area. He said it was a technical point, and he did not take any pleasure in making his motion because he supported small businesses, and he did not like to see them being forced out of business. He said there had been a lot of extraneous talk about what went on before, and he thought the agreement was the controlling issue.

With respect to the non-RUP, Mr. Hammack said he thought the appellants knew the area was to be as a warehouse with very limited retail space. He said the issue of wholesale had come up, but was not addressed in the agreement. He said there had been testimony concerning parking places, the purchase of the property, and many other things that were not germane to the narrow issue before the Board. He stated that the Board had no equitable powers, and they had not been asked to defer a decision. Mr. Hammack indicated that there may have been options that were available to the appellants, such as applying for a special exception or bringing the property into compliance; however, at this point those opportunities had not been taken.

With respect to the authority to revoke a non-RUP, Mr. Hammack said that Sect. 18-707 of the Ordinance provided that the Zoning Administrator may revoke an approved residential or non-residential use permit when it was determined that such approval was based upon a false statement or misrepresentation of fact by the applicant. Given the discussion about the history of the case and how it got to the Board, he said he could not say that the Zoning Administrator did not have some basis for revoking the non-RUP. He said that whether a court might find the arguments of Mr. Jenkins more persuasive, that same section had a comma, and it was written in the disjunctive that stated or as provided in part 9 below. He said that perhaps it would have been better if the County had given notice under part 9, but he thought it had its option about which way to go, and the bottom line for him was that he could not find that the Zoning Administrator erred in the determinations that he and staff had made. Mr. Hammack referenced Mr. Khan's testimony indicating that a lot of money had been expended to turn the property into a retail store. He said Mr. Khan may have used a poor choice of words and wanted only to refer to part of it. He said he thought that Mr. Khan's comment reflected that there was a big retail component in the store. Mr. Hammack said he did not see why the appellants could not have come into compliance short of having the hearing, but that was not what had been presented to the Board.

Mr. Hammack moved to uphold the determination of the Zoning Administrator. Mr. Byers seconded the motion, which carried by a vote of 4-1. Mr. Beard voted against the motion. Mr. Ribble was not present for the vote. Mr. Hart recused himself from the hearing.

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~ ~ ~ September 19, 2006, After Agenda Item:

Approval of January 18, 2005 and September 27, 2005 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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~ ~ ~ September 19, 2006, After Agenda Item:

Approval of BZA Meeting Dates for 2007

Mr. Hammack moved to defer the approval of the BZA meeting dates for 2007 to September 26, 2006. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Board of Supervisors vs. Board of Zoning Appeals, Case Number 06-10952; McLean Bible Church, Case Numbers 06-8305 and 106CD769; and correspondence, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

The meeting recessed at 1:22 p.m. and reconvened at 1:40 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 1:41 a.m.

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

Approved on: January 30, 2013

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 26, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ September 26, 2006, Scheduled case of:

9:00 A.M. HENRY R. TORRICO, SP 2006-LE-027 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit carport 2.5 ft. from side lot line. Located at 6414 Dorset Dr. on approx. 10,003 sq. ft. of land zoned R-4. Lee District. Tax Map 82-3 ((5)) (27) 5. (Deferred from 8/8/06)

Chairman DiGiulian noted that SP 2006-LE-027 had been withdrawn.

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~ ~ ~ September 26, 2006, Scheduled case of:

9:00 A.M. RAYMOND L. HUBBARD III AND PATTY H. HUBBARD, SP 2006-MA-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.5 ft. from side lot line. Located at 7815 Antiopi St. on approx. 15,098 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-2 ((22)) 13. (Deferred from 3/28/06 at appl. req.)

Chairman DiGiulian noted that SP 2006-MA-004 had been administratively moved to November 28, 2006, at 9:00 a.m., for notices.

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~ ~ ~ September 26, 2006, Scheduled case of:

9:00 A.M. WILLIAM T. FANSHER, SP 2006-SU-033 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 6869 Muskett Wy. on approx. 10,019 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 65-3 ((5)) (3) 48.

Chairman DiGiulian noted that SP 2006-SU-033 had been administratively moved to October 17, 2006, at 9:00 a.m.

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~ ~ ~ September 26, 2006, Scheduled case of:

9:00 A.M. HOSSEIN FATTAHI, VC 2004-PR-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.5 ft. from side lot line. Located at 8723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 5A. (Decision deferred from 5/25/04, 7/20/04, 1/25/05, 5/3/05, 9/20/05, and 2/7/06)

Chairman DiGiulian noted that VC 2004-PR-037 had been indefinitely deferred.

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~ ~ ~ September 26, 2006, Scheduled case of:

9:00 A.M. ERNEST W. LAWRENCE III AND ALISON E. LAWRENCE, SP 2006-MA-026 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit an accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.4 ft. from rear lot line and 1.0 ft. from side lot line.

~ ~ ~ September 26, 2006, ERNEST W. LAWRENCE III AND ALISON E. LAWRENCE, SP 2006-MA-026, continued from Page 557

Located at 6058 Wooten Dr. on approx. 8,707 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (A) 12A. (Admin. moved from 7/25/06 at appl. req.)

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

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ernest Lawrence, 6058 Wooten Drive, Falls Church, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow an accessory dwelling unit and reduction to minimum yard requirements based on an error in building location to permit an accessory storage structure to remain 5.4 feet from rear lot line and 1.0 feet from side lot line. A minimum rear yard of 10 feet and minimum side yard of 12 feet are required; therefore, reductions of 4.6 feet and 11 feet, respectively, were requested.

Mr. Lawrence presented the special permit request as outlined in the statement of justification submitted with the application. He said that his mother-in-law was currently living in their home and taking care of their son. He stated that the accessory dwelling unit was being requested to allow his mother-in-law to have her own living space and allow her to continue to care for her grandson while he and his wife worked full time. He requested that they be allowed to continue to use the accessory storage structure, which had been in place for approximately 30 years, to house the equipment and supplies used to maintain the yard.

In response to a question from Mr. Beard, Mr. Lawrence stated that he had read the development conditions dated September 19, 2006, and understood that the special permit would not flow with the property if the property was sold.

Ms. Gibb asked Mr. Lawrence who had sold the property to him. Mr. Lawrence said Adam Bean (phonetic), the builder who owned Celebrity and Greenville Homes.

Ms. Gibb recused herself from the hearing.

In answer to questions from Mr. Hart, Mr. Lawrence said the storage structure did not have electricity or plumbing, and the foundation was attached to the ground and could not be shifted.

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

Mr. Byers moved to approve SP 2006-MA-026 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ERNEST W. LAWRENCE III AND ALISON E. LAWRENCE, SP 2006-MA-026 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit an accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.4 ft. from rear lot line and 1.0 ft. from side lot line. Located at 6058 Wooten Dr. on approx. 8,707 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (A) 12A. (Admin. moved from 7/25/06 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 26, 2006; and

~ ~ ~ September 26, 2006, ERNEST W. LAWRENCE III AND ALISON E. LAWRENCE, SP 2006-MA-026, continued from Page 558

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

1. The applicants are the owners of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This approval is granted to the applicants only, Ernest W. Lawrence III & Alison E. Lawrence, and is not transferable without further action of this Board, and is for the location indicated on the application, 6058 Wooten Drive, (8,707 sq. ft.), 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 Reid M. Dudley, dated February 24, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

5. The accessory dwelling unit shall contain a maximum of 494 square feet, including a maximum of one bedroom.

6. Provisions shall be made for the inspection of the property by County personnel during reasonable

hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.

7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

8. If the use of the accessory dwelling unit ceases and/or the property is sold, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold, a special permit amendment may be submitted to permit the continued use of an 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. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 4-0. Ms. Gibb recused herself from the hearing. Mr. Hammack and Mr. Ribble were not present for the vote.

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~ ~ ~ September 26, 2006, Scheduled case of:

9:00 A.M. FAIR OAKS RECREATION ASSOCIATION/FAIR OAKS ESTATES HOMEOWNERS ASSOCIATION, SPA 85-C-001 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 85-C-001 previously approved for community swim club and meeting hall to permit change in hours of operation and development conditions. Located at 3720 Charles Stewart Dr. on approx. 6.01 ac. of land zoned R-3 and WS. Sully District. Tax Map 45-2 ((6)) E and F.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McBride, the applicant's agent, Vanderpool, Fostrick & Nishanian, 9324 West Street, Manassas, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 85-C-001, previously approved for a community swim club and meeting hall, to permit a change in hours of operation from 10:00 a.m. - 9:00 p.m. to 8:00 a.m. - 9:00 p.m. daily, reduce afterhours parties from 12 total to 6 total per year, change afterhours party end time from 12:00 midnight to 11:00 p.m., and allow devices and loudspeakers associated with swim meets and pool announcements.

In response to a question from Mr. Hart, Mr. Varga acknowledged that the development conditions in the staff report would not allow the applicant to have music playing outside.

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

Mr. McBride presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the applicant was seeking to amend the development conditions to allow the Sharks swim team, which was based in the Fair Oaks Estates community, to continue. He said some members of the Fair Oaks Recreation Association board of directors and residents who supported the application would speak, and two packets of petitions had been submitted to the Board previously and another at the hearing. He stated that the applicant requested additional hours in the morning to allow the

swim team to practice and to allow for morning meets. Mr. McBride said they were also asking for modifications which would cut back on the number of afterhour's events from twelve to six, as well as cutting back on the end time of the events from midnight to 11:00 p.m. He said they had the consensus of the community, and 253 people had either written letters of support or signed the petition. He displayed photographs of the swim team and an exhibit of the people who were in support of the application on the overhead projector.

Mr. McBride said that one of the modifications the applicant was requesting was that the swim club be allowed to police itself. He asked that Condition 12 be changed to the Board of Directors of the Fair Oaks Estates Home Owners Association, instead of the president.

Mr. McBride quoted from a letter dated September 15, 2006, written by Elizabeth Crews, concerning the importance of the team to her daughter Gillian, a 10-year-old member of the swim team. He also referenced a copy of an essay written by Gillian Crews for a school assignment, dated September 12, 2006.

Mr. McBride requested the wording of Condition 9 be changed to "lifeguard and those devices used to provide instructions or announcements shall be used." He said that instructions and announcements were necessary when the pool had to be closed because of adverse weather conditions or when individuals needed to be informed immediately of an emergency situation. Mr. McBride stated that no music would be played over the loudspeakers.

In answer to a question from Ms. Gibb, Mr. McBride said he had seen the letters from various citizens who were in opposition to music and the language in the conditions. He stated that the applicant attempted to speak to everyone involved to assure them that no music would be played at the pool. Ms. Gibb asked if the applicant would object to adding language indicating that there would be no music played over the loudspeakers. Mr. McBride said he would have no objection to adding it to Condition 9. He said concern had been expressed about the end time of the events at the pool, and the applicant was proposing to change the end time from 12:00 a.m. to 11:00 p.m. Mr. McBride stated that a loudspeaker was currently used only in emergency situations and that had been ongoing.

Mr. Beard noted that three of the opposition letters received by the Board were written by the same person.

In answer to a question from Mr. Hart concerning Condition 16, Mr. McBride used the overhead projector to indicate on the map the location of the Fair Woods development. He stated that the areas marked in yellow indicated temporary users of the pool, and they were supportive of the application; however, they were not included in the 253 supporters he had mentioned earlier. Susan Langdon, Chief, Special Permit and Variance Branch, stated that Condition 16 did appear to conflict with what Mr. McBride had said. She said it was a condition that staff carried forward from the previous application, and staff did not have an opinion as to whether or not pool membership should be opened up to other people. Mr. McBride said the applicant would be amenable to removing the second sentence and pointed out that Condition 5 referred to a cap of 420 members which should remain. Ms. Langdon stated that staff was agreeable to removing the second sentence in Condition 16.

Mr. Hart said some of the complaints received by the Board referred to music being played at the pool, and he asked what the source of the music was. Mr. McBride stated that he was unsure what instance the citizens were referring to, but over the years there had been an afterhour's event with a deejay and outside music that should not have occurred. He stated that it was not allowed by the conditions, and the applicant was not proposing to allow it. He said the policing of the pool was done by community volunteers who were instructed that loud music from radios or loudspeakers was not allowed.

Referencing Condition 6, Mr. Hart said he thought it fair to assume that if there was a swim meet at the pool, there would be more than 43 cars. He asked what the applicant was supposed to do in that case. Ms. Langdon said that Condition 6 was also a condition that had been carried forward from the previous application, and unless there were complaints, she did not think the Zoning Administrator would get involved. She said the applicant might have to look at providing additional parking on-site. Mr. Hart asked whether it would be considered a violation of the special permit if cars parked on the street during a swim meet. Ms. Langdon said it could be interpreted that way, but she did not know whether the intent in the original special permit was aimed toward a need for more parking on a daily basis. Ms. Langdon stated that staff had not

placed a limit on the number of swim meets the swim club could have, and she did not think staff would object to a limitation on the number of meets to be held during the year or on-street parking as a condition; however, it would have to be clarified by saying except during swim meets in Condition 6. Ms. Langdon said the Board could place a cap on the number of meets held each year if they chose.

Mr. Beard said he did not know why the Board was addressing the parking issue if it was a carryover from the original application. Mr. Hart said he had raised the issue because it appeared to him that the swim club was being set up for an instant violation. Because the condition did not work the way it was currently written, the swim club would be in violation at their first meet. Ms. Langdon said that a zoning inspector had advised staff that a complaint had been received recently, but she did not know whether a notice of violation had been issued or not.

Mr. Beard asked Mr. McBride to confirm that there had been no swim meets held. Mr. McBride stated that swim meets had been held at the pool, and what was being proposed was to adjust the hours so A swim meets could occur. He said there were a limited number of meets each year. It was useful for all swim clubs to have the ability to have meets because otherwise only a few clubs had all the meets. Mr. Beard said his question was why the Board was addressing it now if meets had already been approved and were being held. He said that if the request came in through the complaint process, there was obviously a problem. Mr. Hart said there would be more and bigger meets at different hours, and based on what was before the Board, the proposed activity would not comply with Condition 6. Mr. McBride said he did not know whether they would be called bigger because the actual members of the team were the same. It would just be the A team and not the B team. He suggested the number of Saturday meets with the 8:00 a.m. times could be limited to four.

Mike Adams, Zoning Enforcement Branch, said his office had received a complaint concerning the noise-making devises and the parking issues during the meets. He said the residents had complained about too many vehicles being parked on the streets close to their houses during the meets. Mr. Adams said before a notice of violation was issued to the Fair Oaks Recreation Association, they had advised his office that they were going through the special permit process, and he was present at the hearing to determine whether the conditions would be modified.

In answer to a question from Mr. Byers, Mr. Adams stated that the street in question was a public street maintained by the Virginia Department of Transportation. Mr. Byers asked whether he would be in violation if he attended a swim meet and was legally parked on the public street. Mr. Adams replied that as the driver, he would not be in violation, but the swim club would be held in violation because of the conditions contained in the special permit. Mr. McBride said the issue was encountered throughout the County not only for swim events, but for other large events, and the applicant proposed limiting the Saturday swim meets to four.

In response to questions from Mr. Beard, Mr. Adams confirmed that there currently was an open complaint, but a notice of violation had not yet been issued because the pending special permit amendment would hopefully rectify the violations.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in support of the applicant's position: Jack Briggs, 12306 Ox Hill Road, Fairfax, Virginia; Todd Rawley (phonetic), no address given; Chuck Smith (phonetic), no address given; Richard Ikeda, 12588 Misty Creek Lane, Fairfax, Virginia; Joyce Arambroo (phonetic), no address given; Michelle Sweeney (phonetic), no address given; Kim Lawhorne (phonetic), no address given. Their main points were that the swim club had been in existence since 1999; they were not asking for anything more than what had been ongoing since the pool's inception; the complaint that had been filed was being addressed with the application; the staff was comprised of volunteers who had made some mistakes over the years; the team members had been asking for more home meets to enable them to compete at their own pool; the applicant had provided social activities for the children and adults over the years; being on the team and competing was beneficial to the health, social skills, and physical wellbeing of the children; moving the operational starting time for the pool to 8:00 a.m. would allow the swim team to hold its practices; there were over 100 swimmers between the ages of 5 and 18; the current limitation on the hours the pool could be used for practice reduced the number of practices and prevented many team members from attending practices; because of the start time restriction, other pools had to be used for meets, resulting in a loss of revenue;

holding the swim meets away from their home base was a violation of the Northern Virginia Swim League (NVSL) rule; over 105 teams, with close to 15,000 swimmers, participate in the NVSL; and, this was only one of the few swim leagues in the Northern Virginia area.

In response to a question from Mr. Beard, Ms. Sweeney said she was the swim team representative for the Junior Sharks and attended the practices. She said that the team members arrived at the pool in their swim attire just before practice began. Ms. Lawhorne stated that once the association was made aware of the restriction that they were not allowed to begin practice at 8:00 a.m., they moved their practice time to 10:00 a.m. and initiated the special permit request that was before the Board.

The following speakers came forward to speak in opposition to the applicant's position: Walter Hall, 3723 Charles Stewart Drive, Fairfax, Virginia; Bill Nello (phonetic), no address given. Their main points were that they were not opposed to swim meets being held; they were opposed to the request to use sound equipment outside the hours of swim meets; there was concern that if sound equipment was used for general announcements, it could be expanded, and the neighbors could hear them on a continuous basis; that sound equipment use should be limited to swim meets when there were large groups of people and such equipment was needed; restriction of the number of afterhours parties to the existing number; concern about the potential number of events that could be disruptive and cause excessive noise and congestion on neighborhood streets; the swim club had been good neighbors, and they supported the teams; the matters they were presenting were small, but should be addressed by the Board; the Board should focus on the reference in the application to the removal of the limitation to the Fair Oaks Estate and Fair Woods Subdivision and determine what effect that would have on them; there was support for limiting the number of Saturday swim meets per year; the number of meets and an end date should be included in the condition; at times cars were double-parked on the street, causing a potential hazard because fire and rescue equipment would not be able to get through; and, they were in favor of the meets being held, but not to the use of a bullhorn.

In answer to a question from Mr. Beard, Mr. Hall stated that he had no objection to the hours of the swim meets being moved from 10:00 a.m. to 8:00 a.m. He said that perhaps the Board could reword the condition to restrict the use from 8:00 to 10:00 a.m. to swim team practices and lessons, rather than to general use.

In his rebuttal, Mr. McBride requested approval of the amended development conditions. He said it was his opinion that the Board should approve the emergency safety announcements. He said the club had committed to reducing the afterhours events, and they should be allowed to continue with policing themselves within Fair Oaks Estates. With respect to restricting the swim meets, Mr. McBride indicated that the earlier hours were primarily for the Saturday meets and practices during the summer, and by moving the time up, the families would have more time to spend at the pool. He reiterated that they were willing to limit the Saturday swim meets to four and noted that there were other more informal meets for the B team that occurred during the week in the summer. He said the parking issue was not unique to the subject pool. Public parking was available on public streets, and he was not aware of any violations of the normal parking rules that would prohibit emergency equipment from getting through. He said the situation would be monitored very closely; however, that was a separate complaint. Tickets could be generated from that, and a special permit condition was not needed.

Responding to a question from Ms. Gibb, Mr. McBride said bullhorns were not used at practices, just at the meets. He said the use of the word "bullhorn" was a misnomer, that there was an electronic starting device which was also the microphone for announcing the next events at the meets. Mr. McBride said he was talking about a loudspeaker which was used at both the A and B meets on Saturday mornings and Monday evenings.

With respect to the number of B team meets, Ms. Arambroo said that they were in the Fairfax Developmental League, and they met on Monday nights. She said they were supposed to host a big swim meet with four different teams, and at the present time they were unable to do that. She stated that the B team meets would always be on Mondays, and they needed to host at least two of them, but preferably three. She requested that three be added to the conditions.

In answer to a question from Ms. Gibb, Mr. McBride confirmed that the applicant was requesting seven meets, and they would use the loudspeaker starting device. Mr. McBride added that if the Board wanted to

stipulate that no music was to be played, the applicant was agreeable to that.

Mr. Briggs explained that they did not have a loudspeaker. The equipment was in a small stand that contained a muted microphone. It was not a public address system. Mr. McBride added that it was amplified sound.

Mr. Hart asked which board of directors was referenced in the fourth bullet in Conidition12, the recreation association or the homeowners association. Mr. McBride clarified that Fair Oaks Recreation Association and Fair Oaks Estates Homeowners Association were co-applicants.

In response to a question from Mr. Hart, Mr. McBride said the afterhour's parties would take place indoors, and there was no problem with the prohibition on amplified outdoor music. Referring to Condition 9, Mr. Hart said he did not have a problem with emergency announcements and asked if that was the applicant's intention. Mr. McBride said they would not have a problem with adding emergency language to the development conditions.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SPA 85-C-001 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FAIR OAKS RECREATION ASSOCIATION/FAIR OAKS ESTATES HOMEOWNERS ASSOCIATION, SPA 85-C-001 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 85-C-001 previously approved for community swim club and meeting hall to permit change in hours of operation and development conditions. Located at 3720 Charles Stewart Dr. on approx. 6.01 ac. of land zoned R-3 and WS. Sully District. Tax Map 45-2 ((6)) E and F. 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 26, 2006; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the standards for special permits.
3. Staff's recommendation was for approval.
4. The rationale in the staff report was adopted by the Board.
5. Although there is some opposition, the impacts from such a facility on the community are somewhat limited in time, and with appropriate development conditions, they can be 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 Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Fair Oaks Recreation Association/Fair Oaks Estates

Homeowners Association, and is not transferable without further action of this Board, and is for the location indicated on the application, 3720 Charles Stewart Drive, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by O.C. Paciulli III dated November 28, 1984, 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 family memberships shall be 420.

6. The minimum number of parking spaces shall be 43. Bicycle racks may be provided. If in the future it is determined by the Zoning Administrator that there is insufficient parking on site which results in parking on the street, except as otherwise provided herein, the applicant will be required to submit an amendment to provide additional parking spaces on site to alleviate the insufficiency. Pedestrian access shall be encouraged from the northern portion of the subdivision. All parking shall be on site except for up to four Saturday swim meets and up to three weeknight swim meets per year held within hours approved herein.

7. Transitional screening shall be modified in accordance with the screening and landscaping shown on the plat.

8. The barrier requirement shall be waived.

9. All noise shall be regulated in accordance with the provisions of Chapter 108 of the Fairfax County Code. Typical swim meet devices such as loudspeakers and start buzzers may be utilized to manage swim meet events. No amplified music, either from loudspeakers or boom boxes, or loudspeakers, bullhorns, or any other such noise-making device, except for a whistle which is required by the lifeguard or devices used for emergency announcements, shall be used at any other time.

10. If lights are provided for the pool and parking lot, they shall be in accordance with the following:
    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall be a low-density design which directs the light directly onto the facility.
    - Shields shall be installed, if necessary, to prevent the light from projection beyond the pool or parking lot area.

11. The hours of operation for the pool shall be from 8:00 a.m. to 9:00 p.m. Swim team practice shall be included within these hours. The hours of operation for the meeting room shall be from 8:00 a.m. to 10:00 p.m.

12. After-hours parties for the entire use shall be governed by the following:
    - Limited to a maximum of six (6) after-hours parties per year.
    - Limited to Friday, Saturday and pre-holiday evenings.
    - Shall not extend beyond 11:00 p.m.
    - A written request at least ten (10) days in advance and receive prior written permission from the Board of Directors of Fair Oaks Estates Homeowners Association for each individual after-hours party or activity.
    - Requests will be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hours party.

- No amplified outdoor music shall be allowed.

13. The Environmental Health Division of the Fairfax County Health Department shall be notified before any pool waters are discharged during drainage or cleaning operations, so that pool waters can be adequately treated before being released into the storm sewer system.

14. The proposed sign shall be in accordance with Article 12, Signs. The proposed location of the sign, as shown on the plat, may need to be changed if necessary to ensure adequate sight distance.

15. This use shall be subject to the provisions of the Water Supply Protection Overlay District.

16. Residents of the surrounding Fair Oaks Estates shall have priority membership.

17. The facility shall be closed quickly and quietly.

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 is established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

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~ ~ ~ September 26, 2006, Scheduled case of:

9:00 A.M. LAUREL HIGHLANDS, SP 2006-MV-034 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a temporary sales trailer. Located at 9088 Furey Rd., 9162, 9164, 9166 and 9168 Finnegan St. on approx. 19,637 sq. ft. of land zoned PDH-12. Mt. Vernon District. Tax Map 107-2 ((12)) 247, 248, 249, 250 and 251.

Mr. Hart said he thought Laural Highlands was the place, not the applicant. He said that the paperwork showed K. Hovnanian Homes was the applicant, and he questioned whether the advertising was correct. He asked staff to check on it. Susan Langdon, Chief, Special Permit and Variance Branch, said staff would look into it, but she thought that K. Hovnanian Homes was the builder, not the applicant. Mr. Hart said K. Hovnanian Homes had signed the paperwork as the applicant. Ms. Langdon said that was part of the problem with the affidavit, and staff was attempting to straighten it out. SP 2006-MV-034 had been administratively moved to November 7, 2006, at 9:00 a.m., for the affidavit.

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~ ~ ~ September 26, 2006, Scheduled case of:

9:00 A.M. HERITAGE FELLOWSHIP UNITED CHURCH OF CHRIST, SPA 84-C-045 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 84-C-045 previously approved for church to permit building additions and site modifications. Located at 2505 Fox Mill Rd. on approx. 5.08 ac. of land zoned R-2. Hunter Mill District. Tax Map 25-2 ((5)) 51 and 52. (Associated with RZ 2006-HM-001) (Admin. moved from 6/20/06 at appl. req.)

Chairman DiGiulian noted that SPA 84-C-045 had been administratively moved to October 17, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 26, 2006, Scheduled case of:

9:30 A.M. CHRISTOPHER POILLON, A 2006-DR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining three dwelling units on a single lot located in the R-E District in violation of Zoning Ordinance provisions. Located at 9208 Jeffery Rd. on approx. 4.0 ac. of land zoned R-E. Dranesville District. Tax Map 8-2 ((1)) 26.

Chairman DiGiulian noted that A 2006-DR-011 had been withdrawn.

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~ ~ ~ September 26, 2006, Scheduled case of:

9:30 A.M. ROSEMARY L. STARCHER/NVR HOMES, INC., A 2006-MV-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is permitting the operation of a sales office at Tax Map 107-4 ((20)) 10 without a valid Temporary Special Permit in violation of Zoning Ordinance provisions. Located at 9237 Old Beech Ct. on approx. 4,964 sq. ft. of land zoned PDH-5. Mt. Vernon District. Tax Map 107-4 ((20)) 10. (Admin. moved from 10/17/06 at appl. req.)

Chairman DiGiulian noted that A 2006-MV-032 had been administratively moved to November 7, 2006, at 9:30 a.m., at the appellants' request.

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~ ~ ~ September 26, 2006, Scheduled case of:

9:30 A.M. JANET L. PORTER AND GEORGE C. PORTER, A 2006-PR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a kennel use and are keeping pets for commercial purposes on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 10412 Hunter Ridge Dr. on approx. 55,411 sq. ft. of land zoned R-1. Providence District. Tax Map 37-4 ((10)) 8.

Mr. Hart recused himself from the hearing.

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

Elizabeth Perry, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 19, 2006. She noted that color copies of the photographs contained in the staff report had been handed out. She said the appeal was of a determination that the appellants had established a kennel use and were keeping pets for commercial purposes on property in the R-1 District in violation of Zoning Ordinance provisions. In response to a complaint that a dog breeding business was being operated at the subject property, staff from the Zoning Enforcement Branch conducted an inspection on May 3, 2006. The inspection and a conversation with Ms. Porter revealed that the appellants owned nine adult deerhound dogs, and two litters of puppies had recently been born. The appellants' website confirmed that two dogs had been bred in January, and a total of 12 puppies had been born in March of 2006. Zoning Enforcement staff observed fences in the rear yard, several dog cages, and a vehicle advertising Deerhound Deluxe Show and Field Champions at the subject property. During the inspection, Ms. Porter said that most years one of the dogs had a litter, but that sometimes two would produce a litter. Ms. Porter also said that while she occasionally gave away a dog, she mainly sold the puppies, and most of the puppies being kept on the subject property would be sold.

Ms. Perry said Sect. 2-512 of the Zoning Ordinance stated that the keeping of commonly accepted pets was allowed provided such pets were for personal use and enjoyment and not for any commercial purpose. The appellants were keeping dogs at the subject property for the commercial purposes of breeding and selling the dogs. The use established at the subject property was a kennel, defined in Sect. 20-300 of the Zoning Ordinance as any place or establishment in which dogs are kept, trained, boarded, or handled for a fee. A kennel use is permitted in the R-1 District only with approval of a Category 5 special exception by the Board of Supervisors, but a special exception had not been approved for the subject property. Ms. Perry said that it was unlikely the subject property would be eligible for a special exception based on the requirements for

establishing such a use. Staff had received several complaints from neighbors indicating that the kennel use was subjecting the neighborhood to noise and odor that the additional standards for kennel uses were are intended to mitigate.

H. Kendrick Sanders, the appellants' agent, Law Offices of H. Kendrick Sanders, 3905 Railroad Avenue, Fairfax, Virginia, presented the arguments forming the basis for the appeal. Mr. Sanders stated that the number of dogs residing on the property was legal under the County's Zoning Ordinance pertaining to dogs. He said the appellants were allowed to have nine adult dogs under the Ordinance and any number of puppies under six months old. He said staff and the inspector's position was that the Porters' operation fell under the definition of a kennel, and he thought staff had stretched and amended the definition adopted by the Board of Supervisors. He said that the definition on page 5 of the staff report was that a kennel was more than 10 dogs per 40,000 square feet, which did not apply to the appellants. The other portion of the definition which said any place or establishment in which dogs were kept, trained, boarded, or handled for a fee did not pertain to them. Mr. Sanders said that addressed the handling of other peoples' animals for a fee. He indicated that staff was attempting to stretch the definition to add the word "breeding," and that word was not contained in the definition. He said that under the definition, the appellants were not operating a kennel because they did not handle or keep dogs for a fee. All the dogs on the property belonged to the appellants.

Mr. Sanders stated that Ms. Porter disposed of the dogs' litter every day, and they were kept in the house and in the yard in legal doghouses. The yard was fenced, and no complaints had been received that the dogs had run loose or attacked people. He said the question was whether the appellants had crossed the line into a business that was prohibited by the Zoning Ordinance. He said the sign on the side of the appellants' van was legal and the van could be parked in the driveway because one commercial vehicle was permitted in a driveway. With respect to the web page that had been mentioned, Mr. Sanders said that nowhere on the page did it mention dogs or puppies for sale. It mentioned the dogs' championship lines. He said the appellants had been showing Scottish Deerhounds for over 20 years and had won many prizes. He said the puppies replaced dogs that had died, aged, or could not be shown any longer, and on occasion the appellants would sell excess puppies that they did not keep for future breeding or showing. He said what it came down to was why the appellants were at the hearing and what the real issue was of the complaint. Mr. Sanders said it was kind of a nebulous area where the appellants were being asked to change their 20-some-year lifestyle. He said he could understand that the neighbors might tolerate, but not like the dogs. He said it would clearly not be a violation if the appellants gave away the puppies, but they would have the same number of dogs. He said it was questionable whether it would be considered operating a business on the subject property if the appellants sold a puppy to someone in Vienna, delivered the puppy, and picked up a check. Mr. Sanders said staff's attempt to define it as a kennel was contrary to the black and white reading of the Ordinance.

Ms. Gibb asked how many puppies had been born and sold over the past 24 years. Mr. Sanders replied that the appellants had said the dogs could have one to two litters each year, which could be as small as one to as many as 12 puppies. Mr. Sanders stated that the appellants currently had two male and four female adult dogs. Ms. Gibb said there could have been hundreds of dogs, and she asked how many of those had been sold.

Janet Porter, 10412 Hunter Ridge Road, Oakton, Virginia, came forward to speak. She said that in the past 10 years, 26 puppies had been picked up at her house. She said her primary purpose was to raise and show champion Scottish Deerhounds, and she bred every year to continue her showing stock. She explained that because she was not allowed to have all those puppies grow up to be adults on her property, she had to place them somehow. She said she received money for the puppies to offset her expenses. Ms. Gibb asked what had happened with the other puppies. Ms. Porter said she did not know the percentage, but a lot of the puppies had been placed with other show dog people who would show them. Ms. Gibb asked whether Ms. Porter had been compensated for placing the puppies with the show people, and Ms. Porter said yes. She said that out of the 82 puppies born in the past 10 years, 26 had been picked up at her property, she generally kept one to two out of her litter for her own future show stock, and approximately 15 had been sold. She stated that she had 21 litters in 24 years. She said she had been investigated by a zoning inspector twice in years past, and she had been told she could have one to two litters a year without any problems. Ms. Gibb asked whether Ms. Porter was incorporated. Ms. Porter said she was not, that she was a hobby breeder. Ms. Porter explained the various aspects of her personal breeding program and her

membership with the American Kennel Club. She said her kennel name of Deerhound Deluxe referred only to her lineage of Scottish Deerhounds that she had worked on for 32 years, and she had the Number 1 Scottish Deerhound in the United States in 1999 and the Number 2 Scottish Deerhound and Number 1 male in 2000.

Ms. Gibb asked what the complaints were currently and in the past. Ms. Perry said the current complaint was that the appellants were operating a dog breeding business on the property, and noise was not a part of the original complaint; however, after the complaint was received other people had called to complain about noise and odor. Mr. Sanders said he had a letter that had been written by a zoning inspector on July 9, 1996. He said the letter to the appellants contained the Ordinances pertaining to businesses, and the inspector had said a couple litters a year would not be considered commercial use.

Mr. Beard asked whether either of the appellants had a business or professional occupancy license. Mr. Sanders said they did not.

Mr. Hammack asked if the appellants gave puppies away. Ms. Porter said she had given approximately six away. She explained that the reason puppies were not usually given away was to encourage the owners to treat them as something of value. She commented on the problem of unwanted dogs plaguing the country. A brief discussion ensued concerning why a puppy would be given away, such as to a friend or because a puppy did not have the qualities of a show dog.

Mr. Sanders said the Board needed to determine whether or not the appellants had established a kennel, but he said it was not within the definition of a kennel. He said he thought the question was what did someone do if they wanted to breed championship dogs in their home and was that allowable. He said he thought it was allowed under the Zoning Ordinance. Mr. Sanders said the stickier issue was whether someone was prohibited from selling excess puppies or only from selling them on the premises.

Chairman DiGiulian said he was concerned about the number of puppies and asked for clarification regarding the numbers. Mr. Sanders said Ms. Porter had taken the numbers from the past 10 years, and in that period of time a total of 82 puppies had been born on the property.

Mr. Hammack said that under the Ordinance only dogs six months or older in age shall be counted. He said it was clear that a person could have an unlimited number of puppies under six months old, and he asked how old the puppies were when they were removed from the property. Ms. Perry stated that Mr. Hammack's comments were correct; however, the issue was whether or not there was a commercial purpose, and staff's opinion was that the dogs were being regularly kept for that purpose. Mr. Hammack said that people sold puppies all the time and asked if they would be held in violation of the Zoning Ordinance if they were in Fairfax County, and if so, whether those people were prosecuted. Ms. Perry said that if a complaint was made, staff would look into it. She said that what staff was working with was an established pattern of regularly keeping and handling the dogs for commercial purposes. Mr. Hammack stated that all the dog breeding people he knew sold their puppies, and he did not know how anyone could be a member of the American Kennel Club and not have puppies. He said those people would have to dispose of some of them one way or the other and did not give them away. Ms. Perry said that if that was regularly being done, a kennel needed to be established. Mr. Hammack said that if that was the case, then everyone belonging to the American Kennel Club or horse breeders were into a commercial purpose. Ms. Perry agreed, but said horses were under different regulations. Mr. Hammack said that technically there would be a violation of the Zoning Ordinance. Mr. Sanders said it seemed to him that the Board of Supervisors could address this situation in some other way if it desired and they had not done that.

Mr. Beard asked what the appellants would need to do to come into compliance. Ms. Perry said that at the time of the inspection the appellants had several puppies under six months, and they were not counted toward the maximum number of dogs they could keep on the property. Based on the acreage, under Section 2-512, the appellants could have no more than 13 dogs on the property, and they could not be handling, breeding, or selling them for a commercial purpose. She said the commercial component had to cease. Ms. Perry said the information staff had been provided and what was on the appellants' website indicated that the puppies had been born in March, so they currently were six months old and would count towards the limit of 13 dogs.

~ ~ ~ September 26, 2006, JANET L. PORTER AND GEORGE C. PORTER, A 2006-PR-033, continued from Page 569

In response to questions from Mr. Hammack, Ms. Perry said she did not believe there was a definition of commercial purpose in the Ordinance, and that was probably one of the areas where the Zoning Administrator made interpretations based on the facts in the situations presented. She confirmed that if the appellants gave the puppies away, there would be no problem. Mr. Beard said that the Ordinance said for personal use and enjoyment, and if the puppies were given away, he thought there would still be a problem. Mr. Hammack asked whether it would be permitted if the puppies were taken off the premises to sell. Ms. Perry said no because part of what the appellants were doing on the property was associated with commercial use, and whether or not the actual sale transaction took place on the property, it would still be a commercial purpose. Mr. Hammack asked whether it would be considered a commercial purpose if one of the appellants' dogs was loaned to another breeder for breeding purposes off the premises. Ms. Perry said that if the dog was sent out for breeding and the breeding was not taking place on the property, it would still be considered a commercial purpose if the appellants were receiving money for the breeding of the dog. She said she knew that was difficult because it probably happened all the time; however, it did link back to a commercial purpose, which was what staff had to look at in the Ordinance.

Chairman DiGiulian called for speakers.

The following speakers came forward: Joe Turrisi, 10414 Hunter Ridge Drive, Oakton, Virginia; John Williams, 10410 Hunter Ridge Drive, Oakton, Virginia; Linda Ripetta, 2704 Ankeny Street, Oakton, Virginia; John Yaremchuk, 2702 Ankeny Street, Oakton, Virginia; Kristen (phonetic) Ripetta, no address given; Luigi Ripetta, 2704 Ankeny Street, Oakton, Virginia. Their main points were the appellants were conducting a business at their home in violation of the Zoning Ordinance. There was no license involved if it was a business. No one was paying attention to information produced by the County concerning small business operations. Approximately two to three litters a year had been observed with no less than four to five puppies each. A kennel box had been placed against a neighboring lot line. The females were extremely protective of their puppies. There was a pack mentality among the adult dogs. The Health Department needed to take action with respect to the stench emanating from the property, especially in the summer months. The noise level coming from the dogs barking day and night was upsetting and a nuisance. The use of residential areas for dog breeding and resale was not good for property values. More traffic was brought into the area. There was opposition to granting a zoning exception for a dog kennel that was apparently being operated for profit. The dogs had gotten into the Ripetta yard and had killed their small dog. After the Ripettas had installed a six-foot high fence around one and one half acres of their property to protect it from the dogs, the dogs gained access by using their driveway and would hurl themselves into their front windows. The Ripettas had called Animal Control on numerous occasions with a request that they pick up the dogs because of the fear that their windows would be broken. The dogs had gained access to the Ripetta garage and destroyed sports equipment which the appellants refused to pay for. Children standing at a nearby bus stop had been menaced by the dogs, and County inspectors had been called out with the result that the appellants had been required to erect a fence around their property to detain the dogs. Approximately ten years prior, the number of dogs had been increased from two to approximately fourteen, and they all would stand against the Ripettas' fence snarling, howling, barking, and screaming. The adult dogs had attacked the puppies, and Linda Ripetta had witnessed one of the adult dogs kill one of the puppies. The appellants did not clean their yard. Rats and snakes had become a problem. A commercial dog breeding operation should not be allowed in a residential neighborhood no matter what it was called. Children were afraid of the dogs. A limitation should be placed on the number of dogs and litters allowed in a residential area. Effluent from feces and urine was detrimental not only to the environment, but also to the people who inhabit the area around the appellants' property. The appellants' property looked like a ghetto area, and property values were affected by it. The County had failed to support the neighbors who had complained about the appellants' dogs and their rundown property. Numerous calls to the police department had resulted in only one policeman attempting to resolve the situation. The plastic that the appellants had placed against the inside of the fence should be removed because it was an eyesore. When the County placed the notice of the public hearing on the property, the appellants placed their own sign next to it which stated that they were not trying to change anything and asking the neighbors to call them. The situation was unbearable to everyone in the neighborhood.

Copies of the appellants' web pages beginning in 2001 and a letter from a neighbor were presented to the Board by Linda Ripetta.

Mr. Byers said that based upon the 55,411 square feet of property owned by the appellants and setting aside

the commercial versus personal use of the dogs, the appellants were allowed to have 13 adult animals on the property, and there would still be the issue with regard to feces, noise, and everything else. Chairman DiGiulian stated that it would be subject to the Health Department's scrutiny. Mr. Byers agreed, stating that it was not a zoning issue, that it was a Health Department issue.

Mr. Beard explained to Mr. Ripetta that he was sympathetic to his plight, but as had been stated earlier, the issues presented to the Board of Zoning Appeals (BZA) needed to be addressed to the Board of Supervisors because the BZA did not have any authority to change the Zoning Ordinance. The BZA had to operate within the guidelines that were laid out for them. He said that there were certain rights that were granted under the Ordinance, and he wanted the speakers to be aware of that.

Ms. Perry stated that the use of the property demonstrated an ongoing regular cycle of breeding, raising, and handling for a fee, which met the Zoning Ordinance definition for a kennel, and the fees the appellants received for selling the dogs they bred further exemplified the commercial nature of the use of the property. By taking a look at the additional standards for kennels, staff could see how some of the issues associated with kennels really fit the use of the subject property. The additional standards specifically mentioned breeding as a use. It pointed to noise and odor as issues that needed to be mitigated by calling for things like completely enclosed structures and large lot sizes. She said the Board had the authority to ask for specific management techniques to ensure that there were no adverse effects. Although the appellants could keep up to 13 adult dogs, the fact that they were regularly breeding so that they regularly had additional puppies on the property further compounded the issues and adverse impacts that were being felt in the neighborhood. Ms. Perry asked that the Board uphold the Zoning Administrator and make the determination that the appellants were keeping animals for commercial purpose and had established a kennel in the R-1 District without special exception approval.

In his rebuttal, Mr. Sanders said that the complaints voiced at the hearing were not related to zoning issues. He stated that until the week before the hearing, the appellants had never received a letter from the Health Department on the issues of dog feces, rodents, or snakes. He said the issues that were cited concerning the dogs at the bus stop and the attack on the neighbor's dog had happened 25 years prior, long before the current fencing was put up. Mr. Sanders said it was a strange history because after all these years this had come up all of a sudden when all the neighbors had moved in over the years beside the appellants who had owned the dogs all those years. It should have been obvious to anyone who moved next door, and it would be interesting to know whether the people selling those houses pointed out to the buyers that they were buying houses next door to 13 Scottish Deerhounds. He said that over the years there was no record of any complaints except the zoning inspector who had come out, but left after saying he did not think the appellants were violating the Zoning Ordinance. Mr. Sanders said that all of the neighbors except one had dogs. He said that looking at it in a zoning context, he wondered whether the yard could have been screened. If the appellants had tried to put evergreens in, they probably would not have lived with the dogs, and the neighbors probably would ask why they should screen. He suggested the neighbors could have blocked it from view by putting up a privacy fence or things to protect themselves.

Mr. Sanders said that if the Board ruled that the Zoning Administrator was right, they would be saying it was a kennel, which he did not think the definition came close to meeting. In order for the appellants to comply, they could not sell any puppies, but they could still have them. He asked whether it was a continuing violation or only a violation when a puppy was sold. He said he had been told that people did not get money for having prize show dogs, no $100,000 prize at Westminster, only a blue ribbon, the prestige, and the love of dogs. He said you could get money in breeding a champion if someone wanted to breed their dog to a champion and were willing to pay money for that, but the champion dog could still be at the owner's house. He said it seemed to him that it was not forbidden by the Zoning Ordinance to raise champion dogs in someone's house, and it would not make sense if it was because no one would be able to raise champion dogs. He said he had been assured by Ms. Porter that she cleaned her yard every day, and he did not understand the issues raised concerning rats or what they were eating.

Ms. Gibb asked if there could be a kennel on the appellants' property. Ms. Perry said no because the additional standards for the special exception would require a minimum lot size of two acres for any outdoor facilities, and if they were not going to have outdoor facilities, they would have to develop the property with structures that were completely soundproof. She said that by establishing the kennel use, it would not be accessory to the house, so the appellants would not be living there anymore. They would have to create the

structures for the keeping of the animals. Ms. Perry noted that the additional standards stated how the Board shall consider the kinds and numbers of animals proposed to be kept and the characteristics of a particular use and the surrounding areas. She said it was unlikely that the subject lot, being in the middle of a subdivision surrounded by other subdivisions, would be deemed a likely property for establishing a kennel.

Ms. Gibb asked whether it was correct that since puppies under six months were not counted and 13 adult dogs were allowed, 13 adult Great Danes could have 12 puppies each under the Ordinance. Ms. Perry said that was true, provided they were not for commercial use, as stated in paragraph 1 of Sect. 2-512 concerning the keeping of animals.

In answer to a question from Ms. Gibb concerning violations that may have been cited by the Health Department, Ms. Perry stated that staff had done some additional research regarding history of previous zoning actions, and no evidence was found. She said that when the zoning inspector went out to the property, she did take a member of Animal Control with her. Ms. Perry said they had coordinated with the Health Department, and they intended to send an inspector out to the property at a later date.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator for various reasons. Paragraphs 1 and 2A of Sect. 2-512 of the Zoning Ordinance stated that the keeping of commonly accepted pets shall be allowed as an accessory use on any lot provided such pets are for personal use and enjoyment and not for any commercial purpose. Ms. Gibb said some of the dogs were for personal use and enjoyment, but she thought that there was also a commercial purpose based on testimony from the appellant that over the course of the last ten years, she had sold at least 26 puppies to people who came to the property. She said that people going to the property was not the most important thing. It was the selling of them. She said she figured at least 50 more were sold to show people, and whether that commercial purpose was defined or not in the Code, she thought it was reasonable for the Zoning Administrator to say that selling a puppy was a commercial purpose. Ms. Gibb said a lot of testimony had been presented to the Board concerning the effects of the animals on the neighbors. Although she realized the neighbors had moved in later than the appellants had, the issue was stated narrowly in the Zoning Ordinance concerning whether the pets were being kept for a commercial purpose, and she thought they were.

Mr. Ribble seconded the motion.

Mr. Hammack asked whether the motion was finding that the appellants were operating a kennel. He said the violation indicated the appellants had violated two different paragraphs, and the Board could approve-in-part and reverse-in-part. He said he had misgivings as to whether what the appellants were doing actually fell within the definition of a kennel. As the definition was stated in the Zoning Ordinance, which was what the Board had to judge the appeal against, he was not sure that what they were doing fell into any place or establishment in which dogs were kept, trained, boarded, or handled for a fee. He said there had been no evidence that the dogs were being kept for other people, trained, or boarded for a fee, and although the dogs may have been sold or bred and then sold to third parties for a fee, that was not in the definition.

Ms. Gibb stated that she was not able to find it was a kennel, and she amended her motion to overturn the Zoning Administrator's determination regarding a kennel and to uphold the determination concerning the keeping of animals for commercial purposes.

Mr. Byers said he was tremendously sympathetic to the people who were living around the appellants' residence, but he thought the issues that they had presented were health and noise issues, not zoning issues. He noted that several of his colleagues had stated that the Board was bound by the Zoning Ordinance, and under Sect. 20-300, his perspective was that it did not fall under the definition of a kennel. He said the Board had the sworn testimony of Ms. Porter that essentially it was not a commercial enterprise. Mr. Byers said the Board had to make a determination about what the definition was of commercial. He said that the selling of 26 animals over 10 years was 2.6 animals per year, and from his perspective, that did not reach the definition of commercial. Going strictly by the Zoning Ordinance, which he said he was bound to do from, he would not be able to support the motion.

Mr. Ribble seconded the amended motion, which passed by a vote of 5-1. Mr. Byers voted against the

~ ~ ~ September 26, 2006, JANET L. PORTER AND GEORGE C. PORTER, A 2006-PR-033, continued from Page 572

motion. Mr. Hart recused himself from the hearing.

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~ ~ ~ September 26, 2006, After Agenda Item:

Approval of October 25, 2005 Minutes

Mr. Beard moved to approve the Minutes. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 26, 2006, After Agenda Item:

Approval of BZA Meeting Dates for 2007
(Deferred from 9/19/06)

Mr. Hammack moved that the following dates be deleted from the 2007 meeting schedule: January 16, February 20, May 29, July 3, October 9, November 13, and November 20. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack moved that the Board recess and go into closed session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Board of Supervisors vs. Board of Zoning Appeals, et al., in the Circuit Court of Fairfax County, CL No. 2006-0010952; correspondence with the County Executive regarding the retention of private legal counsel to prepare a special permit resolution; the McLean Bible Church vs. Eileen McLane and Board of Zoning Appeals, Case No. 106CV00769 in the U.S. District Court for the Eastern District of Virginia, and the companion case filed in the Circuit Court of Fairfax, which was 06-8305; and Concerned Citizens of Hollin Hall Village, et al., vs. County Board of Fairfax, the Fairfax Board of Zoning Appeals, CL No. 2006-0002456, pursuant to Virginia Code Ann. Set. 2.2-3711(A)(7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:44 p.m. and reconvened at 12:17 p.m.

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

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Mr. Hart moved that he be authorized to contact Charles Shumate regarding the Board of Zoning Appeals hiring him as counsel for the matter discussed during closed session. Mr. Ribble and Mr. Hammack seconded the motion, which passed by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:18 p.m.

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

Approved on: June 27, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 3, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ October 3, 2006, Scheduled case of:

9:00 A.M. DAVID C. MERCER, SP 2006-MA-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.9 ft. with eave 3.2 ft. from side lot line and addition to remain 25.7 ft. with eave 25.2 ft. from front lot line of acorner lot. Located at 3044 Olin Dr. on approx. 15,197 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (B) 10.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Mercer, 207 Grove Avenue, Falls Church, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions to minimum yard requirements based on an error in building location to permit an accessory storage structure, which measures 9.1 feet in height, to remain 3.9 feet with eave 3.2 feet from the side lot line and an addition to remain 25.7 feet with eave 25.2 feet from the front lot line of a corner lot. A minimum side yard of 12 feet and minimum front yard of 30 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side and front yards; therefore, reductions of 8.1 feet, 5.8 feet, 4.3 feet, and 1.8 feet, respectively, were requested.

Mr. Mercer presented the special permit request as outlined in the statement of justification submitted with the application. He said there had been no indication that he would have any future problems when he purchased the property in 1998. He said they had done a title search, but he did not know anything about checking to see if building permits had been obtained. Since that time he had not been aware of any problem concerning the location of the storage structure. He said it appeared to be set back enough and was not noticeable from the street. Mr. Mercer stated that if the application was not approved, he would have to tear down part of the house.

In response to a question from Mr. Beard, Ms. Hedrick stated that the applicant had applied for a building permit to construct something else on his property, and the Zoning Department had determined at that time that the house was too close to the front lot line.

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

Mr. Byers moved to approve SP 2006-MA-031 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID C. MERCER, SP 2006-MA-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.9 ft. with eave 3.2 ft. from side lot line and addition to remain 25.7 ft. with eave 25.2 ft. from front lot line of a corner lot. Located at 3044 Olin Dr. on approx. 15,197 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (B) 10. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ October 3, 2006, DAVID C. MERCER, SP 2006-MA-031, continued from Page 575

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 2006; and

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

1. The applicant is the owner of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This special permit is approved for the locations of an accessory storage structure and addition as shown on the plat prepared by Dominion Surveyors, Inc., dated May 22, 2006, as submitted with this application and is not transferable to other land.

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

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

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~ ~ ~ October 3, 2006, Scheduled case of:

9:00 A.M. JAMES C. THOENNES, SP 2006-SU-037 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 18.0 ft. from one side lot line and 14.0 ft. from the other side lot line. Located at 6221 Hidden Canyon Rd. on approx. 10,688 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) 55.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Thoennes, 6221 Hidden Canyon Road, Centreville, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow modifications to minimum yard requirements for certain R-C lots to permit construction of a deck to be located 18 feet from one side lot line and 14 feet from the other side lot line. A minimum side yard of 20 feet is required; therefore, modifications of 2.0 feet and 6.0 feet, respectively, were requested.

Mr. Thoennes presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed deck would fit within the original R-2 Cluster regulations. He indicated that he had to tear the existing deck down because it was old and would become a safety hazard at some point.

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

Mr. Hart moved to approve SP 2006-SU-037 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES C. THOENNES, SP 2006-SU-037 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 18.0 ft. from one side lot line and 14.0 ft. from the other side lot line. Located at 6221 Hidden Canyon Rd. on approx. 10,688 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) 55. 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, 2006; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicant presented testimony showing compliance with the required standards for this kind of special permit.
7. The proposed deck is no closer to the side than the existing house on one side, and it's further away than the existing house on the other side.
8. There would not be any significant negative effect on anyone.

~ ~ ~ October 3, 2006, JAMES C. THOENNES, SP 2006-SU-037, continued from Page 577

9. There have been many such special permits approved in the vicinity with similar situations.
10. These are all relatively small lots which were subjected to five-acre lot setbacks in 1982.
11. Based on the record before the Board, this is consistent with the other previous approvals.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This special permit is approved for the location of a deck as shown on the plat prepared by Douglas M. Detwiler and Associates, Inc., dated July 6, 1978, as revised by John C. Thoennes, dated July 24, 2006, as submitted with this application and is not transferable to other land.

2. All applicable permits shall be obtained prior to any construction, and approval of final inspections shall be obtained.

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

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

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~ ~ ~ October 3, 2006, Scheduled case of:

9:00 A.M. NORMA VIDAURRE, SP 2006-MA-024 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 4106 Mason Ridge Dr. on approx. 16,403 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((15)) 59. (Admin. moved from 8/1/06 for notices)

The applicant was not present when the application was called. Chairman DiGiulian indicated the hearing would be moved to later in the agenda.

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~ ~ ~ October 3, 2006, Scheduled case of:

9:00 A.M. BRIAN J. AND LISA K. BROADHEAD, SP 2006-MV-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 4.8 ft. from side lot line. Located at 8262 Phelps Lake Ct. on approx. 2,214 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 107-1 ((4)) 54A.

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

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brian Broadhead, 8262 Phelps Lake Court, Lorton, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant

requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit a deck to remain 4.8 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a reduction of 5.2 feet was requested.

Mr. Broadhead presented the special permit request as outlined in the statement of justification submitted with the application. He said he had obtained a permit to build the deck, which had been completed before he received the stop work order. He stated that there were no neighbors living close to the side yard, and Silverbrook Road was at least 150 feet away from his property. He noted that a deck could be built in an interior townhouse unit, but because he had a side yard and a larger rear yard, he could not build the same type of deck as his neighbors. He said the original deck was beyond repair.

Mr. Hart said he did not have a problem with the proposed deck; however, he had a question concerning the upper left quadrant of the plat. He said it appeared that the front corner of the house was 9.9 feet from the side lot line. He asked whether that posed a problem, and if so, could the Zoning Administrator administratively approve it. He pointed out that if the minimum dimension was 10 feet, the applicant had problems at both ends of the house because at 9.9 feet, it was protruding somewhat, unless there was an exception for that which did not apply to decks, but applied to houses. Mr. Varga responded that it could be handled administratively. Mr. Hart asked whether that information should be placed in the development conditions. Mr. Varga said the requirement had been included in past development conditions when that sort of situation had arisen. In answer to another question from Mr. Hart, Mr. Varga said that because the calculation was less than 10 percent, no advertisement was necessary.

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

Mr. Ribble moved to approve SP 2006-MV-032 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN J. AND LISA K. BROADHEAD, SP 2006-MV-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 4.8 ft. from side lot line. Located at 8262 Phelps Lake Ct. on approx. 2,214 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 107-1 ((4)) 54A. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 2006; and

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

1. The applicants are the owners of the land.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

~ ~ ~ October 3, 2006, BRIAN J. AND LISA K. BROADHEAD, SP 2006-MV-032, continued from Page 579

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This special permit is granted for the location of the dwelling as shown on the special permit plat prepared by Guy H. Briggs, dated June 27, 2006, as submitted with this application, and is not transferable to other land.

2. The applicants shall apply for a 10% Administrative Reduction from the Department of Planning and Zoning for the southeast corner of the dwelling to remain 9.9 feet from the side lot line within 90 days 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.

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

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~ ~ ~ October 3, 2006, Scheduled case of:

9:00 A.M. EDE J. IJJASZ, SP 2006-PR-035 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 2913 Beau La. on approx. 1.24 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((3)) (32) 15.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ede Ijjasz, 2913 Beau Lane, Fairfax, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an 832-square-foot accessory dwelling unit, which would include one bathroom, one bedroom, and additional living area. The accessory dwelling unit would comprise 24 percent of the total square feet in the dwelling. The applicants' parents would reside in the separate living space, with access to the unit from the south side of the home by a separate entrance. Staff recommended approval of SP 2006-PR-035 subject to the proposed development conditions.

Mr. Ijjasz presented the special permit request as outlined in the statement of justification submitted with the application. He said he was employed by the World Bank, and for security reasons, he had to bring his

~ ~ ~ October 3, 2006, EDE J. IJJASZ, SP 2006-PR-035, continued from Page 580

parents from Columbia, South America, to live with him. He also stated that he would be getting married shortly, and in order to allow his family to live together, an attached accessory dwelling unit was necessary. He said the character of the neighborhood would not be affected.

Chairman DiGiulian noted for the record that a letter of opposition dated September 24, 2006, from William F. Janssen, 2910 Beau Lane, Fairfax, Virginia, had been received.

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

Ms. Gibb moved to approve SP 2006-PR-035 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EDE J. IJJASZ, SP 2006-PR-035 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 2913 Beau La. on approx. 1.24 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((3)) (32) 15. 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 3, 2006; and

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

1. The applicant is the owner of the land.
2. Staff recommended approval of the application.
3. This is a very large lot, especially compared to the neighboring properties.
4. It seems like a reasonable application and use 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 Sect(s). 8-918 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Ede J. Ijjasz, and is not transferable without further action of this Board, and is for the location indicated on the application, 2913 Beau Lane (1.24 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 Dominion Surveyors, dated July 14, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

~ ~ ~ October 3, 2006, EDE J. IJJASZ, SP 2006-PR-035, continued from Page 581

5. The accessory dwelling unit shall contain a maximum of 832 square feet, including a maximum of one bedroom.

6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.

7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

8. If the use of the accessory dwelling unit ceases and/or the property is sold, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

9. Parking shall be provided as shown on the special permit plat.

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

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

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

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~ ~ ~ October 3, 2006, Scheduled case of:

9:00 A.M. DOUGLAS AND RACHEL KELLY, SP 2006-PR-036 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.8 ft. from side lot line. Located at 2635 Woodley Pl. on approx. 10,011 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((7)) 32.

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

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Douglas Kelly, 2635 Woodley Place, Falls Church, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an addition, specifically the enclosure of an existing porch, to remain 5.8 feet from a side lot line. A minimum side yard of 10 feet is required; therefore, a reduction of 4.2 feet was requested.

Mr. Kelly presented the special permit request as outlined in the statement of justification submitted with the application. He said he had submitted the application to enclose the existing porch because his wife needed an office in which to work and also to provide for a family in the future. After accompanying his contractor to the Zoning office, he said he found out that the side porch was in violation of the setback requirement. He stated that his home had been built in 1949; 29 years prior to passage of the setback requirement, and the side porch had been a part of the original structure. Mr. Kelly said he had hoped the porch could be grandfathered in because the regulation had been passed so long ago; however, he had been told by staff that by changing the porch into an addition, he was changing the nature of the structure and would have to

~ ~ ~ October 3, 2006, DOUGLAS AND RACHEL KELLY, SP 2006-PR-036, continued from Page 582

apply for a special permit. He said that at the time he had been told that he needed a special permit, work had already begun, and at that time work was suspended. Based on the advice of staff, he had winterized and closed in the porch to protect the work that had already been done, so the outside had been completed, but the inside consisted only of flooring and drywall. Mr. Kelly stated that his neighbors did not object to the enclosure, and he referred to a letter of support dated September 18, 2006, from Stanley and Dorothy Stringer, the neighbors who would be most affected by the proposed enclosure.

In reply to a question from Mr. Beard, Mr. Kelly said the porch was already in existence, and he indicated that the footprint had not been changed.

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

Mr. Beard moved to approve SP 2006-PR-036 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS AND RACHEL KELLY, SP 2006-PR-036 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirments based on error in building location to permit addition to remain 5.8 ft. from side lot line. Located at 2635 Woodley Pl. on approx. 10,011 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((7)) 32. 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 3, 2006; and

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

1. The applicants are the owners of the land.
2. The applicant testified that the footprint of the property has not changed over the years.
3. This was indeed done in good faith.
4. The applicants have shown compliance from the standpoint of all work has ceased since they were notified of the problem.

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

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

~ ~ ~ October 3, 2006, DOUGLAS AND RACHEL KELLY, SP 2006-PR-036, continued from Page 583

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

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

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

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

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

1. This special permit is approved for the location of the enclosure of the screened porch, as shown on the plat prepared by Rice Associates, Ltd., dated October 25, 2005, submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the enclosure of the screened porch shall be diligently pursued within 30 days and obtained within 90 days of final approval or this special permit shall be null and void.

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

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

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~ ~ ~ October 3, 2006, Scheduled case of:

9:00 A.M. NORMA VIDAURRE, SP 2006-MA-024 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 4106 Mason Ridge Dr. on approx. 16,403 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((15)) 59. (Admin. moved from 8/1/06 for notices)

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Norma Vidaurre, 4106 Mason Ridge Drive, Annandale, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a home child care facility with a maximum of 10 children.

In response to a question from Ms. Gibb, Mr. Varga said a complaint had been made in association with the notice of violation. Ms. Gibb asked if a complaint had been filed concerning a business located across the street from the subject property. Mr. Varga said a complaint had been filed, but staff did not have any further information. In answer to additional questions from Ms. Gibb, Mr. Varga stated that staff did not know if the complaint concerned noise, parking or something else. He said the inspector had encountered 12 children on the premises at the time of his inspection, and the daycare facility had been in operation since October of 2005. With respect to Ms. Gibb's reference to a neighbor's comment in a letter that a business was being conducted across the street from the subject premises, Mr. Varga said staff had looked into that to determine whether or not any notices or complaints had been received, and they could find none. He said staff did not find any information concerning a submission of an application for a special permit to allow a business to be run at that address, and if there was one, it was being operated on a by-right basis. He stated that when he

was on a site visit, there were no obvious signs that there was a business in operation along that street, and he suggested Ms. Gibb ask the applicant about it. Mr. Varga confirmed that the applicant was requesting no more than 10 children to be in attendance at her daycare facility, and their arrivals and departures would be staggered during the day. He said that if the application was approved, there would be fewer children in attendance than the number that had been observed by the inspector. He stated that the applicant was aware that the maximum number of children allowed would be 10. Ms. Gibb said that a letter received from one of the neighbors stated that there would be 13 children at the daycare.

In answer to questions from Mr. Hart about the parking area noted on the plat, Mr. Varga explained that the Fairfax County Department of Transportation (FCDOT) had looked at the six spaces indicated in the diamond shaped area of the plat which were based on calculations that would make the parking spaces too small under code, and they had determined that only four cars could be allowed to park in the driveway. Mr. Hart said it appeared that there was a one-car garage on the property, and he asked whether that would be counted as one of the four spaces. Mr. Varga stated that it would. Mr. Hart said a photograph showed two cars parked sideways on the side, but if a third car was put in the driveway, there did not appear to be enough room for the first two cars to move out of those spaces. He asked if it was all right to block the other cars in. Mr. Varga explained that FCDOT had made a determination that the parking arrangements would not cause a problem because the applicant lived and worked on the site and would not be leaving the premises during the hours of operation. Mr. Hart said it appeared to him that if one car pulled into the driveway, it would block the other two spaces plus the garage, and he asked if that was acceptable as long as there was room for four cars to park on a paved surface. Mr. Varga replied that the applicant would make her clients and vendors aware that they had to pull into one of the two parking spaces along the left-hand side to allow room for additional parking in the driveway.

Mr. Hart said he thought there was a reference in the Zoning Ordinance that stated that basketball hoops were accessory structures in front yards, and a hoop would not be allowed within 12 feet of a side lot line in a front yard. He stated that the photographs were confusing because the basketball hoop located on the property appeared to be in the area of the two parking spaces to the left, and he could not determine whether or not the pole was conflicting with the parking spaces or whether it was within 12 feet of the side lot line. He also said the hoop was not shown on the plat with reference to the side lot line or the location of the parking spaces. He asked whether he was correct in stating that there was a reference in the Ordinance to that effect and what it meant for the two parking spaces. Mr. Varga stated that he was not aware of the regulation and would look into it. Mr. Hart said the Ordinance had probably been amended because there were many basketball hoops that were located closer than 12 feet to a side lot line. Mr. Varga said that if the hoop was within 12 feet of the line, it was perhaps something the applicant would be willing to address as a development condition. Mr. Hart said he was not concerned about the side lot line issue, but with the parking conflict. Reading from the Zoning Ordinance, Mr. Varga said the center of the basketball hoop, when located in a front yard, shall not be closer than 15 feet to a front lot line or 12 feet to a side lot line and should not be used between the hours of 8:00 p.m. and 8:00 a.m.

Ms. Vidaurre presented the special permit request as outlined in the statement of justification submitted with the application. She said the basketball hoop had been removed from the premises, and the parking lot was larger than shown in the photographs. She stated that three cars would be able to access the spaces to the side. Ms. Vidaurre said she had 12 children in attendance at her child care facility because her state license had specified that she could have that number, and she had not been aware that the County Ordinance would permit only 7 to 10 children.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak: Michael Thesz, 4112 Mason Ridge Drive, Annandale, Virginia; Betty Ann Thesz, 4112 Mason Ridge Drive, Annandale, Virginia; Liz Bowles, on behalf of her parents, Charles and Katherine Ippolito, 4108 Mason Ridge Drive, Annandale, Virginia; Claire Reilly, 4114 Mason Ridge Drive, Annandale, Virginia; and Anthony M. Vaitekunas, 4111 Mason Ridge Drive, Annandale, Virginia. Their main points included the obstruction of the notice of public hearing by a van that had been parked in front of it; there were curbs on the street, but no sidewalks; everyone had to walk in the street, which was unsafe; the owner of the house located at 4103 Mason Ridge Drive conducted a business on the premises which already created additional dangerous traffic and parking situations; the applicant had asked for 10 children, but the neighbors expected there would be 20; parking situation on site was unrealistic because one space would be used by more than one person; more than one client would probably be

scheduled to arrive at the same time; the location of the daycare center was in a tenuous location because it was on a narrow curve where there were many vehicles parked on both sides of the street; currently children were being dropped off on the street in front of the house and across the street from the facility; the addition of three children was more than the County's basic allotment of seven, and it would increase the traffic problems; the house had been increased in size and looked like a commercial property, not a family dwelling; the parking spaces had been expanded and the front yard had been paved over, which took away from the character and serenity of the neighborhood; property values could decline; the proposed parking area would cause great danger to the neighbors, their children, and anyone using that street because the vehicles would have to back out of the driveway onto the street; the neighbors wanted the number of children attending the daycare facility limited to seven; construction at the house at 4103 had been ongoing for some time, commercial vehicles were there all the time, and on occasion a dumpster would be left in the street, causing residents to have to back up and use another means of access to their homes; the applicant's backyard was not fenced in; and if the application was approved, it would set a precedent for others to set up businesses in the neighborhood. A statement from Bliss Miga, 4117 Mason Ridge Drive, Annandale, Virginia, was read into the record.

Ms. Gibb explained to Ms. Thesz that the applicant was asking for no more than 10 children in attendance at the daycare, and they would all be dropped off in the driveway. She noted that the applicant had a family daycare home license that had been issued by the Commonwealth of Virginia that allowed her to have a total of 12 children in the facility. She said the confusion came when a provider's state license indicated one thing and the County's Ordinance stated something different. In response to a question from Ms. Thesz, Ms. Gibb stated that if the application was approved and she or any of the neighbors saw that children were being dropped off on the street, they should lodge a complaint with the Zoning Enforcement office.

In answer to a question from Ms. Gibb, Ms. Reilly said her reference was to the property at 4103 Mason Ridge Drive, which was across the street from the applicant. She said the expansion of the house was similar to the applicant's property, and construction had been going on for a long time. She did not know if there was a business being conducted at the location, but she thought that expanded homes with ten bedrooms and six bathrooms could not be considered a single-family home.

In response to a question from Mr. Hart, Mr. Vaitekunas confirmed that 4103 Mason Ridge Drive was the address of the home across the street from the applicant.

In response to a request from Mr. Hart, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said she would send someone out to 4103 Mason Ridge Drive to determine whether a business was being conducted and whether they had permits that were still in force.

Mr. Byers said the testimony revolved around traffic on Mason Ridge Drive. He suggested the neighbors talk to the magisterial district supervisor because there could be parking restrictions and speed mitigation factors that would help the neighborhood regardless of the application currently before the Board.

Mr. Varga stated that a representative from Zoning Enforcement was present to address any questions the Board had concerning the application.

At the direction of the Board, Mozart Chesson, Zoning Evaluation Branch, swore that his testimony would be the truth.

In answer to a question from Mr. Beard, Mr. Chesson said the applicant had shown him a list of clients, and there were 12 children on it. He said the applicant had volunteered the information, and he had explained to her that the County had received complaints about the number of children attending the daycare. He noted that the original complaint was that the daycare was being operated illegally. Prior to speaking to the applicant, he said he had spoken to her employee and been told that there were seven children in the facility at the time of his visit. He said the employee had asked the applicant, who was on another floor of the dwelling at the time, to come down to where the children were being cared for. He said the applicant had shown him the state license that allowed her to have more children in attendance than the County Ordinance allowed. Mr. Chesson said he had explained why he was there and that she would hear from the County.

Noting that the County allowed seven children to be in attendance at a daycare facility, Ms. Gibb asked whether the applicant would be in violation if she had seven children. Mr. Chesson said she would be in

~ ~ ~ October 3, 2006, NORMA VIDAURRE, SP 2006-MA-024, continued from Page 586

violation because the number did not depend on how many he found there during his visit. It would depend on how many the applicant said she took in.

In answer to a question from Chairman DiGiulian, Mr. Chesson said he believed he had seen seven children on the day of his inspection, but could not confirm it because he did not have a copy of the file with him.

In answer to a question from Mr. Hart, Mr. Chesson stated that the applicant did not need a special permit to have one employee to help look after seven children because the County had a home occupation ordinance that permitted one employee, and normally that would be expected. Mr. Hart said he thought there was a limitation on having employees in the home if there were no development conditions. Mr. Hammack said he thought the difference was between a home professional permit and a home occupation permit because one of them did not allow employees and one did.

In response to a question from Mr. Hart, Mr. Chesson said the violation pertained to the applicant having too many children.

In her rebuttal, Ms. Vidaurre stated that if circular parking was required in lieu of what was stated in the application, her mother had said they would be able to do that. She pointed out that there were many children who lived across the street from the daycare facility, and because they were not clients, she could not control their behavior.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2006-MA-024 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NORMA VIDAURRE, SP 2006-MA-024 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 4106 Mason Ridge Dr. on approx. 16,403 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((15)) 59. (Admin. moved from 8/1/06 for notices) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 2006; and

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

1. The applicant is the owner of the land.
2. On a regular basis, the Board addresses situations where the State issues a license for up to twelve children and the County has seven by matter of right.
3. If the Board denied the application, the applicant could have seven children and one employee as a matter of right and there would not be any development conditions.
4. Ten children is not much of an enlargement.
5. It is ten children on any given day as opposed to seven.
6. The Board heard testimony about what is going on across the street, but the subject application cannot be denied based upon construction going on across the street, and that may be an argument, but nothing compelling was heard in that regard.
7. The community could probably seek some relief from its Supervisor by asking for some traffic calming measures; parking on one side of the street, speed humps, or other things that could be done and have not.
8. The bottom line is ten children is an acceptable number on the subject site.
9. County staff recommended approval of the application.

~ ~ ~ October 3, 2006, NORMA VIDAURRE, SP 2006-MA-024, continued from Page 587

10. The facility appears to meet the standards.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Norma Vidaurre, only and is not transferable without further action of this Board, and is for the location indicated on the application, 4106 Mason Ridge Drive, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared G. Robert Fuller, dated February 7, 2001, as revised through November 1, 2004, by Norma Vidaurre, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The maximum hours of operation of the home child care facility shall be limited to 7:00 a.m. to 5:30 p.m., Monday through Friday.

5. The maximum number of employees shall be limited to one (1) on-site at any one time in addition to the applicant.

6. The dwelling that contains the child care facility shall be the primary residence of the applicant.

7. Parking shall be limited to two (2) spaces for the dwelling, and two (2) spaces in the driveway for the child care facility. All parking shall be on-site. The parking spaces on the site shall be utilized by the applicant and staff so that the children cared for in the facility will be dropped off in the driveway.

8. The total maximum daily enrollment shall not exceed ten (10) children. The drop-off and pickup of the children cared for in the facility shall be staggered so that they can all be dropped off in the driveway.

9. There shall be no signage associated with the home child care facility.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

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

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

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~ ~ ~ October 3, 2006, Scheduled case of:

9:30 A.M. BETTY A. ROYSTER, A 2006-LE-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has constructed an open deck with stairs which does not meet the bulk regulation as it applies to the minimum rear yard requirement for the R-5 District in violation of Zoning Ordinance provisions. Located at 7113 Latour Ct. on approx. 2,325 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((9)) 384. (Admin. moved from 6/27/06 at appl. req.)

Chairman DiGiulian noted that A 2006-LE-016 had been administratively moved to April of 2007.

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~ ~ ~ October 3, 2006, Scheduled case of:

9:30 A.M. ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO LARIOS, A 2006-LE-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a carport and a dwelling do not comply with the minimum yard requirements for the R-3 District, in violation of Zoning Ordinance provisions. Located at 7320 Bath St. on approx. 10,062 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (34) 20. (Admin. moved from 5/2/06 and 7/18/06 at appl. req.)

Chairman DiGiulian noted that the Board had received a request for a deferral to January 9, 2007.

Mr. Hammack moved to defer A 2006-LE-007 to January 9, 2007, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 3, 2006, Scheduled case of:

9:30 A.M. T. WILLIAM DOWDY, TRUSTEE AND SHIRLEY M. HUNTER, TRUSTEE, A 2006-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a junk yard and storage yard on property in the R-1 District in violation of Zoning Ordinance provisions. Located on approx. 36.60 ac. of land zoned R-1. Lee District. Tax Map 90-4 ((1)) 6B.

Chairman DiGiulian noted that A 2006-LE-031 had been withdrawn.

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~ ~ ~ October 3, 2006, Scheduled case of:

9:30 A.M. DONALD R. ROSE AND DEBBE A. ROSE, A 2006-MV-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have constructed an accessory structure, a stone fireplace and a wooden roofed patio cover, which exceed seven feet in height and which do not comply with the minimum yard requirements for the R-3 District, without valid Building Permit approval, and have installed accessory structures and uses which exceed the 30 percent maximum permitted coverage of the minimum required rear yard, all in violation of Zoning Ordinance provisions. Located at 7922 Journey La. on approx. 9,418 sq. ft. of land zoned R-3C. Mt. Vernon District. Tax Map 98-2 ((6)) 273. (Admin. moved from 8/1/06 and 8/8/06 at appl. req.)

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

Elizabeth Perry, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 26, 2006. The appeal was of a determination that the appellants had erected a stone fireplace and a wooden roofed patio cover, which exceeded seven feet in height and did not comply with the minimum yard requirements, without valid building permit approval, and had installed accessory structures and uses which exceeded the 30 percent maximum permitted coverage of the minimum required rear yard. The accessory structures included a slate patio, a gazebo, a spa, a swimming pool, a wooden patio cover, and a

stone fireplace. She reported that staff from the Zoning Enforcement Branch had conducted inspections of the property on November 17 and December 14, 2005, in response to a complaint, which revealed that approximately 80 percent of the minimum required rear yard was covered with accessory uses.

In response to a question from Mr. Hart, Ms. Perry stated that if the fireplace chimney and the roof were reduced to below seven feet, a building permit would be required. If the appellants applied for a building permit, with the exception of the pool, and they were both lowered below seven feet, Mr. Hart asked whether the appellants could obtain a building permit for those accessory structures. Ms. Perry replied that if those accessory structures, in addition to any others that may be on the property, were located in the minimum required rear yard, but did not exceed 30 percent of the minimum required rear yard, they would be permitted to remain. Ms. Perry said that even if the appellants were applying for a permit for the first time, they would still have the 30 percent problem. Mr. Hart asked whether there was a minimum height for a chimney. Ms. Perry said there was not, that it would depend upon the general accessory structure regulations for a freestanding structure.

Mr. Hart noted that Sect. 15.2-2311 of the Virginia Code had not been included in the staff report, and he asked whether the effective date for the 60-day rule was before or after October 23, 1997. Ms. Perry said she would have to look it up. Mr. Hart said that on the building permit for the swimming pool, it appeared that it was dimensioned to over 30 percent, and there was a stamp on the plat that said approved 10/23/97, Jane W. Gwinn, Zoning Administrator, and someone in the Zoning office had signed off on the building permit on the same date. He said it appeared that the pool had been approved. He said having a copy of Sect. 15.2-2311 would be helpful because it would make a difference if the 60-day rule was in effect before October 23, 1997. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, offered to obtain a copy of the section from the internet. Mr. Hart said he did not see this as being a nondiscretionary error, but was something that someone had reviewed and would have had the discretion to approve or disapprove.

Referring to page 4 of the staff report, Mr. Byers said that between October 18, 1991, and August 3, 2005, the appellants had requested and received an approved building permit. He asked Ms. Perry whether staff had asked why the appellants had not obtained a building permit for the chimney and roof. Ms. Perry stated that she had not asked the question and suggested that perhaps Roy Biedler, Zoning Inspector, Zoning Enforcement Branch, could respond to the question. Mr. Biedler said he did not ask the appellants about why they had not obtained a building permit and did not recall them explaining why. He said he knew they had obtained a building permit for the retaining wall, but did not know whether they had assumed that they did not need one.

Keith Martin, the appellants' agent, Sack, Harris & Martin, PC, 8270 Greensboro Drive, McLean, Virginia, presented the arguments forming the basis for the appeal. He stated that after the contractor had obtained the permit for the retaining wall, he went back to the Zoning office, stated that he had agreed with his client that he could also build the chimney right next to the retaining wall and incorporate it, and he asked if he needed a permit for a chimney. He said the contractor had been told by someone from the County that a chimney was akin to a barbeque pit, and a permit was not necessary. He said the appellants thought at the time that everything was all right and found out recently that was not the case. Mr. Martin explained the chronology of events that had taken place since the appellants purchased the property in 1987. He said a permit was obtained in 1991 for a deck to be attached to the house, a spa, and a slate patio under the deck; in 1997 a permit was obtained for the pool, the pool deck, and a stone retaining wall; and, in 2005 the appellants received a permit to build the stone retaining wall. He said the chimney and roof over the patio had been built at that time without a permit. Mr. Martin said the 1991 and 1997 permits by themselves exceeded the 30 percent maximum permitted coverage of the minimum required rear yard, and the 1997 pool permit by itself also exceeded the 30 percent. He said he had drawn a black line on the colored photographs to depict the yard line, which was consistent with the tape measure photograph shown in Attachment 15 in the staff report to show all the improvements that had been made, with the exception of the chimney that exceeded the 30 percent. To uphold the notice of violation, the County would cost the appellants hundreds of thousands of dollars to undo the work they had put into the improvements to the property. Mr. Martin said that over the past 15 years, the appellants had sought and received permits and relied on them and had put in a lot of work and money to improve the property. He called attention to the number of trees that were located on the property. He said the only mistake the appellants had made was that they did not have a permit for the chimney design proposed by the contractor, and if the contractor had

submitted an application for a permit, he would have received one when the retaining wall permit was issued. He stated that no compromise had been offered to the appellants, and he asked what they were to do when the County made an error.

Mr. Byers referred to page 2 of Mr. Martin's letter dated May 3, 2006, that indicated that the appellants had taken appropriate measures to reduce the height and eliminate the complaints of their neighbor with respect to the patio cover and chimney. He asked if that had been taken care of. Mr. Martin responded that the appellants had not been aware that they would have to apply for a permit to reduce the chimney and cover by 18 inches, but that would bring it into compliance with the height restriction, and the appellants were willing to do that.

In answer to a question from Ms. Gibb, Mr. Martin stated that a complaint had been filed against the appellants by their next-door neighbor.

Mr. Hart asked how much of the area was over the 30 percent if everything was taken into consideration. Mr. Martin said he thought that it was 80 percent, as had been mentioned by staff. Mr. Martin stated that 775 square feet comprised 30 percent of the area, and the pool surface itself exceeded that. Mr. Hart stated that his problem was that the Board did not have equitable powers and had to go by what was contained in the Ordinance and statute. He said it appeared that there was a 60-day problem with the swimming pool; however, even if someone dropped the ball on the pool approval, it seemed to him that the appellants would be vulnerable again if someone were to apply for a permit in addition to that. He asked why the County was not going to take a fresh look at the 30 percent issue if the appellants were applying for another permit for fireplaces or roof decks. Mr. Martin replied that he thought that was appropriate on those, and the problems should have been detected. When the appellants applied for a permit, they would be subject to the requirement, and he doubted that the County had the authority to issue one. Mr. Hart asked Mr. Martin if he agreed that if the appellants were to obtain a permit for the roof deck and the chimney, they would have to be in compliance with the 30 percent requirement or they would not get one. Mr. Martin said he saw no way around that; however, the spa, the retaining walls, the pool, and pool deck should be covered by the 30 percent issue. He said the spa had been approved prior to the installation of the pool, and the appellants did not have an issue with the extent of the pool deck exceeding what was shown on the permit.

In response to a question from Mr. Hart, Ms. Stanfield said there was a copy of Sect. 15.2-2311 of the Virginia Code in Attachment B in the after agenda item pertaining to the Consideration for Acceptance filed by Emma Persigehl. Mr. Hart pointed out that the attachment contained the text, but did not have the parenthetical concerning the effective date. Ms. Stanfield said she had been unable to find the information on the internet.

Chairman DiGiulian called for speakers

John Hahl, 7920 Journey Lane, Springfield, Virginia, came forward to speak, and the oath was administered to him. He said constant construction had been going on at the appellants' property since he and his wife purchased their property in 1991, and soil erosion had been caused by the construction. The fireplace had been built on the property line shared by him and the appellants, and it was so large that it should not be allowed on residential property. It dominated the landscape of his backyard, and when it was in use and the windows were open, smoke poured into their home. Mr. Hahl stated that when the appellants had sent him a letter requesting permission to allow workers to use their backyard during construction, they had described the structure as a fence. He noted that if the appellants had applied for a permit to build the fireplace, it would have been denied because the appellants had already exceeded the maximum allowable coverage of accessory structures and uses in the backyard. Mr. Hahl said he and his wife felt that they had been very patient with the appellants over the years, but now they had no choice but to object to the appeal request. He asked the Board to deny the appeal.

Ms. Stanfield said the Board's Clerk, Kathleen Knoth, had internet access to the 2311 provision, but there was no indication of the date of approval.

In answer to questions from Mr. Beard, Ms. Stanfield said there was no way the fireplace could be considered a fixture, and a barbeque would be another accessory structure even if it was freestanding.

Ms. Perry stated that staff had recognized that removal of the fireplace would be an issue of hardship for the appellants; however, when it pertained to a notice of violation that was not a condition upon which the Zoning Administrator could be overturned. It was something that could be considered a variance application. She said staff was willing to work with the appellants if they wanted to obtain a plat that identified clearly the 30 percent minimum required rear yard and could work with them to come into compliance with the Zoning Ordinance provisions in deciding which of the structures they would like to keep. Ms. Perry said that would be possible if the appellants were amenable to removing the structures that were built without building permit approval, the patio cover and the chimney. She said some of the slate patio and the pool itself might be able to remain.

In response to a question from Mr. Beard, Ms. Perry said that if the appellants wanted to keep some of the structures, staff would have to take a look at the numbers and demonstrate what could be done with the 50 percent excess that was not in compliance. She said a lot of the slate patio counted toward the 30 percent in the minimum required rear yard, so it was possible that by removing that patio, some of the other structures could remain. She said that was not something staff could certify was possible, but they could work with the appellants in an attempt to determine what would work for them. Mr. Beard said it did not appear to him that there was a reasonable way to do what Ms. Perry had suggested, especially since the pool, in and of itself, exceeded the 30 percent. Ms. Perry stated that when the building permit for the pool was approved, it included the patio around it, and some of that area included a portion of the slate patio. She said if staff had to tell the appellants that they had to pull everything out, she was offering the appellants an option to try to save some of the structures. Mr. Martin concurred with Mr. Beard's comment that if the appellants wanted to go in that direction, he would know what the options were.

In answer to Mr. Byers' comment that the 30 percent, or a portion of it, would hinge on whether the 60-day rule was in effect on October 23, 1997, Ms. Perry said staff's understanding was that the rule applied to nondiscretionary decisions. She stated that if it came down to something being issued in error, it would not come under the 60-day rule provision, but under Sect. 118-114 of the Zoning Ordinance that addressed the inability of any County employee to issue any kind of approval for something that would violate the Zoning Ordinance.

Responding to a comment from Mr. Beard regarding the 60-day rule, Ms. Perry said that was not a position the County wanted to be in. She said the idea of a building permit approval was not only to protect the applicants, but to also protect the neighbors who would be affected as a result of any type of construction, and this was an unfortunate situation. She said mistakes happened; however, the Zoning Ordinance provided the remedy for the County to enforce that section of the Ordinance when an error was made.

With respect to the water surface of the pool, Ms. Gibb said she assumed that the reason for the 30 percent rule was because the pool cover had an impervious surface that prevented water that collected on it to seep into the pool. Ms. Perry explained that the pool was not specifically tied to that rule, but to the concept of impervious surface, which was why items that did not require building permits, such as a slate patio, still counted toward the 30 percent. Ms. Gibb stated that the pool worked as a giant retention pond and asked why the surface area could not be subtracted from the 30 percent. Ms. Perry explained that there was nothing in the Ordinance that would permit staff to allow that as an accessory structure. She said the Ordinance was clear with respect to 30 percent of all accessory uses associated with the dwelling, and staff did not have any leeway.

Ms. Stanfield said that in the wintertime when the pool was covered, all the water that went onto the cover would run off. Ms. Gibb stated that it would not happen if the pool was covered with mesh.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to defer decision on A 2006-MV-022 to October 17, 2006, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 3, 2006, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, 9/20/05, 2/7/06, 5/16/06, and 7/25/06 at appl. req.)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have Not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, 9/20/05, 2/7/06, 5/16/06, and 7/25/06 at appl. req.)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, 7/26/05, 9/20/05, 2/7/06, 5/16/06, and 7/25/06 at appl. req.)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been withdrawn.

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~ ~ ~ October 3, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Acme Homes, Inc.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that a similar test for a grading plan had been presented to the Board of Zoning Appeals (BZA), and at that time the Board had made a decision not to accept the appeal because it did not hear appeals of Department of Public Works and Environmental Services (DPWES) decisions, including the issuance of grading plans, and they had no jurisdiction over those decisions.

In response to a question from Mr. Hart, Ms. Stanfield confirmed that part of the issue in the case she had referenced was that the determination had been made several times, had not been appealed, and to appeal it in a grading plan at a later date was beyond the 30-day limit. Mr. Hart said that Sect. 2-601(3) of the Zoning Ordinance indicated that grading of land shall be permitted in accordance with a grading plan approved by the Director. The Director shall determine that the amount of soil removal or fill and the grading plan did good things. Mr. Hart said that Sect. 2-602(1), notwithstanding the provisions of 601, did not allow a building permit to be issued without providing adequate drainage in connection therewith as determined by the Director in accordance with the provisions of the Public Facilities Manual (PFM). He asked if he was looking at the wrong sections of the Ordinance. Ms. Stanfield stated that it was her understanding that the disapproval had been decided based upon the applicable sections of the Fairfax County Code, Sect. 104, which regulated erosion and sedimentation control, and the decision-making process was based on the

~ ~ ~ October 3, 2006, After Agenda Items, continued from Page 593

authority provided in that section and not through the Zoning Ordinance. Mr. Hart said it might be that there were more technical provisions in the Ordinance which would guide the Director, but what was confusing to him was that if anyone could appeal a determination by anyone under the Zoning Ordinance it appeared that what they were doing would come under Sects. 2-601(3) or 2-602(l), and it would not matter if there were some other provisions that applied because it was still a determination under the Zoning Ordinance.

In response to a question from Ms. Gibb, Ms. Stanfield confirmed that the referenced case was the one in which the Board of Supervisors, represented by David Stoner, had sued the BZA, and they had made the argument that the BZA had the jurisdiction to hear the case.

Mark Jenkins, the appellant's agent, 2071 Chain Bridge Road, Vienna, Virginia, said Mr. Hart's questions had identified the issue. He referenced his letter dated September 29, 2006, to which he had attached copies of the Ordinance sections Mr. Hart had mentioned as well as a copy of the text of the disapproval and the stamp on the grading plan that had been submitted in accordance with Zoning Ordinance provisions. He said the disapproval began by saying the proposed grading plan could not be approved at this time. He said the grading plan had been submitted because one was required to enable an applicant to disturb soil, and it clearly came out of the Zoning Ordinance, and the disapproving administrative officer had said so. He disagreed with the statement that the appeal had something to do with erosion and sedimentation control. He said the provisions in Part 11 of the PFM had not been referred to by the administrative officer, nor had he referred to the sedimentation and control portion of the Code. Mr. Jenkins said the word "erosion" had been used, but it was an adequate drainage issue which was the problem in the dispute, and reference to it appeared in 2-603(1). He said it appeared to him that it all fit together and that while the Board may be looking at other standards such as those in the PFM, it did not change the fact that the Zoning Ordinance described that a grading plan had to be submitted, that adequate drainage had to be addressed, and that in the appellants case the entire grading plan had been disapproved, and it was clearly within the framework of the administration of the Zoning Ordinance. He asked the Board to accept the application.

Chairman DiGiulian called for speakers to address the question of the acceptance; there was no response.

Mr. Hart moved to accept the appeal application. He said the rationale for his motion was that under Sect. 15.2-2311 the appellants had a very broad sweep of what could be appealed, and an appeal to the Board could be taken of any person aggrieved by any decision of the Zoning Administrator or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of that article or any ordinance adopted pursuant thereto. He said that under the land regulations found in Sect. 2-600 of the Zoning Ordinance under Sect. 2-601(3) with respect to the limitation on the removal and addition of soil, his conclusion would be that the Director of DPWES was explicitly within that paragraph of the Zoning Ordinance when he was approving or disapproving a grading plan and the same with respect to Sect. 2-602(1) and the determination made by the Director of DPWES in accordance with the provisions of the PFM manual. Mr. Hart said the appeal was squarely within the scope of the statute as long as it was within the Zoning Ordinance.

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

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~ ~ ~ October 3, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Emma A. Persigehl

Emma Persigehl, 5619 Everly Drive, Franconia, Virginia, came forward to speak. She said that on September 27, 2006, the Planning Commission had recommended approval of a Zoning Ordinance amendment to the Board of Supervisors which would allow fences six feet in height in front yards. She said her ex-husband frequently visited her neighbor, which upsets her children because he no longer had contact with them. She said she had asked her neighbors if they had any objection to the privacy fence she had erected, and they did not. She said that when she had the fence built, she had not been aware that a permit was required to erect one.

Mr. Hart stated that the issue before the Board was not about the fence, but about the application and

whether she had filed the proper documentation with the correct office on the right day. He asked Ms. Persigehl to address those issues.

Ms. Persigehl said that apparently she had not filed appropriately, but she did have copies with her to submit to the Board. She said the original notice of violation had been sent to the wrong address, and she did not receive it until approximately August 21, 2006.

Ms. Gibb asked whether the Board had heard similar cases where the appeal had only been filed with one office. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said she could not answer the questions unless she reviewed all the appeals filed. She said different appeal applications had been filed in different forms. She said staff had received an appeal application fairly recently that had been filed late and at only one location, and she believed the Board did not accept the application in that case.

Ms. Gibb asked whether the appellant's application had been filed in one office instead of two and was late. Ms. Stanfield stated that to be complete, it would have been late. She said her office had received part of the application on time, but the problem was that it was filed with Zoning Enforcement and did not contain a copy of the notice of violation or the required number of copies.

Mr. Hart said he believed that the statute dealt with the notice being given, and he asked whether staff considered that the notice had been properly given if the notice had been sent in error to another address. Ms. Stanfield said this was the first time she had heard of this, and she did not know.

At Mr. Hart's request, the appellant submitted the envelope in which she had received the notice of violation.

Mr. Hart asked whether there was any reason why the appellant could not apply for a special permit, assuming the fence amendment was adopted on October 23, 2006. Ms. Stanfield said that could be done, and it was her understanding that Roy Biedler, Zoning Inspector, Zoning Enforcement Branch, had informed the appellant of that and recommended that it would be better for her to put money toward an application for a special permit rather than spend money on an appeal.

Ms. Persigehl acknowledged that Mr. Biedler had mentioned the special permit process to her in his letter, but the last page stated that failure to comply with the notice could result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance. She said the fence was so important to her children that she had to file the appeal even in light of Mr. Biedler's recommendation.

Mr. Hammack said the stamp on the letter indicated that the notice had been sent out on August 18, 2006, not on the August 17th. He asked Ms. Stanfield if the stamped date on the envelope or the date of the letter was what staff relied on. Ms. Stanfield said she would have to consult with Zoning Enforcement. Mr. Hammack noted that the appellant had filed on September 18, 2006, which was clearly within 30 days. He said the Board did not have a copy of the notice of violation. Ms. Stanfield said staff was not contending the date, but the completeness of the application.

Mr. Hammack stated that the appellant had filed her appeal application within 30 days, notwithstanding the fact that she did not file all of the proper documents. Mr. Hammack moved to accept the application. He explained to the appellant that the issue was one of zoning, not domestic relations, and if the fence was in the front yard, the Board did not have any discretion to overrule a violation. He said the appellant had to pursue other routes, and staff was doing her a favor by suggesting that she address the issue some other way. Ms. Stanfield said that perhaps it had not been made clear to the appellant that if she were to apply for a special permit, that would stay the enforcement action. Mr. Hammack said the Board had very narrow jurisdiction, and if the Zoning Administrator was correct in the application of the Ordinance, it was his opinion that the Board would uphold the Administrator even if they accepted the application. He said that under the special permit application, the Board had the authority to leave the fence there, and that was another matter.

Ms. Gibb asked whether the appellant understood what Ms. Stanfield had said concerning staying enforcement and that if she filed for a special permit, staff would not move forward with a legal proceeding against her. Ms. Persigehl said it was her understanding that she could not apply for a special permit until after the Board of Supervisors' hearing on the fence amendment, which was scheduled to be held on October 23, 2006. She said the timeline between the information given to her in the notice and the hearing

~ ~ ~ October 3, 2006, After Agenda Items, continued from Page 595

on the fence amendment were too close for her comfort. Ms. Stanfield said the appellant could request additional time in terms of the timeframe given in the notice.

The motion failed for lack of a second.

Mr. Hart moved to defer the Consideration of Acceptance to November 7, 2006. Mr. Beard seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 3, 2006, After Agenda Item:

Request for Reconsideration
Superior 8500, LLC, and Couture Tehmina, Inc., d/b/a McLean Furniture Gallery, A 2006-PR-025

Mr. Hart indicated that he would recuse himself.

A brief discussion was held between Ms. Gibb and Mr. Hammack concerning reconsiderations and the appropriate timeframe for filing dates as referenced in the new by-laws.

Ms. Stanfield stated that when the request had been submitted, staff had a discussion about it, and after talking with Susan Langdon, Chief, Special Permit and Variance Branch, it was staff understands that the Board could consider the request and it did meet the timeframe expressed in the new by-laws.

Mr. Hammack stated that while there was an apparent inconsistency, the new by-laws made it clear that the 30-day appeal period ran from the date of the decision, but did not preclude anyone from making a reconsideration request in writing within seven days.

Mark Jenkins, the appellants' agent, 2071 Chain Bridge Road, Vienna, Virginia, said the appellants had hoped to get the matter worked out and had approached staff right after the hearing. He indicated that the appellants felt the need to file for reconsideration because the 60-day rule discussed at the hearing was something that was not discussed in depth, and it was their opinion that it would be appropriate for the Board to consider. He said the non-RUP had been issued in December of 2004, and the 60 days would have passed, so the grounds to be able to revoke were narrowed. He said Sect. 15.2-2311 of the Ordinance contained three sections that referenced the jurisdiction of the Board. Mr. Jenkins stated that it appeared to him that revocation after the 60 days required a decision because of its location and meaning. To be reversed on those narrow grounds, a determination must be made by the Board, not the Zoning Administrator. He said the appellants had to have a right of appeal to the BZA before there could be a revocation of the non-RUP. Mr. Jenkins said a reading of the statute indicated that it had to be proven that the two narrow exceptions could apply, and it was difficult to see how that context could mean anything other than it shall be proven to the Board. He said the statute more specifically provided that the Zoning Administrator was without authority to revoke a non-RUP on his own before the appellants' right of appeal had been presented at a hearing before the Board.

Mr. Jenkins asked what the burden of proof was. He noted that during the hearing it had been said that the burden lay with the appellants to disprove the allegations of the Zoning Administrator. He suggested that was not correct and called attention to relatively new language in Sect. 15.2-2309 that indicated the Board decided whether the Zoning Administrator was correct, and it referred to other ordinances. He said there was nothing in that section that seemed to suggest there was a deference that had to be paid to the Zoning Administrator, a sort of presumption that the Zoning Administrator was correct, and it was his opinion that that was incorrect. He said an argument that he had made was that there should be a clear and convincing standard. He noted that the Board had indicated it did not show deference, and a decision had to be applied as to whether the Zoning Administrator was correct in applying some burden of proof. He said knowledge of the common law indicated that clear and convincing evidence should have been presented, and it was not. Mr. Jenkins said there was no specific Virginia Supreme Court case that stated anything in the administrative context, but there were cases that stated more broadly that in most cases an administrative tribunal should follow the common law. He requested that the Board approve a reconsideration of its decision.

Mr. Beard moved that the Board accept the reconsideration because Mr. Jenkins had outlined the issues Mr.

~ ~ ~ October 3, 2006, After Agenda Items, continued from Page 596

Beard had at the hearing. Chairman DiGiulian indicated that the motion had to be made by someone on the prevailing side.

Mr. Hammack said he had made the motion, and while he appreciated the issues raised by Mr. Jenkins, he felt the decision made at the hearing was a correct one, and he was not inclined to make a motion.

No motion was made; therefore, the request for reconsideration was denied.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in McLean Bible Church, in federal court, 106CV769, and the companion case in the Circuit Court of Fairfax County, 06-8305; Board of Supervisors vs. BZA, 06-10952, in the Circuit Court of Fairfax County; discussion of legal issues on Cooper vs. BZA, 2005-7636; the filed declaratory action in BZA vs. Board of Supervisors; correspondence in general and personnel matters, the Board of Zoning Appeals vs. Board of Supervisors declaratory judgment action that has been filed, and correspondence dealing with discussion of legal issues, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:41 a.m. and reconvened at 12:06 p.m.

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

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Mr. Hammack moved to request that the County Executive employ Ben Leigh or Brian McCormack to assist the Board with the preparation of a new motion for special permits. Mr. Beard seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:07 p.m.

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

Approved on: November 28, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 17, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ October 17, 2006, Scheduled case of:

9:00 A.M. VICKI LEIGH WHITE, SP 2006-MV-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.8 ft., roofed deck 6.2 ft. with eave 4.9 ft. from side lot line. Located at 7013 Stanford Dr. on approx. 3,720 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 93-1 ((20)) (1) 29B.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vicki Leigh White, 7013 Stanford Drive, Alexandria, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a reduction to the minimum yard requirements based on an error in building location to permit a deck to remain 1.8 feet and a roofed deck (open porch) to remain 6.2 feet with eaves 4.9 feet from the side lot line. A minimum side yard of 8.0 feet is required.

Ms. White presented the special permit request as outlined in the statement of justification submitted with the application. She clarified that she erroneously listed her legal name on her statement of justification, that it was not Dilley, but White. She explained the additions she proposed, noting that they would expand the living space and provide a roofed deck. She pointed out that the existing concrete stoop and its roof were deteriorated, and that was the reason she decided to replace and expand it. Ms. White said that it was she who discovered a year ago that the contractor she hired had neglected to obtain the required permits. On April 3, 2006, she attempted to bring her home into compliance. The County denied the permit due to an erroneous placement of her roofed and ground level decks and advised her to apply for a special permit.

In response to Mr. Hart's questions, Ms. White said she had a written contract, a schedule of payments, and notations of several modifications that were made throughout the process and that she kept copies of all. She said the contractor appeared legitimate as he had a thorough portfolio with a business license, and during most of the construction, inspectors had made site visits. After construction was completed and she applied for refinancing, she was informed by the home inspector that none of the modifications were signed off by the County. She said her contract stipulated that the contractor would obtain all permits, and the County sought to locate him, but apparently he had left the area.

In response to Mr. Hart's question regarding whether the existing shed conflicting with the 30 percent bulk plane was a problem, Susan C. Langdon, Chief, Special Permit and Variance Branch, said she did not believe it was a problem, that it only needed to meet a certain minimum yard requirement.

In response to the applicant's question about her neighbor sending a letter requesting approval of her application, Chairman DiGiulian confirmed that the Board had a copy of Rolando Plummer's letter of support.

Ms. White explained that, at the request of her neighbor, a planter was installed to address a drainage problem.

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

Mr. Byers moved to approve SP 2006-MV-041 for the reasons stated in the Resolution.

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~ ~ ~ October 17, 2006, VICKI LEIGH WHITE, SP 2006-MV-041, continued from Page 599

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VICKI LEIGH WHITE, SP 2006-MV-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.8 ft., roofed deck 6.2 ft. with eave 4.9 ft. from side lot line. Located at 7013 Stanford Dr. on approx. 3,720 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 93-1 ((20)) (1) 29B. 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 17, 2006; 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 Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This special permit is granted for the location of the deck and roofed deck (open porch) as shown on the special permit plat prepared by Patrick A. Eckert dated June 22, 2006, as revised through July

~ ~ ~ October 17, 2006, VICKI LEIGH WHITE, SP 2006-MV-041, continued from Page 600

26, 2006, as submitted with this application, and is not transferable to other land.

2. The applicant shall reduce the maximum height of the wooden fence along the northern property line to no higher than 7.0 feet, as required by Sect. 10-104 of the Zoning Ordinance.

3. All required building permits and final inspections shall be diligently pursued within 30 days and obtained within 90 days of final approval of this application or this special permit shall be null and void.

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

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

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~ ~ ~ October 17, 2006, Scheduled case of:

9:00 A.M. DOLLAR WORLD +, INC., SP 2006-MA-028 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 6464-A Lincolnia Rd. on approx. 1.6 ac. of land zoned C-6 and HC. Mason District. Tax Map 61-3 ((1)) 16A. (Decision deferred from 9/12/06)

Chairman DiGiulian noted that SP 2006-MA-028 had been deferred for decision only.

In response to Mr. Hart's question, the applicant's representative, Mark G. Jenkins, Esquire, 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, and Stephen Varga, Staff Coordinator, each stated that they agreed to the revised development conditions dated October 6, 2006.

Mr. Hart moved to approve SP 2006-MA-028 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DOLLAR WORLD +, INC., SP 2006-MA-028 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 6464-A Lincolnia Rd. on approx. 1.6 ac. of land zoned C-6 and HC. Mason District. Tax Map 61-3 ((1)) 16A. (Decision deferred from 9/12/06) 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, 2006; and

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

1. The applicant is the owner of the land.
2. Although the case has been a difficult one for a number of reasons, the deferral has helped the Board to achieve a resolution, at least with respect to the impacts.
3. Certain non-residential uses can have impacts on the residential neighborhood nearby, but the Board of Supervisors has determined in the Ordinance what the standards would be for a use like a billiard hall in proximity to a residential neighborhood.
4. Staff has reviewed it and recommends approval as it does comply with the standards in the Zoning

Ordinance.

5. The Board did have problems with how the impacts on the neighborhood would be mitigated, and since the staff report's publication and the public hearing, a number of additional development conditions have been added, which go a long way toward mitigating some of the impacts on the neighborhood.
6. The establishment will serve beer and wine only and will not apply for a license to serve mixed drinks, and will not advertise or allow a "Happy Hour."
7. There will be a security camera system.
8. There will be extensive signage and restrictions even on the type of clothing for the patrons of the establishment.
9. There is a requirement that trash be picked up.
10. There are other modifications to the conditions, all of which are in the direction of mitigating the impacts on the neighborhood.
11. The Board received a great deal of correspondence and some form letters to the extent that the neighbors have issues with the category of the use and the proximity to the neighborhood, but to a large extent, that is an issue for the Board of Supervisors to determine in that they write the Ordinance and make the determinations as to what the standards should be.
12. Based on the information that the Board has with these development conditions, the required standards have been met, and the application is approvable.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 4-603 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Dollar World +, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 6464-A Lincolnia Road, and is not transferable to other land. Other by-right, special exception and special permit uses may be permitted on the lot and premises without a special permit amendment, if such uses do not affect this special permit use.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (the "Special Permit Plat") prepared by Yung Chull Kim dated May 26, 2006, as revised through August 10, 2006, 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 building permit or other plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum hours of operation of the billiard/pool shall be limited to 11:00 a.m. to 12 a.m., Sunday through Thursday, and 11:00 a.m. to 2 a.m. Friday through Saturday.

6. The maximum number of billiard/pool tables within the use shall not exceed 11. The maximum number of dining table seats shall not exceed 32.

7. Prior to the issuance of a building permit for the space, a parking tabulation shall be submitted to and approved by Code Analysis, DPWES, to demonstrate that parking on site meets Zoning Ordinance requirements.

~ ~ ~ October 17, 2006, DOLLAR WORLD +, INC., SP 2006-MA-028, continued from Page 602

8. All alcoholic beverage control ("ABC") laws of the State of Virginia shall be complied with.

9. All signage shall be subject to the regulations of Article 12 of the Zoning Ordinance.

10. No additions or expansion to the billiard/pool hall or eating establishment shall be permitted without approval of an amendment to the special permit.

11. Subject to obtaining the applicable license under the ABC laws of Virginia, the Applicant shall serve only beer and wine and shall not apply for or obtain a license to serve mixed drinks. The applicant shall not advertise or allow any 'Happy Hour.'

12. The applicant shall install and operate a security camera system in the premises.

13. In establishing the special permit use, applicants shall post the following signs stating substantially the following:

    a. A plaque or similar sign on the side of the front door, stating in conspicuous type:

       NO ONE UNDER 18 ADMITTED WITHOUT AN ADULT/ AFTER 8 P.M.
       PATRONS MUST BE 21 YEARS OLD

    b. A separate sign on the front door, or at the side of the door, and in at least two locations inside the premises, readily observable by patrons, shall state the following, and such additional rules as the applicant may deem appropriate, in conspicuous type:

       PROPER ATTIRE REQUIRED

       HATS MUST BE WORN FACING FORWARD
       NO BANDANAS OR SKULL CAPS
       NO DIRTY WORK CLOTHES
       NO OUTSIDE FOOD OR DRINKS
       NO TANK TOPS OR SLEEVELESS SHIRTS
       NO LOUD OR DISRESPECTFUL BEHAVIOR

       MANAGEMENT RESERVES THE RIGHT TO REFUSE SERVICE TO ANYONE

       Security cameras are recording sound and activity.

14. The applicant will keep the area in front of the premises in a neat and clean appearance and shall daily pick up any trash in the area.

15. The applicant will provide a copy of these development conditions to each manager. Whether or not applicant obtains an ABC license, either a manager or a principal of the owner shall be on duty at all times on the premises when it is open for business. Each manager or principal shall be instructed on the details of the development conditions and shall supervise enforcement of the rules concerning those on behavior and attire of the patrons.

16. Subject to any required permit or permission pursuant to the Zoning Ordinance and any approval needed under applicant's lease, applicant shall remove the existing "Dollar Plus" sign. The trade name for the special permit use used for signage shall not include the words "Dollar Plus" or use the word "bar," or any close variants, but may use such words as "café", e.g., Franconia Café or Franconia Billiards Café. Subject to Zoning Ordinance rules, applicant may install awnings or similar exterior window and/or door treatments to the front façade to improve the exterior appearance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has

~ ~ ~ October 17, 2006, DOLLAR WORLD +, INC., SP 2006-MA-028, continued from Page 603

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

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~ ~ ~ October 17, 2006, Scheduled case of:

9:00 A.M. WILLIAM T. FANSHER, SP 2006-SU-033 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 6869 Muskett Wy. on approx. 10,019 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 65-3 ((5)) (3) 48. (Admin. moved from 9/26/06)

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William T. Fansher, 6869 Musket Way, Centreville, Virginia, replied that it was.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The subject parcel was located at 6869 Muskett Way, within the Confederate Ridge subdivision. The site was zoned R-3 Cluster and developed with a single-family detached dwelling. Properties to the north, east, and west were also zoned R-3 Cluster and developed with single-family detached dwellings and property to the south was developed with homeowners' association open space. The applicant is seeking approval to permit a modification to the limitation on the keeping of animals to permit the keeping of four dogs and up to two foster dogs. The subject property was 10,019 square feet in size, and, therefore, two dogs would be permitted by right.

Mr. Fansher presented the special permit request as outlined in the statement of justification submitted with the application. He said he had owned the four dogs for three years and was not aware there was a regulation limiting the number to two. He explained that the third dog was a stray, and the fourth dog was a deceased friend's. Mr. Fansher said he strove to maintain good relations with his neighbors, being considerate with his dogs' care by leash-walking, assuring they were quiet, and constantly policing their cleanup, whether inside or outside of the yard, to the extent of carrying a flashlight for night walks. Unaware of the limitation regulation, two and a half years prior, he began fostering rescued American Eskimo dogs and was the Treasurer of a non-profit organization. He said that he knew of no complaints regarding noise or odor from his dogs, having become aware only after his citation. Mr. Fansher said he wanted only to keep his four dogs. He would not replace any after they died, and he hoped to continue fostering, but would limit the number to two, until an adoption to a permanent home.

Responding to Mr. Beard's question concerning the dogs, Mr. Fansher listed each dog's name, breed, age, weight, estimated life expectancy, and how long he had each of them.

Responding to Mr. Hart's questions concerning Ordinance regulations on foster dogs, Ms. Langdon said staff's research found no minimum requirements, and there was no stipulation, definition, or clarification of a foster dog versus a dog kept permanently. She said Mr. Fansher indicated he generally kept an animal for adoption for several days, and staff included a development condition that if he were approved, he was allowed to keep his four plus two foster dogs with no time limit indicated. Ms. Langdon explained that staff took the language from a similar case as it worked well, but the development condition could be reworded to a specific limit and timeframe if the Board so desired.

Addressing Ms. Langdon's comments, Mr. Fansher clarified that he typically kept a foster dog for longer than several days as the rescue organization was nationwide and it could take several months for a good home to be found.

Responding to Mr. Hart's question concerning imposing a time limit, Mr. Fansher said in most cases three months was adequate. He explained that often an animal was not in perfect shape for adoption and was in need of care due to various skin and/or fur conditions, and many dogs were taken from an animal shelter or from an abusive home. He offered to move an animal to another foster home if the time limit imposed was up.

Responding to a question from Mr. Hart, Ms. Langdon said a development condition stipulating how the dogs would be contained within Mr. Fansher's yard was not typical, but one could be crafted.

Mr. Fansher said when his invisible fence was installed in May of 2003, he had three dogs for whom he purchased electric collars, but two were since lost. Immediately after learning of his next-door neighbor's complaint about his dogs trespassing, at a financial hardship as each collar cost over $300, he purchased three new collars. Mr. Fansher explained how the collar operated, pointing out the features on the collar he brought to the hearing. He added that since the purchase of the new collars, none of his dogs had left his yard unless on its leash for neighborhood walks. Each foster dog was properly trained to stay on the property.

In response to Mr. Ribble's question, Mr. Fansher said their fostering organization spanned 25 states, but his was the sole Virginia location, and, to his knowledge, only he had dealt with such Ordinances as those of Fairfax County. He noted that many of the foster homes were in rural areas where there were no restrictions or rules, but he was aware of one former foster home in Indiana who complied with either City or a homeowners association's rules on the allowable number of dogs. Mr. Fansher submitted there were a number of other homes who fostered many more dogs than he.

Mr. Ribble pointed out that his neighbors, John and Kimberly Volpe, did not support a request to foster additional animals, but were not opposed to Mr. Fansher keeping his four.

Mr. Fansher said he did not know nor had interaction with the Volpes, and he did not know what their objections were.

Chairman DiGiulian called for speakers.

Carolyn Jackson, 14725 Top Sergeant Lane, Centreville, Virginia, came forward to speak, and the oath was administered to her. She informed the Board that it was probably she most affected by Mr. Fansher's dogs because she was a stay-at-home mother of three children. She said that Mr. Fansher's dogs were very friendly and his property impeccably maintained and professionally landscaped. Ms. Jackson said her neighborhood was quiet, and any occasional barking was immediately remedied because the dogs were never left unattended. She said that with the invisible fence and bark collars, Mr. Fansher had gone above and beyond what most would do to be considerate of the neighbors. She pointed out that his property was tucked away in a cul-de-sac, relatively quiet and private with a picturesque setting.

Ronald Rabbu, President of the Confederate Ridge II Homeowners Association (HOA), came forward to speak. He said several complaints and concerns were expressed during the HOA meeting regarding the number of dogs, probable noise, and setting a precedent. He said there was a vote to oppose the application. Mr. Rabbu clarified several statements made in his September 22, 2006 e-mail, noting there was no encroachment issue concerning the common grounds and the area was not conducive for dog walking.

In response to a question from Mr. Byers, Mr. Rabbu said their HOA had no covenants regarding pets.

In response to a question from Mr. Hammack concerning noise complaints, Mr. Rabbu said he personally heard no complaints, but other Board members had. To the nature and extent, he was unsure.

Addressing a question from Mr. Ribble concerning complaints, Ms. Langdon said neither she nor the Zoning Inspector knew of any noise complaints, but the staff coordinator, Deborah Hedrick, was not present to speak to that fact. Her notes indicated conversations with neighbors, but there were no indications of complaints.

Chairman DiGiulian closed the public hearing. He noted that the Board had received several letters and e-mails in support of and in opposition to the application.

Mr. Ribble moved to approve SP 2006-SU-033 for the reasons stated in the Resolution.

Mr. Beard seconded the motion. He commented that he thought the situation somewhat complex, and Mr. Fansher should be commended for his community service. He said he thought the concern about setting a precedent had no merit because the BZA reviewed each application on a case-by-case basis without changing zoning regulations. He cautioned Mr. Fansher to use profound diligence addressing the concerns of his immediate neighbors, especially those of Barbara Miller as for many years he had suffered personal experience with such a situation. Mr. Beard said from his observation of Mr. Fansher's person, property, and pets' condition, he was the kind of gentleman who was responsible.

Mr. Byers suggested an amendment to the development condition to require that each animal wear a collar to ensure none leave the property.

Mr. Hammack said he was sensitive to Mr. Fansher's concern over the expense of collars and suggested that the development condition stipulate that the dogs not be permitted to run unleashed off the property.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM T. FANSHER, SP 2006-SU-033 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 6869 Muskett Wy. on approx. 10,019 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 65-3 ((5)) (3) 48. (Admin. moved from 9/26/06). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 17, 2006; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, William T. Fansher, and is not transferable without further action of this Board, and is for the location indicated on the application, 6869 Muskett Way (10,019 square feet), and is not transferable to other land.

2. The applicant shall make this special permit property available for inspection to County officials

~ ~ ~ October 17, 2006, WILLIAM T. FANSHER, SP 2006-SU-033, continued from Page 606

during reasonable hours of the day.

3. This approval shall be for the applicant's existing four (4) dogs. If any of these specific animals pass away or are given away, the dogs shall not be replaced, except that two (2) dogs may be kept on the property in accordance with the Zoning Ordinance. The applicant shall also have the ability to maintain up to two (2) foster dogs at any given time, but any foster dog shall not stay for more than three (3) months.

4. The yard areas where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.

5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

6. There shall be an invisible fence collar for each animal that is maintained on the property.

7. The dogs shall not be permitted to roam unleashed off the applicant's property.

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

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

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~ ~ ~ October 17, 2006, Scheduled case of:

9:00 A.M. FRANK WELFFENS, VC 2006-MA-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4 ft. in height in front yard and 7.0 ft. in height in side and rear yards to remain. Located at 7317 Auburn St. on approx. 27,147 sq. ft. of land zoned R-1. Mason District. Tax Map 71-1 ((8)) 61. (Concurrent with SP 2006-MA-042).

9:00 A.M. FRANK WELFFENS, SP 2006-MA-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit roofed deck to remain 17.1 ft., deck 14.1 ft., dwelling 10.1 with eave 9.5 ft. from side lot lines. Located at 7317 Auburn St. on approx. 27,147 sq. ft. of land zoned R-1. Mason District. Tax Map 71-1 ((8)) 61. (Concurrent with VC 2006-MA-004).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank Welffens, 7317 Auburn Street, Annandale, Virginia, replied that it was.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an existing fence which measured 8.4 feet in height to remain on the western front, side, and rear lot lines and an existing fence which measured 8.3 feet in height to remain on the eastern front yard lot line. The Zoning Ordinance permits a maximum fence height in a front yard of 4 feet and in the side and rear yards of 7 feet; therefore, variances of 4.3 feet and 4.4 feet were requested for the front yard and 1.4 feet for the side and rear yards.

The applicant also requested a special permit to allow a reduction to the minimum yard requirements based on errors in building location to permit a roofed deck to remain 17.1 feet and a deck to remain 14.1 feet from the eastern side lot line and the dwelling to remain 10.1 feet with eave 9.5 feet from the western side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet with a permitted eave extension of 3.0 feet; therefore, modifications of 2.9 feet for the roofed deck, 5.9 feet for the deck, 9.9 feet for the dwelling, and 7.5 feet for the eave were requested.

~ ~ ~ October 17, 2006, FRANK WELFFENS, VC 2006-MA-004 and SP 2006-MA-042, continued from Page 607

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

In response to questions from Mr. Hart, Ms. Langdon said the fence amendment was not applicable in Mr. Welffens' situation. She said she was unaware if a permit was necessary for the pool and if there was a required minimum height for fences around pools or whether a fence must be higher than a deck that surrounds an aboveground pool.

Mr. Welffens presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He said the error in building location was unknowingly inherited from the previous owner and was discovered when he applied for a home improvement permit.

Mr. Hart informed the applicant that the Board of Supervisors in the near future would adopt an amendment to the Zoning Ordinance regarding fences which would allow a fence up to 6.0 feet in a front yard. He asked Mr. Welffens if staff advised him of the options and whether he was aware of the legal difficulties over the last several years with granting a variance for a fence.

Mr. Welffens said he was unaware of the option, and his request was presently before the Board for consideration. He said the fence was there when the house was purchased. The previous owner had erected an aboveground pool, which required no permit, and the fence was placed as a safety precaution around the pool. Mr. Welffens said the fence was necessary for safety reasons, and it would be unsafe to remove it.

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

Ms. Gibb moved to approve SP 2006-MA-042 approve for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK WELFFENS, SP 2006-MA-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit roofed deck to remain 17.1 ft., deck 14.1 ft., dwelling 10.1 ft. with eave 9.5 ft. from side lot lines. Located at 7317 Auburn St. on approx. 27,147 sq. ft. of land zoned R-1. Mason District. Tax Map 71-1 ((8)) 61. (Concurrent with VC 2006-MA-004). 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, 2006; and

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

1. The applicant is the owner of the land.
2. The applicant has met standards A through G.
3. The mistake was made in good faith in that the applicant bought the property "as is," and the mistake was made prior to the time the applicant bought the property.
4. It is a relatively minor error with little impact on the neighborhood.
5. There is no testimony by any neighbors in opposition.

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

~ ~ ~ October 17, 2006, FRANK WELFFENS, VC 2006-MA-004 and SP 2006-MA-042, continued from Page 608

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

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

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

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

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

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

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

1. This special permit is approved for the location of the roofed deck (Frame Arbor), deck (Deck A), and dwelling with eave, as shown on the plat prepared by Alexandria Surveys International, LLC, dated April 5, 2006, submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the roofed deck (Frame Arbor), deck (Deck A), and dwelling with eave shall be diligently pursued within 30 days and obtained within 90 days of final approval or this special permit shall be null and void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Ms. Gibb moved to deny VC 2006-MA-004 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK WELFFENS, VC 2006-MA-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4 ft. in height in front yard and 7.0 ft. in height in side and rear yards to remain. Located

~ ~ ~ October 17, 2006, FRANK WELFFENS, VC 2006-MA-004 and SP 2006-MA-042, continued from Page 609

at 7317 Auburn St. on approx. 27,147 sq. ft. of land zoned R-1. Mason District. Tax Map 71-1 ((8)) 61. (Concurrent with SP 2006-MA-042). 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, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not presented testimony that he is being denied all reasonable beneficial use of the property taken as a whole; therefore, the Board cannot grant a variance in this case.
3. There is testimony that if the fence is moved slightly, it will be a side yard fence.
4. If the fence is slightly lowered, he can comply with the current Zoning Ordinance.
5. The applicant will not be denied all use of his property by the Board denying the variance request.
6. The Board recognized that the mistake was not the applicant's.
7. The applicant's safety implications regarding the aboveground pool are recognized; however, the applicant can have a 7-foot fence on the side yard where the pool is located, and there is already a secondary fence around the interior of the pool; maybe the applicant can have further security measures.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist, which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

~ ~ ~ October 17, 2006, FRANK WELFFENS, VC 2006-MA-004 and SP 2006-MA-042, continued from Page 610

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 17, 2006, Scheduled case of:

9:00 A.M. A. DANE BOWEN, JR., SP 2006-MA-039 Appl. under Sect(s). 8-916 of the Zoning Ordinance to permit a reduction of certain yard requirements to permit existing dwelling 6.3 ft. from side lot line. Located at 6330 Hillcrest Pl. on approx. 10,515 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 74.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. A. Dane Bowen, Jr., 6330 Hillcrest Place, Lincolnia Heights, Alexandria, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit a reduction to certain yard requirements to permit an existing dwelling to remain 6.3 feet from the side lot line of a corner lot. Currently the dwelling straddled the lot between Lots 73 and 74, and the applicant stated that the request was to be able to remove a portion of the existing house, which occupied part of Lot 73, so that a new house could be built on Lot 73, which was a buildable lot. Staff recommended approval.

Mr. Bowen presented the special permit request as outlined in the statement of justification submitted with the application. He said he had hurriedly purchased the house as he sought to provide a home for himself and his disabled son. At no time throughout the June 1992 settlement process on the house and simultaneous purchase of the vacant adjoining lot was he informed of the house's encroachment onto the side lot line. He explained that his intention was to remove the garage portion of the existing house located on Lot 73 and a portion of Lot 74 and construct a new dwelling on Lot 73. Mr. Bowen said the new house would be wheelchair accessible and would provide a home for his 53-year-old son who was unable to work. He said that his proposal had no opposition from his neighbors. The construction would increase the tax base, no infrastructure would be affected, and there was no change in the use. Mr. Bowen expressed his appreciation to staff for revising proposed Development Condition 4 of Appendix 1, as to comply, he and his family would suffer severe financial hardship.

Mr. Hammack pointed out that the plat did not depict all the renovation construction proposed by the applicant.

Mr. Bowen concurred and apologized that his plat was not exact. He clarified the areas where the new construction was proposed.

In response to a question from Mr. Hammack, Ms. Langdon explained that one must meet the angle of bulk plane on non-residential structures. The Ordinance gave the minimum required yard for residential development and not a minimum bulk plane angle. She said that the applicant's request for a special permit was to allow encroachment into the minimum required yard as it satisfied the new amendment of less than 50 percent yard.

Mr. Byers noted that Mr. Bowen had previously applied for a variance and was now again going through the process due to the 50 percent clause which qualified Mr. Bowen's circumstances for a special permit.

There were no speakers, and Chairman DiGiulian closed the public hearing.

~ ~ ~ October 17, 2006, A. DANE BOWEN, JR., SP 2006-MA-039, continued from Page 611

Mr. Beard moved to approve SP 2006-MA-039 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

A. DANE BOWEN, JR., SP 2006-MA-039 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit a reduction of certain yard requirements to permit existing dwelling 6.3 ft. from side lot line. Located at 6330 Hillcrest Pl. on approx. 10,515 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 74. Mr. 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, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The additional standards in Sect. 8-922 regarding reduction of certain yard requirements are complied with.
3. The pages in the staff report dealing with the additional requirements are incorporated by reference.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the demolition of the portion of the dwelling to be removed. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size of the dwelling shown on the plat prepared by Thurber Engineering & Land Surveying, Ltd, dated, September 2003 and revised through August 9, 2004, as submitted with this application and as further modified by the applicant at the public hearing, included as Attachment 1, and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. The demolition of the portion of the dwelling shown to be removed shall take place prior to approval of a residential use permit for the proposed dwelling on Lot 73.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the demolition of the portion of the structure 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.

~ ~ ~ October 17, 2006, A. DANE BOWEN, JR., SP 2006-MA-039, continued from Page 612

Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 17, 2006, Scheduled case of:

9:00 A.M. ROBERT A. & DIANE L. AUSTIN, SP 2006-BR-043 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a reduction of certain yard requirements to permit construction of addition 6 ft. 6 in. from side lot line. Located at 8920 Bald Hill Pl. on approx. 14,432 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 78-2 ((14)) 175.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert A. Austin, 8920 Bald Hill Place, Burke, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit a reduction to certain yard requirements to permit the construction of a 950-square-foot addition 6 feet, 6 inches from a side lot line. The request was needed to add a second garage and additional living space to accommodate current family lifestyles, and an at-grade deck was also proposed in addition to the widening of the existing driveway. Staff believed that the subject application was in conformance with the applicable Zoning Ordinance provisions and recommended approval.

Vice Chairman Ribble assumed the Chair.

Mr. Austin presented the special permit request as outlined in the statement of justification submitted with the application. His neighborhood was well-established with older model homes with carports. Over the past 20 years, he said many in the development had renovated by enclosing their carport or adding one- or two-car garages. His proposal would entail a 4.5-foot encroachment into the minimum yard setback. Mr. Austin said great care was taken to ensure the design of the improvements was compatible and harmonious with the character of the neighborhood, and his homeowners' association had approved the plans. He believed his property value would be increased and that it was beneficial to the subdivision.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Chairman DiGiulian resumed the Chair.

Mr. Hammack moved to approve SP 2006-BR-043 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT A. & DIANE L. AUSTIN, SP 2006-BR-043 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a reduction of certain yard requirements to permit construction of addition 6 ft. 6 in. from side lot line. Located at 8920 Bald Hill Pl. on approx. 14,432 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 78-2 ((14)) 175. 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, 2006; and

~ ~ ~ October 17, 2006, ROBERT A. & DIANE L. AUSTIN, SP 2006-BR-043, continued from Page 613

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant has met the standards for special permit applications including the new revised standards under Sect. 8-922 of the Ordinance to permit this addition.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 950 feet) of the proposed addition as shown on the plat prepared by Bruhnke Architects, dated, July 10, 2006, as submitted with this application and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the maximum build-out of the dwelling with additions, whether approved by special permit, variance or by-right, the resulting gross floor area of an addition to the existing principal structure shall not exceed 150 percent of the total gross floor area of the principal structure that existed at the time of the first yard reduction request or a maximum buildout of the structure of 4,018 square feet.

5. The addition shall be consistent with the architectural renderings included Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 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. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 17, 2006, Scheduled case of:

9:00 A.M. HERITAGE FELLOWSHIP UNITED CHURCH OF CHRIST, SPA 84-C-045 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 84-C-045 previously approved for church to permit building additions and site modifications. Located at 2505 Fox Mill Rd. on approx. 5.08 ac. of land zoned R-2. Hunter Mill District. Tax Map 25-2 ((5)) 51 and 52. (Associated with RZ 2006-HM-001) (Admin. moved from 6/20/06 and 9/26/06 at appl. req.)

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

~ ~ ~ October 17, 2006, HERITAGE FELLOWSHIP UNITED CHURCH OF CHRIST, SPA 84-C-045, continued from Page 614

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stuart Mendelsohn, Holland & Knight LLP, 1600 Tysons Boulevard, Suite 700, McLean, Virginia, the applicant's agent, replied that it was.

Tracy Strunk, Staff Coordinator, made staff's presentation as contained in the staff report. The application property was located on the east side of Fox Mill Road, to the north of its intersection with Pinecrest Road. The property was developed with a church and surface parking approved under SP 84-C-045, which was approved for development in phases and only partially implemented. A rezoning application, RZ 2006-HM-001, was associated with the special permit application, and the rezoning application was heard by the Planning Commission the prior week. Approval of the rezoning application would increase the Floor Area Ratio (FAR) permitted on the site from 0.15 to 0.2. Because the citizens advisory committee for the district, the Hunter Mill Land Use Advisory Committee, was unable to make a recommendation on the rezoning case due to lack of a quorum, the Planning Commission deferred its decision on the rezoning to October 18, 2006. The applicant sought to rezone the site from the R-1 District to the R-2 District and to amend a previously approved special permit to allow the expansion of the existing church. The proposal would increase the approved floor area from 27,000 square feet to just over 46,000 square feet, an increase in the FAR from 0.11 to 0.2. The number of seats approved for the facility would not increase, but would remain at 844 seats, although a new 100-seat chapel had also been requested. The applicant agreed to staff's proposed development condition prohibiting the chapel from being used at the same time as the main sanctuary. Although the number of seats requested had not increased, the applicant was proposing to increase the number of parking spaces from the Ordinance requirement of 211 spaces to 295 spaces, which was 1 space per 2.86 seats. The applicant also requested a modification of the transitional screening requirements to allow the use of existing vegetation where recommended by the Urban Forester and a waiver of the barrier requirement along the Fox Mill Road frontage. Distributed that morning were revised development conditions dated October 12, 2006, which included a change in the date of a revised plat and the removal of a tree preservation condition. Staff recommended approval of SPA 84-C-045.

Mr. Hart informed the Board that he had recused himself from this case's Planning Commission's public hearing, but after speaking with the agent, it was his understanding that the applicant had no objection to the BZA hearing the special permit notwithstanding Mr. Mendelsohn's present involvement in Federal Court litigation. Mr. Hart said that as there was no objection, he intended to participate in the special permit part of the case, and if the BZA did not hear it, the applicant had no vehicle to go forward at that time.

Mr. Mendelson stated for the record that there was no objection, and the issue was he represented McLean Bible Church in another case. He said he told Mr. Hart that the applicant viewed the BZA body as an appellant step which was appealed to the courts; therefore, there was neither perceived bias nor objection to the BZA hearing the case.

In response to a question from Mr. Hart, Ms. Strunk explained the matter of the conservation easement, floodplain, and Resource Protection Area, concurring that the BZA had no involvement in its procedure, that all was properly advertised, and the BZA may hear the special permit application.

In response to a question from Mr. Byers, Ms. Strunk said there were a few outstanding issues that the Hunter Mill's Land Use Committee wanted addressed, but no one told her the application should not be approved.

Mr. Mendelsohn presented the special permit amendment request as outlined in the statement of justification submitted with the application. Although the Hunter Mill Land Use Advisory Committee addressed issues with the Planning Commission and Board of Supervisors, he was unaware of any matter of concern regarding the BZA's hearing, and he had every expectation that it would approve the application when they went before the committee again. He reminded the Board that they had approved the application in 1984. Because of the zoning and uses in the vicinity, Mr. Mendelsohn said the application was in character with the area. After numerous citizen meetings, the applicant agreed not to construct a parking structure, although there would be less tree buffer, because the neighbors thought it was inappropriate in a residential area. The current proposal requested approval of 46,000 square feet, 27,000 square feet of which was approved in 1984. There was no request for child care or preschool, and most of the church's activities remained the

same. There would just be more space afforded for each function.

Mr. Mendelsohn said the perceived impact, which was contemplated in 1984, would be on Sundays when the new sanctuary could accommodate the congregation who were meeting in a high school. Mr. Mendelsohn noted it was no longer feasible to expect one parking space for every four attendees. The requested increase was the reason they were before the Board that day, and the current proposal actually requested fewer spaces than those proposed for the parking structure. He said the site's buffer would be significantly supplemented with plantings and trees, the homes on either side were elevated, and the site would not be visible to the neighbors. He said the stormwater management proposed by the church was greatly improved over the current system and benefited the residential community. Mr. Mendelsohn pointed out that 30 percent open space was approved in 1984, but despite the larger footprint and increased parking, there would be an improvement to 36 percent open space. Mr. Mendelsohn reiterated the proposed improvements, which included the elimination of the parking structure, the increase in landscaping, the addition of tree supplement and preservation proffers, the Best Management Practices (BMPs), the lighting meeting the proposed standards, the open space exceeding the previous approved percentage, addressing the transportation needs, improving ingress and egress to the site, and a sidewalk constructed for pedestrian access. Mr. Mendelsohn said the church would enclose, thereby effectively screening, its air-conditioning/heating ventilation unit with masonry walls. Concerning the suggested board-on-board fence, the issue which had not yet been totally agreed upon, the church would prefer not to construct as it was considered unnecessary and would cause the loss of trees slated to be saved. A condition was proffered to ensure maintenance of the landscape. Mr. Mendelsohn said he believed the applicant would have the approval of the Hunter Mill Land Use Advisory Committee and was confident both the Planning Commission and the Board of Supervisors would support the application, and he requested the BZA's approval.

Mr. Mendelsohn responded to Mr. Beard's question concerning the chapel's location and proximity to the sanctuary.

In response to Mr. Beard's question, Rapatrick Murrell, Chairman of the Board of Directors for Heritage Fellowship Church, quoted the average number of attendees at the high school for the single Sunday service to range around 600.

Chairman DiGiulian called for speakers.

Mr. Murrell, no address given, Trustee for the church, informed the Board that the church's members grew from 300 to 1200, and the single Sunday service at the Fox Mill address became three so as to accommodate the attendees. The overflow originally met at South Lakes High School and then Herndon High School. He said the church sought to meet its membership's needs. He named several of the community services the church offered. Mr. Murrell said the church was a vibrant element to the community and served a vital role in meeting the needs of those in the community.

To clarify for Mr. Beard, Mr. Murrell said the existing church held one Sunday service of about 200 attendees.

Kim O'Halloran, Esquire, Rees, Broome & Diaz, 8133 Leesburg Pike, 9th Floor, Vienna, Virginia, came forward to speak. She identified herself as counsel to the Courts of Fox Mill Homeowners Association which abutted the church property. She acknowledged that the applicant had met with its neighbors after opposition was raised to the parking deck, and a number of issues were resolved. A key issue with the amendment was the church's characterization in the statement of justification that it was in keeping with the original permit approved in 1984. She referenced the staff report's Appendix 15 Glossary, which delineated what was there currently, what was approved in 1984, 27,000 square feet, and what was now proposed, 46,000 square feet. She said the proposed size of the sanctuary was of great concern to her clients, in particular the impact of increased traffic generated from the Sunday services. The residents wanted a 6-foot board-on-board fence in place of an existing chain link fence, as well as upgrading the transitional screening from the required evergreens. Ms. O'Halloran congratulated staff on the incorporation of all rezoning landscape proffers in the draft development conditions to ensure the church remained a good neighbor and, if necessary, could be taxed to fulfill its proffer requirements. She pointed out that the site was not as green as one might assume, that there were a number of deciduous trees, and in winter the site was somewhat

~ ~ ~ October 17, 2006, HERITAGE FELLOWSHIP UNITED CHURCH OF CHRIST, SPA 84-C-045, continued from Page 616

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Responding to a question from Mr. Hammack, Ms. O'Halloran said that the remaining issues could be addressed by the HOA's five Board members and the 30 homeowners active in the process once a meeting was coordinated, with a final written agreement expected in two weeks.

In his rebuttal, Mr. Mendelsohn noted that at the last Hunter Mill Land Use Committee meeting, the church offered to have a meeting and had been waiting for the date and time. He pointed out why the fence was not feasible on the west side as it could damage the existing foliage and that the site was green during all the seasons because of the trees and evergreen plantings. Mr. Mendelsohn said there were several improvements, stormwater management and green open space, proposed for the site, which was what differed this application from what was approved in 1984.

Mr. Mendelsohn responded to a question from Mr. Ribble concerning the church's change of name, but affirmed it was the same entity. He said the property was held by three trustees. He clarified that the area Ms. O'Halloran requested the board-on-board fence be placed adjoined a different homeowners association's development, which would not resolve any issues between the applicant and the Courts of Fox Mill Homeowners Association.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to defer decision on SPA 84-C-045 to October 31, 2006, at 9:00 a.m., for the following reasons: It would be prudent that the Board receive a definitive answer from the Hunter Mill Land Use Association/Citizens Advisory Committee; those client issues brought up by Ms. O'Halloran warranted further consideration; there was a sensitivity to the prerogatives of the Planning Commission (PC) and the elected Board of Supervisors (BOS), and Condition 5 voided the SPA unless the rezoning was approved. Mr. Byers said he thought the PC and BOS had the opportunity to work out the issues, make its decision, and then the case could come before the BZA for its decision.

Mr. Hammack said the BZA could not make a decision at that time as it had no authority to waive FAR, and therefore, a decision would be conditioned on the rezoning. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 17, 2006, Scheduled case of:

9:30 A.M. GOOD STAR CONSTRUCTION COMPANY, INC., A 2006-PR-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a single family dwelling under construction exceeds the maximum building height of thirty-five feet in the R-1 District. Located at 3000 Apple Brook Ln. on approx. 36,000 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((15)) 8. (Admin. moved from 4/18/06 at appl. req.) (Deferred from 5/2/06 at appl. req.) (Admin. moved from 6/13/06 for notices.)

Chairman DiGiulian noted that A 2006-PR-003 had been withdrawn.

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~ ~ ~ October 17, 2006, Scheduled case of:

9:30 A.M. JEFFREY S. GIORDANO, A 2006-PR-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has constructed an accessory storage structure that exceeds 8 1/2 feet in height and does not comply with the minimum yard requirements of the R-3 District in violation of Zoning Ordinance provisions. Located 7419 Tower St. on approx. 12,397 sq. ft. of land zoned R-3. Providence District. Tax Map 50-1 ((13)) 66A.

~ ~ ~ October 17, 2006, JEFFREY S. GIORDANO, A 2006-PR-034, continued from Page 617

Chairman DiGiulian noted that a deferral to December 12, 2006, had been requested.

Mr. Ribble moved to defer A 2006-PR-034 to December 12, 2006, at 9:30 am. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 17, 2006, Scheduled case of:

9:30 A.M. NAVARRO CRESPIN ALEMAN, A 2006-LE-034

Chairman DiGiulian noted that A 2006-LE-034 had been administratively withdrawn.

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~ ~ ~ October 17, 2006, Scheduled case of:

9:30 A.M. DONALD R. ROSE AND DEBBE A. ROSE, A 2006-MV-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have constructed an accessory structure, a stone fireplace and a wooden roofed patio cover, which exceed seven feet in height and which do not comply with the minimum yard requirements for the R-3 District, without valid Building Permit approval, and have installed accessory structures and uses which exceed the 30 percent maximum permitted coverage of the minimum required rear yard, all in violation of Zoning Ordinance provisions. Located at 7922 Journey La. on approx. 9,418 sq. ft. of land zoned R-3C. Mt. Vernon District. Tax Map 98-2 ((6)) 273. (Admin. moved from 8/1/06 and 8/8/06 at appl. req.) (Decision deferred from 10/3/06)

Chairman DiGiulian noted that A 2006-MV-022 had been deferred for additional information and research from staff. Chairman DiGiulian called for a motion.

Mr. Hart stated that A 2006-MV-022 was an appeal of a determination that the appellants had erected a stone fireplace and a wooden roofed patio cover, which exceeded seven feet in height and which did not comply with the minimum yard requirements for the R-3 District, without valid building permit approval, and installed an accessory structure and uses which exceeded the 30 percent maximum permitted coverage of the minimum required rear yard, all in violation of Zoning Ordinance provisions. Mr. Hart moved that the Board adopt the rationale in the staff report, except for that the Zoning Administrator was correct regarding the fireplace structure and wooden roof structure. The building permit, however, for the swimming pool was approved in October of 1997 and showed the pool and deck's location. The equipment and its approval assumed the previous approvals and constructions including the spa. He concluded that under the 60-day rule, Statute 15.2-2311, the approval of the building permit in October of 1997 would be a determination within that 60-day period. The appellants would have relied on that approval and expended money to put in the swimming pool, and there had been no showing of fraud or malfeasance and no showing any concurrence of the County Attorney. Under the circumstances, this would have been a discretionary approval rather than a clerical error. Even if the swimming pool could remain where it was because of the 60-day rule, there had been nothing shown to the Board regarding the approvability of the fireplace or the roof. The 60-day rule would apply prospectively to the extent the 30 percent was further aggravated by the two new structures. The conclusion of the Zoning Administrator was still valid, and the other conclusions regarding the absence of a building permit or the excess height were valid.

Mr. Hart moved to uphold-in-part the determination of the Zoning Administrator except for the approval of the swimming pool and the 30 percent coverage. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

Ms. Tsai requested clarification of Mr. Hart's motion.

Mr. Hart said he thought at the October 3, 2006, public hearing, the testimony was that other than the fireplace and the roof, the pool and the deck were built as shown on the 1997 building permit. After questioning the appellants' attorney, Keith Martin, there was no discrepancy between the delineation on the building permit and what was built. If he remembered correctly, no conflict was presented, and he understood the violation to be the long-existing pool to be too large, and two more structures were built

~ ~ ~ October 17, 2006, DONALD R. ROSE AND DEBBE A. ROSE, A 2006-MV-022, continued from Page 618

without approval. It was not that they built more than what showed on the 1997 plat. He clarified that his motion was that the pool deck was okay, that what was there conformed to the 1997 building permit.

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~ ~ ~ October 17, 2006, After Agenda Item:

Request for Intent to Defer
Vulcan Construction Materials, LP, SPA 82-V-091-05

Mr. Ribble moved to approve the request for an Intent to Defer to November 28, 2006, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation; Horner v. BZA and Guilmard in the Circuit Court of Fairfax County, CL Number 2006-7696; Virginia Equity Solutions, LLC, v. BZA in the Circuit Court of Fairfax County, 2005-6316; Concerned Citizens of Hollin Hall Village in Circuit Court of Fairfax County, 2006-2456; and a new Motion to Intervene in Welsh v. BZA in Fairfax County, 2006-10954; Board of Supervisors v. BZA, 2006-10952; McLean Bible Church, 2006-8305 in the Circuit Court of Fairfax County, 1-06cv769 in the U.S. District Court of the Eastern District of Virginia; Jackson, 2006-10122; and correspondence pursuant to Virginia Code Ann. Sect. 2.2-3711(A)(7) (LNMB Supp. 2002) Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The Board recessed at 11:17 a.m. and convened at 11:41 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack moved that the Board approve the letter to Mr. Griffin that was discussed during Closed Session regarding a request for reconsideration of funding. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack moved that the BZA approve the letter to Mr. Griffin discussed during Closed Session regarding a request for funding in the case discussed by the BZA. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Minutes by: Paula A. McFarland

Approved on: October 27, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 24, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ October 24, 2006, Scheduled case of:

9:00 A.M. VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05 Appl. under Sect(s). 7-305 of the Zoning Ordinance to amend SP 82-V-091 previously approved for stone quarrying, crushing, sales and related associated quarrying activities to permit renewal, increase in land area and site modifications. Located at 10,000 Ox Rd. on approx. 307.68 ac. of land zoned R-C, R-1, I-6 and NR. Mt. Vernon District. Tax Map 106-3 ((1)) 4B and 9; 106-4 ((1)) 20B pt. and 56 pt.; 112-2 ((1)) 8 pt., 9 pt., 11, 12 and 13. (Admin. moved from 9/19/06 at appl. req.)

Chairman DiGiulian noted that on October 17, 2006, the Board had issued an intent to defer SPA 82-V-091-05 to November 28, 2006.

Mr. Beard moved to defer SPA 82-V-091-05 to November 28, 2006, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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~ ~ ~ October 24, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal by Fairfax County Board of Supervisors

The following is a verbatim transcript of the proceedings had in this matter:

CHAIRMAN DIGIULIAN: Item No. 1, Consideration of Acceptance, Application for Appeal by Fairfax County Board of Supervisors.

MS. GIBB: Mr. Chairman, I'll recuse myself on this.

CHAIRMAN DIGIULIAN: Thank you, Ms. Gibb.

MR. HART: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hart.

MR. HART: Can I inquire is Mr. Sanders involved in this case?

EILEEN MCLANE: I don't know if he's still representing the owner or not.

MR. HART: Okay. Well, if he's not here, I think --

CHAIRMAN DIGIULIAN: I don't see him.

MR. HART: All right. Well, I'll participate then. Thank you.

CHAIRMAN DIGIULIAN: Okay. Has everybody read the -- read the --

MS. MCLANE: The -- David Stoner, who is representing the Board, is not present at this moment, so I don't -- I don't know whether you want to --

CHAIRMAN DIGIULIAN: Yeah, when I spoke to Mavis Stanfield yesterday, she was going to have everybody here at 9 o'clock.

~ ~ ~ October 24, 2006, After Agenda Items, continued from Page 621

MR. HART: Mavis is here.

MAVIS STANFIELD: My understanding -- I'm not near a mike. My understanding he's aware that potentially we could take this at 9 o'clock, so -- I mean, I haven't talked to him this morning, so I don't know why he's not here now.

CHAIRMAN DIGIULIAN: Okay. Well, what do we want to do? Want to wait?

MR. HART: We should wait a few minutes.

MR. HAMMACK: We should wait. It's only 9:03.

CHAIRMAN DIGIULIAN: Okay. We'll wait a few minutes for him.

(Inaudible.)

MR. HART: Maybe we should take a recess or something.

CHAIRMAN DIGIULIAN: Yeah, we'll do that. The Board will recess for approximately five minutes.

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The meeting recessed at 9:03 a.m. and reconvened at 9:05 a.m.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Horner vs. BZA, No. 2006-7696; Couture Tehmina, Inc., et al., vs. BZA, et al., No. 2006-13072; Jackson, et al., vs. BZA, No. 2006-10122; Board of Supervisors vs. BZA, No. 2006-10952; McLean Bible Church vs. BZA, No. 2006-8305; Concerned Citizens of Hollin Hall, No. 2006-2456; Virginia Equity Solutions vs. BZA, CL-2005-6316; all those being in the Circuit Court of Fairfax County; McLean Bible Church vs. BZA in U.S. District Court of the Eastern District of Virginia, No. 106CV769; and the By Laws, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

The meeting recessed at 9:08 a.m. and reconvened at 9:35 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

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Mr. Hammack moved that the Board approve the letter discussed during Closed Session requesting funds for representation in the case of Couture Tehmina, Inc., et al., vs. BZA, et al., No. 2006-13072. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

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~ ~ ~ October 24, 2006, Scheduled case of:

9:30 A.M. NORMA VIDAURRE, A 2006-MA-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a home child care center has been established on property in the R-2 District without an approved Special Permit, in violation of Zoning Ordinance provisions. Located at 4106 Mason Ridge Dr. on approx. 16,403 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((15)) 59. (Admin. moved from 5/2/06 and 7/11/06

~ ~ ~ October 24, 2006, NORMA VIDAURRE, A 2006-MA-006, continued from Page 622

at appl. req.)

Chairman DiGiulian noted that A 2006-MA-006 had been administratively moved to December 19, 2006, at 9:30 a.m., at the appellant's request.

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~ ~ ~ October 24, 2006, Scheduled case of:

9:30 A.M. MALCOLM TEN LIMITED PARTNERSHIP, A 2006-MV-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that as a result of the division of the appellant's property caused by condemnation one of the subsequent lots does not meet current minimum lot area requirements of the R-1 District and is not buildable under Zoning Ordinance provisions, however, the dwelling on said lot is not nonconforming, but may be enlarged, subject to the provisions of Par. 1 of Sect. 15-101 of the Zoning Ordinance. Located at 9406 Ox Rd. on approx. 5.21 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((1)) 52A. (Admin. moved from 9/19/06 at appl. req.)

Chairman DiGiulian noted that A 2006-MV-027 had been withdrawn.

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~ ~ ~ October 24, 2006, Scheduled case of:

9:30 A.M. ARLINGTON-FAIRFAX LODGE NO. 2188 BEN. & PROT. ORDER OF ELKS OF USA, A 2006-PR-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is permitting a new vehicle storage establishment, a storage yard, and a retail sales establishment on property located in the R-1 District in violation of Zoning Ordinance provisions. Located at 8421 Arlington Blvd. on approx. 5.15 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((1)) 101A.

Chairman DiGiulian noted that a deferral request had been received regarding A 2006-PR-037, and he asked staff to suggest a date in December. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, suggested December 12, 2006.

Chairman DiGiulian called for speakers to address the issue of the deferral request.

Mr. Hammack stated that the request for a deferral had come in a letter written over the signature of Jim Eckels, Chairman of the Board of Trustees, in which he indicated that the lodge intended to cure any violations and be in full compliance with the Ordinance by December 1, 2006.

Mr. Hammack moved to defer A 2006-PR-037 to December 12, 2006, at 9:30 a.m. Mr. Byers seconded the motion.

Alma Albers (phonetic), no address given, came forward to speak. She stated that she was a 21-year resident of the community around the Elks Club. She said the flea market and part of what the appellants had been cited for ended around the end of November, so in deferring until December and not stopping them before then, the Board would just be allowing the violations and problems to continue, and the problem would not be solved until March or April of 2007 when operations reopened.

Aubrey Burrow (phonetic), a member of the lodge, no address given, indicated that the date of December 12, 2006, was acceptable to Mr. Eckels.

Mr. Hart asked staff whether they had a position on the deferral. Ms. Stanfield indicated that the Zoning Enforcement Branch would not like to see a deferral.

Mr. Hammack said the violation had been going on for a long time, and Mr. Eckels had not indicated in his letter what violations would be taken care of immediately and what would take a while. He indicated that he lived nearby, and some of the activities at the lodge caused problems. He said if the appellant could cure the

~ ~ ~ October 24, 2006, ARLINGTON-FAIRFAX LODGE NO. 2188 BEN. & PROT. ORDER OF ELKS OF USA, A 2006-PR-037, continued from Page 623

violations within the next six weeks without further legal action being taken, it was his opinion that they should be given an opportunity to take care of the violations listed in the notice.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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~ ~ ~ October 24, 2006, Scheduled case of:

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is operating an establishment for the processing of earthen materials and the erection of structures without an approved site plan, a Non-Residential Use Permit nor a Building Permit on property in the I-4 and I-5 District in violation of Zoning Ordinance provisions. Located at 2734 Gallows Rd. on approx. 40,354 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-2 ((1)) 18.

Chairman DiGiulian noted that A 2006-PR-039 had been administratively moved to February 27, 2007, at 9:30 a.m., at the appellant's request.

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~ ~ ~ October 24, 2006, Scheduled case of:

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an establishment for processing of earthen materials, which is not a permitted use in the I-5 District, and operating without site plan, Non-Residential Use and Building Permit approval for storage structure and other structures on property zoned I-5 and H-C in violation of Zoning Ordinance provisions. Located at 2809 Old Lee Hwy. on approx. 1.128 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 65A.

Chairman DiGiulian noted that A 2006-PR-040 had been administratively moved to February 27, 2007, at 9:30 a.m., at the appellant's request.

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~ ~ ~ October 24, 2006, Scheduled case of:

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has expanded the use of property zoned I-5 and H-C without valid site plan and Non-Residential Use Permit approvals and established outdoor storage that exceeds allowable total area and is located in minimum required front yard in violation of Zoning Ordinance provisions. Located at 8524 & 8524A Lee Hwy. on approx. 1.35 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 67 & 65B.

Chairman DiGiulian noted that A 2006-PR-043 had been administratively moved to February 27, 2007, at 9:30 a.m., at the appellant's request.

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~ ~ ~ October 24, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal by Fairfax County Board of Supervisors

~ ~ ~ October 24, 2006, After Agenda Items, continued from Page 624

The following is a verbatim transcript of the proceedings had in this matter:

CHAIRMAN DIGIULIAN: Item No. 1, Consideration of Acceptance, Application for Appeal by Fairfax County Board of Supervisors. Ms. McLane.

MS. MCLANE: Good morning. My name is Eileen McLane. I'm with Fairfax County Department of Planning and Zoning.

MS. GIBB: Mr. Chairman, excuse me. I'm going to recuse myself.

MR. HART: I'm going to recuse myself also.

CHAIRMAN DIGIULIAN: Okay. We're losing members like flies.

MS. MCLANE: The issue before you this morning is the consideration for acceptance of an appeal of two lots in the Fairhill Boulevard Subdivision. Staff is recommending that you not accept this appeal. It is the second appeal that's been filed on this piece of property. The first was brought to you on August 1st, at which time you declined to accept that appeal. This is an appeal of the Board of Supervisors, and I have staff, I have John Foote, who is counsel to retain me on this issue, and I'm gonna pass over any following remarks with John. Thank you.

CHAIRMAN DIGIULIAN: Okay. Questions? Mr. Foote.

JOHN FOOTE: Mr. Chairman, I believe that as a means of proceeding here, sir, given that this is in the nature of an appeal filed by Mr. Stoner on behalf of the Board, it would be more appropriate for Mr. Stoner to make a presentation. To the extent that I have a response --

CHAIRMAN DIGIULIAN: We'll take your testimony now, sir.

MR. FOOTE: Mine, sir?

CHAIRMAN DIGIULIAN: Yes, sir.

MR. FOOTE: Okay, happy to do that, sir. My -- as you know, my name is John Foote with the firm of Walsh, Colucci, Lubeley, and I do represent the Zoning Administrator here. As you know, Mr. Chairman, we have filed a lengthy letter with the Board on behalf of the Zoning Administrator which lays out in some detail the position that we take. What I would say, as a general matter, is that perhaps only my good friend, Mr. Stoner, as able as he is, could construct a statutory argument that is as convoluted as it is to attempt to persuade the BZA that having rejected an earlier appeal with respect to the approval of the grading plan, it now has jurisdiction and must exercise jurisdiction over the issuance of a building permit that is predicated on precisely the same set of facts that underlay the previous determination with but one exception, and that is the issuance of the building permits themselves.

This -- the -- Mr. Stoner's letter was just provided to me, and so I've just had an opportunity to look it over, and we've had an opportunity briefly to speak. The -- it -- I believe that there may be a misapprehension that the Zoning Administrator's position is that no building permit can ever be appealed to the Board of Zoning Appeals. If the memorandum we submitted suggests that, that's not what I believe it says, and that's not certainly what we mean. There are circumstances, and Mr. Stoner's correct, in which the courts have taken up through the BZA issues of building permit, but recall that those have all involved the predicate zoning determination that the Zoning Administrator may have made which underlay the petition -- or the building permit issuance. In the circumstance here, Mr. Stoner is calculating the timeliness of his appeal based on the issuance of the building permit itself. When, if you look at the face of the building permit, it shows that the zoning determination was made on July the 6th, not 30 days before the petition for appeal was filed with the BZA.

What we suggest to you, and it's detailed in the memorandum, is that, in effect, what this is is an effort to reopen a determination made by the Zoning Administrator some time ago that these three lots could properly be classified and redesigned as two and that those are both two lawful building lots in Fairhill on the Boulevard, a determination which this Board has left alone with respect to the challenge to the grading plan

that has already been filed with you and has already been rejected for appeal. We do not see this as different. We do not see this as a matter that requires any hearing because the Zoning Administrator doesn't decide this. The Zoning Administrator recommends to you, as she has and he has done over the years, whether there is jurisdiction of this Board or not. It is this Board that makes the determination whether it has jurisdiction to hear an appeal.

We submit to you for the reasons that are set out that you should properly reject this appeal, as you did the last one, and let this matter go to the Circuit Court where we already know we're going because there's already been an appeal filed with the Court from your last ruling. Mr. Chairman, that in sum is where we are, and if there are any questions, I'm happy to answer them. I'll respond when it is appropriate to the Board.

CHAIRMAN DIGIULIAN: All right. Questions?

MR. HAMMACK: Not right now.

CHAIRMAN DIGIULIAN: Okay. Mr. Stoner.

DAVID STONER: Thank you. And I certainly recognize that you have heard extended testimony from us about this at an earlier hearing, and I will endeavor not to rehash everything that we've gone over. I realize that I have an uphill battle with respect to some of the arguments that I'm making, but I still think that you should consider this appeal. And there's a new argument that the Zoning Administrator is asserting here today. You have not heard it before, I believe, certainly not in the context of this case. And I think it's simply wrong, and you should reject it.

There are two points that Mr. Foote makes in his letter, and, by the way, I did submit a letter this morning. I think you might have it. I apologize for not getting it to you sooner. I didn't actually see Mr. Foote's letter until yesterday, and so that was the best I could do on short notice. If you were to compare it with the letter that I submitted to you on July 31st, you'd see some great similarities as you would between Mr. Foote's letter of last week and his letter of July 24th. That is because there are certainly overlapping issues between the appeal before you today and the one that you chose not to accept on August 1st, but there are some distinctions as well.

First and foremost, the jurisdictional question. Mr. Foote, on behalf of the Zoning Administrator, is asserting that you do not have jurisdiction to consider this appeal. Now, perhaps I didn't appreciate some nuance in his letter, but I certainly read it to say that you do not have jurisdiction to consider an appeal from the issuance of a building permit because it is not the Zoning Administrator's role to issue a building permit. It's the role of the building official to issue it. Well, I submit that's true in any jurisdiction in the Commonwealth, and yet the General Assembly and the Supreme Court both recognize that a BZA does, in fact, have jurisdiction to consider building permit questions when they revolve around an interpretation of the Zoning Ordinance, as certainly our appeal does.

I point to several authorities in the letter. I'll just highlight those. Let me add that I don't believe any of the authorities Mr. Foote cites in his letter is really on point because here we are, in fact, dealing with a Zoning Ordinance interpretation and application. This is not a question arising under the Virginia Uniform Statewide Building Code. This is not an issue where the local Board of Building Code Appeals would have expertise. You are the ones with expertise, and you are the ones charged with considering appeals such as this.

In Section 15.2-2313 of the State Code, there's a provision that says essentially where there's been a building permit issued and someone is aggrieved by it, discovers work going on as a result of the building permit, didn't have any other notice of the building permit's issuance, there's only the actual work on the site that triggered his knowledge, he has 15 days to file a suit in Circuit Court. Well, you say, well, what does that have to do with BZA jurisdiction? Here's what it has to do. The latter part of that, and this is actually quoted on page 3 of my letter, in that instance it says the Court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals. What that says to me, I think it's the logical extension and inference from this, is that where you do have notice that the building permit has been issued and you're aggrieved, your avenue is to the build- -- the Board of Zoning Appeals. I don't think there's any other way to read this.

And, in fact, the Supreme Court has said essentially the same thing in the *Phillips v. Tellum, Inc.,* case.

~ ~ ~ October 24, 2006, After Agenda Items, continued from Page 626

There -- there's an application for building permit. It was denied. The applicant appealed that to Circuit Court, actually sought of a Writ of Mandamus to compel the issuance of a building permit. The case worked its way up to the Supreme Court. The Supreme Court said, no, your avenue of appeal was to your BZA. The applicant said but wait a minute, the BZA doesn't have the authority to issue building permits, so it certainly doesn't have jurisdiction to hear appeals regarding them. The Supreme Court said, no, when the issue turns on the question of interpreting the Zoning Ordinance, it is indeed the BZA that has jurisdiction. So I don't think there's any question whatsoever that you have jurisdiction over the issues raised in this appeal, no question whatsoever in my mind and I hope not in yours.

With respect to the timeliness, I certainly recognize I've got an uphill battle because the issues are largely the same as they were in the prior appeal. My recollection of the prior appeal is that you elected not to accept that on two grounds. One was jurisdictional, and one was timeliness because of decisions that were made in 2005 that at the time were unappealed. No question that there were decisions by the Zoning Administrator. There was -- there were certain things done, but they were not appealed within 30 days. But I submit to you, and to the extent that I'm asking you to reconsider a position you took in the prior appeal, I trust that you will do that, that you'll have open minds to do that, but there's really no way for you to determine that this appeal is not timely without actually hearing it on its merits. Clearly, we filed within 30 days of the issuance of the building permits, and an aside there, Mr. Foote raises, I believe for the first time, the question of whether we were required to appeal somehow within 30 days of some earlier date, some only later revealed date that's on the face of the building permit. Well, that just doesn't make sense for a couple of reasons.

Number one, until the building permit is issued, there's not really a right issue to be appealed. No one's really been aggrieved at that point. It's only when the building official, acting on the advice of the Zoning Administrator and, you know, any other input he's receiving, decides to issue the building permit that you have something that can be appealed. And if that weren't the case, I submit the practice would become to make some internal decision that a proposed permit was in compliance during conformance with the Zoning Ordinance, but not have that decision become final, not have the building permit actually issued for at least 31 days. Therefore, that internal zoning determination suddenly becomes unappealable under the Zoning Administrator's reasoning, and that just doesn't make sense. That's not the law. It can't be the law. We certainly timely appealed within 30 days of the issuance of the building permits. Beyond that, you have to go into the merits. You have to delve into the history and the nature of the decisions that were made in 2005. And I submit that when you do that, let's assume that you accept this appeal, we go to a public hearing and you hear this on the merits, I believe you will see at that point that the decisions that were made in 2005 were either not appealable because they were advisory in certain instances or they were just wrong.

Suppose that we were dealing with a situation where there were no question we're dealing with one lot, and through whatever reason, two building permits were issued. There was an earlier approval, and following that, a build- -- two building permits issued for two houses on what is indisputably one lot. I think the law is very clear. That is a nondiscretionary error. It's unfortunate perhaps that time passed without it being caught, but the fact is the administrative officials, even the Zoning Administrator through inadvertence, through simple error, can't rewrite the Zoning Ordinance and allow two dwelling units on a lot or an apartment building on a single-family lot, just can't happen. And this is that instance. Under the Zoning Ordinance, we're dealing with a single lot. And I don't want to get into the merits of this, but that is the question that you would be taking up on the merits. And without going into that detail, I submit, again, you're not in a position to reject this appeal at this stage, even if -- and I don't believe you have the authority, but even if you had the authority to do that. So for that reason, I would ask you to reject the arguments of the Zoning Administrator regarding jurisdiction and timeliness. Don't short-circuit this process. Let us go to a hearing, have it out in full, and move on from there. And I'll take any questions.

MR. BEARD: Mr. Chairman

CHAIRMAN DIGIULIAN: Questions? Mr. Beard.

MR. BEARD: Mr. Stoner, tell me again, please, and bear with me because I'm a layman, I'm not an attorney, but tell me again how you feel this *Phillips v. Tellum* case pertains to what's before us.

MR. STONER: Because the Supreme Court said that if you are aggrieved by a decision regarding a building permit and your aggrievement concerns an interpretation of the Zoning Ordinance, in *Phillips v. Tellum*, as I say in the letter, the County -- a County planner had said the use proposed in the building permit wasn't

permitted in that district. That was the basis for the denial of the building permit. The Supreme Court said in that instance you should have appealed to the BZA. They basically said you didn't exhaust your administrative remedies. You should have gone to the BZA with that issue, and having failed to exhaust that remedy, we are not going to give you any relief in the courts.

MR. BEARD: But that was a use issue, was it not, a blatant use issue?

MR. STONER: As is this, only one dwelling unit per lot, single-family lot.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Hammack.

MR. HAMMACK: Mr. Stoner, there -- they only are issuing building permits for one dwelling per lot, aren't they?

MR. STONER: I think that's the intention.

MR. HAMMACK: You're not saying --

MR. STONER: That's certainly an intention.

MR. HAMMACK: So it's not a use issue that a building permit is permitted a -- for a single-family dwelling on each of those lots, right?

MR. STONER: No. That's where we believe there is an error.

MR. HAMMACK: Where is the interpretation? I don't see an interpretation issue.

MR. STONER: Oh, there certainly is because the Zoning Ordinance has established that a lot is not determined solely by virtue of where property lines fall --

MR. HAMMACK: Uh-huh.

MR. STONER: -- but where essentially use lines, for lack of a better term, fall, and they're defined by certain kinds of applications.

MR. HAMMACK: Well, there are two -- there was a -- the underlying facts are that there was a realignment of a property line under the Ordinance, right?

MR. STONER: Certainly, it occurred under the Subdivision Ordinance --

MR. HAMMACK: Yeah.

MR. STONER: -- and the argument being made on the other side is that that affected some change in the zoning lot lines.

MR. HAMMACK: Yeah.

MR. STONER: And we have a difference of opinion there.

MR. HAMMACK: But that was signed off by the County and --

MR. STONER: It was certainly signed off by DPWES.

MR. HAMMACK: And the County Attorney's office.

MR. STONER: And the Zoning Administrator.

MR. HAMMACK: Right. The deed I saw had a County Attorney signed the deed.

MR. STONER: Oh, cert- -- as to form. That's a sig- -- that's a signoff as to form, not to substance.

MR. HAMMACK: For just form, not to form, they don't review it for any other purpose?

MR. STONER: I don't think so. Having worked -- I was fortunate enough, frankly, not to do that sort of work when I was in the County Attorney's office. It was not my gift, but I don't believe they're reviewing it for that sort of substance.

MR. HAMMACK: Well, I tell you what, that's surprises me. I'm just --

MR. STONER: Don't let me speak for them. That's just my understanding.

MR. HAMMACK: But anyhow they made two lots, and they have two building permits, and nobody appealed those determinations back what time they were made.

MR. STONER: Well, we timely appealed the issuance of the building permits --

MR. HAMMACK: This is (inaudible) --

MR. STONER: -- and the grading plan, not the minor lot line adjustment.

MR. HAMMACK: You point to these minor lot line adjustments and all that. Nobody appealed any of that, and the County has not taken any legal action to set aside the deed of re-subdivision that it says was erroneously signed off on by the Zoning Administrator and the County Attorney's office.

MR. STONER: Not that I know of.

MR. HAMMACK: And is there any remedy that they have to do that aside from appealing the issuance of building permits? Could they come in and say under the law that says if it is invalid, an invalid, completely illegal use, that, you know, we can't be time barred, setting aside that 60-day statute? They haven't done anything like that.

MR. STONER: They haven't done that, to my knowledge, and I would assume I would know if they had done it.

MR. HAMMACK: They haven't said it's a nondiscretionary error or clerical error the way that the County Attorney's office has been interpreting this.

MR. STONER: Well, they're pursuing it through, I submit, the proper channel, you, and that's why I submit it's incumbent on you to accept the appeal and decide it on its merits, not to foist it on the Circuit Court only, I believe, to have it end up back in you laps. And from the nature of your questions, Mr. Hammack, I would suggest that you're asking questions about the merits of the case, and that's appropriate for a hearing on the merits, not for this. I'm happy to answer your questions, but I think that shows that you need to take this.

MR. HAMMACK: I like the issues on the merits, but let me go back to the statute and code. Where does it say that we have the authority to hear building permit appeals? I know you have these cases here on the use. I think Mr. --

MR. STONER: Well, you have the authority to hear appeals concerning the administration, interpretation, and enforcement of the Zoning Ordinance. That's exactly what this is.

MR. HAMMACK: And the issuance of the building permit, who does that?

MR. STONER: Who issues it?

MR. HAMMACK: Uh-huh.

MR. STONER: Building official --

MR. HAMMACK: And under what --

MR. STONER: -- on advice of the --

MR. HAMMACK: Under what article of the Ordinance do they do that?

MR. STONER: On what part of the Ordinance?

MR. HAMMACK: Under what article do they do that?

MR. STONER: Well, there are multiple Ordin- -- multiple Zoning Ordinance provisions concerning building permits. I mean, if there weren't references in the Zoning Ordinance to it, we wouldn't be here in the first place, but Section 18-114 prohibits the issuance of any permit for the erection of any building or for any use of any land or building that would not be in full compliance with the provisions of this, meaning the Zoning Ordinance. 18-603.1 prohibits a building permit for the erection of any building or structure on a lot that is in violation of this Ordinance. 603.2 -- 18-603.2 prohibits the building permit before a required conservation plan has been approved, in this case the grading plan.

MR. HAMMACK: What I'm saying is, who has the authority, under what section of the Ordinance grants the authority to an official to issue the building permit? Well, let me preface this. For years --I've been on this Board for a number of years, as you know. The County Attorney's office has told us that we have no authority over anything DPWES does, which it's my understanding this is a section that issues building permits, except in a very, very narrow limited group of cases. And they cite -- in making that argument, they cite the section that gives the Zoning Administrator certain authority and the BZA authority under sections to hear appeals from determinations of the application of the Zoning Ordinance, and they argue very vigorously that issuance of grading plans and building permits are not under the Zoning Ordinance normally, that it's a rare, rare case where that comes up. What I'm asking is you to go through in a straightforward way who has authority to issue building permits and under what section they're issued and tell me in that section where the BZA has authority to hear the appeals. And I'm aware, of course, that there is -- if someone is opposed to the issuance of a building permit, they have the right to appeal it to the Board of Zon- -- to a building board. And I'm not sure, as we are a creature of statute, that we have authority to simply just extend our jurisdiction to these other areas necessarily.

MR. STONER: Well --

MR. HAMMACK: Well cognizant of limitations that the Supreme Court has placed on us as well.

MR. STONER: Well, what -- I would ask you why has the Supreme Court in *Phillips v. Tellum* then said if you were aggrieved by a decision regarding a building permit, you should have appealed that to your BZA when the issues concerned interpretation of the Zoning Ordinance, an application of the Zoning Ordinance?

MR. HAMMACK: That's an interpretation. You tell -- I asked you earlier, where is the interpretation issue?

MR. STONER: The interpretation concerns Section 2-405, whether this property qualifies for protection of multiple lots under the grandfathering provisions of 2-405.1 -- 81, I think, and the definition of lot under the Zoning Ordinance. Reading that in combination with provisions of 2-405 and the fact that this lot for decades, since its -- since the 1950s, had been approved as and it functioned as a single lot, and at the time of the 2005 decisions and the grading plan approval in 2006, it was a single lot for zoning purposes. All that is -- but you have to get into the meat of the Zoning Ordinance to make that determination. There's -- I don't know how you can avoid getting into a question of zoning interpretation.

MR. HAMMACK: If these are single-family lots, where's the meat? You want to get into the underlying issues of the resubdivision, and that to me is not an interpretation of the Ordinance. If it's zoned R-1 or R-2 and this grading plan is good for an R-1 or an R-2, where's the interpretation?

MR. STONER: These lots don't qualify as R-1 lots. They're only buildable as -- for more than one lot, for more than one dwelling, if they qualify for protection under 2-405.1. These lots are small lots. They are not

an acre. They're not 36,000 square feet. They're a fraction of that. They're roughly half that as they're presently configured.

MR. HAMMACK: Well, again, I -- the argument's a circular, and I don't want to beat a dead horse, but why hasn't the County taken action to enjoin or to rescind their lot line adjustment as being nondiscretionary or clerical, as they argue to us at times, and do it that way before it ever got to this where it's been sitting there in front of their noses for the past year and a half or two years?

MR. STONER: Well, there you raise a number of issues. Number one, I don't think the Board of Supervisors has been aware of this issue for that period of time. They became aware of it, I believe, at the time of the grading plan approval and took action to appeal that. As to why they haven't taken certain other actions, I don't want to -- I realize I'm their representative here, but I do not speak for them in every respect. I do not know why they've done certain things and not other things, but I do believe it's fair to say that they're trusting this process as an appropriate process. My understanding is that the landowner is pursuing construction of only one dwelling at this point. There hasn't become an issue -- issues haven't really been met in the sense of attempts to build a second dwelling. But I've been in discussions with Mr. Sanders, and I just don't think that there's been a need for the Board to take the action that you're suggesting when we have this process that's available. And, you know, the Board has trusted that you and, on appeal, the Circuit Court will determine these as appropriate.

MR. HAMMACK: Do you think that this Board has the authority to overturn the underlying actual -- or the underlying actions that resulted in these grading plans being issued?

MR. STONER: To overturn --

MR. HAMMACK: Well, you're asking us to hear the appeal and you're asking us to consider why and basically invalidate actions taken by the Zoning Administrator that have been on record. I mean, when you put a deed on record that underlines -- this is, I know, the merits, but you're -- this is what you're asking us. You want us to hear this case so we can hear it on the merits. Well, the merits are, are we going to set aside a deed signed off on by the Zoning Administrator and the County Attorney's office that's been on record for a year and a half. Do you think we have the authority to do that?

MR. STONER: I think you have the authority to make the determination whether this property was capable under the Zoning Ordinance of supporting a second dwelling unit. I think what follows from that, I don't think that you then somehow automatically undo the subdivision, but I think that your ruling, and assuming it stands if there's an appeal, would have the obvious effect of not necessarily undoing the subdivision because, remember, people can subdivide lots for any number of reasons. There -- remember that on paper there were three lots on this property for decades, but one house. And so the fact that there was minor lot line adjustment, in and of itself, doesn't dictate that there are two dwelling units, that this property is capable of supporting two dwelling units. That might be a common practice, but it's certainly not absolute. In fact, it wasn't the case with this property for many, many, many years. And so to the extent that there were prior decisions that were inconsistent with a decision you would make, the effect would be to overturn those. They couldn't be enforced.

In fact, the Supreme Court faced that very question in the *Phillips v. Tellum* case because the applicant said the BZA doesn't have jurisdiction because it doesn't have the authority to issue building permits, and so its decision wouldn't, in and of itself, result in the rescission of the building permit or the issuance of a building permit. And the Court said that's true, but it would simply follow from whatever decision the BZA made that public officials would act accordingly. And so that's -- that would be my answer. I think public officials would act in accordance with what you and the courts ultimately determine to be the law.

MR. HAMMACK: Well --

CHAIRMAN DIGIULIAN: Okay.

MR. STONER: Thank you.

CHAIRMAN DIGIULIAN: Further questions?

MR. BYERS: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Byers.

MR. BYERS: Mr. Stoner, then theoretically what could occur is that I could come in and have something approved by the Zoning Administrator, a minor site plan by DPWES adjudicated by the County Attorney, get a building permit, and after all that was done, after 18 months, as a constituent, I could say I'm aggrieved, and I could stop the whole process on every building permit, theoretically, that is issued by the professional staff. Isn't that what we're saying, theoretically that could be done?

MR. STONER: That someone could raise a complaint at -- at --

MR. BYERS: At the end of an 18-month process when they have not raised any objections through that entire process.

MR. STONER: I think it's theoretically possible. It's -- as a practical matter, it's not going to be every case. It's going to be the rare case when you have a -- you get an arguably nondiscretionary error. That doesn't happen every day.

CHAIRMAN DIGIULIAN: Further questions?

MR. BEARD: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Beard.

MR. BEARD: Mr. Stoner, since you've quoted the Phillips case, are you -- do you know it well?

MR. STONER: I've -- I'd read it in the past, and I read it again last night --

MR. BEARD: Well, here's what I'm getting at --

MR. STONER: -- very late.

MR. BEARD: -- you know, you -- when I talked earlier about use, this case could have involved commercial use in a residential area.

MR. STONER: As another example, yes.

MR. BEARD: And you would hold that as an analogy to this case?

MR. STONER: Yes, yes, because in both instances we're dealing with an interpretation of the Zoning Ordinance and how it's to be applied in a particular instance.

MR. BEARD: But anyway I would contend, as I say, that that would be a blatant situation, but, again, you know, we don't know what it is because you're not aware -- you've quoted a case, yet we're not really aware of what it's about from the standpoint of use.

MR. STONER: Well, now wait a minute. I did tell you essentially what it was about. The community -- the County planner rejected the building permit application because he said it was for a use, and I believe it was a commercial use, that was not permitted in the zoning district.

MR. BEARD: And you hold -- and you say that that is, again, a good comparison to this case.

MR. STONER: Absolutely. I don't think it has to be on all fours factually. The principle that the Supreme Court laid down was if you've got a dispute regarding an application for a decision on a building permit application and your dispute concerns the interpretation or application of the Zoning Ordinance to that situation, then your avenue of appeal is to the BZA.

MR. BEARD: Well, according, again, to Mr. Foote's voluminous document you alluded to earlier, he talks

that the Supreme Court has held that one does not have to exhaust administrative remedies before seeking relief when there's no specific application leading to a determination by the Zoning Administrator, and direct recourse may therefore be had to the court as to zoning issues, so, I mean --

MR. STONER: I'm -- I'm not sure I agree with that.

MR. BEARD: Well, okay, but basically, you know, we're being asked to adjudicate an issue here, and it's talked about -- you know, my associate, Mr. Hammack, talked about what rights are granted to us by the legislature, if you will, and we're a creature statute possessing only those powers extremely conferred upon it as -- again, as in Mr. Foote -- Mr. Foote's note to us. So that's what I'm laboring with here, if you will.

MR. STONER: Well, I would just urge you to remember the statute that I quote in my letter on page 3 which makes explicit reference to appeals to a Board of Zoning Appeals with regard to the issuance of the building permit where the aggrieved person takes the position that it's in violation of the Zoning Ordinance.

MR. BEARD: Yeah, I have -- thank you.

MR. STONER: The General Assembly clearly recognizes that BZAs have authority to consider zoning questions in the context of building permit decisions.

CHAIRMAN DIGIULIAN: Thank you.

MR. STONER: Thank you.

CHAIRMAN DIGIULIAN: Mr. Sanders.

H. KENDRICK SANDERS: Thank you, Mr. Chairman. I'll try to be brief and to the point. I'm Ken Sanders, represent the landowner who -- the person whose ox is being gored here.

CHAIRMAN DIGIULIAN: Wait a minute. Wait a minute. We've lost our quorum.

MR. SANDERS: You've lost your quorum. All right.

CHAIRMAN DIGIULIAN: Have to wait for Mr. Byers to come back. Okay, here we are. Go ahead.

MR. SANDERS: Substitute quorum.

CHAIRMAN DIGIULIAN: Yeah.

MR. RIBBLE: (Inaudible.)

MR. SANDERS: As we know, you're listening to a bunch of lawyers argue legal points as absolutely facts. There are no facts in dispute in this case, and I -- I'm sure it could be painful in some respects. But we also know that your last case was on the grading plan, and they've appealed that to court. I'm concerned about the record in this matter. We are in court. We're going to be in court again because, as you know, he has an appeal of right to the Circuit Court. Circuit Court is going to read everything you say, so I hope -- I'd like to suggest where we are without being presumptuous in this matter and how we got here briefly. I would point out also Mr. Stoner's raised in the lawsuit that you all did not give him a public hearing on the question of -- before you rejected the appeal. I'm just pointing that out because I am concerned about that issue. I don't know where in the statutes it says you all could make decisions regarding appeals without public hearings. I don't know the answer. That's another one of the hundred questions that have never been litigated. Do you have the right, power to pull up a case and say we're not going to put the appeal. I don't know the answer to that, but I'll leave that up to you all whether you want to address it.

MR. HAMMACK: Could I interrupt at that point.

MR. SANDERS: Yeah, sure.

MR. HAMMACK: Is there anything in the statute that says we have the power to extend our jurisdiction

beyond those -- that area that's strictly spelled out in the statute? I mean --

MR. SANDERS: No.

MR. HAMMACK: So, I mean --

MR. SANDERS: No, not that I'm not aware of. You're pretty well restricted to --

MR. HAMMACK: I mean, because we're cognizant of that, and I understand your concern, but in terms of trying to adhere to the statutory --

MR. SANDERS: Right.

MR. HAMMACK: -- authority that we have --

MR. SANDERS: I'm not sure what's in my client's interest. You know, in a way I look at this saying, you know, this whole thing could be back before you. I think, Mr. Hammack, you said that at one point. We've got two appeals now, and I'm sitting here kind of ambivalent saying just theoretically maybe I'd feel better off just let's schedule both for public hearing and let them argue the issue of timeliness first or the issue of appeal if you decide it's late in the case. I don't know. And then at least we've got a complete record and we're where we are, but I -- I'm really probably going beyond, you know, my area here. But I think, you know, we gonna have two appeals in the Circuit Court with no factual record and strictly -- so, therefore, we gotta get to the legal points, but let me suggest where we are.

MR. HAMMACK: Well, let me interrupt. One of the problems I had with Mr. Stoner's argument is that we don't have authority to -- if the Zoning Administrator makes a reasonable interpretation to the application of the Ordinance --

MR. SANDERS: Uh-huh.

MR. HAMMACK: -- I mean, generally the Board is supposed to -- I mean, the test would be whether if there are alternative interpretations and she picks one that's reasonable, this Board should support her. So I think that Mr. Stoner's argument, he said, well, this may come back to you anyhow, but if we heard this argument, let's say we went through the whole case, we had hearings, and we decide that her interpretation is within her legal authority and reasonable, we should support her, and then it goes up to the Circuit Court, and they say, well, the Zoning Administrator made -- did something that was in violation of a nondiscretionary error, they send it back down to us anyhow. I mean, to my way of thinking, you could come back under any set of circumstances almost, given what it is, and I know just from my own point of view --

MR. SANDERS: Unless the court finds that the appeal is not timely for reasons we've discussed and then --

MR. HAMMACK: Well, maybe they're not timely, but if we hear it on the --

MR. SANDERS: -- and then a court would rule that it's over. There are no further proceedings, but you see the thing that keeps being mentioned, Mr. Hammack, respectfully is you keep using the term "Zoning Administrator," and the statute doesn't say only the Zoning Administrator --

MR. HAMMACK: I know this.

MR. SANDERS: -- as you know, so that's very important here because what the Board has done, and I'd like to have this on the record, the Board has taken a legal position in this matter, which is it can appeal the chief building official's determination of issuance of a building permit where their appeal is based upon a zoning question. Simply put, that's their position. They've appealed that. They've also recognized they're subject to the 30-day rule. They very carefully filed their appeals within 30 days, so that's here for all time now, Board of Supervisor who says they're not -- you know, generally, as a legal matter, they're not -- see, they're stuck with anything.

MR. HAMMACK: Right.

MR. SANDERS: I think they're admitting, and I think the lawyers, too, they're stuck with the 30 days too, okay? Now, they appealed the building official, so their position is they can do that. They appealed the Director of DPWES issuance of the grading plan, not the Zoning Administrator, okay?

MR. HAMMACK: Yeah.

MR. SANDERS: And they did that within 30 days. You go back to the prior happening, as you are very familiar with, was the minor lot line adjustment under the Zoning Ordinance, Section 2-40-whatever, which it says the Director may -- the Board gave the Director 2-405, says a subdivision for minor adjustment lot lines, which may be permitted by the Director in accordance with the Subdivision Ordinance. It's right in the Zoning Ordinance, and it says it shall be only to consolidate, not increase any density, just exactly what was done here.

MR. HAMMACK: Uh-huh.

MR. SANDERS: That was a director's determination under the Zoning Ordinance. I want the record to reflect that that's the only way you can interpret 2-405. It's in the Zoning Ordinance, and that's how the minor lot line adjustment got approved or it could never have been approved. There was no appeal taken of that. The Board's position is they have the right to appeal, indeed the obligation, decisions of all officials in the County within 30 days if they want to complain or it's a thing decided. That's my position in court. That's my position before you, and that's -- to me, the simplest answer to this case is the question Mr. Byers raised. Can they wait, not appeal a zoning determination that it's zoned R-3 and then to wait for a site plan to go through and the drainage is all screwed up and not appeal that, and then they can just wait and wait and wait and then go to building permits and say the zoning interpretation back last year was wrong.

MR. HAMMACK: Uh-huh.

MR. SANDERS: And my -- I think the Board's own position respectfully, perhaps unknowingly, has said they're barred because they haven't argued they're not bound by the 30 days, they haven't argued that the Director's decision here was not under the Zoning Ordinance, and they admit they never appealed it. Now, Mr. Stoner said one thing which I would respectfully correct. Remember, with this minor lot line adjustment, it's a subdivision plan. All the surrounding neighbors are notified by mail, certified mail, including Linda Smyth, the District Supervisor. That's required by the Ordinance. So at least Linda Smyth knew about the subdivision plan because Mr. Stoner, as you recall, said the Board didn't know about it. Also I don't know if a court -- that is, a court hadn't decided this, but I think a court would decide there are some things that the Board is charged with knowing. You know, the Board wants to sit there sometimes and say we don't know anything anyone does that we appointed as Director or Zoning Administrator. You know, if we don't know about it, you know, that's a classic issue. Well, I think somewhere that has to stop, you know, that some of their agents, they're going to be charged with knowledge that they approved the plan where you have to notify the Board member particularly. So I think I would like the record to reflect that's the reason why. It said to me crystal clear reason why this appeal is not right because there was no appeal of the Director's decision back in July of 2005, and that became a thing decided, not that has -- no, they can't reverse the subdivision plan, not now, because they admit they have to go exercise administrative remedies. And I think that's the case and that's -- take about as long as it'll take to argue in court.

CHAIRMAN DIGIULIAN: Okay. Further questions? Thank you.

MR. SANDERS: Thank you.

CHAIRMAN DIGIULIAN: Is there anyone else to speak to the question of acceptance of this appeal? Okay, Ms. McLane and Mr. Foote, a brief additional comments.

MR. FOOTE: Mr. Chairman, listening to this reminds me that what we are talking about here is an appeal of the issuance of a building permit. That building permit appeal is based on a zoning determination that these were proper lots and that, in fact, these permits could be issued. That decision was made in 2005 and 2006, and I think that the Board has recognized that the decisions that are the actual decisions that the Board seeks to challenge, as Mr. Sanders points out, were made long ago. He would have to be making the contention that the building official somehow made an independent zoning determination upon the issuance of this building permit that a zoning question was presented and had to be answered. A, we know from all

the materials that are before you that that decision had been made long ago, and, B, even here the zoning determination had been made prior to 30 days before the appeal was filed.

It is -- it would be an error to say that the Zoning Administrator can't rewrite the Ordinance. Now, as a normal matter of course, that's true, but as one of your members pointed out, the 60-day rule takes a Zoning Administrator's opinion that's unappealable and makes it final even as to the local government within 60 days. If the Zoning Administrator errs, that's not a question of discretionary -- nondiscretionary error. We're assuming here that the Zoning Administrator had to make a judgment call with respect to this decision. That judgment call is necessarily one that involves discretion. It's properly pointed out that a nondiscretionary error is a clerical error, not a judgment error. So we have a situation here in which if the Zoning Administrator were to make an incorrect decision, let's assume for a moment we're incorrect, but the 60-day period runs. That decision is final as to the parties involved, and indeed even if in error, it's binding on the locality. What we have here is a situation in which we don't need to reach the question of whether it's right or wrong. We have a building permit appeal predicated on zoning determinations long since met -- long since rendered. If Mr. Stoner's argument were correct, this question could be and for all we know may be brought up again when a RUP is issued for this structure once the building is complete because that, too, at least ostensibly requires the same kind of zoning determination that Mr. Stoner contends the building official were to make here.

With respect to the statutory provisions that are involved, the first I would have mentioned already, and that is the finality provisions that are contained with respect to a Zoning Administrator's determination. The second is to simply reflect that the statute that's cited in support of the conclusion, 2313, is the famous back door zoning challenge statute. It has been used twice in cases that have gone to the Supreme Court. It's in a circumstance that's unique in the extreme when someone who has no earthly idea of the issuance of a building permit brings suit within 15 days, they may raise the zoning issues. That statute mentions a building permit only as a trigger to the suit. It has nothing to do with the jurisdiction of any body with respect to decision to be made. So what that says, you can go to court and raise zoning issues if you meet those peculiar circumstances. We submit that under the circumstances, the decisions that are underlying this have long since been made. The appeal is not timely, and it's not appropriate to the Board.

We also believe that the question of whether a BZA has the jurisdiction to accept an appeal is, in fact, properly made at the BZA otherwise you would decide everything in some way only to learn later you had no jurisdiction. This BZA can make that call. We ask that it do so, sir.

CHAIRMAN DIGIULIAN: Thank you. Mr. Stoner.

MR. STONER: It probably goes without saying, but Lynn Smyth is not the Board of Supervisors, so the fact that Lynn Smyth might have gotten notice of something is not notice to the Board of Supervisors. Just -- I just want to clarify that. Can't serve the Board of Supervisors by serving an individual member of the Board.

So Mr. Sanders was referring to 2-405 and the provisions there regarding minor lot line adjustments. Not every minor lot line adjustment is for property that qualifies for protection under 2-405. The language that Mr. Sanders was referring to in 2-405 actually adds requirements over and above those of the Subdivision Ordinance that have to be met for a minor lot line adjustment, not to cost a property its protection under 2-405. The mere fact that a minor lot line adjustment was approved does not, in and of itself, mean that that minor lot line adjustment qualified as under the specific terms of 2-405 or that it was even determined to qualify. They might be overlapping issues, but they are not the same issues.

I submit that this is more than just a judgment call, and, again, much of this hearing has been getting into the merits of the case, which, again, I would suggest indicates a need to accept this appeal and hear it. But, in any event, this was not simply an error in judgment. It was an error in direct contravention of the Zoning Ordinance. You can't look at the way lot is determined and defined in the Zoning Ordinance and find that this property was anything but one lot at the time of all these approvals that we've been talking about here, and if it was one lot, then it wasn't capable of supporting a second dwelling unit. The statute that Mr. Foote referred to, 15.22-2311, does talk about clerical errors, but it says clerical and other nondiscretionary errors, so it doesn't have to be a clerical error although that would certainly qualify as a nondiscretionary error. If the error, again, is one that does not involve the exercise of discretion where the Zoning Administrator doesn't get to make a judgment call, doesn't get to say you can have two dwelling units on this lot even though the Zoning Ordinance only allows one, that's not a matter of discretion.

MR. HAMMACK: Can I interrupt?

MR. STONER: Certainly.

MR. HAMMACK: If the issuance of a building permit in violation of the Zoning Ordinance is a nondiscretionary error, why doesn't the County Board rescind the building permits?

MR. STONER: Well, the Board of Supervisors doesn't issue the permits.

MR. HAMMACK: They --

MR. STONER: It's the building official.

MR. HAMMACK: -- they -- they tell their agents what to do. County employees work for the County Board.

MR. STONER: I don't think they're in the habit of telling the building official how to do his job in -- with regard to specific applications.

MR. HAMMACK: If it's nondiscretionary and they have the authority -- we've been told many times about nondiscretionary errors, and if it's nondiscretionary, if doesn't make any difference when it happens, and we see building permits rescinded.

MR. STONER: But it's the building official rescinding them, I submit, not the Board of Supervisors.

MR. HAMMACK: They're the ones who can change a statute. They're the ones who ultimately interpret the statute.

MR. STONER: And that's why we're here.

MR. HAMMACK: But if it's nondiscretionary, why don't they ask their building official to rescind it? He -- then give him the discretion of rescinding it. They can talk to him.

CHAIRMAN DIGIULIAN: Yeah.

MR. STONER: I'm not privy to all their discussions and ruminations, but I would suggest that the Board of Supervisors is going about this in a proper way in an avenue that the General Assembly and the Supreme Court have both recognized. You are the body to take this appeal and decide it, and if one side or the other disagrees, then it has the prerogative to appeal that to the Circuit Court, but you are the first resort.

CHAIRMAN DIGIULIAN: Thank you.

MR. STONER: Thank you.

CHAIRMAN DIGIULIAN: We're ready for a motion, I think.

MR. HAMMACK: I'll let you do it. I'll go ahead and let you do it. I might --

MR. BYERS: Mr. Chairman.

CHAIRMAN DIGIULIAN: Mr. Byers.

MR. BYERS: I guess I get the short straw. My motion is that we deny the appeal, and my -- or the application for appeal by the Fairfax County Board of Supervisors. We've heard a lot of testimony this morning, and I come down on the side of essentially the timeliness, and so I'm saying that we should not accept the appeal, sir.

CHAIRMAN DIGIULIAN: Do I hear a second?

MR. HAMMACK: I'll second for purposes of discussion.

~ ~ ~ October 24, 2006, After Agenda Items, continued from Page 637

CHAIRMAN DIGIULIAN: Discussion?

MR. HAMMACK: Yeah, I'm interested -- you know, reading these code sections over, my gut reaction is to be -- respect the decisions of the Supreme Court that say we have very limited jurisdiction and to not accept the appeal, but I was thinking, in listening to these arguments and seeing these new code sections and some cases cited, that I wouldn't mind maybe taking a week before -- deferring decision for a week to go back and read a couple of these. I was out of town last week. I haven't read the cases, but at least give Mr. Stoner the benefit of looking at the Supreme Court case although I'm inclined to think that they may be -- apply to uses and may be not applicable, but read them anyhow and then make a decision next week.

CHAIRMAN DIGIULIAN: Is that a substitute motion?

MR. HAMMACK: I could make it as a substitute motion.

CHAIRMAN DIGIULIAN: Do I hear a second to that motion?

MR. RIBBLE: Second.

CHAIRMAN DIGIULIAN: Second by Mr. Ribble. Discussion? All those in favor of the substitute motion to defer for one week?

MR. BEARD, MR. RIBBLE, MR. BYERS, MR. HAMMACK, CHAIRMAN DIGIULIAN: Aye.

CHAIRMAN DIGIULIAN: Opposed? Motion carries.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Horner vs. Board of Zoning Appeals, Law No. 2006-7696, 1426 Colleen Lane, McLean, Virginia, Tax Map 31-1 ((9)) 208; other legal matters; the by-laws and personnel issues, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hart were not present for the vote.

The meeting recessed at 10:42 a.m. and reconvened at 11:59 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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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 / Mary A. Pascoe

Approved on: July 11, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 31, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ October 31, 2006, Scheduled case of:

9:00 A.M. HERITAGE FELLOWSHIP UNITED CHURCH OF CHRIST, SPA 84-C-045 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 84-C-045 previously approved for church to permit building additions and site modifications. Located at 2505 Fox Mill Rd. on approx. 5.08 ac. of land zoned R-2. Hunter Mill District. Tax Map 25-2 ((5)) 51 and 52. (Associated with RZ 2006-HM-001) (Admin. moved from 6/20/06 and 9/26/06 at appl. req.) (Decision deferred from 10/17/06)

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stuart Mendelsohn, Holland & Knight LLP, 1600 Tysons Boulevard, Suite 700, McLean, Virginia, the applicant's agent, replied that it was.

Chairman DiGiulian noted that the case was being heard for decision only.

Mr. Hammack said he understood that the BZA deferred its decision until after the Planning Commission (PC) heard the associated rezoning, RZ 2006-HM-001, to which Susan C. Langdon, Chief, Special Permit and Variance Branch, confirmed to be correct.

Tracy Strunk, Staff Coordinator, Zoning Evaluation Division, noted the PC recommended approval and had forwarded a memorandum to the BZA noting that the rezoning was in accordance with the special permit. She said the PC also recommended that the BZA approve the special permit amendment.

Mr. Mendelsohn added that the Hunter Mill Land Use Committee, the PC, and the Board of Supervisors all unanimously voted approval of the rezoning.

In response to Mr. Hammack's question, Ms. Strunk said several PC members were absent for the public hearing, and, therefore, there were several abstentions for the vote.

Responding to a question from Mr. Hammack, Mr. Mendelsohn and Ms. Strunk explained the church's name change, that there was no change in permittee, and staff was provided a letter evidencing that fact. Ms. Strunk said there was documentation in the file.

Mr. Hammack moved to approve SPA 84-C-045 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HERITAGE FELLOWSHIP UNITED CHURCH OF CHRIST, SPA 84-C-045 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 84-C-045 previously approved for church to permit building additions and site modifications. Located at 2505 Fox Mill Rd. on approx. 5.08 ac. of land zoned R-2. Hunter Mill District. Tax Map 25-2 ((5)) 51 and 52. (Associated with RZ 2006-HM-001) (Admin. moved from 6/20/06 and 9/26/06 at appl. req.) (Decision deferred from 10/17/06) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ October 31, 2006, HERITAGE FELLOWSHIP UNITED CHURCH OF CHRIST, SPA 84-C-045, continued from Page 639

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Heritage Fellowship United Church of Christ, and is not transferable without further action of this Board, and is for the location indicated on the application, 2505 Fox Mill Road (5.08 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 H. Gordon Associates, Inc., dated December 2005 as revised through October 11, 2006, which was submitted with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use, and shall be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 or Sect. 8-004 of the Zoning Ordinance.

5. This special permit shall not be valid unless and until the Board of Supervisors approves RZ 2006-HM-001. If the Board of Supervisors denies RZ 2006-HM-001, or the application is withdrawn, this special permit shall be considered null and void.

6. The main sanctuary of the church shall have no more than 844 seats.

7. If a chapel is provided in the building, in addition to the main sanctuary, no more than 100 seats shall be provided in the chapel, and the chapel shall not be used at the same time as the main sanctuary.

8. Any new proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground to the highest point of the fixture, shall be of low intensity design, and shall utilize full cut-off fixtures which focus directly on the subject property. Parking lot lighting shall be turned off no more than one-half hour after any event held at the church, except for building mounted security lighting, which shall be shielded to prevent glare.

9. Any free standing sign shall be designed in a monument style no more than 5 feet in height, and shall be constructed of materials and colors compatible with those used in the building, and shall be in conformance with Article 12 (Signs) of the Zoning Ordinance.

~ ~ ~ October 31, 2006, HERITAGE FELLOWSHIP UNITED CHURCH OF CHRIST, SPA 84-C-045, continued from Page 640

10. Landscaping shall be provided in substantial conformance with that shown on the SP Plat, as approved by Urban Forest Management (UFM). Existing vegetation shown on the SP Plat to be preserved shall be as recommended by UFM.

11. Deciduous or shade trees provided shall be a minimum of 3 to 3.5 inches in caliper; evergreen trees shall be a minimum of 6 to 7 feet in height.

12. Barrier shall be provided as shown on the SE Plat; no barrier shall be required along the western boundary (Fox Mill Road frontage).

13. Virginia Pines located with tree preservation areas shall be specifically identified to be saved or removed, in consultation with UFM. If designated for removal, methods for removal shall be coordinated with UFM, and shall be designed to minimize damage to existing vegetation to be preserved, including understory trees and shrubs, as determined by UFM.

14. In addition to the landscaping shown on the plan, the applicant shall coordinate with UFM to provide additional evergreen shrubs that, in conjunction with any fencing provided, shall screen headlights from the parking areas from shining into adjacent residential lots to the north, south, and east.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:00 A.M. ELAINE METLIN AND ANDREW E. CLARK, VC 2006-DR-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in the front yard of a corner lot and an accessory structure to remain in front yard of a lot containing 36,000 square feet or less. Located at 1905 Rhode Island Ave. on approx. 24,457 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (1) 36B.

Chairman DiGiulian noted that the decision on VC 2006-DR-002 had been deferred to March 27, 2007, at 9:00 a.m.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:00 A.M. MICHAELIN MALLETTE, SP 2006-LE-047 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.9 ft. with eave 8.5 ft. from side lot line. Located at 7303 Oriole Ave. on approx. 23,750 sq. ft. of land zoned R-2. Lee District. Tax Map 90-1 ((2)) 167.

~ ~ ~ October 31, 2006, MICHAELIN MALLETTE, SP 2006-LE-047, continued from Page 641

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kali Pellegrino, 7303 Oriole Avenue, Springfield, Virginia, the applicant's agent and daughter, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit a two-story addition to remain 8.9 feet with eave 8.5 feet from the side lot line. A minimum side yard of 15 feet with a permitted eave extension of 3.0 feet is required; therefore, modifications of 6.1 feet and 3.5 feet were requested.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Ms. Pellegrino presented the special permit request as outlined in the statement of justification submitted with the application. On behalf of her mother, she requested permission to complete construction of her 2003 hurricane damaged garage. The error was committed in good faith, as a permit was submitted; however, a plat as well as a different permit were required, of which their contractor failed to inform them. After construction was underway, she received a Notice of Violation that halted further building. Over 18 months, numerous meetings were held with County staff to resolve the situation. During that time, only roofing material and a glass storm door were installed for security and weather protection. Ms. Pellegrino came to her mother's assistance after that time, saying that her mother got involved with a process she was not prepared to undertake. Ms. Pellegrino requested that the Board approve the application and permit the unit to be completed.

In response to Mr. Hart's question, Ms. Hedrick explained that a permit was issued for a foundation to replace one wall of the storm damaged garage. When the second story addition was added, they were cited with a violation and issued a Stop Work Order because there was no valid permit for the addition. The setback problem was noticed during a zoning review when the attached garage, of which there was no history or record, was discovered. Ms. Hedrick said the approved carport was at some time attached to the house by a breezeway and was enclosed.

In response to Mr. Hart's question, Ms. Pellegrino explained that they were under an erroneous assumption that the required permits were pulled by their contractor so they proceeded with the construction. After arranging for County staff to make its building inspection, they were informed that they did not have the correct documents.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2006-LE-047 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAELIN MALLETTE, SP 2006-LE-047 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.9 ft. with eave 8.5 ft. from side lot line. Located at 7303 Oriole Ave. on approx. 23,750 sq. ft. of land zoned R-2. Lee District. Tax Map 90-1 ((2)) 167. 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, 2006; and

WHEREAS, the Board has made the following findings of fact:

~ ~ ~ October 31, 2006, MICHAELIN MALLETTE, SP 2006-LE-047, continued from Page 642

1. The applicant is the owner of the land.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of the addition as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 20, 2006, submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the addition shall be diligently pursued within 60 days and obtained within 120 days of final approval or this special permit shall be null and void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:00 A.M. ELLIOT F. MANN, SP 2006-SP-049 Appl. under Sect(s). 3-303 of the Zoning Ordinance for a reduction of certain yard requirements to permit an addition 6.1 ft. from the side lot line. Located at 8220 Smithfield Ave. on approx. 11,050 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-1 ((4)) 215.

~ ~ ~ October 31, 2006, ELLIOT F. MANN, SP 2006-SP-049, continued from Page 643

Chairman DiGiulian noted that a request for an indefinite deferral regarding SP 2006-SP-049 had been received.

Mr. Hart moved to indefinitely defer SP 2006-SP-049. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:00 A.M. MICHAEL JABALEY, SP 2006-BR-044 Appl. under Sect(s). 3-303 of the Zoning Ordinance for a reduction of certain yard requirements to permit construction of an addition 6.91 ft. from side lot line. Located at 4805 Sligo La. on approx. 24,841 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((17)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael Jabaley, 4805 Sligo Lane, Annandale, Virginia, replied that it was.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested approval to permit a reduction to certain yard requirements to permit the construction of a two-story garage addition 6.91 feet from the northern side lot line. The purpose of the addition was to allow the replacement of an existing carport into a garage to accommodate the parking of two cars and the addition of a second floor with two bedrooms above the garage. Staff recommended approval. Ms. Langdon called attention to a letter distributed that morning in which the next-door neighbor, John Jacobs, requested deletion of Development Condition 5 concerning additional plantings for screening and buffering, as he did not want any. Ms. Langdon also noted that the applicant submitted architectural renderings that morning for changes to the garage doors and the windows for the upstairs addition. If the Board approved the application, a modification to Condition 5 should reflect the changes.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Mr. Jabaley presented the special permit request as outlined in the statement of justification submitted with the application. He concurred that planting additional trees was not necessary and would be difficult on the steep slope that separated their properties. He explained the requested design changes, stating that they were more architecturally compatible with his house and the neighborhood and more practical.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2006-BR-044 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL JABALEY, SP 2006-BR-044 Appl. under Sect(s). 8-922 of the Zoning Ordinance for a reduction of certain yard requirements to permit construction of an addition 6.91 ft. from side lot line. Located at 4805 Sligo La. on approx. 24,841 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((17)) 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 October 31, 2006; and

~ ~ ~ October 31, 2006, MICHAEL JABALEY, SP 2006-BR-044, continued from Page 644

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards.
3. The rationale in the staff report was adopted.
4. The Board had a staff recommendation of approval.
5. The findings of fact and conclusions of law were adopted that the applicant has met the additional standards set forth in Sect. 8-922 regarding provisions for reduction of certain yard requirements.
6. Although in some cases a second floor that close to the side would present some problems, this appears to be in a location that is not significantly going to affect anybody because of the topography and vegetation.
7. There is no opposition from the neighbor to that proposed modification.
8. The improvement to the house seems to be in keeping with the other homes in the neighborhood.
9. No one is going to be significantly negatively affected.
10. If anything, the impact on the neighbor would be greater from the vegetation that is already there rather than the structure, which is somewhat concealed.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 1,114 feet) of the proposed garage and second story addition as shown on the plat prepared by R.A. Schoppet, dated July 19, 2006, as submitted with this application and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family detached dwelling may be up to 150 percent of the total gross floor area of the dwelling (3,300 square feet) that existed at the time of the first expansion request. Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions, except that the applicant, at his option, may delete the brick arches, use a standard garage door instead of two doors, and may substitute either two separate windows or one larger window unit on the second level.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

~ ~ ~ October 31, 2006, MICHAEL JABALEY, SP 2006-BR-044, continued from Page 645

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:00 A.M. RAYMOND C. ALEXANDER, SP 2006-LE-050 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 5908 Bush Hill Dr. on approx. 15,024 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((2)) (4) 8. (Admin. moved from 11/14/06 at appl. req.)

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Betty Alexander-Devers, 5908 Bush Hill Drive, Alexandria, Virginia, mother of and agent for the applicant, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for an accessory dwelling unit, which would be located in a newly constructed addition to the southwest of the existing dwelling. The accessory unit was proposed to house one bedroom, a kitchen, a living room, and a bathroom. The applicant's mother would live in the separate living space and would have a private entrance as well as access to the existing house. Staff recommended approval.

Betty Alexander-Devers presented the special permit request as outlined in the statement of justification submitted with the application. She said she was 100 percent disabled and was unable to traverse stairs, which was why she sold her townhome. In order for her to remain as independent as possible, her son, the applicant, sought to build an accessory unit in which she would reside, retaining private quarters with a separate entrance.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2006-LE-050 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAYMOND C. ALEXANDER, SP 2006-LE-050 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 5908 Bush Hill Dr. on approx. 15,024 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((2)) (4) 8. (Admin. moved from 11/14/06 at appl. req.) Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 2006; 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

~ ~ ~ October 31, 2006, RAYMOND C. ALEXANDER, SP 2006-LE-050, continued from Page 646

Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Raymond C. Alexander, and is not transferable without further action of this Board, and is for the location indicated on the application, 5908 Bush Hill Drive (15,024 sq. ft.), 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 George M. O'Quinn, dated July 28, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

5. The accessory dwelling unit shall contain a maximum of 645 square feet, including a maximum of one bedroom.

6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.

7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

8. If the use of the accessory dwelling unit ceases and/or the property is sold, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold, a special permit amendment may be submitted to permit the continued use of an 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. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:00 A.M. CHAN S. PARK, SP 2005-SP-012 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12219 Braddock Rd. on approx. 5.4 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 57 and 58. (Admin. moved from 5/17/05, 7/19/05 and 10/25/05 at appl. req. and 12/20/05) (Decision deferred from 1/31/06) (Indefinitely deferred from 5/9/06)

~ ~ ~ October 31, 2006, CHAN S. PARK, SP 2005-SP-012, continued from Page 647

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William M. Baskin, Jr., Esquire, 301 Park Avenue, Falls Church, Virginia, the applicant's agent, replied that it was.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. On January 31, 2006, the Board of Zoning Appeals deferred decision for SP 2005-SP-012 to allow the applicant sufficient time to address BZA and staff concerns. The applicant had requested approval of a special permit to convert a 2,150 square foot single-family home with a 2,600 square foot addition for use as a church, located on a 3.67-acre lot on Braddock Road in the Springfield District. The land, developed with one single-family dwelling, was zoned R-C and fell within the Water Supply Protection District. In the staff report dated January 24, 2006, staff recommended that the application be denied.

The applicant had since amended the application to incorporate all of Lot 58, which increased the subject property from 3.67 acres to 5.4 acres. Nearly all of Lot 58 would be preserved as undisturbed open space, thus increasing total undisturbed open space from 40 percent to over 50 percent. The applicant proposed the same 4,750 square foot building in the same location, which comprised a single-family home with an addition. The applicant had increased the proposed seats from 20 in the original request to 60 seats. Parking spaces had also increased from 15 to 23 spaces, with a ratio of 2.6 seats per parking space. A total of 19 deciduous and evergreen trees were proposed to be planted along the western boundary. The FAR of 0.03 proposed in the previous application was reduced to 0.02 in this application. Approximately 50 percent of the site would remain as undisturbed open space as indicated on the applicant's revised special permit plat; however, the applicant had not offered specific figures. A driveway bordered by a mix of deciduous and evergreen trees connected the parking area with Blue Topaz Lane to the west. A stormwater management/Best Management Practices (BMP) facility was proposed in the northeastern corner of Lot 57.

DPWES had stated that a stormwater management pond would be required and that a waiver would not be approved. DPWES had specified that, if placed as proposed, the stormwater management pond would not offer adequate outfall for the subject property. The applicant had not indicated how or if they would be able to obtain necessary off-site easements to construct a proposed off-site storm drainage easement channel.

The applicant had not provided any additional measures to meet BMP requirements on site, even with the undisturbed open space as now proposed and the provision of BMP measures within the pond. Staff requested that Low Impact Designs (LIDs), such as rain gardens with under drains, vegetated water quality grassed swales, or green roof practices, be provided to supplement the proposed on-site structural BMP and conservation easement.

The applicant had not proposed adequate transitional screening in terms of the number of plantings and the width of the planting area. Staff believed that a minimum of full Transitional Screening 1 should be provided along all lot lines. The eastern portion of the site was particularly lacking in vegetation, where it abutted two lots that were not owned by the applicant. It would be difficult for the applicant to achieve adequate screening along the northeastern lot line adjacent to the pond and impossible along the eastern lot line because the access road for pond maintenance was located directly adjacent to the eastern lot line. The applicant had asked for a waiver of the fence only along the northern lot line and had shown a chain link fence along the other lot lines. Additionally, staff believed that the areas indicated as undisturbed open space should be planted with seedlings to instigate re-vegetation of cleared areas.

The applicant had not submitted any historical information that lent any detail to the legal entailments with regard to the outlet road issue raised by the BZA at the January 31, 2006, hearing. Based on the outstanding issues, staff recommended denial of SP 2005-SP-012.

Susan C. Langdon, Chief, Special Permit and Variance Branch, and Mr. Varga responded to Mr. Hart's questions concerning adequate outfall, the pond, the outlet road, transitional screening, supplemental plantings, the site's ingress and egress, and the percentage of open space.

Mr. Baskin presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant had redesigned its proposal to address and mitigate the issues

brought up by staff, and explained use of the outlet road, the creation of an easement, the undisturbed open space, water quality and stormwater management issues, and the church's increase in size. He said the church was actually no larger than a single-family house and should have no additional impact on the neighborhood than a single-family house. He submitted that the proposed plan, to which the applicant's engineer would attest, met all Best Management Practices required by the Department of Public Works and Environmental Services (DPWES) and Stormwater Management. Mr. Baskin stated that perhaps staff sought to have the application withdrawn because there were so many costly resolutions that the proposal was no longer financially possible. He noted several discrepancies in the staff report such as adverse impact on the watershed and the neighborhood. Mr. Baskin said the requirement to reforest the area as requested by staff was unnecessary and impractical. He questioned why so much screening was requested for such a minimal use. He pointed out several other churches in the immediate vicinity that were not required to provide so many mitigation solutions as the applicant. Mr. Baskin submitted that the application's proposed use was as innocuous as they came, that the church would be used perhaps by 60 people for only several hours a week. He maintained that the use would no more tax the sewer/septic or water facilities than a single-family home and that using the bathroom at church was infrequent as opposed to a daily home use. Mr. Baskin requested the deletion of several development conditions, including Number 8 regarding reforestation, Number 9 concerning additional landscaping, Number 16 requiring a sidewalk, and the seating requirements in Number 17.

Mr. Baskin responded to questions from Ms. Gibb concerning the outlet road, screening, and stormwater management.

In response to a question from Ms. Gibb, Ms. Langdon indicated the areas where staff believed screening was inadequate and further explained issues regarding the pond, re-vegetation/reforestation, and the undisturbed open space.

In response to a question from Mr. Hart, Mr. Baskin clarified differences among three similar sites in the area, maintaining that the applicant's use was far less intense.

To address a question from Mr. Hart regarding the disagreement between the applicant and DPWES concerning the pond, Peter Reineck (phonetic), BC Consultants, 12600 Fair Lakes Circle, Suite 100, Fairfax, Virginia, came to the podium and at the direction of the Chairman, took the oath to tell the truth, then proceeded to clarify issues concerning the pond. He said that an area was carefully studied before a determination was made for a pond's location, including the size, necessary easements, outfall provisions, and surrounding open space. He explained that the access road must run over the dam.

Addressing Mr. Hart's question about DPWES's concerns, Ms. Langdon referenced Appendix 5 of the staff report, a November 29, 2005, DPWES memorandum that specified adequate outfall and concern over Best Management Practices. She said DPWES received the revised plat and had not changed its comments nor provided information as to whether the applicant had addressed the issues. Adequate outfall remained an issue. She said the applicant had failed to meet three of the eight required standards.

In response to a question from Mr. Beard, Mr. Reineck gave the location and estimated height of the church's steeple.

Chairman DiGiulian called for speakers.

At the direction of the Chairman, additional participants in the hearing swore or affirmed that their testimony would be the truth.

Douglas K. Cleveland, 12234 Blue Topaz Lane, Fairfax, Virginia, came forward to speak. He said the applicant's plan failed to address numerous questions the Board raised as well as those of his community. He noted that the outlet road, the church traffic routing through their neighborhood via Blue Topaz Lane, the pond, adverse water impacts and concerns over their residential wells and whether the church usage would have a negative impact, were serious matters and should be resolved. Speaking for his community, he said they would like the Virginia Department of Transportation to designate a route for the church traffic out from Braddock Road and not utilize their outlet road.

~ ~ ~ October 31, 2006, CHAN S. PARK, SP 2005-SP-012, continued from Page 649

Ms. Langdon responded to a question from Mr. Hart concerning impact on the wells and buildable lots in the area. She said there was a notation in the original staff report of a letter from the Health Department stating the well was fine for a single-family home, but there was a question whether there would be adequate water supply if a larger use were added. Mr. Hart questioned whether a non-residential use's impact on surrounding residential wells was germane to the BZA's decision. Ms. Langdon referenced General Standard 3, which stated that the use must be harmonious with and not adversely affect the use or development of neighboring properties.

Mark Graves, no address given, representing his mother Mabel Graves who owned several lots that utilized the outlet road, came forward to speak. He voiced concern over the church using the outlet road. For 40 years they had used the road and had the legal right in an easement to do so. He questioned whether the church had a legal right. Mr. Graves said his mother's lot, Lot 56, was landlocked and next to the proposed church site, and they worried that church traffic would block them from their property.

Responding to questions from Ms. Gibb, Mr. Baskin said the church would not limit or impede others from using the outlet road. He referenced his April 24th letter to the property owners that discussed the church's proposal and the construction of a new access directly to Blue Topaz Lane. The letter requested input on whether the most affected property owners would care to use the new ingress/egress through Blue Topaz in lieu of the outlet road to Braddock Road, but he received no reply. It was his understanding that staff did not want church members to use the outlet road, and the applicant would gladly place directional signage for that purpose. He relayed a brief history and use of Mr. Park's church, noting that the number of proposed members had increased to 60 only after questions were raised over Mr. Park's initial number of 20.

Responding to a question from Ms. Gibb regarding a sidewalk required in Condition 17, Mr. Baskin explained the proposal, submitting that it seemed an unnecessary requirement on such a modest use. He maintained that the applicant met Special Permit Standard 3 because the use would not have an adverse impact on its surroundings.

In response to a question from Ms. Gibb, Ms. Langdon clarified that there remained several outstanding issues; however, several others had been resolved by development conditions, including the 50 percent undisturbed open space and the provision for adequate parking. She noted that the Board had requested additional information concerning the outlet road which staff pursued, but to date had not received a response from the applicant. She said she recalled at the last public hearing that the BZA expressed dissatisfaction with staff over the easement, access road issue. At site plan review, the applicant could be stopped on that issue alone. Information received by staff on whether a proposed use impacted neighbors' wells usually came from the neighbors. Staff then forwarded it to the Health Department who, in turn, may or may not provide its information or concerns. In this case, that matter was noted in the original staff report. Ms. Langdon informed the Board that this was the sole application to date that the Health Department told staff there would be a definite impact on the area's wells. If a well were drilled in the area, it definitely would affect the other properties.

Ms. Gibb commented that the matter was disconcerting as she was unsure whether or not there would be an adverse effect, that there was no way to know.

Ms. Langdon believed this was the first time staff received a letter stating that it was possible one would not be able to get water and that tests had not yet been taken for verification.

Mr. Byers pointed out that other agencies in the County had received such communications, and he was sure that was a continued issue with wells and water supply in that area. Ms. Langdon added that of the numerous special permit church applications her branch processed, this was the first application that it was specifically mentioned.

Chairman DiGiulian closed the public hearing.

Commenting that she did not have adequate information to make an educated decision, particularly on the wells and water issue, Ms. Gibb moved to defer the decision on SP 2005-SP-012 to January 9, 2007.

Mr. Baskin suggested adding a development condition that at the time of site plan review process, tests be conducted to satisfy the County that the surrounding wells and water supply would not be adversely

~ ~ ~ October 31, 2006, CHAN S. PARK, SP 2005-SP-012, continued from Page 650

impacted.

Mr. Hammack seconded the motion for purposes of discussion.

Mr. Hart said that during the deferral, he would request DPWES to clarify its position on the outfall problem, whether there was a 50 percent open space complication, if supplemental plantings were possible in specific areas, and whether or not all issues could be resolved. He requested that the Health Department provide information concerning the wells, and he hoped they would follow up with a determination of whether there were potential problems with this particular use in the area proposed. In the context of General Standard 3, he said, with the necessary information, a development condition could be crafted that would address subsequent consequences, and he would want information on how and whom to charge to rectify any impact. A concern of his was that if the use grew over the years, parking would be a problem, and clarity was now necessary on exactly by whom and how the outlet road was used and what conditions were appropriate to mitigate the impact. Also, with future and possibly heavier use of the outlet road, the question may arise of its maintenance; therefore, that too should be specified with a development condition.

At Mr. Byers' request, staff assured that representatives from DPWES and the Health Department would be present on the decision date.

Ms. Gibb requested that Mr. Baskin provide title documentation and language on the easement and its creation, and Mr. Hammack requested that Mr. Baskin submit a written indication on granting the easement.

Chairman DiGiulian called for a vote on the motion to defer the decision on SP 2005-SP-012 to January 9, 2007, at 9:00 a.m. The motion carried by a vote of 7-0.

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The meeting recessed at 10:59 a.m. and reconvened at 11:10 a.m.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:30 A.M. SIMON V. ORTIZ, RONALD ORTIZ AND RUTH A. ORTIZ, A 2006-MA-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have paved a portion of the front yard on property located in the R-4 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 6714 Westcott Rd. on approx. 7,800 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 113.

Chairman DiGiulian called the appeal application and was advised that the appellants were not present.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, informed the Board that the appellants had requested a deferral, and staff supported the request.

In response to a question from Mr. Beard, Mary Ann Tsai, Staff Coordinator, said several family members were currently out of the country, and the appellants had just returned, but there was not sufficient time for staff to advise them on what to do to come into compliance.

Mr. Ribble moved to defer A 2006-MA-041 to December 5, 2006, at 9:30 a.m. Mr. Beard seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:30 A.M. LERICK KEBECK, A 2006-BR-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established and allowed the occupancy of a

~ ~ ~ October 31, 2006, LERICK KEBECK, A 2006-BR-044, continued from Page 651

second dwelling unit on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 9536 Braddock Rd. on approx. 13,291 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((3)) 4.

Chairman DiGiulian noted that A 2006-BR-044 had been administratively moved to February 27, 2007, at 9:30 a.m., at the appellant's request.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:30 A.M. HAJI NOOR AHMAD, A 2006-MV-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 3001 and 3003 Preston Av. on approx. 3,125 sq. ft. of land zoned R-3 and H-C. Mt. Vernon District. Tax Map 93-1 ((18)) (E) 175 and 176.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Jayne M. Collins, Staff Coordinator, presented staff's position as set forth in the staff report dated October 24, 2006. This was an appeal of a Notice of Violation that was issued to the appellant July 17, 2006, for establishing a second dwelling unit at 3303 Preston Avenue. The structure straddled the lot line between Lots 175 and 176. The subject property was zoned R-3, three dwelling units per acre, and developed with a single-family detached dwelling unit that had been converted into a duplex containing two separate and independent dwelling units, with complete living facilities on each side of the duplex.

Staff's record showed the appellant submitted his initial building permit application for construction for the subject dwelling unit in December of 2000. The architectural plan showed two separate kitchens, one on each side of the proposed dwelling, which the County disapproved, and the appellant was informed that he could not construct a duplex on the property.

A revised plan was submitted in April of 2001 for a new two-story single-family detached dwelling unit on the lot. The first floor layout clearly showed that each side of the house was a mirror image of the other side, with the exception that the left side identified one room as an office/den and the corresponding space on the right side identified the room as a kitchen. There was an opening in the wall between the sides of the house that provided interior access between the sides.

During its Residential Use Permit (RUP) site visit, Residential Inspection Division staff observed that one side had a complete kitchen, including functioning appliances, and the corresponding space on the other side of the house had a complete kitchen with appliance hook-ups only. It was also observed that the house had two gas meters. The residential inspector informed staff that the electrical code considered the electric hookup to be a single service because of the disconnect locations. The Zoning Ordinance had no provision for a duplex, and Sect. 2-501 provided that only one dwelling be allowed per each lot. The subject dwelling was approved as one single-family unit, was now being marketed as a duplex, and had two separate outside entrances. Its layout was exactly the same on each side of the house. The office/den noted on the plan had kitchen appliance hookups, and there were permanent provisions on each side for living, sleeping, cooking, and sanitation.

The Tax Administration Department assessed the dwelling as a single-family unit from its construction up to March of 2006 when the appellants requested it be re-assessed as a duplex, which tax administration did as a courtesy. Several times staff from various agencies informed the appellant he was not allowed a duplex on his property. Those few exceptions when a duplex was allowed on a property did not apply to the appellant's situation. Staff requested the BZA uphold the Zoning Administrator's determination as set forth in the July 17, 2006, Notice of Violation.

In response to a question from Ms. Gibb, Ms. Collins noted the brief exception in the Zoning Ordinance when duplexes were permitted for several months after World War II to alleviate the housing shortage.

~ ~ ~ October 31, 2006, HAJI NOOR AHMAD, A 2006-MV-045, continued from Page 652

To address a question from Mr. Beard, Michael Thout, Residential Inspections Division, explained the configurations of the appellant's meter services and disconnects. He said that construction allowed it to be considered one service.

In response to a request for clarification from Mr. Hart, Ms. Collins explained that an October 30, 2002, letter from the Department of Public Works and Environmental Services sought to clarify the appellant's address because he was using two addresses. She relayed a brief history of the subject property with its subsequent development, noting that the two lots were not combined and the one unit was built straddling the lines.

The appellant, Haji Ahmad, apologized for his poor English and the fact that his health was poor and presented the arguments forming the basis for the appeal. He maintained that his property was two separate lots with two tax map numbers and that he had several County documents confirming that fact.

Pat Hallesy, 7812 Cutis Lane, Spotsylvania, Virginia, the appellant's real estate agent, said only after County tax records and assessments declared the house and land use a duplex had he listed it as such. Having worked with different County agencies, he realized that zoning regulations differed from that of tax administration. Mr. Hallesy presented a brief history of the property. He stated that the County basically approved two of everything; however, the office/den had no stove. Because of an incorrect sewer hookup, a revised plan was necessary. He said Mr. Ahmad's issue was that County inspectors conducting site visits approved individual completed work, and then another department's staff would claim it could not be done. Only after the RUP was issued, had Mr. Ahmad checked the County's Department of Taxation website and with that information, listed the property as a duplex.

Mr. Hallesy responded to questions from Mr. Beard concerning the duplex listing, the meter boxes, and the interior centrally connecting door that later was closed off by drywall.

In response to a question from Ms. Gibb, Mr. Hallesy said Mr. Ahmad was a builder, and he had constructed the dwelling.

Staff confirmed that more than one large appliance, refrigerator, washing machine, dishwasher, was allowed in a unit, but one could only have one stove before questions arise about conformity as a single dwelling unit.

Mr. Hallesy said that when Mr. Ahmad received the October 30, 2002, letter from Linda C. Capo, Chief, Residential Inspections, Site Permits, medical issues at that time prevented him from appealing the matter.

Ms. Capo came forward to address a question from Mr. Beard and said that during her numerous site visits concerning the electrical meters, construction was ongoing, and each time it was explained to the appellant that the unit must be a single-family dwelling. He told her that he was aware. When she saw an apparent electrical concealment wiring for a stove, a Zoning Inspector accompanied her and determined that because a stove was not installed, there technically was no second kitchen and, therefore, no violation. She said there was no law prohibiting a building entrance designed like the appellant's.

Ms. Capo informed the Board that a neighbor of the appellant who spoke his language had several times translated the County inspectors' instructions during the period the structure was framed.

Chairman DiGiulian called for speakers.

Pastor Duncan, First Baptist Church of Kingstowne, Hayfield Road, Alexandria, Virginia, came forward to speak. He said Mr. Ahmad's intention had always been to have a two-family dwelling. He was listed with two separate addresses, paid property taxes on two separate addresses, and had two separate electric and gas bills. He believed he had done all that was required of him for such a unit. Pastor Duncan stated that Mr. Ahmad was an honest man who just had not understood the process or instructions.

Addressing Pastor Duncan, Mr. Beard commented that although Mr. Ahmad intended at the onset that the unit be a duplex, it was not allowed, and the BZA could not change the law nor rewrite the Code. Although he sympathized with the appellant's plight, Mr. Ahmad was advised several times that a duplex was not permitted.

~ ~ ~ October 31, 2006, HAJI NOOR AHMAD, A 2006-MV-045, continued from Page 653

Pastor Duncan submitted that Mr. Ahmad had approved permits; however, Mr. Beard pointed out that Mr. Ahmad's building permit was an application for a single-family two-story unit. Ms. Gibb also noted that the approved grading plan recorded it as a single-family dwelling.

Tim Shirocky, Assistant Director, Real Estate Division, Department of Tax Administration, came forward to speak regarding his department's position on the application. He said his department's job was to pick up improvements made to a property and assess accordingly. Mr. Ahmad's permit was taken out in 2001, and during the years 2002 through 2006, the property was assessed as a single-family residential property. March of 2006 was the first time Mr. Ahmad contacted the department and demanded that the assessment records be changed to reflect duplex units. Mr. Shirocky said Tax Administration did so as a courtesy to the appellant, and it was done for billing purposes only. There was no zoning enforcement involved, and Tax Administration did not legitimize Mr. Ahmad's duplex unit.

In response to a question from Mr. Hart, Mr. Hallesy explained that when Mr. Ahmad received permits for basically two of everything, such as a furnace, hot-water heater, washer, dryer, but no second stove, Mr. Ahmad understood that he had approval for a duplex unit.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. Mr. Byers seconded the motion.

Mr. Hart stated that as a threshold matter, under the Zoning Ordinance, it was a close call as to whether the property was one lot or two, and with the incorporation of the grading plan's reference of a second lot, it was within the Ordinance's definition regarding "lot." He pointed out that the paperwork clearly denoted it as a single dwelling without a second kitchen and that both units were on both lots. There also was the fact that the October of 2002 letter was not appealed, and there was abundant testimony regarding the representations made to the appellant concerning no second kitchen. There was no explanation to staff about adding the stove after final inspection or covering up the doorway between the two units. Mr. Hart stated that it was clear that the Zoning Administrator's determination was correct.

The motion carried by a vote of 7-0.

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~ ~ ~ October 31, 2006, Scheduled case of:

9:30 A.M. PHONG T. MAI AND ANH TRINH-MAI, A 2006-PR-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a Residential Use Permit cannot be issued until certification is submitted confirming that the building height of a residential structure is in compliance with Zoning Ordinance provisions. Located at 10521 Vale Rd. on approx. 2.1019 ac. of land zoned R-E. Providence District. Tax Map 37-4 ((27)) 2.

Chairman DiGiulian noted that A 2006-PR-049 had been withdrawn.

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~ ~ ~ October 31, 2006, After Agenda Item:

Consideration of Acceptance - Application for Appeal
Fairfax County Board of Supervisors

Mr. Hart and Ms. Gibb recused themselves.

In response to a question from Mr. Ribble, Chairman DiGiulian said that the item had been deferred because Mr. Hammack requested additional time to contemplate some of the issues raised by Mr. Stoner during the October 24, 2006 meeting.

Mr. Hammack informed the Board that he had read a number of pertinent Supreme Court decisions Mr. Stoner referenced in his October 24, 2006, letter justifying the appeal's acceptance. Mr. Hammack moved to

~ ~ ~ October 31, 2006, After Agenda Items, continued from Page 654

accept the Board of Supervisors' appeal of unauthorized building permits of the referenced lots.

Mr. Hammack's motion failed for lack of a second.

Mr. Beard moved to not accept the appeal. Mr. Ribble seconded the motion, which carried by a vote of 4-1. Mr. Hammack voted against the motion. Mr. Hart and Ms. Gibb recused themselves.

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Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding matters regarding preparation of the special permit resolution form, the McLean Bible Church case both in the Circuit Court of Fairfax County and the U.S. District Court of the Eastern District of Virginia, Couture Tehmina, Jackson v. BZA case, Welch case, correspondence and personnel matters, pursuant to Virginia Code Ann. Set. 2.2-3711(A)(7) (LNMB Supp. 2002). Mr. Beard seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 12:12 p.m. and reconvened at 12:31 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack moved that the BZA's secretary, Ms. Gibb, be authorized to write the letter pertaining to funding for legal counsel regarding the special permit resolution form discussed in Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:31 p.m.

Minutes by: Paula A. McFarland

Approved on: November 3, 2010

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 7, 2006. The following Board Members were present: Vive Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Chairman John DiGiulian was absent from the meeting.

Vice 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 Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ November 7, 2006, Scheduled case of:

9:00 A.M. LOO T. SUN, SP 2006-MA-045 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.7 ft. and deck 0.3 ft. from one side lot line and accessory storage structure to remain 2.8 ft. with eave 2.5 ft. from other side lot line. Located at 3325 Slade Run Dr. on approx. 22,000 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((5)) 7A.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Loo T. Sun, 3325 Slade Run Drive, Falls Church, Virginia, replied that it was.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions to minimum yard requirements based on an error in building location to permit an addition to remain 10.7 feet; a deck, varying in heights, all below 4.0 feet in height, to remain 0.3 feet; and an accessory storage structure, which measured 9.9 feet in height, to remain 2.8 feet with eave 2.5 feet from the side lot line. A minimum side yard of 15 feet is required; however, eaves are permitted to extend 3.0 feet and decks are permitted to extend 5.0 feet into the minimum side yard; therefore, reductions of 4.3 feet, 9.7 feet, 12.2 feet, and 9.5 feet, respectively, were requested.

Mr. Sun presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he had his house for 30 years, and the reason why he converted the carport to a garage was because the carport looked bad. He chose to enclose the carport himself with no complaints from neighbors. He said the carport had been enclosed for 10 years, and the carport looked much better as a garage. Mr. Sun stated that he did not know it was required to get approval from the County first in order to convert the carport to a garage, and that was his fault. He said that between the house and the fence was a slope, and he could hardly walk on it. The space was a waste, and so he made it a walkway. He explained that the house was on a slope up the hill, and it was difficult to go up, so he extended the walkway up to the hill and installed steps. Mr. Sun stated that the shed contained a lot of junk, and he thought it would be better to build it in the back. With the help of his friend, he built a shed in what they thought was the best place for it. He said they applied for a permit a long time prior, and he did not recall if it was approved, but assumed that it had been. He said he thought the inspector came out, but he did not remember. Mr. Sun said the shed was next to the neighbor's driveway, and so far no one had complained.

Mr. Beard asked the applicant whether the garage had been enclosed for over or close to 20 years, and Mr. Sun said no. He said an addition had been built in 1988, and the addition was a kitchen. Next to the kitchen was a carport, but it had been there for a while. Mr. Beard asked the applicant about his statement of justification and quote, "It has been almost 20 years now that our carport became a garage." Mr. Sun said he did not keep all the details, but it had been a long time. Mr. Beard asked whether there was electricity in the garage, and Mr. Sun said there was. A door was needed, and in order for the door to operate, they needed to extend the electricity from the kitchen.

Mr. Hart asked whether the shed was attached to a foundation, and Mr. Sun said it was not, but the shed had been put on top of a concrete block and not in the ground. Mr. Hart asked whether there was electricity or plumbing in the shed, and Mr. Sun replied that there were lights, and the electricity was extended. He stated that he had completed the electricity that extended to the shed according to County code since he knew how to put up the lights. Mr. Hart asked whether an inspection of the electric light in the shed had been done by the County, and Mr. Sun stated that he did not remember. He said that when he added the addition, the inspector came out and put a sticker on the switchboard. Mr. Hart asked whether the inspectors came out

~ ~ ~ November 7, 2006, LOO T. SUN, SP 2006-MA-045, continued from Page 657

when he built the addition and kitchen. Mr. Sun answered that he did not recall. Mr. Hart asked whether the shed could be shifted at all, and Mr. Sun said it would be quite difficult because it was not in the ground, and it would be hard to move because it was quite heavy and it was next to the driveway. He said the neighbors had never complained or mentioned anything about the shed.

Mr. Hart asked what Outlot B was on the plat. Mr. Sun asked whether the outlot Mr. Hart was referring to was next to the shed, and Mr. Hart said it was. Mr. Sun stated that next to the driveway was another house, and the driveway went to the back of his house. Mr. Hart asked for clarification that what he was seeing was the driveway and whether the house was sort of behind the other houses, and Mr. Sun said it was.

Mr. Hammack asked whether the fact that the storage structure was on an outlot would change anything about the report and why a house was built on an outlot. Ms. Langdon answered that the applicant's house was not on an outlot, the applicant's storage shed was on Lot 7A, and there was an outlot directly adjacent to the applicant's lot. Mr. Hammack stated that the applicant had said there was a house built on the outlot. Ms. Langdon said it was in the back, and she pointed it out on the overhead viewer. Mr. Hammack asked whether that made the applicant's side yard a front yard. Ms. Langdon said it did not, not with only one driveway.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2006-MA-045 for the reasons stated in the Resolution.

Mr. Beard asked whether the Board should include something in the development conditions regarding the approval of the electrical. Mr. Hammack said there was a requirement to have building permits for both the shed and the carport enclosure. Mr. Hart said that Condition 2 required a permit and inspection for the addition only, and he would suggest adding something to the conditions about inspecting the electrical in the shed. Mr. Hammack stated that he misread the condition, and he amended his motion to include an inspection of the shed for the electrical.

Mr. Hart asked why an inspection of the deck would not be required if it was located off the ground with structural members holding it up. Mr. Hammack said it was because of the height of the deck, but he did not object to requiring an inspection.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LOO T. SUN, SP 2006-MA-045 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.7 ft. and deck 0.3 ft. from one side lot line and accessory storage structure to remain 2.8 ft. with eave 2.5 ft. from other side lot line. Located at 3325 Slade Run Dr. on approx. 22,000 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((5)) 7A. 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, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

~ ~ ~ November 7, 2006, LOO T. SUN, SP 2006-MA-045, continued from Page 658

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the locations of the addition, deck, and accessory storage structure as shown on the plat prepared by Dominion Surveyors, Inc., dated June 1, 2006, as revised through July 20, 2006, submitted with this application and is not transferable to other land.

2. Building permits and/or electrical permits and final inspections for the addition, shed, and deck shall be diligently pursued within 30 days and obtained within 90 days of final approval or this special permit shall be null and void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 7, 2006, Scheduled case of:

9:00 A.M. LESLIE K. OVERSTREET & ANDREW H. ARNOLD, SP 2006-MV-048 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 28.8 ft. and roofed deck 23.5 ft. from front lot line. Located at 7735 Tauxemont Rd. on approx. 20,000 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((8)) 5.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Andrew H. Arnold, 7735 Tauxemont Road, Alexandria, Virginia, replied that it was.

~ ~ ~ November 7, 2006, LESLIE K. OVERSTREET & ANDREW H. ARNOLD, SP 2006-MV-048, continued from Page 659

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions of certain yard requirements to permit construction of an addition 28.8 feet and roofed deck 23.5 feet from the front lot line consisting of the enclosure of the existing front porch and the addition of a new front porch. A minimum front yard of 35 feet is required; therefore, reductions of 6.2 feet and 11.5 feet, respectively, were requested. Staff recommended approval of SP 2006-MV-048 subject to the proposed development conditions.

Mr. Arnold 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 statement, but would be happy to answer any questions.

Mr. Hart stated that on Sheet 4 of 7 of the plan, there was a 35-foot building restriction line shown, and it looked like the house and the front porch addition conflicted with that. Mr. Hart asked what the building restriction line was. Mr. Arnold said the 35-foot setback line ran through the corner of the house or the front third of the house. Mr. Hart said it appeared that the addition conflicted with that, and he wanted to understand what it was and if it really was a restriction line, why there was a conflict.

Mr. Arnold stated that the house had been built in 1941, and either there was no setback at the time or the setback was 25 feet. He said the subdivision covenants listed the setback as 25 feet, and the existing northwest corner of the house was actually about three inches inside the 25-foot line. He said the whole northwest corner of the house stuck out farther than the 35-foot setback, and he did not know when the 35-foot limit went into effect. Mr. Arnold said all the houses on the street adhered to the 25-foot setback rather than the current 35 feet. He said the reason the line was on the plan was because it was the new setback.

Mr. Hart asked Ms. Langdon if she knew why the line was shown on the drawing and if it should matter to the Board. He asked whether it would affect what the Board was to do if it was a covenant issue. Ms. Langdon said she was not specifically aware of a covenant. She said it sounded like the house had been built legally, and the minimum required front yard had been considerably less at that time. Ms. Langdon stated that the requirement changed in the 1978 Zoning Ordinance. The addition and portico were proposed to be located within the 35-foot setback, which was the minimum required front yard under the current Zoning Ordinance.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2006-MV-048 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LESLIE K. OVERSTREET & ANDREW H. ARNOLD, SP 2006-MV-048 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 28.8 ft. and roofed deck 23.5 ft. from front lot line. Located at 7735 Tauxemont Rd. on approx. 20,000 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((8)) 5. 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 7, 2006; and

WHEREAS, the Board has made the following findings of fact:

~ ~ ~ November 7, 2006, LESLIE K. OVERSTREET & ANDREW H. ARNOLD, SP 2006-MV-048, continued from Page 660

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 20,000 square feet.
4. On July 10, 2006, the Fairfax County Board of Supervisors adopted a Zoning Ordinance amendment to permit revisions for reduction of certain yard requirements by up to 50 percent; therefore, this special permit application must satisfy all of the provisions contained in Sect. 8-922, provisions for reduction of certain yard requirements.
5. Standards 1, 2, 3, 10, 11 and 12 relate to submission requirements and were satisfied at the time of submission. Standard 5 relates to accessory structures which does not apply to this application, and Standard 10 allows the BZA to impose development conditions which will be forthcoming.
6. The application has met all of the remaining standards, specifically Standards 4, 6, 7, 8, and 9.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size of the proposed addition (approximately 71 square feet) and roofed deck (approximately 39 square feet) as shown on the plat prepared by Alexandria Surveys International, LLC, dated January 9, 2004, as revised through May 12, 2004, as submitted with this application and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family detached dwelling may be up to 150 percent of the total gross floor area of the dwelling (1,196 square feet) that existed at the time of the first expansion request. Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be architecturally compatible with the existing dwelling and shall be consistent with the architectural renderings included as Attachment 1 to the special permit conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 7, 2006, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-MA-176 to permit fence greater than 4.0 ft. in height to remain in front yard and greater than 7.0 ft. in height to remain in side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (Admin. moved from 6/15/04, 10/19/04, 12/20/05, and 6/20/06 at appl. req.) (Moved from 3/1/05 for notices) (Admin. moved from 4/19/05, 5/24/05, 7/12/05, and 8/9/05.)

Vice Chairman Ribble noted that VCA 2002-MA-176 had been administratively moved to April 3, 2007, at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 7, 2006, Scheduled case of:

9:00 A.M. LAUREL HIGHLANDS, SP 2006-MV-034 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a temporary sales trailer. Located at 9088 Furey Rd., 9162, 9164, 9166 and 9168 Finnegan St. on approx. 19,637 sq. ft. of land zoned PDH-12. Mt. Vernon District. Tax Map 107-2 ((12)) 247, 248, 249, 250 and 251. (Admin. moved from 9/26/06 for affidavit)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Pelorido, the applicant's agent, 15020 Graymont Drive, Centreville, Virginia, replied that it was.

Vice Chairman Ribble asked whether Mr. Pelorido was listed on the affidavit, to which Mr. Pelorido responded that he probably was not. Vice Chairman Ribble stated that this presented a problem.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said that a revised affidavit had been submitted, and after reviewing the document, she stated that Mr. Pelorido was not listed on the affidavit.

Vice Chairman Ribble asked if there was anyone present who was listed on the affidavit, to which Mr. Pelorido stated that the agent could not make it to the hearing and that the statement of justification spoke for itself.

Vice Chairman Ribble stated that he was not sure whether the Board could proceed unless there was someone who was listed on the affidavit in attendance to present the application.

Ms. Langdon stated that the Chairman was correct, and the hearing would need to be deferred.

Mr. Hart moved to defer SP 2006-MV-034 to December 5, 2006, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mr. Hart said that if there had been a revised affidavit, the Board may not have received it in their packets. Ms. Langdon said staff would make sure the Board received the revised affidavit.

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~ ~ ~ November 7, 2006, Scheduled case of:

9:00 A.M. GREEK ORTHODOX CHURCH OF NORTHERN VIRGINIA, TRUSTEES, SPA 93-M-119-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 93-M-119 previously approved for church and related facilities to permit nursery school. Located at 3149 Glen Carlyn Rd. on approx. 4.43 ac. of land zoned R-3. Mason District. Tax Map 61-2 ((1)) 16.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Aristotelis A. Chronis, the applicant's agent, 1145 North Vernon Street, Arlington, Virginia, replied that it was.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

~ ~ ~ November 7, 2006, GREEK ORTHODOX CHURCH OF NORTHERN VIRGINIA, TRUSTEES, SPA 93-M-119-02, continued from Page 662

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 93-M-119, previously approved for a church and related facilities, to permit the operation of a nursery school of up to 80 three- to five-year-old children and 15 associated employees. No other changes or additions were proposed.

Mr. Varga stated that the proposed nursery school would be located in the newer multi-purpose building, south of the main church building, and the pickup and drop-off point would be located to the rear of the site, with the motorists entering the site through the northeastern entrance. The nursery school would operate between the hours of 7:30 a.m. and 6:00 p.m. on weekdays, between the months of September and June. Mr. Varga stated that the playground was located in the southwest portion of the site within the Environmental Quality Corridor (EQC) - Resource Protection Area (RPA).

Mr. Varga reported that on November 12, 2002, the Board had denied the previous special permit amendment, SPA 93-M-119. He stated that as in the previous special permit amendment request, staff would not support the continued location of the play area in the EQC/RPA. He said it was staff's opinion that the use of the play area would only increase if the proposal was approved, and the applicant would need approval of an RPA exception for the play area to remain in the RPA. Mr. Varga stated that staff had proposed a development condition requiring relocation of the play area out of the EQC/RPA and only supported a proposed nursery school with the adoption of the condition. Staff recommended approval of SPA 93-M-119-02 subject to the proposed development conditions.

In response to a question from Mr. Hart regarding whether the play area violated the existing development conditions, Mr. Varga answered that there were no specific development conditions that currently existed that the playground violated. Mr. Hart asked if the location of the play area had been shown on the plat that was approved the last time, and Mr. Varga answered that it had been. Mr. Hart asked if the location was shown to conflict with the RPA or the floodplain on the previously approved plat. Mr. Varga indicated that it was shown and that the playground was partially located within the RPA area. He explained that since that time, the RPA area had actually expanded, and currently the entire playground area was located within the RPA. Mr. Varga said he was not sure as to how it was constructed, but the applicant had stated that it was constructed a very long time ago, before the RPA was designated, and at that time the playground was smaller. Mr. Hart asked whether the current location of the playground, separate from the development conditions, would be considered a different violation. Mr. Varga stated that the location was a violation of the recommendations in the Comprehensive Plan which stated that there should not be anything constructed within the RPA boundary. Mr. Hart asked whether staff had been able to figure out if there was any indication that the equiptment was more recent than the original construction. Mr. Varga said staff was aware that at some point in the past the playground had undergone an increase in size since it was first constructed, and the applicant might have specific information about when some of the improvements to the playground had been made.

Mr. Beard asked Mr. Varga to confirm that the program would begin at 7:30 a.m. Mr. Varga confirmed that was correct and indicated that it was different from what was in the staff report. He stated that the applicant had amended the request to reflect a 7:30 a.m. start time so the children could be dropped off before work. In response to a question from Mr. Beard regarding whether there would be 80 or 99 children, Mr. Varga said it was 80. Mr. Beard asked whether the staff report was accurate with the exception of the nursery hours, and Mr. Varga stated that it was, and in the development conditions, the start time was 7:30 a.m.

Aristotelis A. Chronis, the applicant's agent, 1145 North Vernon Street, Arlington, Virginia, presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that he was speaking to the Board that day not only as a lawyer, but as a longtime member of Saint Katherine's Greek Orthodox Church in Falls Church, Virginia. He said Saint Katherine's had been a member of the community on Glen Carlyn Road for over 40 years, and he discussed the work stewards at Saint Katherine's had been involved in, supporting both the local and global communities. Mr. Chronis said that members of the young adult group were on pace to contribute over 10,000 sandwiches to the Baileys Crossroads Homeless Shelter located within the county, just a few miles away from the church, which had been an ongoing effort every month for the past seven years. He said the Support the Troops program was providing care packages and comfort not only to soldiers overseas, but also to those wounded and recovering at Walter Reed Hospital. Mr. Chronis said the Ladies Auxiliary Group, the Philoptochos Society, helped the poor of the community, and the stewards had contributed greatly to Hurricane Katrina relief,

tsunami relief, and other efforts. He stated that the church community had made a substantial donation to the funds established for victims of the recent Sully Station police shootings.

Mr. Chronis said the school would be a Saint Katherine's program with the goal of teaching the Greek Orthodox faith and the Greek language to the children as a non-profit group. He said this was not the same application as the application from four years prior for a daycare center because the previous application had been for a third party, an outside for-profit vender to come in to rent the smaller older hall, and the current proposed use was generated by the community and for their community. Mr. Chronis said the young parents in their community were the ones who had asked for the school, and they were the ones organizing and operating the school under the auspices of the church. He said the program would be administered by Dr. Karen Banks, an early education specialist from the Saint Katherine's community, and he had not had a chance to get her resume into the materials before the meeting, but submitted a copy to the Board at the meeting. Mr. Chronis said Dr. Banks' 12-page resume was extremely long and impressive. He said Dr. Banks was currently working as a teacher for McNair Elementary School in Herndon, but she had been a professor at George Mason, a consultant to the Virginia Department of Social Services on early childhood programs, and an early childhood specialist for the Office of Children in Fairfax County. She brought over 30 years of experience to work for Saint Katherine's, and they were confident that the program would be in good hands under her guidance and leadership.

Mr. Chronis said they were asking for a maximum of 80 children, but what the needs would be three to five years down the road could not accurately be predicted. He said the program would not appeal to everyone and was structured to appeal to the members of the church and their community, and while it was against their policy as a church to turn anyone away for any of their ministries, they were quite sure that the program would not be something that would appeal to the general public. Mr. Chronis stated that the neighbors had questioned how the current proposal was different from the prior application, which had been a daycare available to everyone. He said the maximum enrollment would be 80 children, not the maximum occupancy, and it was anticipated that not all of the 80 children were going to be present at any one time. The program was being structured toward the needs of working parents, stay-at-home parents, grandparents, and other relatives in the area that may want to take the children for a few days during the week. Mr. Chronis stated that the hours of operation for the instructional part of the day would begin at 9:00 a.m. and end at 4:00 p.m., and between the hours of 7:30 a.m. to 9:00 a.m., there would be a staggered drop-off, with the same occurring in the afternoon from 4:00 p.m. to 6:00 p.m. He said there would not be 80 cars descending upon the intersection at any one time, and the application was better in terms of where the proposed drop-off and pickup points would be because those points were within the church boundaries and contained in the church parking lot.

Mr. Chronis said the play area was on an approved site plan, pre-existed the EQC/RPA, had been there in some form for 30 years, and the reason he knew that was because he had played on the swings as a child. He said the play area had been updated with newer equipment since that time and was completed in the early to mid-'90s. He said that relocating the playground to a different area presented a problem, which their engineer could explain, but there was a conservation easement in the back that limited where the playground could be located. The only other conceivable area of open space to locate the playground would front Glen Carlyn Road, and Saint Katherine's, the neighbors, and everyone agreed that they did not want children playing in the street. Mr. Chronis said that to move the play area to the other side and put it in the conservation easement would require regrading and a possible removal of trees. He asked that the development condition be deleted and the play area be allowed to remain as it had been on the approved site plan.

Mr. Chronis said the other issue raised by staff was a transportation issue, and the development conditions suggested the installation of a left-hand turn lane. After having met with the neighbors, it was agreed that a left-hand turn lane into the parking lot was not the best suggestion. He suggested a better solution was to require a right-hand turn only out of the parking lot between the hours of 6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 6:30 p.m., which would force all traffic out of the parking lot toward Carlin Springs Road and prohibit going on Manchester Street or making a left turn.

Mr. Chronis said a meeting had been held with the citizens, and as a result three proposed development conditions were crafted. He said the first one stated that the school would not be converted into a day care. The second was that if the playground remained in the current location, a fence or tree screening would be

installed. The third concerned allowing only right-hand turns out of the parking lot.

In response to a question from Mr. Beard regarding whether he had seen the Virginia Department of Transportation (VDOT) trip count for the new use, Mr. Chronis said he had not seen the trip count, and it had not been provided to them. Mr. Beard showed Mr. Chronis a copy of the VDOT document, which was contained in the staff report. Mr. Chronis said he thought that it pertained to the previous application. Mr. Chronis said he had been aware of the issues because staff had raised them with him. In terms of child drop-off and pickup, it would be located in the back and contained within the parking lot. With respect to the proposed left turn lane, he and the neighbors he had met with agreed that it would cause more of a bottleneck, and would take another lane of traffic away. With regard to the sight distance issue, Mr. Chronis said that nothing on the site had changed since the first approval in 1993, and parking was fine. Mr. Chronis said he could not understand how staff came up with 450 because the worst-case scenario with 80 vehicles coming in and out of the parking lot twice daily added up to 320.

Mr. Hart asked why the applicant would not agree to the left-turn striping that staff had requested. Mr. Chronis stated that if staff really thought that was the best solution, the applicant would do it, but he thought the applicant had a better solution in terms of the right-hand turn out of the parking lot during the designated hours.

Mr. Hart said that one of the problems the Board had with the right turn only signs was that they were difficult to enforce without some physical configuration so it could not be disobeyed because the sign was not self-enforcing, and if people wanted to make a left turn, they would make a left turn anyway. He asked whether or not there would be any physical change to the road or if the church would just be putting up a sign. Mr. Chronis said he did not see them putting anything into the inside of the entrance because he did not think there was any room for it, and the church would be happy to live with transportation's suggestion of installing a left-hand turn lane.

Mr. Hart asked whether staff had reviewed the applicant's proposal. Mr. Varga stated that staff had reviewed the applicant's proposal to provide a right-hand turn only out of the church, and the Department of Transportation determined it would place too much of an undue burden on Carlin Springs Road because people would go up Carlin Springs Road to get back to Route 7, and it would place a burden on another part of the neighborhood located a couple of blocks north of the site.

Mr. Hart requested that a copy of the colored RPA exhibit handout that the Board received be displayed on the overhead viewer. He asked what the access easement was and where it went and whether the Board would ordinarily approve something that had an obstruction in an access easement. Ms. Langdon asked if Mr. Hart was referring to the playground being located there. Mr. Hart said he was referring to if the fence was in the way. Ms. Langdon said that she did not think that staff would support it, but not knowing what the access easement was for and who it went to, it was difficult to comment. In response to Mr. Hart's request that Mr. Chronis address what the easement was for, Mr. Chronis said he hoped, Charles Dunlap, their engineer, would address the Board regarding the issue.

Charles Dunlap, Walter L. Phillips, Inc., 207 Park Avenue, Falls Church, Virginia, came forward to speak. Mr. Dunlap stated that the southern portion of the property was crisscrossed with a lot of existing easements, and the access easement was to benefit Fairfax County for the purpose of maintaining the existing concrete ditch that the County installed as part of an improvement project for Long Branch Stream. He said he was not sure when the easement had been constructed, but it still existed, also passed behind Saint Anthony's Catholic Church and school, and continued further south. Mr. Dunlap said there was also a sanitary sewer easement as well as a public water line running through the RPA/EQC near Glen Carlyn Road, but there was no easement for the water line. He stated that as part of the site plan process associated with the special permit approved in 1994, there were additional conservation easements platted over the area as well as expansions of storm drainage easements.

Mr. Hart asked whether the playground had been built before the access easement was created. Mr. Dunlap answered that it was his understanding that it had been and that the concrete ditch was constructed sometime in the late 1970s or early 1980s, but the playground predated that. Mr. Hart said he wanted to see what the deed indicated about fencing, and the issue should be brought to the attention of the Department of Public Works and Environmental Services (DPWES) or the stormwater maintenance people.

Mr. Hart asked where staff wanted to move the playground and whether it was between the little building and Glen Carlyn Road. Ms. Langdon answered that staff had not picked a particular place, but the last time the application was in for the childcare center, staff had suggested an area. She said the play area should allow for 100 square feet per child that would be on the playground at any one time.

Mr. Hart asked if someone could explain how the circulation for the pickup and drop-off worked, where the children would enter, where stacking would be, where the drop-off was, and how the vehicles would get back out. Mr. Chronis said the classrooms were on the lower level, and there were adequate parking spaces for a park and ride system and then to circle around. Mr. Hart asked whether the parents would pull into a space and get out rather than simply pulling off. Mr. Chronis said there was not a designated lane like at a metro station, and depending upon what the backup would be, he hoped the parents would consider parking and walking their child in. Mr. Hart asked what would prevent someone from going north on Glen Carlyn Road and entering through the little driveway or either one of the entrances by Lebanon Street. Mr. Chronis answered that there was nothing to prevent people from looping around and back, but the classroom areas would be below the main level of the church, and it would make sense for people to come to the back parking lot. Mr. Hart asked what would prevent someone from using the other entrance at the top, and Mr. Chronis answered that the entrance had a bollard and chain on it for fire regulations and to prevent people from using it as a cut-through in order to drive through the parking lot and come out on the other side. Mr. Hart said he had voted against the approval of the previous application, and part of the problem he had was the circulation and the conflict with existing traffic due to the Lebanon Street and South Manchester Street intersections. Mr. Varga stated that the applicant had indicated that people used the church entrance across from South Manchester Street because that was what led to the rear of the church and the parking area.

Vice Chairman Ribble called for speakers.

Father Costas Pavlakos, the priest from Saint Katherine's Greek Orthodox Church of Northern Virginia, Falls Church, Virginia, came forward to speak. He said Saint Katherine's was the only existing Greek Orthodox Church in Fairfax County, and it serviced all of Northern Virginia. He had been there for almost four years, and the church had a wonderful relationship with the neighboring parishes and their ministerial associations in the area. Father Costas said the purpose of the school was to provide the children a chance to learn the Greek language and culture, and teaching their faith was an important part of their life and kept their families intact. He said he was a first generation American, but most of the families were third or fourth generation and had intermarried through other faiths. He said the church had a Greek language school, and many times people came in and asked to learn the language. The European Union used the facilities once a year for about 10 or 15 people and would take the church's tests on the Greek language in order to be approved in academics or business. Father Costas said there had been seven churches in the area, and most of them were now closed with the exception of Saint Anthony's.

Tony Alexis (phonetic), 3403 Arnold Lane, Falls Church, Virginia, came forward to speak. He stated that he was a parent and a member of the Saint Katherine's community, and as a parent, he was a member of the organizing committee. He said that the last report he read was that up to 70 percent of their community were marrying outside of the faith. He stated that his wife was American and he was as well, but his wife was born in North Carolina and was learning the Greek language. Mr. Alexis said he saw the school as a "grandmother and grandfather" program for their kids. There were a lot of things to teach the children, and the church was working under the direction of Dr. Karen Banks to set up a program where the kids would learn through play to understand their religion, language, myths, and music in order to maintain their heritage. He said the Hellenic culture was over 3,000 years old, and one thing that the Greeks did 3,000 years ago was offer a program called Padia that would teach kids early on about life. Mr. Alexis said the contents of children's consciousness and how they saw themselves was very important.

Phil Conrad, 6008 Hardwick Place, Falls Church, Virginia, came forward to speak. He stated that he was authorized by Ms. Teresa Wilson, the President of the Hardwick Court Homeowners Association, who was unable to attend, to speak on behalf of the 50-unit townhouse community abutting the southern portion of Saint Katherine's Catholic Church. Mr. Conrad said his residence was one of 15 attached townhomes adjacent to the southern portion of the church property. He said there were currently 2,000 students in various public and private schools in Fairfax and Arlington Counties located within a half mile radius of Hardwick Court, and his community was at a tipping point in terms of density in development and traffic. He said that from inside and outside of his property, he could see children playing on the new playground, could

see and hear the trucks and workers that load catering and event equipment, and could hear in his home the bass frequency produced by bands and deejays, often past the allowed hours. Mr. Conrad said he had filed complaints and was asking the Board to deny the non-residential use permit sought by the church. He said the current application should be denied under the theory of res judicata because it was a matter already judged, and the church's claim for an application should be precluded from the jurisdiction of the Board. He said the church had four years to address existing concerns and had not exhausted all remedies available prior to asking the Board for approval of the nursery school for the second time in four years. Mr. Conrad said the current application was not materially different from the application that had been previously denied by the Board. He said the application did not state that the school would only be for church members and their families. He said the homeowners association believed that most of the elements that resulted in the previous denial of the application were still present, violations of zoning regulations and County code as well as traffic safety and environmental concerns.

Mr. Conrad stated that he had submitted evidence to the Board that the new playground was built inside an EQC or RPA without approval as required by the Chesapeake Bay Preservation Ordinance of 1993, and it was constructed after the conditions of 1994 that the Board had earlier mentioned. He said he had pictures that showed the date stamp of the manufactured playground equipment as 1996 and pictures from 1987 that show the old playground in the condition described earlier. He said there was evidence of past and present violations of County zoning regulations as they pertained to the hours of operation of Saint Katherine's church as recent as Friday, October 27, 2006, when there had been an event that ran past 12:45 a.m., while zoning regulations for Friday night currently permitted operations until 10:00 p.m. Mr. Conrad said there had been many letters submitted that complained about the hours, and the latest example was what he saw as the church's disregard and admitted ignorance to County Zoning Ordinances. He stated that at the open forum held November 1st at the church, he asked the Chairman of the church council whether he was aware of zoning regulations prohibiting activities beyond 10:00 p.m. on Friday nights, and the Chairman replied that he did not know. Mr. Conrad stated that if the church paid more attention to the impact of its uses on its neighbors, they might be a more receptive audience. He said that the traffic safety and environmental concerns had been well documented in letters, testimony, and the staff report, the turn lane on Glen Carlyn was a blind corner, and there were reports in 2002 from DOT that differed from the current recommendations by DOT. Mr. Conrad stated that the playground was too close to the homes on the southern edge of the property, and the intensive use and noise would prohibit them from the quiet enjoyment of their residences.

In response to questions from Mr. Hart regarding the music, Mr. Conrad said he could hear the bass frequency, and the church building was frequently used for social events such as weddings that had bands and deejay music. He said he heard it during the hours that were permitted, and oftentimes the music could still be heard after the hours that the church was zoned for. He said he had complained on several occasions to the Fairfax County Police and to Jim Ciampini, the zoning inspector, and other neighbors had also filed complaints about noise.

Mr. Hart asked whether staff was aware of any pending enforcement issues regarding the noise or anything else, and Mr. Varga answered that there had been a recent complaint which was currently under investigation by Zoning Enforcement. Mr. Hart asked whether it was about loud music or something else, and Mr. Varga answered that he believed that it was for loud music, but he could not substantiate that.

Vice Chairman Ribble asked whether the zoning inspector was present. Mr. Varga said he was not.

Mr. Hammack asked where Mr. Conrad had found the hours of operation for the church. Mr. Conrad stated that he found the hours in the previous application to the Board, and Mr. Ciampini confirmed to him verbally that they were limited until 10:00 p.m. on Friday night. Mr. Hammack stated that he did not see that in the development conditions. Mr. Conrad asked whether a development condition or existing zoning laws should be followed. Mr. Hammack stated that when the church had been approved, it was the development conditions that provided guidance to the church, and perhaps Mr. Chronis could deal with that.

Bruce Gruenewald, 6012 Hardwick Place, Falls Church, Virginia, came forward to speak. He said he lived immediately south of Saint Katherine's Church. He said the intersection of Glen Carlyn and Manchester was a major commuter cut-through, and people took the route to avoid Seven Corners. He said it was a three-way intersection, and the only traffic regulation was on Manchester. He provided a photograph of Manchester facing the Greek Orthodox Church, and the stop sign could be seen in the middle of the road.

Mr. Gruenewald said there were two lanes with two turning arrows, a left-turn lane and a right-turn lane, with nothing to indicate going straight into the Greek Church was allowable, and parents who were picking up or dropping off coming from Manchester would have to take one of the lanes and go directly across. He said that if someone was trying to cross to the entrance of the church, they would have to wait for both lanes to clear, and if they were in the right-hand lane, they would block traffic in its entirety on Manchester. Mr. Gruenewald stated that approval of the application would effectively make it a four-way intersection in both the morning and evening rush hours. He said there was a fire lane along Glen Carlyn Road that the church was previously asked to address, the no parking zone immediately opposite the church, and there was now a fire lane with signage that began at the emergency drive. He took photographs the last two Sundays during the 10:30 a.m. church service and said that the no parking sign was on the left-hand portion of the photograph, the fire lane designation, and there were three cars parked in the fire lane on Glen Carlyn Road on October 29th, 2006, and five cars on November 5th, 2006. Mr. Gruenewald stated that even though the church and its parishioners had successfully addressed the no parking areas immediately opposite the church, they were currently having problems with the fire lane on Glen Carlyn Road between the emergency exit and Hardwick Place.

Mr. Gruenewald said that on the plat he was Lot 7 on Hardwick Court, with his rear window facing the playground, and the manufacturer's stamp on the plastic slides on the playground clearly indicated that they were manufactured in July of 1997. He said the playground had been replaced when his son was in preschool in the fall of 1998 or the spring of 1999. He said the playground Mr. Chronis had played on as a child had been completely removed, including the monkey bars, the swings, and the horses, and a new playground had been constructed in its place with new equipment, new horses, a new swing set, and picnic tables. Mr. Gruenewald said that a perimeter was created around that playground with six-by-six timber, and it was fenced with mulch dumped into it. It was expanded in size approximately twofold during that period, and nothing had been done to address it since the previous hearing. He said the storm ditch began between Lots 6 and 7 on Hardwick Court and was constructed in the early '60s when the development was put into place because the floodplain began on that property line. Mr. Gruenewald said the 100-foot floodplain was three feet from his back porch, and the ditch was put in place by the developer so they could proceed with the development itself.

Darlene Shields, 6022 Hardwick Place, Falls Church, Virginia, came forward to speak. She stated that she and her husband, Jack Williams, own a townhouse that overlooked the Long Branch Stream and Saint Katherine's Church. Ms. Shields said one of the main reasons they had bought the townhouse 13 years prior was that it offered them a peaceful quality of life that was rare so close to Washington, D.C., because the home backed up on the stream and wide floodplain, with only church property on the other side. She said that when they bought the home, they never dreamed that Saint Katherine's would become a nuisance rather than the peaceful neighbor that helped attract them to the community. Ms. Shields said that they had expected Sunday morning church traffic and were comfortable with that reality, but if the church was allowed to establish a nursery school, every morning would bring Sunday morning traffic to the neighborhood and would make the community less peaceful. She said they expected car doors slamming beginning at 7:30 a.m. when the children would be dropped off and again at 6:00 p.m. and extra trash generated by food service which could possibly become a public health nuisance attracting rodents and additional noisy trash pickups to handle the increased garbage that was currently collected at 4:00 a.m. Ms. Shields said that over the past 13 years, they and many of the neighbors had invested time and money to improve the townhouses, which helped increase the value of all the properties, and she was convinced that allowing a school generating a great deal of traffic would wipe out the gains they had seen in property values. Ms. Shields stated that Saint Katherine's proposed nursery school would adversely impact the current high quality of life that was so important to them, their neighbors, and potential homebuyers in the future.

Sandy Szymanski, 6016 Hardwick Place, Falls Church, Virginia, came forward to speak. She said she and her husband had lived there for some time, and if the proposal involved a small number of children, then she would be in favor of the Greek Orthodox Church conveying their religion and language to those children, but they were talking about 80 children. She said her townhouse looked out onto the area that the drop-off and pickup points would be, and wherever the playground ended up, they would be listening to children all day. She said that although this would only be a 10-month program, the days that the children were out would be good weather days, and a neighbor might want to open the windows and enjoy that area. Ms. Szymanski said there were already three churches and two schools nearby, and she did not have children, but knew of daycare facilities in the neighborhood. She asked how much more they were supposed to take on.

Richard Looning, 6010 Munson Hill Road, Falls Church, Virginia, came forward to speak. He stated that he lived about a half block down from the Greek Church, so he was not bordering it like the townhouse people, but saturation was an issue for him. He said that having the entrance right after a blind corner meant they were stuck between two schools, and on Manchester there was a huge condominium complex on each side, so there was a great deal of traffic there already. Mr. Looning said that having the traffic turn right to go down to Carlin Springs Road would either have cars heading toward Columbia Pike or what is already a bottleneck in front of Haycock Elementary on Carlin Springs Road and Route 50. He said the church was well aware of the traffic impact, and close to 15 years prior, the Seventh Day Adventists wanted to build a small church and childcare directly across the street from the Greeks, and the Greeks were the biggest opposition to that with traffic being their main argument. Mr. Looning said that the poor quality of life for them that they were already dealing with involved the heavily traveled roads and not very well laid out intersection, and to put another entrance there would make it much worse. He said the Greeks talked about the fact that the school would be for their native congregation, but he found it hard to believe that all of their congregation was in the immediate surrounding area, so this would actually bring about an impact on people who live there to serve people coming from outside of the area, not conducive for a quality neighborhood environment. Mr. Looning stated that if the church was genuine about their feelings regarding this, when they got denied four years ago about the playground being in violation, they would have moved it, but he did not believe they would move it, and if they were approved today, then in the future they would just have to make amendments to what was already there.

In his rebuttal, Mr. Chronis stated that he was happy at the level of opposition they received for this application because it served to emphasize that this was not the same application as the last time. He said the previous application initiated twice as many speakers, and the concerns were much worse than what was now brought forth. He said the fact that there was half as much opposition was a good sign, and unfortunately there had been no one authorized to speak on behalf of the entire association, despite the comments made earlier.

Mr. Chronis said the church had not received any of the noise violations. He said the hours were accurate, and they had no development conditions regarding hours of operation. He said all of the parties and social events, such as wedding receptions and religious functions, had security in place to make sure that things did not get out of hand. Mr. Chronis stated that the church did not want to exclude anyone from ever becoming a member of the church. He said the public street was not a fire lane, and the County or VDOT would not put fire lanes on public roads. If there were issues with parking, it did not only come from the applicant since there were other uses in the neighborhood on Sundays, like Saint Anthony's. Mr. Chronis said that if there were issues with extra trash, they would do extra pickups. He said that during winter hours, the children would not be playing outside during the day that the church had a multi-purpose room where the children could play, and there would never be 80 kids on the playground all at one time. Mr. Chronis stated that he did not think this was an unreasonable use for a church, and it would be a non-competing use during the weekdays. If the program had been held on Sundays, it would be considered a competing use, but that was not the case. He indicated that if they moved the playground to the other side, it would either be in the conservation easement or affecting another whole set of neighbors, and no one would be happy with any of those locations. He suggested the playground stay where it has been.

Mr. Beard asked whether Mr. Chronis had meetings with the neighbors and if there were any ad hoc committees or had been any communications between the church and its neighbors. Mr. Chronis stated that they had a meeting the previous Wednesday night at the church that lasted for about an hour and a half, and 20 of the citizens from most of the townhouses showed up. He said several members of the community publicized the meeting within the townhouse communities with the church providing meeting space. Mr. Chronis said that those who complained about traffic were cordial at the meeting and also expressed concerns about whether the program would be open to everyone or just the church's community.

Mr. Hammack asked Mr. Chronis whether the church had a Greek festival, and Mr. Chronis said it did. Mr. Hammack stated that he was personally familiar with the festival because he had attended and had seen the parking congestion. He asked if the church intended to have the nursery school operate during the same time the Greek Festival would operate. Mr. Chronis answered that they would not. He said the Friday of the Greek Festival it began at 12:00 p.m., ended about 6:00 p.m., and was sparse in attendance. He said that if they had to close down the center for that day, they would do that. Mr. Hammack asked whether it would be a problem to put that in the development conditions, and Mr. Chronis answered that they could put it that on

two Fridays a year during the Greek Festival, they would not be in operation.

Mr. Hammack said that Condition 7 would require the church to obtain a shared parking agreement prior to the issuance of a non-RUP for the nursery school, and he wanted to know why that was required, how that would be intended to function, and with whom they would share it with. Ms. Langdon answered that the church and the school would share parking spaces with each other. She said that the two different uses, a place of worship and a nursery school, had separate parking requirements, and per the Ordinance, there would have to be enough parking for both uses in order to park separate of each other, and the required on-site parking would be calculated by adding together the seating for the church and the school. Ms. Langdon said that since the site did not have that many parking spaces, it was allowable under the Ordinance for the applicant to apply to DPWES for shared parking because the church met on Sunday and the school would meet during the week at different times. She said the condition staff proposed was a standard condition that staff had used on quite a few churches that could not meet the parking requirements for both uses.

Mr. Hammack stated that he knew shared parking had occurred in the past, but he did not remember where it had been a nursery school Monday through Friday and church services on the weekend. Ms. Langdon stated that there was an application form to request that type of agreement, the applicant would have to provide justification to DPWES, and it may or may not be approved. Mr. Hammack said he recalled applicants that had shared different sites. Ms. Langdon said they would share the same site since they did not have enough parking for both uses at the same time. Mr. Hammack asked whether the applicant would have a problem with the shared parking, to which Mr. Chronis replied that they would not.

Vice Chairman Ribble closed the public hearing.

Mr. Hart said he was prepared to make a motion to defer decision on SPA 93-M-119-02. He said there were a number of issues that the Board needed more information on. He wanted to know what was approved on the previous site plan for the play area and if that had been expanded, enclosed, filled in or changed in any way. He wanted information about the 20-foot access easement and whether the County had any position regarding the easement. He thought the wording of the easement may explain more about fences or obstructions and what happens. Mr. Hart said he wanted to have someone from the Department of Transporation at the next meeting. He said he did not understand how someone would get from South Manchester Street with no arrow to go straight. He asked which lane someone was supposed to go straight in, and if they restriped for a left lane on Glen Carlyn, why they would not restripe Manchester Street. Mr. Hart stated that it was currently a bad intersection, and there had been some suggestions in the testimony regarding existing violations or issues with parking along Glen Carlyn Road. He wanted to understand the conservation easement issue more clearly and pointed out that Mr. Hammack had made a suggestion about a development condition being added to address possibly closing the nursery school for part of the day during the Greek Festival. Mr. Hart said he also wanted to see if moving the playground would be feasible and whether or not another area would be a better location.

Mr. Byers said that Mr. Conrad had stated that he spoke as a representative for the homeowners association, and it would be helpful if he had a formal letter or formal policy position from the homeowners association signed by the president or someone on the Board of Directors before the Board made a final decision. Mr. Byers said the transportation issue was serious, but what concerned him the most was that when looking at the development conditions in SP-93-M-119, Condition 9 specifically indicated that the applicant must meet the Department of Environmental Management's water ordinance and the Chesapeake Bay Preservation Ordinance. Mr. Byers said the development condition did not say anything about when the playground was established. He said the development condition stated that the applicant was to comply with the condition, and either they were in compliance with the condition or not. He said he wanted the issue addressed because it clearly stated that development of any kind in the EQC/RPA represented a potential for water quality degradation and interference with the natural habitat of organisms that lived in the EQC and the RPA. Mr. Byers said the applicant had refused to move the playground outside the EQC/RPA because the playground was constructed before the designation and caused no environmental degradation. Mr. Byers said that was a direct variance with what staff at Fairfax County indicated, and the issue regarding the playground needed to be resolved. He suggested that in situations like this not everyone could be satisfied, but he believed that the communication and meetings between the two groups was good, and if the church and its neighbors could formulate an understanding of some kind and bring it before the Board, it would be better for all parties involved. Then the Board would only have to address one or two things.

~ ~ ~ November 7, 2006, GREEK ORTHODOX CHURCH OF NORTHERN VIRGINIA, TRUSTEES, SPA 93-M-119-02, continued from Page 670

Vice Chairman Ribble requested the zoning inspector be present at the next meeting. Vice Chairman Ribble told Mr. Conrad that if there had been police reports, he could follow up on them, and the Board would like to see any police reports filed.

Mr. Hart moved to defer decision on SPA 93-M-119-02 to February 13, 2007, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-0. Ms. Gibb recused herself from the hearing. Chairman DiGiulian was absent from the meeting.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding McLean Bible Church in the U.S. District Court for the Eastern District of Virginia, 106CV769, and the companion case in the Circuit Court of Fairfax County, 2006-8305; Couture Tehmina, Inc. vs. BZA in Circuit Court of Fairfax County, 2006-13072; Concerned Citizens of Hollin Hall in the Circuit Court of Fairfax, CL-2006-2456; Virginia Equity Solutions vs. BZA in the Circuit Court of Fairfax County, CL-2005-6316; Board of Supervisors vs. BZA in the Circuit Court of Fairfax County, CL-2006-10952; and the BZA vs. Board of Supervisors in the Circuit Court of Fairfax County, and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 11:01 a.m. and reconvened at 11:37 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Beard was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Mr. Hart moved that the Board authorize Mr. McCormick to take the actions that he discussed with the Board in the Closed Session. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard was not present for the vote. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 7, 2006, Scheduled case of:

9:30 A.M. DANIEL F. STURDIVANT, II, A 2006-LE-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure, which is located in the front yard of property located in the R-3 Cluster District is in violation of Zoning Ordinance provisions. Located at 5317 Foxboro Ct. on approx. 12,739 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 91-4 ((5)) 62.

Vice Chairman Ribble noted that A 2006-LE-038 had been administratively moved to January 23, 2007, at 9:30 a.m., at the appellant's request.

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~ ~ ~ November 7, 2006, Scheduled case of:

9:30 A.M. SHENANDOAH LANDSCAPE SERVICES, INC., A 2006-PR-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a Contractor's Offices and Shops and a Storage Yard, has erected structures without valid Building Permits, is allowing the parking of more than one commercial vehicle, and did not obtain an approved grading plan for land disturbing activity on property located in the R-1 District, all in violation of Zoning Ordinance provisions. Located at 3550 Marseilles Dr.,

11100-1115 Phoenix Dr. and 3546 Marseilles Dr. on approx. 12.82 ac. of land zoned R-1. Providence District. Tax Map 47-3 ((1)) 41, 42A, 42B and 43.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Michael Congleton, Senior Deputy Zoning Administrator for Zoning Enforcement/Property Maintenance, Zoning Administration Division, presented staff's position as set forth in the staff report dated October 31, 2006, from Jayne Collins. Mr. Congleton stated that the issue was the use of a 12-acre residential piece of property being used as a contractor's office and shop. He stated that since the adoption of the first Zoning Ordinance in 1941, the property had been zoned either agricultural or residential and had been owned by the Byrd family since the early 1960s. Mr. Congleton said that in April of 2006, staff conducted an inspection on the site and found a new car storage yard housing several hundred automobiles, a used car sales facility, a waste removal company, a moving company, and the appellant's business, Shenandoah Landscaping, which was a full service contractor's office and shop. Mr. Congleton said that staff also found numerous structures on the site, and there were pieces of equipment in vehicles. Mr. Congleton indicated that a review of records had shown that there had been no site plans, grading plans, or building permits approved, and that no inspections were conducted and no non-residential use permits had been issued. Mr. Congleton said that as a result notices of violations were sent to all of the tenants, and the owner and all parties involved had received their notices. Mr. Congleton noted that the basis for the appeal was that Shenandoah Landscaping Company was a tenant, and they felt they were not responsible for their actions on the site. Mr. Congleton also noted that Sect. 18-901 of the Zoning Ordinance provided in part that any person, whether the owner, the lessee, the principal, the agent or an employee, who violated the Zoning Ordinance was subject to enforcement action. Mr. Congleton stated that paragraph 2 of Sect. 18-901 further provided that when the Zoning Administrator became aware of a violation, they served notice to the person committing or permitting the illegal activity to occur and noted that there appeared to be no dispute in this case regarding illegality of all the uses on the site by the tenants and by the owner. Mr. Congleton said that all statutory requirements of Sect. 18-901 had been met through the issuance of notice of violation to all of the tenants and the owner.

John Foust, the appellant's agent, 7822 Swinks Mill Court, McLean, Virginia, presented the arguments forming the basis for the appeal. Mr. Foust stated that in 2004 Shenandoah Landscape Services leased a portion of the property from Mr. and Mrs. Byrd. Mr. Foust mentioned that a copy of the lease was attached to the staff report, and in the lease the appellant intended to use the property to conduct the landscape contracting business from the lease site. Mr. Foust stated that as indicated in Attachment 3 to the staff report, the Byrds jointly owned the property since at least 1989, and as the appellant understood, they had owned it many years prior to that. Mr. Foust said that in photo 3 included in the staff report as Attachment 7, it showed two residences on the site, with one of the residences belonging to Mr. and Mrs. Byrd, and the other was the residence of their daughter Linda Byrd-Dennis. Mr. Foust stated that several other commercial enterprises were leasing portions of the Byrds' property at the time the lease was executed, and in the lease the Byrds warranted that the appellant's intended use of the property was consistent with the Zoning Ordinance. Mr. Foust said that in 2006 the Byrds renounced any grandfathered rights they may have had, and the County staff advised the appellant that its use of the Byrds' property violated the zoning code. Mr. Foust stated that the appellant was not challenging staff's conclusion that the appellant could not use the Byrds' property to operate its landscaping business, and Mr. Foust noted that the appellant was actively looking for an appropriate site to relocate its business to. Mr. Foust indicated that the staff report misstated the issues on appeal, and on page 2 of the staff report under the caption issue, staff set forth the determinations that it stated the appellant was appealing. Mr. Foust said that staff's statement of the issue to be decided by the appeal was not correct. Mr. Foust stated that the appellant was not appealing staff's determination that the appellant has established a contractor's office, shop, and storage yard in violation of the Zoning Ordinance provisions, given the fact that the grandfathered provisions apparently did not apply. Mr. Foust said that the appellant does not appeal staff's determination that the appellant had been allowing the parking of more than one commercial vehicle in violation of the Zoning Ordinance provisions and did not challenge staff's determination that the appellant could not conduct their landscaping business on the Byrds' property.

Mr. Foust said that the appellant was only appealing staff's determination that the appellant erected structures without valid building permits and the appellant did not obtain an approved grading plan for the land disturbing activities on property located in the R-1 District. Mr. Foust stated that the appellant

acknowledged that these activities may constitute violations of the Zoning Ordinance; however, the appellant appealed staff's finding that the appellant committed and was required to clear these violations. Mr. Foust specified that the appellant appealed these determinations to ensure that the appellant was not held responsible for the cost of correcting zoning violations. Mr. Foust said that when the appellant entered the lease, with a few minor exceptions which would be cleared when they departed the property, the buildings that staff had directed the appellant to remove were already constructed, and the land disturbing activities found by the staff on the southwestern corner of Route 41 had already occurred. Mr. Foust said the notice of violation letter received by the appellant was dated July 18, 2006, and a copy was included in Attachment 1 to the staff report.

Mr. Foust noted that the Byrds were not given a notice of violation until the appeal was filed, and that was why they were concerned that staff was trying to make Shenandoah Landscape Services clean up decades of problems created by the Byrds. Mr. Foust said that the notice of violation received by the appellant attempted to make the appellant responsible for all zoning violations found on the Byrds' property; however, the notice and the staff report included several critical factual allegations and conclusions that were not correct. Mr. Foust stated that the following discussion addressed those and clarified the record, and that the staff report alleged that the appellant subleased to Craig Van Lines, Alice Roloff, and S&S Motors. Mr. Foust stated that was absolutely not correct. Mr. Foust said that these companies leased from the Byrds, and they were all on the Byrds' property when the appellant leased its portion, and there was absolutely no relationship between the appellant and these companies. He said that any attempt to make the appellant responsible for zoning violations committed by them was not justified.

Mr. Foust indicated that the appellant's lease allowed the appellant to sublease, and the appellant did sublease to several new car dealerships consistent with the use that the Byrds had put to the property. Mr. Foust said that the Byrds leased to S&S Motors, a used car dealer; and when they were told that this was in violation of the Zoning Ordinance, the appellant immediately terminated the subleases, and the car dealership cooperatively and immediately removed the cars from the site. The only cars remaining on the site were cars belonging to S&S Motors, a tenant of the Byrds, not the appellant. Mr. Foust stated that the staff report referred to a letter dated January 5, 2006, from the USD Compliance Inspector for the Commonwealth of Virginia Department of Environmental Quality. Mr. Foust said that staff alleged that the appellant did not comply with the directions contained in that letter and that the allegation was not correct. Mr. Foust explained that the letter was directed to Mr. Byrd and/or Phoenix Development, a former tenant of Mr. Byrd, not the appellant. Mr. Foust said that he imposed no direction or requirements on the appellant, and the staff report alleged that a land area in excess of 2500 square feet and more than 18 inches in depth has been disturbed, primarily on the southwest corner of Lot 41, and that no grading or site plan was submitted to or approved by DPWES for the land disturbing activity. Mr. Foust said that in its notice of violation to the appellant, staff directed the appellant to clear this alleged violation by either obtaining a valid restoration plan and restoring the property to the grade shown on the plan, or by obtaining approval from the Director of DPWES for the new grading plan on the reference property until they grade the site in accordance with the approved plan. Mr. Foust said that contrary to staff's determination, the appellant had no responsibility for this land disturbing activity, and they believe that it occurred in the 1980s when Mr. Byrd or one of his other tenants allowed a contractor who was building Shirley Gate Road to dump dirt removed from the construction site onto the Byrd property. Mr. Foust said that the appellant had no involvement with that activity.

Mr. Foust indicated that the staff report stated that an inspection conducted on April 28, 2006, revealed that appellant had erected freestanding accessory structures and freestanding accessory storage structures on the property without obtaining requisite permits. Mr. Foust said that the staff report identified the numerous structures and buildings, and they can be seen in the pictures that are attached to the staff report. Mr. Foust stated that the notice of violation issued to the appellant directed the appellant to clear this alleged violation by removing in its entirety all buildings and structures which were not necessary to the residential use or to obtain building permits for any freestanding accessory structures and/or freestanding accessory storage structures, if any, which are accessory to the residential use. Mr. Foust stated that with very minor exceptions, which would be removed when Shenandoah Landscape Services left the property, the structure staff was referring to was constructed before and existed on the Byrds' property when the appellant's lease commenced. He said that to clarify the record, it should be noted that the photographs included in Attachment 7 to the staff report show more than the operations of the appellant. Mr. Foust said that also shown are the operations of the Byrds' other tenants, Craig Van Lines, Atlas Rolloff, and S&S Motors.

Mr. Foust stated that in conclusion, the appellant did not challenge staff's conclusion that the appellant could not continue to operate its landscape business from the Byrds' property. He said that the appellant would comply with the notice of violation by ceasing on a permanent basis its use of the property it leased from the Byrds for the operation of the landscape business; however, the appellant was not responsible for correcting the other zoning code violations found by staff. Mr. Foust stated that the appellant would relocate its business and return the site it leased from the Byrds to the condition it was in when it was leased; however, the appellant was not responsible for returning the site to the condition it was in when the Byrds starting developing it several decades before.

Mr. Hart asked staff whether they took issue with Mr. Foust's representations stating that Shenandoah Landscape Services did not do the site disturbance or that they did not put the buildings in. Michael Congleton, Senior Deputy Zoning Administrator for Zoning Enforcement/Property Maintenance, stated that staff did not have direct evidence that they conducted the land disturbing activities or that they constructed the buildings on the site. Mr. Congleton said that staff's position was that they were one of the lessees of the property in accordance with 18-901 and that they were obligated to take enforcement action against them because they were perpetuating a violation through the use of the buildings and the use of the property without any particular permits. Mr. Congleton stated that they served notices of violation to all of the other tenants stating the same thing, as well as the property owner. He stated that it was staff's position, as long as they were staying on the property, that they were responsible for the violations as much as the property owner was, as established. Mr. Hart asked if Shenandoah Landscape Services vacated the property and did not put the buildings up, would Shenandoah Landscape Services then be responsible for taking the buildings down. Mr. Congleton answered that if Shenandoah Landscape Services vacated the property and were no longer the tenants, the responsibility would fall to the property owners to remove the buildings and restore the site. Mr. Hart asked if Shenandoah Landscape were to become a former tenant and leave, but the buildings were still there, would we then ask that they come back and remove the buildings. Mr. Congleton stated that they would not do that.

Mr. Hart asked Mr. Foust how much time it would take for the appellant to relocate. Mr. Foust answered that they asked for several months additional time or longer, if possible, because it was almost impossible to find a site for the business. Mr. Hart asked Mr. Foust who had been asked. Mr. Foust stated that they asked the County Attorney, and he stated that the appellant wanted to enter into an agreement with the County that stated they would leave and not challenge the County's decision, but that they would need time to keep the business from going under. Mr. Foust stated that they were told that they could not enter into that type of agreement until after the County filed a lawsuit against the appellant, and then they would enter into a consent decree. Mr. Foust was concerned about the notice of violation because if the appellant did not have an agreement with the County and they filed a lawsuit and the issues were not challenged, then the appellant would be stuck with the findings that they were responsible for all of these things, including the regrading and the buildings. Mr. Foust said that they may be able to negotiate their way out of that, but that he did not want to get to that point. Mr. Foust wanted to arrange an agreement with the County stating that the lessee was ready to leave, that they would use their best efforts to find something as soon as possible with the goal of not putting the business under. Mr. Foust stated that this had been going on apparently on the Byrds' property for about 50 years and should end as soon as possible, but the appellant was not sure how much time they needed, and whatever the County gave them was what they would like to get because it is a difficult process.

Mr. Hart asked if they responded as to the length of time, and Mr. Foust stated they did not. Mr. Hart asked Mr. Foust to clarify if they asked for several months and that they stated it would have to be after the lawsuit was filed, and Mr. Foust stated that they had not engaged them in a negotiation and that they just advised them that they could not reach an agreement with them until a lawsuit was filed. He said the agreement would then be part of a consent decree which would be enforceable with a judgment by consent if they did not do what they were going to do.

Vice Chairman Ribble asked Mr. Foust if the lease was still in existence or if it had been terminated. Mr. Foust indicated that the lease was still in existence and that the Byrds told them that they wanted to terminate the lease within a year of entering into it. Mr. Foust stated that the appellant would not and that there were no grounds for termination, and that it was warranted that the zoning was correct. Mr. Foust said that the next thing they knew the County was there with a huge contingency of people pointing at zoning violations. Mr. Foust stated that Shenandoah Landscape Services, Inc., assumed and was told by the Byrds'

~ ~ ~ November 7, 2006, SHENANDOAH LANDSCAPE SERVICES, INC., A 2006-PR-048, continued from Page 674

attorney that they wanted to sell the property and that they wanted them off of it. Mr. Foust said that there would be issues between the Byrds and the lease long after the issues of the zoning were resolved.

Vice Chairman Ribble stated that they could probably terminate the lease if they wanted to. Mr. Foust agreed and indicated that the zoning lease specifically warranted that the zoning was appropriate, and it stated that if they were found to be in violation, they could give 30 days notice and terminate the lease on that basis.

Mr. Hammack asked if the Byrds, by waiving any grandfathering rights, conceded that they were in violation or that they breached the warranty in some way. Mr. Foust asked if that meant the appellant was challenging that. Mr. Hammack asked if they were given grounds, and Mr. Foust answered that they gave the County a letter which the appellant did not know about that stated that they waived all grandfathering rights on the grounds on which the zoning was understood to be acceptable. Mr. Foust said that it would be an issue in and of itself based on what they discovered as to whether they really gave that much up when they gave up their grandfathered rights. Mr. Hammack asked how much time the appellant would need to terminate their lease and get off the property. Mr. Foust stated that they had been advised that the County was talking to another tenant and giving them until next November. Mr. Foust stated that he was not advised that by the County, but that he heard that through various sources. Mr. Foust said that next November would be enough time, and if they got that much time, they would be confident they could leave, but anything less than that would be difficult. Mr. Hammack commented that their lease expired on June 30, 2007. Mr. Foust indicated that the appellant had two one-year extension periods after the 2007 expiration.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision on A 2006-PR-048 to January 23, 2007, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 4-0. Ms. Gibb recused herself from the hearing. Mr. Beard was not present for the vote.

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~ ~ ~ November 7, 2006, Scheduled case of:

9:30 A.M. ROSEMARY L. STARCHER/NVR HOMES, INC., A 2006-MV-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is permitting the operation of a sales office at Tax Map 107-4 ((20)) 10 without a valid Temporary Special Permit in violation of Zoning Ordinance provisions. Located at 9237 Old Beech Ct. on approx. 4,964 sq. ft. of land zoned PDH-5. Mt. Vernon District. Tax Map 107-4 ((20)) 10. (Admin. moved from 9/26/06 at appl. req.)

Vice Chairman Ribble noted that A 2006-MV-032 had been withdrawn.

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~ ~ ~ November 7, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal submitted by Emma A. Persigehl

Vice Chairman Ribble noted that the request for consideration of acceptance had been withdrawn.

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~ ~ ~ November 7, 2006, continued from Page 675

As there was no other business to come before the Board, the meeting was adjourned at 12:03 p.m.

Minutes by: Shannon M. Keane

Approved on: December 5, 2012

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 14, 2006. The following Board Members were present: Chairman John DiGiulian; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard and Nancy E. Gibb were absent from the meeting.

Chairman DiGiulian 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 DiGiulian called for the first scheduled case.

~ ~ ~ November 14, 2006, Scheduled case of:

9:00 A.M. THOMAS W. SPENCE, SP 2006-DR-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 12.1 ft. with eave 10.5 ft. from side lot line and 13.8 ft. with eave 11.4 ft. from rear lot line and permit reduction to certain yard requirements to permit addition 22.5 ft. from rear lot line. Located at 6245 N. Kensington St. on approx. 37,263 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (9) C.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Spence, 6245 North Kensington Street, Mclean, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The application included two special permit requests. The first was to permit a reduction to minimum yard requirements based on an error in building location to permit an addition, specifically an existing partially enclosed carport, to remain 12.1 feet with eave 10.5 feet from the side lot line and 13.8 feet with eave 11.4 feet from the rear lot line. A minimum side yard of 15 feet and minimum rear yard of 25 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side and rear yards; therefore, reductions of 2.9 feet, 1.5 feet, 11.2 feet, and 10.6 feet, respectively, were requested. The second request was to permit a reduction to certain yard requirements to permit an addition 22.5 feet from the rear lot line. Under the existing carport roof the applicant wanted to enclose a portion referred to as a covered breezeway and concrete pad on the plat. The enclosure would consist of adding a back wall on the covered breezeway and enclosing it under the existing carport roof. The applicant requested the addition to be located 24.5 feet from the rear lot line with a 2.0 foot eave, making the addition at its closest point 22.5 feet from the rear lot line; therefore, a reduction of 2.5 feet was requested. Staff recommended approval of SP 2006-DR-046 subject to the proposed development conditions.

Mr. Hart indicated that a shed was identified on the plat in the vicinity of Lot 5 with a height of 9.1 feet and appeared to straddle the line between Fairfax and Arlington Counties. He said it appeared to be the neighbor's shed that was encroaching on the applicant's property. He noted that the engineer had depicted it as partly on the applicant's property and asked if a shed as high as 9.1 feet would be allowed in that location. Ms. Langdon replied that the maximum height permitted in a minimum side or rear yard was 8.5 feet; however, it was her understanding that the shed did not belong to the applicant. Mr. Hart asked if the Board was supposed to act on the shed that was too tall and too close to the lot line. Ms. Langdon responded that staff did not know how that could be addressed if the shed did not belong to the applicant. Mr. Hart asked whether something else could be approved while there was a structure that was potentially a violation. Ms. Langdon stated that she did not know the answer, and if the Board wanted to add a condition that the applicant pursue the removal of the shed from his property, that could be done. She suggested the applicant speak to the issue.

Mr. Spence presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the shed in question was not his and belonged to his neighbor on the Arlington side of the property. He said the shed was not in good condition, and it would be possible for him to approach his neighbor and request that it be removed. He said he wanted to enclose a breezeway between the house and carport; however, he had been informed by the County that a building permit for the carport had not been recorded, and County staff had suggested that he file for a special permit. After looking at the architectural plans and the new plat, he said he realized that by closing the area in, the structure would be too close to the rear lot line, and he had submitted a request to be allowed to build it. Mr. Spence stated that his home had been built in the 1960s, he and his wife had purchased it in the 1980s, and at that time the

~ ~ ~ November 14, 2006, THOMAS W. SPENCE, SP 2006-DR-046, continued from Page 677

plat had shown the carport in its current location. He said he was in the process of trying to correct the discrepancies between his and the County's records.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2006-DR-046 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS W. SPENCE, SP 2006-DR-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 12.1 ft. with eave 10.5 ft. from side lot line and 13.8 ft. with eave 11.4 ft. from rear lot line and permit reduction to certain yard requirements to permit addition 22.5 ft. from rear lot line. Located at 6245 N. Kensington St. on approx. 37,263 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (9) C. 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 14, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses; and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, Reduction of Certain Yard Requirements; and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

~ ~ ~ November 14, 2006, THOMAS W. SPENCE, SP 2006-DR-046, continued from Page 678

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 recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 160 square feet) of the proposed covered breezeway and carport addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated, July 19, 2006, as revised through October 19, 2006, as submitted with this application and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family detached dwelling may be up to 150 percent of the total gross floor area of the dwelling (1,936 square feet) that existed at the time of the first expansion request. Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be consistent with the architectural renderings and materials included as Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 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. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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Because the Board would not be in session the following week, Mr. Hammack moved to authorize staff to send out letters concerning actions taken at the meeting without first having to submit them to the Board. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:00 A.M. JOSE M. & CAROLYN F. LOZANO, SP 2006-DR-053 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7420 Howard Ct. on approx. 10,306 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((6)) (D) 8.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jose Lozano, 7420 Howard Court, Falls Church, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a modification on the limitations of the keeping of animals to permit the keeping of three adult dogs. The Zoning Ordinance requires a residential lot of 12,500 square feet or more to keep up to four dogs. The keeping of two dogs would be permitted by right on the applicants' property.

Mr. Lozano presented the special permit request as outlined in the statement of justification submitted with the application. He said he had been unaware of the limitation on the number of dogs that he could keep on the property. He said he had the dogs for many years, did not want to give one of them away, and if one of them passed away, he would not replace it.

Mr. Hart asked whether the applicants had read and were in agreement with the development conditions. Mr. Lozano said they were.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2006-DR-053 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSE M. & CAROLYN F. LOZANO, SP 2006-DR-053 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7420 Howard Ct. on approx. 10,306 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((6)) (D) 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 November 14, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicants only, Jose M. Lozano and Carolyn F. Lozano, and is not transferable without further action of this Board, and is for the location indicated on the application, 7420 Howard Court (10,306 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.

~ ~ ~ November 14, 2006, JOSE M. & CAROLYN F. LOZANO, SP 2006-DR-053, continued from Page 680

3. This approval shall be for the applicant's existing three (3) dogs. If any of these specific animals pass away or are given away, the dogs shall not be replaced, except that two (2) dogs may be kept on the property in accordance with the Zoning Ordinance.

4. The yard areas where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.

5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:00 A.M. ESFANDIAR KHAZAI, VC 2004-DR-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed Lot 2 having a lot width of 20.0 ft and to permit existing dwelling 9.0 ft. from front lot line. Located at 7072 Idylwood Rd. on approx. 1.27 ac. of land zoned R-2. Dranesville District. Tax Map 40-1 ((1)) 12. (Admin. moved from 11/2/04, 3/15/05, 5/17/05, 8/9/05, 11/15/05, and 3/14/06 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-111 had been administratively moved to March 20, 2007, at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:00 A.M. HOLMES RUN ACRES RECREATION ASSOCIATION INC./FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 77-P-091-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 77-P-091 previously approved for community swim club and parking of Fairfax County school buses to permit modification of development conditions. Located at 3451 Gallows Rd. on approx. 3.83 ac. of land zoned R-3. Providence District. Tax Map 59-2 ((9)) (1) 6 and 7. (SV)

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Norman Gottlieb, the applicants' agent, 3332 Elm Terrace, Falls Church, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit amendment to amend SP-77-P-091, previously approved for a community swim club and parking of Fairfax County school buses, to permit a modification to the development conditions to permit the pool to open at 7:00 a.m. instead of 9:00 a.m., to permit school bus parking until the end of the school year rather than just to Memorial Day weekend, and to permit the deletion of the term limit to allow the continued parking of Fairfax County public school buses. Staff recommended approval of SPA 77-P-091-02 subject to the proposed development conditions.

Mr. Gottlieb presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said that refinements had been made since the approval of the special

permit by both the County's public school coordinators and the recreation association, and everything had run smoothly over the prior year. He stated that the amendment to the special permit would allow the association and the public schools to extend bus operations a few extra days until school ended, allow the pool grounds to remain open for their patrons and community events, and would allow them to compete for membership with the County recreation facilities for profit and non-profit facilities. Mr. Gottlieb said that since November of 2005 the association had received accolades concerning the successful arrangement between the two organizations and no complaints. He referred to the letters, e-mails, and petitions of support that had been submitted to the Board.

Mr. Hammack asked why the applicants were requesting a 7:00 a.m. opening. Mr. Gottlieb stated that the early opening had been requested to allow members of the association and community to swim laps and/or take Tai Chi classes next to the pool before going to work, and the activities would not generate noise. He said most of the County's recreation and YMCA centers opened at 6:00 or 6:30 a.m., and because of that people chose to join those centers and not become members of the association. He said the association had been established in the 1950s when there were no covenants requiring the property owners to become members of the pool. He said the Holmes Run Acres Recreation Association had to recruit members, and by increasing the hours of operation, they could compete with the County and YMCA.

Mr. Hammack said staff had previously been proponents of not allowing pools to open until 9:00 a.m., and he asked staff to comment on the request to open earlier. Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff had looked at a number of special permit applications concerning pools. Many of them opened at 8:00 a.m. for swim team practice, and that was why staff included the development condition that there would be no swim team practice before 8:00 a.m. She said staff did not object to an early opening for the reasons stated by the applicants. Mr. Hammack asked whether staff would take the same position with respect to other pools since applications had to be reviewed on a case-by-case basis. Ms. Langdon said it would depend upon the reasons. She said she was not sure that staff would support a noisy activity, like swim team practice, that early in the morning, but staff did not think the applicants' request was objectionable.

Mr. Hart asked whether there was a reason staff did not suggest development conditions that pertained to the use of bull horns and whistles. Ms. Langdon said that could be added, but she thought the reasons those conditions had been placed in other pool applications was because they wanted swim team practice early in the morning with requests for 8:00 a.m. openings. Mr. Hart said that if noise abatement was not a part of the development conditions, the applicants would be allowed to use that type of equipment. Ms. Langdon said she did not have the wording with her that had been used in other applications, but development conditions could be added that would apply to noise issues.

In response to questions from Mr. Hart, Mr. Gottlieb said home meets were held at their pool, which began at 9:00 a.m., and two to three were held during the year.

In response to a question from Mr. Hart, Ms. Langdon stated that no complaints had been filed with respect to the applicants' swim meets. She said that a majority of the pool was adjacent to school board property, and there were no houses directly affected. With respect to Development Condition 7, Ms. Langdon showed on the plat using the overhead projector where the busses had been parked, which a previous condition addressed, as well as other spaces on the site that had also been used for parking. She said that because the applicant had asked to use the bus parking lot until the end of the school year, there were certain limitations on space use, and staff was confining parking to eight specific spaces in the middle for bus parking.

Chairman DiGiulian called for speakers.

Ann Johnson, no address given, a member of the board of the Homes Run Acres Civic Association, came forward to speak. She said she lived in close proximity to the pool and had no problems with its operation. She said several of the homeowners were retired and had said they would like to be able to take a Tai Chi class or do lap swimming at the pool, but when the swim team begins practicing, there would be no time in the early morning for such activities.

Chairman DiGiulian closed the public hearing.

~ ~ ~ November 14, 2006, HOLMES RUN ACRES RECREATION ASSOCIATION INC./FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 77-P-091-02, continued from Page 682

Mr. Hart moved to approve SPA 77-P-091-02. He stated that he would adopt the rationale in the staff report that contained a favorable recommendation. He said that unlike the controversy that transpired the last time the case was heard, he thought the applicants had demonstrated during the past year that it would work and there would not be a problem making the arrangement permanent. He suggested that wording be added at the end of Development Condition 5 regarding there being no amplified music, use of bullhorns or loudspeakers, and use of whistles except in emergencies before 9:00 a.m. He said that what he meant was that there would be no noisemaking before 9:00 a.m. He said the wording from previous applications would be helpful.

Ms. Langdon stated that if the Board directed staff to add the conditions Mr. Hart referred to, they would, and it would eliminate the need for the applicants to return at a later date.

Mr. Hart stated that his intention was that the Board make the same restriction they had placed on the other applicants concerning early morning noise.

Mr. Ribble seconded the motion.

Mr. Hammack asked whether the Board was going to approve the application that day even though they would not be in session again for two weeks and whether staff was to be allowed to make the changes or did the Board want the case to be returned to them to ensure that the language was correct. Mr. Hammack stated that the applicant would have to comply with the Noise Ordinance in any case.

Mr. Hart said he did not want to have the applicants return in two weeks just for one thing, but if the Board wanted the applicants to return in two weeks, he was amenable to that.

Mr. Hammack asked if the decision could be deferred for two weeks. Mr. Hart agreed to that in order to ensure that the language was correct. Mr. Hammack said he had some reservations concerning no amplified music. Mr. Ribble seconded the substitute motion to defer decision for two weeks.

Chairman DiGiulian called for the vote. The motion to defer decision on SPA 77-P-091-02 to November 28, 2006, at 9:00 a.m., carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:00 A.M. RAYMOND C. ALEXANDER, SP 2006-LE-050 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 5908 Bush Hill Dr. on approx. 15,024 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((2)) (4) 8.

Chairman DiGiulian noted that the agenda indicated that the case had been moved to the previous date of October 31, 2006, and he asked Susan Langdon, Chief, Special Permit and Variance Branch, for clarification. Ms. Langdon said the application had been heard two weeks prior, and the Board had approved it.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:00 A.M. ELIZABETH M. AND BRUCE I. ALLISON, SP 2006-PR-051 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 23.0 ft. from front lot line of a corner lot. Located at 2842 Brook Dr. on approx. 8,370 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((7)) 49.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning

~ ~ ~ November 14, 2006, ELIZABETH M. AND BRUCE I. ALLISON, SP 2006-PR-051, continued from Page 683

Appeals (BZA) was complete and accurate. Bruce Allison, 2842 Brook Drive, Falls Church, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a reduction to certain yard requirements to permit the construction of a two-story addition 23 feet from the front lot line of a corner lot on the southern side of the subject property. The purpose of the addition was to expand and modernize the living space of the strucure and would include additional family living area and an expanded kitchen on the first level and a relocated bathroom. A renovated master bath and an additonal bedroom were proposed on the second floor. An existing one-story frame addition on the first floor would be removed and replaced with the proposed addition. An existing shed, fence, and basketball goal located along the Westover Street frontage of the property were also proposed to be removed. A minimum front yard of 30 feet is required; therefore, a reduction of 7.0 feet was requested. Staff recommended approval of SP 2006-PR-051 subject to the proposed development conditions.

Referring to proposed Development Condition 1 that would require the applicants to record the conditions among the land records, Mr. Ribble asked how staff would follow up to ensure that the applicants were in compliance. Susan Langdon, Chief, Special Permit and Variance Branch, said the Zoning Permit Review Branch would ensure that the conditions had been recorded when the applicants applied for a building permit because they would be required to submit verification to staff that the information had been recorded in the land records. She stated that staff had worked with the Zoning Administration Division on the development condition.

Mr. Allison presented the special permit request as outlined in the statement of justification submitted with the application. He said his house had been built in 1946, and there were many things that were deteriorating. He said he was hoping to obtain a permit not only to reduce certain yard requirements, but to be able to update the plumbing, windows, and other issues. He said he had attempted to take care of the problems within the setback limits, but unfortunately what he had proposed would create an unacceptable L shape to the house, which would cause him to have to reconfigure all existing layouts within the house in order to accommodate the changes he wanted to make to the home. Mr. Allison said he had talked to his neighbors and had submitted a petition signed by 15 of his closest neighbors who were in favor of the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2006-PR-051 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELIZABETH M. AND BRUCE I. ALLISON, SP 2006-PR-051 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 23.0 ft. from front lot line of a corner lot. Located at 2842 Brook Dr. on approx. 8,370 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((7)) 49. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony to meet all the standards required in those provisions of the

~ ~ ~ November 14, 2006, ELIZABETH M. AND BRUCE I. ALLISON, SP 2006-PR-051, continued from Page 684

Zoning Ordinance as set forth by staff.
3. Staff recommended approval subject to the proposed development conditions.
4. The nearby neighbors have all given their full support.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 1,032 square feet) of the proposed two story addition as shown on the plat prepared by Alexandria Surveys, dated July 13, 2006, as submitted with this application and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family dwelling may be up to 150 percent of the total gross floor area of the dwelling (1,576 square feet) that existed at the time of the first expansion request. Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

6. The limits of clearing and grading for the proposed addition shall be the minimum possible and existing vegetation on the property shall be preserved to the greatest extent possible.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:00 A.M. ST. JOHN'S EPISCOPAL CHURCH, SPA 85-S-053-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-S-053 previously approved for church to permit a private school of general education. Located at 5649 Mt. Gilead Rd. on approx. 4.42 ac. of land zoned R-1, HC, HD , SC and WS. Sully District. Tax Map 54-4 ((1)) 24B and 25A.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, the applicant's agent, 10511 Judicial Drive, Fairfax, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 85-S-053, previously approved for a church, to permit a private school of general education. The proposed school would be a full-time school with emphasis on religious studies. Enrollment would be for kindergarten through seventh grade and would not exceed 99 students. There was no increase in building size or any other construction associated with the application. The school was proposed to be operated from existing facilities on site. The applicant received a recommendation of approval from the Fairfax County Architectural Review Board regarding the current special exception application amendment. Development Condition 7 contained in Appendix 1 to the staff report was corrected to change the reference from Wharton Lane to William Peterson Way. Staff recommended approval of SPA 85-S-053-03 subject to the proposed development conditions.

Mr. Fox presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the application was for a school of general education at facilities that were completed in 1994. He said the church was a religious oasis, the proper place for the operation of the school, and had an abundance of space for classrooms which, if not used for that purpose, would remain empty throughout the week. Mr. Fox stated that it was proposed that the school of general education would operate from the same facilities during the week, and the church currently operated from those rooms on the weekends. He noted that Lot 24B at the rear of the church was an open field which was proposed to be used for a playing field. He said information had been presented to the Architectural Review Board, and they had no problem with it. With respect to traffic, Mr. Fox displayed a diagram and showed the general route of traffic from Wharton Lane to the drop-off point and exit from the property. He said traffic flow would allow all the traffic to get off the public right-of-way, and any stacking would take place on the school property.

Mr. Fox said the church leadership could not agree to the proposed Condition 16, which was a condition that should not legally be imposed upon them. He said that if what was proposed was done, it would encroach upon the transition yard between the church and the adjoining property and would be located approximately a foot from the parking that was delineated on the site plan, and it was a need that was generated by the general public, not by the applicant. Mr. Fox said the imposition would run contrary to the Supreme Court's admonition in *Cupp vs. the Board of Supervisors,* which stated that the imposition or condition must be something that was uniquely generated by the use that was proposed. He said that in 1994 or 1995 when the site plan was approved for the addition that had been submitted to the Board, it contained the same Comprehensive Plan language that was then in place. He said there was no imposition either at that time or during the special permit process, and such an imposition would totally obliterate the transition yard and would be within one foot of the parking area. He said he did not believe that the church had to answer for a general public need that would cause the church to be nonconforming, and he requested that the Board delete Condition 16 as being both illegal and confiscatory.

Mr. Fox said he was also concerned about the proposed Condition 18, which he understood was standard wording, but he questioned the logic of the proposed operation, and he referred to proposed Condition 9, which specified that the hours of operation of the school would be from 7:00 a.m. to 5:00 p.m. He said those conditions could mean that the operations may be conducted as simultaneous events, when, in fact, the church and school uses were complementary activities and would be occurring at different times. He said those conditions could lead someone to believe that the applicant and the school were different parties because the conditions referred to a shared parking agreement, and you could not have an agreement with yourself. He said he supported the intent of Condition 18, but he requested that it be modified to read that prior to the issuance of a Non-Residential Use Permit, the applicant shall demonstrate that the church and the school of general education were not used simultaneously and may share existing on-site parking without disruption to either use. If shared parking could not be demonstrated and approved by the Department of Public Works and Environmental Services (DPWES), the applicant shall add such additional spaces as deemed necessary or the number of seats in the sanctuary and/or the number of children in the school shall be reduced to correspond to a number that can be supported by the parking spaces provided on-site as determined by DPWES. He said he was attempting to show that although there was one applicant, there

were two uses, and under the Parking Ordinance, they imposed two different standards, but there was a methodology within the site plan review process whereby staff looked at shared uses.

Mr. Fox stated that the school use would be complementary to that of the church and would fit into the neighborhood. He requested the Board's approval of the application with the proposed modifications.

Mr. Hammack asked whether the Board had received a copy of the Architectural Review Board approval. Mr. Fox said he had received a copy that morning. Mr. Hammack asked staff if the letter and the applicant had satisfied Condition 19. Mr. Chase replied that they had.

Mr. Hammack asked staff to comment on Mr. Fox's suggested modification to Condition 18. Ms. Langdon stated that staff had not yet seen it in writing, so it was difficult to address completely, but it did not appear to be essentially different from what staff had already proposed. She said that it was a Zoning Ordinance requirement that these uses each meet their own parking standards. Even though the school may be run by the church, for Zoning Ordinance purposes, they were two separate uses on a site, and they each had separate parking requirements. She said the Zoning Ordinance did have a section that allowed places of worship to apply to DPWES to obtain a parking reduction or shared parking agreement so the two separate uses could use the same parking lot. She said the argument that Mr. Fox was making was one that would be submitted to DPWES and called for more justification to obtain an approval. Ms. Langdon said the development condition was standard, staff had used it for many years, and it seemed to work well.

In response to another question from Mr. Hammack, Ms. Langdon said the part concerning the nursery school should be removed and should only reference the school.

Mr. Ribble asked who would be running the school. Mr. Fox said the church had a contract with Ad Fontes Academy, and they were a lessee operator. He explained that the church wanted to reserve the right to hire another operator if Ad Fontes decided they did not want to continue with the operation of the school.

Mr. Fox referred to the Zoning Ordinance grid presented on page 5 of the staff report. He said it listed parking spaces which stated the required spaces for the church of 113, the school of 19, for a total of 132 spaces, with 117 provided. He said that it was the applicant's position that the spaces were not cumulative parking spaces, and the modification that he was requesting was designed to do that. He said the applicant believed that there was already sufficient parking on the site, and they could demonstrate that the uses were complementary and not simultaneous. He said that was why he had submitted a modification to the language.

Mr. Hart stated that the Board had discussions previously with respect to *Cupp vs. Board of Supervisors.* He said Mr. Fox was objecting to Condition 16, and he asked staff how that condition was different from the *Cupp* case and why staff had included the condition if what the applicant was doing was not changing the traffic on Leland Road. Ms. Langdon said the applicant would be adding 99 students, and that would cause a significant increase in ingress and egress traffic. She said the information concerning putting Leland Road through was contained in the Comprehensive Plan and was shown on a piece of the application property. She said staff was not asking for any construction or dedication now. They were indicating that if and when Leland Road was put through, there would be dedication at that time. In answer to another question from Mr. Hart, Ms. Langdon agreed that there was a nexus between the request and the intensification on the site.

Mr. Fox stated that the applicant's position was that there was absolutely no nexus between the operation and the extension of Leland Road. He said there were multiple opportunities for an extension on the other properties, and he pointed out that St. John's was a historical site. He said he had been told that one of the reasons staff was making the church a target was that they wanted to save a rare species of birch tree which may be in the way. He said the applicant's position was that their historical site was of equal significance to the birch trees, and they would not agree to such a condition. He said there was no connection there and no current plan to extend Leland Road. It was not on the six-year plan and was a futuristic plan that may never come to fruition. Mr. Fox said the applicant did not want to jeopardize the integrity of the church's site plan for that use. He said that if that portion of the property was condemned, that would be different, and they would have to deal with that as an exercise of eminent domain, for which the church would be paid for the impacts. He said the applicant would not voluntarily give up that portion of the property in this application.

Mr. Hart said he was aware of the fact that the subject was extremely controversial as to which side of the

property line the road would be built. He said he thought that as shown, it was Parcel 31, which was the Royal Oaks property. He said the house had been removed in 1959, but there were foundations and graves there, and one of the oak trees was still there. He said that affected the ability to develop some of those properties, and regardless of whether the road went slightly north or south, it would affect something. Mr. Hart referred to a memorandum from Angela Rodeheaver, Chief, Site Analysis Section, Department of Transportation (DOT), dated October 25, 2006, and said it did not mention 15 feet, only ancillary. He said the 10 feet Mr. Fox referenced would be going within one foot of the parking, but 15 more feet would conflict with the parking spaces that were along the edge. He asked staff whether the total of 25 feet would take out the row of parking spaces. Ms. Langdon said that the explanation from DOT was that they would not take out the parking, but it might be to temporarily store some equipment or materials. She said the idea was not to take out any of the parking, and that was why it had been limited to a maximum of 10 feet for the dedication, so it would not affect any of the parking on the site.

Mr. Fox stated that typically when an ancillary easement was taken, the right to grade in that easement for staging was also taken. Mr. Hart said there could be topography issues so the slope may have to be changed, but what he did not understand, in terms of the interaction between Condition 16 and the plat, was that if there was a 10-foot dedication and Mr. Fox was correct that it would take a fee simple chunk up to one foot from the parking spaces, not much could be stored in a one-foot strip, but if an additional 15 feet were required, it would be 25 feet from the property line. He said that if it was not going to affect the parking spaces, there was something wrong with Condition 16.

Ms. Langdon stated that the parking spaces would not be taken, but there could be temporary storage in the lot. She said staff had discussed the topic with DOT at the time they suggested the development condition, and DOT had stated that they wanted to be very careful because they did not intend to permanently remove any parking spaces from the church property. She said that the wording contained in the development condition had been requested by DOT.

Mr. Hart asked whether DOT had come up with the 15-foot dimension, and Ms. Langdon said they had. Mr. Hart asked whether there was any other information from DOT with respect to why it would straddle the property line or go north or south and why it would be 10 feet plus 15 feet from the applicant. Mr. Chase stated that it was his understanding the alignment issue was being guided by the specimen trees on the adjacent property. Ms. Langdon stated that it was not a definite fact, and that was why DOT staff did not want a dedication at this time. She said the alignment could shift further south in the long run, but at this point this would be the maximum. She added that DOT had indicated that this was not a deal killer insofar as staff was concerned. She said DOT staff felt that there was a nexus, and the alignment may very well stay this far north, in which case land would eventually be needed. Ms. Langdon said that when applications came in for special permits, special exceptions, or rezonings, it would be consistent, and if there was a nexus and there was dedication and/or construction needed, it would be asked for.

Referring to Condition 16, Mr. Byers said that it appeared to him that staff was asking the church to give up its legal rights now with respect to the dedication as opposed to negotiating with the County at a later time from the standpoint of being paid for whatever that dedication would be. He asked if that was the situation. Ms. Langdon said that was true, and it was consistent when staff believed there was a nexus and an applicant was asking for something, which in this case was a school for 99 children. She said it was consistent with other applications the County had, but if the applicant did not give the dedication up now, they could negotiate for payment at a later time.

Mr. Beard said he could understand that logic if the assumption was made that the 99 children in the school would have an impact on traffic, but it would not have an impact. He said that if there was a traffic impact that would be based on an increase in whatever the public did over the coming years. He asked if his assumption was correct. Ms. Langdon agreed that it was. Mr. Fox said the dedication would also affect the surrounding properties. Ms. Langdon stated that there would be a traffic impact because there would be approximately 500 additional trips a day on the surrounding roads. She said that DOT staff had indicated to BZA staff that they believed there was a nexus, and that was why they had asked for the dedication. She said staff would not have recommended denial on the issue alone.

Mr. Hammack referred to a previous statement made by Mr. Fox that there would be no ingress and egress off Leland Road for the school, and he asked whether staff thought there would be. Ms. Langdon said she did not know if there would or would not be an impact in the future. Mr. Hammack said that when information

was contained within the development conditions, it was to show that an applicant satisfied all standards. He asked whether the Board should consider denying the application because it did not meet the standards with respect to traffic impact from the site. He said that if any construction were to be done on Leland Road at some point in time, the traffic impact could be affected and would then require a dedication, but it would not necessarily be affected. Ms. Langdon said there had been other cases when staff had asked for dedication on road frontage that was not necessarily a denial issue, but in this case it was specifically laid out in the Comprehensive Plan that there could be a road dedicated or built in the area of the church.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 85-S-053-03 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. JOHN'S EPISCOPAL CHURCH, SPA 85-S-053-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-S-053 previously approved for church to permit a private school of general education. Located at 5649 Mt. Gilead Rd. on approx. 4.42 ac. of land zoned R-1, HC, HD , SC and WS. Sully District. Tax Map 54-4 ((1)) 24B and 25A. 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 14, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s).3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, St. John's Episcopal Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 5649 Mount Gilead Road, consisting of 4.42 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 Reid M. Dudley of Runyon, Dudley, Associates, dated March 24, 1998, 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 seating capacity shall be 450 seats.

6. All parking shall be on site and in the parking areas designated on the special permit plat.

7. All vehicles dropping off/picking up children for the school shall enter the site at the William Peterson Way entrance and shall drop off/pick up in the area described as the "loading space paved area" in the rear of the existing church addition.

8. Upon issuance of a Non-RUP for the school, the maximum enrollment for the school will not exceed 99 students.

9. The hours of operation for the school shall be from 7 a.m. to 5 p.m. for students.

10. No Transitional Screening/Barrier shall be required along the southwest lot line (Mt. Gilead) adjacent to the property zoned PDC.

    No Transitional Screening/Barrier shall be required along the northwest lot line (Wharton Lane) because there are no building or parking additions in this area, and because any additional screening would encroach upon existing marked graves.

    The twelve (12) feet of Transitional Screening shall be provided along the northeast lot line and southeast lot line. The twelve (12) foot transitional screening shall be heavily planted and continue to meet the planting requirements of Article 13 as shown on the approved special permit amendment plat. The barrier requirements shall be modified so as to allow the continuation of the zigzag split-rail fence in lieu of Barrier D, E, or F. The existing vegetation may be used to partially satisfy this requirement if the vegetation is maintained and/or supplemented to meet the twelve (12) foot screening to the satisfaction of the Urban Forest Management.

11. The driveway connecting Wharton Lane with the eastern parking area shall be marked with signage indicating one-way traffic.

12. Any proposed new lighting of the parking areas shall be in accordance with the following:

    The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

    The lights shall be focused directly onto the subject property.

    Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

13. Best Management Practices (BMPs) shall be provided in accordance with the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance and the Public Facilities Manual.

14. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines.

    Speed limits shall be kept low, generally 10 mph or less.

    The areas shall be maintained routinely with stone and evenly spread to a depth adequate enough to prevent wear-through or bare subsoil exposure.

    Runoff shall be channeled away from and around driveway and parking areas.

15. The Floor Area Ratio (FAR) shall not exceed 0.0467.

16. 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.

17. Prior to the issuance of a Non-Residential Use Permit (Non-RUP) for the private school of general

~ ~ ~ November 14, 2006, ST. JOHN'S EPISCOPAL CHURCH, SPA 85-S-053-03, continued from Page 690

education, the applicant shall obtain an approved shared parking agreement or parking reduction. If a shared parking agreement or parking reduction is NOT approved by DPWES, the number of seats in the sanctuary and/or the number of children in the school shall be reduced to correspond to a number that can be supported by the parking spaces provided on site as determined by DPWES.

These conditions supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:30 A.M. JOHN EVERETT AND CLAIRE EVERETT, A 2006-BR-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a contractor's office and shop, are allowing the parking of more than one commercial vehicle, and have erected an accessory storage structure that exceeds eight and one-half feet in height, does not comply with the minimum yard requirements for the R-3 District and was erected without a Building Permit, all in violation of Zoning Ordinance provisions. Located at 7601 Dunston St. on approx. 13,572 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (47) 1. (Admin. moved from 9/19/06 at appl. req.)

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

John Everett, 7601 Dunston Street, Springfield, Virginia, came forward and identified himself.

Elizabeth Perry, Zoning Administration Division, presented staff's position as set forth in the staff report dated November 14, 2006. This was an appeal of a determination that the appellants had established a contractor's office and shop, were allowing the parking of more than one commercial vehicle on a lot in a residential district, and had erected an accessory storage structure, a shed, without building permit approval that exceeded 8.5 feet in height and did not comply with the minimum yard requirements for the R-3 District. Ms. Perry said the subject property was a corner lot which had two driveways, one extending from Dunston Street to the carport, the other from Juliet Street to the shed. Inspections conducted at the site revealed that a lawn care and snow removal business was being operated. The findings were further supported by advertisements on the Internet for the lawn care component of the business. Two vehicles associated with the commercial use were observed at the site, an equipment trailer carrying various lawn care equipment and snow removal equipment. Storage of equipment was also observed in the shed. Ms. Perry said a contractor's office and shop was not permitted in the R-3 District by right or with special exception or special permit approval. The inspections also revealed that the shed was approximately 248 square feet, approximately 12 feet in height, and was located approximately two feet, two inches from the rear lot line and 10 feet from the side lot line.

Responding to a questions from Mr. Hart, Ms. Perry stated that the red truck with a snow plow on the front and a commercial sign on the side, as shown in Attachment 5, Photo 1, was in violation, and if the appellants removed the commercial signs and used the truck with the plow on it for personal use, it would not be illegal to have it on the property. She stated that Photo 2 showed a white vehicle behind the fence in the rear of the

property that had lawn care equipment attached to the back, and it was illegal because it had trimmers, a rack, and a trailer on it. Ms. Perry stated that the van in Photo 3 did not belong to the appellants. With respect to the white truck, she said that if it did not carry any equipment or signs associated with a commercial use, it would be allowed to remain on the property for the appellants' personal use.

Mr. Everett presented the arguments forming the basis for the appeal. He stated that with respect to the County's definition of a commercial vehicle, he needed to have a definition of rated vehicle capacity before he could state that the vehicles were used for commercial purposes. He noted that in the appeal he had stated that the County had made an assumption that the white vehicle was used strictly for commercial purposes, and he said that was incorrect. He said it was his personal truck that had been temporarily used for other things, but not used as a commercial vehicle on a permanent basis. He said the red truck was the only vehicle there could be a question about. He said that currently the vehicles had no signs or snowplows attached to them. He said he had contacted the Virginia State Police and the U.S. Department of Transportation, and neither agency had any information available on carrying capacity. Insofar as the accessory structure was concerned, Mr. Everett stated that it was there for his personal use. He said he had requested a permit to build a two-car garage because the lot was not large enough to support parking, and he had been cooperative with staff in allowing them to access the property, which he had been advised by counsel he did not have to do. He stated that he wanted the property to be in compliance and had requested that he be allowed to move the workshop to another location on the property to ensure that it met Zoning Ordinance guidelines. He said the workshop was scheduled to be moved on the Friday after the hearing. Mr. Everett said he had received an e-mail from Virginia Ruffner, Zoning Evaluation Division, Department of Planning and Zoning, which said the location of the workshop was at issue, not its size. He said he had a corner lot and planned to move the shed away from the back fence. He stated that he had measured the lot and determined that the shed was located more than 10 feet from the side lot line, but he was going to move the shed to an area that would comply with County regulations. He said anything having to do with his business, such as office or commercial type equipment, had been moved to a site in Maryland, and he intended to get rid of his business occupation license. After having done everything he referenced in his testimony, Mr. Everett said he considered himself to be in compliance.

In answer to a question from Mr. Hart, Ms. Perry said the appellants needed a building permit for the existing shed if it exceeded 150 square feet. Mr. Hart asked what the appellants needed to do to shift the shed and obtain a building permit, assuming that all the violations had been taken care of. Ms. Perry said that provided the shed would become a workshop, it would not be used for storage, equipment was not stored on the property, and he obtained a building permit, he would be in compliance. She stated that if the use of the structure was being modified, staff would have no a problem with it being used for storage or hobbies provided the appellants moved the shed to another location on the property.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to defer decision on A 2006-BR-030 to December 5, 2006, at 9:30 a.m., to allow time for an inspection to be done to ensure the shed had been moved, a building permit had been applied for, and the equipment the appellant had indicated had been moved to Maryland and was no longer on the property. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:30 A.M. M & A, L.C. AND ANNA GERTRUDE BURGESS, TRUSTEE, AND JUNE B. BACON, TRUSTEE, A 2006-DR-051 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a proposed driveway relocation would not be in substantial conformance with the VC Plat and the development conditions of Variance VC 2003-DR-132. Located at 10590 Beach Mill Rd. on approx. 2.05 ac. of land zoned R-E. Dranesville District. Tax Map 3-4 ((1)) 26E.

Chairman DiGiulian noted that A 2006-DR-051 had been administratively moved to January 23, 2007, at 9:30 a.m., at the appellants' request.

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The meeting recessed at 10:47 a.m. and reconvened at 11:01 a.m.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:30 A.M. RODNEY AND JENIFER SPRATLEY, A 2006-PR-050 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established three separate dwelling units on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 9732 Blake Ln. on approx. 21,261 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 142.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Rodney Spratley, 18493 Running Pine Court, Triangle, Virginia, came forward and identified himself.

Mary Ann Tsai, Zoning Administration Division, presented staff's position as set forth in the staff report dated November 7, 2006. Ms. Tsai stated that a letter had been faxed to staff the morning of the hearing, and copies had been distributed to the Board. This was an appeal of a determination that the appellants had established three separate dwelling units on the subject property. The property was developed with a single-family detached dwelling unit containing approximately 2,023 square feet and two separate and independent dwelling units in the basement level. Ms. Tsai said the appellants did not refute the violation. Site inspections on June 19th and 30th, 2006, revealed that the main level, Unit A, contained two bedrooms, two full bathrooms, a kitchen with a refrigerator, sink, stove, and oven, with the second story containing three bedrooms and a bathroom. Ms. Tsai said the appellants had acknowledged that the main and second story levels were being rented to a family. The basement level contained Units B and C, one of which the appellants had indicated was occupied by a renter. Unit B contained a living room, bedroom, bathroom, and kitchen area, and Unit C contained a bedroom, bathroom, and kitchen area. Ms. Tsai said there was no internal access from Unit A to the two basement units, nor was there access between Units B and C.

Ms. Tsai said that in order for three dwelling units to have been legally established, the house had to have been constructed prior to the 1941 Zoning Ordinance; however, based on the Department of Public Works and Environmental Services staff research, aerial photographs, and a 1962 plat, the subject lot appeared to have been the result of a subdivision in 1961 and the dwelling established in 1962. A review of the Department of Tax Administration records indicated that the subject property had been taxed as one single-family dwelling unit.

Mr. Spratley presented the arguments forming the basis for the appeal. He said he had purchased the property in 2004, and it was in complete disrepair. He stated that when the property was purchased, it had been used as a rooming house for 10 to 15 years, and seven people had been living in it. He said he and his wife had cleaned up the blighted, rat-infested property and had not changed any of the internal structure. He said that there was no internal stairway in the house at the time of purchase, but there were two exterior entrances located in the basement area, with the only one exterior stairway leading from the outside to the main level and an open porch, and because it was in a dangerous condition, he had done some repairs to ensure that no one would be hurt. Mr. Spratley stated that at the time of purchase, every room in the house had been rented out and used as sleeping areas. He said that since the renovations to the house had been made, he allowed a family of five to rent the main level, which consisted of a large kitchen, 2 bathrooms and 3 bedrooms. He said that prior to the renovations; the lower level had two additional bathrooms as well as two areas where a refrigerator and microwave were located. He stated that there were no stoves on the lower level, and it was his understanding that he could not have a kitchen in that area. He said he and his wife were not in disagreement about bringing the property into conformance, but the family of five was on public assistance for housing, and their lease would not expire until May of 2007. There was also a woman who lived in the lower level who had no need for a kitchen, and her lease would not expire until June of 2007. Mr. Spratley said that he was willing to put a stairway in as well as comply with other suggestions made by staff, but would be unable to get it all done within 30 days, which was an unrealistic time limit imposed by staff, because he had to hire an architect, a contractor, obtain building permits, and do other things in order to bring everything into compliance. He said it seemed to him that what the County wanted him to do was unreasonable since he did not know he was not in compliance with the regulations. He said he needed more

time. Mr. Spratley said the complaint had been made by a neighbor who lived across the street from his property, who had asked for permission to park her car on his property and was upset when he denied her request.

In response to a question from Mr. Hart, Mr. Spratley stated that he did not have a third tenant, and the space at the rear of the house was vacant.

In answer to a question from Mr. Hart, Susan Epstein, Zoning Enforcement and Property Maintenance Inspector, Zoning Enforcement Branch, explained that only one kitchen was allowed in a single-family unit, and only one area could be set up for cooking facilities, whether it was a stove, microwave, or hot plate. Mr. Hart said that in another recent case it was his understanding that the applicant had been told that if the stove was removed from what appeared to be a den and the door were put back on, that was permissible. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, explained that it was her recollection staff would not have made the request to remove the stove, but would have instructed the appellant to remove all connections to the utilities that would make that den a kitchen in that particular half of the house. Ms. Stanfield said that having a refrigerator and microwave in a basement area would not necessarily be considered a violation, but it would be something staff would look at as the use was being established. In response to a question from Mr. Hart, Ms. Tsai stated that there was no record as to when the appellants had installed the kitchens in the basement.

Referring to Attachment 8 of the staff report, Mr. Hart stated that it appeared the parking lot was more than 25 percent of the front yard. He asked if there was a reason why the area was not part of the staff report. Ms. Epstein said it had been a part of the original complaint, but it was her recollection that the property had been like that since before 2003 and was grandfathered under the current amendment. Ms. Stanfield stated that the photograph Mr. Hart had referred to had been taken in 2003.

Chairman DiGiulian called for speakers; there was no response.

Mr. Hammack asked whether the appellants would be allowed to have more than one family live in the home if they opened it up for interior circulation and removed the microwave. Ms. Epstein said that under the limitations of a dwelling, the appellants could have one family and two other non-related persons living there. With respect to the other dwelling units, she said they would have to remove the sink, refrigerator, and any type of cooking facilities in the lower part of the house. Mr. Hammack asked whether the appellants could do what they were currently doing if they put the doors in and removed the microwaves. He stated that he had been in some upscale homes that had refrigerators and microwaves in bedrooms, and he asked whether that changed a bedroom into a kitchen. He asked whether there was something in the Ordinance that allowed that as well as wet bars and whether that would change those rooms into kitchens. He said he considered that to be a problem. Ms. Stanfield said those things were dealt with on a case-by-case basis. She said that in this particular situation, there was a violation that staff knew existed. She stated that frequently when staff had requests for second kitchens or multiple kitchens in houses, it was done before they were constructed or were in the process of being constructed, and the contractor or homeowner would make the request of staff. She said the subject appeal was a different situation. Mr. Hammack agreed that it was different, but in terms of the definitions in the Ordinance that the Board was asked to apply, staff was indicating that they were interpreting the Ordinance to fit individual situations. He asked whether there was anything in the Ordinance that said a microwave and refrigerator constituted a kitchen. Ms. Epstein stated that there was no definition of a kitchen in the Zoning Ordinance, just a reference to a dwelling unit. Mr. Hammack asked whether there were any Zoning Administrator interpretations or a policy that defined a kitchen. Ms. Stanfield said there were policies for the evaluation of those types of issues, but they were not attached to the staff report. She said there was a Zoning Ordinance Work Program in progress, and staff had been charged with looking at the definition of a kitchen.

Mr. Ribble said Mr. Hart's recollection about the stove being the tipping point was valid, and he thought that had taken place within the last two weeks. He asked whether there was any way to find that out. Ms. Stanfield said she would review the tape to determine whether staff had said the stove was a tipping point. Mr. Hammack stated that he thought a stove had been the tipping point in a number of cases over the past years, and he was not sure that microwaves had been objectionable. He said microwaves, blenders, and such could be plugged in, unplugged, and were not hardwired, and he considered those items to be appliances, placing them in a different category.

Ms. Stanfield said she thought it might be appropriate to defer decision on the appeal and request Mr. Congleton or Mr. Simms to attend the meeting to address the Board's concerns.

Mr. Hammack stated that he was interested in obtaining information on the definition of a kitchen and how it would be applied.

Mr. Spratley stated that he was not in agreement with staff's analysis, but was willing to bring the building into conformance with the Ordinance. He said his major concern was that his tenants be given information concerning what was going on with reference to the house and their living arrangements, and since the sign had been placed on the property, the tenants were very nervous about the possibility of having to move out. He again stated his need for additional time to allow him to employ an architect and contractor to do whatever needed to be done to address the issues listed in the notice of violation. He also said the hookups and appliances had been in the house when he and his wife had purchased it.

Mr. Hammack stated that it appeared that staff had been unable to reference a chain of title or obtain information as to when the house had been constructed. He said that something Mr. Spratley had said concerning the original house having been constructed with logs seemed to predate many things. He asked whether staff or the appellants had looked at the history of building permits on the property and how far back the research had gone. Ms. Tsai said there were no building permits for the property, and that was why staff had relied on land records and aerial photography. She said staff did have the house location plat. Mr. Hammack asked whether staff had land records that went beyond 1955 for the deeds referenced in the staff report, and he referred to the 1947 deed. Ms. Tsai stated that it appeared that the property had been subdivided from a five-acre lot in 1961, and from Public Works' standpoint, that was when the lot was created. Mr. Hammack asked when the house had been constructed. Ms. Tsai said the only information she had found was the house location plat, which established the house in 1962, and the aerial photography supported it by showing that the land was vacant in 1954 and the house was first seen in 1962.

In answer to a question from Mr. Ribble, Mr. Spratley stated that he had purchased the property from a private owner, and no real estate agent had been involved in the transaction. He added that at the time of purchase an appraisal had been done, and there had been no reference to the house other than it was old and needed a lot of work. He said the only history they had received on the house was what had been told to them by the brother of the original owner of the property.

In answer to a question from Chairman DiGiulian, Mr. Spratley said that June 30, 2007, was when the last tenant's lease would expire. He said he had spoken to the tenants about what was going on, but had not said anything specific about when they would have to move out.

Mr. Hart said his colleagues had addressed his concerns, and he thought the case would turn on the definition of a dwelling unit, which could benefit from the provision of further information. He said that, in the final analysis, whatever resulted from further investigation, it would not be for a house with two apartments in the basement. It would probably be one house, or under certain circumstances, there would be a way to have one accessory dwelling unit. He said he thought the appellants might have to live there, and if they did not do that, it would not work because the tenant in the dwelling unit would be age restricted or it could be used for a handicapped person. He said he was concerned about the lack of backup information with respect to how long it would take to complete the memorandum as described by Ms. Stanfield. He said he knew the Board had heard cases that struggled with the subject before concerning when an accumulation of devices would be considered to be a kitchen. He said he did not know whether the County was being consistent, but if the Board was going to have to enforce the definition of a kitchen, he wanted to ensure that they were being consistent with interpretations as to what was meant by permanent provisions for eating, cooking, and sanitation. Mr. Hart asked how much time staff would need to determine whether or not there was any material available on the issue of what comprised a kitchen. Ms. Stanfield replied that staff would need a month to prepare the document, and it could be that they would have to return to the Board to request additional time.

Mr. Hart asked the appellants to provide information to the Board within the same timeframe with respect to their definition of a dwelling unit and how it would help or hurt them. He said it would also be helpful if the appellants had an attorney help them prepare the information he had requested.

Chairman DiGiulian closed the public hearing.

~ ~ ~ November 14, 2006, RODNEY AND JENIFER SPRATLEY, A 2006-PR-050, continued from Page 695

Mr. Hart moved to defer decision on A 2006-PR-050 to December 19, 2006, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 14, 2006, Scheduled case of:

9:30 A.M. HBL, LLC, A 2006-PR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that Site Plan Waiver #2546-WRDF-001-2 is subject to a condition that requires the reservation of the future dedication of a portion of the site-plan property for the eventual extension of Greensboro Drive. Located at 8604 Leesburg Pi. on approx. 3.55 ac. of land zoned I-4, I-5 and HC. Providence District. Tax Map 29-1 ((1)) 17 and 17C.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Brian Buniva, the appellant's agent, LeClair Ryan, 225 Reineckers Lane, Suite 700, Alexandria, Virginia, came forward and identified himself.

Hani Fawaz, Department of Public Works and Environmental Services (DPWES), presented staff's position as set forth in the staff report dated November 7, 2006. This was an appeal of the DPWES Director's decision to attach a reservation for a future dedication condition, a road frontage improvement waiver. Mr. Fawaz said the appellant was challenging the fact that the attached condition did not include an agreement to compensate the appellant in return for the dedication. It was the position of the Director of DPWES that the waiver condition was consistent with the site plan regulations and all applicable County policies and procedures and had been properly reviewed and approved in accordance with the provisions established in the Zoning Ordinance.

Mr. Buniva presented the arguments forming the basis for the appeal. He stated that the appellant was appealing the condition that was attached to the waiver for the reservation for future dedication, not the waiver itself. He said it was their opinion that the alternative alignment that had been prepared by the appellant's engineer, discussed with staff, and was subject to the waiver was far superior to the alignment that was in the Comprehensive Plan. He said the proposed garage that was the subject of the site plan process specifically allowed a garage as a by-right use, and the only approval that the appellant required under the County's Ordinance was the approval of the site plan.

Mr. Buniva introduced Robert Kimball, CFO of HBL, LLC, representing the appellant; Terry Anderson, an engineer with Walter L. Phillips, Incorporated; and Lee Goodman, with LeClair Ryan.

Mr. Buniva said that on September 7, 2006, the appellant received comments on the preliminary site plan that informed them of the deficiencies. He said that was what the Code required to allow the process to go forward. He said that the Code provisions for site plan approval stated that if the requirements were met, an approval would be given, and it was not a discretionary act once the requirements had been met. He said the law required that each of the deficiencies had to be set forth, and that had been done. There was no mention in any of the identified deficiencies of a reservation for a future dedication of any property. He said there was a suggestion made concerning seeking a waiver from the Comprehensive Plan regarding the alignment for Greensboro Drive, and the appellant had followed it. Mr. Buniva stated that in May of 2006, after the appellant had hired a traffic engineer and the Phillips firm to help them come up with an alternative alignment for the proposed extension of Greensboro Drive, a meeting was held between the appellant and staff, and they showed the alternative alignment.

Mr. Buniva provided several documents to the Board, the first of which was the proposed extension sketch that was currently in the Comprehensive Plan. He pointed to the appellant's property and indicated that the extension ran immediately through the middle of the location where the proposed garage was to be built. He stated that it was obvious that the appellant could not meet the condition of compliance with the transportation extension of Greensboro Drive and still retain the garage because the two were not compatible. He said he assumed that was the reason staff had told the appellant that they needed a waiver, and that was why they had done what they did. Mr. Buniva pointed out where the property intersected with the existing Greensboro Drive, and that access was on an angle as opposed to a perpendicular access or

entrance. He said he understood that was inconsistent with the Virginia Department of Transportation (VDOT) requirements, and something would have to change there. He pointed out that the proposed alignment also ran through the Post Office site, which could present some difficulties because it was a federal facility. He said the proposed alignment also ran through an area that was currently being utilized or developed for the extension of the Metro parking facility as well as through the middle of several properties. He said the proposed alignment did not respect property boundaries. Mr. Buniva pointed out that the curve was fairly steep, and as he understood it, that would also present some VDOT problems. He stated that even though it was just a line on a map, if that was where the alignment was to go, it would create so many problems that more than likely the proposed alignment would be placed elsewhere.

Mr. Buniva displayed the a proposal which had been presented by HBL's consultants in an informal meeting with Zoning Enforcement and transportation staff that proposed an alternative design that was consistent with the waiver request. He said the line had been moved to the left of the design and went from Leesburg Pike through an already existing right-of-way that was 50 feet wide and was currently in use and developed until it went behind the subject site. He noted that it followed the property boundaries as much as possible and skipped the Metro area and the Post Office and had a more appropriate curve, according to VDOT standards, and the intersection. He said that a letter from Aaron Vincent with the Phillips firm had been submitted to the Board and listed approximately 12 specific reasons as to why the alternative alignment was better. He said the proposal began in an area where there was an existing 50-foot right-of-way, and that was key, and it did not eliminate by-right uses of his client or others.

Mr. Buniva said the issue that staff kept raising was that the appellant promised the reservation and that it was their idea. He said that was not true. He said that the meeting with staff in May of 2006 was the first time the question had been raised with respect to the appellant needing a reservation for future dedication. He said that subsequent to that the appellant had submitted a drawing with the May 19, 2006 application. He said it showed the area for the proposed alignment, an additional 15-foot reservation, and it was on the site plan only because the appellant had been told to do so by County staff. He said HBL did not own the property. They were a long-term lessee. He said the appellant had been comfortable with staff in working everything through, and at the time the issue of the reservation came up, they did not anticipate any difficulty with their landlord granting it. When the final approval had been received, the appellant did not know that the condition had been added and found out about that new condition a few days prior to the expiration of the 30-day appeal period. It was discussed at that time with the landlord, who emphatically said he would not agree to it. Mr. Buniva said the appellant's lease would run to 2015, and HBL was in need of the garage and had been imposed with a condition they knew they could not comply with. Because of that, an appeal had been filed on July 26, 2006, which was within the 30-day period under the statute.

In addition to the appellant's proposed alignment being the preferable one, Mr. Buniva said the subject site's right-of-way already existed and was currently being used. He said the appellant had an inventory and a need for parking for employees as well as approximately 500 to 600 vehicles. He stated that currently all the appellant had was a blacktopped area that did not accommodate all the vehicles. The appellant had a short-term lease with one of the neighbors located on the other side of the right-of-way to rent storage space for approximately 200 of the inventoried vehicles. He said the site plan request for construction of the garage would not add new impacts, but would bring all of their operation onto their own property. He said it would not generate additional traffic and would provide vehicle storage for the body shop, new vehicles to be sold, and employee and customer parking. Mr. Buniva said he had been advised that a 50-foot wide right-of-way for that type of extension was what VDOT would require for the road. He said that in 1998 a discretionary approval of a special exception had been granted to the adjacent property owner. No reference had been made at that time concerning the extension of Greensboro Drive, and no request for a reservation or dedication had been made when the special exception had been approved. He stated that the granting of the waiver of the alignment did not pose any problems because it was far superior to the original proposal, but what was problematic was the imposition of a reservation for future dedication on a lessee who could not make it because the landlord would not grant it on a by-right development of a garage.

Mr. Buniva said the garage would not add any further impact to the area than already existed. He said it was important to recognize that while this condition was mandating the reservation, the approval letter dated June 27, 2006, from Bruce Nassimbeni, Director, Site Review East, DPWES, after specifying the new condition as the subject of the appeal, noted that the depiction of the alignment and reservation of land area for the alignment on the site plan did not constitute the final alignment for the roadway. It remained a possibility that the planned alignment could be shifted further to the east into the subject property. This would remain a

consideration with any future development proposals that are submitted for Parcel 17C. Mr. Buniva stated that the appellant had a condition of a legal reservation for future dedication on an alignment that may well change for a development that had no additional impact, and as things stood, the condition was illegal under many theories. He said he was not implying that the Ordinance was unconstitutional, but it could not be legally applied in this case in the manner in which it was being proposed. He asked the Board for approval of the appeal which was limited exclusively to the elimination of the reservation for future dedication condition. He said that without that condition, HBL, LLC, was satisfied that they had complied with every comment made by staff in September of 2005 concerning how the site plan needed to be corrected, and they could proceed to submit the final site plan and begin digging.

Referring to Mr. Buniva's comment that he was not asking that the Zoning Ordinance should be declared unconstitutional, Mr. Hart stated that, as he understood case law, the Board of Zoning Appeals did not have the authority to make constitutional type determinations. The Circuit Court had to do that. Mr. Buniva stated that he disagreed. Mr. Hart said he did not understand why that was not a fair characterization of what the appellant was asking for because Mr. Buniva had indicated that in this instance Sect. 17-201, Subsection 4, was constitutionally impermissible. Mr. Hart asked why this was not more properly a declaratory judgment in the Circuit Court and what the Board could decide on that point.

Mr. Buniva stated that the appellant was not asking the Board to decide that. That was what staff had said they were asking the Board to decide when they claimed that the Board did not have jurisdiction, but the Board had made that decision on September 12, 2006, when they decided to hear the case. He said that to him a challenge to the constitutionality of the Ordinance meant that under no circumstances could it be applied in a constitutional way. Mr. Boniva said he did not think state law concerning site plan reviews allowed new conditions to keep being imposed as old perceived imperfections were being corrected. He said that was a statutory argument, not a constitutional one.

Referring to Subsection 4 of the Zoning Ordinance, Mr. Hart said there was no mention of a time limit, and he thought that was discretionary with the Director because it said dedication and construction of widening for existing roads on new alignments and proposed roads, all as indicated on the adopted Comprehensive Plan or as may be required by the Director for a specified purpose; however, proposed roads shown on the adopted Comprehensive Plan as freeways or expressways need not be constructed. He asked why that would be fully discretionary with the Director. Mr. Buniva stated that the reason was that the Director's power flowed from the *Code of Virginia*. Mr. Buniva said there was a time limit in the Code, Sect. 15.2-2260, in the subdivision section with respect to site plan review, and subdivision plat reviews was the source of the law for local governments. He said that Subsection C said that if the local agent or commission did not approve the preliminary plat, the local agent or commission shall set forth in writing the reasons for such denial and shall state what corrections or modifications will permit approval by such agent or commission. He said it also stated that the review of the preliminary plat must take place in 45 days, and if it did not, it would be deemed approved. He said there were timeframes set forth for a plat and site plan review process in the *Code of Virginia*. Most of the time they were waived, and they had been waived with respect to working through the application. He said that as he understood the law, the concept was that the site plan on a by-right use especially was not meant to drag out for a year and a half or more. What it was meant to do was to ensure that all requirements were met, and then the applicant could proceed with obtaining a building permit.

Mr. Hart stated that the only issue he found, in reading through the documents submitted by the appellant, was that the application of the Ordinance provision violated the Constitution. He said he did not see anything that indicated that the reason the appellant had submitted the appeal was because the Director had not reviewed a site plan within 45 days and it should be deemed approved. Mr. Buniva said he was not arguing that. What he was saying was that there was information that gave a timeframe, and it was often waived. Mr. Hart said there was no reference to that in the documents submitted by the appellant, and the only thing mentioned was the constitutionality. Mr. Buniva disagreed with Mr. Hart's statement. He stated that ordinances were presumed to be constitutional, but things could be applied in an unconstitutional or confiscatory manner. He said the first source of law was the Constitution and then the statutory grants of authority and the county code, but if there was no authority granted in the state code for the exercise of discretion, there was a reason why the state law in zoning cases called proffers voluntary. He said most of those had to do with financial matters and dedications of property for certain uses.

Mr. Hart said that it seemed to him that if the Director could require a dedication, a reservation was not as

onerous. He asked whether there was a problem with the Director requiring a reservation. Mr. Buniva said that the statute referred to a dedication and construction of proposed roads as indicated on the adopted Comprehensive Plan or as may be required for a specified purpose. He said the Director had the right to grant a waiver, and he had to address the issue. Mr. Hart said he did not understand what Mr. Buniva had said with respect to his comment that the Director could not impose a reservation only, but he had to do either dedication or construction. He asked whether Mr. Buniva thought that the Director could do that and was it within his discretion to say do not dedicate it now, but maybe at a later date. Mr. Buniva stated that he did not know the answer to that. He said the appellant was not complaining about an error, but was stating that the Director could not mandate the dedication or reservation by the appellant when the only legal basis for government to make such demands was if the proposed development was a factor in creating the need for the dedication. Mr. Hart asked whether there was a declaratory judgment or court case currently pending before the courts that involved the appellant and the County with respect to the reservation. Mr. Buniva said that was not the case.

Chairman DiGiulian called for speakers.

Mr. Fawaz said DPWES had made a comment on the first submission of the site plan with respect to the extension of Greensboro Drive, and they had referenced that the waiver shall be obtained or a submission of a waver was needed. He indicated that the Comprehensive Plan showed that Greensboro Drive was to be extended, and that was the basis for the reservation for dedication.

Mr. Nassimbeni said the appellant had stated that the right-of-way already existed on the site. He said he disagreed. It was his opinion that a right-of-way already existed on the site because there was a recorded ingress/egress easement which was not a fee simple right-of-way. He said the appellant continually brought up the fact that there would be no further impact on the site, but the structure would be a five-story parking structure that would be used for vehicle service, storage, and collision repair, and the total number of vehicular parking spaces would be over 600. He said that if that figure was used for development of single-family detached units, it would consist of over 300 units that would require 600 parking spaces, and for townhouses, the number would be 265. He said it was his opinion that there would be an impact for a five-story garage that would justify his attachment of the condition for a reservation for future dedication.

Mr. Ribble referred to page 4 of the staff report that stated that the waiver condition had been offered by the appellant as part of the proposal when seeking the approval. He asked staff to comment on that because the appellant had not said that. Mr. Nassimbeni stated that the information was in the very last document the appellant had handed out. He said it was their proposal, and in order to obtain approval of the waiver, they had to provide justification to the County, whether it was requested by DPWES staff or the Department of Transportation. That was part of the appellant's justification to obtain approval of the waiver. He said they could have provided a different alignment and justification, but it was the appellant's proposal to staff, and it was what staff had based their decision on. He said he was involved in one meeting with the appellant and did not remember staff saying anything about the appellant having to provide the reservation in order to obtain approval. He said the proposal as shown on the proposed Greensboro Drive extension exhibit had been provided by the appellant. Mr. Buniva said he stood by his comment and pointed out that in looking at the order of the three exhibits, the first one was the Comprehensive Plan as it currently stood. The second one was the appellant's proposal that had been given to staff during their meeting in May when the appellant had been told that the alignment looked good, but staff needed the reservation which was featured in the third document. He said that at the very end of the document that showed the additional distance, it stated additional 15 feet reservation per County requirements.

Mr. Nassimbeni said he did not believe that was per the County requirements, and he did not need the 15-foot reservation. He stated that the County's requirements were shown in green, and he would need the area shown in dark blue that showed the dedication and the portion of the 50-foot ingress/egress easement on the appellant's property to be reserved. He said the additional 15 feet would do nothing for the alignment as proposed by the appellant. Mr. Buniva stated that the bottom line was that the appellant could not give the easement to the County because they were the lessee, and no one knew that at the time of discussion. Mr. Nassimbeni said DPWES did not get involved with whether or not an applicant was the lessee or the owner who submitted a plan to the County. He said DPWES was basing its decisions on the codes and regulations, and it was not staff's position to be concerned about whether an applicant owned a property, leased it, or rented it.

~ ~ ~ November 14, 2006, HBL, LLC, A 2006-PR-042, continued from Page 699

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the determination of the Director of the Department of Public Works and Environmental Services. He stated that he believed the appeal turned on an interpretation of Zoning Ordinance Sect. 17-201, Subsection 4, and he thought the provision gave the Director broad discretion to grant or deny waivers and particular discretion as to whether a dedication for proposed roads or new alignments of roads should be required. He said it was typically not the Board's place to second guess the discretionary exercise of the authority by the Director. It was more common that the Board dealt with issues concerning whether the Director did or did not have the authority to make such a decision, not to revisit the wisdom of discretionary decisions made by the Director. He said it was his belief that the appeal involved questions of whether the application of Sect. 17-201, Subsection 4, to the waiver request was constitutional. He said he did not believe that was within the Board's purview, but that was not to say that the issues were not legitimate or good faith issues. He said he thought there were many things that government required of an applicant that for some reason the applicant may or may not want to do or they felt that there was some constitutional issue involved with it. Mr. Hart said those disputes were typically brought to the court as declaratory judgment proceedings rather than direct appeals to the Board with respect to a decision by the Director and whether it was a constitutional issue that had been raised or whether there was a Dillon Rule argument concerning something the County had done in adopting the Ordinance that went beyond the statute. He said those issues were more properly decided by a judge in a different type of proceeding than a direct appeal to the Board of Zoning Appeals of a decision by the Director. Mr. Hart said he did not think the Board had been given any basis to conclude that the Director's exercise of discretion was in some way wrong or beyond the broad scope expressly set out in Subsection 4, and he believed that the decision of the Director should be upheld.

Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 14, 2006, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Martina M. Stewart

Chairman DiGiulian asked whether Ms. Stewart had been notified of the meeting. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said Ms. Stewart was not able to attend, and she had not been able to ascertain when she would be available to attend.

Mr. Hammack said that according to the staff report, the application should have been presented to the Board of Supervisors.

Mr. Hammack moved to not accept the application for appeal filed by Martina M. Stewart. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ November 14, 2006, After Agenda Item:

Request for Additional Time
Odalys Smith and Virginia I. Carbonell, SPA 94-Y-055-2

Mr. Ribble moved to approve 12 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting. The new expiration date was May 29, 2007.

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~ ~ ~ November 14, 2006, continued from Page 700

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Board of Supervisors vs. BZA in the Circuit Court of Fairfax; BZA vs. Board of Supervisors in the Circuit Court of Fairfax; Virginia Equity Solutions; Concerned Citizens of Hollin Hall; Jackson vs. BZA in the Circuit Court of Fairfax; McLean Bible vs. BZA, both federal and Circuit Court cases; the Lee case; and correspondence involving the preparation of a motion dealing with the new special permit code section, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

The meeting recessed at 12:29 p.m. and reconvened at 12:37 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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Mr. Hammack moved to request staff to prepare a new form of motion for special permit applications that took into account the changes in the special permit ordinances that were enacted earlier in the year by the County Board of Supervisors, consistent with the recommendations in the letter the Board had received from Mr. Griffin. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:39 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: March 20, 2013

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 28, 2006. The following Board Members were present: V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:08 a.m. He asked if there were any Board Matters to bring before the Board.

Mr. Byers informed the Board that the daughter of Deborah Hedrick, Staff Coordinator, recently underwent major cardiovascular surgery, having recently received a transplanted heart. He said Deborah, Jennifer, and their family should be remembered in one's thoughts and prayers.

Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals and called for the first scheduled case.

~ ~ ~ November 28, 2006, Scheduled case of:

9:00 A.M. RAYMOND L. HUBBARD III AND PATTY H. HUBBARD, SP 2006-MA-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.5 ft. from side lot line. Located at 7815 Antiopi St. on approx. 15,098 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-2 ((22)) 13. (Deferred from 3/28/06 at appl. req.) (Admin. moved from 9/26/06 for notices)

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, Esquire, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, agent for the applicant, replied that it was.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a reduction to minimum yard requirements based on an error in building location to permit an accessory structure to remain 2.5 feet from the side lot line. A minimum side yard of 8.0 feet is required; therefore, a modification of 5.5 feet was requested. Ms. Langdon stated that Mr. Fox intended to request a deferral or continuation.

Noting the application was pending for a time, Mr. Fox said the applicants had chosen a rather unorthodox course of action to comply. He said they had worked diligently with staff, finally attaining the right configuration for the adjoining properties they sought to add to the subject property. A November 20, 2006 letter from Michael Congleton, Deputy Zoning Administrator, approved the property's re-subdivision with adjacent lots, which would eliminate the issues regarding lot coverage and the dwelling and accessory structure locations. Therefore, when the recordation occurred, the pending special permit application could be withdrawn. The contracts were recorded in the Land Records, and he was requesting a 90-day deferral or continuation for the completion of the process.

Vice Chairman Ribble called for speakers to address the question of a deferral; there was no response.

Mr. Hammack moved to continue SP 2006-MA-004 to February 27, 2007, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 28, 2006, Scheduled case of:

9:00 A.M. SAMUEL D. LOWENSTEIN AND AMY LOWENSTEIN, SP 2006-DR-056 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 line. Located at 1510 Snughill Ct. on approx. 16,212 sq. ft. of land zoned R-2. Dranesville District. Tax Map 28-2 ((6)) 81.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Samuel D. Lowenstein, 1510 Snughill Court, Vienna, Virginia, replied that it was.

~ ~ ~ November 28, 2006, SAMUEL D. LOWENSTEIN AND AMY LOWENSTEIN, SP 2006-DR-056, continued from Page 703

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested approval to permit a reduction of certain yard requirements to permit construction of an addition 7.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a modification of 7.5 feet or 50 percent was requested. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval with adoption of the proposed development conditions. Ms. Langdon pointed out that distributed that morning were revised development conditions with a minor change to Development Condition 1.

In response to Mr. Hart's question regarding the reference in Development Condition 1 to a court receipt, Ms. Langdon explained that staff's previous conditions had required that a certified copy be returned from the Court that showed the conditions had been recorded, and the Court would then provide a receipt verifying the recordation. The procedure requiring a receipt required no fee, and staff determined that would be easier for the applicants. Formerly applicants would pay for certified copies, which often required a processing wait period. She said that a receipt noted the recordation date, and staff found that sufficient.

Mr. Hart commented that the previous procedure, although costing a nominal fee, may be more efficient because when searching a file, if one found only a recording receipt, one would know the deed book and page number, but one could not be sure exactly what it was that was recorded, that it could be almost anything. Mr. Hart said that if the purpose was to memorialize in the file that the development conditions had been recorded, the presence of the receipt in the file did not really confirm that. Someone would have to go to the deed book and page number.

Mr. Langdon said the Court indicated that the process would be called a "notice," which should prompt whomever undergoing a title search to research further for exactly what was recorded. She said staff's intention was to simplify the procedure for the applicants, but staff would defer the decision to the Board's discretion, and if the Board decided that a certified copy of the recordation was preferable, it would again be implemented.

Ms. Gibb commented that to receive certified copies was a lengthy and frustrating process. She said she was open to an alternative method.

Discussion followed between Vice Chairman Ribble and Mr. Hammack regarding certification processing. The Board agreed to continue with the previous requirement for certified copies. Staff acknowledged the decision.

Samuel D. Lowenstein presented the special permit request as outlined in the statement of justification submitted with the application. He pointed out that his proposal had the support of his homeowners' association, and he had written confirmation from his neighbor who would be most affected.

Vice Chairman Ribble called for speakers.

Jack Crosby, 1509 Snug Hill Court, Vienna, came forward to speak. He said the proposal was aesthetically pleasing and architecturally compatible with the neighborhood and would increase the value of the other homes in the neighborhood. He urged the Board to support the application.

Vice Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2006-DR-056 for the reasons stated in the Resolution.

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~ ~ ~ November 28, 2006, SAMUEL D. LOWENSTEIN AND AMY LOWENSTEIN, SP 2006-DR-056, continued from Page 704

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SAMUEL D. LOWENSTEIN AND AMY LOWENSTEIN, SP 2006-DR-056 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 line. Located at 1510 Snughill Ct. on approx. 16,212 sq. ft. of land zoned R-2. Dranesville District. Tax Map 28-2 ((6)) 81. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Specifically this special permit application must satisfy all the provisions contained in Sect. 8-922, Provisions for Reduction of Certain Yard Requirements.
3. Standards 1, 2, 3, 11 and 12 relate to submission requirements, and were satisfied at the time of the submission.
4. Standard 5 relates to accessory structures which does not apply in this particular application.
5. Standard 10 allows the BZA to impose development conditions.
6. The applicant has met all remaining standards, specifically Standards 4, 6, 7, 8 and 9.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 164 square feet) of the proposed addition, as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated September 6, 2006, as submitted with this application and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family detached dwelling may be up to 150 percent of the total gross floor area of the dwelling (2,235 square feet) that existed at the time of the first expansion request. Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

~ ~ ~ November 28, 2006, SAMUEL D. LOWENSTEIN AND AMY LOWENSTEIN, SP 2006-DR-056, continued from Page 705

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 28, 2006, Scheduled case of:

9:00 A.M. GINA W. LURASCHI, SP 2006-DR-054 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11103 Old Saybrook Ct. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 3-3 ((14)) 18.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Allan R. Dalton, Engineer, McGettigan & Dalton, Inc., 9318 Battle Street, Manassas, Virginia, the applicant's agent, replied that it was.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for an accessory dwelling unit, which would be located on the second floor of a newly-constructed garage addition. The accessory unit was proposed to house one bedroom, a kitchen, a living room, and a bathroom. The applicant's mother would live in this separate living space and would have a private entrance as well as access to the existing house. Staff believed that the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions and recommended approval with the adoption of the proposed development conditions.

Mr. Dalton presented the special permit request as outlined in the statement of justification submitted with the application, clarifying, however, that both Ms. Luraschi's mother and father would reside in the accessory dwelling unit.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2006-DR-054 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GINA W. LURASCHI, SP 2006-DR-054 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11103 Old Saybrook Ct. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 3-3 ((14)) 18. 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

~ ~ ~ November 28, 2006, GINA W. LURASCHI, SP 2006-DR-054, continued from Page 706

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land
2. The applicant has presented testimony showing compliance with the required standards.
3. There is a staff recommendation of approval.
4. The rationale in the staff report is adopted.
5. The structure appears to be an attractive structure in keeping with the character of the neighborhood.
6. There would not be any negative impact on anybody.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Gina W. Luraschi, and is not transferable without further action of this Board, and is for the location indicated on the application, 11103 Old Saybrook Court (1.99 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 Alan R. Dalton, dated July 25, 2006, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

5. The accessory dwelling unit shall contain a maximum of 1,141 square feet, including a maximum of one bedroom.

6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.

7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

8. If the use of the accessory dwelling unit ceases and/or the property is sold, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold, a special permit amendment may be submitted to permit the continued use of an 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. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the

~ ~ ~ November 28, 2006, GINA W. LURASCHI, SP 2006-DR-054, continued from Page 707

Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 28, 2006, Scheduled case of:

9:00 A.M. ROBERT EUGENE BLACKWELL, TRUSTEE, CAROL ANN BLACKWELL, TRUSTEE, SP 2006-DR-057 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 11.2 ft. from side lot line. Located at 1034 Cup Leaf Holly Ct. on approx. 20,624 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-3 ((4)) 92.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carol Ann Blackwell, 1034 Cup Leaf Holly Court, Great Falls, Virginia, replied that it was.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit a reduction to certain yard requirements to permit construction of a 576.4 square foot, one-story addition 13.4 feet from the western side lot line. The addition would replace a 211 square foot section of the existing dwelling which would be enlarged by approximately 365 square feet and extended toward the western property line. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of SP 2006-DR-057 with adoption of the revised proposed development conditions dated and distributed November 28, 2006.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Hammack's question concerning an extension from the addition. She explained that if the fireplace extended closer than 13.4 feet, which was how the application was advertised, the hearing would require re-advertising.

Ms. Blackwell presented the special permit request as outlined in the statement of justification submitted with the application. Addressing the matter of the extension, she said they hoped to put in a gas fireplace and assumed the architect processed everything correctly.

Discussion followed among Mr. Hart, Mr. Hammack, and Ms. Langdon regarding the structure's dimensions and the advertising.

In response to Mr. Hart's question, Ms. Blackwell said they preferred to go forward with the application as is even if it meant not being approved for the fireplace.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2006-DR-057 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT EUGENE BLACKWELL, TRUSTEE, CAROL ANN BLACKWELL, TRUSTEE, SP 2006-DR-057 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reduction of certain yard requirements to permit

~ ~ ~ November 28, 2006, ROBERT EUGENE BLACKWELL, TRUSTEE, CAROL ANN BLACKWELL, TRUSTEE, SP 2006-DR-057, continued from Page 708

construction of addition 11.2 ft. from side lot line. Located at 1034 Cup Leaf Holly Ct. on approx. 20,624 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-3 ((4)) 92. 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, 2006; 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 applicant has presented testimony that the applicant has met all the standards of Zoning Ordinance 8-922.
4. The staff report is adopted.
5. Staff has concluded that the applicant has met all requirements of Sect. 8-006, Sect. 8-903, and Sect. 8-922, of the Zoning Ordinance.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 365 square feet) of the proposed addition as shown on the plat prepared by George M. O'Quinn dated July 27, 2006, as submitted with this application and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family detached dwelling may be up to 150 percent of the total gross floor area of the dwelling (2,448 square feet) that existed at the time of the first expansion request. Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1, Sun Room Addition for Mr. & Mrs. Blackwell, dated March 1, 2005, provided further that no chimney extension may be closer to the side lot line than 11.2 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. 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

~ ~ ~ November 28, 2006, ROBERT EUGENE BLACKWELL, TRUSTEE, CAROL ANN BLACKWELL, TRUSTEE, SP 2006-DR-057, continued from Page 709

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 28, 2006, Scheduled case of:

9:00 A.M. HOLMES RUN ACRES RECREATION ASSOCIATION INC./FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 77-P-091-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 77-P-091 previously approved for community swim club and parking of Fairfax County school buses to permit modification of development conditions. Located at 3451 Gallows Rd. on approx. 3.83 ac. of land zoned R-3. Providence District. Tax Map 59-2 ((9)) (1) 6 and 7. (Decision deferred from 11/14/06)

Vice Chairman Ribble noted that SPA 77-P-091-02 had been deferred for decision for additional information.

Susan C. Langdon, Chief, Special Permit and Variance Branch, concurred that the case was deferred for information concerning loudspeakers and starter buzzers, which staff crafted Development Condition 6 to address, and because the applicant requested several changes in some of the development conditions dated November 28, 2006.

Norman P. Gottlieb, 3332 Elm Terrace, Falls Church, Virginia, agent for the applicant, concurred with Ms. Langdon that the applicant was in agreement with the development conditions.

Vice Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SPA 77-P-091-02 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HOLMES RUN ACRES RECREATION ASSOCIATION INC./FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 77-P-091-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 77-P-091 previously approved for community swim club and parking of Fairfax County school buses to permit modification of development conditions. Located at 3451 Gallows Rd. on approx. 3.83 ac. of land zoned R-3. Providence District. Tax Map 59-2 ((9)) (1) 6 and 7. (Decision deferred from 11/14/06) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The noise issue has been resolved subsequent to the initial one-year try-out of the bus parking situation.
3. There will be no more than eight County busses.
4. There was an affirmative reaction from the neighborhood.

~ ~ ~ November 28, 2006, HOLMES RUN ACRES RECREATION ASSOCIATION INC./FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 77-P-091-02, continued from Page 710

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Holmes Run Acres Recreation Association Inc. / Fairfax County Public Schools, and is not transferable without further action of this Board, and is for the location indicated on the application, 3451 Gallows Road, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Hamid Matin dated April 24, 2005, revised September 14, 2005, and approved with this application, as qualified by these development conditions.

3. A copy of this special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The maximum number of memberships shall be 400.

5. The hours of operation shall be from 7:00 a.m. to 9:00 p.m. daily. No swim team practice shall be held before 8:00 a.m.

6. All noise shall be regulated in accordance with the provisions of Chapter 108 of the Fairfax County Code. Typical swim meet devices such as loudspeakers and start buzzers may be utilized to manage swim meet events. No loudspeakers, bullhorns, or any other such noise-making device except for a whistle which is required by the lifeguard shall be used at any other time.

7. No more than eight (8) Fairfax County School buses shall be parked in the parking lot at any given time.

8. Notwithstanding that which is marked on the plat, the alternate spaces along the eastern lot line shall be deleted. During the period between the Memorial Day weekend and the end of the school year, the alternate bus parking spaces will not be used for bus parking thus allowing for adequate circulation on site for pool patrons.

9. Transitional Screening 1 shall be maintained along the western lot line, between the parking lot and the lot line. All plant material shall be maintained in a healthy condition and any dead, dying or damaged plat material shall be replaced with like kind.

10. The number of After Hours Parties shall be limited to SIX (6) per year with the prior written permission from the Zoning Administrator for each individual party.

11. Fairfax County School buses shall park in Holmes Run Acres Association's parking lot ONLY between Labor Day weekend and the end of the academic school year.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the

~ ~ ~ November 28, 2006, HOLMES RUN ACRES RECREATION ASSOCIATION INC./FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 77-P-091-02, continued from Page 711

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. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 28, 2006, Scheduled case of:

9:00 A.M. GRACE BAPTIST CHURCH, TRUSEES OF, SP 2006-SP-052 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12216 Braddock Rd. on approx. 2.17 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 11. Vice Chairman Ribble announced that this case was administratively moved to 2/6/07 at the applicant's request.

Vice Chairman Ribble noted that SP 2006-SP-052 had been administratively moved to February 6, 2007, at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 28, 2006, Scheduled case of:

9:00 A.M. VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05 Appl. under Sect(s). 7-305 of the Zoning Ordinance to amend SP 82-V-091 previously approved for stone quarrying, crushing, sales and related associated quarrying activities to permit renewal, increase in land area and site modifications. Located at 10,000 Ox Rd. on approx. 307.68 ac. of land zoned R-C, R-1, I-6 and NR. Mt. Vernon District. Tax Map 106-3 ((1)) 4B and 9; 106-4 ((1)) 20B pt. and 56 pt.; 112-2 ((1)) 8 pt., 9 pt., 11, 12 and 13. (Admin. moved from 9/19/06 at appl. req.) (Deferred from 10/24/06 at appl. req.)

Vice Chairman Ribble noted that SPA 82-V-091-05 had been administratively moved to January 23, 2007, at 9:00 a.m., for ads.

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~ ~ ~ November 28, 2006, Scheduled case of:

9:30 A.M. JAMES H. SCANLON, A 2006-BR-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that modifications to parking lot light fixtures are in substantial conformance with Special Permit 77-A-041-3 and Zoning Ordinance provisions and, as such, the zoning violation with regard to glare has been resolved. Located at 10500 Zion Dr. and 5222 Sideburn Rd. on approx. 15.30 ac. of land zoned R-1. Braddock District. Tax Map 68-4 ((1)) 1 and 2.

James H. Scanlon identified himself as the appellant residing at 10512 Sideburn Court, Fairfax, Virginia.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Michael Congleton, Senior Deputy Zoning Administrator, Zoning Enforcement/Property Maintenance, presented staff's position as outlined in the staff report dated November 21, 2006. At issue was an appeal of staff's determination that modifications to parking lot light fixtures were in substantial conformance with SPA 77-A-041-3. Staff received a complaint in August of 2005 regarding the lighting in the parking lot of St. Mary's Church, specifically that the glare and light spillage was not in conformance with the conditions of the special permit. He quoted Condition 16 relating to light fixtures. After a site inspection, it was determined that the lighting did not meet the condition in that when illuminated there was an excessive amount of glare and spread light in a horizontal manner throughout the site. A Notice of Violation was issued to the church

after several attempts to modify the condition failed. Staff requested that the church redesign the light fixture, and after the particular fixture was installed, the glare was reduced or eliminated and redirected downward as a halo effect on the ground. Staff determined that the new fixture met the condition, and the church was informed in writing that they were in conformance with the Zoning Ordinance. The appellant, James Scanlon, contended in his statement that the condition, as adopted by the BZA, almost precluded any lighting to be seen off-site from the church facility. Mr. Congleton quoted Ordinance language concerning glare. He said staff measured the light before and after the modification, and in staff's opinion, there never was an issue of light spillage onto adjacent residential properties. Staff believed that the site was in conformance with the Ordinance.

In response to Mr. Beard's and Mr. Hart's questions, Mr. Congleton and Jack Reale, Senior Staff Coordinator, Zoning Administration Division, further explained the fixture designs and projections before and after the modification.

Mr. Congleton concurred with Mr. Hammack's understanding that the Ordinance had been modified so that the definition of what was considered as off-site spillage was removed.

Mr. Reale said there was Ordinance language in 14-902 that addressed the issue of light trespass, but no reference to metric readings that must be met under the new regulations.

In response to Ms. Gibb's question, Mr. Congleton said both the Board of Supervisors and the BZA had approved special exceptions and special permit applications that had used a variety of terms that spoke of a particular type of light condition; could be minimized, prevented, reduced, et cetera.

Mr. Scanlon presented the arguments forming the basis for the appeal. He and the neighbors were comfortable with Development Condition 16, which implied a higher standard of care for lighting than the Zoning Ordinance standards. To everyone's dismay, when the lights were turned on after the church's completion, they were exceedingly bright. He likened them to Tyson's Corner Mall. He said there was no glare prevention. After a complaint to the County, the Zoning Administrator cited the church with a violation which resulted in modifications. Zoning Administration determined that the church was now in compliance; however, although the neighbors agreed there was some improvement, there remained an annoying amount of glare. Mr. Scanlon noted that the special permit condition required that the glare be prevented, not reduced, and then described a lighting design used by most churches that prevented glare. He said the fact that the lights stayed on all night was additionally disconcerting. Stating he was speaking for the community, he requested that the Board consider the following: overturning the Zoning Administrator's determination; finding the presently installed lighting fixtures not in substantial conformance with the special permit conditions; replacing the existing Colonial style parking light fixtures with shoebox styled light fixtures; requiring that the church add outside shielding to all those fixtures within 150 feet of adjoining properties to further protect the community from glare; and one hour after the last scheduled evening event, for security purposes, that there be only 20 percent of all lights, parking lot, building mounted and area lights, to remain on.

Responding to Mr. Hammack's question of presenting the Board reasons to overturn the Zoning Administrator, Mr. Scanlon noted that it was the glare, which there was no specific definition of. Basically it was not definable, but one knew when one saw it. He invited the Board to make a site visit when the lights were on, and he believed that the Board would also find that there was excessive glare. Mr. Scanlon reiterated that when the lights remained on for a period of time, the glare was most annoying, obnoxious, and a rude intrusion on the neighborhood. He submitted that the entire problem could have been prevented if the proper type lighting was initially selected.

In response to a question from Mr. Hammack concerning the lights, Mr. Congleton explained that the parking lot was expanded, practically doubled in size, and the lot's topography was not flat; therefore, with its varying levels, one saw a number of lights that added to the overall impact.

Ms. Gibb questioned whether the lights were allowed on all night for security purposes. Mr. Congleton said the development condition did not specify what number or which lights were necessary for security, that it was rather open to interpretation. He clarified that, this being under the old regulations, there was no specific

number, but if under new regulations, one was allowed up to 0.2 foot-candles for security reasons on site. If staff were to make an inspection because of a complaint, the inspector's determination would be a judgment call.

Referencing the last sentence of Development Condition 16, Mr. Hart questioned who determined/decided what lighting was necessary for security; the church, the Zoning Administrator or the BZA, who might clarify its decision pertaining to the case.

Mr. Congleton said that in a normal course of events, the applicant would propose what it determined was the normal amount of necessary security lighting. If a question arose, Zoning Administration would make the final determination of whether it was or was not appropriate and whether it met the condition.

In response to Mr. Hart's question, Mr. Congleton explained the measurement of foot-candle determined for security lighting as opposed to regular lighting. He noted that prior to 2003 there was no limitation.

In response to Mr. Hart's question, Mr. Reale further explained how and where a measurement was taken, clarifying the metric 0.2 foot-candle standard. He pointed out that there was no 0.2 threshold requirement under Development Condition 16.

Mr. Congleton said that the issue staff reviewed that resulted from the complaint was that the new lighting did not exceed glare and spillage standards and requirements as set forth in Condition 16. He had not recalled whether there was a specific allegation that the security lighting violated Condition 16. Staff focused on the lights' glare and any spillage on the residential properties.

In response to Mr. Hart's reference to the issue raised in Mr. Scanlon's September 7, 2006 letter of the lights remaining on all night purportedly for security, Mr. Congleton said, in his opinion, the matter was not a part of the August 8, 2006 appeal as the appeal dealt with the fixtures themselves, the glare and spillage. He pointed out that the August 8, 2006 letter of the inspector, David Grigg, made no mention of that matter, only that the violation was resolved. He quoted a portion of Mr. Grigg's letter that determined the matter and which was based on a nighttime review of the retrofitted fixtures.

Vice Chairman Ribble called for speakers.

Steven Turner, 10612 Zion Drive, Fairfax, Virginia, came forward to speak. He said the parking lights were obnoxious, too numerous, too bright, and unnecessary because the new parking lot was rarely filled at night, and the old lot was adequate to accommodate any night church event, and for reasons of economy and keeping peace with the neighbors, the church would want to curtail its light use. He pointed out the design and ineffectiveness of the fixtures. Mr. Turner suggested that the type of lights at Oakton School were a perfect example of appropriate parking lot lights and lot lighting. Mr. Turner said the church was a troublesome neighbor who did not clean its property. It was littered with leaves, fallen tree branches, discarded traffic and construction signs. The church allowed the grass to become overgrown and did not turn off its lights as it was supposed to do one hour after the last scheduled activity. He urged the Board to deny the church's proposal.

Lynne Strobel, Esquire, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., said she was present on behalf of Saint Mary's Catholic Church and had represented the church on its special permit approval in 2001. She pointed out that the church had been there for 30 years. It was subject to special permit approval, and the most recent amendment was in 2001. She noted that the 2001 approval occurred before the adoption of the Zoning Ordinance's lighting restrictions. There were three requirements for the fixtures: that they be fully shielded, had full cut-off, and were downward directed. Ms. Strobel said the church worked closely with staff to resolve the concerns that were raised over the originally installed light fixtures, including holding several night meetings. The church's architect and engineer attended those meetings in order to address the technical issues, to answer questions, and to develop solutions. Ms. Strobel noted that the church had expended $4,200 to make corrections by replacing certain features of the lights to comply with County requirements. She said it was apparent that Fairfax County found the fixtures to have met its standards as the Notice of Violation was cleared, as detailed in the staff report and by Mr. Congleton's testimony. Ms. Strobel requested that the Zoning Administrator's determination be upheld.

Ms. Strobel pointed out that there were two types of lighting discussed. She introduced the architect, Brian

~ ~ ~ November 28, 2006, JAMES H. SCANLON, A 2006-BR-053, continued from Page 714

Frickie, Kerns Group Architects, who displayed sketches of the fixtures as she described them. There were times, she admitted, that for security purposes some lights remained on all night as there were several occasions when teenagers had been drinking on the lot. She displayed the originally approved plan in order to put things into context. She explained different aspects of the site and its surroundings. Also, for the Board's review, there was an actual light standard fixture depicting exactly what was installed.

Mr. Strobel responded to the Board's questions regarding the fixtures' features, design, function, and purpose.

Brian Frickie, Kerns Group Architects, responding to Mr. Beard's question, explained the fixture's design so as to direct and diffuse the beam downward and not emit any refracted upward or horizontal glow. He concurred with Mr. Beard's observation that with the removal of all four glass panes, one basically had a boxed type fixture. Mr. Frickie explained the function and effects of an interior globe in response to Ms. Gibb's question.

In his rebuttal, Mr. Scanlon pointed out that the fixtures caused an extreme amount of glare, regardless of the numerous modifications. He requested that the Board make a site visit to make its own determination of whether the lighting was acceptable. Mr. Scanlon also invited the Board to pass by several other churches and observe their shoebox type fixture to compare with St. Mary's colonial style and confirm whether the latter was what the Board intended by the special permit condition as well as the promises made to the community.

Vice Chairman Ribble closed the public hearing.

Commenting that he thought further review of the conditions may be appreciated by the Board, Mr. Hammack moved to defer decision on A 2006-BR-053 to December 5, 2006, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 28, 2006, After Agenda Item:

Request for Additional Time
First Baptist Church Chesterbrook Trustees, SP 2004-DR-004

Mr. Byers moved to approve 24 months of additional time. Mr. Hart seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was December 8, 2008.

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~ ~ ~ November 28, 2006, After Agenda Item:

Request for Additional Time
Jerusalem Korean Baptist Church, SP 00-S-045

Mr. Hart moved to approve 24 months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was May 28, 2008.

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~ ~ ~ November 28, 2006, continued from Page 715

As there was no other business to come before the Board, the meeting was adjourned at 11:10 a.m.

Minutes by: Paula A. McFarland

Approved on: October 27, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John A Ribble III

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 5, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:03 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 DiGiulian called for the first scheduled case.

~ ~ ~ December 5, 2006, Scheduled case of:

9:00 A.M. MERRIFIELD GARDEN CENTER, SP 2006-PR-038 (In association with SE 2006-PR-018)

Chairman DiGiulian noted that SP 2006-PR-038 had been administratively moved to February 27, 2007, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 5, 2006, Scheduled case of:

9:00 A.M. CARL J. UNTERKOFLER, SP 2004-SU-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.9 ft. with eave 5.4 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Deferred from 6/1/04 at appl. req.) (Admin. moved from 10/12/04 and 3/1/05 at appl. req.) (Indefinitely deferred from 4/26/05 at appl. req.) (Reactivated from indefinite deferral)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carl J. Unterkofler, 14817 Hickory Post Court, Centreville, Virginia, replied that it was.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to allow an accessory storage structure, specifically a shed, to remain 5.9 feet with eave 5.4 feet from a side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 14.1 feet and 11.6 feet, respectively, were requested.

Mr. Unterkofler presented the special permit request as outlined in the statement of justification submitted with the application. He said the shed had been built in 1990, at which time there had been no neighbors, and his builder had gone bankrupt. He stated that he built the shed knowing that he could build a 10-foot-by-10-foot shed without a permit and did not realize that the height of the shed related to the distance from the property line. He said that when he built the shed, he had no idea that there was a legal restriction.

Mr. Hart asked whether there was electricity or plumbing in the shed, and Mr. Unterkofler stated that there was an electrical light. Mr. Hart asked whether the shed was on a foundation, and Mr. Unterkofler stated that it was on a pressure treated platform. Mr. Hart asked whether the shed could be shifted at all, and Mr. Unterkofler stated that it could not be shifted because the platform was attached to the ground with concrete.

Chairman DiGiulian called for speakers.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2004-SU-012 for the reasons stated in the Resolution.

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~ ~ ~ December 5, 2006, CARL J. UNTERKOFLER, SP 2004-SU-012, continued from Page 717

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CARL J. UNTERKOFLER, SP 2004-SU-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.9 ft. with eave 5.4 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Deferred from 6/1/04 at appl. req.) (Admin. moved from 10/12/04 and 3/1/05 at appl. req.) (Indefinitely deferred from 4/26/05 at appl. req.) (Reactivated from indefinite deferral) 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, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has satisfied the standards for granting special permit.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a shed as shown on the plat prepared by Jeffery

~ ~ ~ December 5, 2006, CARL J. UNTERKOFLER, SP 2004-SU-012, continued from Page 718

D. Warner, dated April 2, 2003, revised through January 9, 2004, submitted with this application and is not transferable to other land.

2. Any applicable building permits and inspections shall be obtained within 90 days of approval of this special permit.

This approval, contingent upon the above-mentioned conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 5, 2006, Scheduled case of:

9:00 A.M. BETTY A. ROYSTER, SP 2006-LE-058 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.7 ft. from side lot line. Located at 7113 Latour Ct. on approx. 2,325 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((9)) 384.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan Earman, the applicant's agent, 1364 Beverly Road, Suite 201, McLean, Virginia 22101, replied that it was.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit a deck to remain 3.7 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a reduction of 6.3 feet was requested.

Mr. Hart said he could not orient where the deck was currently located with the steps shown on the drawings that were with the building permit. He said there seemed to be more steps on the drawings, and although the building permit had been approved, nothing on the plat indicated that the steps would go into a minimum yard. He said that since the steps were not shown, they had to get a special permit for them. The development conditions did not say anything about a building permit, and he wondered whether an inspector should look at the steps and railings to ensure the railings were correctly spaced. Mr. Hart asked whether there was a reason a building permit was not needed for the steps and if that was because the steps were already on the first drawing. Ms. Langdon stated that Mr. Hart was correct that the building permit was approved just for the deck, and it did not show any steps. She stated that when the inspector went out to perform the inspection, he found what was shown on the special permit plat, which was another landing and the steps.

Mr. Hart said the steps were shown on the drawing in the staff report, but there did not appear to be as many steps as in the other drawing. Ms. Langdon said that she was not sure whether the steps came out to the same place because the building permit that was approved and several of the drawings actually did not show steps. Ms. Langdon stated that the applicant went back later to get those approved, and it was then determined that they were too close to the lot line. Ms. Langdon stated that a condition had not been included to require a new building permit, but requiring a new or revised building permit and inspection may be appropriate.

Ms. Earman presented the special permit request as outlined in the statement of justification submitted with the application. She said the application was straightforward, and the applicant came before the Board to request that the steps to the deck remain as they were situated currently, which was 3.7 feet from the side lot line. Ms. Earman said the deck had been built in 2003 by the prior owner, Mr. Nardini, and she had an affidavit from Mr. Nardini which stated that he built the steps and an inspector had come out and inspected them. Mr. Nardini submitted the stairs along with the application for the deck, and it was his understanding that everything had been approved because the County had come out and inspected and approved it. Ms.

~ ~ ~ December 5, 2006, BETTY A. ROYSTER, SP 2006-LE-058, continued from Page 719

Earman said the applicant had purchased the property in good faith in 2005, and the steps had not changed since that time. The property adjacent to the side lot line in question was open space owned by the homeowners association, and the closeness of the steps did not infringe on anyone's habitability issues for the next-door neighbors. Ms. Earman said there were no safety issues, and it would be a great expense to move the steps, especially since the applicant had been a bona fide purchaser of the property. She said there had been precedent to approve such cases, as seen in the staff report from 1985, so the request was not unusual, and if not approved, it would be a right taken away from her since she purchased the property as it was. Ms. Earman said the photographs the applicant submitted gave a good view that no one would be affected by locating the deck stairs where they had been since 2003. She said she understood from the prior owner that there had been another building permit submitted in 2003, but the permit could not be located in the County records.

Mr. Hammack asked whether Ms. Earman was able to find the building permit that showed approval of the steps. Ms. Earman stated that what she had was the same information as what the Board had. She said all of the items had been stamped, and she felt the approval from the architectural control of the homeowners association had been part of the record, which led her to believe that the County had knowledge of Plan B with the steps to the side being approved. Ms. Earman said the attached documents had the stamp of the County on them, and they were in the file.

Chairman DiGiulian called for speakers.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2006-LE-058 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BETTY A. ROYSTER, SP 2006-LE-058 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.7 ft. from side lot line. Located at 7113 Latour Ct. on approx. 2,325 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((9)) 384. 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, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the standards for the special permit.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

~ ~ ~ December 5, 2006, BETTY A. ROYSTER, SP 2006-LE-058, continued from Page 720

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the deck with stairs as shown on the plat prepared by B.W. Smith and Associates, Inc. dated May 31, 2006 as revised through September 26, 2006, as submitted with this application and is not transferable to other land.

2. Any applicable building permits and inspections shall be obtained 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. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 5, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2006-SU-055 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 7127 Ordway Rd. on approx. 5.95 ac. of land zoned R-C and WS. Sully District. Tax Map 74-1 ((1)) 2.

Chairman DiGiulian noted that SP 2006-SU-055 had been administratively moved to December 19, 2006, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 5, 2006, Scheduled case of:

9:00 A.M. LAUREL HIGHLANDS, SP 2006-MV-034 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a temporary sales trailer. Located at 9088 Furey Rd., 9162, 9164, 9166 and 9168 Finnegan St. on approx. 19,637 sq. ft. of land zoned PDH-12. Mt. Vernon District. Tax Map 107-2 ((12)) 247, 248, 249, 250 and 251. (Admin. moved from 9/26/06 for affidavit) (Deferred from 11/7/06)

Chairman DiGiulian noted that SP 2006-MV-034 had been moved to December 19, 2006, at 9:00 a.m.

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~ ~ ~ December 5, 2006, Scheduled case of:

9:30 A.M. ANDREW CLARK AND ELAINE METLIN, A 2005-DR-061 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure and a fence in excess of four feet in height, which are located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1905 Rhode Island Av. on approx. 24,457 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (1) 36B. (Admin. moved from 3/7/06 at appl. req.) (Deferred from 5/2/06 at appl. req.)

Chairman DiGiulian noted that A 2005-DR-061 had been administratively moved to May 1, 2007, at 9:30 a.m., for ads.

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~ ~ ~ December 5, 2006, Scheduled case of:

9:30 A.M. ACME HOMES, INC., A 2006-DR-054 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and Environmental Services to disapprove a revision to a grading plan to allow the construction of a single-family detached dwelling on a lot due to inadequate outfall on the site. Located at 1840 Ware Rd. on approx. 8,857 sq. ft. of land zoned R-4. Dranesville District. Tax Map 39-2 ((6)) 68A.

Chairman DiGiulian noted that A 2006-DR-054 had been administratively moved to February 6, 2007, at 9:30 a.m., at the appellant's request.

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The meeting recessed at 9:25 a.m. and reconvened at 9:33 a.m.

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~ ~ ~ December 5, 2006, Scheduled case of:

9:30 A.M. JAMES H. SCANLON, A 2006-BR-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that modifications to parking lot light fixtures are in substantial conformance with Special Permit 77-A-041-3 and Zoning Ordinance provisions and, as such, the zoning violation with regard to glare has been resolved. Located at 10500 Zion Dr. and 5222 Sideburn Rd. on approx. 15.30 ac. of land zoned R-1. Braddock District. Tax Map 68-4 ((1)) 1 and 2. (Decision deferred from 11/28/06)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report. She said Jack Reale, Department of Planning and Zoning, had prepared information the Board had requested regarding the lighting, which had been distributed to the Board.

Mr. Beard asked whether it was staff's position that the situation would be resolved with the lenses as long as the light did not protrude from the property. He said he had visited the property and developed an opinion, and he asked if staff's rescission of the violation was based on the light not escaping the area.

Mr. Reale said that was not what staff's determination indicated. He said staff was concerned about the light being directed downward and the level of glare, and once the modifications were made, the light and glare were found to be acceptable when directed downward versus outward and to the side. Mr. Reale said the issue of light at the property boundary, which was measured in terms of the illumination level, was never an issue since the foot-candle measurement at the boundary was not something required to be met under the condition. He said the condition was focused on the directionality of the light and the glare level.

Mr. Beard asked whether Mr. Reale was referring to within the premise area, and Mr. Reale said yes.

Mr. Beard asked if staff was concerned about glare within the confines of the church property, and Mr. Reale clarified that glare was something that could be subjective in how it was measured and subjective in how it was perceived, and staff's concern over glare under the intent of the condition and the determination in their finding was that the applicant come into compliance with respect to the glare level as it was perceived, not

how it existed on or off the site.

Mr. Beard said that he did not know what Mr. Reale considered glare, but when he looked up while visiting the site, he was almost blinded. He said that before his visit, he thought this was a straightforward case, but when he turned into the lot and looked up to see one side that did not have the refraction or lens, it blinded him. Mr. Beard said that several of the fixtures were like that, and in the spec of the fixtures, it called for there to be 140 feet between them, which had not been the case. He said he found several of the lights to have an unbearable glare, notwithstanding that some sides had panels, and he questioned why they all did not have panels.

Ms. Gibb said that when she had visited the property the prior Saturday night, many of the lights on the periphery were off, and she asked whether with respect to glare staff considered that some of them were supposed to be off at times or if staff only considered them with the lights on. Mr. Reale said staff's judgment went to the adjustment that was made from the element, the centerpiece chimney that was reflecting a lot of light, its removal and the exchange of the side panels from the clear glass to the refractive lenses.

Mr. Ribble said he went to the location the previous night, and there were only four lights on toward the interior, but he thought the church was to have all the lights on in order for the Board to see what it looked like.

Mr. Hart said the more time spent discussing Condition 16, the harder it was to understand. In reference to the statement that all fixtures shall be fully shielded, full cut-off, and directed downward to prevent glare, he asked whether it mattered where the glare was. Mr. Hart said that when he visited the property, there were only a few fixtures on, but it was enough for him to get the flavor of it. It did not seem to be a problem from across the street, but for someone standing in the parking lot, to the side or angled from the bottom of the "hats" with the orange bulb in them, it glared beneath when looking up or slightly off to the side and looking up at an angle. Mr. Hart asked whether it was staff's position that they were preventing glare completely or preventing glare from the surrounding residential properties.

Mr. Reale explained that the intent was primarily to address the impact to the adjacent properties, but not limited to that because there were safety issues within the property related to pedestrians and vehicular traffic. He said that no one wanted to be blinded by glare and have glare be the cause of an accident. Mr. Reale said that after having witnessed the luminaires prior to and after the modifications, his personal impression was that there was most certainly glare present both off-site and on-site with the original configuration. Directly looking at the light through the glass side panels under most anyone's definition would indicate that glare existed, and since he had dealt with lighting for some months now, his perception was that glare certainly existed, especially if there had been impairment of vision or it taking a moment to adjust to the light directly in your eyes. Mr. Reale stated that when the side panels were replaced with the refractive side panels, the effect was eliminated, and when he looked at the light and then looked away, there was no spotlight in his eyes which was one measure of glare, but no two people would respond exactly the same way to a glare source.

Mr. Hart asked about the definitions and whether the NEMA paper the Board received with the memo were standard definitions that the Board would follow in interpreting a development condition and if they had been adopted by the County. Mr. Reale said that with respect to a full cut-off fixture, the new regulations from 2003 were adopted, and they had to find what a full cut-off fixture was because the condition that was approved went back to 2001. Prior to the regulations, and if someone were to look for the meaning of what a full cut-off fixture was, then they would have to go to a source such as ISNA. He said ISNA was within the white paper that Mr. Hart had mentioned, and the technical definition for a full cut-off fixture was also listed. Mr. Hart said he received it, but it had stated that a full cut-off was a light distribution where no light was permitted at or above a horizontal plane located at the bottom of a luminaire, and a luminaire was a complete lighting unit often referred to as a light fixture. He said that a luminaire consisted of the light source, optical reflector and housing, and electrical components for safely starting and operating the source.

Mr. Hart said he could not get on the same level with the light fixture except from far away unless the luminaire was lower down and the pole was considered part of it, and if it was lowered down to pedestrian height, it would not be corrected because it was worse on the glass side as opposed to the frosted side. He questioned whether the bottom of the luminaire, a glass box shown on the overhead viewer, did not come lower than that. Mr. Reale replied that what was being viewed in the diagram displayed was one complete

luminaire, the entire light fixture. Mr. Hart asked if the bottom of the luminaire was just the collar and whether the pole counted. Mr. Reale stated that the pole did not count, the number one on the diagram was where the bottom of the luminaire was located, and it did not extend below that. He said a full cut-off fixture, related to light distribution and above the horizontal in particular, dealt with lighting. He said that a professional would have indicated that the bottom portion of the luminaire shielding the light source, in this case the hat that was being referred to at the top of the fixture, in addition to the lighting element was housed within that. He said that it was fully shielded so that the light came directly from the light element and would not go above the horizontal of the bottom level of the shielded portion of the fixture. Mr. Reale said that technically anyone could measure that light was being reflected off of the side panels, and so there was a disconnect between what was considered to be a full cut-off fixture and one that technically might emit light above the horizontal due to a reflective event with the light coming off of the panels.

Mr. Hart said the phrase "light spillover" was not defined in the NEMA definitions, and he wanted to know if there was another definition for what the phrase meant. Mr. Reale said light spillover meant whether light, to some measurable degree, was trespassing beyond a certain point, in this case a property boundary, after establishing a standard for what was acceptable. He said that prior to 2003 the requirements under the Zoning Ordinance did not permit greater than 0.5 foot-candles at a residential property boundary, which was what had been meant by a spillover, typically referring to a situation at a property boundary. Mr. Reale said measurements were taken all around the perimeter of the subject property, with the measurements being below 0.5 foot-candles in all cases, and there was no question that there was no spillover or light trespass.

Mr. Beard asked whether the 12-foot height had been fully resolved to staff's satisfaction, and Mr. Reale said it had.

James H. Scanlon presented the arguments forming the basis for the appeal. He informed the Board that between 6:00 p.m. and 8:00 p.m., all of the lights had been on. Mr. Scanlon stated that when the lights were all on, it was incredibly bright to look at and lit up the whole neighborhood, and there were twice as many lights in the new parking lot as there had been in the old parking lot. He stated that if the lights were directed downward completely, then there would be no need for diffusers on the sides of some of them because that type of fixture caused light to be generated outward through the side panels, and they were extremely bright, causing a lot of glare, which was a rude intrusion into the neighborhood. Mr. Scanlon said he felt the issue was important enough to come and speak to the Board, and he asked that the church live up to the commitments it had made. He stated that the lights were supposed to be directed downward with no spillover, and it had not occurred.

Mr. Byers said he had visited the site the prior Thursday at 7:00 p.m., and all the lights had been on. He said he was under the impression that the reason the lights were on was that there had been a contractual arrangement, and the parking lot was actually used as a spillover lot for Virginia Rail Express (VRE). He wondered what time Mr. Ribble had been there the previous night since that was a weekday and why there were only four lights on. Mr. Byers said he did not know whether there had been a time when the lights would cut off based on an arrangement between VRE and the County or due to security reasons. He asked Mr. Scanlon whether that was correct.

Mr. Scanlon stated that he did not know about the VRE arrangement and was surprised to hear it. He asked whether an arrangement with VRE would be covered under a special permit to allow satellite parking. Whether the lighting was for a church service or anything else, Mr. Scanlon said all the lighting was supposed to be directed downward and glare prevented, and that had not occurred with the fixtures currently in place. He said that if the Board had been there while the lights were all on, they would understand what he was talking about.

Chairman DiGiulian called for speakers.

Lynne Strobel, agent for St. Mary's Church, came forward to speak. She stated that all the lights had been on the previous week because they had been asked to keep them on, but they had been back on a timer the night before the hearing. Ms. Strobel said that while the church had spent $4,200 on the improvements to make the changes, over $8,000 had been spent on the system to shut off the lights automatically, and the church was honoring its commitments. She stated that she thought this was a technical matter, which had been reviewed and evaluated by staff, and the technical requirements were met. She said she believed staff had properly withdrawn the notice of violation.

Mr. Hart asked whether Ms. Strobel knew anything about the VRE lot, and she stated that she did not know much about it, but that there may have been an arrangement that began the previous day. She said she would try to get more information.

Mr. Hart asked Ms. Stanfield if such an arrangement would need some kind of approval, and Ms. Stanfield said that she would have to consult with others before answering the question, but that it sounded like it would.

Ms. Strobel said that if it was an issue, they would not provide the service that was basically to serve the community. The church would abide by any regulations that were imposed.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to overturn the determination of the Zoning Administrator. He said he visited the site the previous week when all 50 lights were on, and it was quite a display. Part of the problem was the number of light fixtures, and he did not understand why 50 light fixtures of that size were needed to illuminate the lots. Mr. Hammack said he read the definition for Development Condition 16 and remembered that it indicated all fixtures should be fully shielded, full cut-off, and directed downward. The Board had specified shielded lights three separate times. He said the definition of a full cut-off which would prevent light distribution above a 90 percent plane was clear, but the definition of "shielded" confused things more because it said sometimes used in reference to a luminaire that is provided with internal or external louvers, shields or visors to limit glare. Mr. Hammack said that although the standards were a little higher, the Board applied this to tennis court applications, and oftentimes baffles, louvers, shields, or something that prevented horizontal projection light to some extent were used. He said the definition of "fully shielded" was also used to refer to luminaires that were designed to control glare without the use of additional shields, and that would seem to allow a full cut-off, and it indicated that shielded or fully shielded were sometimes used in place of either cut-off or a full cut-off. He stated that the colonial style fixtures that were installed seemed to comply with the definition of cut-off or shielded, but did not direct the light downward because of the style of the fixture. Mr. Hammack said the fixtures were similar to those that were installed on the existing building, although he thought they might be a little larger and gave a little more luminescence.

Mr. Hammack stated that the fixtures were very much the same as the fixtures in the neighborhood across the street, which were on higher standards, but did not have as many colonial fixtures. He did not see a great deal of difference between the existing parking lot glare and the new lights, other than the fact that there were a lot of lights. He said that he did not observe what would be called light spillover into the neighborhood. Mr. Hammack said the issue was partly the number of lights, although the style of the fixtures contributed to some of the problem, but the issue should be addressed in another way other than through an appeal. He said the development condition contemplated a different kind of fixture other than the one that was installed, and topography was part of the issue. Mr. Hammack said the fixtures had very bright reflecting surfaces in an illuminaire underneath the cap of the light which caused a lot of light diffusion. He said Mr. Congleton and staff had done a good job, but technically the lights were not directed downward as required in the development conditions.

Mr. Beard seconded the motion. He said that he tried to be objective about this case, but that when looking up at the lights, it was an offensive glare, and he noticed it on at least two or three fixtures as he was driving. Mr. Hammack added that he drove by another church that had a box-like fixture which provided lighting within a parking lot, and it did not create such a visual impression. Mr. Hammack stated that he drove through the neighborhood and observed the Robinson School lighting along with some of the other lighting around them, and they were not as obtrusive. He said the development condition meant for them to have very subdued lighting.

Mr. Hart said the wording for a lighting development condition should be revisited in future applications. In the subject application, he said he would conclude that the fixtures were fully shielded, full cut-off, and directed downward, and there was no light spillover onto the surrounding residential properties. Mr. Hart stated that the problem with the particular type of fixture and the wording of Development Condition 16 was that it used the phrase "prevent glare" twice, and he did not share staff's conclusion that when the terms "reduce" or "minimize" glare were used as opposed to "prevent" glare, those words were somewhat interchangeable. He said he struggled with whether the glare that was supposed to be prevented was any glare or just glare from the vantage point of surrounding residential properties, and the Board could only refer

to the words used in Development Condition 16 rather than what should have been said or was meant. He stated that he had read the minutes and voted for the special permit, but did not remember the case very well or having discussed the "glare" wording; however, he thought the word "prevent" meant that there would not be any glare. He said that minimizing or reducing something was different from preventing something, and if a person was standing beneath or 20 feet to the side of the fixture, they would see glare at the hat. He indicated that the phrase "to prevent glare" in the third sentence was in reference to the building mounted security lighting and the fixtures themselves, but did not mention surrounding residential properties. Mr. Hart stated that the problem with the fixtures was not that they were not directed downward, but due to the clear glass on the sides and the exposed bulb at the top, there was glare visible to someone standing off to the side.

Mr. Hart said in the future he thought the Board would do a better job on the development condition and not use the word "prevent" if that was not what was meant, but if the word "prevent" was used and there were complaints from neighbors, the Board would have to proceed with the condition that was included.

Mr. Byers said that he reviewed Development Condition 16, and it was his opinion it had been written specifically to prevent glare and light spillover into the surrounding residential properties, and it was his judgment it did that. He said the perimeter lights on Sideburn and Zion Roads had the frosted glass and reflective light to make sure there was no glare. Mr. Byers stated that the question was whether the church was in compliance with the development condition as it was written and whether an applicant should be penalized if there were problems with a development condition, and he did not think so. He said that it concerned him that the Board was making suggestions as to what type of light fixture the church should have instead of simply stating that they would have to meet the standard because how they met the standard on their property was their responsibility.

Mr. Hammack said he agreed with most of the comments made by the other Board members. The Board was asked to adopt development conditions, and then the applicant has an architect or engineer implement the conditions. He said he did not think it was the position of the Board to get into the design criteria because the Board was not comprised of engineers fully informed in technical areas. Mr. Hammack said he did not know why 50 lights were required for the six parking lots and the surrounding ingress and egress lanes and that part of the problem was the number of lights. He said he thought the architect or engineer wanted the colonial style lights because they were consistent with the other lights around the church and in the neighborhood, but there had been no testimony regarding the size or number needed. Mr. Hammack said he agreed with Mr. Byers that the church should not be penalized by coming in after the fact and requiring the replacement of 50 lights, but he did not think that in a technical sense the clear language of the development condition had been met.

Mr. Ribble said that the testimony about how the frosted glass seemed to cut down on the glare indicated to him that there was some sort of glare on the other three sides.

Ms. Gibb indicated that the question she had for staff the prior week was what the difference was between minimizing and preventing. She said that she knew that there was a difference between the two, and she would not use these words interchangeably, but the Board meant something stronger than "minimize" and had said "prevent" several times.

Chairman DiGiulian called for the vote. The motion carried by a vote of 7-0.

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~ ~ ~ December 5, 2006, Scheduled case of:

9:30 A.M. SIMON V. ORTIZ, RONALD ORTIZ AND RUTH A. ORTIZ, A 2006-MA-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have paved a portion of the front yard on property located in the R-4 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 6714 Westcott Rd. on approx. 7,800 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 113. (Deferred from 10/31/06)

Chairman DiGiulian called the appellants to the podium.

~ ~ ~ December 5, 2006, SIMON V. ORTIZ, RONALD ORTIZ AND RUTH A. ORTIZ, A 2006-MA-041, continued from Page 726

Ronald Ortiz, 6714 Westcott Road, Falls Church, Virginia, came forward.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated October 24, 2006. Ms. Tsai stated that Chuck Cohenour, Inspector, Zoning Evaluation Branch, was present at the hearing. She said the appeal was of a determination that the appellants had paved a portion of the front yard on property located in the R-4 District in excess of the allowable surface coverage area under the Zoning Ordinance provisions. Ms. Tsai stated that the appeal was deferred from the October 31, 2006 meeting because two of the appellants were out of the country at the time. Staff had since tried to contact the appellants to discuss the violation, but had been unsuccessful. Ms. Tsai said the property had been developed with an approximately 2,800-square-foot single-family detached dwelling unit, and zoning inspections of the subject property revealed that approximately 38 percent or approximately 673 square feet of the front yard had been paved with concrete for the parking of vehicles. She noted that the staff report had incorrectly stated that 44 percent of the front yard was paved, which included the calculations from the sidewalk which was in the front yard of the property, and it was actually only 38 percent of the front yard that was paved. Ms. Tsai stated that in the R-4 District no more than 30 percent could be paved.

Mr. Ortiz presented the arguments forming the basis for the appeal. He stated that he did not realize that he was violating the code and there was a 30 percent limit when beginning the project, and the reason he expanded the driveway was to solve a problem with the neighbors. He said that anytime he parked his car in front of the neighbor's house, they would come to his door and tell him to move the car. Mr. Ortiz said his home had an addition and a second story, and he felt the driveway was compatible with the home.

Mr. Ribble asked Mr. Ortiz if he had been told why he had to move his car when it was in a legal parking area, and Mr. Ortiz responded that the neighbors had a big family and more than three cars. Their driveway allowed only two cars, and when he parked his car in front of their house on the street, they would come over and tell him to move his car. Mr. Ribble asked whether the complaints stopped after he put the extra pavement in the front yard, and Mr. Ortiz said he then had received the complaint about him building a bigger driveway.

Mr. Beard asked Charles Cohenour, Senior Zoning Inspector, if the appellants needed to cut back 416 square feet to be in conformity, and Mr. Cohenour indicated that he added the front sidewalk in and would have to reduce the driveway by 116 square feet. Mr. Beard and Mr. Cohenour discussed what needed to be removed to bring the property into compliance. Mr. Cohenour said the appellants would have to remove at least four feet in width the entire length of the driveway, which was 29 feet.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to uphold the determination of the Zoning Administrator. He said there was no argument that the pavement was over 30 percent, and Mr. Ortiz had stated as much. Mr. Ribble noted that it was actually 38 percent as opposed to 44 percent as had been previously indicated in the staff report. He said he incorporated the staff report and the remarks made at the hearing. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 5, 2006, Scheduled case of:

9:30 A.M. JOHN EVERETT AND CLAIRE EVERETT, A 2006-BR-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a contractor's office and shop, are allowing the parking of more than one commercial vehicle, and have erected an accessory storage structure that exceeds eight and one-half feet in height, does not comply with the minimum yard requirements for the R-3 District and was erected without a Building Permit, all in violation of Zoning Ordinance provisions. Located at 7601 Dunston St. on approx. 13,572 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (47) 1. (Admin. moved from 9/19/06 at appl. req.) (Decision deferred from 11/14/06)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that she met with Mr. Everett the prior afternoon and advised him to compile the various documents he needed to apply for a special permit for an error in building location. She stated that initially Mr. Everett had planned to move the shed, which was the only remaining violation. The purpose of meeting with him was to determine if he could submit a special permit for an error in building location for the storage facility he converted into a workshop as well as storage. She said that after reviewing the plat, it would need some work, and even though he submitted the special permit application, it would take some time before it would be accepted and scheduled for public hearing. Ms. Stanfield said the appellants requested a deferral for the decision of the appeal.

Chairman DiGiulian asked how long of a deferral would be necessary. Ms. Stanfield said the inspector requested some time to confirm the other violations had been addressed, and she suggested a period of four weeks.

Ms. Gibb moved to defer decision on A 2006-BR-030 until January 9, 2007, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Mr. Hart mentioned that the Board received a letter from Mrs. Bernadine Andrews and quoted the letter, "Why in the world did you have to embarrass the Everett's and the neighborhood with such a big unattractive notification? I've seen many notices over the years and never one that shouted out to embarrass the resident." Mr. Hart asked whether there was something special about the sign. Ms. Stanfield said it was the same as all of the signs the County posted.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the McLean Bible Church vs. BZA in the Circuit Court of Fairfax County, 06-8305; the Board of Supervisors vs. BZA in the Circuit Court of Fairfax County, 06-10952; BZA vs. Board of Supervisors, 06-11777; Concerned Citizens of Holland Hall in the Circuit Court of Fairfax County, 06-2456; Virginia Equity Solutions in the Circuit Court of Fairfax County, 05-63316; and correspondence pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 10:35 a.m. and reconvened at 11:15 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:16 a.m.

Minutes by: Shannon M. Keane

Approved on: November 7, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 12, 2006. The following Board Members were present: V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; and Paul W. Hammack, Jr. Chairman John DiGiulian and Norman P. Byers were absent from the meeting.

Vice 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 Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ December 12, 2006, Scheduled case of:

9:00 A.M. MARK TURNER, III, VC 2005-DR-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure to remain 6.8 ft. with eave 5.3 ft. from rear lot line. Located at 10607 Georgetown Pk. on approx. 1.28 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 24A1 pt. and 12-2 ((1)) 47 pt. (In Association with VC 2005-DR-010) (Continued from 12/20/05 and 6/27/06)

Vice Chairman Ribble noted that a request to indefinitely defer VC 2005-DR-011 had been received.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicant would either withdraw or file for a special permit, and the applicant had requested the deferral to allow time to take appropriate action.

Mr. Beard moved to indefinitely defer VC 2005-DR-011. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Byers were absent from the meeting.

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~ ~ ~ December 12, 2006, Scheduled case of:

9:00 A.M. FAIRFAX COUNTY PARK AUTHORITY, VC 2005-DR-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 7.0 ft. with eave 3.0 ft. from side lot line. Located at 925 Springvale Rd. on approx. 18.75 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 24A1 pt. and 12-2 ((1)) 47 pt. (In Association with VC 2005-DR-011) (Continued from 12/20/05 and 6/27/06)

Vice Chairman Ribble noted that a request to indefinitely defer VC 2005-DR-010 had been received.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicant would be filing for a special permit and converting the variance.

Ms. Gibb moved to indefinitely defer VC 2005-DR-010. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Byers were absent from the meeting.

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~ ~ ~ December 12, 2006, Scheduled case of:

9:00 A.M. BENNY HOCKERSMITH, SP 2006-SP-059 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.83 ft. from side lot line such that side yards total 19.83 ft. Located at 7210 Reservation Dr. on approx. 14,323 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-3 ((2)) 287.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benny Hockersmith, 7210 Reservation Drive, Springfield, Virginia, replied that it was.

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

~ ~ ~ December 12, 2006, BENNY HOCKERSMITH, SP 2006-SP-059, continued from Page 729

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested approval for a reduction of certain yard requirements to permit construction of an addition, a garage, to be located 5.83 feet from the side lot line such that side yards totaled 19.83 feet. A minimum side yard of 8.0 feet and total side yards of 24 feet were required; therefore, modifications of 2.17 feet and 4.17 feet were requested. Staff recommended approval subject to the proposed development conditions.

Mr. Hockersmith presented the special permit request as outlined in the statement of justification submitted with the application. He said that he wanted to convert his one-car carport into a two-car garage, but with the pie-shaped lot and the position of the existing carport relative to the street, the proposed location was the only one feasible. He said he needed enough width to allow a two-car entrance door and pointed out that the roofline and the front view of the garage would remain the same.

Mr. Hockersmith clarified that the initial application was a concurrent variance/special permit that requested an original shed to remain. His present application concerned solely the carport area located on the right side of the property.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2006-SP-059 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BENNY HOCKERSMITH, SP 2006-SP-059 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.83 ft. from side lot line such that side yards total 19.83 ft. Located at 7210 Reservation Dr. on approx. 14,323 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-3 ((2)) 287. 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, 2006, and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The analysis made by staff in the staff report in support of the application is adopted.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size of the proposed addition (approximately 800 square feet) as shown on the plat prepared by Kephart & Company, dated March 5, 1990, as revised

~ ~ ~ December 12, 2006, BENNY HOCKERSMITH, SP 2006-SP-059, continued from Page 730

through February 25, 2004, as submitted with this application and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family detached dwelling may be up to 150 percent of the total gross floor area of the dwelling (2,184 square feet) that existed at the time of the first expansion request. Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be architecturally compatible with the existing dwelling and shall be consistent with the architectural renderings and materials as shown on Attachment 1 to the special permit 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. Chairman DiGiulian and Mr. Byers were absent from the meeting.

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~ ~ ~ December 12, 2006, Scheduled case of:

9:00 A.M. OVED ZUCKER AND FARIDA LIM, SPA 93-M-054 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 93-M-054 to permit reduction of certain yard requirements to permit construction of addition 23.41 ft. from front lot line. Located at 6829 Little River Tnpk. on approx. 1.35 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((1)) 12B.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William B. Lawson, Jr., the applicants' agent, Lawson, Tarter & Charvet, P.C., 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, replied that it was.

Ms. Gibb indicated that she would recuse herself from the public hearing.

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a reduction to the minimum front yard requirement to permit the construction of a two-story addition which would consist of a second-story addition above an existing two-car garage and a two-story portion which would extend the dwelling's footprint along the perimeter of the existing two-car garage, thus creating 376 square feet of additional impervious surface within an Resource Protection Area (RPA) and Environmental Quality Cooridor (EQC). The addition would be comprised of three additional bedrooms, an office, the expansion of the existing garage for a third car, additional storage space, and a workshop area. The existing one-story garage was 29.6 feet from the front lot line, which was a reduction of 5.4 feet to the minimum required front yard, as approved in conjunction with SP 93-M-054. Staff recommended approval-in-part of SPA 93-M-054 for the construction of a second-story addition only subject to the proposed development conditions.

Mr. Varga responded to Mr. Hart's questions concerning notations on the plat, the consideration of an RPA, impervious surfaces, and the necessity for an RPA waiver, which was subject to the Department of Public Works and Environmental Services (DPWES) review and determination. Mr. Varga agreed with Mr. Hart that the DPWES waiver request did not require a public hearing.

Noting his experience with, contributions to, and understanding of the special permit amendment adopted to afford relief to homeowners seeking home expansions, Mr. Lawson said the applicants' property was restricted by a floodplain that engulfed a large portion of the rear of the lot, a 29.6-foot front yard setback requirement, a sanitary sewer easement, and the 15-foot side yard setback requirements. He noted that these type applications were to be in harmony with the Comprehensive Plan, which was to be a guide, and it did discourage development within RPAs and EQCs. He explained the property's topography, setbacks, and surrounding properties, pointing out that these presented a hardship for the owners interested in expansion. He said the applicants had made considerable efforts to be environmentally sensitive. Mr. Lawson said his interpretation of the Plan's language discouraging development in RPAs referred to new projects, new developments, and rezoning, not for a homeowner planning a 200 square foot addition, that it was not a prohibition. He pointed out that the Comprehensive Plan stated development shall be in accordance with the Chesapeake Bay Ordinance and referred to several examples of property owners' situations. Mr. Lawson said the Board of Supervisors meant that one could have reasonable expansions, and it should not make a difference whether it was by right or special permit.

Mr. Lawson said that because of the property's topography, the only buildable area for the addition was into the setback, which mandated the special permit process. He explained the areas of the addition's expansion. He pointed out the areas in the creek where the County did stream erosion measures and recently constructed a bridge, and he said he thought it was unfair that such activities were allowed, yet the applicants were denied a 200 square foot addition a good distance from the creek on an area that was lawn. The applicants were amenable to suggestions from professionals, those whom administer the Ordinance, such as a rain garden, that such conditions for a RPA waiver would be acceptable. Mr. Lawson requested that the applicants not be required to produce a permit for a pre-existing deck because they could assume it was properly processed, but they had no recordation. Mr. Lawson said there were numerous letters of support and that the architect was present to explain the series of additions and demonstrate meeting the 2,500 and 1,000 square foot criteria.

Christopher Ludwig, 1951 Leonard Road, Falls Church, Virginia, the applicants' architect, responded to Mr. Hammack's questions concerning the particulars of the proposed office area and the individual interior sections of the addition. He explained that the office was not considered a formal office, but could be utilized as a work area. He discussed the placement of each bedroom, the garage expansion, and the interior circulation pattern.

Mr. Hart referenced Sect. 8-922, which indicated that the BZA determine that the proposed reduction represented the minimum reduction necessary to accommodate the structure. He questioned how one could conclude that the addition of a third bay to make a three-car garage represented the minimum amount of reduction necessary to accommodate the proposed structure on the lot. With regard to the bedrooms, he said he first thought that a two-bedroom house was rather unusual for today's times, but if approved, three were proposed, making it a five-bedroom home, and he questioned how one determined that those improvements represented the minimum amount of reduction necessary to accommodate the structure on the lot.

Mr. Ludwig explained that due to the bedrock, the home had no basement for storage, and a three-car garage was practical for parking the cars as well as storage and a workshop area. He said access to the third bay required the driveway extension around the building.

Responding to a question from Mr. Hart concerning impervious surface, Ms. Langdon explained that the major concern, which the applicants would have to address with DPWES, was if the impervious surface went over 1,000 square feet, it would then be an RPA exception instead of a waiver, which could affect the applicants' process through DPWES.

In response to a question from Mr. Hart, Mr. Ludwig explained the necessity for the three bedrooms.

In response to a question from Mr. Beard, Mr. Lawson explained the impervious surface calculation.

~ ~ ~ December 12, 2006, OVED ZUCKER AND FARIDA LIM, SPA 93-M-054, continued from Page 732

Referencing Development Condition 9, his understanding was that it was whether the proposed structure was reasonable when applying the other tests such as being harmonious and compatible with the character of the neighborhood. It was the BZA's determination whether the proposed reduction represented the minimum amount necessary to accommodate the proposed structure.

Mr. Ludwig explained the garage's current use and configuration.

Responding to a question from Mr. Beard of whether the Board had the authority to waive proof that a building permit was obtained for the deck, Ms. Langdon pointed out that the paragraph after the conditions in the resolution form stipulated that an approval did not relieve an applicant from compliance with any provision of applicable ordinances, regulations, or adopted standards. She acknowledged that staff found no evidence of a building permit, and the drawings available indicated that the deck's size had increased over time.

Vice Chairman Ribble called for speakers.

Oved Zucker, 6829 Little River Turnpike, Annandale, Virginia, came forward to speak. He said the second-story addition was above the garage and within the same footprint. The second addition would expand the garage to three bays and would include three additional bedrooms and an office area. He said efforts were made to ensure the structure was harmonious and in character with the neighborhood. Mr. Zucker said the improvements would be beneficial to the County because it would increase the tax base and upgrade the property. He said that all but one of the neighbors supported it. Mr. Zucker said, in his opinion, the County was the most flagrant violator of the spirit of the RPA, referencing the rip-rap, bridge, and the destruction of trees. He questioned how the County's objection to the modest proposal of a few feet encroachment could negate the typical improvements for the homeowner and the neighborhood.

In response to Mr. Hart, Mr. Ludwig said he had no floor plans, only elevation drawings included with the application.

Vice Chairman Ribble closed the public hearing.

Mr. Hart said he wanted to see the floor plan in relation to the existing structure as he was troubled by the garage's third bay, which increased the footprint, and because of the driveway, the impervious surface would be increased. He stated that the Comprehensive Plan was a guide, and anything proposed, although sensitively designed and respectful of environmental restraints, was not assured for approval. Mr. Hart stated that he believed additional information was necessary before a majority vote could be attained. He said the Board typically required a building permit for pre-existing decks to assure a safe, sturdy structure.

Mr. Hammack requested Mr. Lawson provide the design layout to staff to forward to the BZA members.

Mr. Hart moved to defer the decision on SPA 93-M-054 to December 19, 2006, at 9:00 a.m., with the record to remain open for written comments. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Ms. Gibb recused herself from the hearing. Chairman DiGiulian and Mr. Byers were absent from the meeting.

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~ ~ ~ December 12, 2006, Scheduled case of:

9:00 A.M. JON/JOAN BOLSTAD, SP 2006-SU-060 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 19.7 ft. from rear lot line. Located at 2901 Mother Well Ct. on approx. 10,471 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 851.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jon Bolstad, 2901 Mother Well Court, Herndon, Virginia, replied that it was.

~ ~ ~ December 12, 2006, JON/JOAN BOLSTAD, SP 2006-SU-060, continued from Page 733

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a reduction of certain yard requirements to permit the construction of a screened porch addition to an existing 19.7 foot deck from the subject property's rear lot line. Staff recommended approval.

Mr. Bolstad explained that the deck was pre-existing and it extended 19.7 feet from the rear lot line. They proposed to place a screened porch on top of half of the existing deck; therefore, the screened porch would also extend 19.7 from the rear lot line. He said the recently adopted amendment regarding special permits for certain yard requirements was applicable. He noted that his neighbors supported the proposal.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2006-SU-060 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JON/JOAN BOLSTAD, SP 2006-SU-060 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 19.7 ft. from rear lot line. Located at 2901 Mother Well Ct. on approx. 10,471 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 851. 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 12, 2006; 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 analysis recited in the staff report is adopted.
4. This is simply a screened-in porch; the applicant is simply screening in his deck.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 216 square feet) of the proposed addition as shown on the plat prepared by William E. Ramsey, dated July 10, 2006, as revised through September 28, 2006, as submitted with this application and is not transferable to other land.

~ ~ ~ December 12, 2006, JON/JOAN BOLSTAD, SP 2006-SU-060, continued from Page 734

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family detached dwelling may be up to 150 percent of the total gross floor area of the dwelling (2,632 square feet) that existed at the time of the first expansion request. Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Byers were absent from the meeting.

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~ ~ ~ December 12, 2006, Scheduled case of:

9:00 A.M. LINDA COOK, SP 2006-PR-061 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 15.2 ft. from rear lot line. Located at 2960 Gray St. on approx. 18,068 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((7)) 16B.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Scott Adams, the agent and contractor, The Dexperts, Inc., 20585 Blue Water, Ashburn, Virginia, replied that it was.

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on an error in the building location to permit a roofed deck to remain 15.2 feet from the rear lot line.

In response to a question from Mr. Hart, Susan C. Langdon, Chief, Special Permit and Variance Branch, explained that the referred to "brackets" was a beam above the deck with spaced slats that attached laterally to the deck floor, and the Ordinance considered that a roof. She said a deck's definition did not allow anything above 36 inches or with a roof over it. Under the deck category was "open" deck and "roofed" deck, stipulating any deck either completely or partially roofed even by open beams or latticework was roofed. Ms. Langdon further clarified that there was no definition for "roof," and Sect. 2-412 defined roofed and open deck.

Mr. Beard commented that he recalled a similar case involving latticework, but it was mounted upon rollers which allowed moving it.

In response to question from Ms. Gibb and Mr. Hammack, Ms. Langdon explained acceptable placement of

deck latticework. She clarified the difference between an "addition" and a "roofed" deck, noting each had certain minimum yard requirements.

Mr. Adams confirmed that he was the contractor and he built the deck. He installed the latticework and had applied for and had with him a copy of the permit. He acknowledged that after seeing that the permit was approved, he neglected to further review it. Mr. Adams said he installed only a few decks per year in Fairfax County as the majority of his business was in Loudoun County where such designs were allowed. He presented a copy of the building permit and the approved plans to the Board for its review.

Discussion followed among Board members, Mr. Adams, and Ms. Langdon concerning the County's regulations on deck latticework. Ms. Langdon confirmed that the application's issue was a roofed deck and the minimum yard requirement.

Mr. Beard pointed out one of the documents with the stamp of William E. Shoup, Zoning Administrator, indicating approval of the deck, but stipulating that there could be no privacy screening, lattice, plant hangers, trellis, or arbor, as there could be nothing above or below the deck flooring.

Vice Chairman Ribble called for speakers.

Mr. Adams again acknowledged that he had made a mistake by referring only to the approved plans, and at final building inspection had realized that lattice, arbors, plant hangers or anything above the rail were not permitted. He said that if he had not already constructed the deck, he would still be before the Board to request a special permit to build the deck with the amenities that were installed.

Linda Cook, 2960 Gray Street, Oakton, Virginia, came forward to speak. She explained that because of her parcel's unusual shape, it abutted three neighbors' properties, and there apparently was some confusion about her special permit approval because she thought there was no infringement on her neighbors. She submitted support signatures from her neighbors.

In response to a question from Mr. Beard, Ms. Langdon said under Sect. 8-922 the applicant could apply for an enclosed porch.

Ms. Cook responded to a question from Mr. Hart concerning the distance from her deck to the house on Lot 17B, that it was more than 35 feet, with ample vegetative screening and buffering.

Vice Chairman Ribble closed the public hearing.

Mr. Beard commented that there was a definite violation although he was very sympathetic to Ms. Cook because the rules were rather restrictive, and she apparently had recourse to remedy it. Mr. Beard moved to deny SP 2006-PR-061.

Mr. Beard's motion was not seconded.

Mr. Hart moved that the Board defer decision on SP 2006-PR-061 to allow the applicant time to file an application for a reduction of certain yard requirements under Sect. 8-922 of the Zoning Ordinance. The motion was seconded by Mr. Hammack for purposes of discussion.

Mr. Hammack pointed out that the applicant already had filed for an error in building location, and he did not see why it would not be approvable under that.

Ms. Gibb stated she would make a substitute motion under the mistake section, stating she thought the mistake was made with good faith, adding that the contractor testified he went forward believing the project was approved. Ms. Gibb moved to approve SP 2006-PR-061 for the reasons stated in the Resolution.

Mr. Hammack stated he would withdraw his second of Mr. Hart's motion to defer decision and would second Ms. Gibb's motion for approval. He noted that he believed the error was done in good faith and that the schematics and building plan details were clearly shown and were not marked up as the contractor was familiar with seeing.

~ ~ ~ December 12, 2006, LINDA COOK, SP 2006-PR-061, continued from Page 736

Mr. Hart said the plans clearly stated the restrictions concerning there was nothing allowed above rails, and that fact could not be circumvented. He said if the application came in under a request for a reduction of certain yard requirements and there were no paperwork complications, he thought the circumstances would be different. Mr. Hart stated he could not support the motion to approve.

Vice Chairman Ribble said it was unfortunate that the documents were signed and stamped; however, he gave the contractor the benefit of doubt on the good faith issue. He added that the contractor deserved a gold star for showing up before the Board. He said he would support the motion to approve.

Ms. Langdon clarified for Mr. Beard that if the application were denied, after the one-year wait period for refiling an application, the applicant could reapply under Sect. 8-922 for a covered porch because the error was less than 50 percent.

Mr. Hammack said that the definitions for an open deck and roofed deck were very confusing as to what was and was not allowed. He said he found the contractor candid and truthful, and the permit process should clearly mark a denial of a roofed deck.

Discussion followed among Board members concerning the plans. Ms. Langdon noted that applications had come before the Board that were considered a roofed deck or an addition. Concerning things that may or may not be permissible upon a deck, Ms. Langdon said she would defer to Zoning Administration for its determination.

Concurring with Mr. Hart's suggestion concerning clarification of decks and permissible amenities for the Work Program's review, Ms. Langdon said that staff would send a memorandum to Zoning Administration of his suggestion as well as Mr. Hammack's suggestion for explicit notations of approval or denial of such permits.

Vice Chairman Ribble called for a vote. The motion to approve SP 2006-PR-061 failed by a vote of 3-1-1.

Mr. Hammack moved to waive the 12-month waiting period for refiling an application. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Byers were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDA COOK, SP 2006-PR-061 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 15.2 ft. from rear lot line. Located at 2960 Gray St. on approx. 18,068 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((7)) 16B. 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 12, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The mistake was made in good faith.
3. The contractor testified that he thought he had permission to go forward based on his building permit, which said he was okay; and he neglected to look at the stamped plat.
4. The contractor's normal course of business is in Loudoun County where it is okay.
5. The homeowner's testimony was that she thought it was okay.

~ ~ ~ December 12, 2006, LINDA COOK, SP 2006-PR-061, continued from Page 737

6. There is testimony that the impact on the neighbors is not great, and that it is shielded from the neighbors by landscaping.
7. 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 Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of the roofed deck, as shown on the plat prepared by Advance Engineering Group, dated August 10, 2006, submitted with this application and is not transferable to other land.

2. An amended building permit and final inspections for the roofed deck shall be diligently pursued within 30 days and obtained within 90 days of final approval or this special permit shall be null and void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hammack seconded the motion, which **FAILED*** by a vote of 3-1-1, **THEREFORE, THE APPLICATION WAS DENIED**. Mr. Beard voted against the motion. Mr. Hart abstained from the vote. Mr. Hammack moved to waive the 12-month waiting period for refiling an application. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Byers were absent from the meeting.

*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

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~ ~ ~ December 12, 2006, Scheduled case of:

9:00 A.M. SHIRLEY HITCHCOCK, SP 2006-SP-062 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.1 ft. from side lot line such that side yards total 15.5 ft. Located at 8842 Applecross Ln. on approx. 10,071 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 201.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Shirley Hitchcock, 8842 Applecross Lane, Springfield, Virginia, replied that it was.

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction of certain yard requirements for construction of an addition such that side yards totaled 17 feet. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of SP 2006-SP-062 with the adoption of the proposed development conditions included as Appendix 1 in the staff report.

Ms. Hitchcock presented the special permit request as outlined in the statement of justification submitted with the application. She said the addition would extend the dining room wall in order to afford enough room for her extended family to have dinner together. She pointed out that the improvement would look the same, that the difference would not be noticeable from the street.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2006-SP-062 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHIRLEY HITCHCOCK, SP 2006-SP-062 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.1 ft. from side lot line such that side yards total 15.5 ft. Located at 8842 Applecross Ln. on approx. 10,071 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 201. 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, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The analysis set forth in the staff report in support of the motion is adopted.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

~ ~ ~ December 12, 2006, SHIRLEY HITCHCOCK, SP 2006-SP-062, continued from Page 739

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 150 square feet) of the proposed one story addition as shown on the plat prepared by Urban, Ltd., dated September, 2006, as submitted with this application and is not transferable to other land.

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family dwelling may be up to 150 percent of the total gross floor area of the dwelling (1,557 square feet) that existed at the time of the first expansion request. Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Byers were absent from the meeting.

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~ ~ ~ December 12, 2006, Scheduled case of:

9:30 A.M. G. RAY WORLEY, SR. AND ESTELLA C. (H.) WORLEY, A 2006-PR-056 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining two dwelling units on a single lot located in the R-3 District in violation of Zoning Ordinance provisions. Located at 2537 Gallows Rd. on approx. 15,375 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 4B.

Vice Chairman Ribble noted that A 2006-PR-056 had been administratively moved to January 30, 2007, at 9:30 a.m., at the appellants' request.

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~ ~ ~ December 12, 2006, Scheduled case of:

9:30 A.M. JEFFREY S. GIORDANO, A 2006-PR-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has constructed an accessory storage structure that exceeds 8 1/2 feet in height and does not comply with the minimum yard requirements of the R-3 District in violation of Zoning Ordinance provisions. Located 7419 Tower St. on approx. 12,397 sq. ft. of land zoned R-3. Providence District. Tax Map 50-1 ((13)) 66A. (Deferred from 10/17/06)

~ ~ ~ December 12, 2006, JEFFREY S. GIORDANO, A 2006-PR-034, continued from Page 740

Vice Chairman Ribble noted that A 2006-PR-034 had been administratively moved to January 30, 2007, at 9:30 a.m., for notices.

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~ ~ ~ December 12, 2006, Scheduled case of:

9:30 A.M. ARLINGTON-FAIRFAX LODGE NO. 2188 BEN. & PROT. ORDER OF ELKS OF USA, A 2006-PR-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is permitting a new vehicle storage establishment, a storage yard, and a retail sales establishment on property located in the R-1 District in violation of Zoning Ordinance provisions. Located at 8421 Arlington Blvd. on approx. 5.15 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((1)) 101A. (Deferred from 10/24/06 at appl. req.)

Vice Chairman Ribble noted that A 2006-PR-037 had been withdrawn.

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~ ~ ~ December 12, After Agenda Item

Request for Reconsideration for Appeal filed by
James A. Scanlon, A 2006-BR-053

No motion was made; therefore, the request for reconsideration was denied.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Board of Supervisors v. BZA, in Fairfax County Circuit Court, CL-2006-14988, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Byers were absent from the meeting.

The meeting recessed at 10:38 a.m. and reconvened at 10:54 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Byers were absent from the meeting.

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Mr. Hammack noted that Chairman DiGiulian's term on the BZA would expire in February of 2007, and he moved that the BZA adopt a resolution that the Circuit Court reappoint Chairman DiGiulian and Ms. Gibb be authorized to send the letter the BZA had discussed. Mr. Beard seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Byers were absent from the meeting.

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~ ~ ~ December 12, 2006, continued from Page 741

As there was no other business to come before the Board, the meeting was adjourned at 10:55 a.m.

Minutes by: Paula A. McFarland

Approved on: November 3, 2010

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 19, 2006. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ December 19, 2006, Scheduled case of:

9:00 A.M. TERI HARPER, SP 2006-DR-064 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit accessory structure to remain 10.0 ft. from a side lot line and reduction to the minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.9 ft. with eave 3.5 ft. from rear lot line and 9.0 ft. from a side lot line. Located at 877 Dolley Madison Blvd. on approx. 1.15 ac. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 137 and 138.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Teri Harper, 877 Dolley Madison Boulevard, Mclean, Virginia, replied that it was.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reductions of certain yard requirements to permit an accessory structure to remain 10 feet from a side lot line. The purpose was to maintain an historic structure, which was considered to have been built legally when it was constructed in 1925. An application for building in error was not appropriate. The second request was to permit a reduction to minimum yard requirements based on error in building location to permit an accessory storage structure which measured 15.3 feet in height to remain 3.9 feet with eave 3.5 feet from rear lot line and 9.0 feet from a side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, reductions of 11 feet and 8.8 feet, respectively, were requested. Staff recommended approval of SP 2006-DR-064 subject to the proposed development conditions.

Ms. Harper presented the special permit request as outlined in the statement of justification submitted with the application. She said she had been a resident for 50 years, and there were two existing structures on the carriage house built before setbacks were required. She stated that the first structure was built in 1925, and the shed was built in 1932. Ms. Harper said the community, citizen organizations, and all of her neighbors supported the application. She said one of her neighbors had been born and raised on the property adjoining another neighbor and phoned to inform of her support. Ms. Harper stated that there was a great deal of history associated with the carriage house, and that was one of the reasons she purchased it.

Mr. Hammack asked whether the shed issue had been addressed, and the applicant handed out photographs of the shed.

Chairman DiGiulian asked whether the shed had been built in 1932, and the applicant stated that the license plate in front of the shed said 1932, but it was difficult to define.

Mr. Beard asked whether the carriage house had been occupied and if that part was planned to be torn down. Ms. Harper said it had a kitchen, living area, and bathroom that would be torn down with no plans to add onto it, and it had been occupied.

Mr. Byers asked how the shed was anchored and if it contained electricity. Ms. Harper said it was anchored on a wood frame base, but did not have electricity. Mr. Byers asked whether there were issues with the proposed development conditions, and Ms. Harper said she had none.

Mr. Hart asked about the advertisement for the hearing and the reference to the lot numbers reflected for the two parcels on the plat from 1983. Ms. Langdon explained that the lots previously referred to as Lots 1 and 2 were currently identified as Lots 137 and 138, but it was the same property.

~ ~ ~ December 19, 2006, TERI HARPER, SP 2006-DR-064, continued from Page 743

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2006-DR-064 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TERI HARPER, SP 2006-DR-064 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit accessory structure to remain 10.0 ft. from a side lot line and reduction to the minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.9 ft. with eave 3.5 ft. from rear lot line and 9.0 ft. from a side lot line. Located at 877 Dolley Madison Blvd. on approx. 1.15 ac. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 137 and 138. 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 19, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The reasons set forth in the staff report and the testimony and written statement presented by the applicant in support of the resolution are adopted.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922, Provisions for Reduction of Certain Yard Requirements, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

~ ~ ~ December 19, 2006, TERI HARPER, SP 2006-DR-064, continued from Page 744

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 existing accessory structure (carriage house) and accessory storage structure (shed) as shown on the plat prepared by Alexandria Surveys International, LLC, dated, September 15, 2006, as revised through October 11, 2006 as submitted with this application and is not transferable to other land. The dwelling attached to the carriage house shall be demolished. The timeline for demolition shall be as determined by the Zoning Administrator.

2. Other by-right uses on site shall be permitted without an amendment to this special permit.

3. Building permits and final inspections shall be diligently pursued within 30 days and obtained within 90 days for the accessory storage structure or this special permit shall be considered null and void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:00 A.M. DIANE H. MAHSHIE BRAUNFIELD, TRUSTEE, SP 2006-PR-063 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of a deck 10.5 ft. from side lot line. Located at 2601 Sledding Hill Rd. on approx. 37,064 sq. ft. of land zoned R-1. Providence District. Tax Map 37-4 ((15)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Diane H. Mahshie Braunfield, 2601 Sledding Hill Rd., Oakton, Virginia, replied that it was.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow a reduction of certain yard requirements to permit construction of a 567-square-foot deck 10 feet from a side lot line. The purpose of the deck addition was to add outdoor living space to the structure. A minimum side yard of 20 feet is required; therefore, a reduction of 10 feet was requested. Mr. Chase noted that the address on the staff report was incorrect, and the 2601 Sledding Hill Road address as advertised was correct. Staff recommended approval of SP 2006-PR-063 subject to the proposed development conditions.

Mr. Hart referred to an email received from Rene and Mary Adam, and he asked whether the proposed deck interfered with the neighbors' septic field under the health department regulations or whether the proposed deck was far enough away. Mr. Chase said it would not affect the neighbor or the septic field on the applicant's property.

Ms. Braunfield presented the special permit request as outlined in the statement of justification submitted with the application. She said the development was new, and the enormous house had no deck like all of the other homes in the neighborhood had. She said there was an egress from the kitchen, but the first step out would be about two stories down, which indicated that the house was designed to have a deck. Ms. Braunfield said that because of the irregular shape of the lot and the fact that it was on a corner, they would end up with a deck no wider than a catwalk if they did not get a reduction to the side yard setback, and a

deck such as that would detract from the character of the neighborhood in a way that would be offensive. She said she was asking permission to build the deck a little further out and had spoken to neighbors in person and by e-mail prior to sending the required certified letters. She said there were no neighbors who had issues with the deck, and they applauded the fact that something was finally being done with the house which had been in immediate post-construction condition for the first few years after it was built. Ms. Braunfield stated that the only question raised was from Rene Adam regarding his concern about the septic field. She told him that she checked with the health department and that it was a requirement to have a 10-foot setback from the property line for the septic field. She said the proposed deck would be an additional 10 feet back from the property line, which would double the required setback. Ms. Braunfield said staff had recommended approval, there was a sufficient buffer of trees, and the deck was in keeping with the character of the neighborhood.

Mr. Beard asked whether the applicant planned to have any latticework done on the deck. Ms. Braunfield said she did not. He said she should be aware that it could be an issue during the building permit phase if she wanted to have latticework above the railing.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2006-PR-063 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DIANE H. MAHSHIE BRAUNFIELD, TRUSTEE, SP 2006-PR-063 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of a deck 10.0 ft. from side lot line. Located at 2601 Sledding Hill Rd. on approx. 37,064 sq. ft. of land zoned R-1 . Providence District. Tax Map 37-4 ((15)) 1. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 19, 2006; 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 37,064 square feet.
4. Under Sect. 8-922, Provisions for Reduction of Certain Yard Requirements, as noted on page 3 of the staff report, the Board concurs with the judgment of the staff that the special permit application does satisfy all the provisions contained therein.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and size (approximately 567 square feet) of the proposed deck as shown on the plat prepared by Highlander Surveying Services, dated September 14, 2006, as submitted with this application and is not transferable to other land.

~ ~ ~ December 19, 2006, DIANE H. MAHSHIE BRAUNFIELD, TRUSTEE, SP 2006-PR-063, continued from Page 746

2. Other by-right uses on site shall be permitted without an amendment to this special permit.

3. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

4. Pursuant to Section 10.104.3.I of the Zoning Ordinance, within sixty days of the approval of the special permit, the applicant shall apply for and receive administrative approval from the Zoning Administrator to allow the existing 4.1 foot high fence to remain in the front yard or the height shall be reduced or the fence moved/removed to be in conformance with Zoning Ordinance requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:00 A.M. OVED ZUCKER AND FARIDA LIM, SPA 93-M-054 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 93-M-054 to permit reduction of certain yard requirements to permit construction of addition 23.41 ft. from front lot line. Located at 6829 Little River Tnpk. on approx. 1.35 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((1)) 12B. (Decision deferred from 12/12/06)

Mr. Byers and Ms. Gibb indicated they would recuse themselves from the hearing.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

William Barnes Lawson, Jr., the applicants' agent, Lawson, Tarter & Charvet, P.C., 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, reaffirmed the affidavit. He said he thought the decision only had been deferred, but he was prepared to make a short presentation if the Board desired.

Mr. Hart asked whether the revision about not having the third automobile bay in the garage changed anything. Stephen Varga, Staff Coordinator, said it did not change staff's recommendation. Staff had recommended an approval-in-part for only the second-story addition to the garage subject to the proposed development conditions.

Mr. Lawson said that one of the conditions was that the applicants must get a building permit and an inspection for the deck, and his clients had contacted a previous owner and obtained the final inspection of the deck. He said it had apparently been a field change when some renovations had been made, and he submitted the document to the Board.

Mr. Hammack noted that Mr. Lawson's memorandum to Mr. Varga dated December 14th, 2006, said the applicants could do without the third parking space. Mr. Hammack asked how much parking area would be reduced in terms of impervious surface. Mr. Lawson stated that a total of approximately 300 square feet of impervious surface would be added.

Mr. Hart asked whether it was correct that the existing deck did not match what was found in the street file and if there were also steps. Mr. Varga said no building permits on record were found in the street file, but

from the plats submitted over the years, it could be seen that the square footage of the deck had been increasing over at least the past decade. He said it could perhaps have been before the applicants purchased the property.

Mr. Hart said the document indicated an approved inspection in 2003. He asked whether what had been approved then was the same as what currently existed. Susan Langdon, Chief, Special Permit and Variance Branch, said that could not be determined because the building permit did not have an accompanying plat.

Mr. Hart noted that one document referenced the address as 6829 Little River Turnpike and another referenced 6879. He said that may be why the record could not be found.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve-in-part SPA 93-M-054 for the reasons stated in the Resolution. Mr. Hammack seconded the motion, which carried by the vote of 5-0. Mr. Byers and Ms. Gibb recused themselves from the hearing.

Mr. Hammack said the fact that the house had been built without a basement was an additional reason for granting the special permit.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

OVED ZUCKER AND FARIDA LIM, SPA 93-M-054 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 93-M-054 to permit reduction of certain yard requirements to permit construction of addition 23.41 ft. from front lot line. Located at 6829 Little River Tnpk. on approx. 1.35 ac. of land zoned R-2 and HC. **(BZA DENIED THE 3RD GARAGE DOOR EXPANDED DRIVEWAY. TO BE WORKSHOP/STORAGE ONLY.)** Mason District. Tax Map 71-2 ((1)) 12B. (Decision deferred from 12/12/06) 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 19, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The owner presented testimony showing compliance with the required standards for a special permit for reduction of certain yard requirements in part.
3. At the stage this is now with the deletion of the third bay of the garage and the corresponding elimination of what would additional impervious surface for the driveway, it has been reduced enough that the application satisfies the required standards.
4. This is a very slight addition to an existing footprint in several directions.
5. This could have been designed in a much more intrusive way, but looking at the plans, the existing garage is very small, and the extensions that are proposed are just a few feet in each direction.
6. This is also unusual in that it is a two-bedroom house, which there are not very many of.
7. What the applicants are asking for will not create any negative effects on the surrounding properties.
8. The Board received several letters in support and no significant opposition to it.
9. The application will have to be reviewed for an RPA waiver or exception, which will be determined later, but there is still that additional layer of review, and if the applicants do not get through that, it would have to be scaled down again.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ December 19, 2006, OVED ZUCKER AND FARIDA LIM, SPA 93-M-054, continued from Page 748

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-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. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit amendment is approved for the location and size (approximately 529 square feet) of the proposed addition as shown on the plat prepared by Michael James Stansbury, dated August 4, 2006, as revised through September 12, 2006, with the undated revision on the fax of December 18, 2006, as submitted with this application and is not transferable to other land. **(BZA DENIED THE 3RD GARAGE DOOR EXPANDED DRIVEWAY. TO BE WORKSHOP/STORAGE ONLY.)**

3. Other by-right uses on site shall be permitted without an amendment to this special permit.

4. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing single family detached dwelling may be up to 150 percent of the total gross floor area of the dwelling that existed at the time of the first expansion request (3,276 sq. ft.). Any subsequent additions, regardless of whether such addition(s) complies with the minimum yard requirements or is the subject of a subsequent special permit or variance, shall be subject to the initial 150 percent limitation.

5. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions, including the revisions to the plan shown on the undated fax of December 18, 2006.

6. Prior to the issuance of a building permit for the addition, the applicant shall apply for and gain approval for either an RPA Exception or an RPA Waiver as determined necessary by DPWES.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Byers and Ms. Gibb recused themselves from the hearing.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:00 A.M. M & A, L.C., AND ANNA GERTRUDE BURGESS, TRUSTEE, AND JUNE B. BACON, TRUSTEES, VCA 2003-DR-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2003-DR-132 to permit change in development conditions and site modifications. Located at 10590 Beach Mill Rd. on approx. 2.05 ac. of land zoned R-E. Dranesville District. Tax Map 3-4 ((1)) 26E.

Mr. Hart made two disclosures and indicated that he would recuse himself from the public hearing.

Ms. Gibb made a disclosure, but indicated she did not believe it would affect her ability to participate in the

case.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson Hanes, the applicants' agent, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Mr. Varga said the subject property was developed with a barn, and access was provided from Beach Mill Road via a gravel driveway through an adjacent lot. The applicants requested a variance amendment to amend VC 2003-DR-132, previously approved for a minimum lot width of 195.87 feet, to permit a change in development conditions and site modifications. The applicants proposed to relocate the current driveway from the east side of the property to the west side, to relocate the original spetic drainfield due to the change in driveway location and physical constraints of the lot, including a rock outcropping near the corner of the septic field, and to relocate the garage. The proposed changes necessitated changes to the clearing and grading from that depicted on the approved variance plat. The proposed site modifications would address issues which had prevented the applicants from fulfilling Development Condition 2 of the approved variance application and from securing a building permit. Mr. Varga said staff believed the subject application met all the applicable Zoning Ordinance provisions.

Mr. Hanes presented the variance amendment request as outlined in the statement of justification submitted with the application. He said that in December of 2003 the Board had granted a variance of approximately four feet for a frontage issue along Beach Mill Road in Great Falls, Virginia. At the time a plat had been submitted that showed the entrance to the property with a driveway off Beach Mill Road on the easterly side of the property. Unbeknownst to the applicants at the time, the Board of Supervisors had recently adopted the Chesapeake Bay regulations, and a very small portion at the very corner of the driveway was located in a resource protection area (RPA). The applicants had an approved plat, but it did not meet the Ordinance requirements because the driveway could not be there under the new regulations if there was an alternate location. Mr. Hanes said the property had been sold by Mrs. Burgess, who was 92 years old and lived on the property next door, and when the applicants bought the property, they submitted the plats to the County and discovered there was a problem due to the Chesapeake Bay regulations and the RPA. They also found that they could not relocate the septic field because during the final inspection an outcropping of rock was discovered, and the Health Department turned down the request for the septic field. Mr. Hanes said the septic field could not be moved to the west because it could not be closer than 10 feet to the driveway. The septic field and driveway had to be relocated, and as a result, the house shifted a bit at the top. He said the applicants wanted to resubmit the plat showing the relocated septic field and driveway, with the garage flipping from the west side to the east side of the house because of the topography. Mr. Hanes said that because of the amended the plat, Development Conditions 1 and 2 would also have to be amended. He said he had submitted letters from adjoining property owners who supported the application, and the application met all of the criteria for variances.

Mr. Hammack asked whether Mr. Hanes had read the proposed development conditions. Mr. Hanes said he had, and they were acceptable to the applicants.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VCA 2003-DR-132 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

M & A, L.C., AND ANNA GERTRUDE BURGESS, TRUSTEE, AND JUNE B. BACON, TRUSTEE, VCA 2003-DR-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2003-DR-132 to permit

change in development conditions and site modifications. Located at 10590 Beach Mill Rd. on approx. 2.05 ac. of land zoned R-E. Dranesville District. Tax Map 3-4 ((1)) 26E. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 19, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have met the nine standards required for such an amendment; in particular, the extraordinary situation as spelled out by Mr. Hanes and the unusual situation whereby the staff thinks that they met these nine 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 approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for a lot width variance of Lot 26E (Outlot A1), as shown on the plat prepared by Paul B. Johnson, dated September 9, 2006, submitted with this application and is not

transferable to other land. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County.

2. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements and a tree preservation plan shall be submitted to the Department of Public Works and Environmental Services (DPWES), including the Urban Forestry Division, for review and approval. The plan shall depict the location of the Environmental Quality Corridor (EQC) and Resource Protection Area (RPA) on site. The EQC/RPA and area outside of the limits of clearing and grading shall be preserved as undisturbed open space with no structures or fences within these limits. The tree preservation plan shall preserve as much of the existing tree canopy as possible as determined by DPWES and the Urban Forestry Division, and shall meet the tree cover requirements of the Zoning Ordinance. Prior to any land disturbing activity for construction, a pre-construction conference shall be held between DPWES and representatives of the applicant to include the construction site superintendent responsible for onsite construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. In no event shall an area of the site be left denuded for a period longer than fourteen (14) days.

3. Stormwater management and Best Management Practices shall be provided in accordance with the requirements of the Public Facilities Manual as determined by DPWES. If not in substantial conformance with this variance plat, the variance shall become null and void.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:00 A.M. LAUREL HIGHLANDS, SP 2006-MV-034 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a temporary sales trailer. Located at 9088 Furey Rd., 9162, 9164, 9166 and 9168 Finnegan St. on approx. 19,637 sq. ft. of land zoned PDH-12. Mt. Vernon District. Tax Map 107-2 ((12)) 247, 248, 249, 250 and 251. (Admin. moved from 9/26/06 for affidavit) (Deferred from 11/7/06) (Moved from 12/5/06)

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Pellerito, the applicant's agent, 15020 Greymont Drive, Centreville, Virginia, replied that it was. He said the staff report and the affidavit spoke for themselves.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the operation of one temporary sales trailer and the continued operation of one other temporary sales trailer within the Laurel Highlands development beyond the two-year maximum approved under temporary special permits until January 8, 2006. Mr. Varga said that on February 3, 2006, a letter had been sent to the applicant from the Zoning Enforcement Branch informing them that they were in violation of the Zoning Ordinance for operating the temporary sales trailer past the expiration date. He said that Sect. 8-808 of the Zoning Ordinance required that temporary special permits for sales trailers may not be issued for more than two years. Mr. Varga said the second trailer approved under the temporary special

permit had not been installed, but was currently proposed under the special permit for Lots 247, 248, and 249 and was a triple wide. Staff recommended approval of SP 2006-MV-034 subject to the proposed development conditions. Mr. Varga said staff from Zoning Enforcement was present to answer questions the Board had.

Mr. Hart asked what signage would be approved with the special permit. He noted that in some of the photographs there were large billboards on the top and sides of the trailer. Susan Langdon, Chief, Special Permit and Variance Branch, said there was not a proposed condition concerning signage, so the applicant would have to meet the Zoning Ordinance requirements.

Mr. Hart asked what would be allowed when someone installed a sales trailer in a residential area. Ms. Langdon said she would have to check the Zoning Ordinance.

Mr. Hart asked whether the billboards in the photograph were acceptable. Charles Forshee, Zoning Enforcement Inspector, stated that a 32-square-foot billboard advertising new construction was allowable, but the one on top which said now selling new section would need to be removed.

Mr. Ribble asked what the timeframe would be for the temporary trailers. Mr. Varga said the approval was for two years, and then the applicant would have to come back in to request additional time through an amendment of the special permit.

Mr. Pellerito presented the special permit request as outlined in the statement of justification submitted with the application. He said they had been constructing homes in the development for a little over two years and anticipated they had another two years to complete the community. He requested the permit be extended until the point at which the last home had been sold.

Mr. Hart said that one of the problems the Board had in the past with sales trailers had to do with the activities that were conducted out of them, and at least one builder had been involved with people camping out overnight or hiring people to wait in line for them so they would be first in line for whatever was happening. He asked whether the builder had events planned that would involve people either camping out to wait for something or hiring people to wait in line around the clock. Mr. Pellerito said they did not, and it was not a typical practice.

Mr. Hart asked what the hours would be for the use of the trailer. Mr. Pellerito said the hours would be daily from 10:00 a.m. until 6:00 p.m.

Mr. Varga stated that Sect. 8-808 of the Zoning Ordinance required that temporary special permits for sales trailers not be issued for more than two years; however, ones that were approved by the Board of Zoning Appeals past that point did not have a time limitation, as represented in the applicant's statement of justification. Mr. Varga said the Board could impose a time limit, if it chose to, but otherwise there would not be a time limit if the special permit amendment was approved as proposed.

Ms. Gibb asked whether the time limit was unlimited. Mr. Varga said that it would be unless the Board imposed a time limitation as a development condition.

Ms. Gibb asked how many homes were left to be sold. Mr. Pellerito said that they had pulled 317 permits to date, and there were 542 approved lots in the community. Ms. Gibb asked whether two years would be long enough. Mr. Pellerito said it would be. He requested that the permit be extended until the last home was sold so he would not have to come back, but if the Board requested that he come back, then two years would be what he would request. Ms. Gibb said she would prefer to have a date.

Mr. Hart asked whether the applicant would be allowed to do around-the-clock things if there was not something specified in the conditions. Ms. Langdon said that with no hours listed in the development conditions, the applicant could be open anytime they wanted. She said the Board could impose hours, if it liked. Mr. Hart asked whether the Board had put hours on similar cases, and Ms. Langdon stated that she did not recall.

There were no speakers, and Chairman DiGiulian closed the public hearing.

~ ~ ~ December 19, 2006, LAUREL HIGHLANDS, SP 2006-MV-034, continued from Page 753

Ms. Gibb moved to approve SP 2006-MV-034 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LAUREL HIGHLANDS, SP 2006-MV-034 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a temporary sales trailer. Located at 9088 Furey Rd., 9162, 9164, 9166 and 9168 Finnegan St. on approx. 19,637 sq. ft. of land zoned PDH-12. Mt. Vernon District. Tax Map 107-2 ((12)) 247, 248, 249, 250 and 251. (Admin. moved from 9/26/06 for affidavit) (Deferred from 11/7/06) (Moved from 12/5/06) 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 19, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Staff has recommended approval.
3. The applicant has presented testimony in support of the application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 6-104 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Laurel Highlands, for a period of two years. It is not transferable without further action of this Board, and is for the location indicated on the application, 9088 Furey Road; 9162, 9164, 9166, and 9188 Finnegan Street, and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Helman A. Castro dated June, 2004 as revised through February, 2006 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 total number of parking spaces within the subject property shall be limited to 12, as shown on the special permit plat. All parking shall be onsite.

6. Foundation plantings and shade and ornamental trees shall be provided around the temporary sales trailers to soften the visual impact of the structures. Plant selection, including the size, species and location of plantings shall be coordinated with Urban Forest Management (UFM).

~ ~ ~ December 19, 2006, LAUREL HIGHLANDS, SP 2006-MV-034, continued from Page 754

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 trailers have 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. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:00 A.M. TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2006-SU-055 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 7127 Ordway Rd. on approx. 5.95 ac. of land zoned R-C and WS. Sully District. Tax Map 74-1 ((1)) 2. (Admin. moved from 12/5/06 at appl. req.)

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, the applicant's agent, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow construction of a 16,265-square-foot church with 450 seats, 158 parking spaces, a driveway leading into the site, and a stormwater management pond. Mr. Varga stated that the site contained an abandoned single-family dwelling constructed in 1900 with a shed, which would both be removed, and a majority of the site had been cleared, although there were trees and shrubs scattered around the property. He said the site was proposed to be accessed by a driveway from Ordway Road which ran parallel with Centreville Road, and the sanctuary was proposed to be located in the center of the 5.95-acre site, approximately 120 feet from Ordway Road. Mr. Varga said the proposed parking lot would surround the church, with a parking ratio of one parking space per 2.8 church seats and a drop-off area directly in front of the entrance. The proposed floor area ratio was 0.06. As referenced in the applicant's statement of justification, Mr. Varga said the church was seeking a new location in which to better serve its new and continually growing congregation, which currently included 250 congregants.

Mr. Varga said the application as proposed failed to provide an adequate amount of undisturbed open space, had not shown an ability to secure an off-site outfall easement, had not proposed to dedicate a right-of-way or install a left-hand turn lane into the site, had not addressed staff concerns regarding parking space location and circulation on the site, and exceeded the intensity of other nearby non-residential uses. For those reasons, he said staff did not believe the subject application satisfied all the general standards set forth in the Zoning Ordinance, and staff recommended denial of SP 2006-SU-055 because the application was not in harmony with the Comprehensive Plan and applicable Zoning Ordinance requirements.

Mr. Fox presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Fox said staff and the applicant had definitional and philosophical differences with regard to the case, and he would attempt to go through the issues in a pedagogical way, but there had been disagreements. He said New Mount Zoar had its origins about 140 years ago and had begun in an old indigenous African-American community off Braddock Road. In the 1950s the current church had been built on a site on Braddock Road, but the site was too small on which to expand. The church sold the existing facility to the church next door subject to occupancy agreements and found the site on Ordway Road. Mr. Fox said the church was a small community based church, not a mega-church, and the worshippers came from the Braddock Road, Ordway, Centreville, and Manassas area and consisted of some of the indigenous members as well as some new members obtained over the years.

Mr. Fox said he did not think the subject site was as challenged as staff had indicated. The church did not propose any childcare center or day school. It would hold worship services on Sundays from 10:00 a.m. to 2:00 p.m., with mid-week events from 7:00 to 9:00 p.m., and some administrative things and choir practices here and there. Mr. Fox said Ordway Road created a kind of an elliptical slice of land between Compton Road down to Bull Run just before entering Manassas Park and Prince William County, and up until 1993 or 1994 that slice of land was not served by public facilities. He said he had participated with County people in condemning easements to provide water and sewer to the homes that had failing septic systems in that area. The area was now supplied by public water and sewer, and the subject site was directly across the street from the Upper Occoquan Sewerage Authority plant, with one of its neighbors being the Northern Virginia Regional Park Authority (NVRPA). He said the issues that needed to be tackled in the case included the 50 percent undisturbed open space and parking requirements. He said the parking requirements had vacillated over time and were not internally consistent, and the site was challenged by the easements that provided water and sewer to the neighborhood. Eleven percent of the site was in the easement area. His client considered that area to be undisturbed open space because it would not be touched, but staff would not allow the 11 percent area to be counted toward the open space requirement. He said the transition areas on the site should be included in the undisturbed open space, consistent with other cases, and the applicant was prepared to accept a condition to re-vegetate the areas, but staff had concluded that those areas were not classically undisturbed open space. He referenced two other cases which had been previously approved by the Board where staff had recommended approval, one of which he had been involved with, and undisturbed open space had included the vegetation and transition yards. Mr. Fox said the 30 percent of virgin undisturbed open space, 11 percent in the easements, and the other 13 percent proposed with the application totaled 54 percent, and he thought that met the standards.

Mr. Fox referred to a 2003 United States Energy Regulatory Commission matter he had found on the Internet involving the Dominion Cove Point liquid natural gas line that went through Pleasant Valley. At the certificate hearing before the commission, the Planning and Zoning staff had been asked to comment on the environmental aspects of putting in the expanded pipeline in the Pleasant Valley Road area, and Fairfax County staff had recommended that the construction at the Pleasant Valley site, which was located within the conservation district of the Occoquan Watershed, use Best Management Practices (BMPs) to meet water quality objectives and that at least half of the project site be retained as (and/or be restored to) perpetually undisturbed open space in light of the water quality sensitivity of the area. He said that through that proceeding, the County was on record in a tribunal similar to the Board's hearing as maintaining that undisturbed open space could include and/or areas to be restored or re-vegetated. He asked that the Board deem that the applicant had met the general intent of the regulation or guideline. Mr. Fox said the applicant had submitted an engineer's evaluation of the BMPs, but it had not been referenced in the staff report. He submitted a copy to the Board and said the engineer had reached the conclusion that, with all things considered, the site met the BMP water quality standards. Mr. Fox said the intractability and inconsistency on staff's part might even have Religious Land Use and Institutional Persons Act (RLUIPA) ramifications.

Mr. Fox said the applicant had been asked to build a left-turn lane into the site from Ordway Road, but logic would suggest that on Sunday morning between 10:00 a.m. and 1:00 p.m., it was an isolated, sleepy little village road. He said that assuming one was even warranted, a fully protected VDOT approvable left-turn lane would require the church to go 600 feet to the north and the south of the site to add pavement, and his engineer estimated that by the time the project came on line, it would cost between $450,000 and $500,000 to construct the lane. Mr. Fox said the lane was totally unwarranted. He said he had his engineers conduct traffic counts, and they concluded that the church traffic was not sufficient during the weekday a.m. or p.m. peaks nor during the Sunday church hours to warrant the lane. Mr. Fox said the federal RLUIPA statute required that the least restrictive alternative be explored, and if the Board felt the traffic should be removed from Ordway with some level of dispatch, the least restrictive alternative would be to use a rental police officer to direct traffic, which would cost significantly less than a half million dollars.

Mr. Fox said the applicant was prepared to use infiltration in the parking lot and could commit to a semi-impervious surface in some areas, but had not submitted that to staff. He said staff had wanted diagonal parking onsite, but the applicant had studied that and felt diagonal parking with one-way circulation would not work, was aesthetically unpleasing, and did not give significantly more spaces.

Mr. Hart said he was going to ask whether anything had been resolved since the staff report had been published, but it seemed that nothing had been. Mr. Fox stated that the staff report was incomplete because

it did not include the submission the church made on the BMPs that he had put into the record at the hearing.

Mr. Hart asked whether staff had seen the second page after the vegetation map. Mr. Varga said staff had received the stormwater management information and the BMP information, but unfortunately it had been received past the deadline for consideration in the staff report. He said comments from stormwater management had not yet been received regarding the calculations.

Mr. Hart said the engineer had concluded a 61 percent reduction of phosphorus, which would be good, but it had been predicated on the assumption of an easement being granted by the Regional Park Authority who had said they would not grant one. He asked where the water would go if the Regional Park Authority said no. Mr. Fox said he had met with staff from the Northern Virginia Regional Park Authority, and they had asked him to justify the request for an easement, which could include the applicant swapping property or dedicating property to the Park Authority. He said he felt confident that it was not highly unusual, especially since the Park Authority owned most of the areas adjacent to the riverbeds along Bull Run.

Mr. Hart said that the non-residential cases in the R-C District were difficult. The plan indicated that a rigorous review was necessary, and there were additional criteria which would make development of the properties more difficult. He said one of the categories that had to be satisfied was that the use be designed in such a way to mitigate impact on the Occoquan Reservoir, and often that required a clear understanding about what exactly was happening to the stormwater and whether everyone was in agreement in that regard. Mr. Hart said he did not remember a case in the R-C District where the stormwater management system depended on off-site easements that had not been sorted out at the time of approval. He said he would be more comfortable if he understood that the Regional Park Authority was in agreement.

Mr. Hart said that one of staff's suggestions about the parking lot modifications was not about aesthetics or the number of spaces, but that with reorientation of the spaces, the amount of pavement or impervious surface could be reduced. Mr. Fox said that it did not change on their study. Eileen Carol, Rinker Detweiller & Associates, stated that the parking area had been totally redesigned using angle parking, and because of the width and depth of the spaces, it did not benefit them. She said it was a one to two percent increase in impervious area, but it also reduced the number of parking spaces and made circulation hazardous.

Mr. Hart said staff had indicated that some of the spaces in the corners could not be maneuvered in and out of, and that was an unresolved issue. Ms. Carol stated that she had looked at that and could not understand since the spaces were all the same width and designed to Fairfax County PFM standards. She said there was one parking space in one corner that could be eliminated, but unless a car did not have a reverse gear, there would be no reason it could not get out of the space.

Mr. Hart said the neighborhood was in transition, and five to ten years prior the homes that were there did not look anything like the new homes that were there today. He stated that as the area continued to redevelop, the older little homes would be replaced by castles on the same lot. He said that one of those little homes, a little blue house to the north, was almost on the property line, and it did not seem like there was anything between the parking lot and where that house was located. He said that if a larger house was built on the small lot, it would not be screened. Mr. Hart asked whether that was an area where the applicant was requesting a reduction. Mr. Fox said that they provided the typical transition yard, which was one of the reasons they were asking for modifications, since that area was encumbered by one of the utility easements. He said a wooden fence could provide a barrier. Ms. Langdon said one of the issues that staff had was that part of the 25 feet was an easement, which could not be planted. More area should be provided outside the easement. She said that 25 feet of transitional screening at a minimum should be provided outside of the easement, and full transitional screening should be provided within it. Mr. Hart said that would move the parking lot further away from the property line, and Ms. Langdon agreed.

Mr. Fox suggested some other form of barrier be placed there to separate it. Mr. Hart asked Mr. Fox to give more information about the other cases he had referenced where there were reforested areas that were counted as undisturbed. Mr. Hart said the Board had often required reforestation, particularly where the undisturbed percentage was lower than what they had wanted, but he did not remember one where the reforested area counted as part of the undisturbed space. Mr. Fox said the Capital Worship Center was his client, and the transition yards were outside the area of clearing and grading and were included in the 46 percent undisturbed open space that was granted.

Vice Chairman Ribble assumed the Chair.

He said another of his clients had been Seoul Presbyterian Church on Wolf Run Shoal Road, who had a lot of land and floodplain, and an old nursery had been added to the property, which had a parking lot and trails running through it to display agricultural products. Mr. Fox said they operated under the condition that they remove the gravel, replace the topsoil, and restore it by planting, and it was counted as undisturbed open space. He said the latter case was not a marginal case of undisturbed open space, but they were examples which included re-vegetated areas that the Board had approved and staff recommended. Mr. Fox said the federal proceeding spoke for itself, and he understood the 50 percent requirement was not cast in stone. The overall criterion was to protect water quality in the Occoquan Watershed.

Mr. Hart asked whether Transportation had commented on the suggestion that the applicant substitute a rental police officer for a left-turn lane. Mr. Varga said that day was the first staff heard that suggestion.

Mr. Hart asked staff to comment on the suggestion of a semi-impervious surface for the perimeter parking spaces. Mr. Varga said the representations shown at the hearing had not been submitted to staff, to which Mr. Fox agreed.

Mr. Hart asked whether staff had looked at Mr. Fox's suggestions regarding the changes to the wording of the development conditions. Mr. Varga said they had not, and they were all things staff would have to take a look at.

Mr. Beard stated that he agreed with Mr. Hart that the application needed to mature more because the staff report was filled with issues staff felt were unresolved, and suggestions were being made during Mr. Fox's presentation about them. He asked whether a community committee had been established pursuant to the application and the letter that was sent on December 14th. Mr. Fox said the Department of Community Development had oversight, and they had not had meetings. He stated that the applicant had a community meeting, which members of the community had been invited to attend. Many members of the church had been in attendance, but there had been few outside attendees. Counsel and the engineer had been there. Mr. Fox said that Mr. Hart had stated in the past that he would like to see the church make a presentation to the Western Fairfax County Citizens Association (WFCCA), and that may be done.

Mr. Beard stated that the issues were outfall issues, parking issues, and the turn lane situation, in spite of what Mr. Fox had outlined pursuant to cost. Mr. Beard said that the church was saying there were no plans for a daycare or school, but missions could change. Mr. Fox said that if they were to do anything else, they would have to come back before the Board to add to the activities, and there were no plans to do so.

Mr. Byers asked whether there had been any presentations given to the land use committee. Mr. Fox said he had made a brief presentation on November 19th at the end of his presentation regarding Mount Olive Baptist Church, and Mr. Hart had been present. Mr. Fox said he would be prepared to go back again. Mr. Byers said he would like to see that done.

Mr. Byers stated that he had an opportunity to view a report by the Chairman of the Environmental Quality Advisory Council before the Board of Supervisors, and in her comments she indicated that Fairfax County was doing a good job with conservation, but that the County could do more from the standpoint of water quality. He said the environmental standards over time had become much stricter, and he wanted to make sure that the Board was doing everything in accord with the Commission's recommendations and the environmental policy of the Board of Supervisors.

Vice Chairman Ribble called for speakers.

With regard to an issue Mr. Fox had brought up regarding the outline of the Capital Worship Center on the overhead, Ms. Langdon pointed out areas that were shown as transitional screening areas, but she said they were actually tree save areas that had beautiful native cedars in them. Existing vegetation was being saved that would serve as transitional screening, which was why it had been included in the undisturbed open space. She said the only plantings being done were a few trees right along the parking lot. They were both tree save and transitional screening areas.

Spencer Issac, 11804 Alford Valley Lane, Woodbridge, Virginia, came forward to speak and identified himself as the Pastor of New Mount Zoar Baptist Church and a new resident to the state, having moved from Maryland where he had lived all his life. He said this was a historic church of 140 years, and by moving they felt they would be better able to serve the community. The church had other opportunities to look for land in other areas, but they wanted to stay in this particular community. He said they had project teams come back with much larger acreage at a cheaper price, but their desire was to stay in the community, although they had to pay more for the land.

Colonel Lonjha Tynes (phonetic), no address given, came forward to speak. He said he had been in the military for 28 years, came to the area to retire, and was a member of the church for the past eight years and project chairman and viewed the project as the vision for the next 140 years. He thanked the Board for considering the special permit for the community based church.

Mr. Hart stated that if the site were slightly larger, it would help with the engineering difficulties and other problems that had been discussed. He said that for a growing church, it might be easier to acquire additional properties now rather than five or ten years later, particularly because of what was happening in the neighborhood.

Chairman DiGiulian resumed the Chair.

Mr. Tynes said the church had been looking for land in Fairfax County and surrounding counties for two and a half years, and there was not much land available even at a modest six-acre lot size. Mr. Hart said he was not suggesting the church find another site, but if it chose to make the subject site its home, they should look at the pieces around the perimeter because those may be lost later if big houses were built. Mr. Tynes said that they would continue to research that.

Patricia Holmes, 7207 Ordway Road, Centreville, Virginia, came forward to speak. She was concerned about the traffic because the church would hold services on Sundays and would also have activities and services during the week. She said the traffic on Ordway Road which came in from Compton Road, Route 28, and Old Centreville Road during peak traffic hours was terrible, and making turns to get to the church site would just make it worse. Ms. Holmes said she had lived on Ordway Road for five years, and traffic had progressively gotten worse.

Mr. Byers said that based on the comments from Ms. Holmes and everything else the Board had heard, staff should contact the Virginia Department of Transportation to determine what plans there were for Ordway Road, and if it was a public road, what improvements were planned and within what time frame the improvements would take place.

In response to a question from Mr. Hart regarding whether the traffic on Ordway Road got much worse if there was an accident or problem on Route 28, Ms. Homes said traffic had been backed up until 9:00 p.m. when there had been an accident on Route 28.

In his rebuttal, Mr. Fox said the mid-week events that occur on the site were minimal and consisted of bible study groups, and those activities could begin a half hour later, at 7:30 p.m., to address the issue of traffic. He said it was clear that the application was not ripe for a decision, but he was unsure whether the Board meant that the church should go through the entire NVRPA process before coming back or if they must be committed to do that in the future. Mr. Fox stated that in his career he had been involved in many off-site easement issues, and usually those issues were reserved to a site plan stage. He said the matter could be conditioned on that. He said that the 50 percent open space issue needed more definition because it could be quite confiscatory, and what was undisturbed open space to one person may not be to another. Mr. Fox said he thought the church was meeting the intent, and he would appreciate any guidance the Board could offer.

Chairman DiGiulian closed the public hearing.

Mr. Hammack asked staff whether there was a definition of undisturbed open space. Ms. Langdon responded that although it was self-explanatory, there was a definition of open space in the Zoning Ordinance, which included grassy areas around the building and a percentage of peripheral and parking lot

landscaping. She said that typically what staff meant was areas that were not disturbed by clearing and grading and soil was not being moved within the area. Ms. Langdon said there had been times when areas in the past were cleared, including some of the turf farms on Pleasant Valley, and the applicants had shown large areas not to be disturbed. She said staff had asked for a replanting of seedlings to speed up the re-vegetation process, and those areas had been counted as undisturbed open space.

Mr. Hammack said he was interested in Mr. Fox's arguments about whether easements could be included and how they would be treated, because they were disturbed by virtue of a utility going through them, but then they remained undisturbed to a large extent. He asked whether they could properly be included in the definitions or not. Ms. Langdon said staff had typically looked at that on an individual basis, and those were areas beyond the control of the applicant because at any time the owner of the utility easement could come in and clear, which had been done in the past. She said that if there was an underground pipe and it had to be dug up, there would be grading and clearing of the area, digging it up, and moving soil, and staff would have to look at each case on an individual basis. Ms. Langdon said there had been some cases where there were larger properties that had larger easements, such as 50 feet wide and 100 feet wide, and because the easements were so cumbersome on the property, staff had included portions of it in the undisturbed open space. She said that for smaller easements, there would usually be overhead lines, and it was possible that they may come in and cut, but they usually did not dig up pipes. Ms. Langdon said that with sanitary sewer and storm easements, the easement area would have to be dug up if repairs were necessary. Mr. Hammack stated that with the subject site, it would be at least 11 percent, and he wanted more information when the application came back to the Board.

Mr. Beard moved to defer decision on SP 2006-SU-055 to allow time to address the outstanding issues of outfall, traffic, undisturbed space, and parking. He also said detailed architectural information should be provided at subsequent hearings. Ms. Langdon suggested the decision be deferred to March 27, 2007, because some of the issues were not going to be easy to resolve, and Mr. Beard agreed. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:30 A.M. ANTHONY TEDDER, A 2004-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing a dwelling to be constructed and has allowed a land area in excess of 2,500 square feet to be filled and graded, both occurring in the floodplain and the Resource Protection Area without an approved permit, in violation of the Zoning Ordinance provisions. Located at 2862 Hunter Rd. on approx. 4.74 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-2 ((7)) (44) D. (Admin. moved from 7/13/04, 10/12/04, 1/18/05, 4/5/05, 6/14/05, and 9/13/05 at appl. req.) (Deferred from 3/14/06) (Admin. moved from 6/13/06 for notices)

Chairman DiGiulian noted that A 2004-PR-011 had been administratively moved to June 5, 2007, at 9:30 a.m., at the appellant's request.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:30 A.M. HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, 12/20/05, 1/31/06, 3/14/06, and 9/12/06 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-042 had been administratively moved to March 20, 2007, at 9:30 a.m., at the appellant's request.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, 12/20/05, 1/31/06, 3/14/06, and 9/12/06 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-040 had been administratively moved to March 20, 2007, at 9:30 a.m., at the appellant's request.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:30 A.M. NVR, INC., A 2004-DR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordanc with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance Provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, 6/28/05, 9/20/05, 12/20/05, 1/31/06, 3/14/06, and 9/12/06 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-041 had been administratively moved to March 20, 2007, at 9:30 a.m., at the appellant's request.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:30 A.M. NORMA VIDAURRE, A 2006-MA-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a home child care center has been established on property in the R-2 District without an approved Special Permit, in violation of Zoning Ordinance provisions. Located at 4106 Mason Ridge Dr. on approx. 16,403 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((15)) 59. (Admin. moved from 5/2/06, 7/11/06, and 10/24/06 at appl. req.)

Chairman DiGiulian noted that A 2006-MA-006 had been withdrawn.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:30 A.M. RAFAEL D. SANDOVAL AND VICTORIA S. SANDOVAL, A 2006-MA-060 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an addition, which was constructed without the Zoning Administrator's approval of a Building Permit and which does not meet the bulk regulation as it applies to the minimum side yard requirement for the R-4 District, is in violation of Zoning Ordinance provisions. Located at 3252 Wayne Rd. on approx. 7,204 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((2)) (A) 2.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position. She said this was an appeal of a determination set forth in a notice of violation issued pursuant to a complaint and follow-up inspection that an addition, which had been constructed without the benefit of building permit approval and did not meet the minimum side yard requirement for the R-4 District, was in violation of Zoning Ordinance provisions. She said the property had been developed with a one-story single-family detached dwelling, and an addition attached to the right or western side of the house was the subject of the appeal. Ms. Stanfield stated that the appellants did not dispute the violation, but claimed in

their appeal statement that a carport had already been attached to the side of the house when they purchased the property in 1982, at which time the structure in question had a side wall, a rear wall, and a roof, but had been open on the front. She said there were no records in the Zoning or Department of Tax Administration files indicating when the structure had actually been added to the dwelling.

Ms. Stanfield said the Zoning Ordinance defined a carport as any space outside of a building and contiguous thereto, wholly or partly covered by a roof, used for the shelter of parked motor vehicles. A carport shall have no enclosure that is more than 18 inches in height other than the minimum required supports for its roof and the sides of the building to which the carport is contiguous. Ms. Stanfield said that based upon the definition, the structure had never been considered a carport from a Zoning Ordinance perspective, and there were no records of any building permits issued for the original carport construction or for the later addition of the front wall. She stated that the appellants had been advised at the time the appeal was accepted that they could apply for a special permit approval for a reduction to minimum yard requirements based on an error in building location. If approved, it would resolve the violation for the addition. Ms. Stanfield said the approval would likely require subsequent approval of a building permit, which would provide the appellants and their tenant assurance that the addition was structurally safe and sound.

Rafael Sandoval, 8723 Etta Drive, Springfield, Virginia, presented the arguments forming the basis for the appeal. He stated that when he purchased the property in 1982, the structure already existed. He said the front of the carport had been added by the tenant because personal property of his had been stolen from the carport. Mr. Sandoval said he would like to keep the structure the way it was and was not sure when the structure had been added. He stated that when the property had been appraised, the appraisal statement said the carport had already been in existence and was 100 percent complete and in conformity with the Code at the time. He stated that the carport had been mentioned by Tax Administration on the tax report.

Chairman DiGiulian asked for copies of the tax report.

Roger Sims, Zoning Enforcement Branch, Zoning Administration Division, stated that there was a copy of the tax document in the staff report.

Mr. Hammack asked when the carport had been enclosed. Mr. Sandoval said it was in 1989. Mr. Hammack asked whether a building permit had been issued. Mr. Sandoval said he believed his tenant had asked the County if he needed a permit and was told he did not. He said the tenant had not gotten anything in writing, but had been told that because the carport was already there, a permit was not necessary to enclose it.

Mr. Hammack said staff had offered an alternative for Mr. Sandoval to apply for a special permit, which would require a building permit, instead of an appeal. Mr. Hammack asked whether the appellant would be interested in doing that. Mr. Sandoval said he would not because it would cost a great deal of money, and it would be less costly for him to tear down the carport. He said he had filed the appeal for the tenant's benefit.

Chairman DiGiulian called for speakers.

Phyllis Clark (phonetic), no address given, came forward to speak. She said she was the daughter of Mr. Hensley, the tenant at the subject property. Ms. Clark stated that she wrote a letter with regard to the issues they were having to Penelope Gross, the Supervisor for the Mason District, and received no response. Ms. Clark stated that they were only finding out now that the carport was a problem, although it had been there for four decades and dated back to 1969. She asked whether a piece of plastic could have been hung up or whether that would be considered an enclosed structure. Ms. Clark asked for the structure to remain because it kept the house warm and provided storage, and it would cause a hardship on her father if it had to be changed. She said the situation had been discussed with the neighbors, who voiced no complaints during the discussions.

Chairman DiGiulian asked how the case came before the Board. Mr. Sims stated that it was a citizen complaint.

Mr. Sandoval said his understanding was that the complaint had been about two cars parked on the grass, and they were subsequently removed.

~ ~ ~ December 19, 2006, RAFAEL D. SANDOVAL AND VICTORIA S. SANDOVAL, A 2006-MA-060, continued from Page 762

Ms. Gibb asked whether it would be a violation if the front of the carport was taken off and a piece of plastic was hung. Mr. Sims said the two photographs submitted by the appellant which were right before Attachment 2 in the staff report showed that the structure was not a carport because a carport was required to be open on three sides, and it was enclosed. She asked whether it would be acceptable if it were open on three sides with a piece of plastic over it. Mr. Sims said a piece of plastic could not be put on it. If it was open on three sides, it would be allowed to remain with a building permit. Mr. Sandoval stated that the photographs showed what the structure looked like when he bought the property in 1982.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that Mr. Sandoval knew what his alternatives were, and he chose not to go through the process which might have allowed the structure to be brought into compliance for financial reasons. Mr. Hammack said he did not see any valid justification for the appeal. The appellant had admitted that the front of the structure had been enclosed by his tenant since 1989 based on his understanding that he did not have to have a building permit, and it had been enclosed on at least two sides when the property had been purchased. Mr. Hammack said the appellant had rejected the options to try to bring the structure as it currently existed into compliance, and he saw no justification offered by the appellant to overrule the Zoning Administration. Mr. Hammack moved to uphold the determination of the Zoning Administrator. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 19, 2006, Scheduled case of:

9:30 A.M. RODNEY AND JENIFER SPRATLEY, A 2006-PR-050 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established three separate dwelling units on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 9732 Blake Ln. on approx. 21,261 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 142. (Decision deferred from 11/14/06)

Chairman DiGiulian noted that a request had been received to defer A 2006-PR-050 to January 9, 2007.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that was correct. She stated that the appellants were currently out of town.

Vice Chairman Ribble moved to defer decision on A 2006-PR-050 to January 9, 2007, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 19, 2006, After Agenda Item:

Request for Additional Time
Singh Sabha Gurdwara, SP 99-S-058

Mr. Beard moved to approve 12 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was October 21, 2007.

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~ ~ ~ December 19, 2006, After Agenda Item:

Request for Additional Time
Maroun S. Bechara and Barbara M. Bechara, VC 2003-HM-185

Ms. Gibb moved to approve 18 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was February 25, 2008.

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~ ~ ~ December 19, 2006, continued from Page 763

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Lee litigation in the Circuit Court of Fairfax County, Law No. 2004-221391; Board of Supervisors vs. Board of Zoning Appeals, Law No. 06-11777; and correspondence; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Vice Chairman Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:34 a.m. and reconvened at 12:41 p.m.

Mr. Byers then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Mr. Ribble moved that the Board resolve to rescind the August 3, 2004 and August 10, 2004 resolutions which were originally issued at that time. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:42 p.m.

Minutes by: Shannon M. Keane / Kathleen A. Knoth

Approved on: March 20, 2013

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals