

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 9, 2007. 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 announced that the first order of business was the election of the BZA officers; Chairman, Vice Chairmen, and Secretary.

Mr. Ribble nominated John DiGiulian as Chairman. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

Mr. Beard nominated John Ribble as Vice Chairman. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

Mr. Ribble nominated Paul Hammack as Vice Chairman. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

Mr. Ribble nominated Ms. Gibb as Secretary. Mr. Hammack 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 called for the first scheduled case.

~ ~ ~ January 9, 2007, Scheduled case of:

9:00 A.M. MICHELLE R. MCCALL, SP 2006-HM-069 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitation on the keeping of animals. Located at 12120 Folkstone Dr. on approx. 22,977 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 36-1 ((14)) 33.

Chairman DiGiulian noted that SP 2006-HM-069 had been withdrawn.

//

~ ~ ~ January 9, 2007, Scheduled case of:

9:00 A.M. SIMIN HAYATI-FALLAH, SP 2006-SU-068 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit construction of addition 10.4 ft. from side lot line. Located at 6220 Hidden Canyon Rd. on approx. 10,688 of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) 49.

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. Simin Hayati-Fallah, 6220 Hidden Canyon Road, 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 applicant requested approval to permit a reduction of certain yard requirements to permit construction of an addition, the enclosure of an existing carport, 10.4 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a modification of 9.6 feet or 48 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 the adoption of the proposed development conditions dated January 2, 2007.

The applicant's husband, Charles Francis (phonetic), presented the special permit request as outlined in the statement of justification submitted with the application. When the property was purchased, the carport had a concrete pad, a roof, and two exterior walls, which they intended to convert into a garage. The installation of a garage door and siding were all that was necessary, but without the improvement, they would be denied

~ ~ ~ January 9, 2007, SIMIN HAYATI-FALLAH, SP 2006-SU-068, continued from Page 1

full enjoyment of their property.

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

Mr. Hammack moved to approve SP 2006-SU-068 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SIMIN HAYATI-FALLAH, SP 2006-SU-068 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements 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. 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 9, 2007; 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). 8-922 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. 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 241 square feet) of the proposed addition, as shown on the plat prepared by B.W. Smith and Associates, Inc., dated September 2, 2005 as revised through September 21, 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 (1,408 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.

~ ~ ~ January 9, 2007, SIMIN HAYATI-FALLAH, SP 2006-SU-068, continued from Page 2

Pursuant to Sect. 8-922 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

//

~ ~ ~ January 9, 2007, Scheduled case of:

9:00 A.M. CHRISTOPHER S. AND MARY G. KICHINKO, SP 2006-SP-066 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.9 ft. with eave 2.4 ft from side lot line. Located at 8907 Triple Ridge Rd. on approx. 24,626 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((6)) 4.

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. Christopher and Mary Kichinko, 8907 Triple Ridge Road, Fairfax Station, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested permission to reduce the minimum yard requirements based on an error in building location to permit an accessory storage structure to remain 3.9 feet with eave 2.4 feet from the side lot line. Staff recommended that, if approved, the Board of Zoning Appeals condition its approval by requiring conformance with the conditions set forth in Appendix 1 of the staff report.

In response to Mr. Hart's comment concerning conformance of a neighbor's shed, Ms. Langdon said Zoning Enforcement staff would take notice of adjacent properties during a site visit to a subject property, then determine whether further investigation was necessary. She concurred that the subject property had a violation.

Mr. Beard observed that the neighbor's shed was depicted on the plat. Ms. Langdon said staff made no request for the applicants' plat to show the adjoining property's shed, that the plat was submitted as such.

Mr. Kichinko presented the special permit request as outlined in the statement of justification submitted with the application. The shed's purpose was to store yard equipment, and their plan was approved by the homeowners association (HOA) with the addition of latticework upon completion. He pointed out the lot's irregular shape, topography, that there was a serious stormwater runoff problem, and that due to steep slopes, the location for the shed was limited. After a period of five years, they received notice from their HOA requesting planting of screening vegetation, which they immediately complied with; however, the HOA also requested that the shed be repainted, which they declined as he had followed covenant guidelines by initially painting it the same color as his home. Mr. Kichinko said a meeting requested by a neighbor, who was also a board member, to consider the shed's removal was attended by two HOA board members and the Chairman of the Architectural Committee, resulting in a vote that it remain, but that it could not be replaced if damaged or destroyed.

Chairman DiGiulian called for speakers.

Caroline Gergel, 8909 Triple Ridge Road, Fairfax Station, Virginia, came forward to speak. For the record, she said it was her shed that was previously mentioned. She said it was in compliance. She asked that the applicants' special permit be denied because there were other places in which to locate the shed. It was too

~ ~ ~ January 9, 2007, CHRISTOPHER S. AND MARY G. KICHINKO, SP 2006-SP-066, continued from Page 3

close and obtrusive to her property, the frequent lawnmower repairs generated terrible noise, and the shadow it cast prevented growth of vegetation. She submitted that the applicants notified the neighbors, a HOA requirement, but no approval or denial was rendered. She said that when they asked her, she informed them as a neighbor and not an HOA board member that her shed complied with County Code and Ordinance regulations. Apparently the applicants mistook that as an HOA approval.

Mr. and Mrs. Kichinko responded to questions from Mr. Hart concerning the installation of electricity to the shed for a security camera and the shed's paint matching that of their house. Mr. Kichinko offered to repaint the shed as an option to not having to remove it. In response a question from Mr. Byers, the applicants said they had the HOA's written approval for the shed. They said that the shed was built in 1999, and there had been no complaints until 2003.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to defer decision on SP 2006-SP-066 to January 23, 2007, at 9:00 a.m., because he thought additional information was necessary on the closeness of the adjacent home to the applicants' property line and shed, that another area was possible for the shed's relocation, and he would like HOA's clarification of whether other sheds were reviewed.

The motion was seconded by Mr. Hammack, which carried by a vote of 5-2. Mr. Beard and Ms. Gibb voted against the motion.

//

~ ~ ~ January 9, 2007, Scheduled case of:

9:00 A.M. VIJAY ALSI, SP 2006-PR-065 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8475 Wolftrap Rd. on approx. 39,204 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((7)) 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. Vijay Alsi, 8475 Wolftrap Road, Vienna, 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.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for a 1,500 square foot 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. Both Vijay and Vasanti Alsi would live in this separate living space and rent out the remaining dwelling. They would have access to a garage space and a private entrance from the rear of the home. Staff recommended approval with the adoption of the proposed development conditions.

Mr. Alsi presented the special permit request as outlined in the statement of justification submitted with the application. Because of his wife's health, it was wise that their living quarters were on one level, and staff recommended he rent out the upper level, but for the foreseeable future, he had no intention to do that. The renovation was to ensure he and his wife would not have to move to a nursing home.

In response to a question from Ms. Gibb concerning the legality of having a second kitchen, Susan C. Langdon, Chief, Special Permit and Variance Branch, concurred that there was a process by which one could apply for a second kitchen through Zoning Administration.

Mr. Alsi said he was informed by staff when applying for the permit that a second kitchen could only be allowed for an accessory dwelling.

Ms. Gibb clarified that if one wanted a second kitchen, it was allowed as long as that portion of the dwelling was not rented out.

~ ~ ~ January 9, 2007, VIJAY ALSI, SP 2006-PR-065, continued from Page 4

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

Mr. Hart moved to approve SP 2006-PR-065 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VIJAY ALSI, SP 2006-PR-065 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8475 Wolftrap Rd. on approx. 39,204 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((7)) 2. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 9, 2007; 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. There is a staff recommendation of approval.
4. The rationale in the staff report is adopted.
5. There is no opposition that has been expressed to the Board.
6. The application will be relatively minimal in the sense that there will not be any real visible effect on the outside of the house.
7. It does not appear that it will have any negative impacts 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 applicants only, Vijay Alsi, and is not transferable without further action of this Board, and is for the location indicated on the application, 8475 Wolftrap Road (39,204 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 Elizabeth L. Thurber, dated July 29, 2002; revised September 25, 2002 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

~ ~ ~ January 9, 2007, VIJAY ALSI, SP 2006-PR-065, continued from Page 5

5. The accessory dwelling unit shall contain a maximum of 1,500 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. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

//

~ ~ ~ January 9, 2007, 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) (Decision deferred from 10/31/06)

Chairman DiGiulian noted that SP 2005-SP-012 had previously been deferred for decision only.

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

William M. Baskin, Jr., Esquire, 301 Park Avenue, Falls Church, Virginia, the applicant's agent, reaffirmed the affidavit.

In response to questions from Mr. Hart concerning outstanding issues, Stephen Varga, Staff Coordinator, explained that due to time constraints, staff was unable to thoroughly assess the applicant's revised plat; however, there were certain changes made by the applicant, such as a reduction of undisturbed open space, that had raised issues staff had considered resolved. Mr. Varga stated that an updated memorandum from the Department of Public Works and Environmental Services, Stormwater Management Division, addressed the well issue, determining that the situation would be remedied by the applicant's revised proposal. However, this would sacrifice the undisturbed open space. Mr. Varga responded to questions from Mr. Hart concerning the resolution of an easement for the outfall and the 30 percent reduction of undisturbed open space.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said it would take a minimum of another week for staff to evaluate the revised plat.

~ ~ ~ January 9, 2007, CHAN S. PARK, SP 2005-SP-012, continued from Page 6

Mr. Baskin pointed out that letters from both the Commonwealth of Virginia's Department of Health and the County's Department of Public Health addressed staff's issues and questions concerning the wells, and they could present documentation regarding the title, deeds, and the access and egress easement. He maintained the applicant met all requirements for Best Management Practices. Mr. Baskin said that it was staff's desire that the applicant meet 50 percent undisturbed open space, but that was not a Code requirement. He stated that the applicant believed it neither appropriate nor necessary, but if imposed by the Board, that would be provided. He stated he believed there was no need to defer the decision. The applicant was entitled that day to a decision, and if the provision of 50 percent open space was the sole outstanding issue, the applicant would comply.

Mr. Ribble commented that he agreed with staff that additional review was necessary.

Ms. Langdon said she would address several of Mr. Baskin's statements. She pointed out that the documents he indicated had not yet been provided to staff. She said that there were several times staff had determined that the application satisfied all requirements, but then another revised plat (to date there had been 11) would be received, and without additional review, staff could not make a recommendation. Ms. Langdon said more time was necessary to evaluate the undisturbed open space, and staff required information on the outlet road.

Mr. Hart requested that the Board be provided copies of Mr. Baskin's letters. He said one of his concerns regarding transportation was the potential problems with church traffic exiting the parking lot and traveling via the driveway back towards the parkway instead of down to Blue Topaz to Braddock Road. He said he did not understand how that matter was being addressed and requested Department of Transportation's (DOT) input.

Mr. Baskin said during a previous hearing the applicant had proposed directional signage prohibiting a right turn onto the ingress/egress easement out to Braddock Road. They would propose a development condition and place in the church bulletin instructions for proper exiting. He noted that when their proposal was originally presented, it did not have the easement crossing to Blue Topaz, but an ingress/egress easement. DOT had a problem with that, and, therefore, a revised plan was submitted, which DOT approved, and the issue was resolved.

Ms. Langdon said staff would consult DOT on the matter, commenting that she was unsure whether DOT realized that the church congregation was still able to use the access road.

Mr. Baskin pointed out that those served by the access road were also served by Blue Topaz Road, and it was not as if that was the only access to a public street.

Mr. Hart commented that he recalled several speakers at a previous hearing who said there were a few vacant lots that only had that thoroughfare as the lots had no frontage elsewhere. He said he thought those individual's right to use that roadway could not be taken away; however, a conflict on Braddock Road must not be created, and he believed a resolution could be created.

Mr. Ribble stated again that the Board and staff should have the opportunity to review the applicant's recent submissions, and further information was necessary concerning the site's travel route. Mr. Ribble moved to defer decision on SP 2005-SP-012 to February 13, 2007, at 9:00 a.m.

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

//

~ ~ ~ January 9, 2007, Scheduled case of:

9:00 A.M. ALI ESKANDARIAN, SP 2006-DR-067 Appl. under Sect(s) 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.2 ft. with eave 11.2 ft. from side lot line, 12.9 ft. with eave 7.5 ft. from other side lot line and 22.5 ft. from rear lot line and reduction to certain yard

~ ~ ~ January 9, 2007, ALI ESKANDARIAN, SP 2006-DR-067, continued from Page 7

requirements to permit construction of second story addition 20.5 ft. from rear lot line and 12.9 ft. from side lot line. Located at 1109 Shipman La. on approx. 12,688 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((12)) 15.

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. Ali Eskandarian, 1109 Shipman Lane, McLean, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant's request was to permit a reduction to the minimum yard requirements based on an error in the building location to permit a dwelling to remain 13.2 feet with eave 11.2 feet from the side lot line, 12.9 feet with eave 7.5 feet from the other side lot line, and 22.5 feet from the rear lot line, and a reduction in certain yard requirements to permit construction of a second-story addition 20.5 feet from the rear lot line and 12.09 feet from the side lot line. Staff recommended approval subject to the proposed development conditions contained in Appendix 1 of the staff report.

Mr. Eskandarian presented the special permit request as outlined in the statement of justification submitted with the application. He purchased the house in 2002 unaware that it did not meet setback requirements. It was built in the '50s or early '60s and apparently had not met zoning regulations at that time either. It was his understanding that when the Central Intelligence Agency (CIA) relocated to the Langley area, houses in his Braewood subdivision were commissioned for housing CIA senior staff, and due to the special circumstances, it was probable that zoning concessions were made. To accommodate his family's needs, they proposed a second-story addition, and unlike many of his neighbors, he preferred not to raze the house and rebuild. Mr. Eskandarian introduced his architect, Susan Woodward Notkins, to provide the Board with the project's details.

Susan Woodward Notkins, Architect, PC, 1179 Crest Lane, McLean, Virginia, concurred that the house did not meet 1960s nor current setback requirements. The applicant requested a reduction to the minimum required setbacks so that the house would be a conforming structure, and there were only three small projections into the setbacks. The applicant also requested approval for permitted extensions into the minimum required yards to permit a second-floor addition over the rear of the house, directly on top of the existing exterior walls that would not project further than the present structure. Ms. Notkins pointed out that the property's errors exceeded just slightly 10 percent of the measurements involved; the non-compliance occurred through no fault of the present owner; the reduction would not impair the purpose and intent of the Ordinance; it was not detrimental to the use and enjoyment of other properties in the immediate vicinity; it would not create an unsafe condition to other properties nor public streets; and, to force compliance after 40-plus years would cause unreasonable hardship on the applicant because two small portions on each side of the house and six square feet in a rear corner would have to be sliced off. Ms. Notkins stated that in all other respects the use was in conformance with present Zoning Ordinance requirements, and she requested the Board's approval.

Chairman DiGiulian called for speakers.

James Criner, 1108 Shipman Lane, McLean, Virginia, came forward to speak. He stated that the house with its proposed improvements was compatible with the neighborhood. It was quite attractive and conformed to the neighborhood character, unlike most of the rebuilt "mega mansions." He voiced his support of the application.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 2006-DR-067 for the reasons stated in the Resolution.

//

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

ALI ESKANDARIAN, SP 2006-DR-067 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.2 ft. with eave 11.2 ft. from side lot line, 12.9 ft. with eave 7.5 ft. from other side lot line and 22.5 ft. from rear lot line and reduction to certain yard requirements to permit construction of second story addition 20.5 ft. from rear lot line and 12.09 ft. from side lot line. Located at 1109 Shipman La. on approx. 12,688 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((12)) 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 January 9, 2007; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony that he bought the property in its present location in good faith.
3. The mistake was made when the house was built many years ago.
4. The applicant has met standards A through G.

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

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

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

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

~ ~ ~ January 9, 2007, ALI ESKANDARIAN, SP 2006-DR-067, continued from Page 9

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 947 square feet) of the proposed second story addition as shown on the plat prepared by Susan Woodward Notkins, P.C. dated, September 20, 2006, and revised 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 dwelling may be up to 150 percent of the total gross floor area of the dwelling (2,626 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 variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required

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

//

~ ~ ~ January 9, 2007, Scheduled case of:

9:00 A.M. TRUSTEES OF FIRST PRESBYTERIAN CHURCH OF ANNANDALE AND SLEEPY HOLLOW PRESCHOOL, INC., SPA 71-A-030 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 71-A-030 previously approved for church and child care facility to delete child care center and permit nursery school and a change in permittee. Located at 7610 Newcastle Dr. on approx. 7.34 ac. of land zoned R-3. Braddock District. Tax Map 71-3 ((16)) A.

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. Kathleen Renette Philpott Cost, 3163 Juniper Lane, 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 applicants requested an amendment to SP 71-A-030, previously approved for church and childcare center, to delete the childcare center and permit a nursery school and a change in permittee. At the time the use was

~ ~ ~ January 9, 2007, TRUSTEES OF FIRST PRESBYTERIAN CHURCH OF ANNANDALE AND SLEEPY HOLLOW PRESCHOOL, INC., SPA 71-A-030, continued from Page 10

originally approved, the definition of a childcare center included the current nursery school use; the use had not changed. The change was to reflect current Zoning Ordinance terminology defining the previously approved childcare center as a nursery school and a change in the permittee from Trustees of First Presbyterian Church of Annandale and Northern Virginia Community College Faculty Wives Club Childcare Center to Trustees of First Presbyterian Church of Annandale and Sleepy Hollow Preschool, Inc. No other changes to the site or use were proposed with the application, and staff recommended approval of SPA 71-A-030.

In response to Mr. Beard's assumption, Mr. Chase concurred that the application was before the Board for the change in permittee. Mr. Chase assured Mr. Hart that the e-mail regarding the Neighborhood Watch Report of December of 2006 sent to the Braddock District Supervisor was researched. Concurring with Mr. Hart, Mr. Chase said staff's position remained that there were no changes to the conditions.

Ms. Philpott Cost acknowledged receipt of the referenced e-mail. She said their preschool was in compliance with the regulations, and there was no on-street parking. She said there was often litter or trash on their lot from Annandale High School students as well as a continued problem with the students parking along the street.

Chairman DiGiulian called for speakers.

Thomas J. O'Brien, 7553 Newcastle Drive, Annandale, Virginia, came forward to speak. He said he sent the e-mail because his frequent attempts to contact the church's pastor were unsuccessful. He requested that "No Parking" signs be installed around the property from Bristow, Newcastle, and Eire Drives. He said that although there was signage for the church's lot, there was no enforcement. He recalled two accidents caused by inappropriate street parking and presented his calculations of the increase in automobile traffic in the mornings and evenings. Mr. O'Brien said graffiti was a serious problem, and the church should address the safety problems attributed to parking and handle its parking lot.

Mr. Beard pointed out that the BZA had no authority to erect parking signs.

Mr. O'Brien acknowledged that the church should assume responsibility for its parking area, but graffiti could not be attributed to the church as it came from people parking nearby. He explained that most of the traffic was generated from the high school students, many of whom used it as a shortcut route. He said the Annandale area had restricted parking zones where permits were issued, and only thoroughfare traffic was allowed. The church did not enforce its area, which had resulted in high traffic.

Ms. Philpott Costa said the church was sensitive to the parking situation, and she would request the church provide appropriate signage. She said recently a pastor who would work full-time had replaced the previous pastor, and Mr. O'Brien or anyone else should not have any problem contacting him.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve SPA 71-A-030 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF FIRST PRESBYTERIAN CHURCH OF ANNANDALE AND SLEEPY HOLLOW PRESCHOOL, INC., SPA 71-A-030 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 71-A-030 previously approved for church and child care facility to delete child care center and permit nursery school and a change in permittee. Located at 7610 Newcastle Dr. on approx. 7.34 ac. of land zoned R-3. Braddock District. Tax Map 71-3 ((16)) A. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ January 9, 2007, TRUSTEES OF FIRST PRESBYTERIAN CHURCH OF ANNANDALE AND SLEEPY HOLLOW PRESCHOOL, INC., SPA 71-A-030, continued from Page 11

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 9, 2007; and

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

1. The applicants are the owners of the land.
2. Basically this application has no changes in use except a change in permittee.
3. In concert with the change in permittee, there is the need to bring the application in conformity with current Zoning requirements and categorization.

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

THAT the applicant has presented testimony indicating compliance with 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 First Presbyterian Church of Annandale and Sleepy Hollow Preschool, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 7610 Newcastle Dr., consisting of 7.34 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 Walter Phillips, dated April 24, 1973, revised May 23, 1974 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 in the main area of worship shall not exceed 350.
6. Upon issuance of a new Non-RUP, the total maximum daily enrollment for the nursery school shall not exceed 75 children.
7. All parking shall be on site and in the parking areas designated on the Special Permit plat.
8. Upon issuance of a new Non-RUP, the hours of operation for the nursery school shall be Monday from 8:30 a.m. to 12:00 p.m. and Tuesday through Friday 8:30 to 2 p.m.

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 a new Non-RUP has been issued. The Board of Zoning

~ ~ ~ January 9, 2007, TRUSTEES OF FIRST PRESBYTERIAN CHURCH OF ANNANDALE AND SLEEPY HOLLOW PRESCHOOL, INC., SPA 71-A-030, continued from Page 12

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

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

//

~ ~ ~ January 9, 2007, 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.) (Deferred from 10/3/06 at appellants' request)

Chairman DiGiulian noted that A 2006-LE-007 had been administratively moved to May 1, 2007, at 9:30 a.m., due to notices.

//

~ ~ ~ January 9, 2007, Scheduled case of:

9:30 A.M. GERMAN CABEZAS AND ROBINSON VILLALOBOS, A 2006-MV-059 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have paved a portion of the front yard on property located in the R-2 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 3905 Colonial Av. on approx. 21,800 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((2)) 9.

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

German Cabezas and Robinson Villalobos, 3905 Colonial Avenue, Alexandria, Virginia, identified themselves as the appellants.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 2, 2007. This was an appeal of a determination that the appellants had paved a portion of their front yard in excess of the allowable surface coverage. An inspection by the Zoning Enforcement Branch was conducted August 28, 2006, revealing that approximately 50 percent of the front yard of the subject property, 3,400 square feet, had been covered with an asphalt driveway. Ms. Collins noted that the approved grading plan for the house's construction showed a standard sized driveway, but after the Residential Use Permit inspection, it was changed to a circular driveway. The appellants' two options were to reduce the driveway's configuration to a standard double width with an apron to turn around or reduce it to a car's width and along the sides install landscape pavers. Ms. Collins explained that because one could not drive on landscape pavers, they were excluded from the percentage of pavement calculated.

Mr. Cabezas presented the arguments forming the basis for the appeal. He said they were fully aware of the violation and would not contest the fact. He explained that when they purchased the property in 2002 there were two driveways, a gravel one along the side and the asphalt one from Colonial Avenue to their three-car garage. He said there was also the remains of a retaining wall, and he thought it was apparent that a circular driveway had been intended. He could not understand a neighbor's claim of water runoff problems caused by his house because when it was designed, that possibility was addressed and the property graded accordingly. He said there was a retaining wall in which to channel flow, and on each side of the road there were drainage ditches. Mr. Cabezas said it was a matter of safety that they converted the driveway into a

~ ~ ~ January 9, 2007, GERMAN CABEZAS AND ROBINSON VILLALOBOS, A 2006-MV-059, continued from Page 13

circular one because it was dangerous when backing out. During inclement weather, it was slippery, and it precluded their guests from on-street parking. He clarified that both driveways were pre-existing with no changes except paving the gravel one and maintained that they strove for harmonious relationships with the neighbors and would address and correct concerns or problems.

Mr. Villalobos explained the difficulties in utilizing the garage. He said the driveway's slight reconfiguration corrected them.

The appellants noted that their improvements had received compliments and praise from the neighbors.

Mr. Beard stated that in such circumstances there was no provision for a waiver, and he questioned staff on whether the appellants were aware that a variance was the usual process.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, assured the Board that she apprised the appellants of the variance process when they submitted their application. She realized it could be difficult to understand, but she tried to explain it. She said she suggested that the appellants work with the Zoning Inspector, who gave them the same information.

Mr. Beard asked the appellants if they understood that there was no vehicle by which a waiver could be granted on issues such as theirs.

Mr. Cabezas responded that he heard about it after they decided upon an appeal process. He referenced page 6 of the staff report, quoting the language that requested the Board uphold the Zoning Administrator's determination, submitting that it was his understanding it was the Board's discretion whether or not to uphold the Zoning Administrator's determination. He wanted the Board's attention to and favorable consideration of his situation.

Mr. Byers pointed out on page 3 of the staff report that there was an associated grading plan approved in June of 2004 that showed a standard-sized driveway, not the large, circular, asphalt one covering approximately half of the front yard. He questioned why the appellants had not recorded their intent for a circular driveway on that plan.

Mr. Cabezas said a circular driveway was not their original intent, and only after a difficult two-year process of plan redesigns had he pointed out the existing ingress/egress and asked whether the change was possible. He was informed it was no problem, and no permit was required. Mr. Cabezas explained that the circular driveway option was brought to their attention by two different contractors who came to his doorway soliciting business and they posed the option.

Chairman DiGiulian called for speakers; there was no response.

Ms. Collins acknowledged the appellants' statement that there were two driveways when they purchased the property. She pointed out the grading plan in the staff report indicated the approved driveway as well as an existing gravel driveway. She submitted that possibly at that time there were two gravel entrances/exits that may have complied with Zoning Ordinance regulations which permitted pavement, but prohibited paving more than 25 percent of a yard. Ms. Collins said that the appellants may have gone awry when they connected and widened the two driveways. She noted that the changes were made after the final inspection for the occupancy permit.

Chairman DiGiulian closed the public hearing.

Mr. Hammack commented that the Board had no authority to grant waivers in such cases, but he could understand how confusion may have arisen with the property's two curb cuts. He said the appellants made no denial that paving was done, the photographs indicated so, and it was an excess of 25 percent. He said that in this proceeding, the Board's function was to determine whether the Zoning Administrator's interpretation and application of the Ordinance was correct. Mr. Hammack said he respected the appellants' candor, and he was sympathetic to their wanting the circular driveway; however, it must be in conformance, and there was nothing to show that the Zoning Administrator's interpretation was incorrect. Mr. Hammack moved to uphold the determination of the Zoning Administrator for those reasons.

~ ~ ~ January 9, 2007, GERMAN CABEZAS AND ROBINSON VILLALOBOS, A 2006-MV-059, continued from Page 14

Ms. Gibb said that there were reasons for restricting impervious surfaces in the County besides aesthetics. She noted hearing testimony from many homeowners who suffered with water runoff flooding their yards caused by impervious surfaces, which was a prime reason for the Ordinance's regulations. Ms. Gibb seconded the motion.

Mr. Ribble said he had driven by and viewed the site and actually had seen worse areas. He said he would support the motion.

Mr. Hart stated that he supported the motion and agreed with Mr. Hammack that there was no procedural basis for the BZA to grant a waiver of the 25 percent maximum. He said the appellants' request for the circular driveway may or may not be a reasonable request, and the appellants had agreed that the paved area exceeded 25 percent, but were requesting permission to allow it. Mr. Hart said that the BZA was not empowered to consider such a request. He submitted that if there was a procedural vehicle for a case-by-case review of the 25 percent, it would be a matter for the Board of Supervisors to consider, and it would necessitate a change in the Ordinance.

Chairman DiGiulian called for a vote on Mr. Hammack's motion. The motion carried by a vote of 7-0, and the determination of the Zoning Administrator was upheld.

//

~ ~ ~ January 9, 2007, Scheduled case of:

9:30 A.M. BRADLEY C. JOHNSON, A 2006-PR-062 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor's office and shop and is allowing the parking of more than one commercial vehicle on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 8231 Citadel Pl. on approx. 11,833 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (K) 1.

Chairman DiGiulian noted that A 2006-PR-062 had been withdrawn.

//

~ ~ ~ January 9, 2007, Scheduled case of:

9:30 A.M. BEAZER HOMES CORPORATION, A 2006-PR-061 (Admin. moved from 2/27/07)

Chairman DiGiulian noted that A 2006-PR-061 had been withdrawn.

//

~ ~ ~ January 9, 2007, 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 and 12/5/06)

Chairman DiGiulian noted that A 2006-BR-030 had previously been deferred for decision only, and he called for a motion.

~ ~ ~ January 9, 2007, JOHN EVERETT AND CLAIRE EVERETT, A 2006-BR-030, continued from Page 15

Mr. Byers referenced the Status Update dated December 28, 2006. He said the appellants remained in violation of maintaining a contractor's office and shop. It was almost eight months since the Notice of Violation was issued, and there was little or no progress in clearing the violation. Based on staff's memorandum, he moved to uphold the Zoning Administrator's determination.

Mr. Hammack seconded the motion for purposes of discussion.

Mr. Hammack questioned staff whether, since its December 28th update, the appellants had followed up on their application for a special permit or made any progress in completing any of the deficiencies.

Elizabeth Perry, Staff Coordinator, Zoning Administration Division, said she understood that the appellant went to the County the previous day with additional information perhaps to correct a deficiency with the plat. She suggested that Mr. Everett inform the Board further.

John Everett, 7601 Dunston Street, Springfield, Virginia, concurred that it was the engineer firm's omission that the shed was left off, but acknowledged responsibility that it was not timely received by the County. He said he went to the County the previous day, and after staff's review of his documents, he understood there were no issues or discrepancies with the special permit process. He voiced his surprise to hear several discrepancies cited. He requested to be informed of each in order to address and resolve them.

Ms. Perry said if the special permit were approved, the accessory structure, the shed, would be permitted to remain. Staff drafted its memo, but during Zoning Evaluation Division's review, several deficiencies were noted in the application, and, therefore, the application was not accepted.

Mr. Hart said his recollection from the public hearing was that the shed issue could be resolved without razing it. It could be approved through a special permit (SP) perhaps with development conditions, and the deferral was to allow time for the appellants to pursue the SP process. He asked Ms. Perry whether staff was aware of Mr. Everett having made any attempts to resolve the other violations.

Ms. Perry said the information requested of Mr. Everett was not received nor were the required site inspections scheduled.

Mr. Everett confirmed he had moved his business to Maryland where for three years he had had an address. At the November 14th hearing, he directly asked staff that he be informed two hours before their inspection in order to allow him to meet them at the site.

Mr. Hart called attention to a photograph dated December 19th, Exhibit 2 of staff's December 28, 2006 Status Update, evidencing a trailer and lawn care equipment. He asked Mr. Everett why equipment was on the subject property if his business had moved to Maryland.

Mr. Everett stated that he had not received a definition of a commercial vehicle and its rated carrying capacity, of which he asked staff at the December 5, 2006 meeting. That information was essential before he could engage in any discussion that concerned a vehicle's classification as commercial because without the definition, he did not know whether his equipment was considered commercial. He listed several units that he moved to Maryland at staff's request.

Mr. Beard said the Code allowed one commercial vehicle, and he asked Mr. Everett what the problem was. Mr. Everett said the problem was that now staff was saying his was not a commercial vehicle.

Ms. Perry said staff considered Mr. Everett's two vehicles as commercial vehicles, one that pulled the trailer and the other with an attached snow plow. Ms. Perry said Mr. Everett was allowed one commercial vehicle.

Mr. Everett explained the series of conversations and understandings he had with staff. He voiced his confusion and frustration with the lack of clarity concerning the commercial vehicle classification. Referencing the truck pulling the trailer, he pointed out that at the public hearing he stated that it had a steering problem; therefore, it remained parked. He added that both vehicles were properly registered. He said he refused to rent a truck when he had another truck.

Mr. Byers referenced page 2 of the December 22nd memorandum, pointing out that there was no mention of

~ ~ ~ January 9, 2007, JOHN EVERETT AND CLAIRE EVERETT, A 2006-BR-030, continued from Page 16

trucks, but the discussion was the trailer being a commercial vehicle and under the Zoning Ordinance, was not permitted as an accessory use. He voiced his concern over the equipment staff cited on the property after Mr. Everett indicated he moved everything to his Maryland address.

Bridget Merz, Senior Zoning Inspector, Zoning Enforcement Division, explained that during her site visit, she observed a trailer loaded with a variety of equipment parked under the carport. She conceded she was unable to determine whether the trailer was attached to the truck.

Mr. Everett contended that the trailer was continually attached to one of his trucks, and if attached, the unit was defined as one vehicle. He clarified what several of his lawn maintenance equipment was that staff had cited.

Chairman DiGiulian called for a vote on the motion on the floor.

Mr. Hammack commented that Mr. Everett had applied for a special permit for his shed, and perhaps that issue would be excluded from the motion. Mr. Hammack amended the motion and moved, excluding the shed, that the Zoning Administrator's determination in Appeal A 2006-BR-030 be upheld, which failed for lack of a second.

Chairman DiGiulian noted that the original motion was again on the floor, and he called for the vote.

Mr. Byers' motion to uphold the Zoning Administrator's determination on Appeal A 2006-BR-030, which was seconded by Mr. Hammack, carried by a vote of 5-1-1. Mr. Hammack voted against the motion. Ms. Gibb abstained from the vote.

//

~ ~ ~ January 9, 2007, 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 and 12/19/06)

Chairman DiGiulian called the appellants to the podium.

Rodney and Jenifer Spratley, 18493 Running Pine Court, Triangle, Virginia, came forward.

Mary Ann Tsai, Staff Coordinator, made staff's presentation as contained in the staff report. This was an appeal of a determination that the appellants had established three separate dwelling units on the subject property in violation of Zoning Ordinance provisions. She noted the considerable discussion at the November 14, 2006, public hearing that centered on how staff determined when a separate dwelling unit was established and whether or not permanent provisions for cooking were critical to such determinations. She referenced staff's December 28, 2006, memorandum that outlined how staff examined the relationship between living, sleeping, eating, cooking, and sanitation to each other to determine whether a separate dwelling unit could be or had been established in any given situation. She noted that the memorandum contained documentation and a 'Second Kitchen' letter used by the Zoning Permit Review Branch.

Staff provided an additional memorandum by facsimile of a similar appeal, A 94-D-024, David M. S. Robertson, where more than one dwelling unit was established on the appellant's property. After the BZA's dismissal of the appeal, the violation was prosecuted in the Fairfax County Circuit Court. Ms. Tsai noted that case provided the judge's discussion of the Zoning Ordinance's definition of a dwelling unit with further clarification of what constituted permanent provisions for cooking. She noted there were several similarities between the Robertson court case and the Spratley appeal, such as a portion of the single-family dwelling's conversion into rental apartments with separate entrances and no internal access or restricted access

~ ~ ~ January 9, 2007, RODNEY AND JENIFER SPRATLEY, A 2006-PR-050, continued from Page 17

between the units. Each apartment contained a living and sleeping area, sanitation area, and a kitchen, and the Court's explanation of the Robertson case was when one had more than one of the areas set up, one was in violation of the Ordinance. The Court further advised that an arrangement designed for use with separate dead-locked, keyed door entrances clearly was a violation, and staff believed the two cases were similar. Since the 1994 court ruling of the Robertson case, staff had addressed multiple dwelling unit violations in accordance with the court's ruling, examining the whole arrangement of the living, sleeping, eating, cooking, and sanitation facilities to determine whether an additional dwelling unit could readily be established with the addition of a microwave, hotplate, or stove. Ms. Tsai stated staff recommended the BZA uphold the Zoning Administrator by finding the appellants had established three separate dwelling units on the property in violation of Zoning Ordinance provisions.

In response to Mr. Beard's question on the subject property's inspection, Susan M. Epstein, Senior Zoning Inspector, Zoning Enforcement Branch, said her inspection found three separate, lettered entrances.

Mr. Spratley said they had established no separate entrances and had made no changes. The property was purchased with the existing arrangement, and before purchasing, they obtained consultation concerning the legality and compliance to Code and Ordinance regulations. The seller had used the property as a rooming house of sorts and had several tenants. Mr. Spratley said their changes consisted of cleaning, carpet replacement, and installation of new appliances. There were no divisions or doorways created, and they were ignorant of any violations until the present. He said that in order to convert the house into a single-family unit, the sole remedy would entail cutting a hole to create an internal staircase, a difficult and structurally implausible feat. He said his research found no permits to explain how the house had been converted over the past 40 years. It was not he who made changes, and he was not requesting to operate illegally or be in violation of the law, but only sought to remedy the situation without evicting the tenants. Mr. Spratley said he observed other units with similar alterations, and he was requesting to be permitted to retain the house as it was.

In response to questions from Mr. Beard, Mr. Sprately said he purchased the property in 2001 as an investment, and he had leases with the tenants.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that he would adopt the rationale contained in Ms. Tsai's staff memorandums dated December 28, 2006, and January 8, 2007, concluding with the facts presented, that the determination of the Zoning Administrator was correct. He said he agreed that there remained difficulty with the kitchen problem or in certain situations, at what point the second dwelling unit came into being, but with the facts presented in this case, it was shown there were three separate dwelling units in the structure, and it was very confusing as to how it had come to that point. Mr. Hart said following Judge Brown's ruling in the Robertson case, he thought there were separate living facilities, there were separate entrances. It was obviously a house with three separate dwelling units in it. It was not an easy situation, and he did not know to make it come into compliance. Mr. Hart noted that he disliked the fact when these type situations were aggressively pursued because existing affordable housing in neighborhoods were eradicated. He said he thought that was a Board of Supervisors' policy decision, and if affordable housing continued to be eliminated, that policy would be enforced in the older structures with the apartments that had existed for many years, getting rid of them. Mr. Hart stated that with the facts presented and with the hand the Board was dealt, the Zoning Administrator's determination was correct and should be upheld.

Mr. Beard said he would support the motion although he found the situation terrible. He said he could not fathom the financial costs for those who purchased investment property in good faith, and he hoped the Spratleys had some recourse through the seller.

Chairman DiGiulian called for a vote. The motion to uphold the Zoning Administrator was seconded by Mr. Ribble and carried by a vote of 5-0-1. Mr. Hammack was not present for the vote. Ms. Gibb abstained from the vote.

//

~ ~ ~ January 9, 2007, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Ghulam M. and Noorsama Ahmadzai

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, introduced Michael L. Simms, staff with the Ordinance Administration Division.

Mr. Simms pointed out that the appellants' application was received December 6, 2006. The filing deadline was November 23rd, a holiday, and, therefore, the deadline date was moved to November 27th, which was still 11 days after the 30 days required to file after receipt of a Notice of Violation.

Chairman DiGiulian asked whether the appellants wanted to speak to the issue of acceptance.

Ghulam M. Ahmadzai, 7632 Shreve Road, Falls Church, Virginia, said initially he was unaware that a certified letter was received as it was accepted and signed for by his children while he was out of town seeing to a sick relative. He then twice made visits to the County to resolve the matter, but had to leave messages because the appropriate staff member was out in the field. When Senior Zoning Inspector Charles Cohenour, Zoning Enforcement Branch, came to his home, he was informed that he was already several days too late to file an appeal, but the Board could choose to consider it. Mr. Ahmadzai submitted that they were under a great deal of stress and were late filing because of his father-in-law's health and the fact that he and his wife sporadically were not home.

Chairman DiGiulian clarified that the appellants were 11 days late to file.

Chairman DiGiulian called for speakers to address the question of the consideration of acceptance; there was no response. He then called for a motion.

Mr. Hart noted that although there were name misspellings, the certified Notice of Violation was received at the correct address and signed for October 28, 2006. He pointed out that the record before the Board showed that the appeal was filed 11 days late, and he recognized that there was an illness in the family, but was unsure whether that had legal basis to extend the filing time or even if the Board had the power to do so. Mr. Hart stated that without an appeal application filed within the prescribed 30-day period, there was nothing for the Board to determine.

Mr. Hart moved to not accept the appeal application. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Board of Supervisors vs. BZA in Circuit Court of Fairfax County, CL-2006-14988; BZA vs. Board of Supervisors in Circuit Court of Fairfax County, CL-2006-11777; HBL, LLC, vs. BZA, CL-2006-15658, and the companion case, HBL, LLC, vs. County of Fairfax, CL-2006-15715; Board of Supervisors vs. BZA in the Circuit Court of Fairfax, 2004-221891; 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 11:33 a.m. and reconvened at 11:54 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 7-0.

//

~ ~ ~ January 9, 2007, continued from Page 19

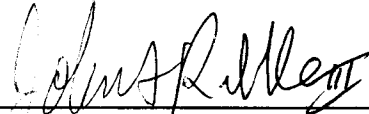
As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Minutes by: Paula A. McFarland

Approved on: November 17, 2010



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 23, 2007. 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 9:00 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 Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ January 23, 2007, Scheduled case of:

9:00 A.M. CHRISTOPHER S. AND MARY G. KICHINKO, SP 2006-SP-066 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.9 ft. with eave 2.4 ft from side lot line. Located at 8907 Triple Ridge Rd. on approx. 24,626 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((6)) 4. (Decision deferred from 1/9/07)

Vice Chairman Ribble asked whether it was correct that SP 2006-SP-066 had been deferred for decision only. Susan Langdon, Chief, Special Permit and Variance Branch, said the decision had been deferred from January 9, 2007, because the Board wanted to see photographs of the shed from the adjacent property, and the photographs had been distributed to the Board members.

Mr. Hammack verified that he had an opportunity to look at the photographs and other materials, and acknowledged a letter from the Timber Ridge Homeowners Association.

Mr. Hammack said the staff report showed the proximity of the shed and the impact of the shed on the adjacent property. He said Sect. 8-914 of the Zoning Ordinance required the Board find that the location was not detrimental to the use and enjoyment of other properties in the immediate vicinity. Mr. Hammack moved to deny SP 2006-SP-066 for the reasons stated in the Resolution.

Mr. Byers seconded the motion.

Mr. Hart stated that he would support the motion. He said that it was a close case because the shed had been in the location for some time, but under Sect. 8-914, Subsections 1C, D and 2 were not satisfied. He said the pictures showed the overwhelming nature of the shed from the adjacent neighbor in terms of height, proximity, and the color. Mr. Hart said that under Subsection 2, the Board was empowered to allow only a reduction necessary to provide reasonable relief, and based on the record, it was apparent there were other places on the lot where a shed could be relocated.

Mr. Beard stated that he would not support the motion because there was constraint due to the topographical characteristics of the property, and based on that, the applicants were entitled to relief.

The motion carried by a vote of 5-1. Mr. Beard voted against the motion. Chairman DiGiulian was absent from the meeting.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER S. AND MARY G. KICHINKO, SP 2006-SP-066 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.9 ft. with eave 2.4 ft from side lot line. Located at 8907 Triple Ridge Rd. on approx. 24,626 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((6)) 4. (Decision deferred from 1/9/07) 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 23, 2007; and

~ ~ ~ January 23, 2007, CHRISTOPHER S. AND MARY G. KICHINKO, SP 2006-SP-066, continued from Page 21

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

1. The applicants are the owners of the land.
2. Under paragraph 8-914D one of the findings the Board has to make is that the location will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
3. To force compliance would cause unreasonable hardship on the owner.
4. The Board is not convinced that the shed cannot be moved. It was placed where it is presently located really for the convenience of the parties and for some topographical reasons, but there are other locations on the site where it could be located.
5. The photographs show that it is very obtrusive when viewed from the adjacent property owner.

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

That the applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.

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

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

//

~ ~ ~ January 23, 2007, 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.) (Admin. moved from 11/28/07 for ads)

Vice Chairman Ribble called the applicant to the podium.

Greg Riegle, the applicant's agent, McGuireWoods LLP, 1750 Tysons Boulevard, Suite 1800, McLean, Virginia, reaffirmed the affidavit.

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

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 82-V-091-05, subject to the proposed development conditions.

Mr. Hart, Mr. Chase, and Ben Coffman, Explosives Enforcement Officer for the Fire Department, discussed the process for handling complaints received by the County or through court proceedings regarding blasting, and noted that there were no violations or complaints.

Mr. Hart acknowledged a letter from Supervisor Hyland opposing the renewal and stating concerns regarding Development Conditions 16 through 18. Mr. Chase said it appeared to be a general complaint with the suggestion that the levels be lowered and that the numerical values in Conditions 16 through 18 were carried forward from established industry standards and thresholds.

Jim Jones, formerly with the Fire Marshall's Office, explained that industry standards were used, and 0.4 for the ground vibration was much less than allowed by the normal industry standards or the fire code of 2.0.

~ ~ ~ January 23, 2007, VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05, continued from Page 22

Mr. Hart asked how the numerical values in Conditions 16 through 18 compared with the conditions for the Luckstone Quarry. Mr. Coffman said Luckstone was generally held accountable to the Department of Mines, Minerals, and Energy, which allowed Luckstone to proceed to a higher level.

Mr. Hart said he and Mr. Byers were at the site for a blast the previous Friday, and he asked about the blast measurement. Mr. Coffman said the vibration and the decibel level were below both maximum allowable measures.

In response to Mr. Beard's question, Mr. Coffman said he did not know what the original limits were for the first permit, but it had been at the current levels for the past 10 years, or was decreased by the applicant.

Mr. Byers said he understood 85 blasts occurred during the year, each one lasting about a second, for a total of about a minute and a half, and asked about impacts if the development conditions changed. Mr. Coffman stated that there was now development around the quarry. He said great care needed to be taken if the blast was to be shortened or increased because it was a very dynamically engineered thing that happened for each individual blast.

Vice Chairman Ribble asked for the plat of the operation to be shown as it currently existed, where the original 75 acres had been in 1992, and the expansion. Mr. Chase said that the original pit area had been in the area of the Fairfax County Water Authority property, and in 1979 it expanded into the current quarrying operation. Susan Langdon, Chief, Special Permit and Variance Branch, said the expansion occurred over time. The Fairfax County Water Authority had taken over part of the original area, filled it with water, and over time the quarry shifted up into another area. In response to Mr. Beard's question regarding when the last increase occurred, Ms. Langdon said it was in 1993.

Mr. Hammack asked about the high pressure gas line that ran between the quarry and some of the homes in South Pointe and whether blasting at any level adjacent to a gas pipeline had been taken into consideration. Mr. Coffman stated that a natural gas pipeline currently ran through the Luckstone Quarry in Centreville. The owners of the gas pipeline were consulted, who determined the limit of vibration acceptable on the pipe, and their guidelines were followed.

Mr. Hammack asked whether any seismographic recording had been conducted on the pipeline that ran between Vulcan and South Pointe. Mr. Coffman said he was not aware of any, but there were seismographs between the quarry and the pipe that would record the vibration.

Mr. Byers asked whether there had been any complaints from the Fairfax County Water Authority with regard to the operations of Vulcan and the two dams across the Occoquan. Mr. Chase said there had been no complaints, and for a number of years there had been seismic monitoring equipment placed on the dams. The monitors eventually were removed because it was thought that it was no longer necessary.

Mr. Hart asked about the correspondence alleging septic tanks cracking. Mr. Chase said the only complaints were ones received in the prior few weeks, and prior to that the various agencies that had monitored Vulcan had not received any complaints. He said that Zoning Enforcement had not yet reviewed them, and he was not sure whether there was a relationship between the blast and the damage. Mr. Hart asked whether the Health Department was aware of the situation. Bhesh Dhamala, Environmental Specialist, Health Department, stated that he was not aware of any complaints. Mr. Hart said that in the correspondence people had indicated their septic tanks had cracked due to the blasting, and asked for a review with the results reported to the Board.

Mr. Byers asked how many rezonings had been approved in the areas near Laurel Hill. Mr. Chase said there had been several in the last five to ten years, especially since the closing of the prison. Mr. Byers added that a substantial one had not yet been built, and he thought there were two more. He said that Vulcan was being held to a standard of 0.4, even though new construction would be limited to 2.0, which was substantially greater. He asked whether it was true that the issue of the construction blasting would remain even if Vulcan's special permit was denied. Mr. Jones said that when construction took place, the blasting companies would file permits and be held to the 2.0 standard.

Mr. Byers asked whether there had been any complaints about blasting in the area that were not generated

~ ~ ~ January 23, 2007, VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05, continued from Page 23

by Vulcan because there had been other construction and a water line built. Mr. Jones stated that one of the biggest complaints was about Quantico Marine Base. During artillery shooting, complaints were received from Centreville to Lorton, and it was easy to determine the origin because it would last for 30 minutes to an hour with a lot of blasts. When construction blasting occurred unrelated to Vulcan, Vulcan was notified by the Fire Marshall's Office because Vulcan would receive complaints and inquiries, and their seismographs would pick up blasting from around the area.

In response to Mr. Beard's questions regarding Vulcan's seismographic monitoring and blasting, Mr. Jones said the company that provided the monitoring data submitted it to Vulcan, who forwarded it to the Fire Marshall's Office for review. Mr. Jones indicated the companies Vulcan used were known in the marketplace for their integrity, and Fairfax County was the leading county in Virginia as far as standards and compliance in the blasting industry.

Mr. Riegler presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said that the Health Department was aware of the septic tank issue, and industry experts indicated that it would take blasting in excess of 10.0 to crack concrete. He said the Dominion gas line had also been addressed, and he had a letter from Dominion that summarized their conclusions. He stated that Vulcan had not asked for any changes, intensification, or expansion of its operations, and they had proposed a number of new development conditions that addressed additional notification procedures for blasting protocol to the affected communities and traffic management mitigation to help the area roads function better. Mr. Riegler discussed the ways information regarding Vulcan's operations had been communicated, including signed disclosure statements from people who purchased property and a sign on the entrance road from Peniwill Drive, which was the only route into Occoquan Overlook.

Mr. Riegler said there had never been any violation against Vulcan for any monitoring or standard the Board had imposed. The Zoning Ordinance standards for special permit renewal were set up to give the Board the opportunity to ensure that the applicant was living by the rules that the Board had set, and based on the permitting and approval history and the absence of any violations, to make fundamental changes to the way the quarry was regulated would not be fair.

Mr. Riegler said the proposed use was unique and had an analytical framework that differed from anything else seen in a land use context. There was a science which was decades old and constantly refined that governed blasting operations and the extraction of rock, and that science provided the appropriate basis to figure out how to best regulate the subject use. Mr. Riegler said blasting was fundamental to any quarry operation, with no alternative way to remove rock from the ground. In the limited context of Vulcan's blasts totaling about a minute and a half per year, the fair question was does the blasting create any potential for property damage, and the answer was no. Mr. Riegler said that based on Vulcan's seismograph monitoring in an occupied dwelling, day-to-day activities, such as slamming doors or going up and down stairs, created vibration comparable to Vulcan's blasting. Mr. Riegler said doing smaller blasts would result in blasting more often and would create safety issues for the quarry operator.

Mr. Hart and Mr. Riegler discussed monitoring requirements, enforcement if the blasting limits were exceeded, variables such as cloud cover which could affect noise readings, other possible causes of damage property owners claimed resulted from Vulcan's blasting, and ways to resolve the truck traffic issue.

Mr. Hart asked staff to provide the numbers used by Loudoun County relative to Conditions 16 through 18 from a recent renewal for another quarry located on Gum Springs Road in Loudoun County.

Vice Chairman Ribble, Mr. Byers, and Mr. Riegler discussed banning truck traffic from certain roads.

Mr. Byers and Mr. Riegler discussed the process by which the signed disclosure statements from property owners were obtained and other means used to inform people of the quarry.

Mr. Hammack and Mr. Riegler discussed whether records existed regarding blasting from other sources, random blasting, and other possible sources of property damage.

In response to Mr. Beard's question regarding the clay content of the ground in the subject area, Mr. Chase

~ ~ ~ January 23, 2007, VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05, continued from Page 24

said he had no information regarding clay content.

Vice Chairman Ribble called for speakers.

The following speakers came forward to speak: Mary Sandra Draude, 9325 Elkhorne Run Court, Lorton, Virginia; Thomas V. Draude, 9325 Elkhorne Run Court, Lorton, Virginia; Edward Vallejos, 9327 Elkhorne Run Court, Lorton, Virginia; Carla Little-Kopach, 9285 Davis Drive, Lorton, Virginia; Sandy Lyons, 9187 Marovelli Forest Drive, Lorton, Virginia; Michael Grogan, 9330 Davis Drive, Lorton, Virginia; Sushil Allagh, 9323 Occoquan Overlook Drive, Lorton, Virginia; Timothy E. Rizer, 5905 River Drive, Lorton, Virginia; Kathleen Stalzer, 9231 Wrights Hollow Lane, Lorton, Virginia; Julianna Bachmann, 7611 Lindsie Place, Springfield, Virginia; Charles Jones, 9355 Davis Drive, Lorton, Virginia; and Dev Ruchandani, 9311 Occoquan Overlook Drive, Lorton, Virginia.

The speakers voiced concerns regarding damage to their property; the transportation of explosives and weekly explosions being inappropriate in residential zoned areas; the changes in the area over the 35 years resulting in diminished quality of life by the truck traffic and explosions at the quarry; the effects felt in their homes during explosions; scientific data not measuring the human experience; people reporting blasting on days when no blasting occurs speaking to the negative psychological impact experienced when living in a blasting zone; citizens not knowing to whom to direct complaints; request for the complaint process to be put in writing and clarified; doubts regarding materials sent to residents discussing stress/strain on structures; the number of complaints being low because the development in the area was recent; the standards from 1972 no longer applying; concern about depreciation of home values due to the quarry blasting; the home builder having not been forthcoming about the quarry and blasting; Vulcan placing sensors on their property in response to complaints and being told there was nothing to worry about; complaints being filed directly with Vulcan rather than with the County and the County's file having no reference to complaints; increasing the oversight; concern about underground utilities being installed close to the quarry; Lorton Valley residents filing complaints with Supervisor Hyland, and holding a community meeting; the impression that there had been a significant expansion of the quarry in 2001 and the proximity to the new homes; the legal limits for blasting should be changed; the Fairfax County community members as well as Prince William County not wanting the application approved.

Ms. Draude answered questions from the Board, stating that she had picked out her lot when she purchased her home, but if an explosion had occurred while she had been at the lot, she would not have paid 1.2 million dollars for her home. Her realtor had not explained anything to her, and the agent for Craftmark Homes had not explained the multitude or velocity of the explosions. She was considering taking action against Craftmark Homes to let them know she was upset with the situation. She invited the members of the Board to her house to witness an event.

Vice Chairman Ribble said that when he had gone to hear the blast, he had been in Ms. Draude's living room, and it was quite an event. The chandelier moved, and things shook in the house. He said there might be more impact sitting in one of the homes.

In response to questions from Mr. Beard, Ms. Little-Kopach indicated she had not been told anything about the quarry when she purchased her property five years prior from a private homeowner. Her subdivision, South Pointe, was located right across from the last major entrance into the Crosspointe community.

Ms. Lyons said she was aware of the quarry when she was considering the purchase of her lot. They were told that the quarry's work would not cause property damage or affect their daily lives. She said she had been disappointed, and after experiencing a blast inside her home, she learned that experiencing a blast outside was significantly different from experiencing one inside. She had been in her home for eight months, developed a leak in her septic tank, and had continual cracks in her basement that required repair. In response to Mr. Beard's questions, Ms. Lyons said that within her home purchase paperwork, there was a paper advising them of the quarry.

In response to comments made by Mr. Grogan regarding the filing of complaints, Vice Chairman Ribble said the complaints should be directed to Zoning Enforcement. Mr. Grogan said they had been told the complaints should be directed to the Fire Marshal, the Supervisor's office, and to the Board directly. He asked the Board to clarify in the development conditions exactly where formal complaints should be directed.

~ ~ ~ January 23, 2007, VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05, continued from Page 25

Vice Chairman Ribble, Mr. Hart, Ms. Langdon, and Mr. Jones discussed how complaints should be filed and would be handled. Mr. Jones said that if someone said they had damage from a blast, the blast would be checked to see if there had been any violation under the Fire Code, and if there had been no violation under the Fire Code, the Fire Marshal had no ability to pursue it. It would become a civil issue, and personnel from the Fire Marshal's office would become expert witnesses in a civil proceeding. If there had been a violation of the law, the violator would be cited and could be charged criminally, but the Fire Marshal personnel were not experts on structural engineering, so there would still be a civil issue involved.

In response to questions from Mr. Beard regarding the builder of his house, Mr. Allagh said it was built by Craftmark Homes, and he had not been told anything and signed nothing with regard to the quarry operation. He had not complained to Craftmark Homes about the foundation because it would be part of the one-year inspection, and he had a one-year warranty that would cover some repairs.

Mr. Byers said he understood Mr. Allagh's concern, but his concern was that every blast that had occurred was being attributed to Vulcan, and he not convinced that was true. He said blasting of a higher magnitude had occurred with home construction. He asked whether there was any way to go back for six months and compare the number of blasts that were not Vulcan's and determine what the levels were. He said he wanted to be sure the applicant was being fairly treated. Mr. Grogan said there had been a seismograph in his yard for six months that was placed by a Vulcan contractor, so Vulcan should have the data.

Mr. Coffman said that each company that did blasting in the County was required to get a permit for a specific site, and he could look at which sites were active in the prior six months. In response to a question from Mr. Byers, Mr. Coffman said it would not take long for him to determine which permits were active, but each company would have to be contacted and their records retrieved and reviewed.

Mr. Hammack said that if the records from a seismograph in someone's yard were compared to Vulcan's records, it would be easy to determine if other sources of seismic activity might be responsible for the cracks in foundations that were being attributed to Vulcan. Mr. Jones affirmed that was correct, and it would also pick up things like lightning.

Mr. Hart stated that he lived in Virginia Run, which was by the Luckstone Quarry, and residents in his neighborhood and in Bull Run Estates had problems eight years prior. His impression was that the Luckstone operations changed and whatever was done seemed to have made a difference, and the perception over the past few years was that there were fewer problems. Mr. Jones said there had been no change in their blasting or traffic procedures in his experience with Luckstone. He said the dynamics of the quarry had changed because they were going deeper, but he did not know whether that had improved things. Mr. Jones said he could check with Luckstone to determine if operations had changed since eight years ago. Vice Chairman Ribble said he thought Luckstone had reduced the use of the quarry by phasing out a retail component which reduced truck traffic.

Mr. Byers asked for clarification about the underlying zoning. Ms. Langdon pointed out the I-6 portion on the overhead viewer and said the majority of the site was R-C or R-1, and a quarry was a use that was allowed in certain residential districts that had the natural resource overlay district.

In response to Vice Chairman Ribble's question regarding whether a letter had been received from Prince William County at the time the application had last been renewed, Ms. Langdon said none had been received with regard to the current renewal, but she could not recall what had been received previously.

In his rebuttal, Mr. Riegle said that the seismographs they used monitored everything, and for the last six months nothing had been picked up other than Vulcan's own blasts. Cracking concrete and septic tanks would require higher blasting levels close to ten, and Vulcan did not have levels that would cause that. He said a complaint had been received from a property owner in Lorton Valley, and a seismograph put on the property did not measure anything relative to the quarry's blasts, so people were hearing things at times coming from other sources and attributing them to the quarry. Mr. Riegle reminded the Board that an annual review and report of the quarry's activities was mandated by the Zoning Ordinance, and if the quarry was not following the requirements, the Board would know. The quarry had never been out of compliance with what had been put in place. Mr. Riegle said he had submitted a copy of the development conditions for the Loudoun County quarry near the county line, and it was regulated in accordance with the minimum state

~ ~ ~ January 23, 2007, VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05, continued from Page 26

standards. With regard to underground utilities, such as water and gas, the vibration levels were manageable because the utility company's analysis found that the blasting from the quarry was no more than a 150-pound person standing on top of the pipe.

Mr. Riegle displayed the results of a seismograph inside a private homeowner's house on Davis Drive which showed four blasts which occurred over a multi-week period as well as other vibration in the house caused by door slamming, backpack dropping, and running down stairs. He said the quarry's blasts were not out of character with day-to-day activities. He said the quarry would certainly accept a condition requiring notification. Mr. Riegle also displayed a photograph of the signs on Peniwill Drive which contained the words "The Vulcan Quarry" and described the blasting protocol.

Mr. Riegle said that as time had passed, the quarry's blasting levels had come down. Vulcan was perhaps the most regulated quarry in the state, had good standards, and was voluntarily working to do the best it could, and it was not fair to further penalize the quarry.

Mr. Riegle, Mr. Coffman, Ms. Langdon, and the Board members discussed requirements for notification of blasting, notification of the Board's meeting, development conditions regarding police patrols, vibration control at other quarrying operations, mitigation of property damage which might be caused by blasting which occurred under the allowable limits, possible ways to minimize the blasts to lessen the impact and the potential results, regulation based on vibration being the best objective standard, science indicating that Vulcan's level of blasting was not sufficient to cause damage to surrounding properties, evidence that the damage was caused by other sources, analysis done by utility companies regarding their equipment and blasting, and the buffer area located between the Vulcan operations and the closest community remaining intact.

Mr. Byers moved to defer decision on SPA 82-V-091-05 to April 24, 2007, at 9:00 a.m. He requested that a written opinion be obtained from the Prince William County government similar to the one obtained in 2001; that Vulcan work with staff to examine the issues outlined in the correspondence received from the Mount Vernon Supervisor; any seismographic information available regarding construction in the area; a transportation study showing the amount in percentage terms of truck traffic on Route 123; coordination between Vulcan and staff regarding Vulcan's proposed development conditions and the capability of the Fairfax County Police Department's involvement; and information from the utility companies regarding the impact of minimal vibrations over time. Mr. Hammack seconded the motion.

Mr. Hart asked for information regarding a response from the Mount Vernon Supervisor if changes in the blasting numbers were proposed; information regarding changes made to Luckstone's operation a few years prior; and information regarding the difficulty involved in documenting the conditions of the homes and structural damage within a certain distance.

Mr. Hammack asked for information regarding the migration of the blasting moving north towards the residential areas, any difference in impacts based on the depth of the blasting, and whether anything unusual existed in the geology surrounding the quarry that might cause issues not experienced at other quarries.

Mr. Beard stated that he would reluctantly support the motion, and he requested information regarding the makeup of soil in the area and the age of the oldest house affected.

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

//

The meeting recessed at 12:20 p.m. and reconvened at 12:26 p.m.

//

~ ~ ~ January 23, 2007, 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

~ ~ ~ January 23, 2007, M & A, L.C. AND ANNA GERTRUDE BURGESS, TRUSTEE, AND JUNE B. BACON, TRUSTEE, A 2006-DR-051, continued from Page 27

DPWES 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. (Admin. moved from 11/14/06 at appl. req.)

Vice Chairman Ribble noted that A 2006-DR-051 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the Board had approved a variance which resolved the subject of the appeal.

//

~ ~ ~ January 23, 2007, 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. (Admin. moved from 11/7/06 at appl. req.)

Vice Chairman Ribble called the appellant to the podium.

Daniel F. Sturdivant II, 5317 Foxboro Court, Alexandria, Virginia, came forward.

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

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. On March 2 and June 14, 2006, inspections of the property revealed that an accessory structure, a freestanding vehicle shelter, had been established in the front yard of the subject property. The structure was determined to be a subordinate use to the principal use, the dwelling, as such met the definition of an accessory use, and was deemed an accessory structure. Paragraph C of Sect. 10-104 of the Zoning Ordinance provides that no accessory structure or use shall be located in any front yard on any lot containing 36,000 square feet or less. A front yard is defined as a yard extending across the full width of a lot and lying between the front lot line and the principal building. A front lot line is defined as, in a case where a lot does not abut a street other than by its driveway or is a through lot, the lot line which faces the principal entrance of the main building. The structure was located on the southeast side of the dwelling where the principal entrance was located, so the vehicle shelter was determined to be an accessory structure located in the front yard.

In response to Ms. Gibb's question regarding how the appeal originated, Roy Biedler, Senior Zoning Inspector, said a complaint had been received by telephone regarding structures of this nature on Foxboro Court, which upon inspection resulted in three properties being found in violation.

In response to Ms. Gibb's question regarding a letter from Mr. Yates, Ms. Tsai said the letter showed how staff arrived at the determination of the front yard for the subject property consistent with previous zoning determinations going back to 1981.

In response to Mr. Byers' questions regarding the complainant, Mr. Biedler said the complaint was not submitted anonymously, and the person identified themselves.

In response to Mr. Hart's questions regarding whether the lot was a pipestem lot or just an oddly shaped lot, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that based on the definition in the Public Facilities Manual, there was a width of 24 feet for what would normally be considered a driveway, and the subject driveway did not meet or exceed that width. Whether there was grass around it or not, if it was less than 24 feet, it was all deemed to be a driveway. If it was not a pipestem lot and was just an oddly shaped lot, the front yard would have to be determined on a case-by-case basis.

~ ~ ~ January 23, 2007, DANIEL F. STURDIVANT, II, A 2006-LE-038, continued from Page 28

In response to Mr. Beard's question regarding the front door and the definition, Ms. Stanfield said the appellant could conceivably change the principal entrance, but because of the minimum yard requirements, the only place it could be changed to would be the rear of the lot.

Mr. Sturdivant presented the arguments forming the basis for the appeal. He said he had lived in the county since 1972 and at Foxboro Court since 1978. He said he had a carport for a long period of time. He submitted a land survey dated in July of 1993 showing the carport and said he had rebuilt the deck, which the County inspected, and the carport was there at that time. Mr. Sturdivant said the situation had arisen as a result of an argument between two other neighbors, one of which had sent a letter saying it had nothing to do with him.

In response to Mr. Beard's questions regarding when the carport had been built, Mr. Sturdivant indicated that he had replaced the older carport with the newer structure in 2001, and the older structure, which he had also put in, had been there since 1979.

In response to Mr. Hart's questions regarding building permits, Mr. Sturdivant said that when he enclosed the deck, he had submitted drawings, but he did not think they showed the carport. He said he also submitted a plat from 1993 when he applied for the permit for the deck, which showed the carport.

Vice Chairman Ribble called for speakers.

Frank Dombrowski, 5315 Foxboro Court, Alexandria, Virginia, came forward to speak in support of the appellant.

In response to Mr. Hart's questions regarding whether the structure would be allowed if it was shifted so it touched the house, Ms. Stanfield said it would be allowed if it met the minimum yard requirement. Mr. Sturdivant said he would like to do whatever he could to keep the carport.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on A 2006-LE-038 to November 6, 2007, at 9:30 a.m., to allow time for staff to determine if any additional backup information was available regarding whether the 24-foot width referenced in the Public Facilities Manual made everything less than that a driveway even if the pipestem was partially paved and partially grass and to provide an opportunity for the appellant to consult with staff to determine if it would be possible to shift the carport over to touch the house. Mr. Byers seconded the motion, which carried by a vote of 5-1. Mr. Hammack voted against the motion.

//

~ ~ ~ January 23, 2007, 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. (Decision deferred from 11/7/06)

Vice Chairman Ribble noted that A 2006-PR-048 had been administratively moved to March 6, 2007, at 9:30 a.m., for ads.

//

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 BZA vs. Board of Supervisors, in the Circuit Court of Fairfax, 06-11777, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Vice

~ ~ ~ January 23, 2007, continued from Page 29

Chairman Ribble seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 12:56 p.m. and reconvened at 1:03 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. Chairman DiGiulian was absent from the meeting.

//

Vice Chairman Ribble noted that the January 30, 2007 Board of Zoning Appeals meeting had been cancelled.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:05 p.m.

Minutes by: Shannon M. Keane / Kathleen A. Knoth

Approved on: September 10, 2014

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 6, 2007. 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. 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 6, 2007, Scheduled case of:

9:00 A.M. ANDREW JANOSKO, SP 2006-PR-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 15.0 ft. from front lot line, 24.2 ft. from rear lot line and 7.4 ft. from side lot line. Located at 2843 Meadow La. on approx. 5,667 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((8)) 29.

Chairman DiGiulian called the applicant to the podium.

Steve Waldron, Brymon Services, Inc., P.O. Box 230296, Centreville, Virginia, the applicant's agent, reaffirmed the affidavit.

Stephen Varga, 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 the construction of a two-story addition 15 feet from one front lot line of a corner lot and 7.4 feet from the side lot line. The approximately 1,000 square foot, 23.3 foot high, two-story addition to the rear of the existing dwelling would allow the applicant to expand their kitchen, bathroom, and hallway as well as add a family room and bedroom. Staff concluded that the subject application was in harmony with the Comprehensive Plan and recommended approval of SP 2006-PR-070.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Hart's request for clarification concerning the recently adopted Ordinance amendment regarding approval of certain side yard setbacks. She explained that the applicant filed under a different amendment than the one he referenced, Sect. 8-922, which was a maximum 50 percent reduction, and, therefore, the addition was permitted closer to the setback than the house, and on a corner lot the rear yard could be treated as a side yard.

Mr. Walton presented the special permit request as outlined in the statement of justification submitted with the application. The family had outgrown their small home and needed more space. He pointed out that the surrounding neighborhoods had constructed all types of additions and homes approved through variances, and the Janoskos submitted their special permit with careful attention to all applicable zoning laws.

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

Mr. Byers moved to approve SP 2006-PR-070 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREW JANOSKO, SP 2006-PR-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 15.0 ft. from front lot line, 24.2 ft. from rear lot line and 7.4 ft. from side lot line. Located at 2843 Meadow La. on approx. 5,667 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((8)) 29. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 6, 2007; and

~ ~ ~ February 6, 2007, ANDREW JANOSKO, SP 2006-PR-070, continued from Page 31

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). 8-922 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 1,000 square feet) of the proposed addition as shown on the plat prepared by Harold A. Logan, dated October 31, 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 (1,200 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.

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 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.

//

~ ~ ~ February 6, 2007, 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. (Admin. moved from 11/28/06 at appl. req.)

Chairman DiGiulian noted that SP 2006-SP-052 had been indefinitely deferred at the applicants' request.

//

As the meeting time was 9:10 a.m., and because the next regular agenda item was scheduled and advertised for 9:30 a.m., Chairman DiGiulian called the after agenda items to be heard next.

//

~ ~ ~ February 6, 2007, After Agenda Item:

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

Mr. Beard moved to approve 18 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was March 2, 2008.

//

~ ~ ~ February 6, 2007, After Agenda Item:

Request for Additional Time
Mok Yang Presbyterian Church, SPA 95-S-071

Mr. Ribble questioned why there were different amounts of time for the additional time items.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicant requested the amount of time they believed was sufficient to commence construction.

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 October 14, 2007.

//

~ ~ ~ February 6, 2007, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Janet A. Bradley

Ms. Gibb recused herself.

William B. Lawson, Esquire, 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, identified himself as the agent for the appellant. He believed there were three points generic to the case. The first was that the Zoning Ordinance referred to interpretations of proffers which the Board of Supervisors (BOS) would hear. The second point concerned the Ordinance itself, with its definition of open space. The last point was the State Code and specific language regarding the BZA's purview to hear certain appeals. In summary, Mr. Lawson said the BZA had the power to hear and decide appeals from any order, requirement, decision, or determination made by the administrative officer in the administration or enforcement of the article or any subsequent adopted ordinance. He stated that the BZA had the right to hear the decision that the applicant thought was wrong. He pointed out that they sought to pressure the homeowners association to make its decision during a certain amount of time. Mr. Lawson stated that he thought this case was a separation situation where the legislature, the BOS, adopted the ordinances and the BZA, as quasi-judiciary, interpreted it when necessary.

Mr. Hart referenced an identical appeal filed with the Board of Supervisors. He asked if staff had any objection to that application going forward and whether the BZA could defer its consideration until after the BOS's hearing.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff had no objection to either action.

Mr. Hart referenced a December 15, 2006 letter from Mr. Congleton which indicated a previous letter saying fences could be put across the common area in a small strip was in error and the issue would be revisited. He asked whether Mr. Congleton's letter rendered the whole appeal moot. Ms. Stanfield said that based on her conversations with Mr. Congleton, it did.

Mr. Hart asked what the Board was to do if the determination being appealed had already been determined to be incorrect. Ms. Stanfield said the matter before the Board was procedural. There was an appeal application which staff was responsible to bring forward for consideration.

Mr. Hart asked whether a new determination was forthcoming. Ms. Stanfield said she understood that

~ ~ ~ February 6, 2007, After Agenda Items, continued from Page 33

investigations were underway.

Mr. Hart asked whether the appellant or her agent could appeal the subsequent determination once it was issued. Ms. Stanfield said that was correct.

Mr. Hart moved to defer the consideration of acceptance of the appeal filed by Janet A. Bradley, to April 3, 2007. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb recused herself.

//

~ ~ ~ February 6, 2007, After Agenda Item:

Request for Additional Time
Terry L. Plummer, VC 2003-HM-173

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 August 24, 2007.

//

~ ~ ~ February 6, 2007, After Agenda Item:

Request for Additional Time
The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, Virginia,
and His Successors in Office (St. Clare Catholic Church), SPA 88-S-091

Mr. Hart recused himself.

Mr. Ribble moved to approve 18 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself. The new expiration date was February 17, 2008.

//

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 HBL LLC, v. BZA in Circuit Court of Fairfax County, Case number 2006-015658, 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 9:19 a.m. and reconvened at 9:34 a.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. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 6, 2007, 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. (Admin. moved from 12/5/06 at appl. req.)

Chairman DiGiulian noted that A 2006-DR-054 had been administratively moved to April 10, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ February 6, 2007, Scheduled case of:

9:30 A.M. VICENTE L. GUEVARA, A 2006-MA-065 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an addition, which was constructed without an approved Building Permit and which does not meet the bulk regulation as it applies to the minimum side yard requirement for the R-3 District, is in violation of Zoning Ordinance provisions. Located at 4014 Arcadia Rd. on approx. 11,837 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((7)) (C) 30.

Chairman DiGiulian called the appellant to the podium.

Vicente Guevara, 4014 Arcadia Road, Alexandria, Virginia, came forward.

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

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 30, 2007. This was an appeal of a determination that an addition, which was constructed without an approved building permit and did not meet the bulk regulation as it applied to the minimum side yard requirement for the R-3 District, was in violation of Zoning Ordinance provisions. The subject property was zoned R-3, had a lot area of 11,837 square feet, and was developed in 1956 with a one-story, brick, single-family detached dwelling. The addition on the southwestern side of the house was the subject of the appeal application. The location of the principal structure, the dwelling, complied with the minimum side yard requirement for the Suburban Residence District when it was constructed. In August 1956, a building permit was approved for a carport/detached tool shed between the existing house and the left side lot line. The building permit showed the structure's location approximately ten feet, five inches from the left side lot line. At that time the minimum side yard requirement for the Suburban Residence District was 15 feet; however, the 1954 Zoning Ordinance contained a provision which permitted a garage or carport placed between a dwelling and a side lot line to extend not more than five feet into the minimum required side yard, so the carport/detached tool shed complied with the Zoning Ordinance regulations as it was initially constructed.

At some point between 1956 and the present time, the carport was enclosed, and the entire structure was attached to the principal dwelling unit. When that happened it became a part of the principal dwelling unit and subject to the minimum yard requirements of the R-3 District. Because the addition did not comply with the minimum side yard requirement of 12 feet, the appellant was in violation of Zoning Ordinance provisions. In addition to being too close to the side lot line, it appeared that the carport was enclosed and the structure was attached to the principal dwelling without building permit approval. In order to bring the property into compliance, the appellant could entirely remove the addition from the property, reduce its size so that it complied with the minimum side yard requirement of 12 feet and obtain approval of a building permit, or apply for and obtain approval of a special permit for an error in building location and obtain approval of a building permit.

Mr. Hart posed staff the question of whether the appellant had the possibility to remedy the violation other than a mistake in building location. He suggested applying for a special permit for a reduction to the minimum yard requirements, pointing out that the enclosed carport was pre-existing and touched the house.

Ms. Collins said staff would look into that possibility.

Mr. Guevara presented the arguments forming the basis for the appeal. He referenced his November 9, 2006, letter, acknowledging the Notice of Violation and requesting a six-month extension of time to remedy the violation by demolishing the old and dilapidated carport. He said his intention was to raze the carport and extend his house. He said his contractor was in the process of finalizing the required permits for the renovations, and he explained that the staff's only notice of his intention was his November 9th letter to the Senior Zoning Inspector, James Ciampini, Zoning Enforcement.

Ms. Collins said staff spoke to the appellant on January 11, 2007, about receipt of his building or demolition permit applications, but to date nothing was received.

In response to a question from Mr. Byers, Mr. Ciampini informed the Board that since the initial inspection the appellant had five months to apply for the necessary permits, but had not done so. The outside storage was nearly cleaned up, but civil matters had not yet been pursued because the appeal was pending.

~ ~ ~ February 6, 2007, VICENTE L. GUEVARA, A 2006-MA-065, continued from Page 35

Mr. Hart asked whether the appellant could get a demolition permit while the appeal was pending. Ms. Collins said he could. Mr. Hart asked whether there was a procedural impediment to the appellant filing for a special permit. Ms. Collins said there was not. Mr. Hart asked whether it would be by right and the appellant would not need a special permit if the structure was shifted approximately 1.5 feet closer to the house. Ms. Collins said that was correct as long as the appellant met the side yard requirement of 12 feet.

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

Mr. Hammack stated that there was no argument that the presently constructed addition did not meet regulations, and there were remedies or alternatives that could be pursued. He said that although Mr. Guevara testified that he would clear the violations and had removed most of the outdoor clutter, for five months no further action had been taken to address the central violation. Mr. Hammack said that the addition was constructed without the necessary permit and did not meet bulk regulations. He would make the motion to uphold the Zoning Administrator's determination, although he was prepared to consider a short deferral to allow Mr. Guevara the opportunity to apply for the permits and cure the violation.

Mr. Beard concurred with Mr. Hammack's consideration of a decision deferral and said he wanted to impress on the appellant the situation's seriousness and immediate action was mandatory.

Mr. Hammack moved to defer decision on A 2006-MA-065 to March 6, 2007, at 9:30 a.m. Mr. Beard seconded the motion.

Mr. Byers stated he would not support a motion to defer decision because the structure was constructed without a building permit and inspections revealed outstanding issues. Over five months had passed without any action taken on acquiring permits. It was a resolution to slightly move the addition in order to make it by right, and the owner was given significant time to take action and had not done so.

Chairman DiGiulian called for a vote on the motion to defer decision.

The motion carried by a vote of 5-2. Mr. Byers and Mr. Hart voted against the motion.

//


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

Minutes by: Paula A. McFarland

Approved on: January 12, 2011



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, February 13, 2007. 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 9:04 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.

~ ~ ~ February 13, 2007, 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. (Decision deferred from 11/7/06)

Chairman DiGiulian noted that SPA 93-M-119-02 had been deferred for decision only.

Mr. Byers moved to approve SPA 93-M-119-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

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. (Decision deferred from 11/7/06.) 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 February 13, 2007; 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, Greek Orthodox Church of Northern Virginia, Trustees; and is not transferable without further action of this Board, and is for the location indicated on the application, 3149 Glen Carlin 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 June 4, 2002, revised through February 6, 2007, and approved with this application, as qualified by these development conditions.
- 3. A copy of this special permit and the Non-Residential Use Permit (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 525.
6. All parking shall be on-site, as depicted on the special permit plat.
7. Prior to the issuance of a Non-RUP for the nursery school, 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 nursery school shall be reduced to correspond to a number that can be supported by the parking spaces provided on site as determined by DPWES.
8. There shall be no clearing of vegetation or grading inside of the EQC line designated on the special permit plat except for the removal of dead and dying trees as determined by Urban Forest Management. There shall be no structures located in the EQC area.
9. The existing play area shall be relocated outside of the EQC/RPA boundary, and in an area on site outside the minimum required front yard, transitional screening areas, and parking lot.
10. Upon issuance of the new Non-RUP for this special permit, the total maximum daily enrollment in the nursery school shall be limited to 80.
11. The nursery school's maximum hours of operation shall be 7:30 A.M. to 6:00 P.M., weekdays, between the months of September and June.
12. A left turn lane shall be provided by striping the existing pavement at the entrance opposite South Manchester Street subject to the review and approval of the Department of Transportation.
13. The applicant must meet the Department of Environmental Management's Water Management Ordinance and the Chesapeake Bay Preservation Ordinance.
14. Transitional screening shall be maintained in accordance with the following: along the northern and western lot lines, existing vegetation shall be maintained between the lot lines and the existing buildings, and this shall be deemed to satisfy Transitional Screening 1. Along the southern lot line, the existing vegetation shall be maintained between the buildings and the northern bank of Long Branch, and this shall be deemed to satisfy Transitional Screening 1. Along the eastern lot line, plantings shall be maintained between the six foot high fence and the parking lot and driveway and this shall be deemed to satisfy Transitional Screening 1. Any dead and/or dying vegetation shall be replaced with vegetation of like kind and size.
 - Along the northern and western lot lines, existing vegetation supplemented by plantings, to the maximum extent possible, that are placed between the lot lines and the existing and proposed buildings shall be deemed to satisfy Transitional Screening 1. The size, type and quantity of these plantings shall be equivalent to Transitional Screening 1.
 - Along the southern lot line, the existing vegetation supplemented by plantings, to the maximum extent possible, that are placed between the building addition and the northern bank of Long Branch shall be deemed to satisfy Transitional Screening 1. The size, type, and quantity of these plantings shall be equivalent to Transitional Screening 1.
 - Along the eastern lot line, supplemental plantings, to the maximum extent possible, shall be placed between the six (6) foot high fence and the parking lot and driveway and shall be deemed to satisfy Transitional Screening 1.

~ ~ ~ February 13, 2007, GREEK ORTHODOX CHURCH OF NORTHERN VIRGINIA, TRUSTEES,
SPA 93-M-119-02, continued from Page 38

15. Any proposed lighting of the parking areas shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall focus directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
16. 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 the use has been established. The Board of Zoning Appeals may grant additional time if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ February 13, 2007, 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) (Decision deferred from 10/31/06 and 1/9/07)

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

Stephen Varga, Staff Coordinator, stated that on January 9, 2007, the Board deferred decision on SP 2005-SP-012 to allow the applicant time to address the concerns of the Board and staff. He said that on December 20, 2006, staff received a revised plat dated December 19, 2006, from the applicant, which had been reviewed by staff. Staff recommended approval of SP 2005-SP-012, subject to the proposed development conditions dated February 6, 2007. Mr. Varga confirmed for Mr. Hart that the street referenced in Condition 19 should be Blue Topaz Lane.

William Baskin, Baskin, Jackson & Hansbarger, 301 Park Avenue, Falls Church, Virginia, the applicant's agent, referred to proposed Conditions 7, 18, and 20. He said 50 percent of undisturbed open space was a recommendation, which there were multiple ways to meet, and the decision should be left to the Department of Public Works and Environmental Services (DPWES) as to whether those requirements had been met. He said the applicant would like the flexibility to locate the well in the best possible location rather than outside of areas designated as undisturbed open space. Mr. Baskin said Sect. 13 of the Code gave authority regarding transitional screening to the Director of DPWES, and he should decide what level should be provided rather than it being established by the Board. Mr. Baskin requested that Condition 17 regarding a sidewalk from the church to the trail be deleted because pedestrian traffic to Braddock Road should be discouraged.

Mr. Hart and Mr. Varga discussed the changes to the proposed conditions requested by the applicant.

Mr. Hart moved to approve SP 2005-SP-012 for the reasons stated in the Resolution.

//

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

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, and 12/20/05 at appl. req.) (Decision deferred from 1/31/06) (Indefinitely deferred from 5/9/06) (Decision deferred from 10/31/06 and 1/9/07) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 13, 2007; and

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

1. The applicants are the owners of the land.
2. This has been a difficult case, and a lot of time has been spent with it.
3. The comprehensive plan says that non-residential uses in the R-C District are to be rigorously reviewed, and they are only to be approved if three additional criteria are met:
 - That they are oriented to an arterial roadway, which it is. It is more or less on Braddock Road, and with the driveway to Blue Topaz, the traffic is going to be coming with an orientation from the arterial.
 - The size and scale of the use has to be compatible with the R-C district, and with the clarifications the Board has had over time, that criterion is satisfied.
 - The third criterion is that the use be designed to mitigate impacts on the Occoquan Reservoir, which has been the most difficult.
4. Over time the Board has become increasingly aware of the impacts of development on water quality in the Chesapeake Bay, and the Board continues to be mindful of those concerns even 25 years after the down-zoning.
5. The Board needs to be fair and consistent.
6. The Board has approved many places of worship and other non-residential uses along arterials in the R-C District, and if the Board is attentive to the Ordinance requirements and mitigation of impacts, those uses can continue to be appropriate.
7. The biggest issue since the previous hearing on the case was the 50 percent undisturbed open space provision.
8. The 50 percent figure is not necessarily an Ordinance requirement. It's a guideline that the Board goes by and almost always tries to apply to a non-residential use in the R-C.
9. On the cases where that has been waived, usually there had been a big thing, some other consideration such as a road widening which made the site smaller or some other quid pro quo, some reason why it's being reduced.
10. The Board has required the 50 percent on places of worship as small as about four acres. With the additional parcel, this is about 5.4 acres, so this site is larger than that.
11. This site is also more or less a regular configuration, and that makes some of the site design issues somewhat easier than on some of the other sites the Board has had.
12. An argument had been made, perhaps more on other cases, that open space ought to be equivalent to undisturbed open space. That would be a departure from the Board's previous approvals and the Board of Supervisors' approvals of special exception uses.
13. There is not a significant enough justification to modify that percentage, and staff is still requesting it.
14. Consistent with the other approvals of non-residential uses on arterials in the R-C, the 50 percent figure is an appropriate one as an additional means of reducing impacts on the Occoquan Reservoir, as a means of reducing the phosphorus load going into Chesapeake Bay.
15. The combination of Development Conditions 7 and 9, including the potential for re-vegetation, also is consistent with development conditions the Board has put on other similar non-residential uses in the R-C where it was a difficult site or a smaller site, but over time forests will be restored in areas that might not be forested now.
16. With respect to the questions regarding the easement, with the development condition, the signage,

~ ~ ~ February 13, 2007, CHAN S. PARK, SP 2005-SP-012, continued from Page 40

- and staff's blessing, there will be no interference with the use of the easement by other parcels.
17. The report from the title company was viewed, and based on some of the testimony, it is possible that the uses of an easement can change over time.
 18. There may be parcels using an easement for whatever reason over a period of time that may not be clearly specified in the land records.
 19. Whatever the entitlement of these other parcels to use the easement, the special permit approval would not be interfering with that, and hopefully the signage will discourage church traffic from using the driveway as an access to Braddock Road.
 20. With respect to the stormwater pond, it is understood that the redesigned pond is acceptable to the Department of Public and Environmental Services.
 21. The issue of the off-site easement was not reached, but if the off-site easement is required and not provided, they are not going to get past the site plan stage, and so maybe then they would be back to the Board.
 22. The approval is contingent on satisfying all the site plan requirements, and the Board does not need to reach that issue today. It does not seem to be as big of a concern for the applicant as it is for staff.
 23. For the purposes of what the Board is doing, if they need the off-site easement and they don't obtain it, they will be back before the Board, and the Board will revisit it. If they do not need it, that is fine, and it can go ahead. If they need it and can obtain it, they have resolved that as well.
 24. With respect to the well, a well is going to have to be approved in order for a non-residential use permit to be issued for this property.
 25. Under the development condition, it is going to have to be in compliance with health department regulations. The health department since the previous hearing has weighed in and said it is doubtful and improbable that an additional well here is going to impact other wells, and although the potential for yielding a lot of water from a well on this site is somewhat limited, there are additional methodologies which can be used to improve or augment the storage supply. So it is not going to impact other wells, and the concern about the well has largely been resolved.
 26. An additional question was raised about ownership, and it is unusual to have a place of worship with an individual as the applicant rather than trustees. Ordinarily church property is titled in trustees; however, even if that is unusual, it is not really a land use issue and would be something for someone else to determine.
 27. The Board is looking at the Zoning Ordinance, and the criteria and standards in the Ordinance for a special permit do not really address the methodology of ownership of the property.
 28. With the additional conditions in the most recent handout, particularly with respect to landscaping and tree save, any impacts of the non-residential use are satisfactorily mitigated on the surroundings.
 29. The applicant may see some of the conditions as a burden, but that is the tradeoff for placing a non-residential use in a residential district, the R-C District where there is additional criteria, and it is consistent with a series of other approvals for non-residential uses along arterials in the R-C.

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

THAT the applicant has presented testimony indicating compliance with 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, Chan S. Park, and is not transferable without further action of this Board, and is for the location indicated on the application, 12219 Braddock Road, Fairfax, Virginia, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dennis D. Dixon (BC Consultants) dated December 14, 2004 through December 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. The maximum number of seats in the sanctuary shall be 60.
6. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.
7. Notwithstanding what is shown on the special permit plat dated through December 20, 2006, a minimum of 50% undisturbed open space shall be provided on-site and shall include all areas on the plat identified as "tree save area", "conservation area" and "possible conservation area." These areas shall be preserved and designated as perpetually undisturbed open space.
8. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance (CBPO) and the Water Supply Protection Overlay District (WS), unless waived by the Department of Public Works and Environmental Services (DPWES). No clearing or grading shall be allowed outside the limits of clearing and grading as depicted on the special permit plat. The minimum amount of land disturbance possible shall be permitted.
9. A tree preservation and restoration plan shall be submitted to Urban Forest Management (UFM) for review and approval at the time of site plan review. This plan shall designate the limits of clearing as delineated on the special permit plat and require that the area outside of the limits of clearing and grading be preserved and labeled as "perpetually undisturbed open space." The restoration plan shall be developed with the intention of revegetating and restoring the perpetually undisturbed open space to its natural habitat. Species shall be predominantly Virginia Pine and cedars, but may also include white pine, loblolly pine, short-leaf pine or other native evergreen varieties. No existing wooded areas may be disturbed to plant the restoration material. The applicant may maintain the undisturbed open space as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural succession takes over. There shall be no mowing of grass in the perpetually undisturbed open space.
10. A landscaping plan shall be developed and implemented to provide additional landscaping over and above that shown on the special permit plat, around the perimeter of the parking lot, the perimeter of the stormwater management pond and around the church structure. Plant material, including ornamental trees and shrubs, grasses, and flower perennials may be used.
11. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance, except that only Bollard-style lighting fixtures shall be used, at maximum 4 feet in height. There shall be no uplighting on site, including any sign or the building, and lights shall be turned off when the site is not in use except for security lighting.
12. The limits of clearing and grading shall be at a minimum of that shown on the Special Permit plat. The proposed tree save areas and open space shall remain undisturbed. These areas 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 has been properly installed.

~ ~ ~ February 13, 2007, CHAN S. PARK, SP 2005-SP-012, continued from Page 42

13. If DPWES determines that a potential health risk exists due to the presence of asbestos-containing rock or soil on the application property, the applicant shall take appropriate measures as determined by the Health Department to alert all construction personnel as to the potential health risks and commit to appropriate construction techniques as determined by DPWES in coordination with the Health Department to minimize this risk. Such techniques may include, but are not limited to, dust-suppression measures during all blasting and drilling activities and covered transportation of removed materials presenting this risk and appropriate disposal of such materials.
14. Should asbestos be found in those areas proposed for outdoor recreation, the applicant shall provide for mitigation or containment methods as deemed appropriate by the Health Department, which may include, but shall not be limited to, removal of contaminated soil and replacement with uncontaminated soil.
15. No structure shall exceed 45 feet in height.
16. The architecture of the church shall be generally as depicted on Page 3 of the special permit plat, and the exterior of the remaining house shall be repaired and maintained.
17. A sidewalk shall be extended to the trail along Braddock Road so that pedestrian access is provided into the site from the Braddock Road trail.
18. Notwithstanding what is shown on the plat, Transitional Screening 1 shall be provided along all lot lines as determined appropriate by UFM. Existing vegetation may be used to satisfy or supplement the screening. The barrier requirement shall be waived; however if determined necessary by the applicant, it shall be located inside of the area depicted for tree save, transitional screening and undisturbed open space.
19. The driveway from Blue Topaz Lane shall be designed so that adjacent property owners can cross the driveway to use the 15-foot outlet road. The driveway shall be signed prohibiting the use of the outlet road by members of the church.
20. Any new wells on site shall meet Fairfax County Department of Health requirements and shall be located outside areas designated as perpetually undisturbed open space.

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.

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

//

~ ~ ~ February 13, 2007, Scheduled case of:

9:00 A.M. MONTE D. ROSSON, SP 2006-LE-071 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 21.9 ft. from the front lot line. Located at 6403 Rye Ct. on approx. 15,429 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((11)) 38

Chairman DiGiulian called the applicant to the podium.

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

~ ~ ~ February 13, 2007, MONTE D. ROSSON, SP 2006-LE-071, continued from Page 43

Monte Rosson and Jeanne Rosson, 6403 Rye Court, Alexandria, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2006-LE-071, subject to the revised proposed development conditions dated February 6, 2007.

Mr. Rosson presented the special permit request as outlined in the statement of justification submitted with the application. He said his house was small, and additional living space was needed. Mr. Rosson said the design of the proposed addition was in harmony with the existing house and others in the neighborhood.

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

Mr. Ribble moved to approve SP 2006-LE-071 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MONTE D. ROSSON, SP 2006-LE-071 Appl. under Sect(s) 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 21.9 ft. from the front lot line. Located at 6403 Rye Ct. on approx. 15,429 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((11)) 38. 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 13, 2007; and

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

1. The applicant is the owner of the land.
2. The Board of Zoning Appeals adopts the new resolution form for Section 8-922.
3. The property is on a corner lot.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (a maximum of 880 square feet) of the proposed one story addition as shown on the plat prepared by Alexandria Surveys, dated, September 7, 2006, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,057 existing + 3,085 = 5,142) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the

~ ~ ~ February 13, 2007, MONTE D. ROSSON, SP 2006-LE-071, continued from Page 44

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

4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
5. The limits of clearing and grading for the proposed addition shall be the minimum possible to preserve existing vegetation on the property.
6. Pursuant to Section 2-419 of the Zoning Ordinance, within sixty days of the approval of the special permit, the applicant shall apply for an administrative reduction to the minimum yard requirement from the Zoning Administrator to permit the existing dwelling to remain 29.8 from the front lot line.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ February 13, 2007, Scheduled case of:

9:00 A.M. TRUSTEES OF CENTREVILLE PRESBYTERIAN CHURCH, SPA 99-Y-065 Appl. under Sect(s). 3-C03 of the Zoning Ordinance amend SP 99-Y-065 previously approved for church and child care center to permit private school of general education. Located at 15450 Lee Hwy. on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7.

Chairman DiGiulian called the applicant to the podium.

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

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

Lynne Strobel, Walsh, Colucci, Lubeley, Emrich & Walsh, PC, 2200 Clarendon Boulevard, Arlington, Virginia, the applicant's agent, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 99-Y-065, subject to the proposed development conditions.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant requested a private school of general education be allowed in addition to the existing approved uses. Ms. Strobel said a childcare center had never operated on the premises, and the school and childcare center uses would not be operated concurrently. She said there would be no additional construction, no intensification of the approved uses, and the previously approved hours of operation and number of students would not be exceeded. Ms. Strobel said the West Fairfax County Citizens Association (WFCCA) had been consulted and had no objection.

Ms. Strobel, Ms. Gibb, Mr. Chase, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed Conditions 12, 13, 20, and the final paragraph that referenced establishing the use within 30

~ ~ ~ February 13, 2007, TRUSTEES OF CENTREVILLE PRESBYTERIAN CHURCH, SPA 99-Y-065, continued from Page 45

months

In answer to a question from Mr. Beard, Ms. Strobel said the Trustees of the Centreville Presbyterian Church were the applicants, and the Ad Fontes Academy would have a lease arrangement with them and would operate the school. She said the applicants held the special permits, and it was not unusual to have daycare center and schools within places of worship. The applicants could change the operators at will because whoever operated the school would have to obtain their own occupancy permit, but the approval would come from the church.

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

Ms. Gibb moved to approve SPA 99-Y-065 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF CENTREVILLE PRESBYTERIAN CHURCH, SPA 99-Y-065 Appl. under Sect(s). 3-C03 of the Zoning Ordinance amend SP 99-Y-065 previously approved for church and child care center to permit private school of general education. Located at 15450 Lee Hwy. on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7 Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 13, 2007; and

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

1. The applicants are the owners of the land.
2. Staff recommended approval.
3. There is no different impact on this site based on having a school.
4. Nothing seems to be any different then having a child care center than the school.
5. There is the same amount of children and the same hours; everything is virtually the same.

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

THAT the applicant has presented testimony indicating compliance with 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, Trustees of Centreville Presbyterian Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 15450 Lee Highway, consisting of 20.38 acres, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by William M. Robson, dated September 13, 1999, as revised through to February 18, 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

~ ~ ~ February 13, 2007, TRUSTEES OF CENTREVILLE PRESBYTERIAN CHURCH, SPA 99-Y-065,
continued from Page 46

County of Fairfax during the hours of operation of the permitted use.

4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats within the main area of worship shall not exceed 400 at the completion of Phase 1 with 158 parking spaces, 500 at the completion of phase II with 190 parking spaces, 650 at the completion of Phase III with 250 parking spaces, and 1200 seats at the completion of Phase IV with 435 parking spaces, as shown on the special permit plat.
6. The total maximum daily enrollment for the child care center or private school of general education shall be 99. Either use may operate on the site; however they shall not operate concurrently. The school shall be limited to grades 5 through 12.
7. The hours of operation for the child care center or private school of general education shall not exceed 6:30 a.m. to 7:00 p.m., Monday through Friday.
8. The total height of all structures on site, including the steeple, shall not exceed 45 feet.
9. Any outdoor lighting shall be in conformance with the following:
 - The combined height of the light standards and fixtures shall not exceed 12 feet,
 - The lights shall be focused downward directly on the subject property,
 - Full cutoff fixtures with shields shall be installed to prevent the light from projecting beyond the property,
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use, and
 - Up-lighting of buildings or signs shall not be permitted on the site except at the recessed entrances to the building.
10. At the time of either site plan submission or grading plan submission, whichever occurs first for each phase of development, a tree preservation plan shall be provided for review and approval by Urban Forest Management. The tree preservation plan shall include a tree survey which describes the location, species, size, accurate drip line, and condition of all trees 12 inches in diameter and greater 25 feet on either side of the limits of clearing and grading. The condition analysis shall be prepared by a certified arborist using the most current edition of "The Guide for Plant Appraisal." Specific tree preservation activities shall be reflected in the tree preservation plans, including methods to be implemented to ensure preservation. The plan shall be developed with the intention of maintaining the existing vegetation within the tree save area depicted outside the limits of clearing and grading as shown on the special permit in undisturbed open space, and to preserve additional trees near these limits where such preservation is determined to be both feasible and desirable by Urban Forest Management. The undisturbed open space shall be maintained by hand as needed to remove only undesirable vegetation such as brambles and vines, and there shall be no fertilizing or mowing of weeds or grass within the open space areas.
11. Transitional screening shall be as shown on the special permit plat along the northern, eastern and western property boundaries and shall consist of natural vegetation, supplemented with landscaping as shown along the western property boundary, subject to the review and approval of Urban Forest Management of DPWES. A 3 foot high landscaped area 25 feet wide with a berm shall be provided along the southern property boundary and a landscaped area between the eastern parking lot and the TRANSCO easement shall be planted using a combination of deciduous and evergreen trees, and understory plant materials to soften the view of the building. The size, number, and type of plant

~ ~ ~ February 13, 2007, TRUSTEES OF CENTREVILLE PRESBYTERIAN CHURCH, SPA 99-Y-065,
continued from Page 47

materials shall be subject to the review and approval of Urban Forestry Management of DPWES. The barrier requirement along all property boundaries shall be waived.

12. To the maximum extent feasible, as determined by DPWES, all stormwater runoff from impervious surfaces shall be conveyed to BMP facilities. If feasible, each stormwater management facility shown on the special permit plat shall be designed as a BMP facility, as determined by DPWES. The facility to the south of the parking lot may be provided as a bioretention facility, subject to the approval of DPWES.
13. The limits of clearing and grading shown on the special permit plat shall be strictly adhered to. For each phase of development, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements planned for that phase shall be submitted to DPWES, including Urban Forestry Management, for review and approval. The extent of clearing and grading for each phase of construction shall be the minimum amount feasible for that phase as determined by DPWES. Prior to any land disturbing activities for each phase of construction, a pre-construction conference shall be held between the DPWES, including Urban Forest Management, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days. Notwithstanding the limits of clearing and grading shown on the plat, the TRANSCO Pipeline easement shall not be cleared, except for the minimum amount of clearing needed to provide the stormwater management pond access road as qualified by Condition 13.
14. Construction of the church shall be in general conformance with the architectural elevation contained in Attachment A, as determined by DPWES.
15. All signs shall be in conformance with Article 12 of the Zoning Ordinance.
16. The use of loudspeakers shall not be permitted outside the building.
17. Four parking spaces located adjacent to the building containing the child care center shall be reserved for the pick up and drop off of children only, during the hours of operation of the child care center or private school of general education.
18. A play area shall be provided which meets the standards set forth by Section 9-310 of the Zoning Ordinance prior to the issuance of a Non-RUP for the child care center or private school of general education. The play area shall be located outside the minimum required front yards, transitional screening areas, and parking. The maximum number using the playground shall not exceed twenty at any one time for the private school of general education.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire without notice thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ February 13, 2007, Scheduled case of:

9:30 A.M. ROLLING ACRES PROPERTIES CO., LP, A 2006-MV-067 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 C-8 District in violation of Zoning Ordinance provisions. Located on approx. 1.49 ac. of land zoned C-8, HC and CRD. Mount Vernon District. Tax Map 93-3 ((2)) (2) 1A.

Chairman DiGiulian noted that A 2006-MV-067 had been indefinitely deferred at the appellant's request.

//

~ ~ ~ February 13, 2007, Scheduled case of:

9:30 A.M. SPRINGFIELD MASONIC LODGE 217, A 2006-LE-066 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing the use of the property that is not in conformance with the limitations of Special Permit S-189-77, in violation of Zoning Ordinance provisions. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19.

Chairman DiGiulian noted that A 2006-LE-066 had been administratively withdrawn.

//

~ ~ ~ February 13, 2007, Scheduled case of:

9:30 A.M. NADEEM KHALIQ, A 2006-PR-068, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing an eating establishment to operate as a principal use on property in the I-5 District without special exception approval, in violation of Zoning Ordinance Provisions. Located at 8424 Lee Hwy. on approx. 1.07 ac. of land zoned I-5 and HC. Providence District. Tax Map 49-3 ((15)) 3.

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

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated February 6, 2007. Ms. Collins confirmed for Mr. Beard that Zoning Enforcement had received a complaint about the subject establishment.

Mr. Beard and Charles Cohenour, Zoning Enforcement Branch, discussed the inspections of the site.

Mr. Hart and Mr. Cohenour discussed the difficulty determining the ownership of the property. Mr. Cohenour said all the parties referenced on the deed were sent notices. He said that Merrifield Kabob was listed with the State Corporation Commission as a company, but there was no owner listed, so he could not send the owner a notice.

Mr. Hart and Ms. Collins discussed the use of outside tables, no alcohol being served, and hookahs being smoked both inside and outside.

Mr. Hart, Mr. Beard, and Ms. Collins discussed the definition of an accessory service use, why staff believed the subject use did not fit the definition, and what needed to be done to come into compliance. Ms. Collins said that if Merrifield Kabob operated as an eating establishment, customers could be drawn from anywhere. Mr. Hart stated that a special exception would be needed.

Susan Earman, Friedlander, Friedlander & Earman, PC, 1364 Beverly Road, McLean, Virginia, the appellant's agent, presented the arguments forming the basis for the appeal. She said it was the appellant's position that the initial notice was not issued to the right tenant entity, and the ownership notice was incorrect. She said the County had since served the owners correctly, but the right business entity that was operating the business was not noticed. Ms. Earman said her client worked for that entity, but had no authority to accept service or notice.

Ms. Earman discussed the history of the location and why the hours of operation of Merrifield Kabob were

~ ~ ~ February 13, 2007, NADEEM KHALIQ, A 2006-PR-068, continued from Page 49

appropriate based on the operating hours of other entities in the business park and the surrounding industrial area where patrons were derived, but said they would like to keep the restaurant open later.

In response to questions from Mr. Beard, Ms. Earman said the owners of the property were Little Count LLC, Little Eye LLC, and Green Door Investment, and the tenants were Abdul Khaliq and Raheela Bibi (phonetic), who had signed the lease as individual tenants and who also owned AK Food, Inc., which was not listed on the lease. She said Nadeem Khaliq was not on the lease, but he had signed the non-residential use permit (Non-RUP) indicating that he had the authority to execute the documents. Ms. Earman said all the men were family members and actively involved in the business.

In response to Mr. Hart's question whether Abdul Khaliq or Raheela Bibi had received notices, Roger Sims, Zoning Enforcement/Property Maintenance Supervisor, stated that at the inspection in which he had been involved, they had been advised that Nadeem Khaliq was the person responsible for the Non-RUP and the lease, so staff had noticed the correct person. Ms. Earman said the entity was AK Food, Inc., doing business as Merrifield Kabob. She said that if the matter went further, such as enforcement with the courts, she would maintain that notice had not been done properly to the right people.

Discussion ensued regarding the ownership of the property and involved entities, the clientele of the business, the cause of the violations, and the possibility of obtaining a special exception.

Chairman DiGiulian called for speakers.

Joe Furman, 13121 Taverner Loop, Woodbridge, Virginia, owner of 5828 Orchard Hill Court, Clifton, Virginia, came forward to speak, stating that he was appearing as a character reference for the business and the people who ran it. He discussed the operation of the business and its patrons and operators.

In closing comments, Ms. Collins said Sect. 18-901 of the Zoning Ordinance allowed staff to send a notice of violation to an employee of an establishment; the appellant had expanded the use of the property beyond the 24 seats allowed on the Non-RUP; the tenant could be in its current location as an eating establishment with a special exception; and as an accessory service use, the tenant should primarily serve the occupants of the office industrial park. Mr. Sims said that during the investigation, the inspector had been told the individual who had been noticed and who was present before the Board was the individual responsible for the business.

In her rebuttal statement, Ms. Earman confirmed that Mr. Khaliq was the manager of Merrifield Kabob. She said that because the Board did not have the proper parties before it, any enforcement action would not be enforceable, so the notice was not properly founded and should be dismissed.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to defer decision on A 20068-PR-068 to April 10, 2007, at 9:30 a.m. He requested notices be issued to the proper individuals because he said there was no one present from the corporation who had authority to enter into agreements.

Mr. Sims, Mr. Beard, Mr. Hart, and Chairman DiGiulian discussed the procedures for reissuing notices of violation and to whom they should be sent. Ms. Earman agreed to assist staff.

Mr. Ribble seconded the motion.

Mr. Byers said he could not support the motion because, in his judgment, the entity was not operating in accordance with the June 29, 1987 decision by the Board of Supervisors with regard to the proffer condition amendment, PCA 85-P-0761. He said he was concerned because the appellant had certified on the Non-RUP application that he did have authority to submit the application, the information on the Non-RUP application was complete and correct, and the use was in conformance with the Zoning Ordinance. Mr. Byers said if Merrifield Kabob wanted to operate a restaurant, they needed to follow the correct route.

Mr. Beard said he did not take issue with anything said by Mr. Byers; however, he wanted to have the right people appear before the Board, and he wanted to go on record as having said that.

~ ~ ~ February 13, 2007, NADEEM KHALIQ, A 2006-PR-068, continued from Page 50

Mr. Hart agreed that a special exception would resolve the issue and was not sure whether the appeal and then a potential court case would be sufficient. He said it would be better to defer the appeal and pursue the special exception. Mr. Hart said that with respect to Sect. 18-901, he agreed that for purposes of enforcement, an employee of a business could be a violator, but he did not think that Sect. 18-901 relieved the County from the obligation of notifying a principal of the employee, and if there was a business in a space, there were legal ways to provide notice to the business. He said he was not comfortable proceeding in the absence of a tenant that was identifiable from either the lease or the sign over the door and the fictitious name.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-1. Mr. Byers voted against the motion. Mr. Hammack was absent from the meeting.

//

Mr. Byers 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 Concerned Citizens of Hollin Hall Village, et al., vs. BZA, Record Number 070058; HBL LLC vs. BZA, Civil Action Number CL 06-0015658; and Board of Supervisors of Fairfax County vs. Board of Zoning Appeals, et al., CL 2006-14988; 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 10:54 a.m. and reconvened at 11:01 a.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. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:16 a.m.

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

Approved on:



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, February 27, 2007. 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.

~ ~ ~ February 27, 2007, Scheduled case of:

9:00 A.M. MERRIFIELD GARDEN CENTER CORPORATION, SP 2006-PR-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 building to remain 28.0 ft. from front lot line. Located at 8132 Lee Hwy. on approx. 3.02 ac. of land zoned C-8 and HC. Providence District. Tax Map 49-2 ((1)) 26C. (In association with SE 2006-PR-018) (Admin. moved from 12/5/06 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. Francis A. McDermott, Esquire, Hunton & Williams LLP, 1751 Pinnacle Drive, Suite 1700, McLean, 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.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The subject site was located at 8132 Lee Highway, was developed as the longstanding Merrifield Garden Center, zoned C-8. The site included the 3.02-acre parcel which was the subject of the special permit and four adjacent parcels. The surrounding parcels were comprised of commercially zoned parcels which included eating establishments, an auto body shop, and a shopping plaza. Records indicated the original building was constructed in 1976 and was in conformance with the Ordinance that was in effect at that time. Sometime after the building's construction, Gallows Road was widened, which required additional right-of-way from the property. Over the ensuing 30 years, the intrusive portion of the building, which began as an overhang connection to the main building with the purpose of shading plants, was expanded and eventually evolved into a part of the year-round retail sales establishment. The applicant requested a reduction to the minimum front yard requirement based on an error in building location to permit the existing building to remain 28 feet from the property line where a 40-foot setback was required.

Mr. McDermott concurred with staff's determination as noted in the staff report, pointing out that the application was straightforward and that it was an inadvertent encroachment into the minimum setback area. He explained that the building was compliant with the Ordinance's setback requirements in 1976 at the time it was built. He referred to the statement of justification, noting that the violation into the minimum yard had occurred by the eventual enclosure over the years to the shade house. He pointed out the quality and density of the plants and vegetation that screened the garden center from the surrounding parcels and streets. Mr. McDermott requested the Board's approval of the special permit.

Mr. McDermott confirmed that the parking change referenced by Mr. Hart was part of the site plan revision that would pull the spaces back into compliance with parking setback requirements.

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

Mr. Hammack moved to approve SP 2006-PR-038 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MERRIFIELD GARDEN CENTER CORPORATION, SP 2006-PR-038 Appl. under Sect(s). 8-914 of the

~ ~ ~ February 27, 2007, MERRIFIELD GARDEN CENTER CORPORATION, SP 2006-PR-038, continued from Page 53

Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit building to remain 28.0 ft. from front lot line. Located at 8132 Lee Hwy. on approx. 3.02 ac. of land zoned C-8 and HC. Providence District. Tax Map 49-2 ((1)) 26C. (In association with SE 2006-PR-018) (Admin. moved from 12/5/06 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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 27, 2007; 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 and size (approximately 438 square feet) of the existing one story structure as shown on the plat prepared by William H. Gordon Associates, Inc. dated, February 2007, as submitted with this application and is not transferable to other land.
2. Other by-right, special permit and special exception uses on site shall be permitted without a special permit amendment if such uses do not affect this special permit use.

~ ~ ~ February 27, 2007, MERRIFIELD GARDEN CENTER CORPORATION, SP 2006-PR-038, continued from Page 54

3. Building permits and final inspections for the structure shall be diligently pursued within 60 days and obtained within one (1) year of final approval or this special permit shall be null and void.

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

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

//

~ ~ ~ February 27, 2007, 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) (Continued from 11/28/06)

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 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, the applicants' agent, replied that it was. He requested the hearing be deferred for several months to allow completion of several matters. He explained that the applicants' revised plat was recently approved by the Department of Public Works and Environmental Services. They were currently in a review process with the County Attorney's Office where their Deed was submitted, and a determination was anticipated in the near future. With the completion of these processes, the plat would be recorded and the application rendered moot.

Susan C. Langdon, Chief, Special Permit and Variance Branch, stated that staff had no objection to a deferral.

There being no speakers to address the matter of deferral, Chairman DiGiulian called for a motion.

Mr. Ribble moved to defer SP 2006-MA-004 to May 1, 2007, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 27, 2007, Scheduled case of:

9:00 A.M. MORRIS E. BROWN AND CAMILLE W. BROWN, SP 2006-SP-072 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit roofed deck 25.33 ft. from front lot line. Located at 8715 Evangel Dr. on approx. 17,083 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-3 ((22)) 4A.

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. Camille W. Brown, 8715 Evangel Drive, Springfield, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants

~ ~ ~ February 27, 2007, MORRIS E. BROWN AND CAMILLE W. BROWN, SP 2006-SP-072, continued from Page 55

requested approval to permit a reduction to certain yard requirements to permit the construction of a 52 square foot roofed deck or porch 25.33 feet from the front lot line. Staff recommended approval of the application.

Camille Brown presented the special permit request as outlined in the statement of justification submitted with the application. She said their unshielded front entrance was continually damaged from sunlight, rain and wind, necessitating replacement of the door and storm door. Because of the driveway's placement, it was not possible to add vegetation to buffer the area. Ms. Brown stated that they sought to reduce the damage caused by weather and to provide shelter for visitors.

Ms. Brown clarified for Mr. Beard the proposed stoop cover/portico design and that it was not enclosed.

Responding to Mr. Byers' question concerning an e-mail from the applicants' neighbor, Donna McCraith, Mr. Varga explained that the referenced fence belonged to an adjoining parcel, a swim club.

Ms. Brown said they did not have a fence along the rear of their property.

In response to a question from Mr. Hart regarding a handwritten notation on the plat referring to a six-foot high chain-link fence, Ms. Brown said it was a dog kennel which would be taken down. She said the kennel had been installed in 1983 using the markers placed by the surveyors, and at the time they were unaware the kennel extended beyond their property line.

Concurring with Mr. Hart, Mr. Varga said the only issue before the Board was that of the front porch entranceway.

In response to Mr. Beard's question concerning the posted public hearing notice, Susan C. Langdon, Chief, Special Permit and Variance Branch, said a notice of public hearing sign was posted on the property for at least 15 days.

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

Mr. Byers moved to approve SP 2006-SP-072 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MORRIS E. BROWN AND CAMILLE W. BROWN, SP 2006-SP-072 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit roofed deck 25.33 ft. from front lot line. Located at 8715 Evangel Dr. on approx. 17,083 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-3 ((22)) 4A. 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 27, 2007; 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 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.

~ ~ ~ February 27, 2007, MORRIS E. BROWN AND CAMILLE W. BROWN, SP 2006-SP-072, continued from Page 56

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 52 square feet) of the proposed roofed deck addition as shown on the plat prepared by Nicholas Diffenbaugh, dated September 21, 2006, as revised through December 4, 2006, as submitted with this application and is not transferable to other land.
2. Other by-right uses on site shall be permitted without an amendment to this special permit.
3. The roofed deck addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
4. Pursuant to Section 2-419 of the Zoning Ordinance, within sixty days of the approval of the special permit, the applicant shall apply for an administrative reduction to the minimum yard requirement from the Zoning Administrator to permit the existing dwelling to remain 29.9 feet from the front lot line.

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

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

//

The Board recessed at 9:23 a.m. and reconvened at 9:33 a.m.

//

~ ~ ~ February 27, 2007, 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. (Admin. moved from 10/24/06 at appl. req.)

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

~ ~ ~ February 27, 2007, ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-039, A 2006-PR-040, and A 2006-PR-043, continued from Page 57

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

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, Zoning Administration Division, presented staff's position as set forth in the staff reports dated February 20, 2007. She said there were three appeals relating to each other that involved the appellant, Mr. Armstrong, because he was the owner of the property, and they were utilized for the operation of a landscaping business, Remington Mulch Company.

Appeal A 2006-PR-039, on property located at 2734 Gallows Road, zoned I-4 and I-5, was an appeal of a Notice of Violation issued June 21, 2006, for operating an establishment for the processing of earthen materials and erecting storage structures without an approved site plan, building permits, and Non-Residential Use Permit (Non-RUP).

Appeal A 2006-PR-040, on property located at 2809 Old Lee Highway, zoned I-5 and H-C, was an appeal of a Notice of Violation issued June 21, 2006, for operating an establishment for processing earthen materials and erecting storage and other structures without a site plan, building permits, and Non-RUP.

Appeal A 2006-PR-043, on property located at 8524 and 8524A Lee Highway, Lots 67 and 65B, was an appeal of a Notice of Violation issued July 11, 2006, that the appellant had expanded the use of the property zoned I-5 and H-C without valid site plan and Non-RUP approvals and established outdoor storage that exceeded allowable total area and was located in the minimum required front yard in violation of Zoning Ordinance provisions.

After receiving several complaints of noise from an adjacent high-rise condominium, the Zoning Enforcement staff inspected the Gallows Road property, finding that the appellant was operating a machine for processing earthen materials which exceeded the maximum permitted decimal levels, and had erected a roofed storage structure surrounding the rear of the property. In order to bring the property into zoning compliance, the appellant needed to obtain either site plan and building permit approval for the existing storage structure, remove the structure entirely or reconfigure it, and reduce a fence to 8.0 feet or less in height. Ms. Collins said that the storage structure was the sole remaining violation on the Gallows Road property because the appellant had removed the earth processing machine, which was not permitted on any of the three properties, subsequent to the Notice of Violation. Ms. Collins noted that the appellant had ceased late night and early morning loading and unloading of trucks.

Both of the Lee Highway properties were also used by the appellant for the operation of his landscaping business, and the three lots formed a land connection between Lee Highway and Old Lee Highway. Lots 67 and 65B at the Lee Highway address had a warehouse structure used for retail sales of lawn care equipment. Lots 65A and a portion of 65B were used for outside storage of lawn care and landscaping materials, such as skids of bagged mulch, topsoil, landscaping pavers, stone, other bagged lawn care/landscaping materials, and lawn care equipment, and did not appear on a site plan. The appellant submitted a site plan in January of 2007, which, if approved, would resolve the zoning violations on the Lee Highway and Old Lee Highway properties. Upon approval of the site plan and the improvements constructed, the appellant indicated to staff he would move his business operations to the Lee Highway addresses and vacate the Gallows Road property, which was under contract to be sold to a developer who had already commenced the rezoning process. Concluding staff's presentation, Ms. Collins said the Lee Highway and Old Lee Highway properties were zoned I-5 where storage yards, warehousing, and associated retail sales were permitted uses.

Concurring with a comment from Mr. Hart, Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff supported a deferral of the Gallows Road property matter and was

~ ~ ~ February 27, 2007, ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-039, A 2006-PR-040, and A 2006-PR-043, continued from Page 58

prepared to go forward with the Lee Highway portions of the appeals.

Mr. Hart voiced a procedural concern that there may have been improper notification if all the property owners/corporations/tenants were not notified.

In response to Chairman DiGiulian's question concerning A 2006-PR-039, Ms. Stanfield said there was no written formal request for a deferral, but she believed that it was the appellant's desire.

John Armstrong, President of Armstrong, Green and Embrey, Inc., the appellant, and owner of the subject properties, said he supported a deferral of the Gallows Road property matter to June of 2008, that the property was scheduled to change hands at that time.

Staff agreed to a deferral date of June 8, 2008.

Mr. Armstrong explained the percentage of ownership of his several businesses, clarifying that Virginia Outdoor Power Equipment Company was a separate entity, and his corporation, Armstrong, Green and Embrey, Inc., owned 50 percent and a Mr. Jones owned 50 percent. Mr. Armstrong said Virginia Outdoor Power Equipment Company, Incorporated, also a separate entity, was owned 50 percent by him, Armstrong, Green and Embrey, Inc., and 50 percent by a gentleman living in Oakton, Virginia, named Kent Brinkmeyer (phonetic). In response to Mr. Hammack's question of Remington Mulch Company's ownership, Mr. Armstrong explained that his company, Armstrong, Green and Embry, Inc., did business under two dummy/fictitious names: Armstrong, Green and Embrey Landscape Services and Remington Mulch Company, and the latter was another name for Armstrong, Green and Embrey, Inc.

Chairman DiGiulian called for a motion on the deferral request.

Mr. Ribble moved to defer A 2006-PR-039 to June 8, 2008, at 9:30 am. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

Discussion followed among Mr. Hart, Ms. Stanfield, and Chuck Cohenour, Senior Zoning Inspector, concerning whether a Notice of Violation would be issued to Virginia Outdoor Power Company to ensure proper notification to all parties and, if warranted, could afford subsequent enforcement procedures.

At Mr. Hart's request, Ms. Stanfield concurred that the two remaining appeals, A 2006-PR-040 and A 2006-PR-043, should also be deferred until proper notice was executed.

Mr. Armstrong said he had no objection to the deferral of the other two appeals, reminding the Board that both the Lee Highway sites were in the process of site plan approval, which would make the appeals moot.

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

Benjamin Tatterson, 2726 Gallows Road, came to the podium to address the Remington Mulch Company site's appeal. He opposed the use because the site was noisy, dusty, unsafe because of improper engineering, and an eyesore. He was concerned about the deferral because for years the operation was noisy, and although the early morning, formerly 3:00 a.m. and currently 6:00 a.m., and late evening trucking ceased, the noise and dust the site generated was annoying for the residential neighbors. It was his opinion that the use was not in keeping with the Master Plan for the Dunn Loring Metro Center and the Merrifield Town Centre. Mr. Tatterson distributed photographs of two fires combusted from the mulch pits and voiced his displeasure over the unacceptable expenditure of public funds for Fairfax County's firefighters to extinguish fires that were generated from the creating and manufacturing of mulch. He said he never would have moved to the area if he were aware of the noise pollution and dust, the trucking at all hours, the persistent operation of backhoes, a use that caused fires, and an unsafe structure. That was an immediate problem, and there should be no deferral to 2008.

Addressing Mr. Tatterson's comments, Mr. Hart explained that Michael R. Congleton, Senior Deputy Zoning Administrator for Zoning Enforcement Branch/Property Maintenance, had determined that the noise problem

~ ~ ~ February 27, 2007, ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-039, A 2006-PR-040, and A 2006-PR-043, continued from Page 59

generated from the Gallows Road address was not a zoning issue, but a police matter.

Ms. Collins said a complaint regarding late or early hour trucking activities should be reported to the closest police station for investigation, adding that in June of 2008 the property should be sold and, therefore, the appeal rendered moot. All other violations were cleared, with the sole issue being that of storage bins.

Ms. Stanfield said that pursuant to site plan approval, Mr. Armstrong intended to move his Gallows Road operation to a Lee Highway site.

In response to a question from Mr. Beard, Mr. Tatterson said there were other residents in his 15-story building who also complained about the noise and dust.

In his rebuttal, Mr. Armstrong conceded that he understood the complaints, assuring all had been done that could be to eliminate the noise and to be good neighbors. They had been on the site since 1992, and good faith efforts were expended negotiating with developers so that the site was now under contract. He had made significant adjustments to the hours of operation, which had been strictly adhered to, and the late night trucking activities were discontinued.

In response to a question from Ms. Gibb, Mr. Armstrong said the prospective purchaser for his Gallows Road property was a well-known company, D.S. F. Long Group, and he was 99 percent sure the sale would go through. Mr. Armstrong said he probably intended to, in a limited manner, use the Gallows Road site up until the property sold. Mr. Armstrong submitted that his operation had been blamed for the noise of trash trucks picking up on adjoining parcels.

Ms. Stanfield suggested a deferral date of June 12, 2007, for A 2006-PR-040 and A 2006-PR-043, the Lee Highway addresses.

Mr. Hart moved to defer A 2006-PR-040 and A 2006-PR-043 to June 12, 2007, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

In response to Mr. Hart's question of whether there could be any action on A 2006-PR-039 before the June of 2008 date if Mr. Armstrong's land sale were to fall through, Ms. Stanfield said staff could initiate further action.

//

~ ~ ~ February 27, 2007, 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 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. (Admin. moved from 10/31/06 at appl. req.)

Chairman DiGiulian noted that A 2006-BR-044 had been administratively moved to July 10, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ February 27, 2007, Scheduled case of:

9:30 A.M. BEAZER HOMES CORPORATION, A 2006-PR-061

Chairman DiGiulian noted that A 2006-PR-061 had been withdrawn.

//

~ ~ ~ February 27, 2007, Scheduled case of:

9:30 A.M. JORGE B. MENACHO, A 2006-LE-069 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining two dwelling units and is allowing a freestanding accessory structure (garage) to be used as a guest house on a single lot located in the R-2 District in violation of Zoning Ordinance provisions. Located at 6415 South Kings Hwy. on approx. 1.05 ac. of land zoned R-2 and HC. Lee District. Tax Map 83-3 ((5)) (3) 5A.

Chairman DiGiulian noted that A 2006-LE-069 had been administratively moved to May 8, 2007, at 9:30 a.m., at the appellant's request.

//


As there was no other business to come before the Board, the meeting was adjourned at 10:07 a.m.

Minutes by: Paula A. McFarland

Approved on: November 27, 2007



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 6, 2007. 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 9:00 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.

~ ~ ~ March 6, 2007, Scheduled case of:

9:00 A.M. HENRY D. POHL AND JAN PINES POHL, SP 2006-SU-073 Appl. under Sect(s). 8-922 of the Zoning Ordinance for reduction of certain yard requirements to permit additions 12.5 ft. and 14.0 ft. from rear lot line. Located at 3222 Nestlewood Dr. on approx. 11,565 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((4)) (9) 46

Chairman DiGiulian called the applicants to the podium.

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

Henry Pohl, 3222 Nestlewood Drive, Herndon, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2006-SU-073, subject to the proposed development conditions.

Mr. Hammack and Mr. Varga discussed a letter received February 23, 2007, from Robert and Victoria Busch concerning water and wet soils, with Mr. Varga stating that the referenced property belonged to the homeowners association, not the applicants, and staff's recommendation had not changed.

Mr. Hart and Ms. Langdon discussed the accuracy of the measurements on the plat.

Mr. Pohl presented the special permit request as outlined in the statement of justification submitted with the application. Responding to a concern expressed by Mr. Hart, he said that if it was necessary, he would reduce the depth of the screened porch to meet any modifications. Mr. Pohl said the additions would be compatible with neighboring homes.

Mr. Hart and Mr. Pohl discussed the storm drainage easement, its proximity to the neighbor's property, photographs taken the week before the hearing after a storm showing first standing water and then the dry easement after the water had run through as it was designed to do, the neighbor's yard to the rear being higher than where the water was standing, and the common area containing a tree that the applicants maintained because they felt it was an extension of their yard.

Mr. Hart said he had scaled the points of the property discussed earlier and indicated that the 14 feet and the 12.5 feet checked out; however, the other corner of the addition on the left was closer to 11 feet, and the addition to be built on the right going toward the side line was approximately 11 feet. He said the addition on the left and the corner on the right were approximately 11 feet, and if the corner of the porch was 11 feet and had been advertised at 14 feet, he thought there was an issue. Ms. Langdon said only an eight-foot side yard was required, staff was relying on the engineer for the dimensions, and the deck was by right and would not be taken into consideration. Chairman DiGiulian stated that the 14-foot dimension was shown as plus or minus.

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

Mr. Hammack moved to approve SP 2006-SU-073 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

~ ~ ~ March 6, 2007, HENRY D. POHL AND JAN PINES POHL, SP 2006-SU-073, continued from Page 63

HENRY D. POHL AND JAN PINES POHL, SP 2006-SU-073 Appl. under Sect(s). 8-922 of the Zoning Ordinance for reduction of certain yard requirements to permit additions 12.5 ft. and 14.0 ft. from rear lot line. Located at 3222 Nestlewood Dr. on approx. 11,565 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((4)) (9) 46. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 6, 2007; and

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

1. The applicants are the owners of the land.
2. There were initial reservations about the stormwater issues and those are now satisfied.
3. The special permit should be granted and authorize what had been advertised.
4. The engineer will have to make sure it fits within that footprint.

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

THAT the applicant has presented testimony indicating compliance with 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 (1,054.5 square feet) of the proposed additions as shown on the plat prepared by Laurie A. Perl, dated December 12, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,166.5 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The applicant must submit a plat showing the actual dimension that the addition is built to the property line.

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

Pursuant to Sect. 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.

~ ~ ~ March 6, 2007, HENRY D. POHL AND JAN PINES POHL, SP 2006-SU-073, continued from Page 64

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

//

~ ~ ~ March 6, 2007, 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) (Admin. moved from 12/12/06 for notices and from 1/30/07 at appl. req.)

Chairman DiGiulian noted that A 2006-PR-034 had been administratively moved to September 11, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ March 6, 2007, Scheduled case of:

9:30 A.M. MARGARET HENDRICKS, A 2006-DR-071 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant's business, which is located on property in the C-2 District, is a use most similar to a retail sales establishment, in violation of Zoning Ordinance provisions. Located at 1464 Ingleside Av. on approx. 9,375 sq. ft. of land zoned C-2, H-C, SC and CRD. Dranesville District. Tax Map 30-2 ((7)) (1) 11.

Chairman DiGiulian noted that A 2006-DR-071 had been withdrawn.

//

~ ~ ~ March 6, 2007, Scheduled case of:

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

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

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated February 27, 2007.

Mr. Hart asked what the appellant had to do to allow him to continue to use the garage. Michael Congleton, Senior Deputy Zoning Administrator, Zoning Enforcement/Property Maintenance, said staff requested the appellants remove the microwave, refrigerator, and kitchen sink, if one existed, but staff had not been allowed entry into the facility and were unable to determine whether a sink existed. If there was a sink in the bathroom, it could remain. Ms. Collins agreed with Mr. Hart that if the appellants applied for a special permit for an accessory dwelling unit, a breezeway would have to be built to make the garage touch the house. She said the appellants would have to build something with a roof, a fence would not comply, and other than building a breezeway, there was no way for the appellants to come into compliance.

In response to questions from Mr. Hammack and Mr. Byers, Mr. Congleton said no consideration had been given to the size of the refrigerator because it provided a method for storing food and should be removed regardless of size. He said the intent was that the facility did not become a dwelling unit where people were

~ ~ ~ March 6, 2007, G. RAY WORLEY, SR. AND ESTELLA C. (H.) WORLEY, A 2006-PR-056, continued from Page 65

living, and it had been staff's interpretation that a cooler with ice was a place to keep food and was considered part of a kitchen. Mr. Congleton said he did not know what had prompted the complaint.

Ray Worley, 2537 Gallows Road, Dunn Loring, Virginia, presented the arguments forming the basis for the appeal. He described the property owned by his family, the surrounding area, and what had transpired since 1932, which he said was a time of quiet possession. He said the Board had offered opinions on the same issue which had been raised previously, and those opinions could be sustained under Common Law. When the issue had been appealed to the Circuit and Supreme Courts, he said the Supreme Court returned a decision affirming that a strict interpretation had to be met. He referenced the McCarthy case and asked why he could not say he had an adverse use for 60 years and have it accepted under Common Law. Mr. Worley said when his parents built the garage in 1936, it had been licensed, and in 1942, his mother used it as a primary school for children, which was also licensed. He said the building had been inspected regularly by the County Fire Marshall; however, the County did not have a record of that because the records were incomplete. He said a provision under the Common Law called "Laches" spoke to the concept of equity and whether or not an agency was supposed to make a timely claim against a property, and if the County in this case had not proceeded in a timely manner, its violation against him should not be permitted. He said the County Attorney and staff had stated that the 1941 Ordinance must prevail. Mr. Worley submitted recent photographs to the Board showing that the County was allowing more properties to be built 10 feet apart.

Mr. Hammack stated that the quiet enjoyment of the property was something that was in the deed that had to do with the warranties noted in it and was not an issue for the Board. The issue of adverse possession dealt with title to property, not with zoning, and with respect to Laches, the Board had been told by the Supreme Court of Virginia that they did not have equitable authority. With respect to the McCarthy case, Mr. Hammack noted that it had been resolved against the Board's decision, which made it difficult to go against precedent. Given the situation Mr. Worley was faced with, Mr. Hammack said he would rather see him try to bring the unit into compliance than to embark on a challenge. Mr. Worley said he would take applying for a special permit into consideration; however, it would be costly, and he would prefer to have things remain as is.

Mr. Hammack stated that there was another issue the Board was faced with, which was that appellants had some burden of proving the arguments they made, such as the paperwork Mr. Worley said staff could not locate, and it was up to the appellants to provide it. He said that if the building was constructed with a building permit and with the additions of a sink and other facilities, Mr. Worley should be producing that document. Mr. Worley responded that staff had searched the 1953 records, and said staff had testified that there was reference to a building permit that was issued with his father's name and a number on it. He acknowledged that it was hard to go back and find old records; however, the house was built in 1932, and he thought the 1936 record staff had was when the note was paid off and a clear title issued.

In response to questions from Mr. Hammack, Mr. Worley acknowledged that there was electricity and water connected in the garage, he did not know if there were permits for extensions of water or electric lines, and a permit had been issued for a recent upgrade to the electricity. Ms. Collins said staff had not checked to determine if there were any records regarding the extension of electricity or water to the property. Mr. Congleton said staff would check with the Department of Public Works and Environmental Services to determine who maintained such records and provide the Board with an answer. Mr. Hammack said that if the County allowed the extension of services to the garage, the appellants had the right to appeal staff's argument, and Mr. Worley's argument might be stronger. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said someone could have a permit for the extension of electricity and water without establishing a second dwelling unit. Mr. Worley said he would look through some of his mother's old papers to try to find additional information to support his statements.

Mr. Hart stated that he agreed with Mr. Hammack's legal points, but had a few others he wanted to add. He said this was not the first time many of the issues spoken about had been raised. With respect to spotty recordkeeping, he said the Supreme Court of Virginia had told the Board that in situations such as the absence of records, it was the appellant's problem, not the County's. He stated that the 1952 building permit would not necessarily deal with the installation of a refrigerator, and the building of the structure may have been acceptable. The kitchen situation would have happened later, and the documentation would not be of any help. Mr. Hart said this was one of a series of cases where the Board of Supervisors had an expressed objective to preserve affordable housing in the County, and the aggressive enforcement of zoning provisions

~ ~ ~ March 6, 2007, G. RAY WORLEY, SR. AND ESTELLA C. (H.) WORLEY, A 2006-PR-056, continued from Page 66

which would seem to eradicate old apartments above garages would be inconsistent with that policy. He said the creation of some exception to allow old apartments to remain was not up to the Board of Zoning Appeals. It was something the Board of Supervisors would have to do in the Ordinance. With respect to Laches, Mr. Hart said it was a doctrine that did not apply to the County in the enforcement of the Zoning Ordinance. Virginia had the 60-Day Rule, and there was nothing in the record before the Board that would suggest the 60-Day Rule was applicable to the appeal. Mr. Hart asked if Mr. Worley would prefer that the Board vote on the appeal or he could apply for the special permit and either build the breezeway or take the kitchen equipment out, which would provide an opportunity to correct the situation rather than force the issue on the violation. Mr. Worley asked the Board to defer the appeal to give him an opportunity to determine whether or not he wanted to file for a special permit.

In response to questions from Mr. Hart and Mr. Byers concerning the length of time for a deferral, Ms. Stanfield said one of the submission requirements was a plat, which could be very time-consuming. Mr. Congleton recommended a 90-day deferral, and Ms. Stanfield suggested June 5, 2007.

Chairman DiGiulian called for speakers.

Bill Grove, 8109 Timber Valley Court, Dunn Loring, Virginia; and Mark Lusch (phonetic), 2223 Westmoreland Street, Falls Church, Virginia, came forward to speak in support of the appeal application. Mr. Grove commented that perhaps the property could be grandfathered.

Mr. Byers said a case such as this could not be grandfathered because the use was never legally established on the property. Ms. Collins said staff was sympathetic to Mr. Worley's position; however, neither the private school nor the second dwelling had ever been legally established, so it could not be grandfathered or considered non-conforming. Water and electricity could be run to a garage and not necessarily make it a second dwelling unit.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to defer decision on A 2006-PR-056 to June 5, 2007, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Beard were absent from the meeting.

//

~ ~ ~ March 6, 2007, 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., 11100-11115 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. (Decision deferred from 11/7/06) (Admin. moved from 1/23/07 for ads.)

Chairman DiGiulian called the appellant to the podium.

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

Michael Congleton, Senior Deputy Zoning Administrator, Zoning Enforcement/Property Maintenance, presented staff's position as set forth in the staff report dated February 27, 2007.

Mr. Hart said the appellant had raised several factual disputes as to information contained in the staff report, such as they had leased to other people, had constructed the buildings, or would be responsible for cleaning up the site. He asked if staff disputed any of those assertions submitted by John Foust, Boring and Pilger, 307 Maple Avenue West, Vienna, Virginia, the appellant's agent, dated March 2, 2007. Mr. Congleton said

staff stood by the information contained in the staff report; however, even if all the assertions were correct, they were irrelevant because the appellant had admitted that its use of the property was illegal.

Mr. Hart said the appellant had conceded that, and the use was not going to continue. He said all the other recipients of the notice had not appealed; however, it was his perception that the appellant had appealed to ensure that they were out from under the other recipients' problems, and it appeared that staff wanted to go forward against everyone else. He asked if there was a factual dispute as to whether Shenandoah Landscape Services leased to the other companies on the property and was there disagreement as to who would be responsible after today for cleaning up the site. Mr. Congleton said Shenandoah Landscape subleased to the tenants, and that was based on information received from the tenants as well as the owner of the property. He said the issue was if Shenandoah Landscape vacated the property, they would no longer be responsible for any of the violations on the site since they were a tenant, and action would be taken against the property owner to resolve the situation. He said, in accordance with Sect. 18-901, they were responsible for the property until they vacated. Mr. Congleton said Shenandoah Landscape and the owner of the property would be responsible for abating the violation, and whether they would be held responsible for cleaning up the property would be decided by the Court.

Mr. Hart asked for staff's position concerning an agreement the appellant had to vacate the premises by July 31, 2007, and another lessee had until November of 2007 to vacate. Mr. Congleton stated that there were no such agreements. He said the County filed suit through the Board of Supervisors and Zoning Administrator against the other tenants, which was proceeding through the court system, and to date there was no judgment by the Court or any consent decree signed by the other tenants. He said staff could not enter into an agreement because it had no legal validity based on someone's promise that they would vacate by July 1st. He said staff would like to move forward so they could begin the action, and once that occurred, staff would enter a bill of complaint and would work with the tenant on an arrangement, most likely through a consent decree, to establish a date for vacation of the property. Until the appeal was decided, staff was precluded from doing that under state law. In response to a question from Mr. Ribble, Mr. Congleton agreed that it was the County's position that they did not care who built the buildings. It was a blanket situation, and the tenants had to deal with each other.

Mr. Foust said the issue on appeal was that the appellant did not want to be responsible for cleaning up or removing any of the improvements that had been made on the property, legally or illegally. He stated that Mr. Byrd had always maintained that he had grandfather rights. With respect to comments that no one had maintained the property and that things had never been done legally, Mr. Foust stated that in the past the understanding was that the property was grandfathered. After Mr. Byrd became incapacitated, all grandfather rights were released. He said the Byrds were trying to get the appellant removed from the property so they could sell it. He stated that the record before the Board precluded ruling in the County's favor because the appellant had demonstrated that the zoning violation notice they had received was so fundamentally flawed, the Board could not read it and rule. The appellant would not be able to determine what they were responsible for unless the Board ruled that the appellant was responsible for cleaning up the entire site, including improvements that were used by other tenants. Mr. Foust stated that he was amazed the appellant had to appear before the Board when they had explained to staff in November of 2006 that they did not sublease to the three other tenants identified in the staff report. He said the tenants had direct leases with the Byrds and had been there before the appellant occupied the premises. What staff had stated in the notice was that the appellant should clean up everyone's problems, not just the Byrds. He said the staff report indicated that Shenandoah Landscape Services was responsible for cleaning up land disturbance activity that Mr. Byrd had done decades ago in order to improve his property. He noted that after the November of 2006 hearing, it was his understanding that staff and the appellant were to discuss a date the appellant would vacate the property. He said it was undisputed that the current use could not continue, particularly if the landlord was waiving any grandfather rights that may exist. Mr. Foust indicated that he had personally spoken to Roger Sims, Zoning Enforcement/Property Maintenance Supervisor, and had asked that the appellant be allowed to vacate in November of 2007, which was the timeframe granted to the other tenants. He indicated that the appellant could be out by July. Mr. Sims said they had to leave by the July date, and he had acknowledged that in his memorandum to the Board dated March 1, 2007. He said the appellant would not go to court over the use of the property. It was extremely difficult to find the type of space they had, but the appellant had a letter of intent for one. They had agreed to an April 1, 2007 commencement date even though the property would not be ready. They would have to pay two rents until the property was ready, and the appellant did not want the Board of Zoning Appeals to rule that they were

~ ~ ~ March 6, 2007, SHENANDOAH LANDSCAPE SERVICES, INC., A 2006-PR-048, continued from Page 68

responsible for cleaning up the entire Byrd property or for the grading issue.

Discussions ensued regarding the buildings constructed by the appellant, a modular unit and a concrete sand bin; the appellants' commitment to be off the premises by July 31, 2007, and removal of those structures; the appellant having the burden of presenting evidence to show it was not involved in the construction of other buildings; and the appellant not being responsible for the grading activity. Discussion also included the Byrd family having contacted the County on a previous occasion seeking to have all the tenants removed from the property, which had been accomplished with the property reverting to the Byrds, who subsequently leased the space in question to the appellant and three other companies located on the property, S&S Motors, Atlas Roll-Off, Inc., and Craig Van Lines. It was also noted that site disturbance on Lot 41 was done through arrangements made by Mr. Byrd with a contractor who was working on Shirley Gate Road; site disturbance of 2,500 square feet was cited as a violation; staff's opinion that the building of the modular unit and wall without a building permit or site plan the appellant admitted to would have disturbed more than 2,500 square feet; an inspection revealing site disturbance in the area on Lot 43 where 2,000 to 3,000 new vehicles had been stored in the southwestern portion of the property sublet by the appellant to various car dealers; the appellants claim that it had only leased Lots 41 and 43; staff's indication that they had a copy of a lease between the Byrds and Shenandoah Landscaping indicating they had leased Lots 41, 42B, 42A, and a portion of Lots 39 and 43; the appellant not disputing they had established a contractor's office and were parking more than one commercial vehicle; the single-family dwelling being the only legal structure on the site;

Gary Blosser, President, Shenandoah Landscape Services, pointed out structures on a photograph, saying his firm had used the two greenhouses of the predecessors as well as a modular office structure located on Lot 42A. He said the modular structure referenced by Mr. Foust was a storage building on skids, which he pointed out, and all the remaining structures on the site belonged to someone else. Mr. Blosser said that prior to occupying the buildings, there was an eight-foot stockade fence that extended through the site, which he pointed to on the photograph, and all the rest of the land had been leased by Phoenix Development and others. He said he did not know what had occurred there until the development company moved out in the 1990s, and Mr. Byrd approached him about leasing that area; however, his firm had nothing to do with the grading done by Phoenix Development. Mr. Blosser said his firm had not graded Lot 41 or the other area noted in the staff report.

Discussions ensued regarding Sect. 18-901 of the Zoning Ordinance, that the liability concerning cleanup was shared among all the tenants and owners, and the appropriate way to deal with the situation was through the Circuit Court to assess liability.

Chairman DiGiulian called for speakers.

Linda Dennis, 8166 Golf Vista Drive, Greencastle, Pennsylvania, a member of the Byrd family, came forward to speak. She said the appellant did not lease to any of the companies referenced today, only to the new car companies who had since left the premises. Her father, who was no longer living, had not signed a grandfather clause, nor had he signed anything else since 1996 because he had Alzheimer's and was not competent to do so. She said no one had used the land except for the appellant, and they took up most of it. Craig Van Lines was in the process of moving, had torn down their trailers and buildings, and were removing their trucks. Atlas Roll-Off would be moving out shortly. S&S Motors had vacated the property.

Ms. Dennis referred to a packet she had prepared for the Board that contained proof of statements and documentation and said Mr. Glosser had given incorrect information regarding the time he had been on the Byrd property under his company's new name, Shenandoah Landscape Services, Inc. They moved back onto the property in July of 2004 and were still there. Mr. Glosser's old company was called STM Landscape, and they left the premises in June of 2004. Mr. Glosser approached Mrs. Byrd, who had developed Alzheimer's in 2003, and asked to move into the area that consisted of the shop and one brown building. He sold the nursery houses he had built to Valley Crest. She said Mr. Glosser had the only nursery company that had ever been on the property, and he had been there in 1970. Ms. Dennis said the only paperwork she could find was dated 1984, when he started as a nursery business and leased a section of the property. In 1983, the appellant had leased the shop and existing area. Phoenix Development had leased the shop before STM did, and Phoenix Development was a water and sewer company that moved out in 1993 and removed the office trailers, debris, and had hauled in dirt and graded the area to specifications.

Since leasing the shop in 1993 under STM, Mr. Glosser had extended his areas, made a road behind 3546 Marseilles Drive, which was Mrs. Byrd's home as well as the second home which belonged to her. There were roads behind, beside, and in front of her mother's house. Ms. Dennis said Mr. Glosser had put in roads where there had been trees and built mulch pens out of concrete. He had built greenhouses and equipment structures and put up concrete barriers against the berm and put in parking areas beside the house for his employees. She said that everything currently on the premises had originated with Mr. Glosser and his company. There was a fence around his entire area, which was locked, and no one could get access to it. She said the mulch bins had caught fire, and the Fire Department had to break through the gates to get in. She disagreed with Mr. Glosser that the other tenants had caused problems because he did not allow anyone on the property.

Ms. Dennis said the problem with Shirley Gate Road was between the Commonwealth of Virginia and her father, and the agreement had been to bring in the dirt from Shirley Gate Road. It had been seeded to specification and inspected. She said the appellant's lease was up in July, and she acknowledged the lease had been signed by both of her parents, but both of them had been incompetent to sign the lease at the time. She said her parents would never have signed a lease to allow anyone to sublet. Ms. Dennis said Mr. Glosser had disturbed the habitat and environment by disturbing the trees to build roads and clear areas for parking, and the company had dumped trash and debris over the back lot where the housing development was located. She said the oil tanks had been replaced by the appellant and Mrs. Byrd, each having paid half, and she had asked the appellant to provide her with a copy of the yearly tank inspections, but he had not done so. Other tanks had been installed by the appellant after the task force had been there to inspect the property. Ms. Dennis said Mr. Foust's claim that the appellant wanted to terminate the lease was incorrect. She stated that she was the one who wanted to terminate the lease because Mr. Glosser had gone to the Byrds when they were incapacitated and asked them to sign it. She said her parents did not know the appellant had a lease. Ms. Dennis said she had moved to South Carolina, and when she returned, she observed that more trash had been dumped, portions of the tanks had been torn off, and another sign had been put up for another one of the appellant's companies.

In response to questions from Mr. Hart, Ms. Dennis stated that STM Landscape had disturbed Lots 41 and 43. The brown building on Lot 41 had been built by Phoenix Development, and her father had built the shop. She said Mr. Glosser had built all the other buildings on the property, except for her and her mother's houses, as well as the concrete barriers near the berm.

Mr. Congleton said, except for one single-family dwelling, the uses currently on the site were unlawful, and staff was seeking to have the property restored to an acceptable state and have the uses cease. Staff had sent notices to all the tenants and the property owner, and except for the appellant, all of the existing tenants and the property owner had not appealed the notice. Staff was in the process of litigation with all of them to resolve the issue. He said staff was asking that the appeal be decided so action could be initiated in Circuit Court to fully resolve the issue.

In his rebuttal statement Mr. Foust said no one else had been accused of the grading activities. He said Ms. Dennis claimed the appellant's company had disturbed Lots 41 and 43; however, she also claimed Phoenix Development had moved out and re-graded that property. Mr. Foust said she had referred to Lot 41, but this was an issue between her father and the Commonwealth of Virginia. He stated that Shenandoah Landscape had not done any grading, and her testimony was contradictory. He said the appellant had a problem with land uses and would solve it; however, the nature of the zoning violations alleged had forced them to appeal because they had to be able to challenge the fact that all the property had been subleased by the appellant, which was not the case.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on A 2006-PR-048 to April 3, 2007, at 9:30 a.m. He said the Board and Mr. Foust needed time to read Ms. Dennis' comments. Mr. Ribble seconded the motion.

Mr. Ribble requested that Mr. Foust and County staff determine what would happen if there was no lease involved and if, in fact, the Byrds were incompetent at the time and should not have signed a lease, which would make it invalid. He said he wanted to know where the County would stand. Mr. Congleton said a meeting would be arranged.

~ ~ ~ March 6, 2007, SHENANDOAH LANDSCAPE SERVICES, INC., A 2006-PR-048, continued from Page 70

The motion carried by a vote of 4-1. Mr. Byers voted against the motion. Ms. Gibb and Mr. Beard were absent from the meeting.

//

~ ~ ~ March 6, 2007, Scheduled case of:

9:30 A.M. VICENTE L. GUEVARA, A 2006-MA-065 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an addition, which was constructed without an approved Building Permit and which does not meet the bulk regulation as it applies to the minimum side yard requirement for the R-3 District, is in violation of Zoning Ordinance provisions. Located at 4014 Arcadia Rd. on approx. 11,837 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((7)) (C) 30. (Decision deferred from 2/6/07)

Ms. Collins said that A 2006-MA-065 had been deferred for decision only, and photographs were distributed to the Board. She said the Board had deferred decision because the appellant had indicated that he wanted to demolish the structure; however, the appellant had not gotten a demolition or building permit. She said the inspector had gone out to the property two weeks before the meeting, and the structure was still there and had been painted.

Mr. Ribble moved to uphold the determination of the Zoning Administrator. Mr. Hart seconded the motion. He recommended that the Board add as findings of fact that the Board adopt the rationale in the staff report that the structure was expanded from a carport without proper approvals. The motion carried by a vote of 5-0. Ms. Gibb and Mr. Beard were absent from the meeting.

//

~ ~ ~ March 6, 2007, After Agenda Item:

Request for Additional Time
New Life Christian Church, SPA 01-Y-069

Mr. Hammack moved to approve six months of additional time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Beard were absent from the meeting. The new expiration date was December 16, 2007.

//

~ ~ ~ March 6, 2007, After Agenda Item:

Request for Additional Time
Church of the Good Shepherd, SPA 81-A-025

Mr. Byers moved to approve 30 months of additional time. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Beard were absent from the meeting. The new expiration date was May 21, 2009.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:29 a.m.

Minutes by: Shannon Keane / Mary A. Pascoe

Approved on: January 7, 2015

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 27, 2007. 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 9:00 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 Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ March 27, 2007, 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. (Decision deferred from 4/18/06 and 10/31/06, converting to SP)

Vice Chairman Ribble noted that the Board had received a request to defer the decision on VC 2006-DR-002 to July 10, 2007, and he asked the reason for the request.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicants were considering filing a special permit to allow the fence to remain.

As there was no one present who wished to speak to the matter of a deferral, Vice Chairman Ribble called for a motion.

Mr. Hammack moved to defer decision on VC 2006-DR-002 to July 10, 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.

//

~ ~ ~ March 27, 2007, 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.) (Decision deferred from 12/19/06)

Vice Chairman Ribble noted that the Board had received a request to defer the decision on SP 2006-SU-055 to April 24, 2007.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff concurred with the deferral request and that there would be an addendum distributed in the near future.

As there was no one present who wished to speak to the matter of a deferral, Vice Chairman Ribble called for a motion.

Mr. Hammack moved to defer decision on SP 2006-SU-055 to April 24, 2007, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ March 27, 2007, Scheduled case of:

9:00 A.M. CURTIS L. & KAREN J. DUBAY, SP 2007-LE-005 Appl. under Sect(s). 3-503 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.8 ft. from rear lot line. Located at 7445 Brighthouse Ct. on approx. 2,746 sq. ft. of land zoned R-5 (Cluster). Lee District. Tax Map 91-4 ((8)) 155.

~ ~ ~ March 27, 2007, CURTIS L. & KAREN J. DUBAY, SP 2007-LE-005, continued from Page 73

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

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. Curtis L. Dubay, 7445 Brighthouse Court, Alexandria, Virginia, replied that it was.

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 the construction of a one-story sunroom addition 14.8 feet from the rear lot line. The 144 square foot, 9 foot high, one-story addition to the rear of the existing dwelling would allow the applicants to enjoy their patio area in all seasons. Staff recommended approval.

Susan C. Langdon, Chief, Special Permit and Variance Branch, addressed Mr. Hart's question concerning end unit townhouse setbacks and the fact that they must meet the minimum side yard requirement on the lot line that is not common to another townhouse.

Mr. Dubay presented the special permit request as outlined in the statement of justification submitted with the application. As his family's space utilization needs had changed over the years, the special permit approval would allow construction of a sunroom to allow enjoyment of their patio area in comfort and year round. He noted that their proposal had the approval of their homeowners association and architectural committee. Mr. Dubay requested the Board's approval.

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

Mr. Byers moved to approve SP 2007-LE-005 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CURTIS L. & KAREN J. DUBAY, SP 2007-LE-005 Appl. under Sect(s). 3-503 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.8 ft. from rear lot line. Located at 7445 Brighthouse Ct. on approx. 2,746 sq. ft. of land zoned R-5 (Cluster). Lee District. Tax Map 91-4 ((8)) 155. 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 27, 2007; 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). 3-503 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

~ ~ ~ March 27, 2007, CURTIS L. & KAREN J. DUBAY, SP 2007-LE-005, continued from Page 74

the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (144 square feet) of the proposed addition as shown on the plat prepared by Larry N. Scartz, dated December 6, 2006, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,850 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to 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. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ March 27, 2007, Scheduled case of:

9:00 A.M. KHOSRO & MAHIN SHAREGHI, SP 2007-DR-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reduction of certain yard requirements to permit dwelling 14.1 ft. from side lot line. Located at 750 Boehms Ct. on approx. 2.14 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((12)) 3.

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. Keith C. Martin, Esquire, Sack Harris & Martin, PC, 8270 Greensboro Drive, Suite 630, McLean, Virginia, the applicants' agent, replied that it was.

A question arose over whether Mr. Martin was listed on the affidavit. Mr. Hart stated that although the affidavit revision had a last minute approval, the Board members had not received it, and they were required by law to make certain disclosures based on the names listed. He reminded staff of the necessity for the Board to receive revised affidavits before the hearing.

Vice Chairman Ribble stated that the Board would proceed based on staff's representation that the revised affidavit had been accepted and a copy would be provided. At his direction, the oath was administered to Mr. Martin.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit a reduction of certain yard requirements to permit an existing dwelling 14.1 feet from a side lot line. The proposed 14.1-foot side yard resulted from the applicants proposal to subdivide Lot 3 into two parcels, Lots 3A and 3B. The existing structure would be located on proposed Lot 3A

~ ~ ~ March 27, 2007, KHOSRO & MAHIN SHAREGHI, SP 2007-DR-002, continued from Page 75

and would not meet the minimum 20-foot side yard requirement in the R-1 District. Staff concluded that the application did not meet the Generals Standards for Special Permit, Sect. 8-006, in particular Standard 1, density requirements, and Standard 3, being harmonious with the Comprehensive Plan. Staff recommended that SP 2007-DR-002 be denied.

Susan C. Langdon, Chief, Special Permit and Variance Branch, concurred with Mr. Hart that the application could have been by right but for the location of the existing house. She said that neither lot, if subdivided, would meet the Comprehensive Plan's density recommendation.

To address the shape factor issue, Mr. Chase said that between the two lots, there was a boundary line change near the drainfield.

Mr. Martin presented the special permit request as outlined in the statement of justification submitted with the application. He concurred that the proposal would be by right but for the one corner of the existing house. Quoting the zoning designations of parcels in the area, he pointed out that the application did not meet Standard 1 with the R-1 zoning of its subdivision and surrounding neighborhoods because R-1 was out of sync with the Comprehensive Plan. He said the proposed newly created lots did not adjoin other lots. There was no impact from the request. It was harmonious with and not out of character with surrounding lots, and Standard 1 was irrelevant in terms of the existing zoning. Mr. Martin requested the Board's favorable consideration.

Mr. Hart said that one of staff's concerns was that the house would be very close to the lot line compared to other homes in the neighborhood even if the lot sizes were comparable.

Mr. Martin pointed out that it was an interior lot. It set back off from the road, had no visible lot line separation, and was so located that it visually did not appear close.

Discussion followed between Mr. Hart and Mr. Martin concerning the Ordinance definition of "shall." Mr. Hart said that he understood that when "shall" was used in a Statute, it was mandatory. It was something that the Board must do.

In response to a question from Mr. Beard, Mr. Martin explained the applicants' position on whether this was a self-imposed hardship. He said there was no intention of attempting what was now being requested when the house was purchased.

Vice Chairman Ribble called for speakers.

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

Charles R. Preston, 9801 Georgetown Pike, Great Falls, Virginia, came forward to speak. As the adjacent property owner, he stated he would be severely impacted by the desecration of the heavily wooded area directly behind his property. There was appreciation for the insight for having set parameters governing the community's development, and as a member of the Great Falls Citizens Association, he strongly supported their mission to protect, strengthen, and control the development of their home sites. Mr. Preston said the community initiative, Vision 2020, was an example of their dedication to that end, and to date general discussion appeared to find the proposal's intent was not in keeping with their vision for the neighborhood's development. He acknowledged that he was not an authority on zoning, realizing its great complexity. After reading the staff report, he believed he could make an educated determination on stipulated impact concerns regarding location, topography, vegetation and tree preservation, and that the proposal was not in harmony with its surroundings and did not meet Plan recommendations and zoning standards. He referenced staff's recommendation of denial in which the staff report cited noncompliance, concluding that the subject application was not in harmony with the Comprehensive Plan or Zoning Ordinance provisions. Mr. Preston requested that the application be denied.

Anil Bhatia, 751 Boehms Court, Great Falls, Virginia, came forward to speak. He said he purchased his lot in 1991 understanding that the neighborhood would have only expansive lots and the three neighboring parcels would remain at least two acres each. He noted that at that time, there was only one house on the applicants' lot. He voiced his concern over the severe destructive impact on wildlife and the natural environment.

~ ~ ~ March 27, 2007, KHOSRO & MAHIN SHAREGHI, SP 2007-DR-002, continued from Page 76

Discussion followed between staff, Mr. Hart, and Ms. Gibb concerning the drainfield and the applicability of the 30 percent minimum yard restriction for impervious surfaces.

Geoffrey Grosvenor, 9807 Georgetown Pike, Great Falls, Virginia, came forward to speak. He said he and the neighbors could not be supportive of something no one knew anything about because the applicants had not provided plans or sketches. Because the proposed structure sat far back from the cul-de-sac, it was not harmonious with the other homes on the street, and he had concern over a precedent for similar exceptions. Mr. Grosvenor pointed out that approving a side yard reduction to subdivide the lot was contrary to the intent and language of Sect. 8-922 of the Zoning Ordinance, and he and the neighbors did not support the application.

Sondra Taylor, 752 Boehms Court, Great Falls, Virginia, came forward to speak. She spoke for herself and her husband, who was unable to attend, saying that they purchased their home in Georgetown Estates because of the spacious two-acre lots and the expectation that no lots would be allowed to be subdivided. She pointed out that increased development effected severe runoff erosion and tree damage.

Vice Chairman Ribble asked if Mr. Martin had rebuttal.

Addressing Ms. Taylor's water runoff concern, Mr. Martin said the Public Facilities Manual required numerous erosion and sediment control measures and stormwater management that must be met, and the applicants would agree to stringent limits of clearing and grading involved with Lot 3B.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to deny SP 2007-DR-002 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KHOSRO & MAHIN SHAREGHI, SP 2007-DR-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reduction of certain yard requirements to permit dwelling 14.1 ft. from side lot line. Located at 750 Boehms Ct. on approx. 2.14 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((12)) 3. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 27, 2007; 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 Board or provided testimony that the application meets the required standards for such a special permit.
3. Under Sect. 8-006, Sub. Sect. 1, the Comprehensive Plan calls for a density of .2 to .5 dwelling units per acre. The result of allowing this application would be approximately double that, which is not in harmony with the adopted Comprehensive Plan.
4. Although the applicants' agent argued that, because of the existing R-1 zoning, Sub. Sect. 1 is irrelevant, the Board's job in following the Ordinance is to read the term "shall" as mandatory consistent with the cases from the Virginia Supreme Court.
5. Although difficult to do, the applicants may elect to leave the house where it is and keep the one lot or make some modification to the house and divide the batwing-shaped piece into two pieces.
6. The lot's shape factor is allowed to be 35, and the new plat is 34.9 so it is as oddly shaped as it can

~ ~ ~ March 27, 2007, KHOSRO & MAHIN SHAREGHI, SP 2007-DR-002, continued from Page 77

be without a special exception.

7. There is no pattern of development in the neighborhood with homes as close as 14.1 feet to a side lot line; this application would be a departure from what is existing.
8. The applicants' house is enormous being over 100 feet long, and approximately 40 feet wide, with a footprint something like 4,000 square feet.
9. The area that requires the special permit is just a few feet deep and about 24 feet long; it is a very small slice of the house.
10. If the applicants kept the house where it was and modified the wall, apparently this would be a by-right, and there is nothing that could be done.
11. Once relief is requested under the Ordinance and the Board is under a procedure which requires it to make findings that something is in harmony with the adopted Comprehensive Plan; we go beyond the R-1 zoning, and if the Comprehensive Plan calls for something different, notwithstanding the existing zoning, the Board must still look to the existing Comprehensive Plan.
12. The rationale in the staff report is adopted generally, but with those specific items called out.
13. There is a letter in opposition from the Land Use Committee of the Great Falls Citizens Association and a letter from Mr. and Mrs. Grosvenor.

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). 8-922 of the Zoning Ordinance.

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

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

//

~ ~ ~ March 27, 2007, Scheduled case of:

9:00 A.M. VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 75-C-182 previously approved for a church to permit an increase in land area, building addition, site modifications and change in permittee. Located at 2438 and 2430 Gallows Rd. on approx. 1.43 ac. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 27A and 28.

Vice Chairman Ribble noted that SPA 75-C-182 had been administratively moved to June 26, 2007, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ March 27, 2007, Scheduled case of:

9:30 A.M. QAISER AZIZ T/A SPICE TOWN, A 2006-PR-073 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination to deny the issuance of a Non-Residential Use Permit for an additional accessory service use on property located in the I-5 District because the maximum permitted gross floor area of accessory service uses under Zoning Ordinance provisions has been exceeded. Located at 8453 G Tyco Rd. on approx. 2,824 sq. ft. of land zoned I-5. Providence District. Tax Map 29-1 ((8)) 7.

Vice Chairman Ribble noted that A 2006-PR-073 had been administratively moved to May 15, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ March 27, 2007, After Agenda Item:

Additional Time Request
Greenbriar Civic Association, Inc., Agape Christian fellowship Church and
Pleasant Valley Preschool, SPA 78-P-192-2

Vice Chairman Ribble noted that staff recommended denial of the request for Additional Time to March 13, 2007.

Mr. Hammack moved that the BZA deny the request for 18 months of Additional Time for SPA 78-P-192-2, for the reasons set forth by staff in its memorandum. Mr. Byers seconded the motion.

Mr. Hart said he would support the motion, but pointed out that the application property was located in the Springfield District rather than the Sully District as reflected in a memorandum.

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

//

~ ~ ~ March 27, 2007, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Adam Love, DBA Ground One Landscaping Company

Ms. Gibb recused herself.

Vice Chairman Ribble called upon the appellant's attorney, William B. Lawson, Jr., Esquire, 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, for comments.

Mr. Lawson said, in his opinion, there were problems with the County's procedure when it implemented Virginia State Code §15.2-2311, the 30-Day Right of Appeal. He contended that the timeframe for submitting one's appeal commenced the day the person was served, not the date of the letter. He said he also believed it was improper for the County to send the registered letters to agents, because, in his opinion, proper service should be considered a sheriff directly hand-delivering or serving the person. He noted that a registered agent's duty was to immediately get the letter to the client and that registered agents usually had numerous clients. He said Mr. Love was at his property and could have been served directly. Referencing the State Code, Mr. Lawson said the language stipulated that "the appeal period shall not commence until the statement is given," clarifying that it was not the date of the letter, but the date that the letter was given to the person alleged to be in violation of the Zoning Ordinance. He said that Mr. Love had a Non-Residential Use Permit and, therefore, a Certificate of Occupancy, so he believed the County's allegation that it was necessary to process a site plan was probably inaccurate. Mr. Lawson informed the Board that half of the violations were cleared, and they were diligently pursuing curing all those remaining. He said he hoped that the appeal would not be necessary, but the reason he filed was to allow the appellant a level playing field to assure Mr. Love's rights and legal position.

Responding to Mr. Byers' question of why twice no one took receipt of the letter, Mr. Lawson explained that there was no one in the office the first and second time the postman tried to deliver the registered return receipt letter. Mr. Love's registered agent, Howard Silverberg, was out of town, and two weeks elapsed before Mr. Silverberg was aware of the certified letter. Mr. Silverberg would prepare an affidavit explaining why it was two weeks before the certified letter was picked up.

Discussion followed between Mr. Hart and Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, concerning at what procedural stage the 30 days commenced and whether staff had authority for the proposition that service on a registered agent was good if an attempt to deliver, although unsuccessful, was made. Citing Ordinance Statute language that "an attempt to serve may be considered clarification of one being served," Mr. Hart pointed out that there remained a difference in interpretation frequently brought up at BZA meetings regarding the 30-day timeframe. He said he recognized a real due process problem implying there was notice when no one was getting it. He said there should be some legal authority, some case or a judge's ruling, that exacted when the time commenced for one being served instead of someone maintaining a different position, notwithstanding what the statute said.

~ ~ ~ March 27, 2007, After Agenda Items, continued from Page 79

Mr. Hammack said that he served as a registered agent and there was a statute that allowed a registered agent to delegate to someone in his office to accept on his behalf. He said he concurred with Mr. Hart's comments concerning the fundamental due process problems and that he thought the word "serve" in the statute was clear.

Ms. Stanfield said it was an ongoing issue between staff and County Attorney over the 30-Day Right of Appeal matter.

Discussion followed among Mr. Beard, Mr. Hammack, and Mr. Hart concerning who may be served, at what procedural stage, and by what legal requirements. Mr. Hammack said, in his opinion, time commenced when the letter was given, which was when the person to be served accepted the papers.

Vice Chairman Ribble called for speakers to address the question of the application acceptance. There was no response.

Mr. Hammack moved to accept the application for appeal filed by Adam Love, DBA Ground One Landscaping Company, as timely filed. Mr. Byers seconded the motion, which carried by a vote of 4-1. Mr. Beard voted against the motion. Ms. Gibb recused herself. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ March 27, 2007, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Jennifer Knight

Jennifer Knight, 4617 Lawn Court, Fairfax, Virginia, said she was temporarily living with her daughter in Centreville, the subject property was her residence, and she rented rooms to several friends. She stated she knew nothing about a zoning violation until she received the notice in January. She had already cleared all except one violation that she was diligently working to resolve. The remaining violation concerning her kitchen she found difficult to resolve because it entailed removal of the refrigerator, sink, and cabinets in order to come into compliance. She said the kitchen was preexisting when she bought the house, had been there at least 15 years, and her research revealed there were no permits on file. Ms. Knight pointed out what she considered contradiction in the certified letter as it directed she clear the violation within 30 days of receipt of the notice. The notice was dated January 9, 2007, but she took receipt January 15th. She was informed she must reside in the dwelling, and although she followed staff's instructions and sought to obtain the required permits, her efforts were unsuccessful. Ms. Knight stated she had hoped not to file an appeal and when submitting the paperwork was dismayed when informed she was one day too late to file. In explanation, Ms. Knight said she had expected a ruling promised from Diane Johnson-Quinn, Deputy Zoning Administrator for the Zoning Permit Review Branch, only to learn that staff had not yet reviewed her matter. She professed that she mistakenly thought February 9th was the last date to file. She had not directly received official notice as no certified letter was hand delivered but tacked to the door. Someone was always home, and if the sheriff had knocked, they would have been provided her daughter's telephone number. She questioned at what point the clock officially ran. Ms. Knight requested that the Board find her appeal timely filed.

Paige Mathes, Staff Coordinator, Zoning Administration Division, clarified that Ms. Knight filed her application February 9th, but the last day to file was February 8th, and the sheriff's office confirmed the notice was left on the door January 17th.

Ms. Knight again affirmed that she had consistently worked with staff to make the kitchen legal. She informed the Board that each time she contacted the County, she recorded the date.

In response to questions from Mr. Hart, Ms. Knight explained that the subject property was her registered tax address, that most all her personal property was there, and that she intended to move back after her daughter could better care for her newborn. She found the notice on January 17th and filed an appeal February 9th. Prior to February 9th, she had followed staff's instructions for obtaining a permit. The normal processing time was two to three days and included submitting a Second Kitchen Letter. When dropping off the documents on the 2nd, she was informed an appeal was not necessary if her permit was approved. Returning February 7th to speak with staff regarding her permit, because she had not made an appointment, she was unable to see the

~ ~ ~ March 27, 2007, After Agenda Items, continued from Page 80

right person, but while she was there was assured staff would discuss her situation on the 7th and would inform her whether the permit was accepted. Upon hearing nothing from the County, she called on the 8th and was told staff had not received it yet. After a week with no news, she returned to the County to process an appeal. She affirmed that all other violations were cleared, that the kitchen was the sole outstanding issue, but to come into compliance was a hardship as it required removal of the refrigerator, stove, sink, and cabinets.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said her understanding was that the Permit Review staff would not recommend a person submit a Second Kitchen Letter if currently in violation for a second kitchen. After conferring with the inspector, she was informed he had not encouraged Ms. Knight to apply for the second kitchen. Ms. Stanfield submitted that basically that would be justifying the violation. She noted that one could apply for a second kitchen prior to construction if staff approved the layout's purpose.

Mr. Byers said that he viewed this situation as a question of fairness because one could sign for something and due to inclement weather and/or holidays, a person could literally have only 15 days to respond to a Notice of Violation. He said, as a government, there was a responsibility to promptly deliver such things so people had a full opportunity under the law to make a decision and respond.

Mr. Byers moved that the Board of Zoning Appeals accept the appeal filed by Jennifer Knight. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ March 27, 2007, After Agenda Item:

Request for an Intent to Defer
Nadeem Khaliq, A 2006-PR-068

Vice Chairman Ribble noted that the Board had received a request for an Intent to Defer regarding A 2006-PR-068.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, concurred that the appellant had requested a deferral.

Mr. Hart said Susan F. Earman, Esquire, counsel for Nadeem Khaliq, had requested the deferral. He pointed out that there were eight more violations recently cited and questioned whether the scheduled April 24th date afforded Ms. Earman preparation time if she were to represent the eight new violations.

In response to a question from Mr. Hart, Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said there had been no appeals filed for the eight new violations.

Noting that staff had recommended a short deferral, Ms. Gibb moved to issue an Intent to Defer A 2006-PR-068 to April 24, 2007, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

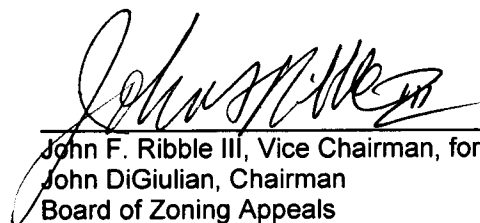
As there was no other business to come before the Board, the meeting was adjourned at 10:45 a.m.

Minutes by: Paula A. McFarland

Approved on: December 1, 2010



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 3, 2007. The following Board Members were present: Vice Chairman John F. Ribble III; V. Max Beard; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Chairman John DiGiulian and Nancy E. Gibb were absent from the meeting.

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

~ ~ ~ April 3, 2007, Scheduled case of:

9:00 A.M. BLANCA M. DELAROSA, SP 2007-SP-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 roofed deck to remain 8.2 ft. with eave 7.6 ft. from side lot line. Located at 4168 Vernoy Hills Rd. on approx. 2,882 sq. ft. of land zoned R-8. Springfield District. Tax Map 45-4 ((14)) 13.

Vice Chairman Ribble called the applicant to the podium.

Blanca M. DeLaRosa, 4168 Venoy Hills Road, Fairfax, Virginia, reaffirmed the affidavit.

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

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Ms. Langdon suggested that the standard condition should be added to the development conditions requiring that the applicant obtain a building permit for the portico.

Ms. DeLaRosa presented the special permit request as outlined in the statement of justification submitted with the application. She said she was unaware that a permit was required for the portico. She explained that the portico had been built to prevent further water and mold damage to the entrance of the house. In response to Vice Chairman Ribble's question, Ms. DeLaRosa said that once she become aware a building permit was required, she had applied for one and had been advised that a special permit was required.

Mr. Hart, Ms. Langdon, and the applicant discussed that the steps had been built by the home builder and they were allowed by right in that location; however, the roof was not.

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

Mr. Hammack moved to approve SP 2007-SP-011 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BLANCA M. DELAROSA, SP 2007-SP-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 roofed deck to remain 8.2 ft. with eave 7.6 ft. from side lot line. Located at 4168 Vernoy Hills Rd. on approx. 2,882 sq. ft. of land zoned R-8. Springfield District. Tax Map 45-4 ((14)) 13. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 3, 2007; and

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

1. The applicant is the owner of the land.

~ ~ ~ April 3, 2007, BLANCA M. DELAROSA, SP 2007-SP-011, continued from Page 83

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 (portico) as shown on Dominion Surveyors, Inc., dated November 27, 2006 as revised through January 15, 2007, as submitted with this application and is not transferable to other land.
2. Pursuant to Section 2-419 of the Zoning Ordinance, within 60 days of the approval of the special permit, the applicant shall apply for an administrative reduction to the minimum yard requirements from the Zoning Administrator to permit the existing deck to remain 7.9 feet from the rear lot line. If an administrative reduction is not approved, the deck shall be removed or reduced in size to meet Zoning Ordinance requirements.
3. All applicable building permits and inspections shall be obtained within 60 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. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ April 3, 2007, Scheduled case of:

9:00 A.M. JOHN L. KING, III, SP 2007-MA-007 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7.5 ft. from side lot line. Located at 3413 Fiddlers Green on approx. 16,331 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 646.

Vice Chairman Ribble called the applicant to the podium.

John L. King, III, 3413 Fiddlers Green, Falls Church, Virginia, reaffirmed the affidavit.

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

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2006-MA-007, subject to revised proposed development conditions dated March 27, 2007.

Mr. King presented the special permit request as outlined in the statement of justification submitted with the application. He said his home was over 50 years old, the rooms were small, and he wanted to enlarge the kitchen and reconfigure the master bedroom suite.

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

Mr. Byers moved to approve SP 2007-MA-007 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN L. KING, III, SP 2007-MA-007 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7.5 ft. from side lot line. Located at 3413 Fiddlers Green on approx. 16,331 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 646. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 3, 2007; 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). 8-922 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 536 square feet) of the proposed addition as shown on the plat prepared by CRC Design Associates, October 9, 2006

~ ~ ~ April 3, 2007, JOHN L. KING, III, SP 2007-MA-007, continued from Page 85

revised to January 14, 2007, as submitted with this application and is not transferable to other land.

3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,171 square feet existing + 1,756 square feet = 2,927 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings included Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ April 3, 2007, Scheduled case of:

9:00 A.M. ANGELO F. ARCARI AND KATHERINE E. JEWETT, SP 2007-DR-008 Appl. under Sect(s) 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7.5 ft. from the side lot line. Located at 8204 Dunsinane Ct. on approx. 17,054 sq. ft. of land zoned R-2. Dranesville District. Tax Map 29-2 ((3)) 225.

Vice Chairman Ribble called the applicants to the podium.

Keith Martin, Sack, Harris & Martin P.C., 8270 Greensboro Drive, McLean, Virginia, the applicant's agent, reaffirmed the affidavit.

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

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2006-DR-008, subject to the revised proposed development conditions dated March 27, 2007.

In response to Mr. Hart's question regarding whether the 7.5-foot measurement from the side lot line was to the wall or edge of the roof, Mr. Chase said the closest point was to the edge of the roof.

Mr. Martin presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant had a one-car garage and wanted to expand it to two with a living space above it. He noted that the McLean Hamlet Architectural Control Committee recommended approval.

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

Mr. Hart moved to approve SP 2007-DR-008 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANGELO F. ARCARI AND KATHERINE E. JEWETT, SP 2007-DR-008 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7.5 ft. from the side lot line. Located at 8204 Dunsinane Ct. on approx. 17,054 sq. ft. of land zoned R-2. Dranesville District. Tax Map 29-2 ((3)) 225. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 3, 2007; and

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

1. The applicant is the owner of the land.
2. The Board adopts the rationale in the staff report.
3. The addition of a two car garage is consistent with the appearance of many of the other homes in the neighborhood.
4. The rooms above the garage are also consistent with what's around it.
5. There doesn't seem to be any opposition and there should not be any negative impacts on anyone.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 922 square feet) of the proposed addition as shown on the plat prepared by Peter R. Moran, dated September 20, 2006 revised through January 13, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,572 square feet existing + 5,358 square feet = 8,930 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings included Attachment 1 to these conditions.

~ ~ ~ April 3, 2007, ANGELO F. ARCARI AND KATHERINE E. JEWETT, SP 2007-DR-008, continued from Page 87

This approval, 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 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. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ April 3, 2007, Scheduled case of:

9:00 A.M. ONE GOD MINISTRY-A GLOBAL CHURCH, SP 2007-SP-006 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12609 Braddock Rd. on approx. 4.84 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((3)) 4.

Vice Chairman Ribble called the applicant to the podium.

Johnson A. Edosomwan, 6821 Ox Road, Fairfax, Virginia, reaffirmed the affidavit.

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

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. He explained that the Board had approved an identical application from the applicant, SP 2003-SP-047, on April 20, 2004. However, before construction commenced, the approval expired. Staff recommended approval of SP 2007-SP-006, subject to the proposed development conditions.

Mr. Beard and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the issue of the denial of the applicant's request for additional time on the original application because it had not been timely filed.

Mr. Hammack, Mr. Beard, and Ms. Langdon discussed the issue of traffic backing up on Colchester Road, which was referenced in letters from citizens, and whether a single point of ingress and egress was sufficient. Ms. Langdon said the current application had been through the full review process, and the Department of Transportation had reviewed the traffic numbers on Colchester and Braddock and said there were no issues.

Mr. Byers, Mr. Hart, Mr. Beard, and Ms. Langdon discussed the environmental analysis related to the soils and the septic field, the possibility of the church hooking up to County sewer system, the transitional screening in relation to the drain fields, the undisturbed open space, correspondence received regarding existing stormwater problems, and the July 11, 2006 approval of the site plan showing the drain fields as proposed on the plan with the same location for the stormwater management pond with adequate outfall.

Mr. Edosomwan presented the special permit request as outlined in the statement of justification submitted with the application. He said the application had been approved in 2004, the site and building plans had been approved, and there had been an extensive County review. He said there was an error with respect to mailing address on the original application, and he had not received the correspondence from the County regarding the expiration, so they had to go through the special permit process again.

Vice Chairman Ribble called for speakers.

The following persons came forward to speak in opposition: James Palmucci, 12508 Bunch Road, Fairfax, Virginia, representing the Lewis Park Community; Christine Podracky, 12400 Rochester Drive, Fairfax,

~ ~ ~ April 3, 2007, ONE GOD MINISTRY-A GLOBAL CHURCH, SP 2007-SP-006, continued from Page 88

Virginia; Mark Deagazio, 12541 White Drive, Fairfax, Virginia; and Jolene Tolbert, 12191 Queens Brigade Drive, Fairfax, Virginia. They voiced concerns regarding significant traffic problems on Colchester Road; safety issues; the use of police officers to control traffic from the churches along Braddock Road; delays in VDOT's plans to straighten Colchester Road; the site entrance for the church being located on a blind curve; water runoff issues; pollution due to increased traffic being detrimental to the Occoquan Watershed; concerns of Braddock Farms and Lewis Park residents about being flanked by two churches; and concerns about wildlife and asbestos.

In response to Vice Chairman Ribble and Mr. Hart's questions, Ms. Podracky said she could provide photographs and videos concerning the water issues. She said the lines on the map were streams which routinely overflowed and flooded homes, yards, and streets. Ms. Podracky said the stream by her property was 15 feet wide at its widest, was located 12 feet from her driveway, and would cover part of her driveway when it overflowed.

In response to Mr. Hart's questions, Ms. Langdon said the outfall was shown to flow approximately one lot from the church and only half the outfall area was shown to be cleared on the site plan. She confirmed that there were no ditches or pipes involved, and the water would flow downhill. She said there was no stream, resource protection area, or environmental quality corridor on the subject property, and staff had not been advised by the Department of Public Works and Environmental Services (DPWES) of any complaints regarding water coming directly from the property. Ms. Podracky indicated that she had spoken with individuals from the County's Stormwater Management Division, and they had acknowledged the flooding problem in the Lewis Park area.

In his rebuttal, Mr. Edosomwan stated that the application had gone through an extensive review; the site and building plans had been approved; bonds had been posted; approval from the Virginian Department of Transportation had been received; and, it had been determined that all development conditions had been met, including stormwater management issues.

In answer to Mr. Hammack's question regarding why the church requested 80 parking places when only 63 were required, Mr. Edosomwan said they did not want overflow parking to be an issue with the community.

In response to questions from Mr. Beard, Mr. Edosomwan said a global church meant it was a traditional non-denominational Christian church that welcomed all faiths, and there was no anticipation of future growth of the church.

Mr. Hart expressed concerns about the stormwater issues, and suggested that staff investigate and determine if DPWES believed that constructing the detention pond would improve stormwater conditions, or prevent them from getting worse.

Vice Chairman Ribble closed the public hearing.

Mr. Byers stated that he had visited the site as a member of the Supervisor's staff, and the neighbors' descriptions were correct. He said he would like the application be deferred so the Board could request DPWES to appear, the transcript from 2004 could be reviewed, and additional information obtained before a decision was made.

Mr. Hammack moved that the Board defer decision on SP 2007-SP-006 to April 24, 2007 at 9:00 a.m., to take additional testimony from DPWES that the approval of the application would not exacerbate any downstream water problem for the neighborhood.

Mr. Hart said his concern was that there would be an 80-space parking lot and a large building uphill from an area that seemed to be flooding, and the drawings did not explain what happened to the water that left the site. He wanted clarification of the interaction between stormwater and the stream shown on the tax map. He also said he wanted to know whether there was a lake or swamp near the church entrance and what effect that would have. Mr. Hart suggested staff write a development condition or modification that would help mitigate the impact of the stormwater runoff. He said he was not concerned about traffic because a Sunday morning use would not be during rush hour.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were

~ ~ ~ April 3, 2007, ONE GOD MINISTRY-A GLOBAL CHURCH, SP 2007-SP-006, continued from Page 89

absent from the meeting.

//

~ ~ ~ April 3, 2007, 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 and 10/3/06 at appl. req.)

Vice Chairman Ribble noted that A 2006-LE-016 had been withdrawn.

//

~ ~ ~ April 3, 2007, 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, 6/20/06 and 11/7/06 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 withdrawn.

//

~ ~ ~ April 3, 2007, 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., 11100-11115 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. (Decision deferred from 11/7/06 and 3/6/07) (Admin. moved from 1/23/07 for ads)

Vice Chairman Ribble's noted that A 2006-PR-048 had been deferred for decision only. Jayne Collins, Staff Coordinator, Zoning Administration Division, confirmed this, noting that the deferral was to review information previously submitted by Linda Dennis.

Ms. Collins stated that the letter the Board received at the current meeting was submitted by the appellant's attorney on March 30, 2007, and indicated that some of the items were being removed from the site. She said a site inspection had been conducted on April 2, 2007, by the Zoning Enforcement Branch.

Susan Epstein, Zoning Enforcement Branch, stated that all commercial vehicles had been removed from the property except those needed to remove the landscaping materials. The construction equipment and at least two of the large temporary structures that had housed much of the landscaping materials had been removed, and two large office buildings remained. She said she was not sure what the appellant had done regarding the grading issues; however, much of the materials had also been removed from the property.

Mr. Hart noted that the letter received from the appellant was a request for a deferral for another month and asked for staff's a position. Ms. Collins replied that staff would not oppose a deferral if the appellant intended to remove everything from the site within 30 days.

~ ~ ~ April 3, 2007, SHENANDOAH LANDSCAPE SERVICES, INC., A 2006-PR-048, continued from Page 90

Mr. Hart recalled there were new cars being stored that belonged to someone else and controversy over who built some of the buildings on the premises and to whom they belonged. He asked if staff believed all the violations would be cleared once the current operation was gone or whether some violations would remain after the appellant vacated the property. Ms. Epstein said the only remaining issues under the notice of violation would be grading and drainage, and if the appellant vacated the property, the property owner was still responsible.

Mr. Hart said the owner did not file an appeal, and the Board was dealing with the tenant only. He said he thought the appellant's tenancy was only on a portion of the assemblage, and all the parcels owned by the owner were not a part of it. Ms. Epstein said she had sent individual notices to every business located on the property as well as to the property owner. Other businesses had vacated the property, and if the appellant removed all its debris, materials, buildings, commercial equipment, and vehicles, the final responsibility was on the property owner for the remaining grading and drainage violations.

In response to Mr. Hart's question regarding a 30-day deferral, Ms. Collins said staff was agreeable to a deferral; however, the notice of violation should be upheld so that if the appellant did not clear off the property, staff could continue with the litigation to ensure that the property was brought into compliance.

Ms. Collins confirmed that since the owner had not appealed, when the Board completed its deliberations on the appeal, staff could proceed with enforcement against the owner whether the tenant was involved or not.

Mr. Hammack said he thought part of the violations dealt with underground storage tanks, and he asked if that had been resolved. Ms. Epstein said the notice of violation did not include underground storage tanks. Mr. Hammack said there were four separate items under appeal on five different lots, and it was unclear where they were located and whether a violation was on the leased property or not. Ms. Epstein stated that Zoning Enforcement wrote its notices so that the property owner and the tenant were cited for violations regardless of the location on the property. Mr. Hammack and Ms. Epstein discussed which past and present tenants had been cited and which had not. Mr. Hammack questioned whether underground storage tanks would fall under the referenced erected structures without valid permits or could affect the grading plan. Bruce Miller, Zoning Enforcement Branch, said some of the tanks had permits issued, and underground storage tanks were not prohibited on residential property and were not included in the notice of violation. However, they may be an issue with the Department of Environmental Quality.

Vice Chairman Ribble called for speakers.

Linda Dennis, 8166 Golf Vista Drive, Greencastle, Pennsylvania, daughter of Mr. & Mrs. Byrd, the owners of the subject property, came forward to speak. She said a permit had been issued for the underground storage tanks to SDM Landscaping, which was now Shenandoah Landscaping. The permit had been issued by the County for a grocery store, and the permit stated that the mechanical plan review had been waived. She said items were left on the property by the tenants, including concrete mulch bins. Shenandoah Landscaping, previously Shenandoah Turf, had been located on the property since 1984. She said the tenant was not telling the truth because he had been on the property for the past four years using his new company name.

Mr. Hammack and Ms. Dennis discussed the Board's determination as to whether zoning violations existed, but was not the proper venue for determining who would be responsible for restoring the property to its original state or lease issues.

Leslie Johnson, Senior Deputy Zoning Administrator, Zoning Administrative Division, stated that if the Board were to make a determination today to uphold or overturn the Zoning Administrator's determination, staff would pursue legal action on the violation, but implementation of the process would take several weeks to get it to the County Attorney's Office. In that timeframe, the appellant would still have time to clean up and finish what they had said they would do. Ms. Johnson said she believed the appellant was looking for additional time so that when they returned to the Board, the site would be clean. There still could be issues between the landlord and the owner, and that would be a private matter between the parties. Ms. Johnson said staff recommended the Board take final action now.

John Foust, Boring & Pilger, P.C., 307 Maple Avenue West, Vienna, Virginia, the appellant's agent, stated

~ ~ ~ April 3, 2007, SHENANDOAH LANDSCAPE SERVICES, INC., A 2006-PR-048, continued from Page 91

that the reason he had requested an extension was because some of the materials would not be removed until later in the week. He said the premises were no longer used by the appellant, who now had a new site. Mr. Foust said the lease would be terminated effective April 30, 2007, and it was now a private matter between the appellant and the owners. He requested that the zoning violations be denied or the decision be deferred for a month to be certain that Shenandoah had removed its operation and the structures placed on the property over the years, even though they disputed responsibility for doing so.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold-in-part the determination of the Zoning Administrator. He said the establishment of a contractor's office, shop, and storage yard; erection of structures without building permits; parking more than one commercial vehicle; and failure to obtain a grading plan were correct and were upheld. Mr. Hart said the appellant established that they were not leasing to the three sub-tenants which were identified in the staff report, but otherwise did not meet its burden of establishing that the Zoning Administrator was plainly wrong. With respect to the construction of buildings and the disturbed area, the appellant contended they did not do many of the things alleged, the owners' daughter contradicted that, and the Board received correspondence supporting both sides. Mr. Byers seconded the motion.

Mr. Hammack stated that he would support the motion. He said the burden was on the appellant to rebut the violations, and they did not challenge the conclusion that the appellant could not use the Byrds' property to operate its landscape business. Mr. Hammack said the letter stated that they were not appealing the notice of violation that they established a contractor's office, shop, and storage yard, or the violation that they parked more than one vehicle on the property.

Mr. Hammack and Mr. Hart discussed how it was determined that the appellant did not lease to others with the exception of one entity which did not continue and was not part of the violation.

Mr. Hart said it was undisputed that the appellant constructed the wall with mulch bins on the northern end of the property, and there was testimony that structure alone would have disturbed more than 2,500 square feet. The appellant also conceded building at least one other small building. Who was responsible for building the other buildings and the rest of the grading was not determined.

Mr. Hammack stated that there was no disagreement between the appellant and staff that the activities took place on the collective sites or that the most recent lease included the subject parcels.

Vice Chairman Ribble called for the vote. The motion carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ April 3, 2007, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Janet A. Bradley
(Deferred from February 6, 2007)

Leslie Johnson, Senior Deputy Zoning Administrator, Zoning Administrative Division, stated the appeal was of a proffer interpretation which staff believed would not properly be heard before the Board of Zoning Appeals. She said an appeal had also been filed with the Board of Supervisors. Ms. Johnson additionally said the issue was moot because the determination had been rescinded. Zoning Enforcement was working with the homeowners association to investigate and work out the issues, and at some point in the future another notice of violation might be issued.

Vice Chairman Ribble called for speakers.

Benjamin T. Danforth, 2538 North Granada Street, Arlington, Virginia, the appellant's agent, came forward.

In response to Mr. Hart's question regarding whether the appeal to the Board of Supervisors had been

~ ~ ~ April 3, 2007, After Agenda Items, continued from Page 92

accepted and scheduled, Ms. Johnson said it had been accepted, but had not been scheduled because the determination had been rescinded, and the issue was being investigated.

Mr. Danforth said there were two issues, one being the determination and the other being the decision not to enforce the Zoning Ordinance against the homeowners association, and the appellant was still grieved by the County's failure to enforce the Zoning Ordinance against the homeowners association.

In response to Mr. Hart's question regarding why the issue was not one for the Board of Supervisors if it was related to proffers, Mr. Danforth said the two Boards had concurrent jurisdiction to hear proffer related issues. He submitted copies of portions of the state code. He said in Fairfax it had been tradition that proffer related appeals went to the Board of Supervisors, and there was a section in the Zoning Ordinance which called for that, but the state code said appellants had the right to appeal proffer related issues to both Boards. Mr. Danforth referenced and discussed the language in the state code.

Mr. Beard, Mr. Hammack, Mr. Hart, Ms. Johnson, and Mr. Danforth discussed the processing of the appeals, the authority of the Boards, and pursuing the issue through litigation.

Mr. Beard said the Zoning Administrator had the right to select what is to be enforced, and a decision had not yet been made. He said the Board had no power to force the Zoning Administrator to make a decision or take an action. Once a decision had been made, then the Board would have the authority to act. Mr. Beard moved that the Board not accept the appeal application. Mr. Byers seconded the motion.

Mr. Hammack said an earlier decision had been made and rescinded, and an appeal could be frustrated by repeatedly rescinding earlier actions. He said inaction was widely considered action just as much as affirmative action. He suggested the decision be further deferred.

Mr. Hart said he could support a deferral based on staff's statement that no decision had been made. He asked that during the deferral period, authority be submitted by either side regarding whether an appeal is appropriate when a zoning violation is alleged and nothing becomes of it be for whatever reason.

Mr. Hammack said the code was broad in that a determination could be not to pursue something, but the Board had no authority to require the Zoning Administrator to do anything.

Mr. Byers said because this involved a special exception and proffers, it was within the purview of the Board of Supervisors.

Mr. Hammack said the appeal related to a determination dated September 27, 2006, and the code required appeals to be filed within 30 days. He said that if the Board refused to accept the appeal, the appellant's rights would be lost. Mr. Hammack said he would rather defer the acceptance to determine if the appellant was able to exercise her rights through the Board of Supervisors.

Mr. Hart made a substitute motion to defer the consideration of acceptance for 30 days. Mr. Hammack seconded the motion, which failed by a vote of 2-3. Mr. Beard, Mr. Byers, and Vice Chairman Ribble voted against the motion. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

Vice Chairman Ribble called for a vote on the original motion to not accept the appeal application. The motion carried by a vote of 3-2. Mr. Hammack and Mr. Hart voted against the motion. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ April 3, 2007, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by James H. Scanlon

Leslie Johnson, Senior Deputy Zoning Administrator, Zoning Administrative Division, stated that the letter sent to the appellant was not a determination of the Zoning Administrator, but merely an information item which explained the process by which the Board of Supervisors took action to establish the commuter park

~ ~ ~ April 3, 2007, After Agenda Items, continued from Page 93

and ride lot. She said the action being appealed was an action of the Board of Supervisors which occurred on October 23, 2006.

Mr. Hart and Ms. Johnson discussed why the statement made in the letter by Mr. Hushour, in his capacity as Senior Assistant to the Zoning Administrator, that he determined the establishment of the lot was properly done by the Board of Supervisors was not within the scope of any order, requirement, decision, or determination.

The appellant, James H. Scanlon, said he disagreed with the position of the Zoning Administrator that his appeal was not timely filed. He said the action by the Board of Supervisors on October 23, 2006, was an agenda item, not a public hearing, to approve an agreement between St. Mary's Church and the County Department of Transportation and not a zoning determination. He said there was no reasonable way for a citizen to know an action was being considered that day. Zoning actions required site postings, mailed notices, and public hearings. A routine approval of a business agreement did not count as an official zoning determination. He said his request for a zoning determination was a valid request, and the response dated February 9, 2007, was an official determination, which he timely appealed on March 9, 2007.

Mr. Hart, Mr. Byers, and Ms. Johnson discussed whether any determination had been made on behalf of the Zoning Administrator.

Vice Chairman Ribble called for speakers.

Jason Heinberg, Law Offices of Walsh, Colucci, Lubeley, Emrich & Terpak, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, came forward to speak, representing St. Mary of Sorrows. He said the church was approached by the County in the effort to find a temporary lot to permit the construction of the parking facility. The church agreed to enter into the agreement in the spirit of being a good neighbor and accommodating the County's request.

Mr. Hammack moved to not accept the appeal for the reasons set forth by staff. He said he did not believe that actions taken by the Board of Supervisors in its legislative capacity were appealable to the Board of Zoning Appeals. Mr. Byers seconded the motion.

Mr. Hart said he disagreed with Mr. Hammack. He said he read the February 9, 2007 letter as a determination because there was a declarative statement in the fourth paragraph of the letter, and it fell within the scope of 15.2-2309.

Mr. Hart, Mr. Hammack, Mr. Beard, and Mr. Byers in discussion determined that if every letter of explanation did not include a disclaimer that it was informational only, every letter written would be appealable.

Vice Chairman Ribble called for the vote to not accept the appeal. The motion carried by a vote of 4-1. Mr. Hart voted against the motion. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

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 Zoning Appeals vs. Board of Supervisors, At Law 2006-11777, and the Board of Zoning Appeals by-laws 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 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

The meeting recessed at 11:57 a.m. and reconvened at 12:27 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 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

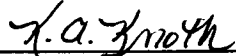
//

~ ~ ~ April 3, 2007, continued from Page 94

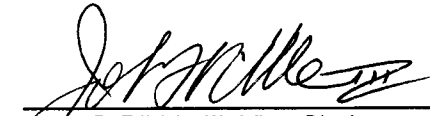
As there was no other business to come before the Board, the meeting was adjourned at 12:28 p.m.

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

Approved on: September 10, 2014



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 10, 2007. The following Board Members were present: Vice Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb and James R. Hart were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:00 a.m. He introduced the newest Board of Zoning Appeals (BZA) member, Thomas Smith, and welcomed him to the Board.

Vice Chairman Ribble asked if there were any matters to bring before the Board.

Mr. Beard noted that John DiGiulian, who had previously held the office of chairman, had not been reappointed to the Board. Mr. Beard moved to nominate John F. Ribble III, current vice chairman, as chairman. Mr. Byers seconded the motion.

A brief discussion followed between Mr. Ribble and Mr. Hammack concerning the nomination, resulting in the determination that the procedure was consistent with the BZA by-laws. Vice Chairman Ribble called for the vote. The motion carried by a vote of 4-0-1. Mr. Hammack abstained from the vote. Ms. Gibb and Mr. Hart were absent from the meeting. John F. Ribble III assumed the Chairman position of the Board of Zoning Appeals.

Referencing Article 2, Sects. 1 and 3, Mr. Beard moved that the BZA by-laws be amended to stipulate there be only one vice chairman for the BZA. Mr. Byers seconded the motion.

Mr. Hammack noted that in the past the BZA had two vice chairmen, and effectively for one reason or another, if there was a vacancy in the chairman position, it might serve the Board to have two vice chairmen. Mr. Hammack said he thought that for such action as changing the by-laws, all Board members should be present.

Chairman Ribble said that he was to understand from speaking with the two absent members, James R. Hart and Nancy E. Gibb, that both were in favor of the by-law amendment, and neither expressed a desire to be considered for a position of vice chairman. Chairman Ribble said that Mr. Hammack remained the sole vice chairman of the BZA, and no vote was necessary to establish that fact.

Chairman Ribble called for a vote on the by-law amendment. The motion carried by a vote of 5-0. Ms. Gibb and Mr. Hart were absent from the meeting.

Mr. Beard acknowledged John DiGiulian's 30 years of outstanding service to the BZA and Fairfax County citizens, 20 of which he had served as the chairman. Mr. Beard said that for the few years he had the pleasure to serve with Mr. DiGiulian, he found him a selfless man of honor and distinction, and he knew he spoke for his colleagues when he wished Mr. DiGiulian all the best in his retirement from the BZA.

Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no further Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ April 10, 2007, Scheduled case of:

9:00 A.M. DALI TAN & JIANMING GONG, SP 2007-HM-004 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 17.6 ft. from rear lot line. Located at 13013 Monroe Manor Dr. on approx. 8,578 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((23)) 7. (Admin. moved from 3/9/07 at appl. req.)

Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jianming Gong, 13013 Monroe Manor Drive, Herndon, 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

~ ~ ~ April 10, 2007, DALI TAN & JIANMING GONG, SP 2007-HM-004, continued from Page 97

staff report. The applicants requested approval to permit a reduction of certain yard requirements to permit an addition 17.6 feet from the rear lot line. The addition would consist of an enclosed sunroom on the rear of the house. The Zoning Ordinance required a minimum rear yard of 25 feet; therefore, a modification of 7.4 feet or 30 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.

Ms. Gong presented the special permit request as outlined in the statement of justification submitted with the application. She said she sought to construct a sunroom in order for her family to enjoy the outdoors and fully utilize her backyard.

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

Mr. Hammack moved to approve SP 2007-HM-004 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DALI TAN & JIANMING GONG, SP 2007-HM-004 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 17.6 ft. from rear lot line. Located at 13013 Monroe Manor Dr. on approx. 8,578 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((23)) 7. (Admin. moved from 3/9/07 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 10, 2007; and

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

1. The applicants are the owners of the land.
2. The reasons set forth in the staff report are adopted.
3. The Board has determined that the applicants have met the six required standards to grant a special permit as set forth in the form.

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

THAT the applicant has presented testimony indicating compliance with 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 (a maximum of 213 square feet) of the proposed addition, as shown on the plat prepared by LS2PC, Land Surveying Services, dated October 13, 2006 as revised through December 19, 2006, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of

~ ~ ~ April 10, 2007, DALI TAN & JIANMING GONG, SP 2007-HM-004, continued from Page 98

an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,914 existing + 2,871 = 4,785 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ April 10, 2007, Scheduled case of:

9:00 A.M. ROBERT BURGOYNE & AMEE VERMILYE, SP 2007-DR-009 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reduction of certain yard requirements to permit additions 11.0 ft. and 10.5 ft. from the side lot line. Located at 6912 Arbor La. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((11)) 11.

Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jeffrey Scott Davis, 215 Caville Drive, Manassas, Virginia, the applicants' 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.

Greg Chase, Senior Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. He noted that a revised affidavit had been distributed that morning. The applicants requested a special permit to allow reductions of certain yard requirements to permit construction of an enclosed porch on the rear of the house 11 feet from a side lot line and a garage expansion at the front of the existing garage 10.5 feet from a side lot line. The purpose of the addition was to enclose an existing porch in the rear of the dwelling into seasonal living space totaling 280 square feet and to add approximately 200 square feet to the front of the existing garage. Staff recommended approval of the subject application.

Mr. Davis presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed sunroom would be constructed over an existing brick patio off the back of the house and would allow more living space for the family. The expansion of the existing garage would provide additional storage space as well as more room for their vehicles.

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

Mr. Byers moved to approve SP 2007-DR-009 for the reasons stated in the Resolution.

//

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

ROBERT BURGOYNE & AMEE VERMILYE, SP 2007-DR-009 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reduction of certain yard requirements to permit additions 11.0 ft. and 10.5 ft. from the side lot line. Located at 6912 Arbor La. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((11)) 11. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 10, 2007; and

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

1. The applicants are the owners of the land.
2. The applicants are in compliance with Numbers 1 through 6.
3. The staff has adopted appropriate rationale for the support of this application.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(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 480 square feet) of the proposed additions as shown on the plat prepared by Alexandria Surveys International, LLC, dated November 10, 2006 as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,600 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.

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

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

~ ~ ~ April 10, 2007, ROBERT BURGOYNE & AMEE VERMILYE, SP 2007-DR-009, continued from
Page 100

special permit. The request must 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. Hart and Ms. Gibb were absent from the meeting.

//

~ ~ ~ April 10, 2007, Scheduled case of:

9:00 A.M. ANDREW AXELRAD AND KALEEN KITAY, SP 2007-HM-010 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 17.7 ft. from side lot line. Located at 9709 Meadowmere Dr. on approx. 38,270 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((22)) 4.

Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jeremy Fleming, 5795-B Burke Center Parkway, Burke, Virginia, the applicants' 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. The subject parcel was zoned R-1 and located at 9709 Meadowmere Drive in the Meadowmere subdivision in the Hunter Mill District. The applicants proposed to construct an approximately 350 square foot, one-story addition 17.7 feet from the eastern side lot line which would contain a therapeutic exercise pool for physical therapy. 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. Fleming presented the special permit request as outlined in the statement of justification submitted with the application. He said the requested addition would enclose a therapeutic indoor pool.

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

Mr. Beard moved to approve SP 2007-HM-010 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREW AXELRAD AND KALEEN KITAY, SP 2007-HM-010 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 17.7 ft. from side lot line. Located at 9709 Meadowmere Dr. on approx. 38,270 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((22)) 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 10, 2007; and

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

1. The applicants are the owners of the land.

~ ~ ~ April 10, 2007, ANDREW AXELRAD AND KALEEN KITAY, SP 2007-HM-010, continued from Page 101

2. The applicants have met all the required standards as set forth in Sect. 8-922, specifically the six standards.
3. Staff has recommended approval of this special permit subject to the proposed development conditions contained in Appendix 1.

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

THAT the applicant has presented testimony indicating compliance with 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 350 square feet) of the proposed addition as shown on the plat prepared by Patrick A. Eckert, dated December 14, 2006, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,742 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ April 10, 2007, Scheduled case of:

9:00 A.M. HOSSEIN FATTAHI, SP 2007-PR-014 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 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.

Chairman Ribble 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

~ ~ ~ April 10, 2007, HOSSEIN FATTAHI, SP 2007-PR-014, continued from Page 102

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. The subject parcel was zoned R-4, with a single-family dwelling, and located at 8723 Litwalton Court in the Tysons Woods subdivision in the Providence District. The applicant requested approval to permit a reduction to certain yard requirements to permit the enclosure of a 295 square foot carport and construction of a storage area, comprising approximately 69 square feet, 6.5 feet from the rear lot 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.

Mr. Fattahi presented the special permit request as outlined in the statement of justification submitted with the application. He said he was approved for a permit ten years prior, but was unable to begin construction at that time. He was now again before the Board for approval so he could commence and complete his project.

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

Mr. Hammack moved to approve SP 2007-PR-014 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HOSSEIN FATTAHI, SP 2007-PR-014 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 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. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 10, 2007; 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 are adopted.

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

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

~ ~ ~ April 10, 2007, HOSSEIN FATTAHI, SP 2007-PR-014, continued from Page 103

2. This special permit is approved for the location and size (295 square foot enclosed carport + approximately 69 square foot storage area = approximately 364 total square feet) of the proposed addition as shown on the plat prepared by R. Thinakaran, dated January 8, 2004, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (1,554 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to 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. Hart and Ms. Gibb were absent from the meeting.

//

~ ~ ~ April 10, 2007, 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. (Admin. moved from 12/5/06 and 2/6/07 at appl. req.)

Chairman Ribble noted that A 2006-DR-054 had been administratively moved to July 10, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ April 10, 2007, Scheduled case of:

9:30 A.M. NADEEM KHALIQ, A 2006-PR-068 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing an eating establishment to operate as a principal use on property in the I-5 District without special exception approval, in violation of Zoning Ordinance Provisions. Located at 8424 Lee Hwy. on approx. 1.07 ac. of land zoned I-5 and HC. Providence District. Tax Map 49-3 ((15)) 3. (Decision deferred from 2/13/07)

Chairman Ribble noted that the Board had previously issued an Intent to Defer A 2006-PR-068.

Mr. Beard moved to defer decision on A 2006-PR-068 to April 24, 2007, at 9:30 a.m., at the appellant's request. Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Hart and Ms. Gibb were absent

~ ~ ~ April 10, 2007, NADEEM KHALIQ, A 2006-PR-068, continued from Page 104

from the meeting.

//

~ ~ ~ April 10, 2007, Scheduled case of:

9:30 A.M. DAVID L. BROWN AND MARY ELLEN BROWN, A 2006-DR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, child's play equipment, a patio, and outdoor storage, all located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1840 Patton Te. On approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 21. (Indefinitely deferred from acceptance) (Reactivated from indefinitely deferred)

Chairman Ribble noted that A 2006-DR-012 had been administratively moved to May 15, 2007, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ April 10, 2007, After Agenda Item:

Approval of December 9, 2003 and February 17, 2004 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Beard seconded the motion, which carried by a vote of 4-0-1. Mr. Smith abstained from the vote. Mr. Hart and Ms. Gibb were absent from the meeting.

//

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

Minutes by: Paula A. McFarland

Approved on: December 1, 2010

K.A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III
John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 24, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Tom Smith was absent from the meeting.

Chairman Ribble called the meeting to order at 9:05 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ April 24, 2007, Scheduled case of:

9:00 A.M. LARRY L. AND ELIZABETH B. SIMMS, SP 2007-DR-016 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit construction of addition 42 ft. from the front lot line. Located at 9900 Beach Mill Rd. on approx. 2.09 ac. of land zoned R-E. Dranesville District. Tax Map 8-1 ((1)) 3.

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

Chairman Ribble called the applicant to the podium.

Jane Kelsey, Jane Kelsey & Associates, 4041 Autumn Court, Fairfax, Virginia, the applicants' agent, reaffirmed the affidavit.

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

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-DR-016, subject to the proposed development conditions.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said the 134-square-foot proposed addition would extend the kitchen. She noted that the original house was located 7.6 feet from the front property line. She referenced a letter in the staff report from the History Commission indicating that the house had been built in 1879 and the addition would not harm the integrity of the historic structure. Ms. Kelsey stated that the application met all the required standards.

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

Mr. Hammack moved to approve SP 2007-DR-016 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LARRY L. AND ELIZABETH B. SIMMS, SP 2007-DR-016 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit construction of addition 42 ft. from the front lot line. Located at 9900 Beach Mill Rd. on approx. 2.09 ac. of land zoned R-E. Dranesville District. Tax Map 8-1 ((1)) 3. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 24, 2007; and

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

1. The applicants are the owners of the land.
2. The Board incorporates the rationale of the staff.

~ ~ ~ April 24, 2007, LARRY L. AND ELIZABETH B. SIMMS, SP 2007-DR-016, continued from Page 107

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (134 square feet) of an addition, as shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated October 23, 2006, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,800 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Smith was absent from the meeting and Mr. Hart recused himself.

//

~ ~ ~ April 24, 2007, 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.) (Admin. moved from 11/28/07 for ads) (Decision deferred from 1/23/07)

Chairman Ribble noted that SPA 82-V-091-05 had been deferred for decision only for additional information, and the Board had subsequently received a memorandum and revised development conditions.

Mr. Byers commended the Fairfax County professional staff and stated that the Board had a very narrow

~ ~ ~ April 24, 2007, VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05, continued from Page 108

scope in the case and was reviewing the quarry's compliance with prior imposed conditions and restrictions and determining if the intended use still satisfied the relevant Zoning Ordinance provisions. He said the Board did not make policy, which was the distinct prerogative not only of the Board of Supervisors, but in this particular case, may also be within the purview of the General Assembly of the Commonwealth of Virginia.

In response to questions from Mr. Hammack, Greg Chase, Senior Staff Coordinator, stated that in response to the Board's request for additional information, the Fire and Rescue Department was asked to do an analysis and suggest conditions. He said language could be added to the conditions to ensure it was clear that Zoning Enforcement, as part of the special permit process, was ultimately the controlling entity; however, staff wanted to ensure that the expertise and knowledge of the Fire Department was included. He said the Fire Marshall's development conditions would be added to staff's conditions. Ben Coffman, Fire Marshall's Office, said his office reviewed the conditions and concluded that development conditions were needed to help clarify and assign some level of responsibility to ensure there was coverage on a long-term basis. He said the language had been incorporated into the conditions assigning oversight by the Fire Marshall's Office as the professional technical expert in the blasting operation itself, which was a capability that Zoning did not currently possess. He said interpreting seismographic results and looking at the amount of explosives used in a blast were aspects of enforcement that were not necessarily within the scope of Zoning's ability, so the Fire Marshall's Office wanted that oversight to remain with their department.

Mr. Hammack asked whether the Fire Marshall's Office had legal authority under other sections of the statutes irrespective of the Zoning Ordinance and if a letter issued by the Fire Marshall's Office would be appealable to the Board or not appealable because it was not under the Zoning Ordinance. Chairman Ribble said he thought Mr. Byers had prepared a condition that would address that. Mr. Hammack asked that the Chairman allow a response to his questions. Susan Langdon, Chief, Special Permit and Variance Branch, stated that she could not answer whether or not a letter signed by the Fire Marshall would be appealable. She said the proposed changes to the conditions arose in part as a result of concern from the Board of Supervisors as to whether the Zoning Enforcement Branch or Zoning personnel had the expertise to review some of the information regarding the quarry, and addressing that was the intention of the conditions Mr. Hammack had questioned. She noted that anything from Zoning Enforcement would be appealable.

In response to questions from Mr. Hammack, Mr. Coffman said the Fire Marshall did not have separate authority to regulate or otherwise inspect any blasting operation at any quarry in Fairfax County. That authority fell to the Virginia Department of Mines, Minerals, and Energy. He said it was his understanding that there were no regular blasting operation inspections performed by the State, and one of the reasons his department had suggested the development condition language was to enable them to assist zoning staff in looking at the technical aspects so they could ensure the quarry regulations were followed in the absence of routine inspections by the State mining agency.

In response to Mr. Hammack's question regarding why staff did not have coordination with the State instead of the Fire Marshall since they had the enforcement authority, Ms. Langdon said the conditions related to what was in the Zoning Ordinance and what staff felt it could do, and she did not think that staff could force the State to come out and make an inspection.

Mr. Hammack said that as he understood from Mr. Coffman's testimony, the Fire Marshall's Office did not have authority over the quarries, and the authority would be vested by the Board by virtue of the development conditions. He asked if the Board had the ability to incorporate authority that was not under the Zoning Ordinance. Ms. Langdon responded that staff believed that it did. She said it was a stricter regulation, and if the Board found that there was a nexus, they could implement the development conditions.

Mr. Hammack said the Board was a creature of statute, and its authorities were strictly limited by the Code of Virginia. He said the Board did not necessarily have reasonable and necessary powers that one might think accrue because Virginia was a Dillon Rule state, and if it was not in the Code, the Board did not have the ability to incorporate other outside authorities.

Mr. Hart stated that he did not know if the last clause of the new Condition 36 that referred to the mediation of resolution of such complaints was a good idea because he did not think the Board wanted to suggest that people could not go to court if they had a problem or would have to go through a Fire Marshall mediation. Ms. Langdon said staff had no objection to removing Condition 36.

Mr. Hart and Mr. Chase discussed the conditions pertaining to police patrols and road improvements, with Mr. Chase saying they resulted from meetings with neighborhood associations and groups in Mount Vernon.

Mr. Hart said he had visited the site, read all the materials, and was present for one blast. He said two stacks of paper had been submitted to the Board. One contained all the reports and scientific data, and it appeared that everything was within acceptable standards, which were quite low compared to other examples. The second stack contained correspondence from surrounding neighbors, who had many problems with cracking septic tanks and other things happening in their homes. Mr. Hart said that implicit in staff's recommendation of approval was a conclusion that the quarry was not the cause of the impact or damage to the residences, and he asked if it was staff's position that the damage had been caused by something other than the blasting from the quarry. Ms. Langdon stated that staff had looked at the information, the standards and requirements for the quarries, the scientific information presented with respect to the cracked septic tanks and other damage, and based on that information, it did not appear that the damage had come from the quarry. She said staff felt the quarry was a viable use that was well within and below all state, federal, and county standards.

In response to questions from Mr. Hart, Ms. Langdon said it was staff's opinion that five years was an appropriate review period to look at the quarry again, and nothing the Board or staff was doing would prevent anyone with blasting damage from going to court.

Mr. Byers said what concerned him was that when something was presented to the Fire Marshall, Zoning Enforcement was not informed. He said there needed to be a lead agency because there would be complaints or information would be lost in transit, and Zoning Enforcement would not understand everything that was going on.

Ms. Langdon said the Fire Marshall had brought up an issue concerning Condition 36, and the Board may want Mr. Coffman to address that before making a decision on including or deleting it. Mr. Coffman said Condition 36 included language that may not seem normal to the Board; however, it was language the Fire Marshall's Office used daily to deal with blasting. He said he was the Explosions Enforcement Officer, and a duty of his position was to have responsibility for explosives matters and oversee the resolution of disputes if possible, but it did not negate anyone from being able to seek legal remedies through the court system. Mr. Coffman said his office had a process to investigate and document a complaint, look into seismographic, quarry, and blasting records, look at the homes and previous conditions, and determine a cause if possible. He said the information was available to the person making a complaint. The purpose of the dispute resolution was to provide them with the possibility of a thorough investigation, not to tell anyone that their dispute was groundless or that they had no further recourse. Mr. Coffman said Condition 36 paired with Condition 37 would be in cooperation with Zoning Enforcement. Zoning would be the lead agency, and the Fire Marshall's Office would work with Zoning to help determine compliance with the development conditions.

Mr. Byers moved to approve SPA 82-V-091-05 with modifications to the proposed development conditions. He said the application was in harmony with the Comprehensive Plan, which clearly recognized the existence of the quarry, and the quarry was part of the land area use concept plan, with the plan map indicating the property was planned for public facilities, government and institutional use, industrial use, and public park. Mr. Byers said the transportation analysis indicated the application did not create significant additional impacts on the surrounding public street system, and there were no significant transportation issues associated with the application. He referenced a memorandum dated February 9, 2007, from the Department of Transportation to the Department of Planning and Zoning indicating that total truck traffic constituted one percent of the traffic on Route 123. He said the Air Pollution Control Division of the Health Department conducted its annual review of the existing quarry operation and reviewed the special permit amendment application, indicated there was no problem with ambient particulate matter, and the total suspended particulates were well controlled.

Mr. Byers stated that the Zoning Enforcement Branch of the Zoning Administration Division was responsible for monitoring noise, hours of operation and earthborn vibration, and conducting periodic inspections of the quarry, and multiple inspections done indicated there were no quarry operation violations. In addition, several inspections were done during 2006 of the pit area, processing plant, repair shop, and recovery and storage areas, which revealed that Vulcan had continued to comply with all of the requirements of the special permit. A comprehensive facility tour was done on August 5, 2006, by County staff, at which time several

~ ~ ~ April 24, 2007, VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05, continued from Page 110

blasts had been conducted. Mr. Byers said he had personally inspected the Vulcan Quarry on January 12, 2007, and witnessed the procedures associated with and the blast itself, and no anomalies were noted. He said he had reviewed the seismographic data covering the period from January 4, 2006, through June 30, 2006, which had previously been submitted to the Explosives Enforcement Officer of the Fairfax County Fire and Rescue Department, and all ground vibration levels were below 0.4 inches per second, which was mandated by the County. Mr. Byers said the Fire and Rescue Department had also provided evidence which indicated no significant adverse issues regarding ground vibration and air over pressure from analysis of tests conducted during the period January of 2006 through October of 2006 at or near the Vulcan Quarry Lorton site. Mr. Byers said the results of the ground vibration tests were well below the County mandated 0.4 inches per second, and the maximum air over pressure was also well below the County mandated 130 decibels.

Mr. Byers said it should be noted that the standards of Fairfax County were more stringent than federal or Commonwealth of Virginia standards. He stated that Vulcan Construction Materials operated under the strictest, most intense environmental monitoring and review, which was conducted by 16 separate federal, state, and local government agencies, among whom included the federal Bureau of Mines, the Mining Safety and Health Administration, the Virginia Division of Mines and Quarries, the Water Control Board, the Air Pollution Control Board, the Fairfax County Fire Marshall, and numerous other County agencies. With the imposition of the proposed development conditions associated with the special permit amendment, Mr. Byers said the quarry would arguably be the most regulated activity of its kind in the Commonwealth of Virginia.

Mr. Byers said the proposed development conditions appropriately reflected the numerous scientific analyses pertinent to the operation, and all the analyses indicated a quarry, such as the one operated by Vulcan at Occoquan, could exist next to residential communities. Mr. Byers quoted from a letter dated March 28, 2007, from Mayor Earnest W. Porta, Jr., of the Town of Occoquan to the Board Chairman, John DiGiulian, stating the Town has no concerns regarding the continued operation of the quarry. Mr. Byers noted that County staff recommended approval.

Mr. Byers suggested modifications to the revised proposed development conditions dated April 20, 2007. He said in each condition he wanted Zoning Enforcement to be listed before the Fire Marshall. Condition 36 would read Zoning Enforcement and the Fairfax County Fire Marshall shall have concurrent responsibility for oversight of all blasting or explosive related operations. Mr. Byers suggested a period be added after the word "complaints" and the language "and the mediation of the resolution of such complaints" be deleted. Condition 37, Zoning Enforcement would be listed first. Conditions 41, 42, and 43, Zoning Enforcement would be substituted for Fire Marshall. Condition 44 would read the applicant shall forward all blasting and explosive related complaints to Zoning Enforcement. The following sentence would read complaints claiming damage shall be reported to Zoning Enforcement. Fire Marshall would be replaced with Zoning Enforcement in the last sentence of Condition 44 and in Condition 45. Mr. Byers suggested Condition 46 be deleted.

Mr. Beard seconded the motion.

Mr Hammack said that the motion went part of the way to satisfy his concerns; however, with Conditions 36, 37, and 38, he had concerns about whether the Board had the legal authority to require the Fire Marshall under the provisions. He said the Board was reminded regularly by the courts that it could only do things that were expressly stated in the Code of Virginia. With respect to Condition 38, he said the Board was requiring the applicant to acquire any and all necessary fire prevention code permits, and if the permits were required, the condition was not necessary. Mr. Hammack said he did not think the Board had the authority to require it under Section 15.2-2314, but perhaps it did, and he wanted to see some legal authority or analysis that would give the Board the authority. He said the Board did not have a cover letter from the Fire Marshall in the package stating under what section of the Virginia Code or the Ordinance the Board would have the authority to impose it. Mr. Hammack said Condition 37 would vest in the Fire Marshall authority to write notices of violation, issue temporary stop work orders, suspend fire code permits or revoke fire prevention code permits, but if that was not in the Ordinance, the Board did not have the authority to require that.

Mr. Hammack said he was not against the Fire Marshall's participation, but it was the form of the development conditions that concerned him because the Board would be vesting the authority in someone else to do something and did not have the actual power or authority to do that. Mr. Hammack said that since he had only seen the Fire Marshall's proposed development conditions the previous day, he was going

~ ~ ~ April 24, 2007, VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05, continued from Page 111

to abstain from voting in favor of the motion and asked that the Board defer the decision and obtain additional legal authority.

Chairman Ribble suggested the decision be deferred for one week and Elizabeth Whiting be consulted regarding her opinion on the proposed conditions.

Mr. Byers said his assumption was that the Fire Marshall would not suggest a development condition unless he had a statutory right to do so. He said that from what he had seen, it appeared to be within the purview of the Fire Marshall, and he asked whether that was correct. Mr. Coffman said that in normal County operations, that would be correct; however, the statewide fire prevention code in Virginia exempted any operation managed to Title 45 of the Virginia State Code from Fire Marshall review, and quarries operated under Title 45. He said his staff had found, during the process of answering the Board's questions and through assisting Zoning, that there was a gap between what the State and the Fire Marshall did. He stated that the proposed conditions were an attempt to close the gap with the intent for the Fire Marshall to work with Zoning to ensure that blasting regulation in the quarry was maintained in the absence of a normal state inspection.

Mr. Hart said he believed the Board had the authority under the statute to impose development conditions which were appropriate to mitigate impacts, but what he was not sure whether extra statutory delegation was going one step further than that. He said the Board could require the Fire Marshall to do certain things, but once authority was delegated from the Board or Zoning Enforcement to the Fire Marshall, he was not sure if the Board was within that same scope. Another concern he had was if the issues were covered by some other regulation, whether it was by the state or the Fire Marshall, one of the reasons the Board did not typically incorporate other provisions or the terms verbatim into a development condition was because those provisions could be amended or repealed or other exemptions could be created by other groups at different times. Mr. Hart said the development conditions would govern the application, and it would be locked into that even if the state regulations changed. He said he did not know if it was appropriate for the Board to act without knowing whether it had the authority to delegate anything to the Fire Marshall or whether the Board would be locking itself into regulations which may become obsolete. He said he would be in favor of a short deferral to consult Ms. Whiting.

Mr. Hart made a substitute motion to defer decision on SPA 82-V-091-05 to May 1, 2007, at 9:00 a.m., to allow staff to consult with counsel to determine whether or not the Board had the authority to delegate to the Fire Marshall and whether terms of other regulations should be incorporated.

Mr. Beard said he failed to see how Mr. Hart's motion went to the crux of what the Board was here for.

Mr. Hammack seconded the substitute motion, which carried by a vote of 4-2. Mr. Beard and Mr. Byers voted against the motion. Tom Smith was absent from the meeting.

Mr. Hammack asked staff to inquire of counsel whether there was any authority under Title 45 which would allow the Virginia Department of Mines to delegate to the local Fire Marshall.

//

~ ~ ~ April 24, 2007, Scheduled case of:

9:00 A.M. TRUSTEES OF SAINT AIDAN'S EPISCOPAL CHURCH, SPA 92-V-003-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 92-V-003 previously approved for a place of worship and nursery school to permit building additions and site modifications. Located at 8531 Riverside Rd. on approx. 7.17 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 33.

Chairman Ribble noted that a deferral request had been received regarding SPA 92-V-003-02.

Ms. Gibb moved to defer SPA 92-V-003-02 to May 15, 2007, at 9:00 a.m., at the applicant's request. Mr. Hart seconded the motion, which carried by a vote of 6-0. Tom Smith was absent from the meeting.

//

~ ~ ~ April 24, 2007, Scheduled case of:

9:00 A.M. JODI B. ARGANBRIGHT, SP 2007-BR-013 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit construction of addition 9.4 ft. from the side lot line with total minimum side yards of 19.7 ft. Located at 9658 Boyett Ct. on approx. 11,848 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((9)) 22.

Chairman Ribble called the applicant to the podium.

Jodi B. Arganbright, 9658 Boyett Court, Fairfax, Virginia, reaffirmed the affidavit.

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

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-BR-013, subject to the proposed development conditions.

Ms. Arganbright presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said in her development of colonial style, split-foyer, and split-level homes, the split-level homes came with carports, and the other homes had garages. She wanted to convert her carport into a garage with brick matching the existing structure to provide vehicle protection, add value to and beautify her home, and improve the appearance of the neighborhood. She said she had spoken with her neighbors and the homeowners association regarding her request.

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

Ms. Gibb moved to approve SP 2007-BR-013 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JODI B. ARGANBRIGHT, SP 2007-BR-013 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit construction of addition 9.4 ft. from the side lot line with total minimum side yards of 19.7 ft. Located at 9658 Boyett Ct. on approx. 11,848 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((9)) 22. 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 24, 2007; and

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

1. The applicant is the owner of the land.
2. The Board adopted the staff recommendation and staff report that recommended approval of the application.
3. The applicant meets standards one through six.

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

THAT the applicant has presented testimony indicating compliance with 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:

~ ~ ~ April 24, 2007, JODI B. ARGANBRIGHT, SP 2007-BR-013, continued from Page 113

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 (264 square foot garage) of the existing garage addition as shown on the plat prepared by Harold A. Logan, dated November 30, 2006 as revised through December 1, 2006, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,000 existing square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The applicant shall obtain a building permit and approval of final inspections within 90 days of the approval date of this special permit or the 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.

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

Mr. Hammack seconded the motion, which carried by a vote of 5-0-1. Mr. Smith was absent from the meeting, and Mr. Byers abstained from the vote.

//

~ ~ ~ April 24, 2007, Scheduled case of:

9:00 A.M. ONE GOD MINISTRY-A GLOBAL CHURCH, SP 2007-SP-006 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12609 Braddock Rd. on approx. 4.84 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((3)) 4. (Decision deferred from 4/3/07)

Chairman Ribble noted that a request to defer decision had been received regarding SP 2007-SP-006.

Mr. Hart moved to defer decision on SP 2007-SP-006 to May 15, 2007, at 9:00 a.m., at the applicant's request. Mr. Byers seconded the motion, which carried by a vote of 6-0. Tom Smith was absent from the meeting.

//

~ ~ ~ April 24, 2007, Scheduled case of:

9:00 A.M. FAIRFAX COUNTY PARK AUTHORITY, SP 2007-LE-012 Appl. under Sect(s). 8-920 of the Zoning Ordinance to permit an existing containment structure. Located at 6000 Trailside Dr. on approx. 6.65 ac. of land zoned R-2. Lee District. Tax Map 80-4 ((1)) 24.

Chairman Ribble called the applicant to the podium.

~ ~ ~ April 24, 2007, FAIRFAX COUNTY PARK AUTHORITY, SP 2007-LE-012, continued from Page 114

Diane Probus, Park Planner, Fairfax County Park Authority, reaffirmed the affidavit.

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

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-LE-012, subject to the proposed development conditions.

Ms. Probus presented the special permit request as outlined in the statement of justification submitted with the application. She said the application was for approval of an existing containment structure at Trailside Park in the Lee Magisterial District. After the nearby interchange opened, the Park Authority built the containment structure in response to incidents of balls hit into the right-of-way of the interchange. The Park Authority, in cooperation with the Risk Management Division, determined a 50-foot tall net would need to be installed to prevent balls from leaving the park, and with concurrence from the Board of Supervisors that the containment net be erected as soon as practical to ensure public safety, the Park Authority proceeded with the containment structure installation. Ms. Probus said that on July 11, 2005, the Board of Supervisors adopted an amendment to the Zoning Ordinance adding containment structures as special permit uses and standards for the use.

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

Mr. Beard moved to approve SP 2007-LE-012 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FAIRFAX COUNTY PARK AUTHORITY, SP 2007-LE-012 Appl. under Sect(s). 8-920 of the Zoning Ordinance to permit an existing containment structure. Located at 6000 Trailside Dr. on approx. 6.65 ac. of land zoned R-2. Lee District. Tax Map 80-4 ((1)) 24. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 24, 2007; 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). 8-920 of the Zoning Ordinance.

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

1. This Special Permit is approved for the location and size of the containment structure as shown on the plat entitled "Special Permit Plat – Trailside Park Containment Structure As Built," prepared by "SS," dated January 23, 2007 as submitted with this application and is not transferable to other land.
2. The applicant shall obtain any required building permits and inspections within 90 days of the approval date of this special permit, or the special permit shall become null and void.

~ ~ ~ April 24, 2007, FAIRFAX COUNTY PARK AUTHORITY, SP 2007-LE-012, continued from Page 115

3. The containment structure (net) shall be consistent with that shown in the pictures included in Attachment 1 to the development conditions.

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

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

//

~ ~ ~ April 24, 2007, 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.) (Decision deferred from 12/19/06 and 3/27/07)

Chairman Ribble noted that SP 2006-SU-055 had been deferred for decision to allow the applicant to address the issues outlined in the staff report, and the Board had subsequently received an addendum to the staff report.

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the revised proposed development conditions, with Ms. Langdon stating that when the Department of Transportation reviewed the conditions based on the revised plat, a revision to Condition 17 and deletion of Condition 18 were suggested because they were addressed on the plat.

In response to questions from Mr. Hart regarding Condition 15, Ms. Langdon said staff was concerned about the bulk and mass of the building in general and the amount of parking shown on the plat. She said staff continued to recommend denial of the application, but had included Condition 15 to ensure the structure, if built, would be consistent with the architectural drawings the applicant submitted. Chairman Ribble noted that the applicant had submitted proposed development conditions at the hearing that indicated the exterior of the church would be red brick.

Stephen K. Fox, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, the applicant's agent, came forward to speak. He said a traffic report done by a consultant indicated the church use did not warrant a left-turn lane because the use was off peak given the traffic generation on Ordway Road. Since the last hearing, he had met with the Office of Transportation and a representative from the Virginia Department of Transportation (VDOT) and came up with a design for a shortened left-turn lane that VDOT thought was safe and could be approved. Mr. Fox said it was within the existing right-of-way, so no dedication was needed.

Regarding stormwater management outfall, Mr. Fox said the outfall for the site had to go through the Northern Virginia Regional Park Authority property, and they retained engineering staff to review applications. He said he had met with them on the site, and the applicant proposed placing the stormwater outfall where the Northern Virginia Regional Park Authority indicated they would recommend approval, subject to the engineering review. He explained that it was placed on the north side because that was an area of park property which had already been partially cleared for the Fairfax County sanitary sewer line. Mr. Fox said the applicant would have to pay fees for the engineering review, but felt approval would ultimately be received.

With respect to undisturbed open space, Mr. Fox said the applicant believed planted transitional yards should be included in undisturbed open space, but in order to increase the percentage, the applicant had changed the entire stormwater management plan and gone to an underground stormwater management system, which allowed them to recapture the surface area that was previously the proposed pond. Mr. Fox said the site was impacted by areas that could not be used because 11 percent of the site was easements which would remain undisturbed, but counted in the overall site area and not in the undisturbed open space. He discussed a proceeding before the federal Energy Regulatory Commission in which Fairfax County was involved where it was recognized that revegetated areas could function as undisturbed open space. Mr. Fox said inclusion of the easements in undisturbed open space and the transitional yards as revegetated open space, the site would be 70 percent open space if the normally accepted County open space definition was

~ ~ ~ April 24, 2007, TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2006-SU-055, continued from Page 116

applied, and that would be comprised of 40 percent classically undisturbed open space, 11 percent in the easements, eight percent in the transitional yards, and the remaining as other planted areas throughout the site. He said the applicant's lot was the largest lot along Ordway Road, and most lots along Ordway Road were small nonconforming R-C lots with coverage much greater than the applicant proposed. Mr. Fox concluded his presentation by outlining the development conditions proposed by the applicant.

Discussions ensued regarding the parking configuration and surface material; the storm drainage easement and licensing; alternative stormwater management methods; open space; transitional screening; Best Management Practices (BMPs); restrictions on property located in the R-C District; the Religious Land Use and Institutionalized Persons Act; tree preservation, replanting, and conservation plans; and the open space percentages of other applications previously heard by the Board.

Mr. Hart moved to approve SP 2006-SU-055 for the reasons stated in the Resolution with modifications to the development conditions. Mr. Hammack seconded the motion for purposes of discussion.

Mr. Hammack, Mr. Beard, Mr. Byers, and Ms. Gibb indicated their opposition, stating concerns about the open space issue, the storm drainage easement, BMPs, intensity, compatibility with the area, and stormwater runoff.

The motion failed by a vote of 2-4; **THEREFORE, THE APPLICATION WAS DENIED.** Ms. Gibb, Mr. Beard, Mr. Byers, and Mr. Hammack voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refiling an application. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

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.) (Decision deferred from 12/19/06 and 3/27/07). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 24, 2007; and

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

1. The applicants are the owners of the land.
2. This is a very difficult case like many other applications for non-residential uses in the R-C.
3. This is a relatively small site, approximately six acres although it is located on an arterial roadway.
4. Throughout the R-C District, the redevelopment or the remaining development on vacant sites fronting on an arterial has often been with a non-residential use such as a church.
5. The Comprehensive Plan requires a rigorous review of non-residential uses in the R-C District and the Board has given this case that kind of rigorous review.
6. Usually the Board wants to see 50 percent undisturbed open space which is a policy designed to protect water quality, not an ordinance requirement and not a hard and fast rule and on occasion the Board has made some exceptions to that on a case by case basis looking at particular sites or their contexts or how water quality standards might otherwise be achieved.
7. This site is not only impacted because of its size in combination with the size of the building that is proposed but also the easements to the north and south.
8. There was a great deal of criticism in the original staff report and the applicant has responded to

~ ~ ~ April 24, 2007, TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2006-SU-055, continued from Page 117

some extent with the changes that have since been made.

9. The 50 percent open space is not necessarily a bar to approval of this.
10. The Board is content with the intensity of this use, given the particular context that the neighborhood along Ordway Road consists largely of non-conforming narrow lots much smaller than five acres.
11. In the past few years and with the introduction of public sewer into that conservation district, many of those lots have been developed or redeveloped with much larger new homes than the type of cottages or what else had been on those lots previously.
12. Those lot's structures are relatively close to the street and side lines and take up a considerable area of the lot and much of the lot is cleared and this area isn't particularly heavily wooded anyway.
13. There have been other non-residential approvals on Ordway Road. The Board notated a large church at the northern end and the Deepwood Veterinary Clinic on the same side of the street, a few lots down.
14. With the changes to the plan, the traffic issue is largely resolved and the citizens or land use committee struggled with some of the same issues as staff and they ultimately had a split vote. They decided six to two to endorse this but recommendation is approval with some modifications which will be reviewed once the conditions are being addressed.

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

THAT the applicant has presented testimony indicating compliance with 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.

Mr. Hammack seconded the motion, which **FAILED**** by a vote of 2-4; **THEREFORE, THE APPLICATION WAS DENIED.** Ms. Gibb, Mr. Beard, Mr. Byers, and Mr. Hammack voted against the motion. Mr. Smith was absent from the meeting. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Hammack seconded the motion, which carried by a vote of 6-0.

** 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.

//

~ ~ ~ April 24, 2007, 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, 9/12/06, 12/19/06, and 3/20/07 at appl. req.)

Chairman Ribble noted that A 2004-DR-042 had been withdrawn.

//

~ ~ ~ April 24, 2007, 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, 9/12/06, 12/19/06, and 3/20/07 at appl. req.)

Chairman Ribble noted that an administrative withdrawal was pending regarding A 2004-DR-040.

~ ~ ~ April 24, 2007, BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040, continued from Page 118

Jayne Collins, Staff Coordinator, Zoning Administration Division, stated that new notices of violation had been issued, and A 2004-DR-040 would be administratively withdrawn. She stated that the noise wall was under construction, which would resolve the issue.

//

~ ~ ~ April 24, 2007, 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, 9/12/06, 12/19/06, and 3/20/07 at appl. req.)

Chairman Ribble noted that an administrative withdrawal was pending regarding A 2004-DR-041.

Jayne Collins, Staff Coordinator, Zoning Administration Division, stated that new notices of violation had been issued, and A 2004-DR-041 would be administratively withdrawn. She stated that the noise wall was under construction, which would resolve the issue.

//

~ ~ ~ April 24, 2007, Scheduled case of:

9:30 A.M. NADEEM KHALIQ, A 2006-PR-068 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing an eating establishment to operate as a principal use on property in the I-5 District without special exception approval, in violation of Zoning Ordinance Provisions. Located at 8424 Lee Hwy. on approx. 1.07 ac. of land zoned I-5 and HC. Providence District. Tax Map 49-3 ((15)) 3. (Decision deferred from 2/13/07 and 4/10/07)

Chairman Ribble noted that A 2006-PR-068 had been deferred for decision only from April 10, 2007.

Jayne Collins, Staff Coordinator, Zoning Administration Division, stated that the appeal had initially been deferred for decision because all of the entities that were associated with the property had not been issued notices of violation, and it was subsequently deferred for decision because the appellant's agent could not be present on April 10, 2007.

In response to questions from Mr. Hart, Ms. Collins indicated that no appeals had been filed of the additional notices of violation issued, and Charles Cohenour, Zoning Enforcement Branch, said the deadline for filing had passed.

Susan Earman, Friedlander, Friedlander & Earman, PC, 1364 Beverly Road, McLean, Virginia, the appellant's agent, came forward to speak. She stated that the appellant's position was that they were in compliance.

Chairman Ribble stated that the decision had been deferred only to provide notice to the additional parties.

Ms. Earman said that at the time of a meeting with the Zoning Enforcement Branch in late March, the appellant was in compliance with the seating, and an additional tenant was present who could discuss the hours of operation.

Mr. Hart asked whether it was objectively determinable that there were eight too many seats. Ms. Earman said she had understood that when she had met with Zoning Enforcement in March that the appellant was in compliance, and she was unaware until reading the staff report that staff felt the appellant had more seats than allowed under the non-residential use permit. She said it had been discussed that a booth was used as an office and people were not seated in the booth, and that could be remedied by removing a table. She

~ ~ ~ April 24, 2007, NADEEM KHALIQ, A 2006-PR-068, continued from Page 119

said the owner had submitted a document stating that the tenant's operating hours were acceptable to the other tenants occupying the center. Ms. Earman said a special exception application had not been filed due to parking issues. Her client would have to lease additional parking and was currently in negotiations to do so.

Mr. Hammack moved to uphold the determination of the Zoning Administrator for the reasons set forth in the staff report. He said the Board had heard that the appellant had attempted to come into compliance, but had not heard anything to indicate they had or that staff's opinion was wrong. Mr. Hammack suggested the best remedy would be for the appellant to file a special exception application. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Board of Zoning Appeals vs. Board of Supervisors, 06-11777; Horner vs. Board of Zoning Appeals, 06-7696; Couture Tehmina vs. Board of Zoning Appeals, 06-13072; 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. Smith was absent from the meeting.

The meeting recessed at 11:51 a.m. and reconvened at 12:32 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. Beard seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

//

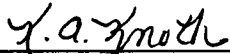
Mr. Hammack moved that the Board authorize its attorney to take the action discussed in the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 5-1. Mr. Hart voted against the motion. Mr. Smith was absent from the meeting.

//


As there was no other business to come before the Board, the meeting was adjourned at 12:35 p.m.

Minutes by: Kathleen A. Knoth

Approved on: October 29, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 1, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ May 1, 2007, 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 ass 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.) (Admin. moved from 11/28/07 for ads) (Decision deferred from 1/23/07 and 4/24/07)

Chairman Ribble noted that SPA 82-V-091-05 had previously been deferred for decision only for revisions to development conditions, and revised development conditions dated April 30, 2007, had been distributed.

Mr. Byers moved to approve SPA 82-V-091-05 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

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.) (Admin. moved from 11/28/07 for ads) (Decision deferred from 1/23/07 and 4/24/07) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 1, 2007; 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, R-C, I-6 and NR.
3. The area of the lot is 307.68 acres.
4. The SPA is in harmony with the Comprehensive Plan.
5. The Plan language clearly recognizes the quarry's existence as shown in Figure 9 on Page 24 of the Laurel Hill Community Planning Sector.
6. The Vulcan Quarry is part of the land area use concept plan.
7. The Plan map indicates the property is planned for public facilities, government and institutional use, industrial use and public park.
8. The transportation analysis indicates the proposed application does not create significant additional impacts on the surrounding public street system.
9. There are no significant transportation issues associated with this application.

10. In a memorandum dated February 9, 2007, from Angela Rodeheaver, Chief, Site Analysis Section, Department of Transportation, to Ms. Barbara Byron, Director, Zoning Evaluation Division, Department of Planning and Zoning, states truck traffic constitutes one percent of total traffic on Route 123.
11. The Air Pollution Control Division of the Health Department has conducted its annual review of the existing quarry operation and has reviewed the subject special permit amendment application. This report indicates there is no problem with ambient particulate matter, and the total suspended particles, or TSPs, are well controlled.
12. The Zoning Enforcement Branch of the Zoning Administration Division is responsible for monitoring noise, hours of operation, earth-borne vibration, and for conducting periodic inspections of the Vulcan quarry site.
13. Multiple inspections have indicated there are no violations existing with the quarry operation and, in addition, several inspections were made during 2006 of the pit area, the processing plant, the repair shop, the recovery area and the storage area. These inspections reveal Vulcan Materials Company has continued to comply with the requirements of the special permit.
14. A comprehensive facility tour was also made by County staff on August 5, 2006. During that time several blasts were conducted.
15. I also personally inspected the Vulcan Quarry on January 12, 2007, witnessing the procedures associated with the blast and from the blast itself, with no anomalies noted.
16. I also reviewed all of the seismographic data covering the time period from the 4th of January, 2006, through the 30th of June, 2006, which had been previously submitted to the explosives enforcement officer of Fairfax County Fire and Rescue Department. All the ground vibration levels were below 0.4 inches per second as the explosives officer had previously certified and as mandated by the County.
17. The Fire and Rescue Department provided empirical evidence indicating no significant issues regarding ground vibration and air over pressure from an analysis of tests conducted during the period of January 2006 to October 2006, at or near the Vulcan Quarry Lorton site.
18. As noted above, the results of the ground vibration tests were well below the County mandated .4 inches per second.
19. The maximum air overpressure was also well below the County mandated 130 dBL.
20. It should also be noted the standards of Fairfax County are much more stringent than either federal or commonwealth standards.
21. Vulcan Construction Company operates under the strictest and most intense environmental monitoring and review standards. These standards are enforced by 16 separate federal, state and local government agencies, among whom are the Federal Bureau of Mines, the Mining Safety and Health Administration, the Virginia Division of Mines and Quarries, the State Water Control Board, the State Air Pollution Control Board, the Fairfax County Fire Marshall, and numerous other County agencies.
22. With the imposition of the proposed development conditions associated with this special permit amendment, this will arguably be the most regulated activity of its kind in the commonwealth, if not the entire United States.
23. The proposed development conditions appropriately reflect the numerous empirical scientific studies and analyses pertinent to this operation.
24. All of these analyses indicate a quarry such as the one operated by Vulcan at Occoquan can exist next to residential communities.
25. A letter dated the 28th of March, 2007, from Mayor Ernest W. Porta Jr., of the Town of Occoquan to then BZA Chairman John DiGiulian, stated "Without exception we have found Vulcan to be an outstanding corporate citizen in all their dealings with us. Accordingly, the town has no concerns or objections regarding the continued operation of the Occoquan Graham Quarry."
26. The staff recommends approval of this SPA and believes any damage to homes has not been as the result of Vulcan operations.

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. 8-105, Standards for all Group 1 Uses.

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, Vulcan Construction Materials, LP, and is not transferable without further action of this Board, and is for the location indicated on the application, (approximately 307.68 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 Bury + Partners Engineering Solutions dated May 25, 2006, and signed May 31, 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 granted for a period of five (5) years from the approval date of SPA 82- V-091-5 with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.
5. 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.
6. The proposed berm as shown on the special permit plat along the northeastern lot line shall be maintained. A minimum of 100 feet of existing vegetation shall be preserved between the berm and the northeastern lot line.
7. The existing berms east of the expansion area and north of Peniwill Drive shall be maintained.
8. The areas denoted as EQCs on the special permit plat shall be permanently marked with orange fencing or chain link fencing to ensure grading and earth moving equipment does not disrupt the EQCs. There shall be no clearing, grading or structures in the areas identified as EQCs in the final delineation shown on the approved grading plan.
9. The vegetation preserved in the EQCs and to be provided in and around the berms shall be deemed to fulfill all requirements for Transitional Screening and shall be maintained in a healthy condition. Species and exact location of any replacement trees shall be as determined by Urban Forest Management (UFM), DPWES. The chain link fence surrounding the site shall be deemed to fulfill the barrier requirement.
10. Landscaping and screening shall be provided in accordance with the master reclamation plan subject to UFM.
11. The bond of \$2,000 per acre to insure restoration of the property shall be continued for the duration of this operation. The permittee shall comply with all requirements of the approved Restoration Plan and amendments thereto.
12. The area of stone excavation (i.e. the actual quarry pit area) shall not exceed 232 acres as is shown on the approved special permit plat.
13. Stormwater management and erosion and sediment control measures as shown on the stormwater management and erosion and sediment control plan shall be implemented as approved by DPWES.
14. The applicant shall coordinate with the Code Analysis Branch of the Environmental and Facilities

Review Division of the Department of Public Works and Environmental Services (DPWES) regarding best management practices (BMP) requirements of the Chesapeake Bay Preservation Ordinance. The applicant shall comply with those standards as determined by DPWES.

15. Drilling or crushing shall be limited to the hours between 7:00 a.m. and 6:00 p.m., Monday through Saturday. Blasting shall occur only between the hours of 10:00 a.m. and 6:00 p.m., Monday through Friday and all blasts shall be adjusted to wind and other atmospheric conditions in order to minimize as far as possible any adverse effect upon any privately owned occupied dwellings. The Zoning Enforcement Branch of the Fairfax County Department of Planning and Zoning (DPZ) and the Prince William County Public Safety Communications Center, at 703-792-6810, shall be notified at least four (4) hours prior to each blast. Work on Sundays shall be confined to repairs on the processing plant, items of equipment and the operation in general.
16. Blasting vibrations shall be limited to a maximum peak particle velocity of 0.4 inches per second in the earth at any privately-owned occupied structure not on the quarry property, except not more than one in ten shots can go over 0.4 with the limit being no more than 0.6. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any complaints of residents.
17. The peak overpressure from any blast shall be limited to 0.0092 psi (130 dB) at any privately-owned occupied structure not on quarry property.
18. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any privately-owned occupied structure not on quarry property.
19. Airborne noise produced by the quarry from sources other than blasting shall not exceed at any privately-owned occupied structure not on quarry property, 58 dBa in residential areas or 65 dBa in commercial areas.
20. No blasting material shall be stored on site. When on site for a blast, all blasting materials shall be handled in accordance with standards and regulations established by the United States Bureau of Mines.
21. No blasting, drilling or extraction shall be permitted on Tax Map 112-2 ((1)) 13.
22. The crushing equipment may be located at the discretion of the applicant, provided it is located within the pit area and is operated pursuant to these conditions. An adequate dust suppression system shall be provided on the crusher to prevent point source emissions from the crusher, screens, shakers and the various conveyors during all periods of operation including, but not limited to: testing; maintenance; and the actual crushing of extracted materials, stone and concrete and/or re-crushing of the same.
23. Dust control equipment shall be installed, maintained and operated on all portions of its processing plant so as to adequately control dust. In the event any new feasible equipment or means of controlling the dust from blasts becomes available to the industry, these shall be installed and used as soon as reasonably possible.
24. All conveyors shall continue to be covered, if necessary, to meet applicable standards.
25. Paved roads and other paved areas within the confines of the quarry shall be watered and cleaned with heavy duty cleaning equipment to prevent dust or mud from entering the public street.
26. All trucks transporting material excavated from the site to any off site location shall be covered.
27. Vulcan Materials, LP will take all steps appropriate or as required for deadening sounds of vibrating screens and plant operations during all periods of plant operation.
28. This approval includes the barge loading facilities and the operation thereof located on the north side

of the Occoquan River adjacent to the site.

29. A copy of water quality data submitted to the Commonwealth of Virginia under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Department of Planning and Zoning on an annual basis.
30. Air quality monitoring station(s) shall be provided by the applicant and installed as necessary and as required by the County Health Department to demonstrate the attainment and maintenance of ambient PMIO and TSP air quality standards.
31. The applicant shall provide the Department of Planning and Zoning with a record of any complaints or violations related to State and Federal permits for air quality compliance and water quality control.
32. The permittee shall absorb one hundred percent of the cost of enforcement service as determined by the Zoning Administrator. As monitoring equipment is shared between Luckstone Quarry and Vulcan Quarry, the applicant shall be responsible for fifty percent (50%) of the cost of the maintenance of all seismographic and noise monitoring equipment required in previous approvals of this use.
33. Peniwill Drive shall only be used for emergency vehicle access.
34. SEA 82-V-046, APAC-Virginia, Inc., lessee of Tax Map 112-2 ((1)) 12, is not a part of this application and a change in this use or corresponding SEA would not necessarily require a change to this special permit.
35. The Applicant and its agents or contractors shall acquire any and all applicable fire prevention code permits, as determined by the Fire Marshal, for blasting- or explosive-related operations that occur within Fairfax County.
36. The Applicant shall use the best readily available technology and industry practices applicable to quarry operations in blast design and blasting operations to ensure accuracy in drilling, loading, timing, and detonating blasts to maintain the lowest effective powder factor and pounds of explosive per delay to produce the desired blast effects.
37. The Applicant shall use the best readily available technology and industry practices applicable to quarry operations to reduce the creation and effects of air blast and ground vibrations, particularly vibration peak particle velocity and frequency.
38. The Applicant shall maintain accurate drilling, blasting, and seismographic records on-site and readily available for Zoning Enforcement Branch and the Fire Marshal's review for a period of five years.
39. The Applicant shall notify the Zoning Enforcement Branch and the Fire Marshal of any change in the location of seismographs monitoring blast effects and the reason(s) for the change.
40. The Applicant shall forward all seismographic records to the Zoning Enforcement Branch and the Fire Marshal for review on a quarterly basis. These reports shall also include the following information pertaining to blasts:
 - A. Date of blast
 - B. Time of blast
 - C. Pounds of explosives per delay
 - D. Total pounds of explosives per blast
 - E. Ground vibration levels
 - F. Air blast in decibels
41. The Applicant shall forward any and all blasting - or explosive-related complaints to the Zoning

Enforcement Branch and the Fire Marshal within one (1) business day of receipt, except those complaints claiming damage. Complaints claiming damage shall be reported to the Zoning Enforcement Branch and the Fire Marshal immediately upon receipt. This includes complaints from any citizen, local, state, or federal agency whether located in Fairfax County or not, but only those referring to operations conducted within Fairfax County. In addition, the Applicant shall instruct complainants to contact the Zoning Enforcement Branch and the Fire Marshal to submit their complaint directly as well.

42. The applicant shall notify the Zoning Enforcement Branch and the Fire Marshal immediately upon discovering a violation of any blasting- or explosive-related condition of this special use permit, including but not limited to ground vibrations or air blast above the levels set forth in the special use permit.
43. At least twice within each calendar year, or more often, as determined by the Applicant, the Applicant shall sponsor a "Trucker Safety Education Day" to educate contracted truckers on procedures for visual inspection of vehicles and safest routes to and from the Quarry.
44. The Applicant shall provide written and verbal instructions to all contracted truckers to access I-95 via Route 123 rather than Lorton Road. A sign shall be posted on site informing all customers that trucks should not use Lorton Road for through traffic movements.
45. The Applicant shall work diligently with the Transportation Committees of the Mount Vernon Council of Citizens Associations and the South County Federation to support the prohibition of through-truck traffic on Lorton Road. Efforts may include coordinating petitions, processing written requests through appropriate local and state bodies.
46. In addition to the seismograph monitoring required by Fairfax County at the closest occupied structure not owned by Vulcan, Vulcan shall also employ at least one (1) seismograph monitor within Southpointe subdivision, within Occoquan Overlook subdivision and on Eddystone Drive in Prince William County, subject to owner's consent, if necessary. Permanent seismographs shall also be installed and operational at the following addresses subject to owner consent: 9355 Davis Drive, 9330 Davis Drive, and 9310 Davis Drive. A copy of the said results shall be provided to the resident upon request.
47. In addition to the auditory signal system currently utilized to indicate an upcoming blast, the applicant shall establish and employ reasonable procedures such as a telephone call or email to provide advance notification of each blast to interested parties requesting such notification.
48. Any new lighting installed on the site shall be shielded and directed downward.
49. Irrespective of the quarterly seismograph results submittals referenced in Condition 40, the Applicant shall provide the results from seismograph monitoring, which includes the date and time of each blast, within seven (7) days of receipt of such request by the Zoning Administrator or the Fire Marshal.
50. When a conflict exists between these conditions and other regulations by local, state or federal authorities regarding the quarry operations the stricter condition shall apply.
51. The Zoning Administrator, or designated agent, shall be permitted to inspect the premises monthly to determine that the quarry is being operated in compliance with all the foregoing restrictions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this application shall become valid upon the date of approval by the BZA.

~ ~ ~ May 1, 2007, VULCAN CONSTRUCTION MATERIALS, LP, SPA 82-V-091-05, continued from Page 126

Mr. Beard seconded the motion, which carried by a vote of 6-0-1. Mr. Smith abstained from the vote.

//

~ ~ ~ May 1, 2007, 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) (Continued from 11/28/06 and 2/27/07)

Chairman Ribble noted that SP 2006-MA-004 had been continued to July 31, 2007, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ May 1, 2007, Scheduled case of:

9:00 A.M. DONALD J. MCCARTHY, SP 2007-MA-001 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to Admin. remain 8.2 ft. with eave 7.5 ft. from side lot line. Located at 3915 Glenbrook Rd. on approx. 1.47 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 20A. (Admin. moved from 3/20/07 at appl. req.)

Chairman Ribble noted that SP 2007-MA-001 had been administratively moved to September 11, 2007, at 9:00 a.m., at the applicant's request.

//

Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals.

//

~ ~ ~ May 1, 2007, Scheduled case of:

9:00 A.M. OFELIA L. CALDERON, SP 2007-MA-017 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 25.9 ft. from front lot line. Located at 6804 Barrett Rd. on approx. 7,800 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((20)) 278.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ofelia Calderon, 6804 Barrett Road, Falls Church, 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 subject parcel and surrounding parcels were zoned R-4 and developed with single-family detached dwellings. The subject property was located at 6804 Barrett Road, which was south of Route 50 and west of Annandale Road in the Mason District. The applicant requested approval to permit a reduction to certain yard requirements to permit construction of a 163 square foot roofed deck (porch) with a step 25.9 feet from the front lot line. Staff concluded that the subject application was in harmony with the

~ ~ ~ May 1, 2007, OFELIA L. CALDERON, SP 2007-MA-017, continued from Page 127

Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval.

Ms. Calderon presented the special permit request as outlined in the statement of justification submitted with the application. She said she very much liked the neighborhood and wanted to stay. Because the house was small and they had two children, she hoped to construct a porch so her family could enjoy the back and front yards. She pointed out that she requested an additional 2.5 feet for the porch in order to accommodate neighbors and her extended family coming over to hang out. Ms. Calderon said that the proposed structure was architecturally compatible with the house and that there were a number of porches in the neighborhood. Her porch would only add to the community flavor.

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

Mr. Hammack moved to approve SP 2007-MA-017 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

OFELIA L. CALDERON, SP 2007-MA-017 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 25.9 ft. from front lot line. Located at 6804 Barrett Rd. on approx. 7,800 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((20)) 278. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 1, 2007; and

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

1. The applicant is the owner of the land.
2. The recommendation of staff is adopted.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(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 (163 square foot roofed deck) (porch) of the proposed construction as shown on the plat prepared by Patrick A. Eckert, dated December 13, 2006, as submitted with this application and is not transferable to other land.
2. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.

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

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 establish the use if a written

~ ~ ~ May 1, 2007, OFELIA L. CALDERON, SP 2007-MA-017, continued from Page 128

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

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

//

~ ~ ~ May 1, 2007, Scheduled case of:

9:00 A.M. DAVID M. FENNER, SP 2007-SU-015 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from side lot line. Located at 2721 Clarkes Landing Dr. on approx. 20,182 sq. ft. of land zoned R-1. Sully District. Tax Map 36-2 ((5)) 43.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David M. Fenner, 2721 Clarkes Landing Drive, 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 a special permit to permit a reduction of certain yard requirements to permit construction of an addition (enclosed porch) approximately 145 square feet in size in the front of the house 12.6 feet from a side lot line and the construction of a three-story addition approximately 1,064 square feet in size at the rear of the existing dwelling 12.6 feet from a side lot line. Both measurements included a 0.5 foot eave. 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. Fenner presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition was requested in order to enjoy their backyard and provide a performing arts area for his son and future siblings. He pointed out that the additional light and open air visibility opened up a presently rather dark room. Mr. Fenner said he believed the proposal an appropriate addition to the value of the property.

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

Mr. Hart moved to approve SP 2007-SU-015 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID M. FENNER, SP 2007-SU-015 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from side lot line. Located at 2721 Clarkes Landing Dr. on approx. 20,182 sq. ft. of land zoned R-1. Sully District. Tax Map 36-2 ((5)) 43. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 1, 2007; and

~ ~ ~ May 1, 2007, DAVID M. FENNER, SP 2007-SU-015, continued from Page 129

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

1. The applicant is the owner of the land.
2. The rational in the staff report is adopted.
3. This is a modest addition.
4. It is no closer to the side than the existing house already is.
5. It seems to be comparable with other homes in the neighborhood.
6. It is believed there will 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 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 145 and 1064 square feet) of the proposed additions as shown on the plat prepared by Architectural Designs, dated January 30, 2007 as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,393 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The additions shall be consistent with the architectural renderings included Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ May 1, 2007, 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)

~ ~ ~ May 1, 2007, ANDREW CLARK AND ELAINE METLIN, A 2005-DR-061, continued from Page 130

36B. (Admin. moved from 3/7/06 at appl. req.) (Deferred from 5/2/06 at appl. req.) (Admin. moved from 12/5/06 for ads)

Chairman Ribble noted that A 2005-DR-061 had been administratively moved to September 11, 2007, at 9:30 a.m., at the appellants' request.

//

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.) (Deferred from 10/3/06 at appellants' request) (Admin. moved from 1/9/07 for notices)

Chairman Ribble noted that A 2006-LE-007 had been administratively moved to September 18, 2007, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ May 1, 2007, After Agenda Item:

Approval of Proposed Revisions to the Board of Zoning Appeals By-laws

Mr. Hammack moved to approve the by-laws as amended. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

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 language to include in the resolution for the BZA's former chairman, John DiGiulian, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 9:28 a.m. and reconvened at 9:43 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. Byers seconded the motion, which carried by a vote of 7-0.

//

Responding to a question from Mr. Hart, Susan C. Langdon, Chief, Special Permit and Variance Branch, explained the reason and procedure for issuing dismissal letters.

//

As there was no other business to come before the Board, the meeting was adjourned at 9:50 a.m.

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

Approved on: December 1, 2010

K.A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III
John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 15, 2007. The following Board Members were present: Chairman John F. Ribble III; Thomas Smith; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr. and V. Max Beard were absent from the meeting.

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

~ ~ ~ May 15, 2007, Scheduled case of:

9:00 A.M. TRUSTEES FOR MCLEAN PRESBYTERIAN CHURCH, SPA 85-D-034-05 Appl. under Sect(s) 3-103 and 3-203 of the Zoning Ordinance to amend SP 85-D-034 previously approved for a church to permit site modifications. Located at 1020 Balls Hill Rd. on approx. 7.5 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 21-3 ((1)) 50, 50A, 51, 53; 21-3 ((15)) A1. (In association with SE 2007-DR-003) (Admin. moved from 5/8/07)

Chairman Ribble called the applicant to the podium.

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

Lynne Strobel, the applicant's agent, 2200 Clarendon Boulevard, Arlington, Virginia, reaffirmed the affidavit.

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

St. Clair Williams, Staff Coordinator, made staff's presentation as contained in the staff report. He said the applicant was seeking a special permit amendment to permit a college/university use within the existing McLean Presbyterian Church structure, which was approved in conjunction with SP 85-D-034. No additional land disturbance or site improvements were proposed.

Mr. Williams said that on May 2, 2007, the Planning Commission deferred decision to May 16, 2007, for SE 2007-DR-003, which was filed in association with the subject application. He said the decision was deferred to allow time for staff to revise the proposed development conditions to show that they were not too restrictive on the operation of the church. Staff recommended approval of SPA 85-D-034-05 subject to the proposed development conditions.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the proposal would not alter any of the existing development conditions, nor were there any changes proposed to the existing conditions of the place of worship. Ms. Strobel emphasized that there would be no changes to the building, in traffic circulation, and parking, noting that there were over 300 parking spaces on site.

In response to a question from Mr. Hart, Mr. Williams stated that any proposed change to the previously approved special permit conditions would necessitate a special permit amendment.

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

Mr. Byers moved to approve SPA 85-D-034-05 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES FOR MCLEAN PRESBYTERIAN CHURCH, SPA 85-D-034-05 Appl. under Sect(s) 3-103 and 3-203 of the Zoning Ordinance to amend SP 85-D-034 previously approved for a church to permit site modifications. Located at 1020 Balls Hill Rd. on approx. 7.5 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 21-3 ((1)) 50, 50A, 51, 53; 21-3 ((15)) A1. (In association with SE 2007-DR-003) (Admin. moved from 5/8/07). Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ May 15, 2007, TRUSTEES FOR MCLEAN PRESBYTERIAN CHURCH, SPA 85-D-034-05, continued from Page 133

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2007; 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) 3-103 and 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 for McLean Presbyterian Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 1020 Balls Hill 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 Frederick D. Neal, dated December 18, 2006, revised through April 11, 2007, consisting of 2 sheets, 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. Amendments to the Special Exception may be made without amending this Special Permit provided the amendment is in substantial conformance with the Special Permit as determined by the Director of the Zoning Evaluation Division of the Department of Planning & Zoning.
6. The maximum number of seats within the main area of worship shall not exceed 736 seats.
7. The maximum number of parking spaces shall be 328 spaces as shown on the special permit plat. All parking associated with these uses shall be contained on-site as shown on the special permit plat.
8. The limits of clearing and grading shall be maintained as shown on the special permit plat.
9. The existing vegetation shall be maintained along all lot lines to the maximum extent possible and shall satisfy transitional screening I requirements.

Landscaping as shown on the submitted Special Permit Amendment Landscape Plan shall be maintained along the frontage of Lot 53 adjacent to Balls Hill Road and along the western side of the new parking area to the satisfaction of Urban Forest Management, DPWES.

10. Barrier F shall be maintained along Lots 21-3 ((15)) 4, 5, 6, and 21-3 ((1)) 50B where the property is adjacent to the church's southern property line, except along 21-3 ((15)) A1. The barrier requirement

~ ~ ~ May 15, 2007, TRUSTEES FOR MCLEAN PRESBYTERIAN CHURCH, SPA 85-D-034-05, continued from Page 134

shall be waived along all other lot lines except as stated above.

11. The existing interior parking lot landscaping shall be maintained and interior parking lot landscaping shall be provided in the new parking area on Lot 53 in accordance with the Zoning Ordinance.
12. The right turn deceleration lane shall be maintained at the southern entrance from Balls Hill Road. If it is determined by the Department of Transportation at any time that the signs indicating exit only provided to prevent ingress movements in the northern exit are not effective, the applicant shall construct a standard right-turn lane at this access point to Virginia Department of Transportation (VDOT) standards.
13. In order to reduce the maximum interior noise level to a level of approximately 45dBA Ldn, for all buildings located between the 65-70 dBA Ldn highway noise impact contours, the following measures shall be employed:
 - Exterior walls shall have a laboratory STC rating of at least 39.
 - Doors and windows shall have a laboratory STC rating of at least 28. If glazing constitutes more than 20% of any façade, they should have the same laboratory STC as walls.
 - Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

As an alternative, an acoustical engineering study may be submitted at the time of site plan approval to DPWES which will specify those building materials to be used to ensure that building interior sound levels will not be in excess of 45 dbA Ldn. The study methodology shall be acceptable to the Department of Planning and Zoning.

14. Any new proposed lighting of the parking areas shall be in accordance with the following:
 - The combined height of the light standards and fixture shall not exceed 12 feet.
 - The lights shall be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
 - There shall be no up-lighting of any of the proposed building additions.
15. Signs shall be permitted provided they are erected in accordance with the provisions of Article 12. Signs shall be located as to be integrated into the landscape and shall conform in size to Article 12 of the Zoning Ordinance.
16. Church services and college/university classes shall not be held at the same time.

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

~ ~ ~ May 15, 2007, TRUSTEES FOR MCLEAN PRESBYTERIAN CHURCH, SPA 85-D-034-05, continued from Page 135

amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:00 A.M. KEVIN J. O'NEILL, VC 2007-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings 7.0 ft., stoops 3.0 ft. and bay windows 5.5 ft. from a front lot line of a corner lot and 5 ft. from the side lot line. Located at 1111 I St. on approx. 9,900 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 93-2 ((7)) (4) 3.

Chairman Ribble noted that VC 2007-MV-001 had been administratively moved to July 10, 2007, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:00 A.M. TIMOTHY P. MORAHAN AND DIANA K. MORAHAN, SP 2007-HM-018 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition such that side yards total 36.5 ft. Located at 10305 Saddle View Ct. on approx. 24,130 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((4)) 5.

Chairman Ribble called the applicants to the podium.

Timothy P. Morahan, 10305 Saddle View Court, Vienna, Virginia, reaffirmed the affidavit.

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

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction of certain yard requirements to allow construction of a garage addition, such that side yards totaled 36.5 feet. The Zoning Ordinance requires a minimum side yard of 12 feet, with total side yards of 40 feet in this district. The applicants met the minimum side yard requirement of 12 feet from a side lot line, with the proposed garage addition to be located 16.5 feet from a side lot line; however, it did not meet the total side yards of 40 feet. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Morahan presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to construct a garage on the footprint of an existing carport. The proposed garage would have two separate single doors and provide protection and safety for their two vehicles as well as a place for their children to pile up their tricycles and baseball bats. Mr. Morahan said there was currently a carport with a roof and a concrete slab in place. Since the carport already existed on the footprint of the proposed garage, the visual and aesthetic impact would be negligible. He added that enclosing the carport would improve the curb appeal of the house.

Chairman Ribble called for speakers; there was no response.

Ms. Gibb, Mr. Hart, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the development condition which required that BZA resolutions be filed with the Land Records for Fairfax County and the court standards for filings. Ms. Langdon said that usually only the resolution and Attachment 1 to the conditions were filed with the Land Records. She also stated that handouts were provided to applicants to assist them with the filings.

~ ~ ~ May 15, 2007, TIMOTHY P. MORAHAN AND DIANA K. MORAHAN, SP 2007-HM-018, continued from Page 136

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-HM-018 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TIMOTHY P. MORAHAN AND DIANA K. MORAHAN, SP 2007-HM-018 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition such that side yards total 36.5 ft. Located at 10305 Saddle View Ct. on approx. 24,130 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((4)) 5. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2007; and

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

1. The applicants are the owners of the land.
2. The rationale in the staff report is adopted.
3. This is a relatively modest proposal, enclosing an existing carport that has a very substantial roof on it already.
4. From the photographs, there will be no significant impact on anyone.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (470 square feet) of an addition, as shown on the plat prepared by Dominion Surveyors, Inc., dated January 3, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,860 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

~ ~ ~ May 15, 2007, TIMOTHY P. MORAHAN AND DIANA K. MORAHAN, SP 2007-HM-018, continued from Page 137

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

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

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

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:00 A.M. TIMOTHY T. MURRAY & POLLY A. MURRAY, SP 2007-SU-024 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from one side lot line and 12.6 ft. from rear lot line and roofed deck 5.2 ft. from other side lot line. Located at 13603 Gladwyn Ct. on approx. 8,382 sq. ft. of land zoned R-5 . Sully District. Tax Map 34-4 ((10)) 161A.

Chairman Ribble called the applicants to the podium.

Timothy T. Murray, 13603 Gladwyn Court, Chantilly, Virginia, reaffirmed the affidavit.

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

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction of certain yard requirements to allow an enclosed deck to be located 5.0 feet from a side lot line and 12.6 feet from a rear lot line. The applicants also requested a roofed deck to be located 5.2 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 8.0 feet and a minimum rear yard of 25 feet for the addition; therefore, modifications of 3.0 feet and or 38 percent for the side lot line, and 12.4 feet or 50 percent for the rear lot line were requested. The Zoning Ordinance requires a minimum side yard of 8.0 feet for the roofed deck; therefore, a modification of 2.8 feet or 35% was requested. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Murray presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposal was to construct a front covered porch which would wrap around the left side of the house to a rear deck, and a covered enclosed porch on the right rear of the house. Mr. Murray stated that they wished to increase their living space, and these improvements would allow them to enjoy the outdoors more. He said having a covered porch on the rear of the property would provide much needed shade and alleviate the heat which a southern exposure created. Mr. Murray said the house was skewed on the property, which created the need for a special permit. He added that the porch would be consistent with other homes that had additions in the neighborhood, and had been approved by the homeowners association.

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

Ms. Gibb moved to approve SP 2007-SU-024 for the reasons stated in the Resolution.

//

~ ~ ~ May 15, 2007, TIMOTHY T. MURRAY & POLLY A. MURRAY, SP 2007-SU-024, continued from Page 138

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TIMOTHY T. MURRAY & POLLY A. MURRAY, SP 2007-SU-024 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from one side lot line and 12.6 ft. from rear lot line and roofed deck 5.2 ft. from other side lot line. Located at 13603 Gladwyn Ct. on approx. 8,382 sq. ft. of land zoned R-5. Sully District. Tax Map 34-4 ((10)) 161A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2007; and

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

1. The applicants are the owners of the land.
2. The motion is based on the applicant's testimony and the favorable staff report recommending approval.
3. The staff report is adopted, which stated that the applicant has met the required standards for a special permit under Sect. 8-922, which says that the applicant has met Standards 1 through 6.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the locations and sizes (enclosed deck 392 square feet; front porch 270.4 square feet; side porch 272 square feet; back porch 259.2 square feet and open rear deck 194.4 square feet for a total of 1,388 square feet) of additions, as shown on the plat prepared by Wachob & Wachob, Inc., dated November 20, 2006 as revised through February 26, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,193 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition and roofed deck shall be consistent with the architectural renderings and materials shown on Attachment 1 to these conditions except that the northeast corner shall be as shown on the plat.

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

~ ~ ~ May 15, 2007, TIMOTHY T. MURRAY & POLLY A. MURRAY, SP 2007-SU-024, continued from Page 139

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. Mr. Beard and Mr. Hammack were absent from the meeting.

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:00 A.M. MELVIN H. FRIEDMAN, SP 2007-LE-019 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height to remain in front yards. Located at 3403 Austin Ct. on approx. 8,710 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((32)) 63.

Chairman Ribble called the applicant to the podium.

Melvin Friedman, 3403 Austin Court, Alexandria, Virginia, reaffirmed the affidavit.

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

Steven Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an existing four-foot, six-inch to 5-foot high wooden fence to remain in the front yards of both Austin Court and Gentele Court, as stated by the applicant in part to screen his view of his next-door neighbor's automobiles.

Mr. Hart, Mr. Varga, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the location of the fence, which appeared to be partially on Lot 62 and partially within a right-of-way. Ms. Langdon said that technically an approval would apply only to the portion of the fence on the applicant's lot, but the Board could impose a development condition saying that the entire fence had to be pulled onto the applicant's lot.

Chairman Ribble pointed out that the survey submitted with the application noted that fence locations were approximate only and did not certify as to ownership. Mr. Hart said he felt it was very confusing.

In response to a question from Mr. Smith, Ms. Langdon stated that there were two front yards, and the fence on both sides of the house, on Austin and Gentele Courts, were requested to be approved.

Mr. Hart asked if there was a requirement to show where the fence was located. Ms. Langdon responded affirmatively. Mr. Hart said he was surprised the application showed no definite location on the survey.

Mr. Friedman presented the special permit request as outlined in the statement of justification submitted with the application. He said he surveyed all his neighbors on Austin Court, with the exception of Lot 62, and all of them wanted to keep the current fence location. When he learned the Board was also concerned about the neighbors on Gentele Court, he polled them. Again, the majority wanted the fence to remain. Mr. Friedman explained that he erected the fence because of the numerous junk cars kept on Lot 62, along with old tires, a wading pool, garbage pails, and car repair equipment, and he provided photographs of the same.

Mr. Byers and Mr. Smith discussed the apparent car repair business on Lot 62. Mr. Friedman said he built the fence a little over a year prior. The County then received a complaint from the owner of Lot 62, stating that the fence was too tall. In response to a question from Mr. Hart, Mr. Varga stated that he was unaware of any pending violations for Lot 62.

Mr. Hart stated that the subject property, Lot 63, was considered a through lot because there was a street at

~ ~ ~ May 15, 2007, MELVIN H. FRIEDMAN, SP 2007-LE-019, continued from Page 140

either end of the lot. Because of that, the portion of the fence that was past the back of the house was considered in a front yard. He noted, however, that because of the way the fence had been drawn by the engineer, it appeared some of the fence was on the applicant's property, some on the next-door neighbor's property, and some on the right-of-way. Mr. Friedman stated that he was the original owner of the property, and there was no survey when he moved in. He said it was performed two to three months later, and the fence was constructed well within the property lines. Mr. Friedman did not believe the fence meandered onto the County's property. Mr. Hart asked if Mr. Friedman would move the fence back onto his property if it was shown on a revised survey to be off his property. Mr. Friedman replied that he would.

Chairman Ribble called for speakers.

Winifred Olson, 6402 Gentle Court, Alexandria, Virginia, came forward to speak. She said she recently saw the fence and wondered what all the fuss was about because it was such a beautiful fence. Ms. Olsen stated that arguing over a few inches seemed ridiculous.

John Hall, 3405 Austin Court, Alexandria, Virginia, came forward to speak. He said he was the owner of Lot 62, and he built a fence on his property 25 years ago which conformed to the County requirements. Mr. Hall confirmed that he did have several cars on his property; however, they were all legal and titled, stating that they were not junk cars. He asked that the applicant's fence conform to County regulations.

Mr. Smith asked if the height of the fence adversely impacted Mr. Hall's use of his property. Mr. Hall stated that he had difficulty cutting the grass between the fences with a weed-whacker.

In response to a question from Ms. Gibb, Mr. Hall said his fence was recessed behind his boundary line when it was built.

Mr. Hart asked whose property contained the wooden fence. Mr. Hall said he assumed that the applicant took whatever extra land there was between their properties when erecting the fence.

In his rebuttal, Mr. Friedman said that the photographs he presented did not lie and were not retouched. He said they were an accurate depiction of Mr. Hall's lot, and he noted that it had been much worse in the past. Mr. Friedman said that although Mr. Hall did have some nice cars, a Corvette and a deLorean, he would purchase between three to five cars per year to fix up and sell. He then began purchasing jalopies to repair. Mr. Friedman said he believed that Mr. Hall complained about the fence height because he was the one who stopped his car repair business, and this was his way of retaliating.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-LE-019 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MELVIN H. FRIEDMAN, SP 2007-LE-019 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height to remain in front yards. Located at 3403 Austin Ct. on approx. 8,710 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((32)) 63. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2007; and

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

~ ~ ~ May 15, 2007, MELVIN H. FRIEDMAN, SP 2007-LE-019, continued from Page 141

1. The applicant is the owner of the land, Lot 63.
2. The maximum fence and/or wall height does not exceed six feet.
3. It was determined that there are two front yards.
4. The aesthetic concerns identified by the applicant and as identified in the photographs were noted.
5. It was determined that the proposed fence and/or wall height increase is in character with the existing on-site development and will be harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, scale, and historic designations.
6. It was determined that the proposed fence and/or wall height increase does not adversely impact the use and enjoyment of other properties in the immediate vicinity.
7. The ability to cut grass on someone else's property is not an adverse use or adverse impact.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-903 and 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location of a fence as shown on the plat prepared by Michael L. Flynn, dated January 11, 2007, as submitted with this application and is not transferable to other land.
2. Notwithstanding what is shown on the plat, this approval is limited to Lot 63 only, and the fence shall be no higher than 6.0 feet.

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

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

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:00 A.M. KATHLEEN DOLCE, SP 2007-MV-020 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 11.6 ft. from side lot line. Located at 1117 Cameron Rd. on approx. 11,500 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 50.

Chairman Ribble called the applicant to the podium.

Kathleen Dolce, 1117 Cameron Road, Alexandria, Virginia, identified herself.

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

Steve Varga, Staff Coordinator, made staff's presentation as contained in the staff report. He said the applicant wished to construct an addition to enlarge the family room, which would be 11.6 feet from the east side lot line. Staff recommended approval of SP 2007-MV-020 subject to the proposed development conditions.

Ms. Dolce presented the special permit request as outlined in the statement of justification submitted with the application. She said an existing carport and sunroom would be closed off, noting that a roof and foundation were already present. Ms. Dolce stated that no trees would be removed. She said the contractor would provide walls, siding, and windows to match the existing house. Ms. Dolce mentioned that many of the homes in the neighborhood had enclosed the carports, so the addition would be very compatible with the

~ ~ ~ May 15, 2007, KATHLEEN DOLCE, SP 2007-MV-020, continued from Page 142

neighborhood.

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

Mr. Byers moved to approve SP 2007-MV-020 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KATHLEEN DOLCE, SP 2007-MV-020 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 11.6 ft. from side lot line. Located at 1117 Cameron Rd. on approx. 11,500 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 50. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2007; and

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

1. The applicant is the owner of the land.
2. The application meets all six of the required standards set forth in Sect. 8-922.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 (195 square feet) of the existing addition as shown on the plat prepared by Kenneth W. White, dated October 20, 1992, revised by Rebecca L.G. Bostick, dated February 6, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (1,407 existing square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance

~ ~ ~ May 15, 2007, KATHLEEN DOLCE, SP 2007-MV-020, continued from Page 143

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

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

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:00 A.M. GREGORY C. GARDNER, SP 2007-MA-023 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.7 ft. from side lot line. Located at 3016 Aspen La. on approx. 19,250 sq. ft. of and zoned R-1. Mason District. Tax Map 51-3 ((6)) 30.

Chairman Ribble noted that SP 2007-MA-023 had been withdrawn.

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:00 A.M. ONE GOD MINISTRY-A GLOBAL CHURCH, SP 2007-SP-006 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12609 Braddock Rd. on approx. 4.84 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((3)) 4. (Decision deferred from 4/3/07) (Decision Deferred from 4/24/07 at appl. req.)

Chairman Ribble reminded the Board that the application was for decision only. He said the Board had requested that the following personnel be present: an engineer from the Department of Public Works and Environmental Services to address stormwater management on site and its effect on downstream properties and a planner from the Department of Transportation to address whether there had been any significant increase in traffic on Braddock and Colchester Roads since the original approval in 2005. Susan Langdon, Chief, Special Permit and Variance Branch, said that both departments were represented.

Kyung Ha, Site and Environmental Review Division, said he was present to answer any questions the Board might have.

Chairman Ribble said the main concern was water running off onto the neighbor's property. Mr. Ha said the site plan had been revised so that water would run in the opposite direction along Colchester Road and not cause any problems.

Mr. Hart asked for confirmation that the water from the building and parking lot would be drained to Braddock Road and would not increase the runoff onto neighboring properties. Mr. Ha said that was correct.

In response to a question from Mr. Hart, Ms. Langdon said redirecting the water would increase undisturbed open space and would not aggravate property to the southeast.

In response to the request from the Board, Lou Ann Hutchins from the Department of Transportation said that traffic counts on Colchester Road remained fairly stable, and Braddock Road had seen a gradual increase.

Mr. Hart moved to approve SP 2007-SP-006 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ONE GOD MINISTRY-A GLOBAL CHURCH, SP 2007-SP-006 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12609 Braddock Rd. on approx. 4.84 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((3)) 4. (Decision deferred from 4/3/07) (Decision deferred from 4/24/07 at appl. req.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2007; and

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

1. The applicants are the owners of the land.
2. The rationale in the staff report through the May 15, 2007 memorandum from Mr. Varga is adopted.
3. Although there were reasons to reflect on the original approval and serious and legitimate concerns by neighbors affected by stormwater problems in the neighborhood, on the record before the Board and with the revisions to the application, this will be significantly better than what was originally approved.
4. The transportation issues are not serious enough to warrant a denial.
5. The stormwater management will now be routing the water north rather than southeast.
6. Based on the latest information, this applicant would not be aggravating the situation regarding the flooding problems in the neighborhood.
7. It is a difficult situation where the Board has already approved the church once before, and it is an appropriate site for a church in the R-C District.
8. The church has made certain investments in engineering, design, and everything else.
9. The standards have not changed even if the Board's appreciation of the surrounding circumstances is a little more detailed.
10. This was given the rigorous review that is required.
11. It is of a size and scale that is compatible with what is around it.
12. The use is oriented to an arterial roadway even if the entrance is slightly offset.
13. Braddock Road is a divided, four-lane road with a median strip with very few nonresidential type uses that would be opening directly onto Braddock Road without a median break, and in this case there is a stoplight at Colchester Road, so the entrance configuration is safer and better than shown on the drawings than it would be oriented to Braddock Road.
14. The use is designed to mitigate impacts of the Occoquan Reservoir.
15. Unlike some others, this church has met the 50 percent undisturbed open space requirement.
16. With the recent revisions on stormwater, it is better than when it started.

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

THAT the applicant has presented testimony indicating compliance with 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, One God Ministry – A Global Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 12609 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 William E. Missell dated October 22, 2003, as revised through May 7,

2007 and approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the sanctuary shall be 250.
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 to satisfy the requirements, but shall be supplemented as shown on the plat, with the following modifications:
 - A minimum of one row of evergreen trees shall be planted along the eastern lot line, from the northern edge of the church building, to the southern edge of the parking area.
 - Full Transitional Screening 1 shall be provided, a minimum of 25.0 feet in width, along Colchester Road from Braddock Road to the site entrance and on the southern side of the entrance.

Size, species, and location of plantings shall be provided in consultation with Urban Forest Management and DPWES.

8. 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 Urban Forest Management and DPWES.
9. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
10. The barrier requirement shall be waived.
11. 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 Urban Forest Management and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction.
12. 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. 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 reviewed and approved by Urban Forest Management.

The tree preservation plan shall consist of 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 CDP/FDP for the entire site. The tree preservation shall provide for the preservation of those areas shown on the tree preservation, those areas outside of the limits of clearing and grading shown on the CDP/FDP 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 tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

All trees shown to be preserved on the tree preservation plan shall be protected by 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, 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.

14. At least 50% of the site shall be preserved as undisturbed open space. There shall be no clearing or grading of any vegetation in the undisturbed open space except for dead or dying vegetation, as determined by Urban Forest Management. No structures or fences shall be permitted in the area of undisturbed open space.
15. The applicant shall demonstrate to the satisfaction of DPWES that every effort has been made to obtain a public sanitary sewer connection from the Hampton Forest subdivision. If such a connection can be obtained, the area where the proposed septic drainfields are now depicted on the plat shall not be cleared and shall remain as undisturbed open space or if such connection occurs in the future, the area of the drainfields shall be revegetated to a natural state and shall be incorporated into the undisturbed open space.
16. 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.
17. 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.
18. 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, notwithstanding that any parking lot lighting shall consist of bollard style light fixtures, with a maximum height of approximately (3) three feet.
19. Stormwater management/Best Management Practices facilities shall be provided as depicted on the special permit plat or as determined by DPWES, except that no additional vegetation shall be cleared. Notwithstanding that which is depicted on the plat, the applicant shall use bioretention/infiltration trenches with underdrains around the perimeter of the parking area, and/or

~ ~ ~ May 15, 2007, ONE GOD MINISTRY-A GLOBAL CHURCH, SP 2007-SP-006, continued from Page 147

other low-impact design techniques for stormwater management and Best Management Practices as permitted and approved by DPWES.

20. The applicant shall obtain a sign permit for the proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
21. Proposed right-of-way dedication along Colchester Road shall be provided in fee simple to the benefit of the Board of Supervisors at the time of site plan approval or upon demand, whichever occurs first.
22. 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.
23. The church building construction shall be generally consistent with the architecture presented in the attached elevations (Attachment 1). The building will be constructed with a brick façade.

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

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

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

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:00 A.M. TRUSTEES OF SAINT AIDAN'S EPISCOPAL CHURCH, SPA 92-V-003-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 92-V-003 previously approved for a place of worship and nursery school to permit building additions and site modifications. Located at 8531 Riverside Rd. on approx. 7.17 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 33. (Deferred from 4/24/07 at appl. req.)

Chairman Ribble called the applicant to the podium. He made a disclosure and indicated that he would recuse himself from the public hearing.

Ms. Gibb assumed the chair.

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

Jason Heinberg, the applicant's agent, 2200 Clarendon Boulevard, Arlington, Virginia, reaffirmed the affidavit.

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

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The request was to amend SP 92-V-003, previously approved for a place of worship and nursery school, to permit building modifications and additions. The building additions consisted of construction of a curbed area behind the altar of the sanctuary, an increase in the size of the greeting and entrance areas, and an addition to the space to support worship, which included uses such as choir vesting, meeting, and

~ ~ ~ May 15, 2007, TRUSTEES OF SAINT AIDAN'S EPISCOPAL CHURCH, SPA 92-V-003-02, continued from Page 148

classroom space. Several improvements to the entrance area were also proposed, as well as construction of a 40-foot, 9-inch tall bell tower. The additions would increase the size of the existing building by 1,600 square feet. There would be no increase in the number of seats in the sanctuary or any additional enrollment at the nursery school. Staff recommended approval of SPA 92-V-003-02 subject to the proposed development conditions.

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the proposed changes to Development Condition 13, with Ms. Langdon explaining that any new lighting to be installed would have to have full cutoff.

Mr. Heinberg presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the property had been improved and used as a place of worship and nursery school since the late 1960s. With this application, the applicant sought to amend the existing special permit to allow several minor building additions and site modifications. Mr. Heinberg noted that the proposed improvements were intended to enhance the existing facilities and meet the needs of existing parishioners, but said no increase in the number of sanctuary seats or increased enrollment of the nursery school was sought. He outlined some of the proposed changes, including the addition of a wall behind the altar, enlargement of the greeting area, and construction of additional support worship space for meeting or choir vestry. The exterior of the building would be consistent with the existing improvements and architecturally compatible. Mr. Heinberg also noted the proposed addition of a 41-foot tall bell tower with an open design, but said that it was mainly ornamental in nature and would not be rung on a regular basis. He stated that some additional landscaping would be added along the northern property line and around a shed in the vicinity, which would better screen the use from the adjacent residents. Mr. Heinberg stated his concurrence with the proposed development conditions.

Mr. Hart referred to a case in Reston where the church bell could not technologically ring as quietly as required in the Ordinance. He asked if it was feasible to ring the bell at less than 55 dba. Mr. Heinberg said the case he was referring to had a much larger bell, noting that the proposed bell was small and well within the limit of 55 dba.

Ms. Gibb called for speakers.

Mr. Heinberg said that several parishioners were present in the audience, but he did not believe they wished to speak.

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

Mr. Smith moved to approve SPA 92-V-003-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF SAINT AIDAN'S EPISCOPAL CHURCH, SPA 92-V-003-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 92-V-003 previously approved for a place of worship and nursery school to permit building additions and site modifications. Located at 8531 Riverside Rd. on approx. 7.17 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 33. (Deferred from 4/24/07 at appl. req.) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2007; and

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

~ ~ ~ May 15, 2007, TRUSTEES OF SAINT AIDAN'S EPISCOPAL CHURCH, SPA 92-V-003-02, continued from Page 149

1. The applicants are the owners of the land.
2. The rationale as stated in the staff report dated April 17, 2007, 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). 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 St. Aidan's Episcopal Church, and is not transferable without further action of this Board, and is for the location, 8531 Riverside Rd., 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 December 4, 2006 revised to May 3, 2007 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, 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 church seats in the main area of worship shall be limited to 300.
6. The maximum daily enrollment of the nursery school shall not exceed ninety-nine (99) students.
7. Hours of operation of the nursery school shall be limited to 9:00 a.m. until 2:00 p.m., Monday through Friday.
8. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site.
9. Transitional Screening shall be modified along all property lot lines in favor of the existing natural and supplemental landscaped vegetation as shown Page 3 on the approved special permit amendment plat. Notwithstanding that which is shown on the plat, a continuous row of plantings shall be provided along the northern lot line between the center of the southern boundary adjacent to Lot 3 and the southeast corner of adjacent Lot 6. All existing landscaping shall be maintained. Dead or dying landscaping shall be replaced as needed with a like kind of plant material. The landscaping shall be planted prior to site plan approval.

The applicant shall preserve and transplant a Japanese Maple and two kousa dogwoods located on the north and west sides of the existing church. The applicant shall provide a transplanting plan as part of the first and all subsequent submissions of the site plan for review and approval by the Forest Conservation Section, DPWES. The plan shall be prepared by a professional with experience in the preparation of tree transplanting plans, such as a certified arborist or landscape architect. The plan shall address the transplanting of the existing trees on site.

10. The barrier requirements shall be waived along the east, west and south lot lines. Along the north lot line, a 7.0 ft. high board-on-board wood fence shall be installed and maintained between the parking lot and the north lot line.

~ ~ ~ May 15, 2007, TRUSTEES OF SAINT AIDAN'S EPISCOPAL CHURCH, SPA 92-V-003-02, continued from Page 150

11. The play area for the nursery school shall be in the area as shown on the special permit plat, as approved by the Health Department. This play area shall remain fenced and shall be located outside the required transitional screening yard.
12. Interior Parking lot landscaping shall be provided and maintained in accordance with Article 13.
13. In order to mitigate any potential impacts of glare from outside lights on surrounding residential lots, the outside lighting of the parking lot shall be directed away from residential lots and shall be equipped, if necessary, with shields to prevent light from projecting onto surrounding residential lots. Any new proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Any new outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property.
14. The existing church structure and additions shall remain connected to the public water and sanitary sewage systems.
15. Stormwater management and Best Management Practices facilities shall be provided as determined by DPWES. If any structural facilities are required, no existing or proposed vegetation as shown on the SPA plat shall be removed to install the structures.
16. Use of the equipment and the equipment garage structure located in the northwest corner of the property, and labeled on the special permit plat as "Ex. Gar.", shall be limited to the hours of 8:00 a.m. and 7:00 p.m. The Applicant shall utilize the structure exclusively for storage of equipment, machinery and other materials associated with operations of the place of worship and nursery school including, but not necessarily limited to, tables and chairs. There shall be no major repair of equipment or machinery in and around the equipment garage or parking area of the property.
17. The number of outdoor events shall be limited to twelve (12) per year.
18. Use of amplified music for outdoor events shall be prohibited.
19. The sound pressure level of the bell in the bell tower shall be in accordance with the provisions of Chapter 108 of the Code of Fairfax County (the "Noise Ordinance"), which currently sets a maximum sound pressure level of 55 dBA. If the limits in the Noise Ordinance are lowered, the sound level shall conform to the new requirements; however, in no instance shall the sound pressure level exceed 55 dBA. The bell may be sounded during major religious holidays (such as Christmas and Easter), weddings and funerals, for no longer than one (1) minute in duration and no more than three (3) times in one day. The bells shall not be sounded before or after regularly scheduled services. In no event shall the bells be sounded during hours prohibited by the Noise Ordinance, currently between 11:00 p.m. and 7:00 a.m. the following day.
20. The church building construction shall be generally consistent with the architecture presented in the attached elevations (Attachment 1).

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.

~ ~ ~ May 15, 2007, TRUSTEES OF SAINT AIDAN'S EPISCOPAL CHURCH, SPA 92-V-003-02, continued from Page 151

Mr. Byers seconded the motion, which carried by a vote of 4-0. Chairman Ribble recused himself. Mr. Beard and Mr. Hammack were absent from the meeting.

//

~ ~ ~ May 15, 2007, 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.) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred)

Chairman Ribble called the appellants to the podium.

Robert and Anhalim Sues, 3228 Highland Lane, Fairfax, Virginia, identified themselves.

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

Jane Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. She said this was an interior lot with the dwelling unit situated on the southern end of the lot, leaving the northern end an undeveloped yard. Ms. Collins stated that the fence in question was a six-foot tall board-on-board fence that ran for approximately 190 feet along the Highland Lane frontage from where the appellants' lot abutted Lot 21 on the north. The fence made a turn just north of the driveway where it continued into the interior portion of the lot. Ms. Collins provided the Zoning Ordinance definition of a fence, noting that the appellants' fence met the definition. Since the height of a fence in the front yard was limited to no more than four feet, which in the appellants' case was the area between Highland Lane and the dwelling, running the full width of the lot, the fence was in violation of the Zoning Ordinance unless the appellants applied for a special permit. Ms. Collins asked that the Board uphold the Zoning Administrator's determination.

In response to a question from Mr. Hart, Mike Adams, Zoning Enforcement Branch, stated that the maximum fence height was six feet.

Mr. Sues presented the arguments forming the basis for the appeal. He requested that they be allowed to keep the fence without going through the special permit process. After providing pictures of the property to the Board, Mr. Sues said the property was constructed in 1948 with the fence possibly constructed during the 1950s. He said the property was purchased by Bill Cumberland, Sr., in 1970, noting that a letter in the staff report from Mr. Cumberland affirmed that the fence was in place at that time. The property subsequently passed to Bill Cumberland, Jr. In May of 2003, the Cumberlands were cited with a zoning violation, but no action had been taken by the County. In December of 2004, the appellants purchased the property. In February of 2005, a sheriff's notice was tacked to the front door citing a zoning violation of the fence.

Mr. Sues said he felt there was a legal basis for their appeal. The Doctrine of Laches, which was defined as an undue delay in asserting a legal right or privilege in Webster's Dictionary or undue delay or negligence in asserting one's legal rights possibly leading to estoppel of the negligent party's suit in Barron Real Estate Dictionary. He said the County permitted a fence in the location for at least 30 years and chose not to act after citing the prior owners in 2004. He said the inspector at that time told Mr. Cumberland that the fence was grandfathered, and no action would be taken by the County. Mr. Sues said the County's inaction had caused financial harm, since modification of the fence would cost in the neighborhood of \$1,000, and the special permit process would cost even more.

Mr. Sues stated that the surrounding community supported the current fence, noting that modification of the fence would be detrimental to the community and would adversely impact the use and enjoyment of adjacent properties. He said there were several neighbors present who supported the appeal, along with additional

~ ~ ~ May 15, 2007, ROBERT H. AND ANJALI M. SUES, A 2005-PR-023, continued from Page 152

letters he would submit in support.

In response to a question from Ms. Gibb, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the cost to file an appeal was \$375.

Ms. Stanfield noted that a certified plat would be necessary to file for a special permit. Mrs. Sues stated that she had contacted four surveyors who had provided her an estimate of approximately \$1,500 based on the size of the house and lot.

Ms. Gibb asked if the previous owner had disclosed that there was a zoning violation on the property. Mr. Sues said he had not, but that it was not a problem since a zoning inspector had been to the house and seen the location of the fence without taking any further action.

Chairman Ribble called for speakers.

The following speakers came forward to speak: Sarah McDade, 8502 Crestview Drive, Fairfax, Virginia; Delores Gehr, 8524 Crestview Drive, Fairfax, Virginia; Phyllis Schaffer, 3227 Highland Lane, Fairfax, Virginia; Arthur Klekner, 8504 Crestview Drive, Fairfax, Virginia; and Blair Barrow, 3304 Highland Lane, Fairfax, Virginia. Their main points dealt with their belief that the fence was harmonious with the neighborhood, and its removal would be a financial burden to the appellants and would harm the appearance of the area. They believed the appellants should be allowed to keep the fence.

Chairman Ribble closed the public hearing.

Mr. Byers moved to uphold the determination of the Zoning Administrator. Mr. Hart seconded the motion.

Mr. Hart commented that it was a difficult case because the neighbors had spoken eloquently about reasons for the fence, and the lack of opposition to it was abundantly clear. He said in such a situation like this, you would think that enforcement of a fence issue after many years would be a very low priority. This was one of many such situations that came up following a cluster of fence cases in McLean, and the Ordinance was changed to allow it. Mr. Hart stated that on an appeal, the only question before the Board was really whether the Zoning Administrator was correct or not in making a determination. The Board did not have the flexibility to say this was a perfectly attractive fence. They could consider many things on a special permit as to whether there was an impact on the neighbors, but in an appeal context, the focus was very limited. There may be things a judge could do, but the Board did not have the authority to do that. The Board of Supervisors looked at the fence issue and came up with a solution, knowing there were many fences in Fairfax County that were more than four feet high and much older than this fence. The solution was to allow applications for a special permit, and the Board had heard some of those. Mr. Hart reiterated that the Board did not have the ability on an appeal to bless the continuation of a fence that still was in violation of the Ordinance requirement. He said that given the narrow issue that was before them, whether the Zoning Administrator was correct or not in the determination, the fence was clearly more than four feet high and did not seem to have been validly established. Whether it was to the right of the house or not, it appeared to be in an Ordinance front yard even if only a few of them would think of it as the functional front yard of the house. Nothing was shown to the Board that the Zoning Administrator was incorrect. Mr. Hart said he would support the motion.

Mr. Smith noted his frustration because he sympathized with the comments that were made and commended the appellants for their excellent presentation in laying out all the facts. He said he thought the problem was that the Board's discretion was somewhat limited. Mr. Smith said he wrote a paper about 15 years prior for state bar publication about estoppel in local governments, and his recollection was that applying estoppel and laches principle against local governments was exceedingly difficult. He said the flip side was that, in many instances, it could be difficult for local government where there was not enforcement, if you want uniform and fair application of the Zoning Ordinance.

Mr. Smith asked if any permit or any action had been taken in reliance on anything that the County had done, such as a building permit, subsequent to the fence being constructed with the fence shown on any documents submitted to the County. Ms. Collins stated that she was unsure and would have to check the files.

~ ~ ~ May 15, 2007, ROBERT H. AND ANJALI M. SUES, A 2005-PR-023, continued from Page 153

Mr. Hart commented that the exception he referred to was commonly referred to as the 60-day rule. He said the General Assembly had provided that if someone spent money in reliance on governmental approval, which might be approval of a building permit, if sixty days had gone by, the government official could not change their mind. If the building permit had been approved, even if it was wrong, and someone spent money in reliance on that, they were not supposed to be able to unapprove it or to make it be torn down. Mr. Hart said the Board previously had cases that had gone on for 30 years or longer, and there were no other exceptions that he knew of other than what was carved out in the statute, and there was not much for that.

Ms. Collins stated that in the background section, the only building permits that she had been able to find in her files were issued between 1976 and 1996 and were noted on page 3 of the staff report. She said she did not find anything since the appellants had purchased the house.

Mr. Hart stated that there was little flexibility on appeals, noting that special permits conditions were much more flexible. He said an issue such as fence heights must be fair across the board.

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

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:30 A.M. QAISER AZIZ T/A SPICE TOWN, A 2006-PR-073 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination to deny the issuance of a Non-Residential Use Permit for an additional accessory service use on property located in the I-5 District because the maximum permitted gross floor area of accessory service uses under Zoning Ordinance provisions has been exceeded. Located at 8453 G Tyco Rd. on approx. 2,824 sq. ft. of land zoned I-5. Providence District. Tax Map 29-1 ((8)) 7. (Admin. moved from 3/27/07 at appl. req.)

Chairman Ribble noted that A 2006-PR-073 had been withdrawn.

//

~ ~ ~ May 15, 2007, Scheduled case of:

9:30 A.M. DAVID L. BROWN AND MARY ELLEN BROWN, A 2006-DR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, child's play equipment, a patio, and outdoor storage, all located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1840 Patton Te. On approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 21. (Indefinitely deferred from acceptance) (Reactivated from indefinitely deferred) (Admin. moved from 4/10/07 at appl. req.)

Chairman Ribble noted that A 2006-DR-012 had been administratively moved to September 18, 2007, at 9:30 a.m.

//

~ ~ ~ May 15, 2007, After Agenda Item:

Request for Additional Time
Trustees of the Pilgrim Community Church, SPA 81-A-002-04

Mr. Byers moved to approve 12 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Hammack were absent from the meeting. The new expiration date was November 24, 2007.

//

~ ~ ~ May 15, 2007, After Agenda Item:

Request for Additional Time
Chesapeake Healthcare Corporation, VC 00-H-027

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

Mr. Byers moved to approve 24 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Hammack were absent from the meeting. The new expiration date was December 14, 2008.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:37 a.m.

Minutes by: Suzanne Frazier

Approved on: January 16, 2013



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John Ribble, 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 22, 2007. The following Board Members were present: Chairman John F. Ribble III; Nancy E. Gibb; James R. Hart; and Norman P. Byers. V. Max Beard; Thomas Smith; and Paul W. Hammack, Jr., were absent from the meeting.

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

~ ~ ~ May 22, 2007, Scheduled case of:

9:00 A.M. BROOKS HERBERT LOWERY, SP 2007-MA-027 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 feet in height to remain in front yard of a corner lot. Located at 3212 Cofer Rd. on approx. 12,981 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 148.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brooks Herbert Lowery, 3212 Cofer Road, 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 subject parcel was located at 3212 Cofer Road, in the Bel Air Subdivision, in the Mason District. The subject property and surrounding properties were zoned R-3 and developed with single-family detached dwellings. The applicant requested approval to permit an existing fence measuring 5.8 feet in height to remain in a portion of the front yard of a corner lot. The Zoning Ordinance allows a maximum fence height of four feet; therefore, a modification of 1.8 feet was requested.

In response to questions from Mr. Hart, Ms. Langdon said that a slight adjustment to the location of the fence would allow the fence height by right, and the fence was placed on the property line.

Mr. Lowery presented the special request as outlined in the statement of justification submitted with the application. There was a high level of traffic in the area, and he sought to provide a safe, secure, and private environment for his family, which a fence the height requested would permit.

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

Mr. Byers moved to approve SP 2007-MA-027 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BROOKS HERBERT LOWERY, SP 2007-MA-027 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 feet in height to remain in front yard of a corner lot. Located at 3212 Cofer Rd. on approx. 12,781 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 148. 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 22, 2007; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.

~ ~ ~ May 22, 2007, BROOKS HERBERT LOWERY, SP 2007-MA-027, continued from Page 157

3. The area of the lot is 12,781 square feet.

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

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

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

1. This special permit is approved for the location of a fence as shown on the plat prepared by Larry N. Scartz, dated January 4, 2007, 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 4-0. Mr. Beard, Mr. Hammack, and Mr. Smith were absent from the meeting.

//

~ ~ ~ May 22, 2007, Scheduled case of:

9:00 A.M. RHODA YVONNE WATERS, TRUSTEE, SP 2007-BR-022 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.3 ft. from side lot line. Located at 8437 Chapelwood Ct. on approx. 12,091 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((23)) 19.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Rhoda Yvonne Waters, 8437 Chapelwood Court, Annandale, 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 subject property and surrounding properties to the north, east, and west were zoned R-3 and developed with single-family detached dwellings. Property to the south was zoned R-1 and developed with a single-family detached dwelling. The applicant was seeking approval of a special permit for the reduction of certain yard requirements to permit the construction of a garage, enclosing an existing carport, 7.3 feet from the side lot line. The proposed garage was approximately 458 square feet in size. Staff recommended approval of SP 2007-BR-022 subject to the proposed development conditions.

Ms. Waters presented the special permit request as outlined in the statement of justification submitted with the application. She described the unusual shape of the cul-de-sac, the placement of the houses, and the fact that each appeared farther apart from one another than the actual footage. Ms. Waters referenced several letters in support from her neighbors.

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

Mr. Hart moved to approve SP 2007-BR-022 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RHODA YVONNE WATERS, TRUSTEE, SP 2007-BR-022 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.3 ft. from side lot line. Located at 8437 Chapelwood Ct. on approx. 12,091 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((23)) 19. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 22, 2007; and

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

1. The applicant is the owner of the land.
2. The rationale in the staff report is adopted.
3. The staff recommendation is for approval.
4. This is for enclosure of an existing carport, which is fairly substantial to begin with and which has a large roof and attic over it; essentially, this is putting walls on the lower level.
5. It is believed there will be no significant negative impact on anybody.
6. It would be consistent with the other homes in the neighborhood.
7. There are three letters in support to include one from Norwood, Massachusetts, so obviously it has very wide-spread support.
8. The Board has determined that the application meets the requirements set forth in the standard motion.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the 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 (458 square foot garage addition) as shown on the plat prepared by Peter R. Moran, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (4,796 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

~ ~ ~ May 22, 2007, RHODA YVONNE WATERS, TRUSTEE, SP 2007-BR-022, continued from Page 159

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

Mr. Byers seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Hammack, and Mr. Smith were absent from the meeting.

//

~ ~ ~ May 22, 2007 Scheduled case of:

9:00 A.M. JOHN K. PHOUMINH, SP 2007-LE-021 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.7 ft. from the rear lot line. Located at 6275 Willowfield Wy. on approx. 8,507 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 81-3 ((47)) 14.

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 Phouminh, 6275 Willowfield Way, Springfield, 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.

Gregory Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The subject property and surrounding properties were zoned R-3 Cluster and developed with single-family detached dwellings. The request was to permit a reduction of certain yard requirements to permit construction of a sunroom addition, approximately 228 square feet in size, in the rear of the house 15.7 feet from the rear lot line. The sunroom would be constructed adjacent to an existing deck, and its purpose was to provide additional seasonal family living space. Staff recommended approval of SP 2007-LE-021 subject to the proposed development conditions.

Mr. Phouminh presented the special permit request as outlined in the statement of justification submitted with the application. The addition was to afford all family members a comfortable area for family gatherings. The design had compatible building materials with his home and was harmonious and compatible with the neighborhood. He noted that he had the support of his neighbors and approval from the homeowners association.

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

Ms. Gibb moved to approve SP 2007-LE-021 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN K. PHOUMINH, SP 2007-LE-021 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.7 ft. from the rear lot line. Located at 6275 Willowfield Wy. on approx. 8,507 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 81-3 ((47)) 14. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

~ ~ ~ May 22, 2007, JOHN K. PHOUMINH, SP 2007-LE-021, continued from Page 160

applicable State and County Codes and with the by-laws of 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 22, 2007; and

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

1. The applicant is the owner of the land.
2. The applicant desires to build a sunroom.
3. The rationale of the staff report is adopted; it sets forth the exact location and specifications of the sunroom and recommends approval.
4. It is compatible with the neighborhood.
5. The applicant has received approval of his homeowners' association.

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

THAT the applicant has presented testimony indicating compliance with 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 228 square feet) of the proposed additions as shown on the plat prepared by Architectural Designs, dated January 29, 2007 as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,168 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings included Attachment 1 to these conditions.
5. A row of evergreen trees, a minimum of seven (7) to eight (8) feet in height at time of planting, spaced a maximum of twelve (12) feet apart, shall be planted along the length of the rear fence adjacent to Lot 43.

This approval, 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 4-0. Mr. Beard, Mr. Hammack, and Mr. Smith were absent from the meeting.

//

~ ~ ~ May 22, 2007, Scheduled case of:

9:00 A.M. GREGORY C. GARDNER, SP 2007-MA-023

Chairman Ribble noted that SP 2007-MA-023 had been withdrawn.

//

~ ~ ~ May 22, 2007, Scheduled case of:

9:00 A.M. TRUSTEES OF SHILOH BAPTIST CHURCH OF ODRICK'S CORNER AND SIMPLY... SPARETIME, INC., SPA 00-D-069 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 00-D-069 previously approved for a church to permit addition of a child care center. Located at 8310 Turning Leaf La. on approx. 3.16 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 58C.

Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michelle Spady, the applicants' agent, 1019 Salt Meadow Lane, McLean, 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.

Gregory Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The subject property was located at 8310 Turning Leaf Lane in the Dranesville District, zoned R-1, developed with a church and ancillary facilities, and it and surrounding properties were planned for residential development at two to three dwelling units per acre. The request was to amend SP 00-D-069, previously approved for a church, to permit the addition of a child care center using the existing fellowship hall facilities. No other changes were proposed. The applicants proposed a maximum daily enrollment of 50 students, and there would be five employees with hours of operation from 2:00 p.m. to 6:30 p.m., Monday through Friday. Staff recommended approval of SPA 00-D-069 subject to the proposed development conditions.

Ms. Spady presented the special permit amendment request as outlined in the statement of justification submitted with the application. The request was approval to utilize one room in the fellowship hall to run after-school programs, which would help alleviate the area's childcare issues. As there would be no changes in the church's activities, she saw no adverse impact on the neighborhood because there would be no increase in traffic.

After reading an opposition letter from the Lewinsville Coalition provided by staff, Ms. Spady explained that the original proposal was for 15 to 20 children, but as the proposal progressed, she was informed by engineers that 72 children could be accommodated and was told by the Department of Transportation (DOT) that they foresaw no problem with 50 children. She noted that State licensing was forthcoming, and at that time she may be allowed 20 to 25 maximum. She said she explained the trip generation to Jane Edmondson, the president of the Lewinsville Coalition, and that she declined to put in writing for her an exact number of children. She confirmed that she was a tenant of the church, and she did not have the easement's deed of dedication nor its language.

In response to a question from Mr. Byers, Mr. Chase explained the traffic/transportation/trip generation analysis. He said DOT estimated that even with 50 children, there would be no more than 40 trips daily, and their staff supported the application because they thought the impact would be minimal.

Chairman Ribble called for speakers.

Jane Edmondson, 7804 Arial Way, McLean, Virginia, came forward to speak. She gave a brief history of the Lewinsville Coalition, of which she was the president. Although she stated that they supported the church's original expansion, they could not support Ms. Spady's current proposal. She noted the difficulty when turning into or exiting Turning Leaf Lane during rush hour with the secondary roads gridlocked. She pointed out that the situation would only worsen as more and more approved projects commenced construction. Ms. Edmondson said the coalition's duty was to oppose all development until the traffic impact on the secondary neighborhood roads was thoroughly assessed and it was determined that the impact would be minimal. If the Board were to approve the project, she requested that the number of children be limited to the number Ms. Spady believed could be reasonably served. If in the future Ms. Spady applied for a special permit

~ ~ ~ May 22, 2007, TRUSTEES OF SHILOH BAPTIST CHURCH OF ODRICK'S CORNER AND SIMPLY... SPARETIME, INC., SPA 00-D-069, continued from Page 162

amendment to increase the number of enrollees, the community would have had first-hand experience with the traffic situation, and possibly there would be no opposition at that time. Ms. Edmondson said the Lewinsville Coalition could possibly support the after-school program if it were at a lower number.

Discussion followed among Mr. Hart, Ms. Langdon, and Ms. Edmonson concerning an application recently submitted by the McLean Hamlet Swim Club and possible traffic considerations.

In her rebuttal, Ms. Spady pointed out that other facilities, such as a soccer field in the area, drew many children, and she did not believe the child care center would bring any more traffic.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SPA 00-D-069 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF SHILOH BAPTIST CHURCH OF ODRICK'S CORNER AND SIMPLY... SPARETIME, INC., SPA 00-D-069 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 00-D-069 previously approved for a church to permit addition of a child care center. Located at 8310 Turning Leaf La. on approx. 3.16 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 58C. 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 22, 2007; 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 3.16 acres.
4. It is noted that the transportation analysis took the most conservative tact on the standpoint of the 50 children, which would be the maximum.
5. A trip generation of a maximum of 40 per day is calculated.
6. Ms. Spady's remarks are noted, and although she is going through the special permit process, she will also have to have the approval from State authorities regarding the maximum number of children to attend.
7. Quality childcare is required within Fairfax County, and based on that, the application should go forward.

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

THAT the applicant has presented testimony indicating compliance with 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). 8-308 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 Shiloh Baptist Church of Odrick's Corner and Simply... Sparetime, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 8310 Turning Leaf Drive, consisting of 3.16 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 Harold A. Logan Associates, P.C., dated June 15, 1999, revised through January 30, 2001 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit 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 two hundred sixty (260) with a corresponding minimum of sixty five (65) parking spaces as reflected on the Special Permit Plat. All parking for the church shall be on site.
6. Upon issuance of a new Non-RUP, the total maximum daily enrollment for the child care center shall not exceed 50 children.
7. The maximum hours of operation of the child care center shall be limited to Monday through Friday: 2:00 p.m. to 6:30 p.m.
8. 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.
9. Transitional Screening 1 (25 ft.) shall be waived along the eastern property line adjacent to the existing cemetery. Transitional Screening 1 (25 ft.) shall be modified along the eastern property line south of the cemetery as shown on the Special Permit Plat, to screen the parking lot and minimize any headlight glare from the adjacent low density residential uses.
10. The barrier requirement shall be waived along the eastern lot line.
11. Additional plantings, a minimum of six (6) feet in height at the time of planting, shall be maintained between the parking lot and Spring Hill Road. Plantings a minimum of six (6) feet in height at the time of planting, shall also be maintained along the eastern edge of the parking lot, as shown on the plat, in order to screen the parking lot and minimize glare from headlights to the adjacent residential development. The species of plantings shall be as approved by Urban Forest Management. All required landscaping shall be maintained. Dead or dying plant material shall be replaced as needed with a like kind and size.
12. Interior and peripheral parking lot landscaping shall be maintained in accordance with Article 13 of the Zoning Ordinance as determined by DPWES.
13. Any lighting of the parking area shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve feet.
 - The lights shall be focused directly on the subject property and shall not impact adjacent properties.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
 - All lights shall be full cut off.
 - Any 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. Any new outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground

~ ~ ~ May 22, 2007, TRUSTEES OF SHILOH BAPTIST CHURCH OF ODRICK'S CORNER AND SIMPLY... SPARETIME, INC., SPA 00-D-069, continued from Page 164

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.

14. If Stormwater Management/Best Management Practices (BMP's) requirements are not waived, such facilities shall be provided outside of the transitional screening areas and the cemetery, as shown on the SP plat and as determined by DPWES.
15. Tree cover shall be provided 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.
16. All signs on the property shall conform to the provisions of Article 12.

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 a new Non-RUP has been issued. 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 4-0. Mr. Beard, Mr. Hammack, and Mr. Smith were absent from the meeting.

//

~ ~ ~ May 22, 2007, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Great Latin Restaurants, L.C. T/A Cerro Grande Cafe

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, quoting Virginia Code § 15.2-2311, stated that the Zoning Administrator's position was that the appellant did not have the right to appeal to the Board of Zoning Appeals (BZA) because the referenced Code only gave appellants the right to appeal decisions that were made by the Zoning Administrator pursuant to ordinances adopted pursuant to Article 7, Chapter 22, Title 15.2, of the Virginia Code. She stated that Chapter 27 of the County Ordinance was not adopted pursuant to Article 7 of Chapter 22 of Title 15.2, but rather it was adopted pursuant to Virginia Code 15.2-912.3, a part of Article 1 of Chapter 9 of Title 15.2. Ms. Stanfield noted that Virginia Code 15.2-912.3 expressly gave the County the authority to adopt procedures for the revocation of permits to allow dancing, providing a right to appeal the revocation of a permit to allow dancing to the County Executive. This was part of the procedures the County had adopted for the revocation of those type permits.

Referencing Michael Congleton's, Senior Deputy Zoning Administrator, Zoning Enforcement/Property Maintenance, April 13, 2007 letter, Mr. Hart noted that it said the notice of violation must be filed with the Zoning Administrator and the BZA. He questioned why staff was currently saying that it was not a Zoning Ordinance determination and was not appealable to the BZA. Ms. Stanfield maintained that staff's position was that this type of permit would be issued pursuant to Chapter 27, and Mr. Congleton's subsequent letter clarified the matter of the denial of the reissuance of the dance permit.

Mr. Hart questioned staff whether he understood their position correctly in that, by Ordinance, the County could limit the scope of appeals set by the General Assembly. Ms. Stanfield said that staff's position was that the scope of appeals could be limited by the County by Chapter 27 provisions, and for this case staff found that there was no Zoning Ordinance provision that addressed the appellant's argument. She added

~ ~ ~ May 22, 2007, After Agenda Items, continued from Page 165

that Mr. Congleton's letter cited provisions directed to the eating establishment, not the dancing.

Responding to Mr. Byers' interpretation of the words "shall" versus "may," Ms. Stanfield said that "shall" was also a direction as one could choose whether or not to appeal. She noted that Zoning Ordinance language that referred to appeals used the word "may," therefore, one had that option.

Douglas E. McKinley, the appellant's agent, McKinley & Bornmann, P.L.C., 100 N. Pitt Street, Suite 201, Alexandria, Virginia, presented his position as cited in his brief in support of opposition. Referring to Mr. Congleton's April 13th letter, he noted that it revoked the permit that was issued, pursuant to the Zoning Ordinance; that it referred to two violations, but the language fell squarely within Virginia Code §15.2-2311 that provided the right of appeal of such a decision. The County's position was that the Fairfax County Code, § 27-1-5 (c), took that right away; however, Mr. McKinley said that was not possible because the County could not, under the Dillon Rule, trump the State Code. He further explained that when the Zoning Administrator did the revocation, the claim made was that they only referred to the restaurant. Mr. McKinley said he found that rather disingenuous because no violations by the restaurant were cited. Mr. McKinley maintained that the County could not deny, by virtue of its Code, a right to appeal contained in the State statute.

In response to a question from Mr. Hart, Mr. McKinley explained the procedural sequence that occurred after receipt of the April 13th letter. He clarified that there was the revocation of two Non-Residential Use Permits (Non-RUPs) and submission of a Non-RUP for the restaurant; that the restaurant had a Non-RUP, but the dance floor did not. He also recalled an April 16th letter, addressed to him and received April 25th, notifying that all live entertainment and dancing were prohibited at the facility until such time as a dance permit was approved.

Referencing Mr. Congleton's April 23rd letter, Ms. Stanfield said it informed the appellant that a permit for dancing would not be reissued and that the denial of the reissuance was appealable to Chapter 27 of the County Code. She stated that, in this situation, there was Code language that, in staff's perspective, was unusual in that the Zoning Administrator specifically gave the authority to issue a permit to allow dancing; however, the revocation was appealable to the County Executive. There were no provisions in the Ordinance specifically that allowed the issuance of this type of permit.

Chairman Ribble called for a motion.

Mr. Hart moved that the Board accept the appeal filed by Great Latin Restaurants, L.C., T/A Cerro Grande Café. He said he agreed with the rationale in Mr. McKinley's brief in support, and he thought the April 13th letter was appealable within the scope of Sect. 15.2-2311 as it dealt with interpretations under the Zoning Ordinance. Zoning violations in the C-7 District, Group 5 Special Permits, cited the Zoning Ordinance and spoke of procedures including an appeal to the BZA. Mr. Hart said he found this the type of determination that the General Assembly had made appealable under Sect. 15.2-2311. Although he was not sure that he entirely understood the argument about the Fairfax County Code section, he would tend to agree that appeals under a County Code section would not be within the BZA's jurisdiction. However, at the same time, he thought that where there was a hybrid letter issued that included a good many things, as long as it was partly about the Zoning Ordinance or its determinations, the letter would be appealable. Mr. Hart submitted that the question concerning whether the square footage mattered or that it was or was not a dance hall use were Zoning Ordinance questions, and perhaps the use required some other sort of approval, but that was not for the BZA to determine that day. The question remained whether this case was appealable or not, and he thought it was. Mr. Hart said he observed that if the General Assembly said that everything in a certain category was appealable, the Board of Supervisors could not take that away. They did not have that power. He said that the Board of Supervisors could not pass an Ordinance that said some subset of what the General Assembly had made appealable was appealable to the BZA, and in their wisdom would decide that the County Executive should hear those other things. Mr. Hart said he did not think that such a procedure would be exclusive, although he thought there was not necessarily a problem with creating another procedure if someone wanted to go to the County Executive. He commented that could be a very flexible procedure if there were no time limit for it. Mr. Hart said the problem in this case was that it was being presented to the BZA as if the procedure were exclusive and because someone could appeal something to the County Executive, that they were somehow foreclosed from going to the BZA. He maintained that he thought that was exactly the opposite of what the statute said. Mr. Hart stated that for those reasons, the BZA should accept the appeal.

~ ~ ~ May 22, 2007, After Agenda Items, continued from Page 166

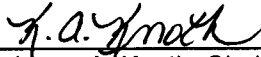
Mr. Byers seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Hammack, and Mr. Smith were absent from the meeting.

//


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

Minutes by: Paula A. McFarland

Approved on: July 18, 2012



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 5, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 8:59 a.m. He asked if there were any matters to bring before the Board.

Mr. Hart stated that the Planning Commission's soft drink booth at the Fairfax Fair that weekend would donate all proceeds from sales to the Hokie Spirit Fund for the victims and families of the tragic shootings on the Virginia Tech campus. He extended an invitation to any and all to come to the fair and have a good time.

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

~ ~ ~ June 5, 2007, Scheduled case of:

9:00 A.M. PAULA E. SEVERS, SP 2007-PR-028 Appl. under Sect(s) 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building locations to permit an accessory structure (deck) to remain 4.3 ft. and addition (wood shed) 19.1 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition 18.0 ft. from rear lot line. Located at 9101 Petros Ct. on approx. 20,240 sq. ft. of land zoned R-2. Providence District. Tax Map 58-4 ((17)) 20.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paula Severs, 9101 Petros Court, Fairfax, 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 subject property and properties to the north, south, and west were zoned R-1 and developed with single-family detached dwellings. The Congregation Olam Tikvah abutted the subject property on the east. The applicant requested approval to permit a reduction of certain yard requirements to permit construction of a two-story addition 18 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a modification of 7.0 feet, or 28 percent, was requested. The applicant also requested reductions to the minimum yard requirements based on error in building location to permit an accessory structure, a wood pool deck, to remain 4.3 feet and an addition, a wood shed attached to the dwelling, to remain 19.1 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 9.0 feet for the deck and 25 feet for the shed; therefore, modifications of 4.7 feet, or 52 percent, and 5.9 feet, or 24 percent, respectively, were requested. Staff recommended approval of SP 2007-PR-028 for the addition subject to the proposed development conditions.

Ms. Severs presented the special permit request as outlined in the statement of justification submitted with the application. She said the house was built in 1965 and because of her growing family, was in need of improvements and expansion. They chose to renovate instead of moving because they liked the neighborhood and schools. The rear yard backed up to the synagogue, Olam Tikvah, where its delivery drop-off area afforded her family a less desirable view. An architect was retained to design the improvements, and Ms. Severs explained the expansion proposal for each room, pointing out that the back view would be redirected with a frosted window facing the synagogue. Ms. Severs noted that the entire expansion was to the rear of the house, and because of the deep setback of the house on the lot, there would be an encroachment into the 25-foot setback from the property line shared with Olam Tikvah. She addressed the deck and shed error in building location issues discovered during the special permit process. She said that each were preexisting, were added to the application, and they sought permission to allow them to remain. Ms. Severs said the proposal had the support of the neighbors, and she requested the Board approve the special permit application.

Mr. Hart asked whether anyone had calculated the rear yard coverage. Ms. Hedrick said the calculation of 23 percent rear yard coverage had been done by the engineer and was reflected on the plat in Note 3.

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

~ ~ ~ June 5, 2007, PAULA E. SEVERS, SP 2007-PR-028, continued from Page 169

Mr. Hammack moved to approve SP 2007-PR-028 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAULA E. SEVERS, SP 2007-PR-028 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building locations to permit an accessory structure (deck) to remain 4.3 ft. and addition (wood shed) 19.1 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition 18.0 ft. from rear lot line. Located at 9101 Petros Ct. on approx. 20,240 sq. ft. of land zoned R-2. Providence District. Tax Map 58-4 ((17)) 20. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 5, 2007; 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 two-story addition.
3. The rationale in the staff report is adopted.
4. The error in building location's construction was done by a previous owner and had existed for some time.
5. There apparently has been no problems with the structures, and they are not in any way detrimental to the back of the Olam Tikvah temple.
6. There are two letters in support of the application.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in 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

~ ~ ~ June 5, 2007, PAULA E. SEVERS, SP 2007-PR-028, continued from Page 170

Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (1,232 square feet) of addition and attached shed and deck, as shown on the plat prepared by B.W. Smith and Associates, Inc., dated February 1, 2001 as recertified on September 25, 2006 and as revised through April 16, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,387 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ June 5, 2007, Scheduled case of:

9:00 A.M. AIMAN ELKHATIB, SP 2007-SP-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 addition to remain 6.4 ft. from side lot line. Located at 5925 One Penny Dr. on approx. 1.85 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((3)) 22.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Aiman Elkhatib, 5925 One Penny Drive, Fairfax Station, 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.

~ ~ ~ June 5, 2007, AIMAN ELKHATIB, SP 2007-SP-030, continued from Page 171

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The subject parcel was located at 5925 One Penny Drive, in the Pickwick Woods Subdivision, in the Springfield District. The subject property and surrounding properties were zoned R-C and WS and developed with single-family detached dwellings. The applicant requested a reduction to minimum yard requirements based on error in building location to permit an addition, a partially enclosed carport, to remain 6.4 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 13.6 feet, or 68 percent, was requested.

Mr. Elkhatib presented the special permit request as outlined in the statement of justification submitted with the application. He said before commencing his project, he researched the internet and spoke with a woman who advised him that no permit was necessary for his proposal. Upon completion, however, he received a notice of violation informing him that a permit was required. He stated he never would have considered the addition if aware of neighbors' objections or Code/Ordinance violations. Mr. Elkhatib said he would raze the unit if that would appease everyone, and he would not waste the Board's time. He sought to be a good neighbor to the extent of giving away his dog whose barking irritated a neighbor. Mr. Elkhatib maintained that he was a peaceful man who enjoyed peaceful relations, and he would withdraw his application if that settled the matter.

Responding to Chairman Ribble's request for clarification, Ms. Hedrick explained that there had been no complaint to Zoning Enforcement. Code Enforcement had issued the applicant a corrective work order regarding the necessity for a building permit, and the zoning violation had been discovered while pursuing the building permit.

Mr. Elkhatib said the Code Enforcement staff informed him that a neighbor had reported him. He said he was very sorry for building the carport. He built it to protect his vehicle from tree debris and acorns falling off a neighbor's tree. Responding to Mr. Hammack's question concerning the removal of the carport, Mr. Elkhatib said he would remove it himself, and because of several family commitments, the soonest would be September. Mr. Hammack said that if Mr. Elkhatib withdrew his application, he would be in violation, but if the Board continued the hearing for a reasonable amount of time, it would allow Mr. Elkhatib time to remove the structure.

In response to a question from Mr. Hart, Susan C. Langdon, Chief, Special Permit and Variance Branch, and Ms. Hedrick noted that the applicant had a permit for the concrete retaining wall, and the concrete referenced in the work order was the carport's footers.

Mr. Byers asked Mr. Elkhatib if he spoke to his neighbors about his proposal prior to construction. Mr. Elkhatib said the next-door neighbor had an issue with him and his family. They were not on speaking terms, and regrettably, they did not have a neighborly relationship. He restated that he would withdraw his application to resolve the matter.

Concurring with Mr. Hammack's earlier suggestion, Mr. Beard said he also thought a 90-day deferral was appropriate.

Mr. Byers said he was prepared to make a motion to defer for 90 days, but he wanted to be certain that would allow enough time after the removal of the structure for the property to be inspected before the next public hearing.

Chairman Ribble called for speakers.

Connie Maier, 5923 One Penny Drive, Fairfax Station, Virginia, came forward to speak, and the oath was administered to her. She said she was the next-door neighbor, and she wanted good neighbor relations. She said her home was listed for sale, and several prospective buyers had commented about the carport. Ms. Maier said it may affect her ability to sell, and that impact made the issue very relevant to her and her family. She respectfully requested that, if the structure was to come down, it be immediately and not wait until September.

Mr. Elkhatib said he believed himself to be fair and that he was fair throughout these proceedings. He said that if the Board deemed appropriate, he would take the structure down, preferably by himself, but was unable to do so immediately, and his sole request was that any action wait until September.

~ ~ ~ June 5, 2007, AIMA ELKHATIB, SP 2007-SP-030, continued from Page 172

Maura Elkhatib, 5925 One Penny Drive, Fairfax Station, Virginia, came forward to speak. She said they cared about their home and the neighborhood, and that the carport was constructed with no intention that it look ugly. She said Ms. Maier's house had been on the market for approximately a month, and the housing market had slowed. Ms. Elkhatib said it was not the carport that hampered the sale of the next-door neighbor's house.

Mr. Elkhatib stated that he would remove the carport as he wanted to resolve the situation, that he was very sorry, and that he only needed the time to remove it.

Chairman Ribble closed the public hearing.

Mr. Byers moved to defer decision on SP 2007-SP-030 to September 11, 2007, at 9:00 a.m. Mr. Hammack seconded the motion.

Ms. Gibb commented that deferring the decision was really the only action that would allow the applicant the time needed to resolve the matter.

Chairman Ribble called for the vote. The motion carried by a vote of 7-0.

//

~ ~ ~ June 5, 2007, Scheduled case of:

9:00 A.M. CHRISTINE LOUISE RUTLEDGE, TRUSTEE, SP 2007-BR-025 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 19.4 ft. from rear lot line. Located at 8618 Canterbury Dr. on approx. 10,518 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 70-3 ((5)) 16.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christine Louise Rutledge, 8618 Canterbury Drive, Annandale, 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 applicant requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit an addition, a screened porch, to remain 19.4 feet, including the eave, from the rear lot line.

Ms. Rutledge presented the special permit request as outlined in the statement of justification submitted with the application. She said the home had been constructed in 1964, and she had purchased it in 1985 and loved the neighborhood and schools. In 1997, she contracted a person that a co-worker had referred to build a wood deck on the rear of the house. She said had not realized a permit was necessary because the contractor had told her it was up to her whether she wanted to get a permit. Ms. Rutledge said the wood deck, half of which was screened, was beautiful and created a place to sit, listen to the birds, enjoy the weather, and have meals.

The applicant's husband, David, said the reduction was in keeping with the Ordinance. It did not negatively impact the neighbors, the severe drop from the deck afforded a view of just the roofs of the houses behind them, and seasonally the deck was like living in a tree house because of the dense foliage. He said everyone's privacy was maintained due to screening. At issue was a small pie-shaped portion of the porch that encroached within the minimum yard setback, and they were before the Board requesting permission to allow the structure to remain.

Chairman Ribble called for speakers.

Michael Hilbert, 8617 Canterbury Drive, Annandale, Virginia, came forward to speak. He said he was not an

~ ~ ~ June 5, 2007, CHRISTINE LOUISE RUTLEDGE, TRUSTEE, SP 2007-BR-025, continued from Page 173

expert on zoning, but he did not believe any zoning standards pertaining to setbacks were compromised regarding the subject property. He voiced concern that he may be adversely impacted, perhaps by noise, by any alteration imposed to correct the error.

Richard Massey, 8616 Canterbury Drive, Annandale, Virginia, came forward to speak. As the applicant's next-door neighbor for 30 years, he found them to be excellent neighbors, and he saw no impact to their request and fully supported the special permit. He said it was his shed that encroached within the Rutledge property, and 30 years ago it was located there, before zoning restrictions.

Normand Tousignant, 8611 Canterbury Drive, Annandale, Virginia, came forward to speak. Being a neighbor to the Rutledges for over 20 years, he said one could not hope for nicer neighbors. They were Fairfax County employees, were hard workers, friendly, and had beautifully maintained their property to the delight and appreciation of the neighborhood. Mr. Tousignant said the error was done in good faith, and the applicants were unaware of the requirement. He and his neighbors supported the application's approval.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-BR-025 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTINE LOUISE RUTLEDGE, TRUSTEE, SP 2007-BR-025 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 19.4 ft. from rear lot line. Located at 8618 Canterbury Dr. on approx. 10,518 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 70-3 ((5)) 16. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 5, 2007; and

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

1. The applicant is the owner of the land.
2. There is one letter in support from a neighbor and several neighbors spoke in support of the application.
3. Based on the statement of justification and photographs, with the existing vegetation there does not appear to be any negative impact on anybody.
4. The porch has been this way for approximately ten years.
5. The Board has determined that the required standards under the mistake section have been met.

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

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

~ ~ ~ June 5, 2007, CHRISTINE LOUISE RUTLEDGE, TRUSTEE, SP 2007-BR-025, continued from Page 174

- 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, as shown on the plat prepared by John D. Jarrett, dated October 16, 2006, as revised through February 28, 2007, submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the screened porch addition shall be 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.

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

//

~ ~ ~ June 5, 2007, Scheduled case of:

9:00 A.M. JAMES WILLIAM BROWN, SP 2007-SP-026 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height in the front yard. Located at 10402 Hampton Rd. on approx. 1.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 105-2 ((5)) 1.

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 William Brown, 10402 Hampton Road, Fairfax Station, 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 applicant requested a special permit to allow a six-foot high wood fence in the front yard to remain. A seven-foot high wood fence existed along the entire western property line, of which an 80-foot portion was in the front yard. Additionally, a seven-foot high, 127.5-foot long wood fence existed along the eastern property line, of which a 75-foot portion was in the front yard. The Zoning Ordinance permits four feet height by right in a front yard;

~ ~ ~ June 5, 2007, JAMES WILLIAM BROWN, SP 2007-SP-026, continued from Page 175

however, through a special permit application, the applicant could request a fence in the front yard up to six feet in height. The applicant stated that he was aware that the granting of a special permit in this case would necessitate reducing the height of the existing fence in the front yard to no greater than six feet. A development condition had been included to specify this requirement.

An easement was located along a portion of the property line, as noted by Ms. Gibb, and Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff could propose a development condition to address the location of the fence in the easement.

Commenting that there seemed to be a number of things occurring on the site, Mr. Hart suggested that staff conduct a site visit to assess the situation.

As a point of clarification, Ms. Gibb noted that the Board would determine whether the fence met Standard 8-923 regarding compatibility and harmony.

Mr. Brown presented the special permit request as outlined in the statement of justification submitted with the application. He said his neighbor to one side, Mr. Conner, had installed a seven-foot fence made of wood scraps and non-dimensional lumber approximately 17 years prior along the entire property line, including into Mr. Brown's front yard. Mr. Brown said a Fairfax County zoning inspector had been called out and stated that it was the worst looking fence he had seen in 25 years, and a real estate broker had said that Mr. Conner's fence would adversely affect the selling price of Mr. Brown's home. Mr. Brown said he had looked at Mr. Conner's unsightly fence for years and then erected his own fence to hide Mr. Conner's fence and to provide needed security and privacy. He said the house and driveway on Mr. Conner's property was over 600 feet from his front yard, and there were dense bamboo, brush, trees, and a garden bordering the fence. Mr. Conner's garden, which was located next to the property line, contained miscellaneous trash, such as wire, mailboxes, ropes, and sinks. Mr. Brown said the fence had not been maintained and was in disrepair and infested with termites. He said Mr. Conner had different Spanish day laborers each week who worked in the garden next to the fence, and the workers walked around with long knives and defecated next to the fence in the dense bamboo. Mr. Brown said that not only was that a security problem, but also a health issue. He said Mr. Conner's grandson had been arrested and jailed for 30 days the prior year for stalking Mr. Brown's wife.

Mr. Brown said that on the property owned by his neighbor to the other side, Mr. Hall, there were dense trees, brush, bamboo, trash, and wires between Mr. Brown's fence and Mr. Hall's residence. Mr. Brown said his fence blended into the natural environment and provided security and privacy for both families. He said Mr. Hall's son had thrown an apple against Mr. Brown's house, damaging the siding and windows, for which a police report was filed, and had been caught taking videos of Mr. Brown's wife in the yard the prior year. Mr. Brown said that in addition to sheds, there were many trucks, SUVs, autos, trailers, and boats parked within view of his front yard, and the display of the items devaluated his property and generated high traffic at all hours. Mr. Hall's son and his friends rode off-road four-wheel vehicles next to Mr. Brown's property, generating noise and dust, which the fence helped to eliminate. There was an unfenced swimming pool located on the Hall property, which was dangerous to small children. Mr. Brown said Mr. Hall had a motorcycle with special loud mufflers that entered and exited the driveway at all hours in the summer months, and the fence helped to muffle the noise impact. There were many parties held by Mr. Hall in his front yard with those attending parking in the grass next to Mr. Brown's home. Mr. Brown said no trespassing signs were displayed by Mr. Hall along the trees and fence in the front and rear yards. Mr. Hall had dumped several truckloads of lead, fill dirt, and concrete in his front yard, which took the Fairfax County Environmental Division over a year to have removed. Mr. Brown said that during the survey of his property, Mr. Hall and his wife verbally attacked and threatened Mr. Brown's wife and the surveyor, which resulted in police being dispatched and a report being filed. Mr. Brown said his garage had been vandalized, the landscape lighting destroyed, and dirt had been put into the gas tank of his lawnmower. He said the privacy and security issues justified the need for an increase in height of his fence from four to six feet.

Chairman Ribble called for speakers.

Jerry Conner, 10400 Hampton Road, Fairfax Station, Virginia, came forward to speak. He said Mr. Brown was an angry man, and he would like Mr. Brown's fence to be 10 feet high as that would be more suitable. Mr. Conner's fence was made from locust slabs, which were not infested with termites. Mr. Brown was infamous throughout the neighborhood for calling in complaints, a practice that commenced 20 years prior

~ ~ ~ June 5, 2007, JAMES WILLIAM BROWN, SP 2007-SP-026, continued from Page 176

and continued to the present. Mr. Conner denied that the hired day labors defecated near the fence. He said it was a relative, not his grandson, who was acquitted of the false charge. Mr. Conner stated he could not understand the complaint about the signs because Mr. Brown had many all over his own property, that he supported the fence, and he felt obligated to correct the record.

Laura Lanier, 8120 Woodland Hills Lane, Fairfax Station, Virginia, came forward to speak. She disagreed with the fence's justification as it was not harmonious, it was obtrusive, too tall, a bright white color, noticeably stood out, and was unlike the other neighborhood fences. Ms. Lanier recommended that Mr. Brown reduce the fence to the required four feet, build it with split rails, and establish screening and buffering plantings for privacy. She added that after considering the previous testimony, it would appear that Mr. Brown would probably have some issue with his neighbors anyway, and the height of a fence would not prevent it.

In his rebuttal, Mr. Brown pointed out from the photographs, the dilapidated condition of Mr. Conner's fence. He maintained that there were other six- and seven-foot tall fences on the larger lots in the area. He said that from his second-story window, the day laborers were very visible, carrying large knives, which he felt was a security concern that warranted several police reports. Mr. Brown said his wife would not enjoy their back yard without a fence, and he believed it was harmonious because it matched the white color of his house.

Addressing a question from Mr. Smith, Mr. Brown was unable to provide the street addresses for the other tall fences he had cited, but maintained that there were several in the area. He claimed several of the fences were painted white. Based on the location of an easement on his property, if the Board required, he would shift his fence.

Chairman Ribble closed the public hearing.

Mr. Byers said he had no objection to the fence being six feet high, but because it was white, it stood out in the rural area, and he was not necessarily convinced that many other fences in the area cited by Mr. Brown were permitted to be white. He believed Zoning Enforcement should take a look in the area to determine exactly what was occurring. He stated he did not find the application met the required Standards 4 and 5 under Sect. 8-923.

Mr. Hammack said he, too, had no problem with a six-foot high fence, but had reservations with the easement encroachment, and although he saw nothing in the Ordinance regarding fence colors, he found the solid, white fence glaring and not harmonious with the neighborhood's rural character. He noted that the application was for the fence section in the front yard, which by right was allowed to be four-foot high. He suggested that a development condition could be crafted requiring additional landscaping for portions of the fence to be screened.

Ms. Gibb said she had considered revisions to the development conditions, but realized that additional construction would be necessary as the fence had to be taken partly down and removed from the easement, and depending on the season, in some areas the fence would still be visible. It was the style of the fence, being six foot and solid, which she found made it obtrusive.

Mr. Hart said landscaping with bushes and evergreens and painting or staining the fence a more natural color, grey or brown, would make it less noticeable. There were ways to alter the design and still have a six-foot fence. He submitted that, although this case did not really meet the criteria, he could support something. Mr. Hart suggested that a deferral would afford the applicant an opportunity to consider how he could address the matter's resolution. Mr. Hart said he was unsure if it made sense to deny the application and waive the one-year refiling rule, or defer decision to see what changes the applicant would propose that might alleviate some of the objections.

Ms. Gibb moved to deny SP 2007-SP-026 for the reasons stated in the Resolution.

//

~ ~ ~ June 5, 2007, JAMES WILLIAM BROWN, SP 2007-SP-026, continued from Page 177

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES WILLIAM BROWN, SP 2007-SP-026 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height in the front yard. Located at 10402 Hampton Rd. on approx. 1.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 105-2 ((5)) 1.

Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 5, 2007; and

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

1. The applicant is the owner of the land.
2. From the photographs, the fence does not appear in character with the existing on-site development nor is it harmonious with the surrounding off-site uses and structures in terms of location, height, bulk and scale.
3. The fence and its height cannot be determined that it will not adversely impact the use or enjoyment of other properties in the immediate vicinity.
4. There is testimony from a neighbor stating that there is negative impact.
5. Although the applicant finds Mr. Conner's fence objectionable, it appears natural and blends well with the landscape.

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). 8-923 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 6-1. Mr. Hammack voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refiling an application. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 5, 2007, Scheduled case of:

9:00 A.M. THE WESLEYAN CHURCH CORPORATION, D/B/A UNITED WESLEYAN CHURCH, SP 2007-LE-029 Appl. under Sect(s). 3-303 of the Zoning Ordinance for an existing church to permit addition and site modifications. Located at 5502 Trin St. on approx. 4.31 ac. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 91A and 94A.

Chairman Ribble noted that SP 2007-LE-029 had been administratively moved to August 7, 2007, at the applicant's request.

//

~ ~ ~ June 5, 2007, 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

~ ~ ~ June 5, 2007, ANTHONY TEDDER, A 2004-PR-011, continued from Page 178

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) (Admin. moved from 12/19/06 at appl. req.)

Chairman Ribble noted that the Board had received a request for a deferral, and he called the appellant to the podium.

Anthony Tedder, 2862 Hunter Road, Fairfax, Virginia, acknowledged that he was requesting a deferral of 60 days in order to obtain a residential use permit (RUP) to cure the violation.

Chairman Ribble asked whether staff had any comment.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff memorandum dated May 25, 2007, from Jane M. Collins, Staff Coordinator. This was an appeal of a notice of violation regarding a determination that the appellant had allowed a dwelling unit to be constructed and land area in excess of 2,500 square feet to be filled and graded, both occurring in a floodplain and resource protection area without an approved permit, in violation of Zoning Ordinance provisions. All of the elements of the notice of violation had been satisfied, and the application had been on the agenda since 2004. There was currently no violation in effect for Mr. Tedder's property, and as such, staff believed the appeal was moot and recommended that the appeal be dismissed. As there was no complaint, there would be no action taken against Mr. Tedder at this point.

Mr. Smith asked Mr. Tedder what the reason was that the appellant chose to defer the case when County staff advised him that he had complied with the notice of violation, and there was nothing left to appeal.

Mr. Tedder stated that he wanted to obtain his RUP in order to occupy his house, and this had dragged on for four years.

Mr. Hart pointed out that Mr. Tedder's case had been deferred perhaps eight times, and the appeal he filed four years ago for alleged violations had nothing to do with obtaining an RUP in 2007 and was not germane regarding a RUP.

Mr. Tedder still requested a deferral, stating that having an open appeal gave him a sense of peace of mind.

Ms. Gibb made a motion to defer the appeal for 60 days. Mr. Hammack seconded the motion.

Mr. Byers stated that, in his perspective, he understood the mental health issue, but questioned whether the Board was responsible for someone's mental health. Mr. Beard said that if the Board denied Mr. Tedder's appeal and Mr. Tedder had no opportunity to file an appropriate appeal regarding the RUP, that was one thing; however, Mr. Tedder had a right to appeal. Mr. Byers stated that this appeal was not relevant.

Mr. Hammack said he had no problem with a 60-day deferral, and the appeal could be dismissed as moot at that time.

Responding to Mr. Beard's question concerning cost and possibility of an amendment, Ms. Stanfield said Mr. Tedder would have to apply and pay for a new appeal if his RUP were denied. Also, there was no provision that allowed an amendment to Mr. Tedder's current appeal that would include the RUP matter.

Ms. Stanfield explained that staff tried to communicate with Mr. Tedder the many times his hearing approached to suggest a deferral because his status was not known and staff would readily support a deferral. The problem was there was no communication. Mr. Tedder informed staff of his deferral intention the day before the hearing, which frustrated staff that the process had unnecessarily proceeded to this point. Because Mr. Tedder had not apprised staff and staff was aware that a RUP had not been issued, an inspector was sent on a site visit to assess the situation.

Chairman Ribble called for a vote on the motion to grant a 60-day deferral, which failed by a vote of 3-4. Mr.

~ ~ ~ June 5, 2007, ANTHONY TEDDER, A 2004-PR-011, continued from Page 179

Beard, Mr. Hart, Mr. Byers, and Chairman Ribble voted against the motion.

Mr. Beard moved to dismiss A 2004-PR-011. Mr. Byers seconded the motion.

Mr. Hart noted that the appeal was moot, the violations were cleared, and based on staff's statements, there was nothing now the Board could do, and there was nothing in the original appeal to hamper Mr. Tedder's position for any future theoretical denial of a RUP that had not yet happened. Mr. Tedder would be free to appeal on other issues.

Chairman Ribble called for the vote. The motion carried by a vote of 4-3. Ms. Gibb, Mr. Smith, and Mr. Hammack voted against the motion.

Mr. Hammack advised Mr. Tedder that the matter was appealable to the Circuit Court, and Mr. Tedder should consult his attorney.

//

~ ~ ~ June 5, 2007, Scheduled case of:

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

Chairman Ribble noted that the Board had received a request for a deferral of the decision to September 25, 2007.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, informed the Board that the appellants were in the process of filing a special permit, and although having had a few setbacks, staff was confident they were making progress and would support the deferral.

Mr. Beard moved to defer decision on A 2006-PR-056 to September 25, 2007, at 9:30 a.m., at the appellants' request. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 5, 2007, After Agenda Item:

Request for Additional Time
Trustees of Holy Trinity Lutheran Church, SP 2004-PR-032

Mr. Hammack moved to approve 24 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was February 10, 2009.

//

~ ~ ~ June 5, 2007, After Agenda Item:

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

Mr. Hart moved to approve 18 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was July 10, 2008.

//

~ ~ ~ June 5, 2007, After Agenda Item:

Request for Additional Time
Trustees of the Church of the Apostles (Episcopal), SPA 99-Y-046

Mr. Hart stated that he would recuse himself.

Mr. Hammack moved to approve 24 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself. The new expiration date was April 18, 2009.

//

Ms. Gibb requested that staff develop a more conservative way to reproduce the voluminous paperwork generated with processing the Board's business. Susan Langdon, Chief, Special Permits and Variance Branch, explained the various ways staff produced and photocopied its reports and correspondence. She acknowledged that staff was aware, and every attempt was made to be conservative while providing the necessary documents to pertinent personnel.

Discussion followed among the Board members regarding County efforts with recycling and responsible use of its resources. Mr. Byers noted that copies were usually produced two-sided and were completely recyclable. He said care should be used to assure all necessary information was distributed while simultaneously assuring there was no duplication of material.

Ms. Langdon said staff would make every effort, when possible, to photocopy documents on both sides.

//

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: July 18, 2012



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble, 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 12, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 12, 2007, Scheduled case of:

9:00 A.M. ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO L. LARIOS, SP 2007-LE-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 10.2 ft., addition 9.2 ft. and deck 0.4 ft. from the side lot line. 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.

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

Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jessica Gorman, the applicant's agent, Clark & Associates, 108-E South Street, S.E., Leesburg, 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 reductions to minimum yard requirements based on errors in building locations to permit a dwelling to remain 10.2 feet from a side lot line; an addition, specifically a partially enclosed carport, to remain 9.2 feet from a side lot line; and a deck, specifically a concrete patio, to remain 0.4 feet from a side lot line. A minimum side yard of 12 feet is required; however, decks are permitted to extend 5.0 feet into the minimum side yard; therefore, reductions of 1.8 feet, 2.8 feet, and 6.6 feet, respectively, were requested.

Referring to a photograph on the overhead projector, Mr. Hart stated that the area in front of the house appeared to be a driveway in the photograph, but was marked as a patio on the plat. Ms. Hedrick said that was correct. The driveway and the patio were actually separated by a wrought-iron fence. Since the driveway had been labeled on the plat as a concrete patio, staff had to consider it to be a patio. Ms. Hedrick explained that initially the concrete patio extended from the front of the property all the way to the rear of the property and was part of the violation on the original application in 2006. The applicants had corrected the other errors except where the patio met the driveway. Mr. Hart questioned the location of the fence in relationship to the driveway and the 0.4 foot measurement from the side lot line. He said he thought the 0.4 foot measurement was 10 to 15 feet closer to the street than where the fence was located. The fence appeared to be two thirds of the way back on the side of the house. He said that if he understood the application, the 0.4 feet was in the area at the front corner of the house which was a car length away from the location of the fence. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the area of the patio in question was actually behind the fence.

Mr. Beard asked Leo Conrad, Inspector, Zoning Enforcement Branch, if the concrete patio would require a building permit. Mr. Conrad stated that the Department of Public Works and Environmental Services did not require an applicant to have a permit for a patio, but the Zoning Ordinance stated that it had to be a certain distance from the property line. He said that in this case the applicants would not have needed a permit for a patio.

Mr. Byers said it was his understanding, based upon the staff report, that there had been at least ten violations on the property. He asked Mr. Conrad if the applicants had worked in good faith with the County and Zoning Evaluation Division to ensure that the violations had been cleared. Mr. Conrad said Mr. Larios had cooperated with staff and been very diligent. He had found the applicants' property to be in pristine condition with the only remaining issues being the addition and the area of the patio.

Ms. Gorman presented the special permit request as outlined in the statement of justification submitted with the application. She complimented staff on going out of their way to work closely with her and the applicants in order to enable the applicants to reach a successful resolution. Ms. Gorman referred to photographs displayed on the overhead projector and identified those areas that were in issue. She said she wanted to

~ ~ ~ June 12, 2007, ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO L. LARIOS, SP 2007-LE-031,
continued from Page 183

briefly address six of the seven requirements needed for special permit approval since it was the good faith requirement that was the majority of the conversation. First, the error in the case exceeded ten percent of the measurements involved; second, any reduction in the minimum yard requirements would not impair the purpose and intent of the Ordinance; third, any reduction in the minimum yard requirements would not be detrimental to the use and enjoyment of the surrounding properties; fourth, a reduction in the side yard requirements would not create an unsafe condition to the properties or the street. She said anyone viewing the property from the street would not be able to recognize any error under the Ordinance. Six letters of approval from the applicant's surrounding neighbors had been submitted to the Board and to date there had been no opposition. To force the applicants to come under the requirements of the existing setback would create an unreasonable physical and financial hardship for them, causing them to have to demolish and rebuild the brick and concrete corner of the home for approximately 1.8 feet. She stated that any reduction in the minimum yard requirements would not result in an increase of floor area permitted by the regulations. She felt that the six points had been addressed sufficiently. Focusing on the good faith requirement, Ms. Gorman said that whatever the applicants had done over the years since the home had been purchased was done in good faith. Mr. Larios and his family moved into the house in 1996 and wanted to enclose the carport to make a dining room for their home. He did not know that there were setback requirements. Other neighbors had similar renovations, and, therefore, he thought what he had done was in keeping with the regulations. She said that what he did was wrong, but it was done in good faith.

Referring to an application filed by the applicant in 2005, Ms. Gorman said Mr. Larios had described himself as a contractor. Ms. Gorman clarified that he worked as a foreman and carpenter for a commercial construction company and had no knowledge of permit requirements for the construction of a building or upgrades to a property.

She stated that staff had recommended approval and had noted previous special permits had been approved for similar circumstances. Ms. Gorman requested that the Board grant the special permit with respect to the three minor intrusions in accordance with the proposed development conditions.

Mr. Hart asked if staff was recommending approval of the application. Ms. Hedrick stated that staff did not make recommendations on errors in building location. She said she thought Ms. Gorman had been referring to the way staff had worded the development conditions. If the Board chose to approve the application, she said staff was recommending approval based on the development conditions.

Mr. Smith stated the development conditions referenced that the building permits and final inspections had to be diligently pursued and obtained within 90 days. He asked staff if the words "and obtained" were standard language. Ms. Hedrick said in the past staff had also used "pursued within 30 and obtained within 90." Staff had worked with the Department of Public Works and Environmental Services (DPWES) to ensure that the 90-day period was a logical time frame. She said the 90-day period was the length of time applicants had to bring the property into compliance. Mr. Smith stated that "obtained" was not something an applicant would necessarily have control over. He acknowledged that staff thought that 90 days was a reasonable period of time. Ms. Hedrick said, in conjunction with DPWES staff, 90 days was the number of days they determined was reasonable. She said she was not aware of any problems arising from 90 days, and staff had been using that time frame for a little over a year.

Mr. Beard said in the Notice of Violation dated January 9, 2006, a reference had been made to reducing the height of the accessory structure, a shed, to 8-1/2 feet which would allow it to remain in its current location. He also noted that Bullet 8, on page 2, of the Notice, referred to reducing the size of the deck. He asked if staff was referring to the same deck upon which the shed sat. Leo Conrad, Inspector, Zoning Enforcement Branch, replied no, the shed had been in the rear yard, and the applicant had removed it completely. It was a different pad. Mr. Beard asked if the concrete pad the shed had sat on was still there. Mr. Conrad replied that, yes, it was. The applicants had built another shed on the pad that did not require a permit since it was less than 8-1/2 feet high and, therefore, was legal.

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

Mr. Byers moved to approve SP 2007-LE-031 for the reasons stated in the Resolution.

//

~ ~ ~ June 12, 2007, ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO L. LARIOS, SP 2007-LE-031, continued from Page 184

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO L. LARIOS, SP 2007-LE-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 10.2 ft., addition 9.2 ft. and deck 0.4 ft. from the side lot line. 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. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 12, 2007; and

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

1. The applicants are the owners of the land.
2. The applicant meets all seven of the requirements from the standpoint of the mistake in building location.
3. The applicant has worked diligently with staff to correct all the violations on the property.
4. The observations made by Leo Conrad, Senior Zoning Inspector, during his recent visit of the site are taken seriously; I am satisfied that the non-compliance was done in good faith.
5. The requirements for non-compliance were all met.

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.

~ ~ ~ June 12, 2007, ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO L. LARIOS, SP 2007-LE-031, continued from Page 185

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 dwelling, addition (partially enclosed carport) and deck (concrete patio), as shown on the plat prepared by Alexandria Surveys International LLC, dated November 9, 2006 as revised through February 28, 2007, submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the addition shall be diligently pursued and obtained within 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. Smith and Mr. Hammack each seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 12, 2007, Scheduled case of:

9:00 A.M. SUSAN K. HUBER, SP 2007-PR-033 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.7 ft. from side lot line. Located at 3008 Oakton Meadows Ct. on approx. 3,870 sq. ft. of land zoned R-5. Providence District. Tax Map 47-2 ((27)) 19.

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

Chairman Ribble 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 to allow a reduction to minimum yard requirements based on error in building location to permit a deck to remain 0.7 feet from the side lot line. A minimum side yard of 8.0 feet is required; therefore, a reduction of 7.3 feet was requested.

Mr. Beard asked if this had been brought before the Board by way of complaint. Susan Epstein, Senior Zoning Inspector, Zoning Enforcement Branch, stated, yes, it had.

Mr. Fox presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Fox stated that the complaint in this case was more generic than specific. As he understood it, another resident of the townhouse community wanted to build a deck similar to the applicant's and had been informed by the Department of Public Works and Environmental Services (DPWES) that he would be in violation if he built the deck. He said he thought the neighbor wondered why the applicant could have a deck, but he could not.

Mr. Fox said the applicant had moved to Fairfax in 2004 and purchased the property with the deck already in place. The property bordered open space which did not intrude on any of the applicant's neighbors. He said the applicant had acted in good faith. Ms. Huber had not done anything but buy the property with the deck already in place.

Referring to Condition 2, Mr. Fox stated that the reference to the "screened porch" should be stricken and the word "deck" added.

Mr. Fox stated he would like to echo Mr. Smith's concerns related to the 90-day requirement for obtaining the building permit and final inspections. Mr. Fox said he believed for a small project, such as this, it might be difficult finding professionals willing to help since their services were needed after the fact. He was afraid the

~ ~ ~ June 12, 2007, SUSAN K. HUBER, SP 2007-PR-033, continued from Page 186

applicant would not be able to obtain the drawings and a permit within the 90-day period. Mr. Fox requested that the Board extend the time limit for a minimum of 150 days to allow the applicant to complete the necessary steps to obtain a permit. He said he would help her locate the professionals she needed to complete the project.

Chairman Ribble called for speakers.

Samuel Kirton, 3012 Oakton Meadows Court, Oakton, Virginia, President of the Oakton Mains Homeowners Association, came forward to speak. He said that when he moved into his home in the late '90s, the property that Ms. Huber purchased in 2004 was exactly the same. The work that she had done on the deck had been a benefit to the community both in the restoration and maintenance of the property. It had brought up, not only the value of her home, but the value of the community. His home was adjacent to Ms. Huber's and was the only one with a full view of the deck. He and his wife had no objection to the deck as currently built and situated on the property. Mr. Kirton noted that the board of the homeowners association was in full support of the deck as built and as it existed today, and that had been reaffirmed at the board's June 4, 2007, meeting.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-PR-033 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN K. HUBER, SP 2007-PR-033 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.7 ft. from side lot line. Located at 3008 Oakton Meadows Ct. on approx. 3,870 sq. ft. of land zoned R-5. Providence District. Tax Map 47-2 ((27)) 19. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 12, 2007; and

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

1. The applicant is the owner of the land.
2. It is determined that the applicant has satisfied the required standards for granting a special permit.
3. The non-compliance was done in good faith and there is no issue or question about that.
4. This situation is not unusual because title insurance does not show zoning violations.
5. One often purchases a property unaware that it has a violation.
6. The application is supported by the homeowners association and many neighbors.
7. The addition has been there for a very long time, perhaps 20 years.
8. The addition is not detrimental to the use and enjoyment of the other properties in the immediate vicinity.

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

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

~ ~ ~ June 12, 2007, SUSAN K. HUBER, SP 2007-PR-033, continued from Page 187

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 Peter R. Moran, dated November 15, 2005, revised March 20, 2007, submitted with this application and is not transferable to other land.
- 2. Building permits and final inspections for the deck addition shall be obtained within 120 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. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 12, 2007, Scheduled case of:

9:00 A.M. TAE KUN (TED) PANG, SP 2007-PR-032 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 12.57 ft. from rear lot line. Located at 11262 Derosnec Dr. on approx. 42,225 sq. ft. of land zoned R-1. Providence District. Tax Map 46-4 ((16)) 4.

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

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tae Kun Pang, 11262 Derosnec Drive, Oakton, 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 of certain yard requirements to permit the construction of a sunroom addition 12.57 feet from the rear lot line. The proposed sunroom was 273 square feet in size. A minimum rear yard of 25 feet is required; therefore, a reduction of 12.4 was requested. Staff recommended

~ ~ ~ June 12, 2007, TAE KUN (TED) PANG, SP 2007-PR-032, continued from Page 188

approval of SP 2007-PR-032 subject to the proposed development conditions.

Mr. Pang presented the special permit request as outlined in the statement of justification submitted with the application. He noted that he was requesting the special permit to allow him to build a sunroom at the rear of his property. He said his lot appeared to be larger than it actually was because of unusable open space on Lots 5 and 6 which were adjacent to his property line. He stated that there was a large drainage system located on Lot 6. He indicated that the proposed sunroom would face a large open space. It would not cause any obstruction to his neighbors nor change the character of the neighborhood.

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

Mr. Hart moved to approve SP 2007-PR-032 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TAE KUN (TED) PANG, SP 2007-PR-032 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 12.57 ft. from rear lot line. Located at 11262 Derosnec Dr. on approx. 42,225 sq. ft. of land zoned R-1. Providence District. Tax Map 46-4 ((16)) 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 June 12, 2007; and

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

1. The applicant is the owner of the land.
2. The rationale in the staff report is adopted.
3. Staff recommends approval.
4. During the Planning Commission's drafting of the Zoning Ordinance Amendment for a Shape Factor, this was staff's example of what can go wrong without restrictions on shape factors in the design of lots.
5. An issue with the Shape Factor was that certain lots have a certain logical relationship to certain spaces near them, but when these kinds of tentacles/ribbons are allowed, it creates problems for maintenance, confusion over ownership, and difficulty in expanding the home.
6. Mr. Pang's back yard appears to have a good deal of open space, but actually there is a drain field, tentacles of both lots 5 and 6, a septic field, a floodplain and open space.
7. An addition on the rear of the house will not interfere with anybody.
8. An addition on the rear of the house will not change the use of the space because it is doubtful anything functional can be done within the ribbons.
9. Placing a small sunroom or deck at the rear of the house visually appears feasible, and won't hurt anything.
10. It is suggested that when considering the purchase of a lot, question the realtor about what constitutes the back yard.

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

THAT the applicant has presented testimony indicating compliance with 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:

~ ~ ~ June 12, 2007, TAE KUN (TED) PANG, SP 2007-PR-032, continued from Page 189

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 (273 square foot sunroom addition) as shown on the plat prepared by Alex E. Fernandez dated March 7, 2007, and signed March 21, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (6,046 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ June 12, 2007, Scheduled case of:

9:00 A.M. JOHN ALTON CRAIG SR, SP 2007-PR-034 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.4 ft. with eave 0.4 ft. from side lot line and to permit addition 11.5 ft. from side lot line. Located at 2986 Wilson Ave.on approx. 28,263 sq. ft. of land zoned R-1. Providence District. Tax Map 47-2 ((2)) B.

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

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 Alton Craig, Sr., 2986 Wilson Avenue, Oakton, 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 an approximately 488-square-foot, nine-foot high prefabricated frame garage to remain 1.4 feet with eave 0.4 feet from the northern side lot line and a two-story 1,318-square-foot addition to the existing dwelling comprising a garage and master bedroom to be located 11.5 feet from the southern 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 18.6 feet and 16.6, respectively, were requested. Staff recommended approval of SP 2007-PR-034 for the proposed addition subject to the proposed development conditions.

~ ~ ~ June 12, 2007, JOHN ALTON CRAIG SR, SP 2007-PR-034, continued from Page 190

Ms. Gibb asked if the shed in the back was permitted because it was not too large. Mr. Varga said that was correct.

Mr. Hammack asked if staff supported leaving the shed in its present location. Mr. Varga said staff did not make recommendations with respect to the error in building aspect of an application.

Mr. Craig presented the special permit request as outlined in the statement of justification submitted with the application. He said the garage that had been cited for being too close to the property line had been there since 1995. He noted the property next door was owned by a member of his family. Since his family had always lived next door, the property line had never been an issue. Mr. Craig stated that removing the driveway, tearing the garage down or attempting to move it to the other side of the property would place a financial hardship on him. He also mentioned his request for a special permit included the addition of a garage with a master bedroom above it on the other side of the house.

Ms. Gibb asked if the existing garage was acceptable but not the open storage. Ms. Langdon noted that in this case they were considered one structure. She explained that even if the open storage were to be taken down, the remaining frame garage would still not meet the minimum yard requirement and would barely be within the minimum required side yard.

Ms. Gibb asked Mr. Craig if Lot C had a house on it. Mr. Craig replied yes, that was where he had grown up and where his brother lived.

Mr. Hart asked if there was electricity in the garage. Mr. Craig said there was.

Mr. Hammack asked Mr. Craig if he had contacted the County to determine whether or not he was required to obtain permits. Mr. Craig said no, because he thought a pre-fabricated roll-off shed would not fall under zoning requirements. In response to another question posed by Mr. Hammack, Mr. Craig said the open storage shed had been added within the last few years. Mr. Hammack asked if the open storage shed could be reversed and placed on the other side of the garage. Mr. Craig said the land was steeper on the other side, and the side it was currently on was already blacktopped when he put the driveway in. He stated that both he and his brother used the open storage shed.

Ms. Gibb said there was concern about property owners building so close to the property line and their ability to maintain the structure. She commented that she was curious as to how the open storage space would be maintained if he or his brother sold their property. They would have to be given permission to go on someone else's property to access the space. Mr. Craig said he had never taken that into consideration because the property had been in his family since he was born.

Mr. Hart asked staff if a calculation had been done to determine how much of the front yard was paved with the two driveways and circle because he did not see it on the plat. Ms. Langdon said the calculation had not been done, but if the driveway was there prior to the change in the Ordinance, it would be legal.

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

Ms. Gibb moved to approve SP 2007-PR-034. She noted that the staff report recommended approval. She said the applicant had met the six required standards of Sect. 8-922, and under Sect. 8-914, the applicant had met the required Sections A through G. Ms. Gibb said she thought it was a close case. She said the applicant acted in good faith because the neighboring and subject properties had been in the applicant's family since the 1960s and he put up the prefabricated garage near his boundary line himself. She said it would not be detrimental to the use and enjoyment of other property in the immediate vicinity. Mr. Smith seconded the motion.

A discussion ensued with Mr. Hammack, Mr. Hart, Mr. Varga, Ms. Gibb, and Ms. Langdon concerning the open storage shed being located so close to the side lot line; the problems that could be caused should one or the other of the brothers sell his property; the addition of a development condition requiring the applicant to have a maintenance easement drawn up; requiring the applicant remove the storage shed and leave the garage in its current location; and deferral of the special permit to a later date to further define the development conditions to either allow the applicant to obtain a maintenance easement or remove the storage shed.

~ ~ ~ June 12, 2007, JOHN ALTON CRAIG SR, SP 2007-PR-034, continued from Page 191

Mr. Hart made a substitute motion to defer decision on SP 2007-PR-034 to June 26, 2007, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

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 Board of Zoning Appeals vs. Board of Supervisors, the Supreme Court cases and the Lee case, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Smith and Mr. Byers seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 10:11 a.m. and reconvened at 11:28 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. Beard seconded the motion, which carried by a vote of 7-0.

//

Mr. Hammack moved to authorize an attorney to take the action discussed during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 12, 2007, 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) (Decision deferred from 4/19/05 and 10/25/05) (Indefinitely deferred from 2/14/06)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in a memorandum dated June 5, 2007, from Elizabeth Perry. Ms. Stanfield indicated that staff had had difficulty contacting the appellant because he traveled extensively. She said the appellant had contacted her last week and told her he would apply for a special permit that day. Ms. Stanfield was in agreement with his request for a deferral. She suggested that the appeal be deferred to July 20, 2007, to determine if the application actually came to fruition.

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

Mr. Byers moved to defer decision on A 2004-PR-035 to July 24, 2007, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 12, 2007, Scheduled case of:

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

~ ~ ~ June 12, 2007, ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-040 and A 2006-PR-043, continued from Page 192

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

Jayne M. Collins, Staff Coordinator, presented staff's position as set forth in her memorandum dated June 5, 2007. She explained that the appellant had submitted a site plan in February of 2007 that was close to being approved; however, there were still a few administrative details to be addressed. Ms. Collins said that the appellant had requested a three-month deferral to enable him to have the site plan approved and implemented. She stated staff was agreeable and suggested a date of October 2, 2007.

Chairman Ribble called for speakers to address the deferral request. There was no response.

Mr. Beard moved to continue A 2006-PR-040 and A 2006-PR-043 to October 2, 2007, at 9:30 a.m. Mr. Smith seconded the motion.

Mr. Hart asked about the third appeal, A 2006-PR-039, which was not addressed. Ms. Collins replied that the third case was concerning property on Gallows Road and had been deferred to June 8, 2008 because that property was in the process of being sold.

The motion carried by a vote of 7-0.

//

~ ~ ~ June 12, 2007, 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 12 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was March 12, 2008.

//

~ ~ ~ June 12, 2007, 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. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was March 16, 2008.

//

~ ~ ~ June 12, 2007, After Agenda Item:

Request for Additional Time
Salameh Brothers Construction Company
VC 01-V-187

Ms. Gibb moved to approve 12 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was January 31, 2008.

//

~ ~ ~ June 12, 2007, After Agenda Item:

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

Ms. Gibb moved to approve six months of Additional Time. Mr. Smith seconded the motion, which carried by a vote of 7-0. The new expiration date was November 30, 2007.

//

~ ~ ~ June 12, 2007, After Agenda Item:

Request for Additional Time
Trustees of Mt. Calvary Baptist Church
SPA 82-V-013

Mr. Hammack moved to approve 18 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was September 21, 2008.

//

~ ~ ~ June 12, 2007, After Agenda Item:

Request for Reconsideration
James William Brown, SP 2007-SP-026

Susan Langdon, Chief, Special Permit and Variance Branch, explained that Mr. Brown was not able to be present at the meeting because his wife was obtaining her citizenship.

Mr. Hammack said it was his understanding that the Board was not necessarily opposed to the six-foot high fence but to its color. He said he thought the Board could still reconsider the application and require some type of screening and landscaping to be put in, and the applicant could do that if he submitted another special permit application. Mr. Hammack also indicated that a development condition could be added to require landscaping.

In answer to a question by Mr. Beard, Ms. Langdon said it would be the Board's decision on whether or not to allow Mr. Brown to speak to them. She stated that even if a reconsideration were to be granted by the Board, the applicant would have to go through the same process and a new hearing date would have to be set.

Ms. Gibb said that in Mr. Brown's letter, he had indicated that the ground was too hard to allow him to plant trees or bushes in front of the fence and landscaping would not be possible.

Mr. Byers stated that the one-year resubmittal time had previously been waived by the Board, and he reiterated that Mr. Brown could submit a new application that would be suitable to the Board.

No motion was made; therefore, the request for reconsideration was denied.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:45 a.m.

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

Approved on: June 4, 2014

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble, 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 26, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 26, 2007, Scheduled case of:

9:00 A.M. JOHN GORENA, SP 2007-BR-035 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot located at 7500 Axton St. on approx. 15,100 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (44) 9.

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

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 Gorena, 7500 Axton Street, 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 an existing 6.0 foot high fence to remain in the front yard of a corner lot. The maximum height permitted in a front yard is 4.0 feet; therefore, a modification of 2.0 feet was requested.

Referring to Page 2, Paragraph 2 of the staff report, Mr. Hart asked Ms. Hedrick if the portion of the fence facing Axton Street was in the front yard or the side yard. Ms. Hedrick responded that it was in the side yard because it did not come forward beyond the front plane of the house and it faced Axton Street; therefore, the fence was permitted to be there by right. Mr. Hart asked whether the fence could be higher than 6.0 feet if it was even with the front of the house. Ms. Hedrick responded that yes, it could since it was considered a side yard; fences could be up to 7.0 feet in height in a side or rear yard. In response to Mr. Hart's question about when the fence would be considered in the front yard, Ms. Hedrick explained that it would be considered in the front yard if the fence was located beyond the front plane of the front of the house. Ms. Hedrick stated that the fence which was in close proximity to Heming Avenue was 6.0 feet or under, and that it was considered a front yard, as opposed to a side yard, because it was on a corner lot facing Heming Avenue.

Mr. Gorena presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the reason he had installed the fence was to provide a safe environment for his family; his home is on a dangerous corner with traffic exceeding the speed limit. He said he had also built the fence for security purposes since unknown persons would cut across his property and stand in his yard. Mr. Gorena stated that neither the North Springfield Civic Association nor his neighbors had expressed any objections to the height of his fence. He noted that many corner lot homes in the North Springfield subdivision had six-foot fences extending into front yards. He said his request satisfied the Zoning Ordinance requirements and did not infringe on any of his neighbors' properties. He asked the Board to approve his application.

Chairman Ribble called for speakers.

Andrea Myers, 7500 Axton Street, Springfield, Virginia came forward to speak. She confirmed her husband's testimony concerning the traffic; the number of accidents at the corner of Heming Avenue and Axton Street; the number of school and metro busses that stopped and discharged people at that corner; and the safety of her son as he crossed Heming Avenue on his way to and from the North Springfield Elementary School. She said the fence had allowed them to increase the size of their useable yard, had provided additional play area for their children, and had prevented their children from running into the street to chase balls.

In answer to a question by Mr. Beard, Ms. Hedrick confirmed that Bridget Merz, Senior Zoning Inspector, Zoning Enforcement Division, was present to answer questions.

In response to a question by Mr. Beard, Ms. Merz said the inspection had taken place as a result of a complaint filed by one of the North Springfield Civic Association (NSCA) board members. However, since

~ ~ ~ June 26, 2007, JOHN GORENA, SP 2007-BR-035, continued from Page 195

that time, Norma Heck, President of the Association, had written a letter stating that the association did not have any objections to the fence. Mr. Beard asked if NSCA's change in position would have had any effect on staff's position. Ms. Merz said no, it would not. Noting that the applicant had made mention of other fences in the area, Mr. Beard asked Ms. Merz if staff had received other complaints about fences in the North Springfield subdivision. Ms. Merz replied that, as a result of this application, ten other cases had been reported. Mr. Beard asked if Ms. Merz's office only responded to complaints that had been submitted to them and did not investigate violations in other yards when they visited a property. Ms. Merz said that was correct.

Mr. Smith asked staff if the Board would be hearing at some time in the future the ten complaints that had been submitted. Ms. Merz stated that it was possible.

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

Mr. Hammack moved to approve SP 2007-BR-035 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN GORENA, SP 2007-BR-035 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7500 Axton St. on approx. 15,100 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (44) 9. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 26, 2007; and

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

1. The applicant is the owner of the land.
2. The applicant has met the six required standards to grant the application.
3. In particular, the applicant has addressed the provisions of Sect. 8-923 of the Ordinance.
4. Specifically, the fence will not exceed six feet in height.
5. The fence is pulled in from the sidewalk approximately 19 to 20 feet, about half of the yard.
6. The fence does not interfere with any sight distance requirements, which is Subsection 2.
7. Subsection 3, the applicant has testified as to the orientation towards a busy thoroughfare and a lot of not only vehicular, but foot traffic and concerns about safety and noise.
8. The remaining conditions appear to be met, that it will not adversely impact other buildings or residences in the community.
9. The Board has the staff report, and there are photographs of other fences in the immediate vicinity.
10. Pulling the fence back halfway into the functional side yard is important, and the BZA has granted that type of a special use or on occasion variances in the past if they were pulled back in and sight distances were not interfered with, so this is consistent with the type of fence the BZA may have approved in the past.

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

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

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

~ ~ ~ June 26, 2007, JOHN GORENA, SP 2007-BR-035, continued from Page 196

1. This special permit is approved for the location of a fence as shown on the plat prepared by Alexandria Surveys International, LLC, dated December 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.

Mr. Smith seconded the motion, which carried by a vote of 6-0-1. Ms. Gibb abstained from the vote.

//

~ ~ ~ June 26, 2007, Scheduled case of:

9:00 A.M. NATALIE A. KOLB, SP 2007-MV-036 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 10807 Harley Rd. on approx. 8.13 ac. of land zoned R-E. Mt. Vernon District. Tax Map 118-2 ((1)) 19C.

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

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Natalie Kolb, 10807 Harley Road, 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 an accessory dwelling unit. The principal dwelling unit was under construction and would be approximately 5000 square feet in size. The proposed accessory dwelling unit contained two bedrooms, one bathroom, a kitchen and a living room, and comprised 20.2 percent of the total square feet of the principle dwelling. The applicant's mother would live in the accessory dwelling unit.

Ms. Kolb presented the special permit request as outlined in the statement of justification submitted with the application. She said the accessory dwelling unit had been requested because she wanted to provide a home in the new house for her mother, who already lived with her and her family. They would like to continue to look after her mother. She said that one of the reasons her mother lived with them was because the applicant's son was autistic. Ms. Kolb stated that both she and her husband were in the military and her mother looked after her son while the applicant and her husband were at work or away. Ms. Kolb said her mother was on the Section 8 housing list, but the current wait list was approximately five years.

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

Referring to proposed Development Condition 8 that said the accessory structure shall be converted to a use permitted by the Zoning Ordinance, Mr. Hammack asked what the use would be. Susan Langdon, Chief, Special Permit and Variance Branch, said she did not know, but if the applicants sold the house, staff would have to determine what could be done. She said that given the size of the property the accessory dwelling unit could be removed or it could be converted to a guesthouse or barn.

In answer to a question by Mr. Smith, Ms. Langdon said that since the accessory unit was granted to the applicant only, a new buyer would have to apply for a Special Permit to allow the accessory dwelling to be used by someone over 55 years of age.

Mr. Hart asked about the portion of Condition 8 that referenced when the property was sold. He asked if the same considerations would apply if the property was inherited or was a deed of gift and if the Board should look at this application in the context of conveyance and not just a sale. Ms. Langdon said yes and staff could add "sold or otherwise conveyed" to the condition if the Board wanted that phrase added.

Mr. Byers moved to approve SP 2007-MV-036 for the reasons stated in the Resolution.

//

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

NATALIE A. KOLB, SP 2007-MV-036 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 10807 Harley Rd. on approx. 8.13 ac. of land zoned R-E. Mt. Vernon District. Tax Map 118-2 ((1)) 19C. 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 26, 2007; and

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

1. The applicant is the owner of the land.
2. Present zoning is R-E.
3. The area of the lot is 8.13 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. 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, Natalie A. Kolb, and is not transferable without further action of this Board, and is for the location indicated on the application, 10807 Harley Road (8.13 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 Lawrence H. Spilman III, dated December 29, 2006, revised through January 5, 2007 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and 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 1,008 square feet, including a maximum of two bedrooms.
6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet the applicable regulation for building, safety, health, and sanitation.
7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
8. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold, a special permit amendment may be submitted to permit the continued use of an

~ ~ ~ June 26, 2007, NATALIE A. KOLB, SP 2007-MV-036, continued from Page 198

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

//

~ ~ ~ June 26, 2007, Scheduled case of:

9:00 A.M. JOHN ALTON CRAIG SR, SP 2007-PR-034 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.4 ft. with eave 0.4 ft. from side lot line and to permit addition 11.5 ft. from side lot line. Located at 2986 Wilson Ave. on approx. 28,263 sq. ft. of land zoned R-1. Providence District. Tax Map 47-2 ((2)) B. (Decision deferred from 6/12/07)

Chairman Ribble called the applicant to the podium and noted that the application had been deferred to allow Mr. Craig to consider removing at least a portion of the accessory structure. He asked the applicant to identify himself for the record. The applicant stated that his name and address were John Alton Craig, Sr., 2986 Wilson Avenue, Oakton, Virginia.

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

Mr. Ribble asked the applicant if he had considered what he was going to do with the structure. Mr. Craig said he had removed the entire open storage structure and left the garage intact. He said that, by doing so, the corner of the garage was now more than 11 feet from the side lot line of the property.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-PR-034 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN ALTON CRAIG SR, SP 2007-PR-034 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.4 ft. with eave 0.4 ft. from side lot line and to permit addition 11.5 ft. from side lot line. Located at 2986 Wilson Ave. on approx. 28,263 sq. ft. of land zoned R-1. Providence District. Tax Map 47-2 ((2)) B. (Decision deferred from 6/12/07) 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 26, 2007; and

~ ~ ~ June 26, 2007, JOHN ALTON CRAIG SR, SP 2007-PR-034, continued from Page 199

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 addition.
3. The accessory structure, which was the subject of the Board's concern, has been modified since the public hearing such that the open portion of it has been removed.
4. There was no opposition to the application.
5. The Board had a favorable staff recommendation.
6. Based on the record before the Board, with the removal of the open part of the garage, there will be no significant negative impact on anyone.
7. Based on the record before the Board, the applicable standards for both kinds of applications have been met.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922, 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.
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 1,318 square feet) of a garage addition and second story bedroom and frame garage, as shown on the plat prepared by George M. O'Quinn, dated September 29, 2006, as revised through November 17, 2006, as submitted with this application and is not transferable to other land. Notwithstanding what is depicted on the plat, the open covered storage component of the accessory structure is not

~ ~ ~ June 26, 2007, JOHN ALTON CRAIG SR, SP 2007-PR-034, continued from Page 200

approved and will not be replaced without an amendment to this special permit.

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,216 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. Building permits and final inspections shall be diligently pursued and obtained within 90 days for the frame garage or it shall be removed or brought into compliance with the Zoning Ordinance.

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

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 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.

//

~ ~ ~ June 26, 2007, Scheduled case of:

9:00 A.M. VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 75-C-182 previously approved for a church to permit an increase in land area, building addition, site modifications and change in permittee and modification of minimum yard requirements to perrmit existing building 33.3 feet from front lot line. Located at 2438 and 2430 Gallows Rd. on approx. 1.43 ac. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 27A and 28. (Admin. moved from 3/27/07 at appl. req.)

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

CHAIRMAN RIBBLE: The next case is Vietnamese Alliance Church, SPA 75-C-182, under Section 3-103 of the Zoning Ordinance to amend SP 75-C-182.

I'm gonna recuse myself on this case, and I think Mr. Hammack is gonna take over the Chair.

MR. HART: Nobody reaffirmed the affidavit.

VICE CHAIRMAN HAMMACK: I should ask. What is your name, sir?

THONG NGO: My name is Thong Ngo, and I'm representing the Vietnamese Alliance Church at 2438 and 2430 Gallows Road, Dunn Loring, 22027.

VICE CHAIRMAN HAMMACK: Mr. Ngo, do you reaffirm the affidavit?

MR. NGO: Yes, sir.

VICE CHAIRMAN HAMMACK: And were you sworn in earlier?

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 201

MR. NGO: Yes, sir.

VICE CHAIRMAN HAMMACK: Okay.

MR. HART: Susan's saying no.

SUSAN LANGDON: No, I don't believe he was sworn in yet.

MR. NGO: Not yet.

VICE CHAIRMAN HAMMACK: Okay. You -- were you gonna speak on behalf -- would everyone who wants to speak for or against the application or speak with respect to the application stand up and be sworn in, please, face the Clerk.

KATHLEEN KNOTH: Do you swear or affirm that your testimony will be the truth under penalty of the law?

(Those persons standing responded affirmatively.)

VICE CHAIRMAN HAMMACK: Okay. We'll have the staff report first.

MR. NGO: Thank you.

GREG CHASE: Thank you, Mr. Chairman. The subject property is located at 2438 and 2430 Gallows Road in the Providence District. The subject property is zoned R-1 and is surrounded by property zoned R-3 and also to the north the W&OD Trail. An amendment to the SP 75-C-182 previously approved for a church to permit an increase in land area from the existing 24,000 square feet, which is Lot 28, and the addition of 38,209 square feet, which is Lot 27A, the new addition lot, results in a 62,209-square-foot or 1.34-acre site. Also requested is to demolish portions of the existing structures and to construct a building increase, which will increase the size of the church and related structures from 60 to 150 square feet to 9,330 square feet, also some site modifications, and also a request is made for a change in permittee from the Community Church of God to the Vietnamese Alliance Church. Also requested is a modification of the minimum yard requirements to permit the existing building 33.3 feet from the front lot line after right-of-way dedication is provided along the property's Gallows Road frontage.

Staff concludes that the subject application is in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommends approval of SPA 75-C-182 with the adoption of the revised proposed development conditions dated June 26, 2007, which were distributed to you today. Thank you, Mr. Chairman.

VICE CHAIRMAN HAMMACK: Are there any questions of staff?

MS. GIBB: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Ms. Gibb.

MS. GIBB: With respect to the affidavits on ownership, you've taken the two deeds that you have for Parcels 27A and 28 and the trustees named in those deeds are the persons named in the affidavit, and that's how you've established who are the owners; is that correct?

MR. CHASE: Yes, ma'am. The County Attorney looks at the tax records, and also if they need further evaluation, they'll pull the deed. And they -- in this case, they did that, and based on those pieces of information, they've certified that indeed the applicant, in terms of their analysis, is the owner of the property and entitled to go forward with the application.

MS. GIBB: Okay. Thank you.

VICE CHAIRMAN HAMMACK: Other questions of staff?

MR. HART: Mr. Chairman.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 202

VICE CHAIRMAN HAMMACK: Mr. Hart.

MR. HART: Thank you. Let me follow up on Ms. Gibb's question. The -- it's our practice, isn't it, that if there's a question as to ownership, we don't typically make a determination as to who's right, but we would leave that to the court, as long as the County Attorney's Office is satisfied with the affidavits, that we can go forward, and questions of ownership would be determined by others?

MS. LANGDON: That's correct.

MR. HART: Okay. I do have some other technical questions about the application itself. I have several questions about a memo from Jeremiah Stonefield. It's dated June 15, regarding stormwater. If you have that memo, it's dated June 15. It's from --

MR. CHASE: Yes, sir, I have it.

MR. HART: Okay. The -- one of the problems that I'm having difficulty understanding, it says there's a drainage complaint on file downstream related to a wet basement which may suggest that the soil types in the area possibly have slow infiltration rates and/or high groundwater. Prior to site plan approval, infiltration tests must be performed at the location of the proposed trenches, et cetera, and then he also says the applicant has indicated in the stormwater management computations that they have a tested infiltration rate. The test hole locations do not correspond to the location of one of the proposed infiltration trenches. So I guess what I'm not understanding is if the -- if they're gonna have to show the infiltration tests, if we've got a problem downstream already, and staff is -- in the Stormwater Division is saying the test hole doesn't correspond to the location of the trench, don't they have to do something else? I mean, if we're requiring this information, but they're saying it's in the -- the test is in the wrong -- the test hole is in the wrong place, how did it get to this point, or we don't care and we just wait 'til site plan?

MS. LANGDON: They'll have to make the final decisions at site plan, yes, and if for some reason it doesn't work the way the applicant has shown it, they may have to do a minor modification or they may have to come back through for a special permit amendment.

MR. HART: Okay. Well, that gets to my next question about whether an amendment is needed. I didn't understand if they have to make something larger. I didn't really understand this outfall thing, that they need to -- the applicant must provide additional information in the outfall narrative on the plan, et cetera. If an analysis demonstrates the pipe system and/or the outfall will be inadequate, then the limits of clearing must be expanded to account for any necessary improvements to the downstream system. Well, if we're approving a drawing that has the limits of clearing on it and, again, they're saying more information is needed to know if this works and we may have to expand the limits of clearing and grading, I don't know what we're doing. Do they have to come back then and do a --

MS. LANGDON: Well, if you're really looking at the plat, the plat isn't showing specific limits of clearing and grading on the site. That's one reason why we put some of the development conditions that we are, that they're gonna be out there with the Urban Forester at the time looking at what trees are on the site, whether they can save any or not, and what they have to replant. So, you know, those things are kind of -- kind of work hand in hand. You know, if they have to expand, there are some minor modifications that can be approved administratively. It could even be putting something under the parking lot and which they wouldn't be clearing anything different. So there are different scenarios that could happen with that.

MR. HART: Well, I thought the discussion about the existing trees, and I don't remember where that was, that they were not in very good shape.

MS. LANGDON: Correct.

MR. HART: They were kind of weird species and things, but that the -- on the plat, I don't understand what we would be expanding. Would we be taking out these sort of trees at the edge? What is it that's --

MS. LANGDON: Well, they would not be able to clear over onto the adjacent property, but they could clear up to the property line, which is what really is shown on the plat now. Again, it could be that it could expand into the parking lot. It could move under the parking lot. It could expand lengthwise, but as you see, we also

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 203

have a condition, which we did discuss with Stormwater Management, and maybe the discussion was after the date of this memo, that they could change that to a rain garden so that they could plant in that area rather than the infiltration trenches. So how they're gonna finally address the stormwater management isn't tied down at this point, but staff is satisfied that they could do it in some form on the site.

MR. HART: I was gonna ask about the rain garden also, but let me just finish this up. The -- notwithstanding the memo that says the test hole's in the wrong place, we need more information, and this may have to be more clearing and grading, and we've got this problem with the wet basement, as of today we don't have the additional information, but staff is okay with this?

MR. CHASE: That's correct. We were -- we've written the development conditions in a fashion that we basically have indicated that these issues have to be addressed before site plan approval. We were comfortable with the scope of the condition that it did that and also dealing with the issues regarding additional plantings. So both those areas we felt were covered adequately to give them enough room to address the problem, whichever form was going to be the most efficient.

MR. HART: Okay. Two questions about Development Condition 7, that these rain gardens, are they in exactly the same place where kind of the -- there's like -- I don't know -- bubbles on the sort of dark rectangles on the -- yeah, they would go in exactly those same locations?

MR. CHASE: That is our understanding, that the rain gardens would work in the locations that are designated right now as infiltration trenches. That would be -- and that's why, because of the location, we thought infiltration -- excuse me -- rain gardens would provide some additional plantings --

MR. HART: Right.

MR. CHASE: -- and landscaping and buffer there which would kind of serve two purposes.

MR. HART: The -- we're requiring that we be -- they be planted with trees. Would the Urban Forester be determining the number and location? Because there aren't any trees on the drawing really.

MR. CHASE: Yes, that's correct, because evidently with the rain gardens the type of mixes of trees that are gonna thrive there are a little bit different, and so they would have to provide some guidance there as to what would work and be effective and have a good chance of survival.

MR. HART: If I understood the other memo, the stormwater people were saying you can't put plantings in the infiltration trenches, but now we're saying there are gonna be rain gardens, and you must plant trees in them. Are they, the stormwater people, okay with this condition requiring trees in the rain garden?

MR. CHASE: Yes. Their main -- in that discussion, their main point was that being careful to make sure it's species that can be somewhat damp in the -- at the roots because of -- you know, it's a retention of water. Certain types of evergreens I understand would not do as well. So that's just a matter of coordination between Urban Forestry and DPWES regarding the right kind of mix of plantings.

MR. HART: The last question about the historic component of the existing church, I understand -- or maybe I -- maybe "historic" isn't the right word, but the old part that it's being demolished, but we're going -- it's gonna be photographed, is the -- I don't know who reviews that, the History Commission or Architectural Review Board or someone. They're okay with the demolition and photographs?

MR. CHASE: Yes. This has gone before them, and they had no issue. There's very little of the original building that is left, but they want to make sure they at least can document with photographs the interior and exterior of it. But it's gone through their review, and in a memo, it's included, they had no issue with it.

MR. HART: All right. Thank you.

MR. BEARD: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Beard.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 204

MR. BEARD: Question of staff again, help me out with the Number 5 on the revised development conditions, please, about the parking. Now, here's what I'm deriving from that. In other words, we're saying that they -- the main area will satisfy 217 people, so -- but there shall be no more than two events with 100 people held simultaneously. What I'm seeing here, is it possible that we'd have a sanctuary with 215 people in it, they have an event with another 100 in another portion of the building, and then where are we with parking when your parking calculations are done on basically four per at 220, give or take?

MR. CHASE: The intent there is my understanding is there is one principal service on Sunday, but there's other activities, so the intent there was -- because they meet the parking, but, you know, it's not an excessive amount over that, the intent of this condition was to make sure that, say, there wasn't another event, like a Bible study or something that had a large number of people, occurring at the same time as the main service. So we try to do some staggering there to help to ensure that the traffic flow would not be a problem or parking.

MR. BEARD: Well, I don't understand that as staggering, and, again, perhaps I'm misunderstanding it, when it says no more than one church service or an event with more than 100 patrons shall be held simultaneously.

MS. LANGDON: We said "or," that they have the church service or they have an event with more -- no more than 100, so we meant that they would not have a church service at the same time they're having another event with more than 100 people.

MR. BEARD: I see what the intent is. I'm just saying that in theory the sanctuary, they could have a sanctuary with 215 people and a -- something going on in another portion of the building, Sunday School, Bible --

MS. LANGDON: Correct.

MR. BEARD: -- study, whatever, for 50 or 60 people.

MS. LANGDON: Which is typical of what most churches do.

MR. BEARD: Well, then you've got 300 people on the facility with parking, you know, calculated for approximately 220 there. That's my point.

MS. LANGDON: Yeah. Well, and, again, typically some of those overlap. In other words, some of the people who are coming to church are in the same car with some of the people who may be in Bible study at the same time.

MR. BEARD: Okay. Well, I'm sensitive about this because on -- in the -- over this past years that I've been on the Board, we've had several churches and synagogues and so forth where their parking has spilled out into the adjacent neighborhoods, and I know what kind of havoc that creates. So I really think we need to stay focused, and this needs to be a very clarified issue in the ultimate development conditions. Thank you, Mr. Chairman.

MR. CHASE: Can I add something, Mr. Beard? The parking in this case by the addition of the additional lot and removing of the existing structure actually it's gonna probably be improving their parking situation by adding a number of spots and also better flow on the site, so Transportation was of the opinion that they were gonna be in a much better situation than they currently have for parking where they're having some spillover on the adjacent lot. So hopefully that will improve the situation.

MR. BEARD: Well, notwithstanding that, I'm looking at numbers of spaces. That's what I'm concerned about. Thank you.

VICE CHAIRMAN HAMMACK: Any other questions of staff?

MR. BYERS: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Byers.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 205

MR. BYERS: The memorandum by Jeremiah Stonefield is a great concern to me. The applicant has indicated in the stormwater management computations they have a tested filtration rate, but have not provided the soils report, and he's suggesting that it should be provided as a part of the SPA plat. Infiltration tests must be performed. Have they been performed?

MR. CHASE: Subsequent to the memo, they did provide a soils report and infiltration report. It was provided to Mr. Stonefield. I think they do have possibly some more work to do on that in terms of it meeting exactly their requirements, but it was provided.

MR. BYERS: Well, what concerns me is at least my perception is that there's a difference of opinion between staff from the standpoint of incorrect computations being made. And we're also talking about this phosphorous removal again where the applicant has indicated they meet the 10 percent requirement, but yet there's a requirement in here that talks about 40 percent. The applicant must correctly compute the phosphorous removal provided by the actual drainage area served by the facilities and meet the 40 percent phosphorous removal requirement. I mean, that's a pretty significant requirement, isn't it?

MR. CHASE: Yes, sir, and the intent of the wording in the development condition is to ensure that they will meet that or they won't get other site plans, so we've addressed that in terms of the fact that, you know, it's -- more work is needed to be done in terms of calculations and provision of information to make sure those levels are met.

MR. BYERS: Well, let me ask you this, and maybe I don't understand. Why don't we do that before we come to the BZA? Why don't we have this thing more solidified? I mean, environmentally there is an issue. What concerns me is I know EQAC briefed the Board of Supervisors this year that four out of our five streams in Fairfax County are rated fair to poor. We're talking about being in accordance with the Chesapeake Bay Act. We're talking about moisture in a residence that is relatively close to this. I mean, there seem to be issues here, and I don't see that they've been resolved even at the staff level. And if we approve this, what if they don't meet this, it just goes away? It's not approved? I mean, how does --

MS. LANGDON: It -- yes, a site plan could be denied or would be denied if they don't meet the requirements. It's somewhat of a balancing act, what I would say is. In other words, there's always more than one way to meet these requirements on site. Sometimes they use aboveground means, ponds. Sometimes they use belowground detention areas. They used to be called vaults. They're called something else now. Sometimes they use rain gardens. Sometimes they use infiltration trenches. And when an applicant comes in, obviously to them it's a cost issue at this point in how much they provide and -- or how much work they do up front, how much we ask them to redo, how much we require that they do before we give a recommendation. Stormwater Management felt that they could meet all the requirements, that there are some tweaks and different things that need to be done to do that, but they -- regardless of this memo, they did give their support to the application because they feel that all these requirements can be met. They may end up with underground detention under their parking lot to do that. Now, again, whether the church can afford to do that, they're gonna have to decide later on, but that's not gonna change the design of this site. It's just going to put the detention underground.

So it's kind of a balancing act in how much can the applicant do beforehand, how much do they want to take a chance not to do now that they are due at site plan, and those are things that staff is looking at. If stormwater or DPW had told us no matter what they do on this site, they're never gonna meet the 40 percent or the 50 percent or the 60 percent or whatever they have to do, then that would have been a different issue. We would have told the applicant that we couldn't support it at this point. Then they could have made the decision what they wanted to do, but Stormwater Management does feel that they can, possibly with infiltration trenches and/or a rain garden. Possibly there may be other measures. Whether -- depending on the severity of those measures, if they can't do it in the -- in an area that's already shown to be cleared or under the -- under a parking lot, then they might have to amend the special permit. It's kind of a chance that the applicant will take, but the basic layout, the basic design, the basic pieces were there, and we thought they could get to the rest of it.

MR. BYERS: Thank you.

MR. HART: Mr. Chairman.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 206

VICE CHAIRMAN HAMMACK: Mr. Hart.

MR. HART: Let me follow up on that. I would agree, on the one hand, it's a balancing act, but I think there's some balancing also that needs to be done by us between the applicant and the community. And when we get a memo like this, which to me raises some red flags that, you know, we -- staff -- technical staff is saying we need more information, the test hole is in the wrong place, the trenches won't work, you know, whatever, I think of another church application we had a few blocks away off of Cedar Lane a few years ago, the Korean Central Presbyterian expansion. And if I recall, what happened on that was an SPA was approved, a site plan was approved, they built the addition, but they didn't do exactly what was shown on the drawing. They didn't do the pond the same way, and the parking was a little different. And then the next-door neighbor's basement filled up with water, and then they came in for another SPA. And we battled that around for a while, and ultimately the whole thing was denied.

I think if we're going to get a memo like this that says we have a problem, let's say, a wet basement problem or some other problem like this where more information is needed, what they've given us isn't enough, we have a test hole in the wrong place, et cetera, aside from these other issues about soils or phosphorous removal or Chesapeake Bay, whatever, we're up here trying to sort this out and make a decision, and on the one hand, I think what I'm hearing is, well, it's okay. We know there might be some bad things, but it's okay. We'll wait 'til site plan, and someone else can deny it. And then at that point if the site plan is denied, then the -- you all are off the hook. I don't know, and I think that time with the Korean Church on Cedar Lane, that was the assumption, that the -- whatever the problems are, they would be caught at site plan. And they weren't, and then it blew up in our faces a couple of years later. I think if we're gonna have a situation like this, it would be helpful -- it would be helpful to me to have someone from Stormwater to answer these types of questions so that we are comfortable that they're comfortable with you all saying it's okay. There's these problems, but we'll just -- we'll alert you to them, but you don't have to base your decision on them. And then you'll be off the hook. We'll make the decision at site plan. I don't know. We've had Stormwater people here on other cases. I think on a situation like this, that it's -- it would be helpful to have them here to answer questions about this. Whether these newer development conditions are consistent with their expectations or whether something based on the testimony of the neighbors and the stormwater changes anything, I don't know, but -- and I won't belabor that, but I think that would be helpful to me at least.

VICE CHAIRMAN HAMMACK: Any further questions of staff? If not, Mr. Ngo.

MR. NGO: Yes. Good morning. That's a lot of technical questions, but -- I'm the project engineers on this site plans (inaudible) basically the managers for this whole project. But I'm a member of this church for -- since I was little, and it's almost been 15 years. And this building is more than 120 years old. It is aged, worn, and it needs some major repairs, big repairs. And basically that's why we are here today is to ask for your permissions to close, to develop, renovate, and repair this building as we have the site plan. And for the last two years, we've been working with the County and the State and closely with them for this new site plan and to win this new building up to code, accessibles, and to last longer. The new building will be compliant with all the State and County (inaudible), various regulations, and be ADA compliance which what we don't have now, and, of course, accessibles to the community.

The proposed site plan, which is the hot topic, but the best thing is will give us more parkings, bigger parking lot. We don't cut down the trees except one that in the way of the -- where we gonna plan the (inaudible), and that's the only tree we gonna cut down. But in doing that, we gonna plant a lot more trees and a lot more landscaping, what we show on the site plan. And, of course, all that will be regulate and meet the requirement of the Department of Landscaping or Department of Parks. It will be an attraction to the community. Lady and gentlemen, this is a church, and we will be -- use them as a church. There's no other intentions. What we do is the original will stay intact. The only thing we do is remove the additional in the back. So it wasn't the original part. It was the additional that was built back in '69 or so. We will remove that and build it out, but after we done, we will have a new renovated church, a new building. And it's a church. It's for church use. It belong to God, and we dedicate to God. We worship him in the name of the God. Thank you.

VICE CHAIRMAN HAMMACK: Are there any questions of Mr. Ngo?

MR. SMITH: Mr. Chairman.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 207

VICE CHAIRMAN HAMMACK: Mr. Smith.

MR. SMITH: Did you mention that -- are you the project engineer?

MR. NGO: I'm actually the mechanical engineers on the projects. I have consultants, architect, structural (inaudible), and the whole consultant team work for me. I'm just handle and taking over the project as a leader as well as working on the HVAC system of the project.

MR. SMITH: Are the civil engineers or who prepared this plat here or specifically those who are knowledgeable on stormwater management issues?

MR. NGO: Yes, he's a licensed engineer, and he's here with me.

MR. SMITH: Will he be speaking today?

(Inaudible.)

MR. HART: He has to be on the microphone.

VICE CHAIRMAN HAMMACK: Yes, you have to be on the mike if you wish to testify, sir.

MR. SMITH: Okay. Yeah. You know, you've heard the discussion that we've had regarding the infiltration trenches, and, you know, you've got -- there's a concern about whether this is adequate and whether the holes were drilled in the right spot.

MR. NGO: Yes.

MR. SMITH: And so there's a question about whether this plat is accurate, and then, you know, from our perspective up here, we're -- you know, if we approve this, you have a development condition that says that you're going to -- stormwater management and best management practices facilities shall be provided as determined by DPWES, so, you know, we're sort of covering ourselves by making sure that it's gonna comply with the County Ordinance requirements and State requirements, and it's -- and at the site -- when -- and when you get your site plan, you gonna have to ensure that.

MR. NGO: Yes.

MR. SMITH: But the concern is if we approve this with this plat, you know, we're also -- have a development condition that we're granting the special permit only for the purposes, structures, and uses indicated on this plat. And so if you have one of these infiltration trenches in the wrong place and it has to be moved and you have to come back in here and amend the application because the plat is not accurate, that wouldn't serve, you know, anybody's best interest, not yours, not the County's. You know, that -- none of us want that. So the question is, are you prepared really to go forward today based on the information here or would you prefer to defer this and make sure that you've got those holes drilled in the right spot and that this is accurate before having this approved, because nobody wants to see this approved prematurely and then have to come back through this process again.

MR. NGO: Yes, I understand that, and I know when the staff, Mr. Greg Chase, come back and ask us to do the stormwater management report, and the soil testing company have came and dig a few places to do the soil test. And they came back with a report, and basically they professionals. You know, we trusted them to do what they want. And, of course, we have the licensed engineers to propose the site plan and work closely with the Department of Stormwater Management, and like the staff has say, there's numerous ways to approach to resolve this problem. What we think now, what we propose to ask is the -- what we think is the best way as well as the most economical way to do the -- to manage the stormwater. And the Department for Stormwater Management come back, and basically they okay with what we propose, if we stay with what we propose, and that what we intend to do. We will not sidetrack. We will do what we show on plan.

MR. SMITH: Have you seen the June 15th memorandum?

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 208

MR. NGO: (Inaudible.) He sent it to the site plan (inaudible).

(Inaudible.)

VICE CHAIRMAN HAMMACK: Yeah, would you like to have him testify?

MS. GIBB: No.

MR. NGO: He said (inaudible).

VICE CHAIRMAN HAMMACK: Mr. Ngo, why don't you have your engineer come down and testify.

MR. BEARD: He hasn't been sworn.

JIM ZHAO: Yeah, so as he have -- I may have to say something because as some --

VICE CHAIRMAN HAMMACK: Excuse me, sir. Have you been sworn in?

MR. ZHAO: Not yet.

VICE CHAIRMAN HAMMACK: Okay, well, if you'd face the clerk and let her take your oath.

MS. KNOTH: Do you swear or affirm that your testimony will be the truth under penalty of the law?

MR. ZHAO: Yes, I do.

VICE CHAIRMAN HAMMACK: And if you'd state your name and address for the record, please.

MR. ZHAO: Okay, my name is Jim Zhao. I'm licensed professional engineers and also the civil engineer for this project. I live in 14516 Bubbling Spring Road in Boyds, Maryland.

Okay, probably since the Board members have discussed so much on stormwater management, and I think I should have to bring these issues. Actually it's all my fault and Mr. -- in some extent Mr. Fieldstone's (sic) fault. We had extensive exchange of information and calculations, and somehow the Zoning Board were left outside so they were not informed of our decisions. But (inaudible) general directions were being -- there's a couple issues.

The first issue was somehow when he wrote the memo, he did not find the soil report, and subsequently we resolve that. We give him it, and then I e-mailed him again. So that were -- so the soil quality issues, he was afraid that soil had no enough infiltration capacity so that this water may stand above the infiltration because he had impression somewhere in that neighborhood there was basement flooded, but he said that's what's missing.

And, secondly, he thought there was an error in the calculation, but basically it not calculation. It's just common knowledge. We classified that as a late development. Late development means if the -- it would even -- if that take packing, modify it, he feel that the change is too significant. It should be classified as new development. The difference between these three that according to Northern Virginia -- or actually of Fairfax adopt that regulation. For new development, you have to revoke pollutants by 40 percent. For all kind -- I'm very environmentally sensitive, and it's a church besides. We can end up for 50 percent removal. So that's perfectly requirements, so that second issue.

The third issue is infiltration itself. Infiltration trench meet all the regulation and laws of State and County's, but he has suggestion. He said because it's adjacent to neighborhood of residential zone, he think that if people feel that stone, they no not like, this only suggest as to change into rain garden. Rain garden is a terminology. It is same as infiltration, but it has a green area of plantation on top. The fallacy is that when water get into these stones, they don't go into a street storm system directly. They try to seepage, what we call discharge into earth. Water is discharging to earth. It won't go to Chesapeake Bay, but if it go directly into street storm system, it eventually goes to Chesapeake Bay. So I can assure you that after development you will have far less water going to Chesapeake Bay and far less pollutant than existing now.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 209

MR. BEARD: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Question, Mr. Beard.

MR. BEARD: So you're saying that you've had these conversations with Mr. Stonefield subsequent to this May the 23rd memorandum?

MR. ZHAO: Oh, of course. These are -- we have to -- I mean --

MR. BEARD: So -- but you're -- so -- and you're saying staff is unaware of this. Is that what you're saying?

MR. ZHAO: No, Zoning Department was not aware, but that's why they couldn't answer the questions you were giving -- you asking.

MR. BEARD: Well, my question, of course, of staff, I want to ask staff about that, but I contend unless there's a subsequent memorandum, Mr. Chairman, we're gonna need Mr. Stonefield here to address this issue, it looks to me like. What's staff have to say about it?

MR. CHASE: Well, I had conversations with Mr. Stonefield and was aware that he was in discussions with Mr. Zhao, and I was passing along documentation and letting him know he needed additional information. And I had had a discussion with Mr. Stonefield between the receipt of the May 23rd memorandum, and also the June 15th came after we published the staff report. And my discussion with him indicated that basically -- and he was satisfied that -- as Ms. Langdon had said, that they could meet the requirements at time of site plan, and they were talking to each other and working things out as they would continue to do into the site plan process. But my understanding from him verbally was that they were okay with things and felt comfortable that they could indeed achieve the requirements. That's why we put the development condition in saying that they would have to meet DPWES' requirements at the time of site plan approval.

MR. BEARD: So you're saying to me there's a memorandum from Mr. Stonefield subsequent to this May 23rd?

MR. CHASE: Well, it came in a package.

MR. BEARD: Do I have it?

MR. CHASE: Yes, sir. It came in a memo from -- that came yesterday, dated yesterday, the 25th.

MR. BEARD: Okay.

MR. CHASE: It's a package of a number of comments we got post-report publication in addition to some additional legal documentation regarding the property and title on it, and it's included in there.

MR. HART: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Hart.

MR. HART: Thank you. I don't want to prolong this, but the concern that I have about what we're doing, we have an application which shows in the drawings infiltration trenches, which I understand based on the memo and based on the staff discussion, notwithstanding what's shown on the drawing, they're not going to do that. We have put in a development condition that instead they're going to do rain gardens. We have less familiarity with rain gardens and infiltration trenches generally, I think, than we do with other methodologies of managing stormwater. My understanding was that the fire station down the street here, which was approved with rain gardens, the rain gardens, as it turned out, didn't work and had to be retrofitted in some way, and I don't understand the first step in that. I don't know what was done wrong. I don't know what assumptions were incorrectly made. I don't know any of that. But now we have another case, and we're saying, well, it isn't shown, but we're going to do rain gardens, but we have all this stuff in the background. I think we need to know more about this whole topic, and Mr. -- whether it's Mr. Stonefield or somebody else, I'm not very comfortable with where this all is going

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 210

MS. LANGDON: We can certainly have Mr. Stonefield come. So there's not a confusion, we've been working with Jerry all along in this process. He's attended our staffings and our pre-staffings. He's the one who suggested that the rain gardens may be a better option to go to. He has verbally told us things will work, and, you know, he's satisfied with his discussions with the applicant. But if you want to defer decision, we can cert- -- or continue the case, we can have a date where he can come and discuss those things with you, but we have been discussing those all along. It hasn't dropped by the wayside. That's -- our condition came from discussions with DPWES, with the stormwater section, and we knew they were working directly with the applicant. We put them in touch with the applicant so they could work directly with them, but certainly we can have him here. We just didn't think it was necessary. We thought we were far enough along, and he was okay with the development conditions that we have.

MS. GIBB: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mrs. Gibb.

MS. GIBB: I don't know what -- for what it's worth, I don't know why exactly we're getting into this minutia. To me, everything the applicant's engineer has said has made perfect sense. It's sworn testimony that is consistent with everything I know of and that I understand is true with respect to rain gardens and infiltration trenches, which is not much, but we have a trained staff that has worked with the stormwater people. And I do know that it is very expensive to do these calculations, these outfall calculations, and I can see why a church would want to put off these things until they know they have their special permit. But it looks like that they have worked in good faith with the County, and I guess we're gonna wait and hear, but I certainly -- I think that we're not going to ever have the expertise on every issue here, and I'm not sure that this is my area to become --

MR. BEARD: Mr. Chairman.

MS. GIBB: -- a person who says yes or no.

VICE CHAIRMAN HAMMACK: Mr. Beard.

MR. BEARD: Well, after the statement Ms. Langdon just made, I feel a lot more comfortable. I mean, she's just said we work -- quote, we've been working with Jerry. He said that these things could be worked out. I'm paraphrasing, okay. Now, that gives me a greater degree of comfort than I've had, so that's where I'm coming from.

MR. SMITH: Mr. Chairman.

MR. BYERS: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Smith.

MR. BYERS: I'm sorry. Go ahead.

MR. SMITH: I likewise am -- you know, hearing from a professional engineer is very comforting for me and also to hear staff's recounting of the conversations that they've had, and -- but just one more question for Mr. Zhao. The infiltration trenches that are shown then on this plat, you're comfortable with the location of those trenches on this plat, because that was my biggest concern is that you may find that you need -- later need to move them and then had to come back and amend the plat, and I would hate to see that have to happen.

MR. ZHAO: No, location okay because our infiltration only about -- like about four feet. Groundwater is about ten foot deep, and also the soil condition's so good. It's like -- almost like sand. So there is no possibility of water stagnant somewhere, not leaving somewhere. The difference between infiltration trench and rain garden is not the functionality. They provide exact same function, and it's just appearance. It's -- that suggestion, it look much nicer if you can see the grass, flowers, or trees on top.

MR. SMITH: Understood. Thank you.

MR. BYERS: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Byers.

MR. BYERS: I've read the memo dated the 15th of June 2007 from Jerry Stonefield twice, and I don't see anyplace in here where he says that all of this can be resolved. In fact, he reiterates in the 15 June memo what he has said before, which is that the design and filtration rates must be based on test performed at the location of the proposed trenches. They're still not there. I don't think we -- I agree with my colleague, Ms. Gibb. I don't think we need to be, you know, experts on stormwater management, but we do need to be sensitive, I think, to policy of the County. And it's not -- it's not, for example, that I don't respect you as a professional engineer, because I do. What I think would be helpful would be if Steve Atchison and/or Jerry Stonefield were here to address the BZA and alleviate some of these concerns, which I think are legitimate concerns, and then we can move forward from there, because I think it would be a waste of time. I think Mr. Smith said it before. We want to make sure we're absolutely correct before we move ahead for everybody. Thank you, Mr. Chairman.

VICE CHAIRMAN HAMMACK: Any other questions or comments? Well, we have some speakers in support of the application, and I think we ought to go ahead and call other speakers while they're here. They've taken time to come out today. If anyone else would like to speak in support of the application, please step forward. You all may sit down. There's some chairs right behind you. And I recognize you, Mr. Dryden.

GLENN DRYDEN: Good morning.

VICE CHAIRMAN HAMMACK: Please state your name and address.

PASTOR DRYDEN: And let me say thank you for serving our community. I am Pastor Glenn Dryden. I reside at 2520 Gallows Road in Dunn Loring and serve as pastor of the Community Church of God, 2500 Gallows Road. Although I am speaking in an individual capacity, I am confident that the congregation that I pastor, the congregation of the Community Church of God, would join me in my support of the application before you.

In the late 19th Century, General William McKee Dunn, Dr. George B. Loring, and Mr. George H. LeFetra established the Loring Land and Improvement Company and developed a comprehensive plan leading to what some speak of as the first platted subdivision in the Commonwealth of Virginia, Dunn Loring. To their credit, these men understood the merit of honoring and worshipping the Lord Jesus Christ. They set aside the property occupied by the applicants for the construction of, quote, a building to be used as a schoolhouse and for religious services for the use and benefit of the neighborhood of Dunn Loring forever, close quote. General Dunn, Dr. Loring, and Mr. LeFetra would be pleasantly surprised and giving glory to God to know that today four places of worship are located within the, quote, neighborhood of Dunn Loring, close quote, the Dunn Loring United Methodist Church at 2501 Gallows, the Episcopal Church of the Holy Cross at 2455 Gallows, the Community Church of God at 2500 Gallows, and your applicant, the Vietnamese Christian and Missionary Alliance Church, at 2438 Gallows.

I would like to commend the congregation of the Vietnamese Christian and Missionary Alliance Church for their sensitivity to the Dunn Loring community in preserving the original section of their facility. I do not believe they have to do this. Documents relating to chain of title speak for themselves, and should you have any questions later in this proceeding regarding the chain of title, I would be glad to attempt to answer them. Much sentiment is attached to this site. My wife Judy and I were married in this present building in 1975. We labored for the Lord Jesus from this building for a number of years, and our two sons were spiritually nourished there through their preadolescent years. Joe and Annie Miller, who resided at the 2430 Gallows, were members of the Community Church of God, and I believe that they would be pleased to know their property passed to the use of this renovation by the Vietnamese Christian and Missionary Alliance congregation. The applicant has developed a plan for these properties which I believe will enhance the appearance of the neighborhood of Dunn Loring while giving consideration to the sentiment many have for this site, and I would like to encourage you to grant the applicant's request. Thank you.

VICE CHAIRMAN HAMMACK: Thank you. Any questions of the speaker? Thank you, Pastor. Next speaker.

PHILIP SAUNDERS: My name is Philip Saunders. I live at 8150 Woodland Court, which is in the Bright

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 212

Meadows Subdivision just adjacent to the west of this property. I would just like to testify that the church has been and the congregation have been wonderful neighbors. We love having them there, and we would very much like to support their efforts to improve their facility and to enhance their activities on that site. I would want the Board to be mindful that over a long term in the future we would like to continue to have these churches located where they are with the uses that they have now. This section of Gallows Road may be, to my knowledge, the only non-commercial section of Gallows Road. It is gonna be an extremely difficult section of Gallows if development goes in a different direction, and I would hate to see any of these congregations find these facilities in this location to be unsatisfactory and move elsewhere because they're wonderful neighbors. They -- the kids playing in the playground are a joyous thing to hear. And their use is very low impact, and the traffic is almost insignificant. And I wouldn't like to see them have to jump through a lot more expensive hoops to get this change accomplished, and I think that reliance upon staff assurances of their internal communication should be accepted. And so I think the Board should approve this application at this time. Thank you.

VICE CHAIRMAN HAMMACK: Thank you, sir. Any questions? Next speaker, please. Anyone else who would like to speak in support of the application? Are there any speakers in opposition to the application who would just like to -- okay, we have three.

RICHARD DANA OPP: Good morning.

VICE CHAIRMAN HAMMACK: State your name.

MR. OPP: My name is Richard Dana Opp, and I live at 8000 North Park Street, Dunn Loring, Virginia. I appear today as a nominated trustee for the property in question at 2438 Gallows Road as well as a trustee of the record for the Dunn Loring Parks property, which is located on either side of the Washington and Old Dominion Trail from Gallows Road to Morgan Lane, which was also deeded to the community in 1889 under the same auspices and recorded documentation. I'm also a member of the Dunn Loring Improvement Association. Permit me to briefly cite some points relevant to the ownership of the property in question for the special permit.

VICE CHAIRMAN HAMMACK: Excuse me. Before you speak, are you speaking as an individual or on behalf --

MR. OPP: As an individual.

VICE CHAIRMAN HAMMACK: As an individual.

MR. OPP: Yes.

VICE CHAIRMAN HAMMACK: All right. Thank you.

MR. OPP: The deed dated April 1889 from the Loring Land and Improvement Company for the benefit of the neighbors of Dunn Loring states, in trust to erect thereon a building to be used as a schoolhouse and for religious services for the use and benefit of the neighborhood of Dunn Loring forever.

Two, per Appendix 2 of the staff report, none of the trustees of the Vietnamese Alliance Church live in the Dunn Loring neighborhood, thus, they could not be seen as fulfilling the explicit charge of the original donor, which was the Dunn Loring Land and Improvement Company.

In Appendix 3 of the staff report, statement of justification from 5 May 2007, there are several misstatements of material truth. In paragraphs 2 and 3, the staff states that the church has changed the name to Vietnamese Alliance Church, the same owner, quote. The Vietnamese Alliance Church was, in fact, never the Community Church of God, nor did they ever make the application for their previous special permit as stated, S 182-75. The Dunn Loring Community Church of God is a separate entity with a building at 2500 Gallows Road. The Vietnamese Alliance Church is a separate entity that conducts services at 2439 Gallows Road in the designated community building. Since the Vietnamese Alliance Church was not the owner of record, nor was the Dunn Loring Community Church of God, this special permit amendment does not apply to them as stated in the staff report. As noted above, there are two separate entities, and, thus, this is a misrepresentation of material truth, thus, one could conclude that the application has been improperly filed.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 213

Four, in Appendix 4 of the staff report, the previously recorded Board of Zoning Appeals action 75-C-182 dated 14 October '75, page 403 of the record contains this language, that the owner of the property is Trustees of the Community Church of God, end quote. This appears to be a misstatement of material fact in referencing back to the deed dated April 9, 1889, from the Loring Land and Improvement Company. Dr. Ed Beck, former pastor of Community Church of God, would so attest. Most of the leadership of the Community Church of God and Dunn Loring United Methodist Church would testify that the subject property was probably set aside for the benefit of the Dunn Loring neighborhood.

Further, one, this is the quote. This approval of a special permit is granted to the application only -- the applicant only and is not transferrable without further action of this Board, i.e., the Board of Zoning Appeals. Apparently this is a required action. Transfer precedent to the current application is not addressed so in the staff report.

On page 7 of the staff report, citing a report from the community history section, it states, speaking of the building site, quote, it is the original Dunn Loring United Methodist Church constructed in 18-9 -- '89 as an integral part of the unique community. First, this is incorrect and erroneously stated. Second, the building was not constructed as a church, but was constructed as a community building which was to be used either for a school or religious services. The property was conveyed to three trustees on April 9th, 1899 -- 1889 to have and to hold said lot in trust to erect thereon a building to be used as a schoolhouse and for religious purposes and for the use and benefit of the neighborhood of Dunn Loring forever. Provided that after five years no school is kept and no religious services are held in said building, then said building with all its appurtenances shall revert to the grantor with the same right and title as if this deed had not been given.

Further, the staff report states the Vietnamese Alliance Church, while operating under the name of the Community Church of God, have previously received County approval for alterations to the historic structure. All this statement seems erroneous. The Vietnamese Alliance Church never operated under the name of the Community Church of God. Rather, apparently the Community Church of God permitted the Vietnamese Alliance to hold services in the community structure.

VICE CHAIRMAN HAMMACK: Mr. Dana Opp --

MR. OPP: Moreover --

VICE CHAIRMAN HAMMACK: Sir.

MR. OPP: I'm alm- -- I have one -- one more sentence.

VICE CHAIRMAN HAMMACK: If you could sum up, please, your three minutes are up.

MR. OPP: Moreover, the Vietnamese Alliance Church never received permission to alter the structure. In closing, I'm not sure how the Board can act on a permit request for 2438 Gallows Road which is not from the owners of property, recent County records notwithstanding. Thank you.

VICE CHAIRMAN HAMMACK: Any questions of this speaker? No questions. Next speaker, please.

MARCHE COVINGTON: Hello, my name is Marche Elaine Covington. I live at 8016 North Park Street in Dunn Loring. I appear as a nominated trustee for the property at question at 2438 Gallows Road that was deeded to the community in 1889. I attached letters from the -- April of 1954, from the Arlington Fairfax Savings and Loan Association, and a letter dated April 27th, 1954, from the attorney F.R. Taylor, representing the United Methodist Church in Dunn Loring.

Allow me to briefly call into question the ownership of the referenced property that's been -- it's before you before -- for special permit. Dunn Loring, as was stated, was a planned community. It was marketed as two hours from D.C., come enjoy the healthful air and the clean water. The land in Loring community established lots around a park that they dedicated to the community as well. My husband and I own a home called Tudor Hall as one of the lots of the -- this neighborhood of Dunn Loring, part of the original plot. That lot itself was to be a general store or a hotel with the forethought of the Land and Loring Community to be part of the community association. Thomas Tudor Taylor purchased that lot and built a house with the general

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 214

store as one large room of this house. At some point in time the neighbors were needing religious services. They gathered in the park that was dedicated to the community. And later a minister was sought, and the land -- the Loring Land Community donated a lot special for the people of the community so that they could use it as either religious services or as a time for a -- excuse me -- as a place for a school. The -- it -- I think the history shows the Loring Land Community's foresight in looking at the properties that they all shared, whether it would be the park or the community building or the general store, the property that was for the depot and the mail services. I think they were building a community, and that's -- that's how it all began.

In 1954 the Methodist Church group that was meeting in the building applied for a loan. The letter attached tells the story of them not being able to attain title insurance because there was not a clear title. This lawyer's response in doing due diligence is to be emulated by the County's Attorney in finding the true ownership of the property.

With the Loring Land Company's forethought of the needs and donations for a community building, there have been many organizations that have used this building. As I stated, the United Methodist Church, the Chur- -- they used it, needed a larger facility, bought property across the street, and built a bigger church. The Church of God used the building, needed a larger church community, eventually built a bigger building, as well as the Vietnamese community now needing a larger facility for their church.

We have met with the Vietnamese group. We understand their needs, are very compassionate about their needs. We've tried to work with them as far as stating why don't you build your building on the church -- on the property you presently own, and the community would allow you the use of the parking lot for parking. As much as we're concerned about their needs, we can't negate the original ownership and the forethought of the builders of this community building and give the property to individuals when it's owned by the community. Thank you.

VICE CHAIRMAN HAMMACK: Do you have questions of Ms. Covington? I have a question or two.

MS. COVINGTON: Sure.

VICE CHAIRMAN HAMMACK: If you're a trustee, why haven't you all taken action to establish your legal rights in the property?

MS. COVINGTON: I'm a nominated trustee. We've not gone through the actual trusteeship. There has been a succession of trustees for this property. That's a very good question. One of the reasons is there are no funds for this community. This is a neighborhood community. It is not a homeowners association, and we have been looking for -- for some time for a lawyer to take up our cause to establish the rightful ownership. We have been allowing through suffrage the Church of God, the Vietnamese Church to use the building. We had no knowledge that they had any intent to build a new building until they purchased the adjacent property. Finally I picked up the phone and called the owner of record, and it was the former owner. And I said do you own the property, and he said no, I've sold the property to the Vietnamese group, and they're going to raze the church and build a new building. That was our introduction. We have been not aware of any changes, anything that's gone through the County. We've never been notified. We were still under the understanding that they were using the community building and maintaining it as in trade for their use.

VICE CHAIRMAN HAMMACK: If I could follow up.

MS. COVINGTON: Sure.

VICE CHAIRMAN HAMMACK: Who nominated you?

MS. COVINGTON: The Dunn Loring Community Association. It's a group of homeowners that has been going on for 30-some years, and Ray Worley is the president.

VICE CHAIRMAN HAMMACK: When do you take office?

MS. COVINGTON: As soon as we've gone through the -- all the legal paperwork and stand before the judge.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 215

VICE CHAIRMAN HAMMACK: All right. Thank you.

MS. COVINGTON: Thank you.

MR. BEARD: Quick question.

VICE CHAIRMAN HAMMACK: Another question, Ms. --

MR. BEARD: No, no, this is for --

VICE CHAIRMAN HAMMACK: Oh, for staff.

MR. BEARD: -- actually for you.

VICE CHAIRMAN HAMMACK: Oh, Mr. Beard.

MR. BEARD: This letter from Thomas, Ballinger, Vogelman, and Turner, is that a legal opinion?

VICE CHAIRMAN HAMMACK: I'm not sure which one you mean.

MR. BEARD: And also a question of staff, is the exact address of the building 2430? And the adjacent lot is 2438; is that correct?

MR. CHASE: 27A is the -- the existing church is on Lot 28. The adjacent property which was purchased is Lot 27A, and that is, let me see --

MR. BEARD: You mean it was --

MR. CHASE: 2430 is the new lot. 2438 is the --

UNIDENTIFIED SPEAKER: Original church lot.

MR. BEARD: Well, this settlement statement I have here in the package, that was on -- for the lot, obviously, right?

MR. HART: I saw that.

MR. CHASE: It's on the original church property, those documents.

MR. BEARD: So this 2438 Gallows Road, somebody sold the building at some point. Is that what I'm --

MS. COVINGTON: No, you've got this confused.

MR. BEARD: Well, straighten me out, please.

MS. COVINGTON: One was the community building that was established in 1889.

MR. BEARD: Right.

MS. COVINGTON: The other one is an adjacent property that held an older home building --

MR. BEARD: Right.

MS. COVINGTON: -- on it, and our understanding is they bought the older home building property and they want to join the two --

MR. BEARD: Okay, but I --

MS. COVINGTON: -- believing they owned the community building.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 216

MR. BEARD: Right. So no one surreptitiously sold the old building or anything like that.

MS. COVINGTON: Well, not yet, but when you're being told something you own is going to be razed --

MR. BEARD: Okay, gotcha. All right. I'm clear, and then I'm still waiting for my answer.

VICE CHAIRMAN HAMMACK: I have no -- well, you know, I can't answer --

MR. BEARD: I mean, I'm just asking.

VICE CHAIRMAN HAMMACK: -- for Thomas, Ballenger. It sure looks like one, but I -- I mean, except for that.

MR. BEARD: I'm not an attorney, so I'm just looking for a little help. Does staff consider this a legal opinion?

MR. CHASE: We -- the only comment we were really more concerned about was the County Attorney's Office indicated, based on the affidavit and title research that they did, that the Vietnamese Alliance Church could rightfully -- was the rightful owner and could go forward in this application. Beyond that, we just looked at the land use implication to this, and that's the scope we looked at. Anything else is basically, the way we looked at it, between the two parties involved in the dispute.

MR. BEARD: Once again, you're relying on the County Attorney's assertion.

MR. CHASE: Yes, sir, in terms of their interpret- -- that it is a legal application, that the applicant has a right to make that application, and it's legal. That's correct.

MS. GIBB: Mr. Chairman.

MR. BYERS: Mr. Chairman. I'm sorry.

VICE CHAIRMAN HAMMACK: Who's -- who called? Oh, Ms. Gibb.

MS. GIBB: I was just going to say that all -- I think all we can rely on is what's in the land records to look at right now. I mean, how can you look beyond -- behind a deed? How can we or the County Attorney look behind a deed? And that's up to the people that have the deeds to fight it out. I mean, otherwise we'd be rendering judgment based on evidence that's presented --

MS. COVINGTON: Excuse me.

MS. GIBB: -- here.

MS. COVINGTON: There doesn't seem to be a sufficient title search to the property.

VICE CHAIRMAN HAMMACK: Well --

MS. COVINGTON: And that's our concern.

MS. GIBB: That's not for us to -- you know, all we can do is look at what's presented in the --

MS. COVINGTON: But it would be a problem if I came to your home and visited and then put my name on the title, and that seems to be what has occurred here.

MS. GIBB: Then you'd need an attorney to represent you and take care of it.

MS. COVINGTON: Can the Board really approve a permit to build a church and raze the prior building when there's a question about title?

MS. GIBB: Then I would say that your right is to get an attorney and to proceed with -- in court, I would say,

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 217

with --

MS. COVINGTON: That may be, but it may be after the -- you know, the horse is out of the barn.

MR. HART: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Hart.

MR. HART: Thank you. If you need legal advice, you should probably be talking to an attorney about what could or couldn't be done. There have been other situations that I know of, most recently a subdivision -- I can't remember if it was in Lee or Mt. Vernon District, but it was a case before the Planning Commission last year, and there was a small cemetery in it. And the developer owned, I think, the cemetery or the lot leading to it ostensibly, at least based on the records, but there was a woman saying, no, it was a family cemetery, and she had an interest in it, and she and her relatives didn't participate in anything, and they were not part of the application and whatever. The applicant went forward knowing that the -- that there was this question, as they were entitled to do, and basically both the Planning Commission and the Board of Supervisors went ahead with the application knowing that if there is some problem, then perhaps there's some issue about the validity of the approval, but we leave that for a judge to sort out those claims between private parties and that the Planning Commission and the Board of Supervisors made the decision in that case on the land use issues and left the ownership issues to the Court. And I don't know whatever happened, but I assume that it was worked out. I think typically we don't get involved in -- the County does not get involved in disputes, land records kind of disputes between private parties, such as, covenants or reversions or things like that, which may be susceptible of multiple interpretations, may be dependent upon facts that we don't have a jurisdiction to adjudicate.

MS. COVINGTON: Is not the County the governing body that actually grants the deeds? And if there's been an error, is not the County responsible?

MR. HART: No, ma'am.

VICE CHAIRMAN HAMMACK: No, no.

MR. HART: The County doesn't do deeds at all.

VICE CHAIRMAN HAMMACK: It's the owner of the property that does deeds, and this Board has no authority to really deal with this type of a dispute. We can only look at the issues that are as provided in the Code for the special permit application, and I think that if you say there is a title issue, there would be a burden on you to prove that. I mean, we don't have any proof. You make an assertion. Whether we would consider that or not is a whole other issue, but I agree with what my colleagues said. You need to get legal counsel. There are a lot of remedies, talk to the County Attorney, do -- I mean, but this Board can't make that adjudication. We can't give legal advice either --

MS. COVINGTON: Uh-huh, I understand.

VICE CHAIRMAN HAMMACK: -- other than properly. Get a lawyer. Any other questions of Ms. Covington? I see Mr. Worley's out there --

MS. COVINGTON: Thank you.

VICE CHAIRMAN HAMMACK: -- wanting to speak.

RAY WORLEY: Mr. Chairman, Members of the Board, I'm Ray Worley from 2537 Gallows Road, but today I appear in another hat, president of the Dunn Loring Improvement Association, and we regret that this day has come. We talked with and communicated with the Vietnamese Alliance Church as far back as February 17, 2005, trying to say, yes, there are some problems here, we'd like to talk with you, we'd like to work them out, and we've not been able to do so. And so legally, yes, I feel that we've done a great deal of title work, and we feel we have come to an understanding of what could prevail here.

We do feel that the County Attorney was derelict of responsibility of not doing more than a one-deed look at

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 218

this because what occurred essentially was the Dunn Loring United Methodist Church, when they vacated the property, conveyed the contents to the Community Church of God with a quitclaim deed. Unfortunately, when the Community Church of God vacated the property, they conveyed title using a general warranty deed. All of this we feel is in great violation of the intent of the original donor, General Dunn and the Loring family back in 19- -- 1889, and we feel -- I could reconstruct it pretty well -- that this is just unfortunate to come up. We tried to negotiate. We tried to talk to people rationally, and I assure you all of these committee members from the Dunn Loring community were selected because we felt they were strongly empathetic with the purpose of what is going on. But we feel that they are remiss regarding what the law is and what needs to prevail, and we do feel technically we can't argue that issue here. We do feel that the application is greatly flawed. There's a lot of misinformation in it, misunderstanding, and, therefore, we feel that it -- and misrepresentation, and so, therefore, we feel that that alone should lead you to say let's go back and look at this thing.

And we could talk more and more about it. The community has permitted various groups to use this property by sufferance, and that's good, you know. Hey, we want them to keep up the property and to do things, and they have been a little bit negligent of recent moment, but regardless, that's the situation. So we can talk on a great deal about it, and I could answer a bunch of questions. We probably have many or most of the documents. I'd be happy to make them available to you, but that may not be specifically germane to your concern. We do intend to put an inquiry into the County Attorney's Office and say a staff member took a position. All right. What was the basis for the staff member taking that position? Was it the law? Was it an ordinance? Was it a staff directive? How do we get to the point that we say we only want to go back one deep and ascertain what ownership may be without looking whether or not that ownership was well derived?

We do feel like, as Ms. Covington has stated to you, back in 1954 they recognized the possibility of problems with this. I could talk with you about all the stuff. I could give you the documents, but the -- what comes now, should you consider and should you approve. You've got a lot of questions been raised, and my judgment is -- and I've dealt with real estate and within the community I've said and many and almost all of the developmental studies in this area, including two in Dunn Loring and Merrifield Metro and Merrifield and all over, and if it's not in writing, it's not signed, it's not enforceable. And we feel that that should be a principle that ought to guide this Board in its decisions, you know. Whatever, you know, by guess and by golly and gee, maybe. And so you have been provided that information to give you the approach to this whole question. Therefore, our community and the Dunn Loring area strongly urges you to defer this to clarify a lot of these questions. In the meantime, we do have some attorneys in mind. We hoped we'd be able to get in and negotiate the understanding, not have to go to court, not to have to -- more expenses on these two congregations represented here today. And that's been our attitude in community. We've practiced forbearance and patience and consideration, but perhaps to no avail.

So, therefore, we strongly counsel this Board to defer this issue, and we'd be glad to talk with you further, but we feel that the application is so flawed on the face of it that it should not be accepted as presented. So that's part of our position, and we do ask that -- we recognize -- we feel that there was an inadvertent error made, but it's still a false error. And we may have to go to court to prove it and to demonstrate it, and we don't want to put the congregations through the expense.

And, by the way, I would take issue with the pastor from this who spoke today. His previous predecessor specifically stated he had a full understanding from his experience of living in the area and attending church in this building which we're talking about today that it was indeed a building site that resided with the trusteeship in the community, and you cannot just move in and take over and say it's mine. So thank you very much, and I'll be glad to respond to any questions.

MR. BYERS: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Byers.

MR. BYERS: Mr. Worley, just -- your comment was that the representative from the County Attorney's Office should have gone more than one title search deed, so are you telling me that you have titles, other titles?

MR. WORLEY: No, sir, I didn't say that. I said their action. It seems to me they were -- I've personally talked with them. Mr. Chase gave me the number. I talked to the lady there, and I put her on notice that we think there's questions here. And then Mr. Opp also wrote a letter, and they reacted to it. It seems to me the

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 219

question ought to be -- ordinarily I would say yes, but if a question's raised, it seems to me there's a matter of due diligence, and I think the due diligence has been sadly missing all through some of this thing, essentially going back and looking at the deed, because the pastor from the church that did provide us with some information of a court ruling in 1942 which dealt in part with that issue. But it seems to me that you can't go back and negate, negate the intent of the original donor of this, that it should be for the benefit and the use of the Dunn Loring neighborhood. That's his words. And how can we change that? And I know that's not your issue, may be of your interest, but I think that the way they handled this today is because of the interest over the engineering, the interest over the title, the interest over the approach, the mistakes in the application. I started -- told somebody I might get some large clothing clips and come up and give it to you, and I said, hey, you would need this because this thing got a little bit of aroma to it.

MR. BEARD: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Beard.

MR. BEARD: Mr. Worley, again, help me understand your position. Is it your position that the trustees basically could evict these people from the building should they choose to do so?

MR. WORLEY: Well, that has not been our intent anytime.

MR. BEARD: I understand that, but --

MR. WORLEY: And it -- well, the point was our desire and our letter, which I'll be glad to provide you a copy of, stated that we wished to work out arrangements and understanding that would give you the -- give this group, this congregation the continued use of that property.

MR. BEARD: Well, to me, and, again, I agree with my colleagues, I don't think we're here to --

MR. WORLEY: I understand this.

MR. BEARD: -- to discuss -- you know, I think this is an issue again that the courts will ultimately have to see, but it states to me quite succinctly it's schoolhouse and for religious services. Now, I don't see any other, you know, criterion that are laid down, but I just want to know if it is your position that, in other words, whoever occupies that building is beholding, if you will, to the trustees and -- or under the direction of the trustees and can be removed at the will of the trustees.

MR. WORLEY: Well, sir, I think any -- the gentlemen who are two attorneys here would say that in a situation where it might become untenable for a person to continue there, it might be possible to by law evict them, but the point is here we wanted to work with the church people.

MR. BEARD: So you're not saying that this is at -- no point has become some type of an adverse situation?

MR. WORLEY: No. Well, as I said before, we selected these people because they're emphatic with the purpose of the church, and we do feel, in part probably, that the concern for the purpose of the church clouded the judgment of some of the people at the other church.

MR. BEARD: Okay, now you've selected them. They interviewed for the facility from the trustees. Is that what happened? You say they selected them.

MR. WORLEY: Sir, I'm president of the Dunn Loring Improvement Association, and I made a motion on -- I think it was January 15, 2005. These names were put forward as being ones that could be nominees, but to be worked -- the committee to work on this issue. So that's how we got together.

MR. BEARD: I'm sorry. I just want to be clear. The group that now occupies the church --

MR. WORLEY: Yes.

MR. BEARD: -- you all -- they didn't come to you. You didn't approve them for occupancy.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 220

MR. WORLEY: We never did, no.

MR. BEARD: No, okay. Thank you, Mr. Chairman.

VICE CHAIRMAN HAMMACK: Any other questions? Mr. Hart.

MR. HART: Thank you, Mr. Chairman. I don't want to spend too much time on the ownership issue either because I think that's for a judge to sort out, if anybody, but, Mr. Worley, you did raise one thing in your testimony, and I'm not sure I understand this. Is -- if I understood something you said, that there was a problem with the Community Church of God trustees conveying to the Vietnamese Church.

MR. WORLEY: Yes.

MR. HART: The copy of the deed from 1988 that we have, I mean, it's clear on the face of it this was a -- in fee simple and with general warranty of title, et cetera.

MR. WORLEY: That's correct.

MR. HART: Weren't you the notary who notarized three of the signatures?

MR. WORLEY: You are correct, sir, and I did it as a courtesy. But I do not review all the documents I notarize. My role only is to attest to the signatures, and if you go by -- if you go down on that document, the last -- one of the last lines says that this document is subject -- if you would read -- I forgot those exact words, but is subject to other terms and conditions, and so we are going back and will be challenging that phrase.

MR. HART: But the last 19 years, no one has gone to court to set this deed aside or do anything?

MR. WORLEY: Well, sir, we did not really have need to.

MR. HART: All right. Thanks.

MR. WORLEY: We had not examined the title until this issue came up. In fact, it was only when the staff report came out that I found out that a law firm apparently drafted a document and also signed the title, which seems to me may have reflected in not a thoughtful judgment. Due diligence would have shown some of these other problems in the past.

VICE CHAIRMAN HAMMACK: Any other questions? Thank you, Mr. Worley.

MR. WORLEY: Okay, thank you very much again, sir.

VICE CHAIRMAN HAMMACK: Are there any other speakers on this particular --

MR. WORLEY: Excuse me. May I say that there was another gentleman here also from the Dunn Loring Community and the gentleman -- another gentleman was here earlier who lived back in that area, but he had to go, and he couldn't stay. So we do have -- I've gotten several e-mails, and there will be probably more people speaking to this question, but we're sorry that we were not able to negotiate an amicable agreement.

VICE CHAIRMAN HAMMACK: All right. Thank you. If some -- Mr. Ngo, you get five minutes for rebuttal.

MR. NGO: Good morning again. I would like to have just a couple of things to say, and I try to make it short. Basically, it's been 1989 when the Vietnamese Alliance Church asked for use, about the rights to use the church from the Community Church of God. All the title search were done properly, legally, and that is what you got in front of you now. Mr. Worley here was the one, the official notarized (inaudible) 19 years ago, and we believe that was his intention, to let the transition approve. Our intention here is today is just to ask for permissions to renovate this worn-out building. Again, we don't dispute about the ownerships or the titleships. Especially me personally, I'm too young to know those things. It's a church. It belongs to God, and we dedicate it to God. The land that we bought next door, our intention to make this whole thing work is to dedicate this whole thing for church use, and that's what's the original deed -- the General Dunn Lor -- Dunn

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 221

and Dr. Loring intend to use 120 years ago, for religious use, regardless of whoever using it as long as it's to used to worship God. And that's what we here to do. We ask for your permission. Our intentions and our permit -- your permissions to renovate this church. It's too old. It's very old, and that's all we do. Thank you, sir.

VICE CHAIRMAN HAMMACK: Any further questions? Okay, the public hearing is closed.

MS. GIBB: Mr. Chairman

VICE CHAIRMAN HAMMACK: Ms. Gibb.

MS. GIBB: In Special Permit Application SPA 75-C-182 by the Vietnamese Alliance Church under Section 3-1032 and 8-9- -- 8-921 of the Fairfax County Zoning Ordinance to permit an amendment to SP 75-C-182, previously approved for a church, to permit an increase in land area, building addition, site modifications, change in permittee, and modification of minimum yard requirements to permit existing building 33.3 feet from the front lot line, I'm going to -- on property located at 2438 and 2430 Gallows Road, I'm going to move that we defer for, I guess, a week or two just so we can get maybe the gentleman from Stormwater to come and answer a couple questions. I myself feel pretty comfortable about that one issue, but to make sure that everyone feels that their questions can be answered, and I feel that that's the only issue that needs to be addressed, and in -- and it'll be for that reason only.

MS. LANGDON: Our next meeting is July 10th.

MS. GIBB: July 10th.

MR. HART: Second. If that was the motion, I second it.

VICE CHAIRMAN HAMMACK: Okay. Any discussion?

MS. GIBB: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Ms. Gibb.

MS. GIBB: On the issue of the title, again it's simply something that we are not equipped to nor have the ability to rule on. You know, we're not a court. We don't have all the evidence. We don't -- you know, there can be fraudulent deeds. There can be anything. We just -- it's not something we can pass on here. That's why we have the procedure that we have, which is to have the applicant make application, have an affidavit, have the County Attorney review it, and if there's any question, they look at the land records and look at the deed, and that's the best we can do. And I know you're unhappy, the people that have spoken from Dunn Loring, but then your right is to, you know, pursue it further as you -- as you like, and I would suggest that you would need legal advice probably. And that's my comment on the title.

MR. BEARD: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Beard.

MR. BEARD: And just as a follow-up point to Ms. Gibb's statement, again I'm looking at a settlement statement with title insurance and for -- the title insurance states for purpose -- purchase of a church, so, again, I don't -- that's not an issue for us, but it makes me feel comfortable to proceed on as Ms. Gibb had outlined and for this short deferral. Thank you.

MR. BYERS: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Byers.

MR. BYERS: I concur with Mr. Beard's comments and also Mr. Hart and Ms. Gibb. I think the only issue that I want to be very comfortable about is the stormwater management issue, frankly. And I think any other thing, if you're -- any other legal issues should be addressed by a judge between the two parties, and I don't think we should be a part of that at all. Thank you, Mr. Chairman.

~ ~ ~ June 26, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 222

VICE CHAIRMAN HAMMACK: Thank you. Any other discussion?

MR. HART: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Hart.

MR. HART: Thank you. I also agree we should not get into the issue of who's right on the ownership, and if we started that today, we would be doing it again and again. We leave that to the court, and we're not gonna take sides in that either way.

I did want to come back to stormwater for a second. I think it would be helpful to have Mr. Stonefield and whoever here to answer the questions, but a couple of the -- Mr. Zhao, I think, indicated there was some exchange of information, and I -- there were different memos, different dates. I'm not sure I've seen every single thing, but if there's some other transmittals which clear up, you know, what the misunderstandings or deficiencies were, I'd like to see that. And I -- it would be helpful to see it sooner than the morning of July the 10th if there's a way to -- you know, don't send me 200 pages of calculations and graphs or something, but if there's some documentation that explains the confusion about the location of the hole or whatever else has been resolved, I would like to see that. Thank you.

VICE CHAIRMAN HAMMACK: Any further discussion? I would just -- I would add that this Board does not have a statutory authority under the Code or the Ordinance to adjudicate disputes over real property, which is simply to reaffirm what several other members have said, but in a little bit different context.

If there's no further discussion, all in favor of the motion?

MR. BEARD, MR. SMITH, MS. GIBB, MR. HART, MR. BYERS, VICE CHAIRMAN HAMMACK: Aye.

VICE CHAIRMAN HAMMACK: All opposed? The motion to defer to July 10th passes unanimously.

MR. NGO: Thank you.

//

Chairman Ribble resumed the Chair.

//

~ ~ ~ June 26, 2007, Scheduled case of:

9:30 A.M. ADAM LOVE DBA GROUND ONE LANDSCAPE CO., A 2007-PR-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a use and is allowing outdoor storage, which does not meet the minimum yard requirements for the I-5 District, without an approved site plan in violation of Zoning Ordinance provisions. Located at 8522 Lee Hwy. on approx. 1.48 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3 ((1)) 65.

Barnes Lawson, Jr., Lawson and Frank, 6045 Wilson Boulevard, Arlington, Virginia, the appellant's agent, requested a deferral.

There were no speakers and closed the public hearing.

Mr. Beard moved to defer A 2007-PR-005 to October 16, 2007, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 26, 2007, Scheduled case of:

9:30 A.M. JENNIFER KNIGHT, A 2007-BR-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established and allowed the occupancy of a second dwelling unit on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 4617 Lawn Ct. on approx. 24,211 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-1 ((5)) 89B.

Chairman Ribble called the appellant to the podium.

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

Jennifer Knight, Fiery Dawn Court, Centreville, Virginia, came forward.

Jane Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated June 19, 2007. The dwelling unit contained two complete and independent living facilities including two kitchens, one in the basement and one on the main level. In response to a complaint, Zoning Enforcement Branch staff had inspected the subject property.

Mr. Smith asked if there were two violations pertaining to this appeal, e.g., two separate dwelling units and more than four unrelated persons living in the dwelling. He verified with Staff that the second issue had been rectified since some of the people had moved out, and the locks between floors had been removed, putting the appellant in compliance. Ms. Collins confirmed that the issue before the Board was that there were two dwelling units in the single family home.

Bridget Mertz, Senior Zoning Inspector, Property Maintenance, Zoning Enforcement Division, stated that the lock between the two floors had been removed; however, a full kitchen remained in the basement. Mr. Smith asked if the cabinets, refrigerator, stove and sink, couch, and ingress/egress still remained in the basement area and that was what led staff to the conclusion that a second separate dwelling still remained. Ms. Mertz said that was correct and indicated that the person who had been living downstairs had moved upstairs and taken the bed there as well; however, the second kitchen still remained and the basement could easily be converted back to a separate dwelling unit. Responding to another question posed by Mr. Smith, Ms. Mertz confirmed that there had been a separate appeal filed concerning Virginia Maintenance Code violations. Ms. Mertz said that issues that pertained to the Building Code had a 30-day compliance and nothing had been appealed but fact. Mr. Smith then asked if those violations had been corrected. Ms. Mertz responded that they had been corrected to a point, noting that a railing needed to be replaced, along with other building maintenance problems. She stated that those violations were an entirely separate issue and did not concern the appeal before the Board.

Referring to the kitchen in the basement, Mr. Hart asked if there had been any further inspections and/or approvals pertaining to plumbing, electrical or appliance issues. Ms. Collins said staff has not been aware of any inspections. In answer to a question by Mr. Hart, Ms. Collins confirmed that the request for a second kitchen had been denied because there was an outstanding Notice of Violation and that the Permit Review Branch would not approve a second kitchen if there was already an outstanding notice for that issue. Ms. Mertz clarified that the reason the appellant had been denied was because the appellant had changed the verbiage in the letter to reflect that she did not reside in the house, and indicated that the second kitchen would not be utilized by persons related to her. Ms. Mertz confirmed that Ms. Knight's letter had been denied because her application was not in line with the requirements; the owner had to be living in the house, Ms. Knight did not, and the second kitchen had to be used for familial use such as a mother-in-law suite, which it was not. Ms. Mertz said the rules were very specific and rarely was a second kitchen letter issued because of the possibility of a lack of compliance. Mr. Hart stated that staff and the Board had to be consistent about the rules because many people had refrigerators, sinks for a bar, and a microwave in their basements and that was getting very close to having a kitchen.

Mr. Smith asked if there was a provision in the Zoning Ordinance that authorized an administrative approval for a second kitchen. Ms. Collins explained that there was nothing in the Zoning Ordinance that specifically permitted or did not permit a second kitchen. She said that approval was done on a case-by-case basis, given individual circumstances such as a mother-in-law suite. Ms. Collins confirmed Mr. Smith's statement that the only other option would be to apply for a Special Permit for an Accessory Dwelling Unit.

In response to a question by Mr. Beard, Ms. Collins said when the application was filed in January, 2007, Ms.

~ ~ ~ June 26, 2007, JENNIFER KNIGHT, A 2007-BR-002, continued from Page 224

Knight was not a resident of the subject property.

The appellant presented the arguments forming the basis for the appeal. Ms. Knight said she had had many discussions with Zoning Enforcement staff and found the information she had been provided as well as staff's explanations to be very confusing. She said she had not known about regulations concerning rentals and agreed that there were too many people living in her home. She stated that she had moved out of the house to help her daughter who had just had a child. The lease on the townhouse where she was now residing would be up in October of this year, and she intended to move back in to her house at that time. She noted that the second kitchen came with the house when she purchased it nine years ago. Ms. Knight stated that she had repaired everything listed in the Notice with the exception of the railing leading to the upper floor, because she had had to remove it to move the bed upstairs. She said she had been told that she had to rip out the cabinets, sink and refrigerator, and although she could do without a stove, she did not think she needed permission to have the other items in her basement. However, she wanted to be in compliance and indicated that she had been working diligently to get the problems fixed. She stated that she had been told by two members of the Zoning Evaluation Division staff that there should be no problem, all she had to do was fill out the application, and if a kitchen was not approved, she could turn it into a wet bar. Ms. Knight stated that she returned with a kitchen package after those meetings and went to the Permit Division where she was again told that she should not have any problems and all she had to do was fill out a kitchen letter. She confirmed that she had told staff that she could not sign the original letter because the information on it was not correct, and therefore, she had made changes to the letter. At that time, she said, she was told that she should have a ruling within two to three days. However, she said that, by the time she received the ruling, the 30 days had lapsed and she had filed one day late. Ms. Knight stated that because she had not received the letter until 10 days after it was written, there had been only 20 days to resolve the problems. She added that ripping everything out seemed like excessive and severe punishment; ripping out the items in the kitchen would be costly and would leave a big hole in the floor. Ms. Knight indicated that she planned to sell the house in a few years and asked the Board to allow her to convert the second kitchen into a wet bar.

In answer to a question by Mr. Hammack concerning whether a second kitchen letter might be approved after Ms. Knight moved back into the house in October, Mavis Stanfield, Deputy Director, Zoning Enforcement Division, said it was not likely because there would be a very strong assumption that the second dwelling unit would be reestablished based on the past violation. Mr. Hammack asked why in the past several years the emphasis has been on removal of stoves, but now staff required that cabinets and other items be removed. Calling attention to the Spratley case that was heard on January 9, 2007, Ms. Stanfield said there was a similar situation in which staff had stated that the cabinets had to be removed. She advised that that was where staff had picked up the court language concerning violations and it was known that there was a potential for the violation to return with the arrangement of the kitchen facilities as they were. In the Spratley case, Ms. Mertz stated, Zoning Enforcement had the owners take out all utilities that were associated with a kitchen and required that all plugs be removed and put behind the walls so a second kitchen could not be reestablished in the basement. She explained that the problem with this particular case was that there were never any permits issued for the work and, because of that, it may not be safe. Ms. Stanfield stated that in this case if the applicant had applied when she lived in the house, perhaps staff would have taken a different look at the second kitchen. She indicated that, because of the existing outdoor access and arrangement of the living areas, staff could not simply approve the application.

Ms. Gibb said Ms. Knight had stated that she had changed the second submittal of the second kitchen letter to make corrections. She asked if by doing so she had negated her application. She said it had struck her that the appellant was telling Zoning that she did not live in the house and that was all she was doing with respect to the submission of the corrected second letter. Ms. Gibb asked if staff had inferred something from that. Ms. Stanfield said the appellant did not reside in the home and, therefore, she would not be using the basement kitchen in the way the second kitchen letter was designed to address. Ms. Gibb said that it was obvious that Ms. Knight thought that was okay or she would not have filled it out that way, signed it and handed it in. She said it seemed to her that the appellant was just giving staff the facts and asked if that was what staff thought when they read it. Ms. Stanfield said perhaps that was so.

Calling attention to the January 30, 2007, submission of the second kitchen letter that indicated that the second kitchen would only be used by family members, Mr. Beard asked what necessitated it. He referred to Ms. Gibb's question concerning the slight change in the wording that had been made and indicated that it was not conspicuous and may not have been picked up. Ms. Stanfield suggested that Mr. Beard consult the

appellant. In answer to Mr. Beard's question about what had happened, Ms. Knight said she did not recall signing two letters. She stated that perhaps she had signed the first one because someone in the Zoning Office had told her to sign it, which she did, and turned it in. She advised that the second submission was the correct one.

In response to Mr. Hammack's question concerning written criterion used to evaluate second kitchen letters, Ms. Collins said the criteria was located on the second kitchen letter form itself and the information was available to the public. Ms. Collins confirmed that there was nothing in the Zoning Ordinance that addressed second kitchens. She said each request was evaluated on a case-by-case basis. Mr. Hammack said it bothered him when he was told there was nothing in the Ordinance that prohibited or permitted a second kitchen. He said a decision was made by staff and no criteria had been set forth as to what constituted a second kitchen, which led itself to a misunderstanding on the part of members of the community. He asked if staff had the authority to prohibit a second kitchen. Ms. Stanfield stated that the Zoning Ordinance indicated that there could only be one dwelling unit on a lot. Mr. Hammack responded that one dwelling unit was fine but, when it came to second kitchens, he wanted to know if the Ordinance spelled out how many kitchens could be located in one dwelling unit. Ms. Stanfield stated that staff had interpreted the Ordinance to mean that in this circumstance, where there was an arrangement of uses, that constituted a second dwelling unit. Mr. Hammack pointed out that there were many areas of redundancy within a house. In response to Mr. Hammack's question regarding who had the authority to decide what would constitute a second dwelling unit, Ms. Stanfield said those decisions were made by staff and the Zoning Administrator.

Mr. Hart stated that when there was a departure from Zoning Ordinance requirements and staff applied long-standing practices or interpretations, it became difficult for the Board to determine whether there was a violation. He said he was trying to understand why it made a difference whether someone lived in the property or not; or that one structure could be in compliance and the other one would not. He said the problem he was having was that there was only one reference to the Ordinance in the staff report that spoke to the structure and it did not specify whether the dwelling had to be owner-occupied or a rental. He said he wanted to know what the Ordinance or state code basis was for allowing the Zoning Administrator to approve a kitchen for an owner-occupied house and reject an application because the owner did not live in the house. He said the structure was the same either way. He said perhaps the Board of Supervisors needed to draw those lines before this Board could say it was fair or not.

Mr. Hammack said he thought Ms. Stanfield provided the answer by stating that the tenants could sign the letter. He suggested that Ms. Knight have her tenants sign the letter stating that they would not use the area as a second kitchen, noting that Ms. Stanfield said it would be approved. Ms. Stanfield said that she had not been referring to Ms. Knight's circumstances but to a scenario presented by Mr. Hart concerning the probability of renting his house to a family, having a second kitchen in the basement, with the presumption that the family would want to use the second kitchen for entertainment purposes, and it was at that time the renter could fill out and submit the letter.

Mr. Smith said it was his understanding that the issue before the Board concerned the definition of dwelling unit in the Zoning Ordinance that stated that one or more rooms in a residential portion of a building which are arranged, designed, used or intended for use as a complete, independent living facility, which included permanent provisions for living, sleeping, eating, cooking and sanitation. He noted that there could be only one dwelling unit in a structure and the question was whether there was a permanent provision for the definition he had just referenced. He indicated that what the BZA was hearing was that there were exceptions for a second kitchen; however, he could not find anything in the Ordinance that referenced those criteria, which may exist separately. He noted that a reference had been made to a wet bar and asked if there was a process for applying for a wet bar. Ms. Stanfield stated that as part of the Building Permit process an applicant could file for a permit for a wet bar. In response to Mr. Smith's question as to whether the appellant could do that now, she stated that Ms. Knight could make application for anything she wanted to keep in her kitchen. Whether the wet bar application would be approved or not, she said that she could not say. Mr. Smith then said he had problems with the definition he had referenced because if someone had all of the items noted in the definition, they had a dwelling unit. He acknowledged that the photographs showed all of those provisions to include a separate ingress and egress, and that it did constitute a separate dwelling unit. He noted that the bed had been removed and the appellant had agreed to remove the stove and to cap the electrical outlets. If that was done, he said he wanted to know where the line should be drawn with respect to what needed to be removed. He asked how far the County could go and if there some corrective measure Ms. Knight could take. Mr. Smith said other dwelling units throughout the County had

~ ~ ~ June 26, 2007, JENNIFER KNIGHT, A 2007-BR-002, continued from Page 226

cabinets and sinks in the basement and it was onerous to require their removal; however, he was amenable to the removal of the stove because there was no need for one unless the basement would be used as a separate dwelling unit. Ms. Mertz stated that it was her understanding that an application could be made for a wet bar; however, because the house was utilized as a rooming house, Ms. Knight would have to be sure that the area was strictly utilized as a wet bar with no cooking appliances and limiting storage. She said Ms. Knight would have to submit an application to the Permit Branch for a wet bar.

Mr. Byers said he sympathized with the fact that there was no reference to every circumstance contained in the Zoning Ordinance. He stated that from his past experience and having served on the County Staff, he believed that it was not one particular item that Zoning Enforcement looked at, it was a continuation of things that occurred. He said that when a Zoning Inspector, who had 20 years of experience, entered into such situations, the inspector could determine whether the applicant had a second dwelling unit. He said there had to be a point when some discretion was offered to the Zoning Administrator to adjudicate such things. Mr. Byers listed the items he had in his basement and stressed that the differences between his home and the appellant's were that his did not constitute a separate dwelling unit and there were other criteria involved such as the fact that he did not have separate entrances to his house nor did he have seven people living there. That, he said, made the difference. He stated that the Board had to look at the totality of the issue, the number of complaints, the number of years it had gone on and the fact that it was never permitted. He said there were other extenuating circumstances. The issue the Board had to address was the stove and if removing it was sufficient. Mr. Byers stated the policy had to be uniform and people had to understand that they would be treated exactly the same, each case was separate but the policy must to be the same.

Mr. Ribble commented that the appellant did not have permits for any of the things cited in the Notice.

Mr. Hammack stated that it bothered him that the County is asking the Board to enforce a code section that did not exist. Ms. Stanfield stated that it was staff's position that there was a code provision which was a prohibition for a second dwelling unit. Mr. Hammack said to that extent staff could prohibit anyone from having additional occupants in the house but with no criteria set forth it became a subjective test. That, he said, was his concern because the Board was supposed to enforce things based upon the statute.

Ms. Mertz stated that the appellant did have a second dwelling unit and that was why staff was trying to have the cabinetry, etc. removed; therefore, this was a moot point. She said Zoning Enforcement was trying to be uniform throughout the County. In this case, she noted, staff was asking that the second kitchen be removed because the dwelling was being misused as a rooming house. Mr. Hammack said it was his experience that removal of a stove had been the main criteria for the past several years. He stated that he believe that staff was saying one person must take out the stove while someone else must take out cabinetry and that was objectionable. Ms. Stanfield noted that in the Spratley case there was no cooking facility and staff had requested that the cabinetry be removed. She said it was her understanding that Zoning Enforcement had long relied on previous court cases that had supported that requirement.

Mr. Smith said that he believed that at one point in time the appellant had two dwelling units in her house that violated the Zoning Ordinance. He stated that his inclination was to affirm the Zoning Administrator with respect to the items in the Ordinance that he had referenced earlier but the question was how to fix the violations. In answer to Mr. Smith's question concerning whether she was amenable to applying for a permit to install a wet bar in lieu of removing cabinets, the appellant replied that she was.

Ms. Gibb said her problem was with the appellant having to remove the cabinets; put in new flooring; hire a plumber; and repair the walls. She said that seemed to her to be dramatic when Ms. Knight had fixed the other items listed in the Notice and the kitchen was there when she moved in. She said that if the Board approved the appellant's applying for a wet bar she might still have to remove the cabinets. Ms. Gibb stated that she thought that was a lot to ask of someone.

Chairman Ribble called for speakers.

Barnes Lawson, Jr., Lawson and Frank, 6045 Wilson Boulevard, Arlington, Virginia came forward to speak. He said his law firm had an appeal before the Supreme Court of Virginia concerning the same issue. He said it came out of Arlington County and dealt with whether just the stove had to be removed or did the cabinets, sink and refrigerator have to be removed as well. It was his suggestion that the Board wait until October to make their decision.

~ ~ ~ June 26, 2007, JENNIFER KNIGHT, A 2007-BR-002, continued from Page 227

In answer to a question by Mr. Hart, Mr. Lawson said the name of the case was *Jones vs. Board of Zoning Appeals*. In answer to a question by Mr. Hammack, Mr. Lawson replied that the court had granted the writ. He stated that oral arguments would begin in September 2007 and he expected that an opinion would be made in October 2007. He noted that the ordinance in Arlington had two criteria for a separate dwelling unit; a totally segregated area and equipment that applied heat to food. He said his firm's argument was that only a stove applied heat to food, and therefore, it was not necessary to remove the refrigerator and other items. Mr. Lawson said the Supreme Court was very interested in his firm's questions and nuances and it seemed that everything this Board had discussed today with respect to the appeal was right on point. In response to Mr. Hart's request, Mr. Lawson said he would be willing to share copies of the materials both sides had submitted on the Jones case with staff.

Chairman Ribble closed the public hearing.

Mr. Smith moved to defer decision on A 2007-BR-002 to November 27, 2007, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 26, 2007, After Agenda Item:

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

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

Mr. Byers moved to approve 12 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself. The new expiration date was June 7, 2008.

//

~ ~ ~ June 26, 2007, After Agenda Item:

Request for Additional Time
Trustees of Mount Pleasant Baptist Church, SPA 75-M-060-2 and VC 2002-MA-060

Mr. Hart moved to approve 18 months of Additional Time. Mr. Smith seconded the motion, which carried by a vote of 7-0. The new expiration date was September 25, 2008.

//

~ ~ ~ June 26, 2007, After Agenda Item:

Approval of March 15, 2005; November 15, 2005; and December 13, 2005 Minutes

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

//

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 *Welsh v. BZA* in the Circuit Court of Fairfax County, Case No. 2006-0010954, *Concerned Citizens of Hollin Hall v. BZA*, 2006-00024056, in the Circuit Court of Fairfax County, *Virginia Equity Solutions v. BZA*, 2005-0006316, in the Circuit Court of Fairfax County, *BZA v. Board of Supervisors*, 2006-11777, in the Circuit Court of Fairfax County, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Smith seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 12:20 p.m. and reconvened at 12:31 p.m.

~ ~ ~ June 26, 2007, continued from Page 228

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.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:35 p.m.

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

Approved on: May 7, 2014

K.A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III
John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 10, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ July 10, 2007, Scheduled case of:

9:00 A.M. KEVIN J. O'NEILL, VC 2007-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings 7.0 ft., stoops 3.0 ft. and bay windows 5.5 ft. from a front lot line of a corner lot and 5.5 ft. from the side lot line. Located at 1111 I St. on approx. 9,900 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 93-2 ((7)) (4) 3. (In Association with SE 2005-MV-017) (Admin. moved from 5/15/07 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 Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin O'Neill, 9403 Fairfax Street, Alexandria, Virginia, replied that it was.

Catherine E. Lewis, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of two single-family attached dwellings, a duplex, 7.0 feet, with bay window 5.5 feet and stoop 3.0 feet, from a front lot line of a corner lot and the duplex structure 5.0 feet from the side lot line. A minimum front yard of 9.0 feet is required for the duplex structure, a minimum front yard of 6.0 feet for the bay window, a minimum front yard of 4.0 feet for the stoop, and a minimum side yard of 10 feet is required for the duplex structure; therefore, variances of 2.0 feet, 0.5 feet, 1.0 foot, and 5.0 feet, respectively, were requested. The Planning Commission deferred its decision on the associated special exception application, SE 2005-MV-017, until July 19, 2007, but did vote to recommend that the BZA approve the requested variance.

Ms. Lewis responded to questions from Mr. Beard and Chairman Ribble concerning the vacation and abandonment of the right-of-way along I Street and Potomac Avenue, which would have increased the size of the lot, but it never had gone forward. In response to a question from Mr. Hart, she said 12 feet was the by-right buildable area on the lot. Responding to a question from Mr. Byers, she verified the structure's proposed length, its current width, and clarified that the lot width warranted the variance.

Referencing the applicant's statement of justification which claimed no habitable structure was possible without a variance, Mr. Smith asked staff for its position. Ms. Lewis said in that zoning district only duplexes were permitted, and whether two 12-foot wide structures built on the lot were considered habitable was the question.

Mr. Beard asked whether the existing house would have to be torn down or left to fall down if the variance was not granted since the applicant had not rebuilt within the allotted two-year period. Ms. Lewis said the structure would have to be torn down, and Housing and Community Development had started blight proceedings, but had not proceeded to demolition due to the pending special exception and variance requests.

Responding to a question from Ms. Gibb, Ms. Lewis explained that the application property was zoned R-20 and was determined a non-conforming use and was the sole one, to her knowledge, with these unique circumstances. She responded to Mr. Hammack's question concerning a building permit and Mr. Hart's question regarding time extensions for processing applications.

Susan C. Langdon, Chief, Special Permit and Variance Branch, noted that the Zoning Ordinance specifically designated procedures for allowing additional time.

Discussion followed among Board members and staff concerning special circumstances that were created after the destruction of Hurricane Isabel, particularly in the New Alexandria area.

~ ~ ~ July 10, 2007, KEVIN J. O'NEILL, VC 2007-MV-001, continued from Page 231

Mr. Byers commented that during the two-year window for rebuilding, the applicant could have filed an application, and when the County reviewed, it would have discovered that the use was non-conforming. He asked staff why so much time had elapsed before it was determined there was a problem.

Ms. Lewis said the County erred in not immediately discovering the special exception remedy was not applicable. The oversight resulted in the applicant losing a great deal of processing time during which his home might have been rebuilt.

Mr. O'Neill presented the special permit request as outlined in the statement of justification submitted with the application. He voiced his relief that his application was now before the Board as the entire confusing process appeared one step closer to resolution, the house could be razed, and he could proceed with improving his property. He said the process was a very involved learning experience during which he expended a great deal of time and money. He said he hoped to move along with the project.

Ms. Lewis responded to a question from Mr. Hammack regarding the timeframe for filing and processing Mr. O'Neill's application.

Paul Wilder, RC Fields & Associates, identified himself as the project's civil engineer and land surveying company representing Mr. O'Neill on technical issues. He said that at the 2004 meeting with staff, the applicant proposed placing a new dwelling on the property, and it was decided that the 21-foot width of the original house would be the limit for the new dwelling so that the new structure would be no closer to the property lines on either side than what had existed at the time the house was destroyed in the storm. He referred to the drawings distributed at the hearing. Mr. Wilder assured Ms. Gibb that the applicant was well aware of the perimeters established by the Cochran decision. He summarized the existing and proposed house's elevations, setbacks, floodplain encroachment, zoning, and permitted development.

In response to a question from Ms. Gibb concerning the proposal's setback, angle, and bulk plane, Ms. Langdon described the area and type of house that could be developed without a variance.

Mr. Hart discussed the stricter standards now imposed as a result of the Cochran decision for approving variances. He recalled the particulars of several applications. He said the Board must also consider the standard mandating that one must be deprived of all reasonable beneficial use of the property taken as a whole. Mr. Hart noted the standard charging the Board to determine whether a situation was a self-inflicted hardship. He commented that he was rather open-minded concerning two standards, but the standard he found most troubling was determining the minimum variance necessary. Instead of the requested 21 feet, he questioned whether an 18-foot variance, or something less, was feasible. He mentioned that placing the proposed structure as close as the existing one was not germane because the Ordinance said nothing about existing structures, only that it must be determined what was the minimum variance necessary. Mr. Hart said the Board was forbidden to consider economics in its determinations.

Addressing a question from Mr. Hart regarding whether a bulk plane requirement precluded an 18-foot wide townhouse on the lot, Mr. O'Neill said, as the property's developer and ultimately the seller, an economic consideration was unavoidable for him due to the necessary construction costs. He stated that a 21-foot wide house was more attractive and functional to a prospective buyer, and an 18-foot wide unit would look extraordinarily awkward in the neighborhood.

Mr. Wilder explained that with an 18-foot wide house to fit within the guidelines for the angle of bulk plane, only a one-story structure could be built, and the proposal afforded no basement because the first floor elevation of the house must be above the floodplain a minimum of 18 inches. He confirmed for Mr. Hart that the proposal was for a two-level house, and the attic was a decorative feature.

Utilizing the overhead, Mr. Wilder described the proposal's design, engineering, vertical setbacks, different elevations, location of the floodplain, and numerous architectural considerations.

Mr. Hart reminded the applicant that the Board must understand what the minimum variance was for the project, and from the presentation so far, he was not sure that 21 feet was the minimum.

Addressing Mr. Beard's comment, Mr. Wilder said there was concern about the amount of fill and impervious surface in the floodplain that garages would cause, and at the request of the Mount Vernon Council and the

~ ~ ~ July 10, 2007, KEVIN J. O'NEILL, VC 2007-MV-001, continued from Page 232

neighborhood, the applicant replaced them with parking pads that accommodated three parking spaces.

Ms. Lewis added that because the driveway was within Virginia Department of Transportation's right-of-way, no parking was allowed along the driveway, and, therefore, a pad for three spaces had to be created to assure sufficient parking.

Mr. Beard voiced his concern over exactly how much impervious surface resulted from the lot's proposed development with two units.

Ms. Langdon responded to Mr. Smith's question concerning an 18-foot minimum required lot width in the R-20 District.

Ms. Lewis noted that her research found no 18-foot wide homes in the County, excluding trailers.

Discussion followed between Board members, staff, and Mr. Wilder, concerning the timeframe for rebuilding after Hurricane Isabel, staff's recommendation for various options to rebuild in an R-20 District, the different applications submitted by the applicant, the circumstances when staff realized that certain developments were not allowed options, meetings the applicant held with staff, the District Supervisor, and several citizen land use and advisory groups, the issue with the flood plain, topography considerations that complicated site plan approval, the matter of a non-conforming use, and different proposals that were considered.

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

Mr. Hammack moved to defer the decision. He voiced his concern over whether the situation was self-inflicted because the renovation could have been done by right during the two-year period, the fact that the application required two variances because they were requesting a duplex, the restrictions and standards imposed by the Cochran decision, the determination of whether all reasonable use would be denied without the variances, a determination of what would be the minimum variance that afforded reasonable use of the property, whether a bay-window was necessary or a discretionary amenity, the necessity for a second floor, and the applicant's factual demonstration that all reasonable use of the property was denied. Mr. Byers seconded the motion.

Mr. Beard stated that he could not support the motion to defer because he thought all reasonable beneficial use of the property was explained and well-documented. He added the fact that the property had been reduced to a blighted condition, the Cochran decision had created a tough standard to be met, and aside from the intricacies of the legal issues, the redevelopment was in the best interest of the neighborhood and the County.

Mr. Hart commented that he thought the application had met the Cochran standards as the Ordinance did not allow a single-family detached unit on the property, and, therefore, a continuation of a previous similar use was interfered with. He said he also did not believe the situation was a self-inflicted hardship, but was troubled about the minimum necessary. He said that with the record before the Board, there was insufficient information to conclude that what was requested was the minimum. He requested that the applicant determine the exact constraint of the bulk plane requirement on the structure if the footprint were slightly narrower. Mr. Hart suggested the decision be deferred one week. With the requested bulk plane information, the BZA would make its decision, and the applicant would meet the Planning Commission date.

Mr. Hart amended the motion to defer VC 2007-MV-001 to July 17, 2007. The amendment to the motion was accepted by Mr. Hammack and Mr. Byers. The motion carried by a vote of 6-1. Mr. Beard voted against the motion.

Ms. Gibb clarified the information the applicant was to bring before the Board concerning what the minimum necessary was in light of the bulk plane information, whether any 16-foot wide duplexes existed in the County, and any exhibits which would indicate what the hardship was on the lot. Mr. Beard suggested the stoop and bay window issues raised by the Board members be considered.

//

~ ~ ~ July 10, 2007, Scheduled case of:

9:00 A.M. JIHAD J. JARIRI, SP 2007-MA-038 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 3531 Tyler St. on approx. 12,366 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((3)) (F) 7.

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

Chairman Ribble asked the applicant if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jihad Jariri, 3531 Tyler Street, Falls Church, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requests approval to permit an existing fence measuring 6.0 feet in height to remain in the front yard of a corner lot. The Zoning Ordinance requires a maximum fence height of 4 feet; therefore, a modification of 2.0 feet was requested.

Susan Langdon, Chief, Special Permit and Variance Branch, responded to several of Mr. Hart's questions concerning an administrative approval of the house's building restriction line and clarification of use limitations on corner lots and site distance consideration.

In response to Mr. Byers' question, Steve Mason, Property Maintenance Zoning Enforcement Supervisor, Zoning Enforcement Branch, speaking for the site inspector who was not present, outlined the sight distance issues and requirements for compliance.

Mr. Jariri presented the special permit request as outlined in the statement of justification submitted with the application. He explained that he consulted with County staff before commencing his project, bought the materials and proceeded with the fence construction under the County's directions and instructions. He said the site inspector, Jim Ciampini, had assured him that he was allowed an 8.0 foot fence by right. Mr. Jariri said he was concerned about the safety of his three children, and the fence would keep them out of the street. He submitted signatures of several of his neighbors who supported his request.

Chairman Ribble called for speakers.

Ze Chen, 3538 Corbin Street, Falls Church, Virginia, came forward to speak. He said there was a problem with sight distance approaching the intersection of Tyler and Columbia Pike because of the fence. He said that when it was dark, neither he nor the driver could see one another, and it was very dangerous. Mr. Chen said he appreciated the applicant's concern for his children's safety, but his situation, as a pedestrian, also was a safety issue. Mr. Chen suggested that only a portion of the fence along Columbia Pike be reduced, and he requested that if in the future a variance were requested to rebuild the fence to 6.0 feet, it be denied.

In response to Mr. Byer's question regarding whether the applicant had an objection to lowering several portions of the fence, Mr. Jariri explained that the fence was completed under County supervision by Mr. Ciampini who later returned to admit he had made an error and that the fence must be cut down in several sections. Mr. Jariri said the alteration was costly, but he took care of it. When Mr. Ciampini returned again to inform him that the height restrictions had changed and the fence could be no higher than 4.0 feet, he was dismayed. Mr. Jariri said he did not understand Mr. Chen's sight distance observation because a pedestrian was struck before his fence was installed. He said the fence caused no sight distance problem, accidents occurred with or without the fence, and one must be aware when street crossing.

In response to Mr. Beard's question regarding what information the applicant had been given, Mr. Mason said Mr. Ciampini had made several site visits to clarify mistakes made when instructing Mr. Jariri about the fence height, the corner lot and sight distance situations. The case file noted all instructions were verbal, and the applicant proceeded to follow the directions as given. Mr. Mason said no notice of violation had been issued, and it was suggested to Mr. Jariri that he pursue a special permit resolution. Mr. Mason said the applicant's statements agreed with what he had read in the case file.

Mr. Jariri responded to several more questions from the Board concerning the expense of his project.

Vice Chairman Ribble closed the public hearing.

~ ~ ~ July 10, 2007, JIHAD J. JARIRI, SP 2007-MA-038, continued from Page 234

Mr. Byers moved to approve SP 2007-MA-038 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JIHAD J. JARIRI, SP 2007-MA-038 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 3531 Tyler St. on approx. 12,366 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((3)) (F) 7. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 10, 2007; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 and HC.
3. The area of the lot is 12,366 square feet.

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

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

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

1. This special permit is approved for the location of a fence as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated April 30, 2004, as submitted with this application and is not transferable to other land.
2. The applicant shall remove two additional sections of the fence bordering or facing Columbia Pike reducing the fence height from 6.0 feet to 4.0 feet or less.

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

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

//

~ ~ ~ July 10, 2007, Scheduled case of:

9:00 A.M. EMMA PERSIGEHL, SP 2007-LE-037 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 5619 Overly Dr. on approx. 12,239 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (P) 5.

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

Chairman Ribble asked the applicant if the affidavit before the Board of Zoning Appeals (BZA) was complete

~ ~ ~ July 10, 2007, EMMA PERSIGEHL, SP 2007-LE-037, continued from Page 235

and accurate. Emma Persigehl, 5619 Overly Drive, Alexandria, 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 an existing fence measuring 6.0 feet in height to remain in the front yard of a corner lot. The Zoning Ordinance requires a maximum fence height of 4 feet; therefore, a modification of 2.0 feet was requested.

Staff clarified for Mr. Hart the specific areas of the fence that were under consideration and the location of the right-of-way.

Ms. Persigehl presented the special permit request as outlined in the statement of justification submitted with the application. She said the privacy fence had been constructed for her children's safety and emotional and psychological well-being. She explained that the fence blocked the view of her next-door neighbor's house and certain vehicles parked there. Referencing several neighbors' letters, Ms. Persigehl pointed out that she addressed their concerns and issues. She said the shed mentioned had been removed, and the matter of sight distance had been carefully considered. Ms. Persigehl stated that her children's emotional health was paramount, and a six-foot fence was necessary.

Chairman Ribble called for speakers.

Alice Malone, 5620 Overly Drive, Alexandria, Virginia, came forward to speak. Ms. Malone said the subject property was on a cul-de-sac with one house beyond it, and there was a 25-mile-per-hour speed limit. She said the fence was an attractive addition to the neighborhood, and it provided the privacy Ms. Persigehl's sons needed. Ms. Malone also mentioned that her experiences with County staff had all been favorable.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-LE-037 for the reasons stated in the Resolution. Mr. Byers seconded the motion.

Mr. Hammack said he could not support the motion because he believed there was a sight distance issue regardless of whether it was on a cul-de-sac. He said he would prefer that the first four feet of the front yard fence were reduced to four feet for safety reasons.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EMMA PERSIGEHL, SP 2007-LE-037 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 5619 Overly Dr. on approx. 12,239 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (P) 5. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 10, 2007; 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 this kind of special permit.
3. This is an unusual justification in that it is not exactly land use related, but the neighbors appear in support.

~ ~ ~ July 10, 2007, EMMA PERSIGHEHL, SP 2007-LE-037, continued from Page 236

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

THAT the applicant has presented testimony indicating compliance with 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). 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location of a fence as shown on the plat prepared by B.W. Smith and Associates, Inc., dated November 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.

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

//

~ ~ ~ July 10, 2007, 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. (Decision deferred from 4/18/06, 10/31/06, and 3/27/07)

Chairman Ribble noted that VC 2006-DR-002 had been deferred for decision for a possible conversion to a special permit if Zoning Ordinance Amendments were helpful. He asked staff for comments.

Deborah Hedrick, Staff Coordinator, referenced her July 3, 2007 memorandum noting she had nothing further to add and had not prepared another presentation. She noted that the applicants were present and wished to address her memorandum. Ms. Hedrick said the variance application had included a request to permit a fence greater than 4.0 in height in the front yard, and the applicant had converted the fence portion of the variance into a special permit, which was in the process of being accepted. Ms. Hedrick said the remaining item of the variance application was an accessory structure in a front yard containing 36,000 square feet or less.

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

Elaine Metlin, 1905 Rhode Island Avenue, McLean, Virginia, reaffirmed the affidavit. She said she had not prepared any remarks because she understood the hearing was for decision only. She said their case was made in their May 31, 2007 memorandum. She said they had not erected the play equipment. It had already been there when they moved into the neighborhood and was very attractive. She said it blended with the neighborhood, and there had been no complaints about the structure. She said that when an inspector made a site visit about the fence, the issue of the structure had come up. Ms. Metlin said they understood the Cochran decision, and they were not requesting a variance, but sought to have the matter deferred indefinitely to allow the family time to enjoy the playground.

Mr. Hart suggested that the work program review options for such situations where the yard was considered a front yard, had less than 36,000 square feet, and had children's play equipment.

Ms. Gibb commented that the Board was restricted regarding granting variances, and she was unable to find that the applicants were denied all reasonable use of the property taken as a whole without the play equipment. Ms. Gibb said she could come up with no reason to grant an indefinite deferral.

~ ~ ~ July 10, 2007, ELAINE METLIN AND ANDREW E. CLARK, VC 2006-DR-002, continued from Page 237

Ms. Gibb moved to deny VC 2006-DR-002 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Mr. Beard stated that although he knew it was correct, he would not support the motion as a matter of principle because it was unreasonable that the citizens of Fairfax County could not have play set located somewhere on their property.

Discussion ensued between Mr. Hammack and Ms. Hedrick concerning possible alternate locations for the play set, the lot size, and topography.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

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. (Decision deferred from 4/18/06, 10/31/06, and 3/27/07). 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 10, 2007; and

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

1. The applicants are the owners of the land.

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.

~ ~ ~ July 10, 2007, ELAINE METLIN AND ANDREW E. CLARK, VC 2006-DR-002, continued from Page 238

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

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

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

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

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

//

The meeting recessed at 11:02 a.m. and reconvened at 11:06 a.m.

//

~ ~ ~ July 10, 2007, Scheduled case of:

9:00 A.M. LINDA COOK, SP 2007-PR-039 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit an existing addition 15.2 ft. from the 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.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Scott Adams, the applicant's agent, 20585 Blue Water Court, Ashburn, 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 the minimum yard requirements based on an error in building location to permit a roofed deck to remain 15.2 feet from the rear lot line. The addition was a deck with plant hangers and proposed lattice below the decking. Staff recommended approval of SP 2007-PR-039 subject to the proposed development conditions.

Mr. Hart said there were a lot of people who put lattice below their decks and hung plant hangers and had no idea that they were turning their deck into an addition and triggering setback requirements by doing so. He said that if something was not already a part of the Work Program regarding lattice underneath and plant hangers above being part of a deck, it should be added. Susan Langdon, Chief, Special Permit and Variance Branch, said the issue had come up in the citizen meetings regarding changes to the Zoning Ordinance, and there had been a lot of opposition from citizens. She said she thought that was why nothing had gone forward on that part of the Ordinance. She stated that if the minimum yards were met, it was allowable, and it was only prohibited if the minimum yards were not met.

Mr. Beard asked whether a lattice screen above the deck was allowed if it was portable and could be removed. Ms. Langdon said a determination would have to be made by the Zoning Administrator.

Mr. Adams presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant contracted with him to have a deck constructed, and he applied for and received the necessary permits. He said he overlooked a notation stamped on the plat that the proposed structure was considered an open deck, and latticework and plant hangers were not permitted. After construction was completed, an inspector brought to his attention that the plant hangers and latticework were not approved. Mr. Adams said that at the December 12, 2006 meeting, the Board had denied the

~ ~ ~ July 10, 2007, LINDA COOK, SP 2007-PR-039, continued from Page 239

special permit application, SP 2006-PR-061, to permit a reduction to minimum yard requirements based on an error in building location to permit a roofed deck to remain 15.2 feet from the rear lot line, and the Board had passed a motion to waive the 12-month waiting period for refileing an application and suggested that the applicant apply for a yard reduction for an addition.

Chairman Ribble called for speakers.

Linda Cook, the applicant, 2960 Gray Street, Oakton, Virginia, came forward to speak. She said her neighbors supported the deck, and it was attractive and increased property values. Ms. Cook said she wanted to comply with all codes and ordinances, and the mistake was made in good faith, which she immediately tried to remedy through the permit process. Ms. Cook referenced the staff report and the eight general standards for a special permit. She said that Mr. Chase indicated Standards 3 and 5 were of particular note regarding being harmonious with and not affecting the use or development of neighboring properties. Ms. Cook said the deck was screened by vegetation.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-PR-0392 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDA COOK, SP 2007-PR-039 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit an existing addition 15.2 ft. from the 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. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 10, 2007; and

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

1. The applicant is the owner of the land.
2. The property is zoned R-2.

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

THAT the applicant has presented testimony indicating compliance with 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 of the addition, as shown on the plat prepared by Advance Engineering Group, dated Advance Engineering Group, dated 4/11/07, submitted with this application and is not transferable to other land.
2. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,817 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance,

~ ~ ~ July 10, 2007, LINDA COOK, SP 2007-PR-039, continued from Page 240

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

3. The additions 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.

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

//

~ ~ ~ July 10, 2007, Scheduled case of:

9:00 A.M. VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 75-C-182 previously approved for a church to permit an increase in land area, building addition, site modifications and change in permittee and modification of minimum yard requirements to permit existing building 33.3 feet from front lot line. Located at 2438 and 2430 Gallows Rd. on approx. 1.43 ac. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 27A and 28. (Admin. moved from 3/27/07 at appl. req.) (Decision deferred from 6/26/07)

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

CHAIRMAN RIBBLE: The next case is Vietnamese Alliance Church, SPA 75-C-182. This was deferred for decision only for staff member from DPWES to address Stormwater issues. I think we got a memo on that. Has everybody read that? Any questions you might ask staff?

MR. HART: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: Yes. Thank you. It isn't really in the memo or Mr. Stonefield's e-mail, but I guess reading between the lines, that one of the issues in the earlier memo that I think caused all the discussion was that one of the test holes was in the wrong place and that they needed to resubmit some data. Whatever that was about, that's all been -- we're past that, and that doesn't matter anymore?

SUSAN LANGDON: That's correct, and if there's any outstanding questions, they'll have them address it at site plan.

MR. HART: Okay. Thank you.

CHAIRMAN RIBBLE: Mr. Hammack, could you take the Chair for a minute. I -- I'd forgot to recuse myself on this.

VICE CHAIRMAN HAMMACK: Okay. Are there any further questions by the Board?

MR. BEARD: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Beard.

MR. BEARD: Mr. Vice Chairman. In application SPA 75-C-182 by the Vietnamese Alliance Church, under Sections 3-103.2 and 8-921 of the Fairfax County Zoning Ordinance, to permit an amendment to SP 75-C-182, previously approved for a church, to permit an increase in land area, building addition, site modifications, change in permittee, and modification of minimum yard requirements to permit existing building 33.3 foot from the front lot line on property located at 2438 and 2430 Gallows Road, Tax Map Reference 39-4 ((1)) 27A and 28, I move that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ July 10, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 241

Whereas, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and, whereas, the Board has made the following findings of fact, that the owner of the property is the applicant, the present zoning is R-1, and the area of the property is 1.43 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 use -- special permit uses as set forth in Section 8-006 and the additional standards for this use as contained in the appropriate sections of the Zoning Ordinance; now, therefore, be it resolved that the subject application is approved with the developmental conditions contained in Appendix 1 of the staff report dated June 19th, 2007.

MR. BYERS: Second.

VICE CHAIRMAN HAMMACK: Seconded by Mr. Byers. Any discussion?

MR. HART: Mr. Chairman.

VICE CHAIRMAN HAMMACK: Mr. Hart.

MR. HART: Yeah, does those development conditions take care of all the changes between whatever and the infiltration and whatever changes we were making on stormwater?

MS. LANGDON: Yes, sir.

MR. HART: Okay. Thank you.

VICE CHAIRMAN HAMMACK: Okay. Any further discussion? If not, all in favor of the motion signify by saying "aye."

MR. BEARD, MR. SMITH, MS. GIBB, MR. HART, MR. BYERS, VICE CHAIRMAN HAMMACK: Aye.

VICE CHAIRMAN HAMMACK: Opposed? Carries, 6 to 0.

THONG NGO: Thank you.

MR. BEARD: Congratulations. There you go. Good. That's good.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 75-C-182 previously approved for a church to permit an increase in land area, building addition, site modifications and change in permittee and modification of minimum yard requirements to permit existing building 33.3 feet from front lot line. Located at 2438 and 2430 Gallows Rd. on approx. 1.43 ac. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 27A and 28. (Admin. moved from 3/27/07 at appl. req.) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 26, 2007; 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.

~ ~ ~ July 10, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 242

3. The area of the property is 1.43 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). 8-922, 8-903 and 8-923 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, Vietnamese Alliance Church and is not transferable without further action of this Board, and is for the location, 2438 and 2430 Gallows 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 Frederick Engineering Consultants, LLC, dated June 2007 and signed June 12, 2007, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, 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 seating capacity for the main area of worship shall be limited to 217. No more than one church service or an event with more than 100 patrons shall be held simultaneously; a minimum of 30 minutes shall be required between the conclusion of one such event and the beginning of another to allow for orderly ingress and egress.
6. Parking shall be provided as depicted on the Special Permit Amendment Plat. All parking shall be on-site.
7. Stormwater management and Best Management Practices facilities shall be provided as determined by DPWES. Rain gardens shall be used instead of the infiltration trench proposed along the southern boundary and another trench proposed in the northeastern corner of the site as shown on the SP Plat to provide water quality measures. The rain gardens shall be planted with trees, to serve as an additional buffer to the adjacent properties. Maintenance of the rain gardens shall be provided by the applicant as determined by DPWES.
8. The barrier requirement shall be waived along eastern lot line. Along the southern and western lot lines, a 6.0 ft. high wood fence shall be installed and maintained except around the existing playground. This fence shall be located in the transitional screening areas in such a manner that vegetation can be planted on both sides of the fence as noted below.
9. Transitional screening yards shall be provided as shown on the special permit plat. Full transitional screening 1 will be provided along the western lot line. Plant material required for transitional screening 1 shall be provided along the southern lot line to the fullest extent as determined by Urban Forest Management (UFM) except around the existing playground. Vegetation shall be planted on both sides of the barrier and access shall be provided to maintain the vegetation on both sides.
10. A tree preservation and landscaping plan shall be submitted to the Urban Forest Management (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

~ ~ ~ July 10, 2007, VIETNAMESE ALLIANCE CHURCH, SPA 75-C-182, continued from Page 243

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 drip line 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.

11. Interior and peripheral parking lot landscaping shall be provided in accordance with Article 13. Additional vegetation shall be provided along the Gallows Road frontage to soften the appearance of the parking lot and church structure.
12. Size, location, numbers and species of all plant material shall be determined in consultation with UFM.
13. Any new proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Any new outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property.
14. Prior to the issuance of a demolition permit for the existing church structure, Fairfax County DPZ Heritage Resources or its representatives shall be contacted by the applicant and shall be permitted to photograph the interior and exterior of the existing original church structure.

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 construction 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 6-0-1. Chairman Ribble recused himself.

//

Chairman Ribble resumed the Chair.

//

~ ~ ~ July 10, 2007, Scheduled case of:

9:30 A.M. JED L. GOEHRING, A 2007-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, has erected an accessory storage structure that exceeds eight and one-half feet in height, which does not comply with the minimum yard requirements for the R-1 District and was erected without a

~ ~ ~ July 10, 2007, JED L. GOEHRING, A 2007-DR-009, continued from Page 244

valid Building Permit, all in violation of Zoning Ordinance provisions. Located at 6111 Ramshorn Pl. on approx. 43,527 sq. ft. of land zoned R-1 and R-2. Dranesville District. Tax Map 31-2 ((5)) 8 and 31-2 ((1)) 124C.

Chairman Ribble noted that the Board had received a request for a deferral. He asked whether staff had any comment.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that the appellant had requested a deferral to a date in October, and staff had some concerns which would be addressed by Michael R. Congleton, Senior Deputy Zoning Administrator for Zoning Enforcement, Property Maintenance.

Mr. Congleton said this was the second complaint of a similar nature filed against the appellant within four years regarding the running of a commercial storage facility for landscaping equipment. Staff's position was that the continued use would have a serious detrimental impact on the surrounding residential properties. Mr. Congleton said staff did not support the appellant's request for a deferral until October or November, but would agree to a deferral to August 14, 2007.

Chairman Ribble called for speakers to address the question of a deferral; there was no response.

In response to a question from Mr. Hart, Ms. Stanfield said she had expected Mr. Goehring to be present. She said she had advised him several times that his presence was necessary because staff could not administratively defer his hearing, and it would require action from the Board.

In response to a question from Mr. Hart, Susan C. Langdon, Chief, Special Permit and Variance Branch, said that with the number of pending applications and the 90-day scheduling requirement, it would be necessary to hold an August 14th public hearing, and that week would not be part of the Board's recess.

Chairman Ribble called for a motion.

Mr. Hammack moved to defer A 2007-DR-009 to August 14, 2007, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 10, 2007, 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. (Admin. moved from 12/5/06, 2/6/07, and 4/10/07 at appl. req.)

Chairman Ribble noted that A 2006-DR-054 had been administratively moved to October 30, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ July 10, 2007, Scheduled case of:

9:30 A.M. JAMES H. SCANLON, A 2007-BR-010

Chairman Ribble noted that A 2007-BR-010 had been administratively moved to July 31, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ July 10, 2007, Scheduled case of:

9:30 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A
2007-MA-011

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to September 18, 2007, at 9:30 a.m.

//

~ ~ ~ July 10, 2007, 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 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. (Admin. moved from 10/31/06 and 2/27/07 at appl. req.)

Chairman Ribble noted that A 2006-BR-044 had been administratively moved to September 18, 2007, at 9:30 a.m.

//

~ ~ ~ July 10, 2007, After Agenda Item:

Consideration of Acceptance
David and Catherine Voorhees

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

CHAIRMAN RIBBLE: We'll move to after agenda items. The first item and only item, it looks like, is Consideration of Acceptance, David and Catherine Voorhees. We've got a memorandum dated July 3rd, 2007, from Ms. Stanfield as to the acceptance of this appeal. Anyone wishing to speak to this? Ms. Gibb.

MS. GIBB: Mr. Chairman, I have a question for staff. Is there a date of approval on the grading plan when they're approved?

CATHERINE VOORHEES: Yes.

MS. GIBB: No, this is a question for staff.

MAVIS STANFIELD: Yes, ma'am. There is a date approved and --

MS. GIBB: Is it stamped on there?

MS. STANFIELD: Yes, I can show it to you if you'd like.

MS. GIBB: Okay, and that date is?

MAVIS STANFIELD: Is March 27th, I believe.

MS. GIBB: Okay.

MS. STANFIELD: Excuse me. March 26th.

MS. GIBB: March 26th.

CHAIRMAN RIBBLE: March 26th.

MS. GIBB: Okay, and when we denied the Board of Supervisors, I recused myself in this case, and so their appeal on the grading plan when they -- when we -- when they appealed, it's a case you refer to on page 3 of

~ ~ ~ July 10, 2007, After Agenda Items, continued from Page 246

your memo, paragraph 3, should be noted that on August 1st, 2006, the BZA took action not to accept an appeal filed by Fairfax County Board of Supervisors regarding the approval of grading plans for two properties. It was your position that we didn't have jurisdiction, but, secondly, the appeals were not timely filed because the decision appealed from was a letter to a property owner dated June 6th, so that was not -- that was not based on the date of approval of the grading plan?

MS. STANFIELD: That's correct.

MS. GIBB: So is there -- so letters go out?

MS. STANFIELD: I'm sorry. I don't understand the question.

MS. GIBB: So this was based on a letter going out?

MS. STANFIELD: Yes, it was a letter that had been sent to a property owner, I believe, about a year beforehand. If you'll recall, Ms. Gibb, this was a situation where we had attorneys from both sides representing the Board of Supervisors' --

MS. GIBB: Right.

MS. STANFIELD: -- position and the Zoning Administrator's position, and this was a situation where the appeal was of a grading plan. Now, it's not identical to this situation because this is -- well, it isn't because that -- it was actually timely filed with respect to the grading plan approval in the Fair Hill on the Boulevard situation, but what the -- what we were basing our position on was the determination that had been made previous, which is what we thought was actually being appealed.

MS. GIBB: Okay, thank you.

MR. HART: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: Let me follow up on that. I, too -- I think I recused myself on that case, but I think I watched it on television. There were -- as I recall, the appeal if it had been of the grading plan would have been timely in the 30 days, but it was the underlying issue they were trying to relate back to which had to do with is it by right if you subdivided from three substandard lots into two substandard lots and trying to reach -- and that issue -- that was the issue that had been decided a year earlier or something, and the question was can you appeal the grading plan so as to get back at that issue that no one appealed from way back when.

MS. STANFIELD: That's correct, Mr. Hart. Thank you.

MR. HART: Okay, thank you.

CHAIRMAN RIBBLE: Good morning.

MS. VOORHEES: Hello.

CHAIRMAN RIBBLE: Would you state your name and address for the record.

MS. VOORHEES: I am Catherine Voorhees, and I'm 8029 Washington Road, Alexandria, Virginia, 22308.

CHAIRMAN RIBBLE: Okay, we saw your memorandum. Do you have anything to add to that?

MS. VOORHEES: Yes, I have copies. Unfortunately, I only have six copies for you guys, but I can also -- if I can show, I do have a copy of the grading plan that was stamped, and I would like to show that to Ms. Gibb since that's what she asked.

CHAIRMAN RIBBLE: You can submit that to the clerk, and he'll get it to Ms. Gibb.

~ ~ ~ July 10, 2007, After Agenda Items, continued from Page 247

MS. VOORHEES: If they would so like to put it on the projector, I have the eight-and-a-half-by-eleven of the grading plan.

CHAIRMAN RIBBLE: That's fine. It's on.

MS. VOORHEES: You can't really see it very well. Let me see.

CHAIRMAN RIBBLE: Well --

MS. VOORHEES: You see it says -- I guess it's (inaudible) -- I can't -- SFP -- but it's 4/20/07, and then at the very top, it says -- at the very top, you can see it's highlighted. It says no grading or building will be allowed until a building permit, and they give the number, is approved. Well, that building permit was approved on May 9th, 2007. So I'm not sure if the grading plan was approved on May 20th, 2007, when it has a stamp on it that says that you can't do any grading or earth moving or building until you get the building permit, and the building permit is the FIDO -- I think it's Exhibit C attached to our appeal. So that -- since our appeal was filed on May 23rd, clearly we were within 30 days of that approval.

However, the other issue that seems to be confusing is that the tax map description of the property is zero -- 1022030112, and that's Exhibits A and B of the packet. And that would be effective, I think, in 1965 when they created these tax parcel IDs. Now, 112, just using that as the subject parcel number, using the last three numbers, that has 13,200 square feet on it. It was not until May 8, 2007 -- if you look at the purple, if you have a sticky, there's Post-Its -- that the above parcel, the Parcel 112, was actually resubdivided into Parcels 112A and 112 -- 113A. And that -- again, you cannot have a grading plan that is literally for one parcel and then having -- showing two dwelling -- or two grading plans so you are going to build two houses on that because that does not comply with Article 18, Section 114 of the Zoning Ordinance, which basically says that the grading plan -- that if it was approved and it goes against -- say, for example, that you can only build one house on a -- on a parcel or a lot, it's null and void. So clearly until May 8, 2007, the grading plan approval was null and void, and maybe that's the reason why we have the highlighted on the grading plan that there is no grading or whatever -- no grading or no earth moving or building until the building permit goes through. So that's one issue, is that the date -- the earliest date that we believe is possible is May 8th because that was the day that the shoe -- the Parcel 112 was resubdivided into Parcel 112A and Parcel 112 -- 113A. So that would be the earliest, and we are clearly within 30 days of that date.

The other issue is that if you look at the distribution status of the grading plans, and these are basically 008, 009-INF-002-1, and then on B, the same, but it's 003-1, nowhere does it show that anybody from Planning and Zoning reviewed those plans for zoning regulations. I mean, the grading plans were never reviewed for zoning, so how can our appeal, which we specifically state that we are appealing the zoning approval of a grading plan that allows two houses on one parcel of land -- I mean, it just seems totally improper to have a grading plan that was approved by DPWES without looking at any zoning regulations or having anybody from Zoning review it, and the only time that somebody reviewed it was when it gets to the building permit. And that was the April 26th, 2007 date that I believe is quoted in our appeal, and we're within 30 days of that. So I believe that our appeal is timely because the earliest the grading plan could have been approved would be May 8th or May 9th depending upon which one you want to choose.

And if it was approved, it never was approved by Zoning, and I think that that's -- you know, again going back to Article 18, Section 114 of the Zoning Ordinance, it's very clear that no officer, board, agency or employee of the County shall issue, grant or approve any permit, license or other authorization for erection of any building or for any use of any land or building that would not be in full compliance with the provisions of the Zoning Ordinance. And it also says that no action shall be taken by any officer, board, agency or employee of the County, including the BZA, purporting to validate any such violation.

Wherefore, we ask that you say that our appeal is timely because if you say that it is untimely, you are basically violating -- taking an action and purporting to validate this grading plan being approved prior to having any zoning review.

CHAIRMAN RIBBLE: Thank you.

MR. HART: Mr. Chairman.

~ ~ ~ July 10, 2007, After Agenda Items, continued from Page 248

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: Thank you. A couple questions, let me just ask staff, if I might, the answer to Ms. Gibb's question is March 26 for the grading plan; is that right, Ms. Stanfield?

MS. STANFIELD: Yes, thank you, Mr. Hart. That's correct.

MR. HART: Can you show on the overhead?

MS. STANFIELD: Sure, I can show you where the actual grading approval is, but Mr. Nassimbeni from DPWES is here, and if you wouldn't mind, I'd like him to address the issue of the stamp that you see on the overhead which has an April date.

MR. HART: Well, I was going to ask about that, too, but I'm -- I want to start with the March 26 date and where that's coming from. Mr. Nassimbeni, you can come down if you want or -- I don't -- either way.

BRUCE NASSIMBENI: That's fine. I'll stay where I'm at. Thank you.

MR. HART: I don't -- I can't read any of that, but where -- show me where does it say March 26.

(Inaudible)

MR. RIBBLE: Okay.

MR. HART: Oh, wait, if you're going to talk, I've got to -- okay, and who is GSS or GISS?

MR. NASSIMBENI: Bruce Nassimbeni, Department of Public Works and Environmental Services. That is an individual that works in the Site Review Branch who approved that plan. That is the stamp that DPWES uses when approving a grading plan.

MR. HART: Okay, and Lot 112 and 113 is the two --

MR. NASSIMBENI: The two lots in question, correct.

MR. HART: Okay. All right. All right.

MR. NASSIMBENI: That was the approval date that DPWES approved the grading on those two lots.

MR. HART: Okay, then I've got a question for Mrs. Voorhees, that the -- what you showed us I thought had an April 20 date in the left margin rather than April 26. Is that not --

MS. VOORHEES: Yes, that is. If you would look at the distribution status, that's page 12 --

MR. HART: No, I'm not --

MS. VOORHEES: Well, that is where you get the April 20th, 2007. It is on the actual infill distribution status, and so --

MR. HART: I think that's just a printout from the website.

MS. VOORHEES: And it says site permits processing, so --

MR. HART: Right, but what you showed us on the overhead I thought was somebody actually writing on the drawing in the left margin -- yeah, that one.

MS. VOORHEES: Yeah.

MR. HART: Is that 20 or 26?

~ ~ ~ July 10, 2007, After Agenda Items, continued from Page 249

MS. VOORHEES: It's 20.

MR. HART: Okay. Whether it's March 26 or April 20, depending on which stamp you go on on which thing, isn't it untimely if there's a March 26 approval or an April 20 approval?

MS. VOORHEES: No, because at the very top of the -- I'll pull it down so you can see or she can do it -- it says that you will have no grading, earth removal or building will be allowed until -- and it's the building permit number -- okay, is permitted, so --

MR. HART: Well, obviously, you wouldn't allow it --

MS. VOORHEES: No, but the point is, is that clearly they would not have stamped that on there and say, okay, we are allowing this grading plan, but you can't do anything. That's not allowing anything. Furthermore, like I said, the lots in question did not exist. 112 was the entire property. 113 does not exist. That is Exhibit F attached to our appeal. 113 never existed.

MR. HART: One more time, why are you saying it's May the 8th --

MS. VOORHEES: May 8th is when --

MR. HART: Why is it May 8th?

MS. VOORHEES: May 8th was when the Lot 112 was resubdivided and recorded in the Deed Book as two parcels, 112A and 113A. That is in the little handout that I gave out. You can see that. It was resubdivided -- resubdivided on May 8th, 2007.

MR. HART: The May 8th event you're talking about is something done by the owner of the lots in the land records rather than something done by staff?

MS. VOORHEES: That is correct.

MR. HART: When was the last time staff did anything?

MS. VOORHEES: Staff did something?

MR. HART: Yeah, I'm assuming your appealing from a staff decision.

MS. VOORHEES: Right. Well, the -- again, the appeal is the zoning approval. Okay? And the only --

MR. HART: Isn't that at least as early as April the -- 20?

MS. VOORHEES: There is no zoning approval in the grading plan. If you look at the distribution status, no one from zoning looks at the grading plan.

MR. HART: Okay. Well --

MR. NASSIMBENI: There are -- if you look in our appeal, there are --

MR. HART: I think I understand your position. Let me ask staff, is a zoning approval required for a grading plan or just a building permit?

MR. NASSIMBENI: It's for the building permit. They routinely do not review our grading plans, site plans or subdivision plans.

MR. HART: Am I correct nothing -- staff did nothing on May the 8th? It's -- the dates we're talking about are March the 26th and April 20 on our paperwork?

MR. NASSIMBENI: Staff never reviewed a resub- -- a plat to resubdivide these. These were two lots of record. I believe the courts have made that determination.

~ ~ ~ July 10, 2007, After Agenda Items, continued from Page 250

MR. HART: Yeah. It --

MR. NASSIMBENI: They never submitted a plat of subdivision.

MR. HART: As I understand it, and I don't know if this is in the record, Mrs. Voorhees, the issue of whether this is one or two lots, the Zoning Administrator disagreed, the BZA disagreed, the Circuit Court disagreed, the Virginia Supreme Court disagreed and then disagreed again on your rehearing, and now you're appealing that to the Virginia Supreme Court?

MS. VOORHEES: That is correct. All the --

MR. HART: But nothing else --

MS. VOORHEES: There is no final issue on -- no issue of mandate by the Virginia Supreme Court because that is -- we're wait- --

MR. HART: You filed a motion to stay the mandate --

MS. VOORHEES: -- motion to defer --

MR. HART: -- pending this later --

MS. VOORHEES: -- the U.S. Supreme Court hearing this decision.

MR. HART: The last question, do you have any authority for the proposition that an appeal of a building permit decision in Virginia can include within it issues decided in earlier approvals not appealed?

MS. VOORHEES: This is not -- the point of this appeal is not to re-decide that other issue. I think you're confusing the two. We are -- our appeal is on zoning issues concerning stormwater, 2-601 and 2-602 of the Zoning Ordinance, and the stormwater issue, we feel, if -- because these houses are being basically built on berms, our land will be flooded, our neighbor's lot -- land will be flooded. So this is what the grading plan should take into effect -- into account, that there is a --

MR. HART: I understand --

MS. VOORHEES: -- substantial alteration of --

MR. HART: Excuse me, Mrs. Voorhees. I --

MS. VOORHEES: No, but that's my point, is that it's --

MR. HART: I understand your conviction.

MS. VOORHEES: -- the different -- it's a different appeal.

MR. HART: My question is, do you have any authority that you can relate back, and I take it the answer is no.

MS. VOORHEES: No, because, again, it's two different appeals.

MR. HART: All right. Thank you.

CHAIRMAN RIBBLE: Thank you. Anyone else to speak to the acceptance of this appeal?

MR. HART: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: While Mr. Emrich's coming down, I know we don't have affidavits and disclosures on after

~ ~ ~ July 10, 2007, After Agenda Items, continued from Page 251

agenda items, but I would disclose that my firm has right now -- the law firm of Hart & Horan, P.C., has two cases right now where there are attorneys from Mr. Emrich's firm representing other parties. Those matters and those cases are unrelated to this case. We have no business or financial relationship. I don't believe those matters would affect my ability to participate in this case, but I will make that disclosure. Thank you.

CHAIRMAN RIBBLE: Glad to hear everybody's so busy. Would you state your --

JERRY EMRICH: I wish he weren't.

CHAIRMAN RIBBLE: State your name and address for the record, sir.

MR. EMRICH: My name is Jerry Emrich with the law firm of Walsh, et cetera, in Arlington. I represent Hall Hollin, LLC, the owner of these lots which have been before you on a number of occasions. Our position -- we agree with the position of the Zoning Administrator and Mr. Nassimbeni. There's no -- certainly no reason, no need for any formal approval. What has happened previously in these cases is that the appellants have raised all sorts of issues in the various courts which have attempted to create procedural requirements in the County that don't exist.

Basically, this case, appeal is not only not timely, but as I think everybody recognizes, it is an attempt to re-litigate matters that have been litigated all the way up through the Virginia Supreme Court. And I think the issuance of the mandate has nothing to do with any decision of the Virginia Supreme Court. I'm not sure that when an appeal is denied, the Court will even issue a mandate. At least that's been my experience over a number of years, but even if they do, it's irrelevant. There's nothing to mandate. The Court simply said the Circuit Court was correct, thank you very much.

With regard to the issue -- the argument that this is a new matter that has come before you, I have -- and I apologize for not having a number of copies, but I can certainly put my copy in the record, but in the petition for writ of certiorari in the original case that has gone all through the judicial system, in paragraph 30H, they raised the issue of stormwater. They said that stormwater should be considered, there are regulations that apply. That argument was rejected. The fact that the -- something was said by the BZA with regard to that is irrelevant. They had the opportunity at the Circuit Court and did attempt to raise that issue. They were not successful. And I would respectfully submit that this case is -- this appeal is simply one more frivolous attempt of a property owner to control the rights of an adjacent property owner, and we'd ask that the Court not -- or the Board not accept the appeal.

MR. HAMMACK: Question.

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: Sir, Mr. Emrich, I -- just to make it clear, did your client resubdivide the property?

MR. EMRICH: No, this is the argument that has been made again continuously, that by virtue of conveying two subdivided parcels with one deed, it -- that is a consolidation or a resubdivision, which, again, has been consistently rejected, and there's never been any support even offered for precedent to support that argument.

MR. HAMMACK: All right. Thank you.

MR. BYERS: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Byers.

MR. BYERS: Are we ready for a motion?

CHAIRMAN RIBBLE: Is -- I'll ask if there's anyone else to speak to this acceptance. Staff have anything they want to add?

MS. STANFIELD: I'll just make a note that on May 9th was the date that the building permit was actually issued.

~ ~ ~ July 10, 2007, After Agenda Items, continued from Page 252

CHAIRMAN RIBBLE: Thank you. Mr. Byers.

MR. BYERS: Mr. Chairman, I move that we do not accept this appeal based on the rationale provided in the memorandum dated the 3rd of July, 2007, from the Fairfax County staff.

MR. SMITH: Second.

CHAIRMAN RIBBLE: The motion is seconded by Mr. Smith. Discussion? All those in favor signify by saying aye.

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

CHAIRMAN RIBBLE: Opposed? The vote is unanimous, and the appeal will not be accepted.

//

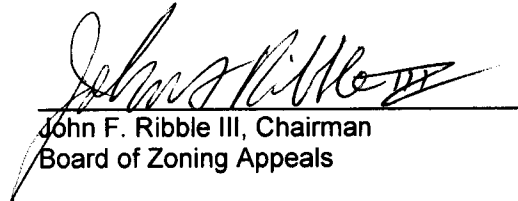
As there was no other business to come before the Board, the meeting was adjourned at 12:00 p.m.

Minutes by: Paula A. McFarland / Kathleen A. Knoth

Approved on: June 4, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 17, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Norman P. Byers was absent from the meeting.

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

~ ~ ~ July 17, 2007, Scheduled case of:

9:00 A.M. KEVIN J. O'NEILL, VC 2007-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings 7.0 ft., stoops 3.0 ft. and bay windows 5.5 ft. from a front lot line of a corner lot and 5.5 ft. from the side lot line. Located at 1111 I St. on approx. 9,900 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 93-2 ((7)) (4) 3. (In Association with SE 2005-MV-017) (Admin. moved from 5/15/07 at appl. req.) (Decision Deferred from 7/10/07)

Chairman Ribble noted that letters had been submitted requesting a deferral of this case and called for a motion.

Mr. Beard moved to defer decision on VC 2007-MV-001 to July 24, 2007, at 9:00 a.m. Mr. Hammack and Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

//

~ ~ ~ July 17, 2007, Scheduled case of:

9:00 A.M. JANE C. HILDER AND ROBERTON C. WILLIAMS, JR., SP 2007-LE-042 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 6.1 ft. from the side lot line. Located at 5707 Norton Rd. on approx. 12,192 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((12)) 7.

Chairman Ribble noted that SP 2007-LE-042 had been administratively moved to July 31, 2007, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ July 17, 2007, Scheduled case of:

9:00 A.M. NANCY A. SPIVACK, SP 2007-MA-044 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 3219 Parkwood Ter. on approx. 10,005 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((17)) 136.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy Spivack, 3219 Parkwood Terrace, Falls Church, 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 for a modification to the limitation on the keeping of animals to permit the keeping of two pot-bellied pigs. Sect. 2-512, Par. 3 of the Zoning Ordinance requires the keeping of livestock to be an accessory use on any lot of two acres or more in size.

Ms. Spivack presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she and her husband had housed Vietnamese pot-bellied pigs on their property for 17 years. She said that she had thought it was okay to have pot-bellied pigs on her property, because the official ruling in a case filed in 1991 with the Fairfax County District Court had been that it was

~ ~ ~ July 17, 2007, NANCY A. SPIVACK, SP 2007-MA-044, continued from Page 255

legal to keep pot-bellied pigs. She noted that she could not find any specific reference to the case in court records. She said that she had had no complaints from neighbors, no citations from the County, and no interactions with Animal Control. She also stated that the neighbors living closest to her property were in support of her keeping the pigs. Ms. Spivack said the fence was sturdy, the yard was clean, the pigs were never left outside when her family was not at home, and because of the landscaping, the pigs were not readily noticeable to passersby. She said that as her zoning hearing approached, she was made aware that a letter of dissent had been sent to the BZA from "The Neighbors of Parkwood Terrace." She stated that prior to sending out the required notices, she sent personal letters to all the concerned property owners explaining what had happened and encouraged them to contact her should they have questions or complaints. Ms. Spivack said that those neighbors who had secretly approached the Board were clearly misinformed as to the nature of her special permit request, and should the Board move to approve her application, the neighbors could be assured that Parkwood Terrace would not be turned into a barnyard. She briefed the Board on the care and expense involved with raising and housing pot-bellied pigs and said she was willing to comply with the conditions set forth by the Board. She assured the Board that when her pigs passed away, she would not replace them.

Mr. Hart said the court case referred to by Ms. Spivack was heard in the Circuit Court by Her Honor Rosemarie Annunziata and not in the District Court. He said he did not remember the name of the case but the name of the pig was Petunia. He said he thought the issue was not one of zoning but whether, under the restrictive covenants of the subdivision, a house pet type of pig was the same as livestock. He said he thought it was the judge's conclusion that the covenants precluded farm animal-type pigs and not house pets. In answer to Mr. Hart's questions concerning access to the yard, Ms. Spivack replied that the pigs had never gotten out, and children could not get in the yard because the gate was double padlocked and an extra piece of fence had been added to the top.

Chairman Ribble called for speakers.

Nancy Slocumb, 1906 Joliet Court, Alexandria, Virginia, came forward in support of the application. She stated that she had received approval of her application to keep pot-bellied pigs in April, 2007, Ms. Spivack took excellent care of her animals, her yard was very clean, pot-bellied pigs were cleaner than dogs, the pigs made no noise, and they were not a nuisance to the neighborhood. She said that the applicant was a wonderful owner. She said pot-bellied pigs had pleasing, good natured personalities. Ms. Slocumb requested that the Board grant Ms. Spivack's variance.

Chairman Ribble asked staff how the complaint had been received. Ms. Hedrick said that she had spoken to John Zemlan, the Zoning Inspector and he said he had not issued a notice of violation in writing but had knocked on Ms. Spivack's door and advised her of the rules. Mr. Zemlan said that Ms. Spivack had told him she would apply for a permit immediately, which she did, and therefore, an official notice was never issued.

Mr. Beard said he was impressed that Ms. Spivack had taken it upon herself to take immediate action.

In answer to Mr. Smith's question concerning the meaning of Condition 3, which stated that the application was for the existing two pigs, Ms. Hedrick said that Condition 3 was standard for dogs and animals of this type. She stated that the condition referred only to the two existing pigs on the Spivack property and should the pigs pass away or be given away, she could not replace them unless she had applied for a new permit and received approval to do so from the Board.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-MA-044 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY A. SPIVACK, SP 2007-MA-044 Appl. under Sect(s) 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 3219 Parkwood Ter. on approx. 10,005

~ ~ ~ July 17, 2007, NANCY A. SPIVACK, SP 2007-MA-044, continued from Page 256

sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((17)) 136. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 17, 2007; 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, Nancy A. Spivack, and is not transferable without further action of this Board, and is for the location indicated on the application, 3219 Parkwood Terrace (10,005 square feet) and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection to County officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing two (2) pot-bellied pigs. If either of these specific animals pass away 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

//

~ ~ ~ July 17, 2007, Scheduled case of:

9:00 A.M. LORAN AND ROBERT AIKEN, SP 2007-MV-047 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 22.7 ft. from front lot line, accessory structure to remain 1.8 ft. from rear lot line and 1.5 ft. from side lot line and accessory structure to remain 3.4 ft. from side lot line and to permit fence greater than 4.0 ft. in height in front yard. Located at 2106 Belle Haven Rd. on approx. 11,400 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (20) 15.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Loran Aiken, 2106 Belle Haven 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.

~ ~ ~ July 17, 2007, LORAN AND ROBERT AIKEN, SP 2007-MV-047, continued from Page 257

Chairman Ribble and Mr. Beard gave disclosures, but indicated they did not believe their ability to participate in the case would be affected.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow reductions to the minimum yard requirements based on error in building location to permit a roofed deck (porch) to remain 22.7 feet from the front lot line; a 9.6 foot tall, 84 square foot playhouse to remain 1.8 feet from the rear lot line, and 1.5 feet from the eastern side lot line; and a 10.9 foot tall, 27.6 square foot stone fireplace to remain 3.4 feet from the western side lot line. A minimum front yard of 30 feet, a minimum rear yard equal to the height of the accessory structure (9.6 feet), and a minimum side yard of 10 feet are required; therefore, reductions of 7.3 feet, 7.8 feet, 8.5 feet, and 6.6 feet, respectively, were requested. The applicants also requested a special permit to allow an approximately 5.0 foot long portion of a 6.0 foot tall wood fence in the western portion of the front yard to remain. The Zoning Ordinance currently allows a maximum fence height of 4.0 feet.

Ms. Aiken presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the roof deck, portico and fence existed when the house was purchased. She noted that most of the fence had been removed in the rear of the property and replaced with trees and shrubs. She stated that the playhouse and fireplace had been built just after she and her family moved in. She said there was no landscaping on the property at that time, and they had undertaken a large landscaping project. They had hired a landscape architect and had been told they did not need a permit for the fireplace. They subsequently discovered that that was incorrect. She said her husband had designed the playhouse and hired someone to build it, not realizing at the time that it was too big.

In answer to a question by Mr. Hart, Ms. Aiken said the playhouse did not have any plumbing or electricity, was not on a foundation, and could be shifted. Referring to the photographs that had been submitted, Mr. Hart stated that the playhouse appeared to be visible to the right of the house and asked if it could be shifted to the left. Ms. Aiken responded that if the playhouse was moved to the left, it would not allow much space between the house and the playhouse because their lot was an odd shape. She indicated that they had chosen that location in order to allow them to have the most use of the yard.

In response to Mr. Hart's query concerning which items had been on the actual notice of violation, Mr. Varga stated that the fireplace had been the subject of the complaint and indicated that a letter submitted by a neighbor had begun the investigation. At that point, he said, the other violations had been discovered. In answer to another question posed by Mr. Hart, Mr. Varga said the complaint referred to the fireplace's close proximity to the neighbor's property line, not the height of the chimney.

Mr. Beard noted that the playhouse was 9.6 feet tall and asked if it would have been in conformance at its current location if it were seven feet in height. Mr. Varga said that was correct.

Chairman Ribble asked if the applicant's land was flat. Ms. Aiken said yes and explained that the properties on her block were shaped like a pie, there was a house to the right, an empty lot behind them, and the corner of the playhouse backed up to the empty lot. She said the neighbor who owned the house closest to the playhouse had indicated that she did not have a problem with the location. Ms. Aiken said the original complaint filed by one of her neighbors had been submitted for the fireplace only, and subsequently, a letter withdrawing the complaint had been submitted.

In answer to Mr. Hammack's question about the height of the fireplace, Mr. Varga said the plat indicated that the fireplace was 10.9 feet tall. Mr. Hammack then noted that the notice of violation stated that the fireplace could be reduced to seven feet and the shed to 8.6 feet. He said that in the testimony just heard, it appeared that those figures had been reversed and asked which was correct. Mr. Varga said the heights listed on the plat were correct.

Mr. Hart asked if there was a Building Code requirement that a chimney be a minimum height. Mr. Varga stated that in conversations with staff in the Building Permit Review Branch, he had not been made aware of any permits that would be associated with the construction of a fireplace as it appeared on the applicant's property. Mr. Hart said his question was whether there was a Building Code requirement that a chimney be a certain height above the fire box for safety reasons, and by requiring the chimney height be lowered, it would no longer be compliant with other requirements. Mr. Varga said he did not have that information.

~ ~ ~ July 17, 2007, LORAN AND ROBERT AIKEN, SP 2007-MV-047, continued from Page 258

Ms. Aiken stated that a letter of support from Gene Olney, the original builder of Belle Haven, had been submitted to Mr. Varga. Chairman Ribble said the Board had received a copy.

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

Mr. Hart moved to approve SP 2007-MV-047 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LORAN AND ROBERT AIKEN, SP 2007-MV-047 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 22.7 ft. from front lot line, accessory structure to remain 1.8 ft. from rear lot line and 1.5 ft. from side lot line and accessory structure to remain 3.4 ft. from side lot line and to permit fence greater than 4.0 ft. in height in front yard. Located at 2106 Belle Haven Rd. on approx. 11,400 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (20) 15. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 17, 2007; 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 showing compliance with the required standards.
3. In looking at the photographs, the chimney or fireplace is not going to have a significant impact on anybody.
4. With the landscaping, it will be difficult to notice the chimney or fireplace.
5. The playhouse is a little more visible, although it is a very ornate and finished structure, and although it is close to the corner, based on the record before the Board, with the landscaping, its impact is somewhat mitigated.
6. There doesn't seem to be any opposition to the playhouse.
7. There are not a lot of better places on the lot where the playhouse could be placed.
8. The playhouse could be shifted to the left, but it is unknown whether that would be bringing it closer to something else.
9. With respect to the porch, there is no problem at all.
10. The porch is an open structure that is relatively small and is consistent with the other homes in the neighborhood.
11. The house was built in the early 1940s, and it is not clear whether it was exactly before the Ordinance or not.
12. The style of the porch is consistent with the neighborhood.
13. Regarding the fence, there would not be any significant negative impact on anybody.
14. It is a small section of a fence that is just barely into the front yard.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, and Sect. 8-923, Provisions for Increase in Fence and/or Wall Height in Any Front Yard, of the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the

~ ~ ~ July 17, 2007, LORAN AND ROBERT AIKEN, SP 2007-MV-047, continued from Page 259

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, playhouse, stone fireplace, and 6.0 foot tall wood fence, as shown on the special permit plat prepared by Ronald J. Keller, dated May 19, 2006, as revised through April 20, 2007, as submitted with this application, and is not transferable to other land.
- 2. All required building permits and final inspections shall be diligently pursued and obtained within 90 days of final approval 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 6-0. Mr. Byers was absent from the meeting.

//

~ ~ ~ July 17, 2007, Scheduled case of:

9:00 A.M. BECKY MARTIN, SP 2007-PR-040 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 2512 Swift Run St. on approx. 10,684 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((11)) 19.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Becky Martin, 2512 Swift Run Street, Vienna, 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 applicant requested a special permit for the reduction of certain yard requirements to permit the construction of a

~ ~ ~ July 17, 2007, BECKY MARTIN, SP 2007-PR-040, continued from Page 260

garage with a second-story bedroom addition 6.0 feet from the side lot line. The proposed addition was approximately 1,400 square feet in size. A minimum side yard of 12 feet is required; therefore, a reduction of 6.0 feet was requested. Staff recommended approval of SP 2007-PR-040 subject to the proposed development conditions.

Mr. Hammack noted that the staff report said the proposed addition was 18 feet in height but the front elevation showed two stories. Ms. Martin stated that the addition would be one and a half stories. Mr. Hammack asked how a garage with a room above it was measured. Mr. Varga stated that it was one and a half stories in height as the applicant had indicated and that the measurement was for the garage with a second story living space above it which would only be 18 feet in height.

Mr. Hart said he was concerned that the second floor would create more of an impact, and in the drawing of the side elevation, it did not look like one and a half stories but two stories in height to include an attic. Mr. Hart asked if the height had been determined by the front or back side of the proposed addition. Mr. Varga explained that the height had been determined by the low point of the property on one side and the high points on the other side; that was officially how the height of a proposed structure was determined. He said the actual height of the property may not reflect what the end result would be; however, the architectural rendering the applicant had submitted was the best representation of what staff expected.

Mr. Hart noted that a memorandum contained in the staff report from Todd Nelson, Urban Forester II, Forest Conservation Branch, dated June 19, 2007, mentioned concerns and recommendations with respect to a tree save area along the western and northern portions of the site that should be provided to protect several types of trees and shrubs from construction activities. Referring to Appendix 1, Condition 5, Mr. Hart asked why staff had recommended less preservation than that recommended by Mr. Nelson. Mr. Varga said that when he formulated the development conditions, he had spoken to Mr. Nelson who indicated that the trees were not specimen trees and it would not be necessary to make specific reference to them in the staff report. Mr. Nelson had said it would serve the interests of the County as well as the applicant to have the applicant consult with Urban Forestry Management at the time the addition was constructed. Mr. Hart said he was concerned that the proposed addition appeared to be two stories and would be six feet from the property line. He said one of the ways that impact might be mitigated would be to add some type of landscaping to buffer the addition from the next door neighbor.

Mr. Hammack said that according to the actual plat and the footprint contained in the staff report, the addition would be flush with the front of the house, but according to the elevation drawing, it appeared that the two-car garage would project out in front of the house by a few feet. There also appeared to be a bay window projecting from the structure on the elevation drawing that was not shown on the footprint. Greg Chase, Senior Staff Coordinator, said the applicant had indicated that the window was an existing one and that in the preparation of the plat it had not been shown. Mr. Hammack said Condition 4 stated that the addition shall be consistent with the architectural renderings and materials as shown on Attachment 1. It appeared that the footprint was not consistent with the architectural renderings. Mr. Hammack asked if the garage did project out, should the footprint indicate something other than a straight line. Mr. Chase stated that the plat should indicate the dimensions and protrusion accurately but as long as it met the side yard setbacks it was all right. In answer to Mr. Hammack's question concerning the garage addition projecting out in front of the house, Mr. Varga said the garage addition would not project out in front of the existing house and would be flush with the existing structure along the side lot line and in the front. Mr. Hammack stated that that was not shown from the left side elevation looking vertically from the window down. He said it showed the garage projecting in front of the window and pointed out the shadow to the right that would indicate that it projected out. Mr. Varga agreed with Mr. Hammack and deferred to the applicant for an explanation.

Mr. Chase concurred with Mr. Hammack's comment that staff's analysis might not be accurate, but stated that it did not have an impact on what was advertised. He said that the only thing referenced in the advertisement was the distance of the addition from the side yard, and therefore, there was no problem with the advertising.

Ms. Martin presented the special permit request as outlined in the statement of justification submitted with the application. She said the plat prepared by Peter Moran had been done when she applied for a variance. At that time, she said, her application had been deferred because of a case that was pending in court. She said the architectural drawings before the Board were new. Ms. Martin said she believed the permit stated that whatever was built must agree with Mr. Moran's drawing. She pointed out that the garage would be

~ ~ ~ July 17, 2007, BECKY MARTIN, SP 2007-PR-040, continued from Page 261

equal to the main part of the house; however, there was a setback in the area where the family room was located and it was possible that that was where the confusion lay. She indicated that the drawings had been done manually and could be a bit deceiving.

Mr. Hammack asked if the garage projected in front of the house by approximately two feet. Ms. Martin said that the main part of the house already projected out by approximately six feet. Mr. Hammack stated that from looking at the renderings, it appeared that the garage projected in front further than that. Ms. Gibb asked if the garage was flush with the house. Ms. Martin responded that part of the house was not flush but the garage would be no further out than the part that was extended. Ms. Martin agreed with Mr. Ribble's comment that it would be flush with the part of the house closest to the lot line. Mr. Hammack then said the blacked in area on the plat was confusing because it showed the front of the house going straight across with no indentation. Mr. Varga said that perhaps the plat indicated the building envelope of the proposed structure, and the relief Mr. Hammack was referring to along the front lot line would be within that envelope. In either case, Mr. Varga said, the application could be conditioned to construct no larger than a 1,400 square foot addition if that was what the Board was comfortable with approving. Mr. Hammack said his concern was that Condition 2 stated that the special permit was approved for the location and size (approximately 1,400 square foot garage with second story bedroom addition) as shown on the plat prepared by Peter R. Moran. He said that the plat showed that the front of the house and garage went straight across with no indentations. Referring to Condition 4, he said that it indicated that the addition shall be consistent with the architectural renderings and materials as shown on Attachment 1, and it was his opinion that there was an inconsistency in the special permit and new plats needed to be submitted before he would be willing to approve the application.

Mr. Smith said the Board could either approve the application to be not larger than the footprint that was provided on the plat or the application could be deferred until the plat had been revised. He said the last thing Ms. Martin wanted was to have the Board approve the application with a plat that was not consistent with what she wanted to construct. Ms. Martin stated that she would accept those conditions and would rather not have her application deferred because it had been a long time coming.

Referring to the plat with the bold line, Mr. Hart said he thought what Ms. Martin wanted was to put the garage into the left two thirds of the rectangle with the right one third consisting of a gap; however, he believed the front of the garage was approximately two feet in front of the rest of the house. Mr. Ribble stated that the garage would be 22 feet wide and that it was in the area along the rectangular strip. Mr. Hammack said that if the left line of the existing house was extended out to the front line and the left side of the existing house was brought out, the rectangular area in the middle would be open space. Mr. Varga said he agreed with that interpretation based on the information staff had when compared with the architectural renderings. He said the information contained in the staff report had been included in the computation and that was the 1,400 square feet. He noted that if what they had discussed was correct, the actual square footage of the addition would be smaller than what had been indicated in the staff report.

Mr. Smith agreed with Mr. Hart's comment and stated that the left dimension of the building was 29 feet and the right was 25 feet, there was a four foot difference due to the fact that two feet protruded forward and two feet protruded backward which would be consistent with the renderings.

Ms. Martin said that at the back of the house the second floor story was jugged out over the lower level of the house by two feet so the back of the house would be aligned evenly.

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

Ms. Gibb moved to approve SP 2007-PR-040 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BECKY MARTIN, SP 2007-PR-040 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 2512 Swift

~ ~ ~ July 17, 2007, BECKY MARTIN, SP 2007-PR-040, continued from Page 262

Run St. on approx. 10,684 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((11)) 19. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 17, 2007; and

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

1. The applicant is the owner of the land.
2. The Board has a positive staff report recommending approval.
3. The applicant has waited a number of years and is eager to go forward.
4. The Board has some questions about the plat, but it seems there was not misinformation in advertising because it was advertised that the issue was an addition six feet from the side yard.
5. The applicant has met the required six standards for a 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). 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 1,400 square foot garage with second story bedroom addition) not to exceed that which is shown on the plat prepared by Peter R. Moran dated June 30, 2003, as revised through May 3, 2004, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,370 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The applicant shall preserve to the greatest extent possible all individual trees or tree stands that may be impacted by construction of the addition as determined in consultation with UFM.

This approval, 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

~ ~ ~ July 17, 2007, BECKY MARTIN, SP 2007-PR-040, continued from Page 263

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

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

//

~ ~ ~ July 17, 2007, Scheduled case of:

9:00 A.M. TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-062 previously approved for church with a private school of general education, child care center, and nursery school to permit modification of development conditions. Located at 2516 Squirrel Hill Rd. on approx. 4.28 ac. of land zoned R-1. Hunter Mill District. Tax Map 15-4 ((1)) 27 and 28.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Rev. Andre Revell, 43735 Mink Meadow Street, Chantilly, 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 applicants requested a special permit amendment to amend SP 95-H-062, previously approved for church with a private school of general education, child care center, and nursery school, to permit the deletion of Condition 18 which requires the retention of a historic single-family dwelling located on the property. The applicants proposed to remove the dwelling. There were no other changes requested with the application. Staff recommended approval of SPA 95-H-062-03 subject to the proposed development conditions.

Mr. Hart said he had concerns with respect to the proposed development conditions. He stated that to some extent, Condition 25 conflicted with Condition 15 which stated that the stone wall shall be preserved to the maximum extent feasible, and Condition 25 stated that the wall shall be maintained as long as the church and any associated uses are located on site. He said that if Condition 25 required the church to keep the wall as long as anything else was happening, he thought that the words "to the maximum extent feasible" should be removed from Condition 15. Mr. Varga said that he agreed that the wording in Condition 25 was more precise and the final sentence in Condition 15 should be removed. Mr. Hart then noted that the last sentence in Condition 25 should have a period placed at the end of it. Also in that sentence, he asked if the word "and" should be changed to "or". He said that if the church wanted to cease having a child care facility on the premises, they should still be required to retain the wall. In Condition 21, Mr. Hart stated the word "Keyes" was misspelled. He also noted that Condition 24 was vague as to where the money was coming from and he assumed it was coming from the applicant. In the second line of Condition 24, he suggested that the wording be changed to read "shall be provided by the applicant to the FCPA Resource Stewardship Branch". In answer to Mr. Hart's suggestion, Mr. Varga agreed that the word "rather" in the last sentence in Condition 26 should be changed to "whether." Mr. Hart then referred to Condition 29 concerning the seven landscape trees which he said he assumed had either died or were not in good shape and the applicant had indicated that they wanted to replace them. He suggested that the wording in that condition should say something to the effect that the applicant would be required to replace and maintain the new trees. Mr. Varga agreed that the word "maintained" should be added after the word "replaced." Mr. Hart asked for clarification of the provision that stakes would be placed where the foundation used to be and asked if staff had specific wording for that provision. Mr. Varga said the condition in his presentation would satisfy staff that the corner posts would be provided by the applicant. Mr. Hart said he would like to have something in writing that he could refer to specifying such a condition. Mr. Varga agreed to provide that information to the Board.

Mr. Hammack, referring to Condition 28, asked why a Certified Arborist had to be on the site at all times during demolition. Mr. Varga explained that that was a standard condition used by staff on many occasions. Mr. Hammack questioned the need for an arborist in lieu of an engineer or construction expert. Mr. Varga stated that it was his belief that the intent was to protect the trees.

~ ~ ~ July 17, 2007, TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03,
continued from Page 264

Rev. Revell, Director, Family Life Ministries, Mt. Pleasant Baptist Church, introduced the members of the church who were present as well as Rev. Todd, Assistant Pastor; Rev. Blonden (phonetic), Youth Pastor; Deacon Willie Hassell, Director of Administration; Deacon Bush; and Deacon Best. He advised that Rev. Graham was out of the country.

Mr. Hammack stated that neither Rev. Graham nor Rev. Revell was listed on the affidavit.

Chairman Ribble advised that a trustee listed on the affidavit would have to introduce Rev. Revell before he could speak for the church.

Deacon Hassell introduced Rev. Revell and stated that Rev. Revell would speak on behalf of the church and Pastor Graham.

Chairman Ribble advised that Deacon Hassell would have to reaffirm the affidavit. Deacon Hassell reaffirmed the affidavit as previously submitted.

Rev. Revell gave a brief history of the founding of the church. He stated that although the trustees recognized the historic nature of the Keyes home, it was not something that the church could maintain. He said the church had been expanding and needed to provide for that expansion. Rev. Revell stated that the congregation had reviewed and supported staff's recommendations with the exception of two development conditions. He called attention to Page 3, Paragraph 2 of the staff report that stated that Henry Cook was a founding member of the church. Rev. Revell said that was not correct, Henry Cook had donated the property to the church and the founder was Rev. Fred Cook. He called attention to Page 6 of the staff report that referenced an additional sixth point made by the History Commission that required retention of the house foundation and/or building footprint. He advised that the trustees had taken exception to it and stressed that it was not something the church had originally agreed to accomplish because of the burden the cost would place on them. He noted that they would be willing to comply with that recommendation only if the History Commission or the County provided the funds.

Mr. Smith asked what the cost would be to erect the four corner posts and what construction materials would be used. Linda Blank, Planner, Department of Planning and Zoning, said she did not know what the cost would be and asked Bob Beach, Chairman and Architect, Fairfax County History Commission, to respond. Mr. Beach stated that he did not know if the Commission had an estimate, but it was his understanding that ground markers would be used to mark the corners of the foundation and he did not think the markers would be very expensive.

Mr. Smith asked if the area would become an open space where children would play after the demolition of the house. He added that he was curious about the cost of providing signage. Rev. Revell confirmed that the front of the church would become open space and that they had agreed to supply the signage. He said they thought that any action to provide the actual corner footage for the building itself was excessive.

Mr. Hart said he had not seen the wording of the development condition but assumed that the applicant would be required to put in the corner posts or markers and wanted to know if that would be a minor or major expense.

Mr. Beach stated that the Commission had reluctantly conceded at their July 11, 2007, meeting to recommend to the BZA the demolition of the Keyes House to the extent that the foundation would remain below grade with the corners marked, and with the placement of interpretive signage. As stated in the staff report addendum, he said the Commission recommended mitigation in light of the loss of the Keyes House historic structure. He noted that the Keyes House was one of over 350 properties listed on the Fairfax County Inventory of Historic Sites. He stated that the inventory had been established in 1969 and was a catalogue of historically significant sites within the County. Mr. Beach proceeded to describe the sites that were on the inventory list and indicated that at least 60 of the sites had been demolished since the creation of the list; inclusion on the list was an honorary designation and did not impose restrictions or limits as to what an owner could do with a property. He advised that the Fairfax County Comprehensive Plan recognized the sites, listed them by area in the Heritage Resources sections, and encouraged preservation when possible. In the case of the Keyes House and the Michelitch House located on Colvin Run Road in Great Falls, Mr. Beach said that limitations had been imposed by the BZA through development conditions

~ ~ ~ July 17, 2007, TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03,
continued from Page 265

which required retention of the houses. However, Mr. Beach said they had painfully learned that retention of historic properties in and of themselves was not enough to provide for long term protection of the resources and a requirement to maintain those properties must also be stipulated in the development conditions. He said the History Commission was requesting that the Board make provisions in future development conditions for the retention and maintenance of historic structures and to provide for long term protection of heritage resources. He stated that the History Commission could work with BZA staff to develop general wording to achieve that goal. Mr. Beach said consideration should also be given to allow the widest variety of uses possible for historic properties and not to impose undue restrictions on them. He acknowledged that purchasing properties located within the County was very expensive; that there were many competing demands for land use which made historic preservation and the protection of the historic-built environment challenging; and that ways needed to be found to preserve and protect that environment or it would be lost. He called attention to the Commission's many responsibilities for protecting and preserving heritage resources throughout the County. Mr. Beach commended the Board on doing its part by requiring, through development conditions, that the County's heritage resources be maintained and preserved. He noted that this issue had been very contentious and the vote had not been unanimous. He said his interpretation of what had transpired at the Commission's July 11th meeting was that they had recommended that documentation be done before the Keyes House was demolished and had requested that the foundation be razed to the point of current level ground so that the old foundation would remain. He pointed out that the area could be grassed over and the corners of the original home, not the entire home, could be marked. He indicated that that could be done by the installation of a marker that was flat to the ground and could be walked over.

In answer to Ms. Gibb question concerning the FCPA involvement in determining the type of markers that should be placed on the corners, Ms. Blank stated that the development conditions had been written in consultation with the FCPA. She said staff of the Park Authority's Resource Management Branch (RMB) had been working with the History Commission on various proposals, and that in several of the proposed development conditions, the RMB had been cited. Ms. Blank suggested that if the Board wanted to add language that they do so in consultation with the FCPA and the History Commission. Referring to Rev. Revell's comment that the trustees had objected to spending too much money, Ms. Gibb said she wanted to ensure that the development condition indicated that the expense was not to exceed a certain dollar amount, noting that dollar limits had been placed in development conditions in other applications. Ms. Blank advised that she did not have a cost estimate.

Mr. Hammack referred to Condition 22 and asked what the Keyes stone was, what the FCPA would do with it, and why it should not stay with the church. Ms. Blank stated that there was a stone marked with the name "Keyes" on it that had been placed in the entryway to the basement in 1923 or 1925 when the Keyes family had purchased the house. Ms. Blank indicated that it was the builder of the church, not the Keyes family that had the connection to the church. She stated that the thinking had been that the stone should go to the FCPA because it was a part of the history of the County and the Floris community, and they would be well served by adding it to the collections maintained by FCPA. Mr. Hammack indicated that some of the development conditions stated that the Park Authority was to be notified and asked if a condition should be added to say that they had to respond within a certain period of time. He asked if the FCPA would be allowed to delay demolition and construction of the work required of the church after a demolition permit had been issued if FCPA lacked sufficient staff to address a situation. Ms. Blank said the addition of a time limit seemed appropriate if the Board wanted to add one.

Referring to the comments made by Mr. Beach and Ms. Blank, Mr. Hart called attention to Condition 30 that had been distributed to the Board by Mr. Varga. He said that there were three or four issues which had not been addressed. Condition 30 needed to include that the consultation would involve others besides the Park Authority and he was not sure what the phrase "corner posts" meant. The issue concerning retaining the foundation below grade to the frost line was not mentioned, and if the church was supposed to leave something alone on the site, there was no reference to it in the conditions. He said he was not sure that the Board had ever used a condition like Condition 30 on another project and he thought additional information was required to make the condition clearer, because if Condition 30 was not specific, the applicant would not have to comply with it.

Mr. Hammack stated that in addition to what Mr. Hart had said, Condition 24 would require funding up to \$2,000 for interpretive signage and that would add another cost to the church's renovation project. He stated

~ ~ ~ July 17, 2007, TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03,
continued from Page 266

that he could not remember requiring an applicant to pay the Park Authority to make a sign in the past.

Ms. Blank, in response to Mr. Hammack's remarks, said that with respect to the interpretive signage, staff had spoken to the trustees and they had agreed. She also indicated that the trustees had expressed an interest in helping and the cost of the actual interpretive signage was the only expense the church would have to pay. Ms. Blank advised that FCPA staff would work with the church in the development of the language.

Mr. Beard suggested that staff and the Board refer to the markers as corner markings instead of posts and suggested that a dollar amount be included in the condition.

Chairman Ribble called for speakers.

Mr. Hart called attention to an e-mail dated June 18, 2007, from Kim R. Blake-Wilcox concerning a request to pave the church parking lot and cut a bike path through the church's cemetery. He said that insofar as he knew, those subjects had never been raised with respect to this application. Mr. Varga explained that staff had received an e-mail approximately a month and a half ago regarding a Mt. Pleasant Baptist Church; however, that was a reference to another church of the same name located in the County and did not in any way pertain to this application. He said Susan Langdon, Chief, Special Permit and Variance Branch, had had a discussion with Ms. Blake-Wilcox and informed her that this particular application was not associated with the issues she had mentioned. Mr. Varga stated that the e-mail should not have been included in the packet.

Mr. Beard asked for verification that Ms. Blake-Wilcox was not a member of the applicant's church. Rev. Revell stated that for clarification their church did not have any paving or trail issues with the County and it was clearly not an issue for their church.

Mr. Smith asked if the trustees had any concerns with respect to the condition that required the foundation of the house be retained below the frost line. Rev. Revell said it was a concern and reminded the Board that all the historic recommendations had been submitted after the church's review. He indicated that the trustees had no problems with the first five points with respect to helping with the signage or providing the funding; however, they did have a problem with the addition of the sixth point involving what would be done with the corner posts. He stated that having the markers at grade level helped but the church had to be concerned about safety issues because their congregants and neighbors walked through the area. He noted that the church also had concerns about costs.

Mr. Hammack said it was his opinion that some of the questions that had been raised were open-ended and unresolved. He asked if any useful purpose would be served with respect to deferring a decision to allow the church to have an opportunity to speak to staff and the Historic Commission. Rev. Revell stated that the trustees would prefer to move forward. Actually, he said, the trustees would prefer to return to the original language prior to the July 10, 2007, staff report and that they had a problem with the addition of the sixth point. He stated that the church would like to comply with the County's desires to do the signage and provide the stone; however, the situation was being prolonged by attempting to discern what the costs would be.

With respect to the posts, Mr. Smith said it was his understanding that they would be at grade. Ms. Gibb and Mr. Beard stated that staff had been talking about markers not posts. Mr. Beard said it was not known what would be placed on the site; it should be specified and a dollar figure could be added as well.

Mr. Beach confirmed that the History Commission's vote on this issue was not unanimous and indicated that many of the members of the Commission did not want the Keyes House to be torn down; however, the majority vote was that markers be used for identification and the foundation marked below grade.

A discussion ensued between Mr. Beard, Mr. Hammack, and Mr. Beach about the wording of the development conditions and the possibility of allowing excavation in the future. It was determined that the Commission would like to do some archaeological work on the site at some point in the future and that Condition 26 would need to be changed in order to allow it.

~ ~ ~ July 17, 2007, TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03, continued from Page 267

Mr. Hart asked staff and Rev. Revell if there would be any problems with the Board deferring the application for a week in order to straighten out some of the development conditions and if that would cause any additional expenses or costs. Mr. Varga said staff would have no problem with deferring the application. Rev. Revell said there would be no monetary issues involved with a deferral.

Chairman Ribble closed the public hearing.

Mr. Smith moved to defer decision on SPA 95-H-062-03 to July 24, 2007, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

//

~ ~ ~ July 17, 2007, Scheduled case of:

9:00 A.M. LERICK S. KEBECK, SP 2007-BR-041 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 9536 Braddock Rd. on approx. 13,291 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-3 ((3)) 4.

Chairman Ribble noted that SP 2007-BR-041 had been administratively moved to August 14, 2007, at 9:00 a.m., for notices.

//

~ ~ ~ July 17, 2007, Scheduled case of:

9:00 A.M. LA IGLESIA DE SANTA MARIA AND NEW BUILDING BLOCKS PRESCHOOL, LLC, SPA 76-S-109 Appl. under Sect(s). 3-403 of the Zoning Ordinance To amend SP 76-S-109 previously approved for a church to permit change in permittee and child care center. Located at 7000 Arlington Blvd. on approx. 3.47 ac. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 127, 128, 129, 182, 182A, 183 and 184.

Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mabel Espinoza, 2345 N. Dickerson Street, Arlington, Virginia, the applicants' 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.

Mr. Beard asked whether Ms. Espinoza represented the Building Blocks Preschool and she responded that she did. Rev. Jesus Reyes, Vicar, La Iglesia de Santa Maria Church, stated that the Episcopal Diocese of Virginia was the owner of the property and had a lease with the preschool. Greg Chase, Senior Staff Coordinator, in answer to Mr. Beard's request to see a bona fide copy of the lease, offered to show the file copy to the Board. He and Rev. Reyes confirmed that the applicant was the lessee of the property.

Mr. Chase made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 76-S-109, previously approved for a church, to permit change in permittee from Boulevard Baptist Church to La Iglesia de Santa Maria and New Building Blocks Preschool, LLC, and a child care center for 80 children. No physical changes to the site were proposed. Staff recommended approval of SPA 76-S-109 subject to the proposed development conditions.

In answer to a question from Mr. Beard, Mr. Chase confirmed that the only thing that had changed from prior applications was the addition of 20 more children for a total of 80.

Christine Verzi, Director, Building Blocks Preschool, presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the goal of the preschool was to provide a quality education and learning environment for children with full day hours in order to accommodate working parents. She said English immersion would be provided for non-English speaking children, Spanish enrichment for non-Spanish speaking children, and a beginning introduction and exposure

~ ~ ~ July 17, 2007, LA IGLESIA DE SANTA MARIA AND NEW BUILDING BLOCKS PRESCHOOL, LLC, SPA 76-S-109, continued from Page 268

to the use of American Sign Language. Ms. Verzi stated that the school would not be affiliated directly with the church; however, they would be offering a Christian-based, non-denominational program.

Chairman Ribble called for speakers.

Rev. Jesus Reyes, 7000 Arlington Boulevard, Falls Church, Virginia, came forward to speak. He stated that he was in full support of the preschool and its programs, much-needed daycare would be provided, there were many Latino families residing in the area who would benefit from the preschool and daycare services. He said the preschool's programs would be beneficial in providing the integration of new and existing families located within the geographical area of the school.

Mr. Beard moved to approve SPA 76-S-109 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LA IGLESIA DE SANTA MARIA AND NEW BUILDING BLOCKS PRESCHOOL, LLC, SPA 76-S-109 Appl. under Sect(s). 3-403 of the Zoning Ordinance To amend SP 76-S-109 previously approved for a church to permit change in permittee and child care center. Located at 7000 Arlington Blvd. on approx. 3.47 ac. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 127, 128, 129, 182, 182A, 183 and 184. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 17, 2007; and

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

1. The owner of the property is the Episcopal Diocese of Virginia.
2. This application is a reiteration of what has been happening there with a minor amendment and a change in lessee or operating occupant and is well within accord.

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

THAT the applicant has presented testimony indicating compliance with 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, 8-303, and 8-308 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, La Iglesia De Santa Maria and New Building Blocks Preschool, LLC, and is not transferable without further action of this Board, and is for the location indicated on the application, 7000 Arlington Blvd., consisting of 3.47 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 George B. Korte, Land Surveyor, P.C., dated January 11, 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.

~ ~ ~ July 17, 2007, LA IGLESIA DE SANTA MARIA AND NEW BUILDING BLOCKS PRESCHOOL, LLC, SPA 76-S-109, continued from Page 269

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 two hundred seventy six (276).
6. Upon issuance of a new Non-RUP, the total maximum daily enrollment for the child care center shall not exceed 80 children.
7. The maximum hours of operation of the child care center shall be limited to Monday through Friday: 7:00 a.m. to 6:00 p.m.
8. 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.
9. 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 the issuance of a new Non-RUP for the church and child care center to permit the shared use of the church parking lot for both the church use and school 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 child care center shall be reduced to meet the parking requirements as determined by DPWES.
10. Transitional screening yards and barrier requirements on all boundaries shall be modified or waived to that 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. 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 a new Non-RUP has been issued. 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. Byers was absent from the meeting.

//

~ ~ ~ July 17, 2007, Scheduled case of:

9:30 A.M. ANNANDALE PLAZA LLC, A 2007-MA-012

Chairman Ribble noted that A 2007-MA-012 had been administratively moved to September 25, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ July 17, 2007, Scheduled case of:

9:30 A.M. NUTLEY STREET, LLC, A 2007-PR-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the addition of soil in the floodplain on property located at Tax Map 48-4 ((1)) 12 occurred without the requisite approvals in violation of Zoning Ordinance provisions. Located at 3050 Nutley St. on approx. 13.52 ac. of land zoned

~ ~ ~ July 17, 2007, NUTLEY STREET, LLC, A 2007-PR-013, continued from Page 270

C-3, C-6, C-8 and H-C. Providence District. Tax Map 48-4 ((1)) 12.

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

CHAIRMAN RIBBLE: The next case is Nutley Street LLC, Appeal 2007-PR-013. This has been administratively moved to July 24, 2007.

//

Chairman Ribble noted that there were no action items listed on the Board's After Agenda.

//

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 following matters: McLean Bible Church, Circuit Court of Fairfax County, Case No. 2006-8305; Board of Supervisors vs. BZA, two consolidated cases, CL06-10952 and CL06-14988, Circuit Court of Fairfax County; Jackson vs. BZA, CL06-10122, Circuit Court of Fairfax County; Lake Braddock Community Association vs. BZA, two consolidated cases, Chancery 04-190742 and At Law 04-221687; Horner vs. BZA, CL06-7696, Circuit Court of Fairfax County, Virginia; Equity Solutions v. BZA, Circuit Court of Fairfax County, Case No. 05-6316; personnel matters and calendar, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

The meeting recessed at 11:37 a.m. and reconvened at 12:12 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:20 p .m.

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

Approved on: May 14, 2014

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 24, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He asked whether there were any Board Matters to bring before the Board.

Mr. Byers said he viewed the videotape of the July 17, 2007, meeting and would be able to participate in the ongoing cases from that date.

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

~ ~ ~ July 24, 2007, Scheduled case of:

9:00 A.M. MICHAEL DAVIS, SP 2007-BR-052 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 5515 Joplin St. on approx. 14,110 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (14) 16.

Chairman Ribble called the applicant to the podium.

Michael Davis, 5515 Joplin Street, Springfield, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an existing fence measuring 6.0 feet in height to remain in the front yard of a corner lot. The Zoning Ordinance allows a maximum fence height of 4.0 feet in a front yard; therefore, a modification of 2.0 feet was requested.

Mr. Davis presented the special permit request as outlined in the statement of justification submitted with the application. He said he and his wife had resided in their home for seven years, and the fence was erected as a result of burglary and trespassing incidents. Because the house was located in an area affording a perpetrator a number of escape routes, the police informed him that it was a prime target for such break-ins. With the rear yard backing up to I-95, a fence was also warranted to screen the continuous loud traffic noise, and the height of six feet was necessary to accomplish both the security and noise attenuation issues. Mr. Davis said he had spoken with both of the adjoining neighbors before installing the fence, and they had no objections.

Responding to a question from Mr. Hammack, Mr. Davis said the fence did not block roadway visibility, and sight distance was a factor considered when placing the fence.

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

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

Mr. Hammack moved to approve SP 2007-BR-052 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL DAVIS, SP 2007-BR-052 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 5515 Joplin St. on approx. 14,110 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (14) 16. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ July 24, 2007, MICHAEL DAVIS, SP 2007-BR-052, continued from Page 273

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 24, 2007; 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) 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location of a fence as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 9, 2007, as submitted with this application and is not transferable to other land.

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

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

//

~ ~ ~ July 24, 2007, Scheduled case of:

9:00 A.M. KEVIN J. O'NEILL, VC 2007-MV-001 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwellings 7.0 ft., stoops 3.0 ft. and bay windows 5.5 ft. from a front lot line of a corner lot and 5.5 ft. from the side lot line. Located at 1111 I St. on approx. 9,900 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 93-2 ((7)) (4) 3. (In Association with SE 2005-MV-017) (Admin. moved from 5/15/07 at appl. req.) (Decision Deferred from 7/10/07 and 7/17/07)

Chairman Ribble noted that VC 2007-MV-001 had been deferred for decision for staff to verify certain measurements and calculations. He called the applicant to the podium.

Kevin J. O'Neill, 9403 Fairfax Street, Alexandria, Virginia, reaffirmed the affidavit.

Catherine E. Lewis, Staff Coordinator, Zoning Evaluation Division, referenced an exhibit distributed to the Board evidencing the buildable area, confirming that the front yard setback along I Street was 9.0 feet, the side yard setback was 10 feet, and, therefore, the buildable area on the lot was 14 feet in width.

In response to a question from Mr. Hammack, Ms. Lewis pointed out a chart at the back of the Zoning Ordinance which provided calculations such as height and bulk angle, and what was the effective setback. Regarding the lot, the front yard's angle of bulk plane in the R-20 District was 15 feet, but not less than 5.0 feet, and with the proposed building height of 35 feet, that was a 9.0 foot setback. The setback angle of bulk plane for the side yard was 15 degrees, but not less than 10 feet. Computing the angle of bulk plane in this case, it was 9.0 feet, but because it could not be less than 10 feet, the setback was 10 feet. Ms. Lewis said the calculations were confirmed by the Zoning Administration Division.

Responding to questions from Mr. Hart, Ms. Lewis discussed bulk plane issues, the recalculations required if the unit were narrower, and the necessity of a variance if the unit was more than 14 feet wide.

~ ~ ~ July 24, 2007, KEVIN J. O'NEILL, VC 2007-MV-001, continued from Page 274

Noting that there were many applications where houses were less than the 21 feet the applicant was requesting, Mr. Hart asked what the minimum variance necessary was to place two units on the lot.

Paul A. Wilder, the applicant's agent, RC Fields, Jr., & Associates, P.C., 730 South Washington Street, Alexandria, Virginia, explained that because a narrow house was difficult to build because the rooms and hallways become very narrow, in consultation with the architect and structural engineers, it was his and the applicant's determination that the home could be no more narrow than 21 feet, and even that width would be difficult to construct. An individual townhome could be narrow because it would be grouped in a line with other townhomes, so it would be more structurally strong. Mr. Wilder said 21 feet was what they believed was the minimum necessary.

Mr. Hart asked whether Mr. Wilder was aware of a design contest in Oregon where freestanding units were 15 feet wide and attractive, although they did not look like the homes in New Alexandria. Mr. Wilder said he was not, but he felt the proposed house would be compatible with what was in the neighborhood, and if it were smaller, it would not fit within the neighborhood. Mr. Hart said the Board was forbidden to do a lot of things, some of which could be reasonable and some were things that were formerly allowed. He said he did not think compatibility was a permissible factor for consideration because Ordinance provisions did not address the minimum variance in terms of compatibility. Mr. Hart said the Board had been told by a court that additional expense because of topographic constraints or doing something a different way was not a reason for which a variance could be granted.

In response to a question from Mr. Hart regarding whether an 18-foot wide house could be built on the lot, Mr. Wilder said it was possible, although it would be difficult and the rooms would be much smaller, and it would still require a variance. He said a triangular design would fit on the lot, but they did not feel it was something appropriate on the lot.

Mr. Hammack said he recalled testimony from the previous hearing that suggested nothing could be built less than 16 feet wide under the Ordinance. Ms. Lewis said the issue had to do with the minimum lot width. The width of the subject lot was 33 feet, and it would not be subdivided with the proposal. She said the minimum lot width referred to the lot, not the unit.

Mr. Smith said he was struggling with the case because of the standard that must be applied concerning all reasonable beneficial use of the property taken as a whole. He said a 14-foot wide unit could be built, but the question remained whether it would be economically viable, and data was necessary for the Board to determine whether a narrow width interfered with all reasonable beneficial use of the property. He said that a financial analysis or perhaps a realtor could assess the situation and conclude whether such a narrow width would interfere with a beneficial use because the lot would not be marketable. Mr. Smith said he sympathized with the applicant, but he was struggling because of that very difficult standard.

Mr. O'Neill stated that to make the living space in a 14-foot wide unit work, or even at 18 feet wide, the architect had said the house would have to be made longer, which would require more fill, which was an issue they already had addressed, and the Mount Vernon Council of Civic Associations objected to that. Mr. Wilder said the proposed design was the result of numerous consultations with County staff and civic organizations, and with numerous redesigns, they had to resolve issues with in-fill, off-street parking, garages, a floodplain. All designs had been based on a 21-foot wide unit because a 14-foot wide unit would not be marketable in the neighborhood. For an 18-foot wide unit, the amount of fill would increase. He said the existing house was 21 feet wide, and anything less than 21 feet would look odd and would not blend in with the neighborhood. He stated that 21 feet was the minimum acceptable width.

Mr. Beard noted that the Board was restricted from considering a project's economic viability, but practical and physical matters could be addressed. He said he wanted to hear more about that it was physically impractical and that the variance requested was the minimum relief necessary.

Mr. Byers said he could understand Mr. O'Neill's frustration with the project that had been ongoing almost four years. He said he was sensitive to the fact that the applicant had no control over the situation because it was a force of nature, and on multiple occasions the applicant had done exactly what was asked of him. He believed Mr. O'Neill had done everything possible to respond to and address the many issues and concerns

~ ~ ~ July 24, 2007, KEVIN J. O'NEILL, VC 2007-MV-001, continued from Page 275

of staff and the homeowners association. Mr. Byers said he was far more comfortable with the application currently than he was several weeks ago.

Responding to a question from Mr. Hammack, Mr. O'Neill said he could not recall being advised that very few variances were currently being granted, and as the plans were repeatedly presented, no one told him the project would be impossible.

Ms. Lewis said staff had determined that because of the many issues, including the lot width, the floodplain, and infill, that a special exception would be necessary. It was recognized that although a variance would be difficult, the applicant had a better chance than most with securing one. Ms. Lewis reminded the Board that the only structure the applicant could build on the lot was a duplex. A single-family unit was not allowed. She said she was aware of the applicant's difficulties with a special exception as well as the variance request, and he was competing with two different set of standards. If something were done to satisfy the BZA for the variance, it was unclear how that might affect the Board of Supervisors' approval of his special exception.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve-in-part VC 2007-MV-001 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Mr. Hammack said he could not support an approval because he had not heard testimony that satisfied the Cochran standards. He did not believe all reasonable use of the property taken as a whole was denied without the variance, that it was a minimum variance required, and that the justification seemed one of economics and preference. Mr. Hammack added that it was unfortunate the standards prohibited the Board from doing things that may be reasonable or sometimes sensible.

Mr. Smith moved to amend the motion to exclude the stoop and bay window. Mr. Beard seconded the amended motion.

Mr. Hart said he had no problem with the justification of reasonableness, compatibility, and good faith. He believed it was not a self-inflicted hardship, and he had no problem with the special exception portion of the application. He referenced the Cochran decision and applying the reasonable use stipulation. He noted that the problem was not the width of the house, but how shallow the lot was, and whether it was one house or two would not change the dimension. Mr. Hart said he struggled with the conclusion that under the Ordinance the minimum variance necessary would be 21 feet, and if the house were wider than 18 feet, he could not support the variance.

Mr. Beard commented that the case was arbitrary in that each Board member could come to a different conclusion about whether 18 feet or 21 feet might afford relief. He said the parcel was currently a blighted, and the neighbors wanted the matter to be resolved. He gave great weight to what the applicant had gone through with the many authorities, and granting the variance was in the best interest of the Fairfax County citizens. Mr. Beard said he would support the motion, and if later there were problems, the courts could address it.

Stating that he took the legal standards very seriously concerning the Cochran case, Mr. Byers voiced his concern about the reasonable use standard and how one defined it. He said a structure that was a very narrow width could conceivably be built in order to comply with the Ordinance; however, the unit might be practically ridiculous if the interior hallways were 18 inches wide. The Board had the prerogative and the obligation from the standpoint of offering its best judgment on what would work in a particular case, and in this particular case, he believed the variance was deserved.

Chairman Ribble said he did not believe the situation was self-inflicted, and he thought it had been legislated by the public to be where it now was. He said he recalled a few cases when staff recommended approval of a variance, and although each of those approved variance cases were quite different from one another, they all had certain things in common. Chairman Ribble said he would support the motion.

//

~ ~ ~ July 24, 2007, KEVIN J. O'NEILL, VC 2007-MV-001, continued from Page 276

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN J. O'NEILL, VC 2007-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings 7.0 ft., stoops 3.0 ft. and bay windows 5.5 ft. from a front lot line of a corner lot and 5.0 ft. from the side lot line. **(THE BZA DID NOT APPROVE THE STOOPS OR BAY WINDOWS.)** Located at 1111 I St. on approx. 9,900 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 93-2 ((7)) (4) 3. (In Association with SE 2005-MV-017) (Admin. moved from 5/15/07 at appl. req.) (Decision Deferred from 7/10/07 and 7/17/07) 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 24, 2007; 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-20.
3. The area of the lot is 9,900 square feet.

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.

~ ~ ~ July 24, 2007, KEVIN J. O'NEILL, VC 2007-MV-001, continued from Page 277

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

1. This variance is approved for the two single-family attached dwellings (duplex) shown on the plat entitled "Variance Plat, 1111 I Street," consisting of one sheet, prepared by RC Fields, Jr. and Associates and dated February 18, 2005, as revised through May 22, 2007, and is not transferable to other land. **(THE BZA DID NOT APPROVE THE STOOPS OR BAY WINDOWS.)**
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The proposed structures shall be consistent with the architecture included on the VC Plat.

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

Mr. Beard seconded the motion, which carried by a vote of 5-1-1. Mr. Hammack voted against the motion. Mr. Hart abstained from the vote.

//

~ ~ ~ July 24, 2007, Scheduled case of:

9:00 A.M. ROBERT DONOVAN, SP 2007-SU-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 4.7 ft. from side lot line. Located at 13707 Rosetree Ct. on approx. 8,065 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 442.

Chairman Ribble called the applicant to the podium.

Robert V. Donovan, 13707 Rosetree Court, Chantilly, Virginia, reaffirmed the affidavit.

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. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an approximately 224-square-foot sunroom addition to remain 4.7 feet from the side lot line. A minimum side yard of 8.0 feet is required; therefore, a modification of 3.3 feet was requested.

Mr. Donovan presented the special permit request as outlined in the statement of justification submitted with the application. He was the original owner of the house and had resided there for 15 years. Over the years he made numerous significant improvements to the house and property. He was unaware of the 8.0 foot setback requirement until preparing to sell the home. He said the pending contract on his new home was based on approval of the special permit request.

Mr. Donovan responded to Mr. Hart's questions concerning the building permit, the contractor retained for the sunroom's construction, the process undergone for the approval of his homeowners association, a neighbor's letter of support, and other home improvement projects completed.

In response to a question from Mr. Hart, Mr. Varga said the applicant applied for the special permit upon realizing a building permit was required. There were no violations or complaints on the property.

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

~ ~ ~ July 24, 2007, ROBERT DONOVAN, SP 2007-SU-050, continued from Page 278

Mr. Hart moved to approve SP 2007-SU-050 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Mr. Byers stated he would not support the motion because the licensed contractor had advised the applicant that a building permit was necessary, and the applicant failed to obtain one. He said the structure was large and had electricity, and he could not accept that the noncompliance was done in good faith. Mr. Byers said given the fact that a permit was not obtained, it impaired the purpose and intent of the Ordinance, and it behooved the Board to ensure that the purpose and intent of the Ordinance was upheld. Because of the close proximity of the addition to the neighbor's house, he thought it could create an unsafe condition because there never was an electrical inspection performed.

Mr. Smith noted that the development conditions required a building permit and final inspections within 90 days.

Mr. Hart said as long as the existing structure was going to be inspected, that would take care of any safety problems with the electrical or structural conditions.

Mr. Byers explained his comments by saying that if the house had not sold, there would be non-permitted electrical use in the sunroom. He said that all other County residents were to comply with such requirements.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT DONOVAN, SP 2007-SU-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 4.7 ft. from side lot line. Located at 13707 Rosetree Ct. on approx. 8,065 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 442. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 24, 2007; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the required standards for special permit.
3. The applicant had a licensed contractor.
4. The applicant sought approval from the homeowners association.
5. The applicant submitted the application before a violation was issued.
6. The landscaping is somewhat screening the sunroom from the street.
7. At the closest point to the house next door, there is a chimney and no windows, and it is not as intrusive on the neighbor on that side as it could be.
8. The proposal is within the 50 percent one may apply for in this district.
9. Although there is one opposition letter, there were no speakers 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:

~ ~ ~ July 24, 2007, ROBERT DONOVAN, SP 2007-SU-050, continued from Page 279

- 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 sunroom addition, as shown on the plat prepared by William E. Ramsey, dated March 6, 2007, signed March 19, 2007, submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the sunroom addition shall be 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. Smith seconded the motion, which carried by a vote of 6-1. Mr. Byers voted against the motion.

//

~ ~ ~ July 24, 2007, Scheduled case of:

9:00 A.M. TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-062 previously approved for church with a private school of general education, child care center, and nursery school to permit modification of development conditions. Located at 2516 Squirrel Hill Rd. on approx. 4.28 ac. of land zoned R-1. Hunter Mill District. Tax Map 15-4 ((1)) 27 and 28. (Decision deferred from 7/17/07)

Chairman Ribble noted that the Board had received a request to defer the decision to July 31, 2007. He asked staff for comment.

Stephen Varga, Staff Coordinator, said staff concurred with the request as the final details of the development conditions were being worked out with the applicant, and it was staff's position that one

~ ~ ~ July 24, 2007, TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03, continued from Page 280

additional week was advantageous for all parties.

Chairman Ribble called for a motion.

Ms. Gibb moved to defer the decision on SPA 95-H-062-03 to July 31, 2007, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 24, 2007, 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) (Indefinitely deferred from 8/1/06) (Reactivated from indefinitely deferred)

Chairman Ribble noted that A 2005-SP-045 had been administratively moved to October 23, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ July 24, 2007, 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. 8,213 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602. (Admin. moved from 8/9/05 and 12/13/05 at appl. req.) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred)

Chairman Ribble noted that A 2005-MV-018 had been administratively moved to October 23, 2007, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ July 24, 2007, Scheduled case of:

9:30 A.M. NUTLEY STREET, LLC, A 2007-PR-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the addition of soil in the floodplain on property located at Tax Map 48-4 ((1)) 12 occurred without the requisite approvals in violation of Zoning Ordinance provisions. Located at 3050 Nutley St. on approx. 13.52 ac. of land zoned C-3, C-6, C-8 and H-C. Providence District. Tax Map 48-4 ((1)) 12. (Admin. moved from 7/17/07)

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated July 17, 2007. The appeal was of a determination that the addition of soil in the floodplain on property located at 3050 Nutley Street occurred without the requisite approvals in violation of Zoning Ordinance provisions. The subject property was approximately 13.5 acres, heavily wooded, undeveloped, and located on Nutley Street between Lee Highway and Arlington Boulevard across from the Pan Am Shopping Center. Hunters Branch and its associated floodplain easement and Resource Protection Area (RPA) traversed an area on the property's western side in a north-south direction. The sole issue of the appeal was whether the existing fill in the floodplain easement on the subject property was illegally

established. The appellant submitted rezoning and special exception applications and floodplain and RPA studies for the development on the subject property. Both studies were initially approved by the County based on an incorrect assumption that the fill shown in the floodplain easement had been placed there with the required approvals and permits for such work in a floodplain easement, and had since been revoked. There was no evidence that any approvals were obtained for the filling in of the floodplain. The site plan for the Pan Am Shopping Center required that the off-site silt basin area be restored, and there was no evidence that the restoration occurred. As the property owner, the appellant was subject to the Ordinance's enforcement regulations and was responsible for developing the property in compliance with current zoning regulations. Staff recommended that the Zoning Administrator's determination as set forth in the April 18, 2007 notice of violation be upheld. Ms. Collins said that minutes before the hearing, the appellant handed staff additional information which staff had not had adequate time to review, and staff would entertain a deferral to allow time to review the appellant's computations.

In response to a question from Chairman Ribble, Don Lacquement, Department of Public Works and Environmental Services (DPWES), Stormwater Planning Division, said the information received was floodplain modeling depicting cross studies/comparisons of the United States Geological Survey (USGS) studies compared to the appellant's more recent field run topography. It was relayed to staff that the new cross-study pointed to the fact that the USGS elevations that were established and adopted by the Board and mapping were slightly higher than what was actually out in the field, which indicated there was an alleged inaccuracy in the USGS topography. Mr. Lacquement said a one-week deferral would be sufficient to review the data.

Keith Martin, the appellant's agent, Sack Harris & Martin, P.C., 8270 Greensboro Drive, Suite 810, McLean, Virginia, said the point of the appeal should be discussed, that the issues in question were easily discernable, and he did not support a deferral.

Discussion ensued among Board members concerning questions that could be discussed, which the recently submitted data had no bearing upon.

Mr. Hammack moved to defer A 2007-PR-013. Mr. Byers seconded the motion, which failed by a vote of 2-5. Chairman Ribble, Mr. Beard, Mr. Smith, Ms. Gibb, and Mr. Hart voted against the motion.

Mr. Lacquement responded to Mr. Hart's questions concerning the appellant's involvement throughout the appeal process. It was concluded that the appellant never sought to mislead staff nor misrepresent the facts. Staff made its conclusions through the data they compiled.

In response to a question from Mr. Hart, Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, explained the 60-day rule. She confirmed it would not be applicable under this circumstance because the approvals in question predated the enactment of the statute establishing 60-day rule.

In response to questions from Mr. Hammack, Mr. Lacquement explained that the floodplain/fill matter remained undiscovered for many years after the completion of Pan Am Shopping Center because typically floodplains were undeveloped areas. All major floodplains became RPAs in 1993 and untouchable once a site plan or a subdivision plan had been submitted, so it was not something that was often visually apparent. When a study was submitted and a survey done of cross-sections across a stream valley and computations run to try to mimic the USGS studies that were Board adopted, that was when these things usually came to the attention of staff. He said there had been kind of a general change of perspective regarding floodplains, and what in the 1970s was looked at as useless, everyone's consciousness of them had been elevated since becoming RPAs.

Mr. Martin presented the arguments forming the basis for the appeal. His client purchased the property a year prior. Another perspective purchaser at that time advised him that he had hired Urban Engineering, who had informed him that the USGS lines were inaccurate compared to the existing conditions and there was an assumption concerning fill on the site. Mr. Martin said that in 1974 there was no accurate topography of the site before the clearing for the Pan Am Shopping Center. The applicant prepared a floodplain study and an RPA delineation study, which the County approved in October of 2006, in preparation for the special exception and rezoning application his client would submit for a proposed retail center on the site. Mr. Martin said the area in question, which was determined not to be in a floodplain or RPA, was an area on the

~ ~ ~ July 24, 2007, NUTLEY STREET, LLC, A 2007-PR-013, continued from Page 282

Generalized Development Plan (GDP) and special exception plat for two small retail buildings, and although staff recommended approval of the rezoning and special exception and there was unanimous citizen support at the public hearing and the proposed development was reduced by 50 percent over the life of the application, it was not popular with the Providence District Supervisor. Mr. Martin said he was outraged when informed that the Department of Public Works and Environmental Services staff was to review the floodplain and RPA delineation in the area of the two small retail buildings. Subsequently, the revocations occurred, and the appellant filed the appeal.

Mr. Martin discussed a brief history of the site from the early 1970s; the original Pan Am Shopping Center site plan, the aerial photographs evidencing the stages of development, the presence of an erosion sediment pond and staff's pertaining notes, the removal, grading and seeding of berms, subsequent inspections and approvals and the bond release. The approved site plan showed the exact area in question to be used as a siltation pond and the work performed on the berms. Mr. Martin said the required preparation/development of the property was completed 30 years prior; aerial photographs proved the progression; and, there was evidence the site was inspected and approved.

Mr. Martin said the appellant ran the existing condition cross-section over the USGS model to find that the existing condition was an average 0.9 foot lower water surface elevation currently than that of what the USGS model showed it to be. He stated that it was obvious that there was no harm to the floodplain as evidenced by the work performed 30 years ago and the present condition of the site.

Mr. Martin said that there was no illegal fill; everything was done legally pursuant to an approved plan; and, it was an existing condition that was correctly reviewed by Mr. Lacquement with the floodplain study, which was accurately reviewed and approved. Noting that the existing conditions showed that the floodplain was different than that of the USGS findings, Mr. Martin requested that the floodplain study be reinstated.

Mr. Lacquement responded to questions from Mr. Hart concerning drawings, notes, and specific areas of the site.

Valerie Tucker, Site Review, DPWES, and Mr. Lacquement further explained the staff notations and the bond's release.

Discussion ensued between Board members, Mr. Lacquement, and Don Demetrius, Chief, Stormwater Management Department, on issues regarding staff's position, the appellant's position, the matter of berms versus fill, the approval of certain permits, Board of Supervisors' approvals, former and current Zoning Ordinance language, staff's position that the site's sediment basin was allowed to remain, and whether the area was restored after the grading.

Mr. Byers referenced the December 31, 1992 letter from Melinda M. Artman, Deputy Zoning Administrator for Permit Plan Review Branch, that referred to a July 7, 1983 certificate of completion (CC0131-83) certifying that the County had inspected and reviewed the development, its use and plans, and approved them as meeting all the applicable codes and ordinances of the County. He pointed out that Ms. Artman's letter evidenced that there were no violations over the last several years and that she was unaware of any violations pending against the lot. Mr. Byers said that when the County inspected and approved something, the County could not come back some years later and admit to making a mistake. He said that he thought the citizens of the County must have respect for the integrity of the process, and he was concerned that what the County may have said was correct could 25 years later say it was not correct or could even call the issue into question.

Eileen McLane, Zoning Administrator, explained that at the time the December 31st letter was issued, all the available information staff had led to the determination that the property was in accordance with all applicable regulations. She said that since that time it had come to light that may not have been the case, and that was the issue before the Board. She said if the County made a mistake, that would not justify that it was right. The County must go back and remedy the situation, which was what staff sought to do.

Mr. Lacquement said staff had consistently referred to USGS topographies produced over the years, which predated the construction of Nutley Road and identified and mapped about 80 percent of the County's

floodplains. He said the fill was within the floodplain easement as well as within the original floodplain determined by the USGS. The USGS maps were adopted by the Board of Supervisors and put into the Code.

In response to a question from Mr. Hart regarding whether an appeal had been filed pertaining to the December 31st letter, Ms. Collins indicated that no appeal had been filed. Mr. Hart said asked whether that would then mean it was a thing decided since there had been no appeal. Ms. Stanfield said DPWES established floodplains, not the Zoning Administrator; however, the Zoning Administrator issued the notice of violation when aware of a violation after floodplain lines were established.

Mr. Martin said staff acknowledged that the USGS study was the sole record of the pre-Nutley development and now admitted to the inaccuracy of that survey. He said the survey must be currently inaccurate if it was inaccurate many years ago, and the area was not currently floodplain, nor had it ever been floodplain.

Mr. Lacquement said staff acknowledged an inaccuracy, but a lot of the topography used for computations was shot by aerial photogrammetry, which was recognized not to be as accurate as field-run topography. He explained accuracies as defined by percentages, contours, and measures by survey rods, as established by the National Mapping Accuracy Standard. He had not said the USGS study was completely inaccurate, but that field run methods were always more defined and tighter than aerial. Mr. Lacquement pointed out that the Board of Supervisors adopted the floodplain maps for 85 percent of the County based on the USGS elevations and the maps derived from them, and that was how the County regulated floodplains.

Mr. Lacquement responded to questions from Mr. Hammack concerning square footage of the fill site.

In response to a question from Ms. Gibb, Mr. Martin said the fill area was not within a floodplain; the appellant's floodplain study evidenced that; and, a recent Virginia Department of Transportation (VDOT) floodplain study marked a three-foot difference between the USGS and that of VDOT. He pointed out that there could be major discrepancies.

Ms. Stanfield clarified that the referenced study was not of the subject property.

Mr. Lacquement said it was not a comparative example. He said the issue was that no fill could be placed in a floodplain that allowed an increase in water surface, and nothing could increase the 100-year water surface on off-site properties above what it was prior to the fill being located there.

Susan Epstein, Zoning Enforcement Branch, said the notice of violation was issued from staff's information from USGS and the appellant's field and floodplain studies, DPWES determinations, and Zoning Enforcement observations, and she had not made a site visit.

Mr. Lacquement addressed Mr. Smith's question regarding curing the violation. He said the notice of violation laid out three alternatives, one of them being that if the amount of fill inside the floodplain was less than 278 cubic yards and there was no hydraulic impact, the applicant could apply to the Director of DPWES for approval. If the value was higher than 278 cubic yards, it would require a special exception from the Board of Supervisors.

Mr. Martin concurred with Mr. Byers that staff initially recommended approval of the special exception. Mr. Martin said that since the revocation of the special exception, staff had issued an addendum recommending denial. Mr. Byers asked whether it was correct that there had been no violations as of 1992, and up to the point the appellant appeared before the Planning Commission, staff had recommended approval. Mr. Martin said that was correct.

Andrew Hushour, Staff Coordinator, Zoning Evaluation Division, said he worked on the original rezoning and special exception and concurred that staff had initially recommended approval, having received input during the process from various agencies in order to formulate a position. He noted that staff's recommendation of approval was based on the study conducted by the Watershed Planning and Evaluation Branch of DPWES of the floodplain's re-delineation in October of 2006, but when the issue of the floodplain arose, the approval was revoked. The appellant's plan was then essentially proposing activities, construction, and site design within a floodplain, and without an approved study, staff did not support the application.

~ ~ ~ July 24, 2007, NUTLEY STREET, LLC, A 2007-PR-013, continued from Page 284

Chairman Ribble closed the public hearing.

Ms. Gibb moved to overturn the determination of the Zoning Administrator. She said she was concerned that many years prior a decision had been made, which was currently being overturned. Based on the testimony and facts presented, she said someone did not just put fill in a floodplain. The Board had testimony and exhibits from the land records and DPWES which showed that there were Fairfax County approved plans for sediment basins located in the disputed area, whether it was in the floodplain or not. The notes on the plat showed that they were to be removed prior to bond release, and the Board had testimony from the appellant's attorney that the sediment basins were removed to the natural state. The question remained whether what was left that was seeded was fill in the floodplain. Ms. Gibb said the Board had the December 31st letter from the Zoning Administrator which said she was unaware of any zoning problems, complaints, or violations with respect to the subject property, and there was a certificate of completion which said it had been issued upon completion of all required performance for use. She said the appellant had floodplain and RPA studies approved by Fairfax County, which were both older than 60 days, which the appellant relied upon and spent considerable sums of money in reliance by filing for a rezoning, and then became aware of the allegation that there was fill in the floodplain during the application process with the Planning Commission.

Mr. Beard seconded the motion, saying that he believed the appellant relied greatly on the County's information. He commended staff for its "by-the-book" approach and excellent job. However, he did believe there were extenuating circumstances, and although Mr. Lacquement's testimony was thorough, he did not think there were any environmental disasters.

Commenting that it was difficult to enforce decisions made many years prior and that he did not fault staff for its vigilance in this case because the floodplains must be protected, Mr. Hart said he did not take overturning the Zoning Administrator lightly, but the determination that there was illegal fill was procedurally barred, and the matter was satisfactorily rebutted by the appellant. The 1983 certificate from the Zoning Administrator that all was done properly was in the record as well as the 1992 determination of Melinda Artman, Deputy Zoning Administrator, that at the time of construction, everything was done properly, that there were no violations, that all was signed off on by the County, and whether right or wrong, both the Zoning and Deputy Zoning Administrator signed off that all was in order. He said he found the 2007 determination that there was a fill problem directly contradicted those implicit determinations. He noted the applicability of the 60-day rule and the revocation of the 2007 RPA and floodplain studies. He said an area on the drawings that depicted an access onto the site that appeared to evidence the special exception application would not have been approved if there were a problem, and it did not show the appellant had done anything wrong nor concealed anything leading up to the approvals. Mr. Hart said that based on the testimony and the record, he was persuaded the County found everything was done properly 20 or 30 years prior, and it was too late to go back. Mr. Hart stated he would support the motion.

The motion to overturn the determination of the Zoning Administrator carried by a vote of 7-0.

***** RECONSIDERATION GRANTED ON JULY 31, 2007 *****
***** NEW HEARING SCHEDULED FOR SEPTEMBER 18, 2007 *****

//

The meeting recessed at 12:12 p.m. and reconvened at 12:19 p.m.

//

~ ~ ~ July 24, 2007, 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

~ ~ ~ July 24, 2007, MICHAEL J. RYAN, A 2005-DR-030, continued from Page 285

12/13/05 at appl. req.) (Indefinitely deferred from 2/28/06) (from indef def)

Chairman Ribble noted that A 2005-DR-030 had been withdrawn.

//

~ ~ ~ July 24, 2007, 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, 7/19/05, and 12/20/05) (Indefinitely deferred from 2/14/06) (From indef. def.)

Chairman Ribble noted that the Board had received a letter requesting a deferral.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant had requested a deferral, which staff supported since the special permit application for the fence had been accepted and was scheduled for November 27, 2007.

Mr. Hammack noted that four of the ten cases on the agenda were being deferred for long lengths of time. He questioned whether the deferrals were in the same category where an appellant was applying for a special permit.

Ms. Stanfield confirmed that the cases were awaiting resolution of a special permit. In the Bratti case, the appellants had not responded to staff nor submitted additional information, and after the notice sign was posted, they then submitted the information, and the special permit application had been accepted. She noted that the other applicants had submitted their applications and had made efforts to get their special permit accepted and scheduled.

Mr. Hammack moved to defer A 2005-DR-009 to November 27, 2007, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of a 7-0.

//

~ ~ ~ July 24, 2007, 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) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred)

Chairman Ribble noted that A 2004-SP-025 had been administratively moved to December 4, 2007, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ July 24, 2007, 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.

~ ~ ~ July 24, 2007, MARC SEGUINOT, A 2004-PR-035, continued from Page 286

Providence District. Tax Map 59-3 ((7)) 45. (Notices not in order - Deferred from 1/11/05)
 (Decision deferred from 4/19/05 and 10/25/05) (Indefinitely deferred from 2/14/06)
 (Reactivated from indefinitely deferred) (Decision deferred from 6/12/07)

Chairman Ribble noted that A 2004-PR-035 had been deferred for decision only. He asked staff for comments.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, explained that the appellant repeatedly expressed interest in filing a special permit. She said the notice was old with a number of years transpiring with no action being taken towards an application for a special permit. Ms. Stanfield said staff recommended that the Board of Zoning Appeals uphold the Zoning Administrator.

Mr. Hart asked whether the appellant was aware the matter was scheduled for the current meeting. Ms. Stanfield said she had recently made repeated attempts to contact the appellant, but had been unable to reach him by telephone. She said a copy of the memorandum referencing the date of the hearing had been mailed to him, and she had advised him of the date of the hearing when she had last spoken to him in June.

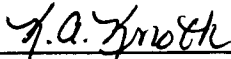
Mr. Smith moved to uphold the determination of the Zoning Administrator. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

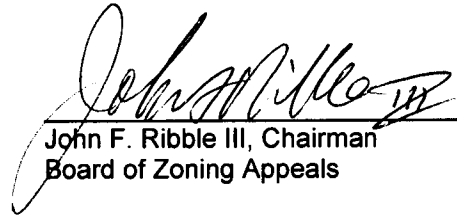
As there was no other business to come before the Board, the meeting was adjourned at 12:30 p.m.

Minutes by: Paula A. McFarland / Kathleen A. Knoth

Approved on: October 3, 2012



 Kathleen A. Knoth, Clerk
 Board of Zoning Appeals



 John F. Ribble III, Chairman
 Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 31, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ July 31, 2007, 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) (Continued from 11/28/06, 2/27/07 and 5/1/07)

Chairman Ribble noted that the applicants had requested a withdrawal of SP 2006-MA-004.

Mr. Hammack moved to accept the withdrawal of SP 2006-MA-004. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. MARK A. CHRISTMAS AND ELIZABETH B. POWELL, SP 2005-PR-032 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 storage structure to remain 6.2 ft. with eave 5.3 ft. from side lot line. Located at 7604 Maydan La. on approx. 26,927 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((9)) 15. (Admin. moved from 10/18/05 and 1/10/06 at appl. req.) (Indefinitely deferred from 2/14/06 at appl. req.) (Reactivated from indefinitely deferred)

Chairman Ribble called the applicants to the podium.

Mr. Hart gave a disclosure and recused himself from the hearing.

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

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

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

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said Mr. Christmas built the shed in 2002 and was unaware that he needed a building permit; the error had been made in good faith and occurred because the property abutted a higher density lot which affected the setback; and the shed was only visible from Lots 14 and 16, and could not be easily seen. Ms. Kelsey called the Board's attention to eight letters from the neighbors and a signed agreement regarding storage between the applicants and a neighbor, Robert Ullrich, which were included in the record.

Chairman Ribble called for speakers.

Robert Magruder, 2241 Senseney Lane, Falls Church, Virginia, came forward to speak in support of the application.

Paul Gauthier, Vanderpool, Frostick and Descheney, 9200 Church Street, Manassas, Virginia, came forward to speak in opposition to the application, representing Robert Ullrich, 2247 Providence Street, Falls Church, Virginia. Mr. Gauthier said his client's property was severely impacted by the shed. Mr. Gauthier called

~ ~ ~ July 31, 2007, MARK A. CHRISTMAS AND ELIZABETH B. POWELL, SP 2005-PR-032, continued from Page 289

attention to a petition in opposition signed by 19 neighboring property owners. He said his client had proposed development conditions to mitigate the impact on his property.

Mr. Beard, Mr. Hammack, Chairman Ribble, Mr. Gauthier, and Ms. Kelsey discussed the proposed development conditions; the location of the Ullrich residence; the outside storage of items on the subject property; the proposed landscaping; the visibility of the subject and a neighboring shed from Mr. Ullrich's property; the difficulty involved with relocating the shed; the existing trees and the topography of the property; and the signed petition.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2005-PR-032 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK A. CHRISTMAS AND ELIZABETH B. POWELL, SP 2005-PR-032 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 storage structure to remain 6.2 ft. with eave 5.3 ft. from side lot line. Located at 7604 Maydan La. on approx. 26,927 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((9)) 15. (Admin. moved from 10/18/05 and 1/10/06 at appl. req.) (Indefinitely deferred from 2/14/06 at appl. req.) (Reactivated from indefinitely deferred). Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2007; and

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

1. The applicants are the owners of the land.
2. The applicants meet all the criteria A through G associated with the mistake in building location.

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

~ ~ ~ July 31, 2007, MARK A. CHRISTMAS AND ELIZABETH B. POWELL, SP 2005-PR-032, continued from Page 290

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

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

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

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

1. This special permit is approved for the location of the shed, as shown on the plat prepared by Alexandria Surveys, International, LLC, dated April 22, 2005, as revised through May 9, 2005, submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the shed shall be diligently pursued and obtained within 90 days of final approval or this special permit shall be null and void.
3. The applicants shall not store any material or items behind any shed currently on the property. The applicants shall be allowed to continue to store neatly stacked firewood which currently exists on the property.
4. The applicants, in coordination with the County Arborist and with the County Arborist's approval, shall plant trees to screen Shed "A."
5. The applicants shall maintain the required landscaping in good condition and replace any dead or dying landscaping in the future.

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

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. JAMES NAPIER, SP 2004-LE-051 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 8.0 ft. from side lot line. Located at 7124 Lamar Dr. on approx. 21,781 sq. ft. of land zoned R-1. Lee District. Tax Map 90-4 ((4)) 9. (Admin. moved from 10/26/04 at appl. req.) (Indefinitely deferred from 4/5/05 at appl. req.) (Reactivated from indefinitely deferred)

Chairman Ribble called the applicant to the podium.

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

James Napier, 7124 Lamar Drive, Springfield, Virginia, reaffirmed the affidavit.

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

~ ~ ~ July 31, 2007, JAMES NAPIER, SP 2004-LE-051, continued from Page 291

Mr. Napier presented the special permit request as outlined in the statement of justification submitted with the application. He said the shed had been built in 1973, prior to the current Zoning Ordinance; he purchased his home in 1994 and was unaware that the shed was in violation; and his neighbors did not have a problem with the location of the shed.

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

Mr. Hart moved to approve SP 2004-LE-051 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES NAPIER, SP 2004-LE-051 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 8.0 ft. from side lot line. Located at 7124 Lamar Dr. on approx. 21,781 sq. ft. of land zoned R-1. Lee District. Tax Map 90-4 ((4)) 9. (Admin. moved from 10/26/04 at appl. req.) (Indefinitely deferred from 4/5/05 at appl. req.) (Reactivated from indefinitely deferred). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2007; and

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

1. The applicant is the owner of the land.
2. The shed has been there for approximately 34 years, apparently without complaint.
3. From the photographs, with the size of the landscaping around the shed, it does not seem that it would really significantly be bothering anyone.
4. The Board has received one letter in support and a representation that the other neighbor is in support as well.

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.

~ ~ ~ July 31, 2007, JAMES NAPIER, SP 2004-LE-051, continued from Page 292

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

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

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

1. This special permit is approved for the location of the shed, as shown on the plat prepared by Alexandria Surveys, Inc., dated September 22, 1994, as revised through August 18, 2004, submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the shed shall be diligently pursued 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 carried by a vote of 7-0.

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. PAUL KLEIN & BARBARA ELKIN, SP 2007-MV-043 Appl. under Sect(s) 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7.0 ft. from side lot line. Located at 6404 Tenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 20.

Chairman Ribble called the applicants to the podium.

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

Barbara Elkin and Paul Klein, 6404 Tenth Street, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-MV-043, subject to the proposed development conditions.

Ms. Elkin presented the special permit request as outlined in the statement of justification submitted with the application. She said this was the only location on the property where the porch could be built; the porch would be consistent with the surrounding neighborhood; there would be no adverse impact on the neighbors; and two letters of support had been submitted.

Mr. Hart, Ms. Langdon, and Ms. Elkin discussed whether the existing patio would be connected to the house. Ms. Elkin said she would move some of the stones to comply with the regulations so the patio did not touch the steps or the house.

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

Ms. Gibb moved to approve SP 2007-MV-043 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL KLEIN & BARBARA ELKIN, SP 2007-MV-043 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7.0 ft. from side lot line. Located at 6404 Tenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 20. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2007; 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 that they have complied with Standards 1 through 6 of the required standards of Sect. 8-922.
3. In their staff report, staff recommended approval of the application.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (288 square feet) of a screen porch addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 11, 2004, as revised through May 25, 2004, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,588 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Notwithstanding the proposed patio as depicted on the plat, the patio shall not be attached to the dwelling.
6. Prior to approval of a building permit, the applicants shall obtain a determination from the

~ ~ ~ July 31, 2007, PAUL KLEIN & BARBARA ELKIN, SP 2007-MV-043, continued from Page 294

Department of Public Works and Environmental Services (DPWES) that the proposed addition is a permitted use in the floodplain in accordance with Paragraph 8 of Section 2-903 of the Zoning Ordinance.

7. The addition shall comply with the current Chesapeake Bay Ordinance requirements. An exception for the addition shall be obtained, if necessary, from DPWES prior to construction.
6. Notwithstanding the height of the proposed screen porch addition as depicted on the plat, the height may increase to compensate for any increase in floor elevation as may be required by DPWES.
7. Prior to approval of a building permit, 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 addition within a floodplain area.
8. Disclosure of the Hold Harmless agreement and the fact that the addition is located 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.

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

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

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. JANE C. HILDER AND ROBERTON C. WILLIAMS, JR., SP 2007-LE-042 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 6.1 ft. from the side lot line. Located at 5707 Norton Rd. on approx. 12,192 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((12)) 7. (Admin. moved from 7/17/07 at appl. req.)

Chairman Ribble called the applicants to the podium.

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

Jane Hilder, 5707 Norton Road, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-LE-042, subject to the proposed development conditions.

Mr. Hart, Ms. Hilder, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed a drawing included in the staff report for an enlarged driveway and the yard coverage requirements.

Ms. Hilder presented the special permit request as outlined in the statement of justification submitted with the application. She said the house had been purchased in 1984, and the carport was not aesthetically pleasing, did not enhance the character of the neighborhood, and was a hazard due to the drop to ground level beside it.

~ ~ ~ July 31, 2007, JANE C. HILDER AND ROBERTON C. WILLIAMS, JR., SP 2007-LE-042, continued from Page 295

Mr. Hart, Ms. Hilder, and Ms. Langdon discussed the dimensions and the intended use of the garage, the location of the chimney within the garage, and relocation of the garage door.

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

Mr. Smith moved to approve SP 2007-LE-042 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JANE C. HILDER AND ROBERTON C. WILLIAMS, JR., SP 2007-LE-042 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 6.1 ft. from the side lot line. Located at 5707 Norton Rd. on approx. 12,192 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((12)) 7. (Admin. moved from 7/17/07 at appl. req.) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2007; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the application meets the requirements as outlined in the staff report in some detail.

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

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

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

~ ~ ~ July 31, 2007, JANE C. HILDER AND ROBERTON C. WILLIAMS, JR., SP 2007-LE-042, continued from Page 296

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the addition (two car garage with a one story addition above for a total of 836 square feet) and the brick patio, as shown on the plat prepared by Alexandria Surveys International, LLC, dated May 26, 2004, as revised through April 9, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,850 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-062 previously approved for church with a private school of general education, child care center, and nursery school to permit modification of development conditions. Located at 2516 Squirrel Hill Rd. on approx. 4.28 ac. of land zoned R-1. Hunter Mill District. Tax Map 15-4 ((1)) 27 and 28. (Decision deferred from 7/17/07 and 7/24/07)

Chairman Ribble noted that SPA 95-H-062-03 had been deferred for decision only.

Mr. Beard moved to approve SPA 95-H-062-03 for the reasons stated in the Resolution.

~ ~ ~ July 31, 2007, TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03, continued from Page 297

Mr. Hammack seconded the motion, but stated that the requirement in Condition 30 regarding 18-inch markers in an area where children would play could be a hazard. Mr. Smith said the markers should be at grade.

Mr. Byers stated that he could not support the motion for the following reasons: Fairfax County Historical Commission (FFHC) listed the Keyes House on the Fairfax County inventory of historical sites on November 6, 1985, prior to the original special permit; there was no evidence to support any change from the designation; there was language in the special permit to indicate the expectation that the house would be maintained; the applicants did not comply with the condition; and the Keyes House was the last remaining structural evidence of a once thriving 19th Century African American community in Fairfax County.

Mr. Hart and Mr. Smith discussed Condition 30, filling in the basement with dirt, and the material to be used for the markers.

Ms. Gibb, Mr. Beard, Mr. Hammack, and Mr. Byers all commented on the FFHC and the maintenance of the house. Those comments included: anyone could nominate a property to be historic; whether the financial burden of maintaining should fall on the owner; the FFHC had voted for the demolition; the church had a hardship maintaining the property; there were a number of organizations which could be approached to restore the building aside from the applicants; the church had promised to keep the house; and it was designated historic, and now was to be remove rather than maintained.

Mr. Hart asked whether the motion included Mr. Smith's change regarding the markers and his own change about filling in the basement with dirt, and it was determined both were included.

Mr. Ribble called for the vote. The motion failed by a vote of 3-2-2; therefore, the application was denied. Mr. Byers and Ms. Gibb voted against the motion. Mr. Hammack and Mr. Hart abstained from the vote.

Rev. Graham, Senior Pastor of the Mount Pleasant Baptist Church, asked if information had been provided to the Board about the church's attempts to preserve the house, because they had wanted to preserve it, had invested a lot of money trying to preserve it, but it reached a point that they could no longer preserve it. Ms. Gibbs said they had not.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-062 previously approved for church with a private school of general education, child care center, and nursery school to permit modification of development conditions. Located at 2516 Squirrel Hill Rd. on approx. 4.28 ac. of land zoned R-1. Hunter Mill District. Tax Map 15-4 ((1)) 27 and 28. (Decision deferred from 7/17/07 and 7/24/07) 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 31, 2007; and

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

1. The applicants are the owners of the land.
2. The Board has heard the case and determined that there was a developmental condition that needed expanded upon and has been resolved by the parties in addition to the previous developmental conditions.

~ ~ ~ July 31, 2007, TRUSTEES OF THE MOUNT PLEASANT BAPTIST CHURCH, SPA 95-H-062-03,
continued from Page 298

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

THAT the applicant has presented testimony indicating compliance with 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.

Mr. Hammack seconded the motion, which **FAILED*** by a vote of 3-2-2; **THEREFORE, THE APPLICATION WAS DENIED.** Mr. Byers and Ms. Gibb voted against the motion. Mr. Hammack and Mr. Hart abstained from the vote. Mr. Hart moved to waive the 12-month waiting period for refiling an application. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

*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.

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. ELLYN FINE, SP 2007-DR-049 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 8.5 ft. from the side lot line and second story addition 5.0 ft. from side lot line. Located at 6942 Spruce St. on approx. 6,000 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((19)) (J) 22.

Chairman Ribble called the applicant to the podium.

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

Ellyn Fine, 6942 Spruce Street, Falls Church, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-DR-049, subject to the proposed development conditions.

Ms. Fine presented the special permit request as outlined in the statement of justification submitted with the application. She said the addition was requested because the house was too small for their growing family. She said it would not overwhelm the property or have any adverse effects on the neighborhood, and no healthy mature trees would be removed. She said the modular process they had chosen would result in less on-site disruption to the neighbors. Ms. Fine introduced her architect, Lucy Adams, Pasteur Designs, 9303 Irving Street, Manassas, Virginia.

Mr. Hart, Ms. Fine, and Ms. Adams discussed how the modular components would be delivered to the back of the house with a crane and that some minor limbs may have to be trimmed, but no trees would be removed.

Mr. Hart asked if the owner of Lot 21 knew the tree next to the fence might be impacted by the proposed construction. Ms. Fine said her neighbor, Bill Wood, was aware of the impact.

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

Mr. Hammack moved to approve SP 2007-DR-049 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELLYN FINE, SP 2007-DR-049 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of

~ ~ ~ July 31, 2007, ELLYN FINE, SP 2007-DR-049, continued from Page 299

certain yard requirements to permit addition 8.5 ft. from the side lot line and second story addition 5.0 ft. from side lot line. Located at 6942 Spruce St. on approx. 6,000 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((19)) (J) 22. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2007; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the six required standards under Sect. 8-922 to submit 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). 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 additions (2,228 square foot two story and second story additions) as shown on the plat prepared by George M. O'Quinn dated February 1, 2007, as revised through May 15, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (1,824 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. A Certified Arborist shall be contracted to evaluate and make recommendations for the preservation of the existing trees to the rear of the proposed addition, including the tree on Lot 21 identified as "3' Tree". The recommendations of the Certified Arborist shall be followed regarding the preservation measures necessary to protect these trees during construction of the additions, including, but not limited to pruning, mulching, root pruning and installation of tree protection fencing. Any pruning of the branches, or other maintenance of the trees that may be required, should be done by a Certified Arborist.

This approval, 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,

~ ~ ~ July 31, 2007, ELLYN FINE, SP 2007-DR-049, continued from Page 300

thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

The Board recessed at 11:11 a.m. and reconvened at 11:18 a.m.

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. VINAYKUMAR B. AND TINA V. PATEL, SP 2007-SU-053 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit a reduction of certain yard requirements to permit construction of addition 20.7 ft. from rear lot line. Located at 13772 Henry Pond Ct. on approx. 10,798 sq. ft. of land zoned R-2. Sully District. Tax Map 44-4 ((17)) 38.

Chairman Ribble called the applicants to the podium.

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

Arif Hodzic, Hodzic Architects, PC, the applicants' agent, 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SU-053, subject to the proposed development conditions.

Mr. Hart asked if Parcel F was part of a park and whether the Park Authority knew about the application. Mr. Varga said it was, and Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Park Authority knew and had not commented on it.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said he had contacted the Park Authority, explained what they planned to do, and the Park Authority staff had not expressed any concern. Mr. Hodzic said there would be a small encroachment into the rear setback to enlarge the kitchen, and a screen porch would be added to enjoy the view of the parkland. In response to a question from Mr. Hammack, Mr. Hodzic said the elevation noted in Attachment 1 showed a stoop because the floor of the house was one foot higher than the grade outside.

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

Mr. Byers moved to approve SP 2007-SU-053 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VINAYKUMAR B. AND TINA V. PATEL, SP 2007-SU-053 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit a reduction of certain yard requirements to permit construction of addition 20.7 ft. from rear lot line. Located at 13772 Henry Pond Ct. on approx. 10,798 sq. ft. of land zoned R-2. Sully District. Tax Map 44-4 ((17)) 38. 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

~ ~ ~ July 31, 2007, VINAYKUMAR B. AND TINA V. PATEL, SP 2007-SU-053, continued from Page 301

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2007; and

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

1. The applicants are the owners of the land.
2. The Board made the determination that the application meets all the submission requirements set forth in Sect. 8-922.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 addition (303 square foot kitchen addition) as shown on the plat prepared by Patrick A. Eckert and revised by Arif H. Hodzic, and dated March 23, 2007, as revised through May 23, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,006 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. SUSAN P. JOSLYN, SP 2007-SP-055 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 17.4 ft. from side lot line. Located at 4804 Village Dr. on approx. 22,500 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((4)) 67.

Chairman Ribble called the applicant to the podium.

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

Arif Hodzic, Hodzic Architects, PC, the applicant's agent, 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SP-055, subject to the proposed development conditions.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant was not changing the roofline of the house, but wanted to enclose the area under it which was originally a carport and was presently used as a screened porch. He said the applicant had spoken to the neighbors, and they had expressed no objection. He noted a letter in support of the application had been submitted.

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

Mr. Hart moved to approve SP 2007-SP-055 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN P. JOSLYN, SP 2007-SP-055 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 17.4 ft. from side lot line. Located at 4804 Village Dr. on approx. 22,500 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((4)) 67. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2007; and

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

1. The applicant is the owner of the land.
2. The Board had a favorable staff recommendation.
3. The rationale in the staff report was adopted.
4. This is a relatively modest request to convert an existing screened porch into a breakfast room and an entryway.
5. The screened porch was an old carport that was screened in.
6. It is not going to be that much different from what has been there for many years already.
7. The Board also had a number of signatures from the adjacent neighbors or representations that certain neighbors have verbally consented.
8. There would not be any significant negative impact on anybody.
9. This is consistent with some of the other homes in the neighborhood.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special

~ ~ ~ July 31, 2007, SUSAN P. JOSLYN, SP 2007-SP-055, continued from Page 303

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 addition (328 square foot one story addition) as shown on the plat prepared by Patrick A. Eckert dated February 28, 2007, as revised through March 30, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (1,488 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. Prior to approval of a building permit, an Administrative Reduction shall be obtained from the Department of Planning and Zoning for the dwelling to remain 19.9 feet from the southern side lot line. If this approval as is not granted, the dwelling shall be brought into conformance with the Zoning Ordinance requirements.
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. Hammack and Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. JERRY A. GLASOW, SP 2007-MA-048 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 9.9 ft. from side lot line. Located at 6518 Spring Valley Dr. on approx. 29,820 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((7)) 61A; 72-3 ((5)) 62 and 62A.

Chairman Ribble called the applicant to the podium.

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

Jerry Glasow, 6528 Spring Valley Drive, Alexandria, Virginia, reaffirmed the affidavit.

~ ~ ~ July 31, 2007, JERRY A. GLASOW, SP 2007-MA-048, continued from Page 304

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-MA-048, subject to the proposed development conditions.

Mr. Glasow presented the special permit request as outlined in the statement of justification submitted with the application. He said the existing garage had been approved as an accessory structure in 1982, and the special permit was required to attach the garage to the house because the garage was 10 feet from the lot line.

Mr. Hart said the lot appeared to be less than 36,000 square feet with an accessory structure, a workshop, located in the front yard, and he asked why the structure had been allowed. Mr. Chase said a letter of interpretation had been sent to the applicant by the Zoning Administrator which allowed him to build the structure as long as it met the setback requirements because it was subordinate to the primary house.

Mr. Glasow explained that when the road was closed, half of it was vacated to one owner and the other half to another. He and his wife purchased all three parcels, the main lot and the two sub-lots that used to be the road. He said he had inquired prior to the purchase to determine if the two small parcels could be used to build a workshop, and County staff had determined that as long as the workshop was subordinate to the house in size and scope and the setbacks were met, the workshop could be built. He said he had been told that if the workshop was built across the lot lines, the entire property would be considered one piece, but it had not crossed into the primary house lot, so the two small parcels had become a single entity and was not considered part of the major parcel.

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

Ms. Gibb moved to approve SP 2007-MA-048 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JERRY A. GLASOW, SP 2007-MA-048 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 9.9 ft. from side lot line. Located at 6518 Spring Valley Dr. on approx. 29,820 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((7)) 61A; 72-3 ((5)) 62 and 62A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2007; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony that he meets the required Standards 1 through 6.
3. The Board had a staff report which 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). 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

~ ~ ~ July 31, 2007, JERRY A. GLASOW, SP 2007-MA-048, continued from Page 305

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 913 square feet) of the proposed garage and breezeway addition as shown on the plat prepared by Andrew V. Wyczalkowski Land Surveying, March 15, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,409 square feet existing) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings included Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:00 A.M. KAY SARGENT, SP 2007-MV-045 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8338 Bound Brook La. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 126.

Chairman Ribble called the applicant to the podium.

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

Kay Sargent, 8338 Bound Brook Lane, Alexandria, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-MV-045, subject to the proposed development conditions.

Ms. Sargent presented the special permit request as outlined in the statement of justification submitted with the application. She said she wanted to have an addition built in the rear of her home for her mother. It would have a separate entrance and also be connected internally for easy access; have a kitchen; and be ADA accessible.

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

Mr. Smith moved to approve SP 2007-MV-045 for the reasons stated in the Resolution.

//

~ ~ ~ July 31, 2007, KAY SARGENT, SP 2007-MV-045, continued from Page 306

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KAY SARGENT, SP 2007-MV-045 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8338 Bound Brook La. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 126. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2007; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-918 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, Kay Sargent, and is not transferable without further action of this Board, and is for the location indicated on the application, 8338 Bound Brook Lane (10,500 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 Dominion Surveyors, dated March 22, 2007 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and 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 518 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 or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued

~ ~ ~ July 31, 2007, KAY SARGENT, SP 2007-MV-045, continued from Page 307

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.

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

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:30 A.M. JAMES H. SCANLON, A 2007-BR-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the retrofitting of lenses on parking lot lighting fixtures located on the subject property would be in substantial conformance with the conditions of Special Permit Amendment 77-A-041-3. 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. (Admin moved from 7/10/07 at appl. req.)

Chairman Ribble called the appellant to the podium.

James Scanlon, 10512 Sideburn Court, Fairfax, Virginia, came forward.

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

Michael Congleton, Senior Deputy Zoning Administrator, Zoning Enforcement/Property Maintenance, presented staff's position as set forth in the staff report dated July 24, 2007. In August of 2005, Zoning Enforcement received a complaint regarding the lights at St. Mary of Sorrows Catholic Church on Sideburn Road. In December of 2005, the church was sent a notice of violation for non-compliance with the lighting standards as established in Condition 16 of SPA 77-A-041-3. In August of 2006, the church agreed to remove some of the glass chimneys from the lights and replace one of the four panels in each light with a frosted panel, which staff believed would make the church compliant with Condition 16. An appeal was filed by the appellant and heard by the Board; and the Board overturned the determination of the Zoning Administrator. In January of 2007, the church proposed to remove all the clear glass panels and replace them with frosted lenses in order to be compliant with Condition 16; staff concurred; and the appellant appealed that determination. Mr. Congleton said the County's position remained that the lights as proposed would meet the standard of Condition 16.

Mr. Reale, Senior Assistant to the Zoning Administrator, Zoning Administration Division came forward and explained the test methodology used to determine if the church's proposal would reduce light sufficiently to be compliant with Condition 16 and the results; stated that the data was consistent with a reduction of approximately 70 percent of the light emitted from the fixture with the frosted lenses; and changing all the clear panels to frosted ones would be in substantial conformance with the requirement of the development condition.

Mr. Hart, Mr. Byers, Mr. Beard and Mr. Reale discussed the type of fixtures used at the church versus other churches; the possibility of having a section of the lights modified in order for the board to make a determination; if the church should be required to bear the cost; and staff's belief that changing all the panels to frosted glass would put the fixtures in substantial conformance with Condition 16.

~ ~ ~ July 31, 2007, JAMES H. SCANLON, A 2007-BR-010, continued from Page 308

Mr. Scanlon presented the arguments forming the basis for the appeal. He said nothing had physically changed on the site since the Board had overturned the decision of the Zoning Administrator on December 5, 2006; the Zoning Administrator had approved the proposed changes on March 12, 2007; and he appealed that determine because he did not believe replacing panels in interior areas of the site would make any meaningful difference. He disagreed with staff that the development condition represented an unattainable absolute but it could not be achieved with the colonial style fixture installed at the church. Mr. Scanlon requested that the March 12, 2007 determination of the Zoning Administrator be overturned and the Board find that the fixtures, as installed, modified, and as proposed to be modified, would not be in substantial conformance with the conditions of the special permit. He also requested the church replace all colonial style fixtures with shoebox style fixtures, add glare shields to all fixtures within 150 feet of property lines, and the church agree to leave not more than 20 percent of all outside lighting on in the evening for more than one hour after the last scheduled evening activity.

Chairman Ribble called for speakers.

Lynn Strobel, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, came forward to speak on behalf of St. Mary of Sorrows Catholic Church. She stated that the standards for lighting and glare were set forth in the Zoning Ordinance; the Zoning Administration Division had the authority to interpret and implement the Ordinance; and they had determined that the existing church parking lot lighting, as well as what had been proposed, met the Zoning Ordinance and development condition requirements. Ms. Strobel asked the Board to consider the church's position and uphold the Zoning Administrator's decision.

Steven Turner, 10612 Zion Drive, Fairfax, Virginia, came forward to speak, and the oath was administered to him. Mr. Turner said he considered the lights to be obnoxious, the glare excessive, and the lights were not in compliance with the requirements set forth in Article 16 of the Zoning Ordinance.

Gerald O'Dell, 3920 Bradwater Street, Fairfax, Virginia, came forward to speak. Mr. O'Dell read from Condition 16 and said the requirements were impossible to fulfill and could not be reasonably imposed.

Mr. Hammack and Mr. Scanlon discussed the standard needed to overturn a decision; whether Mr. Scanlon had any evidence that Mr. Congleton's determination was incorrect; and whether the replacement of 150 lenses would bring the lighting into compliance.

Father Barkett, Pastor, St. Mary of Sorrows Catholic Church, came forward to speak, and the oath was administered to him. He said the church tried not to have all the lights on, but the lights were necessary for security; and they wanted to comply with the County's requirements, but were frustrated because they had not been told exactly what needed to be done.

Chairman Ribble closed the public hearing.

Mr. Hart moved that the Board of Zoning Appeals uphold the Zoning Administrator's determination that the retrofitting of lenses on the parking lot lighting would be in substantial conformance with the conditions of the special permit amendment. Mr. Smith seconded the motion.

Chairman Ribble called for the vote on the motion to uphold the Zoning Administrator's determination. The motion carried by a vote of 7-0.

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:30 A.M. SHERRY BROWN, A 2007-MV-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot located in the R-2 District in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11.

Chairman Ribble noted that A 2007-MV-015 had been administratively withdrawn.

//

~ ~ ~ July 31, 2007, Scheduled case of:

9:30 A.M. NVR, INC./NV HOMES C/O JERRY JOHNSON, A 2007-MV-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a septic field for Lot 24 of the Nirvana Palace Subdivision may not be located across the street on a new Outlot O under Zoning Ordinance provisions. Located at 9199 Marovelli Forest Dr. on approx. 55,000 sq. ft. of land zoned R-1. Mount Vernon District. Tax Map 106-4 ((7)) 24 and pt. E.

Chairman Ribble noted that A 2007-MV-016 had been administratively moved to October 30, 2007, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ July 31, 2007, After Agenda Item:

Request for Reconsideration
Nutley Street, L.L.C., A 2007-PR-013

Chairman Ribble referred to the July 30, 2007 memorandum from Eileen McLane, Zoning Administrator, requesting that the Board reconsider its decision on the appeal because it was contrary to the law and the Board failed to apply the Board adopted United States Geological Survey floodplain limits and the applicable provisions of the Zoning Ordinance to the facts in this case.

Mr. Hammack moved that the Board reconsider its decision in Nutley Street, LLC, A 2007-PR-013. Mr. Hart seconded the motion.

Mr. Hart, Ms. Gibb, and Mr. Smith discussed Ms. McLane's memorandum; Keith Martin's presentation; and the Board's decision and authority in the case.


Chairman Ribble called for the vote on the motion to reconsider its decision regarding A 2007-PR-013. The motion carried by a vote of 6-1. Ms. Gibb voted against the motion. The new hearing was set for September 18, 2007.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:39 p.m.

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

Approved on: September 24, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 7, 2007. The following Board Members were present: Chairman John F. Ribble III; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard and Nancy E. Gibb were absent from the meeting.

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

~ ~ ~ August 7, 2007, Scheduled case of:

9:00 A.M. STEPHANIE BOLLINI, SP 2007-HM-054 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 6.0 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line such that side yards total 20.4 ft. Located at 2222 Carmichael Dr. on approx. 15,278 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((20)) 22.

Chairman Ribble called the applicant to the podium.

Stephanie Bollini, 2222 Carmichael Drive, Vienna, Virginia, reaffirmed the affidavit.

At the direction of the Chairman, 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 approval to allow a reduction to minimum yard requirements based on an error in building location to permit an existing deck to remain 6.0 feet from the side lot line and to permit a reduction of certain yard requirements to allow construction of a two-car garage addition 5.0 feet from the side lot line such that side yards totaled 20.4 feet. The Zoning Ordinance requires a minimum side yard of 8.0 feet with a total of 24 feet; therefore, modifications of 2.0 feet, or 25 percent, for the deck; 3.0 feet, or 38 percent, for the addition; and 3.6 feet, or 15 percent, for the total side yards were requested. Staff recommended approval of SP 2007-HM-054 subject to the proposed development conditions.

Ms. Bollini presented the special permit request as outlined in the statement of justification submitted with the application. She said a carport, placed at a slight slant, had been added to the house, of which a previous owner enclosed to make it a garage; however, the foundation's slight slope was not corrected. Ms. Bollini said she hired a contractor to extend the garage for the needed storage space to house their minivan and store her children's toys. She had been recently advised that the house would soon have structural damage due to the constant pull from the garage. She noted that reconstructing the garage within the same footprint would meet setback requirements, but would not afford the additional storage space needed for her growing family. Ms. Bollini said the contractor she hired to build the deck had erroneously placed it within the setback, and the mistake was discovered during the garage survey, and to rebuild the deck was an unaffordable expense.

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

Mr. Hammack moved to approve SP 2007-HM-054 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHANIE BOLLINI, SP 2007-HM-054 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 6.0 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line such that side yards total 20.4 ft. Located at 2222 Carmichael Dr. on approx. 15,278 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((20)) 22. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ August 7, 2007, STEPHANIE BOLLINI, SP 2007-HM-054, continued from Page 311

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 7, 2007; 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.

Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, and 8-922, Provisions for Reduction of Certain Yard Requirements. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (two car garage for a total of 495 square feet) of addition and deck, as shown on the plat prepared by Dominion Surveyors Inc., dated February 5, 2007 as revised through April 25, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,614 square feet) regardless of whether such

~ ~ ~ August 7, 2007, STEPHANIE BOLLINI, SP 2007-HM-054, continued from Page 312

addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Tree protection fencing shall be installed prior to demolition/construction of the addition for the existing row of Leyland Cypress trees located on Lot 23. The fencing shall be installed as far outside the drip line of the trees as possible and shall remain in place until all construction is complete.

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

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

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

//

~ ~ ~ August 7, 2007, Scheduled case of:

9:00 A.M. WILLIAM J. FENNELL AND KATHERINE I. FENNELL, SP 2007-PR-058 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 22.8 ft. from rear lot line and 8.0 ft. from side lot line. Located at 2405 North Park Ct. on approx. 12,503 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((44)) 14.

Chairman Ribble called the applicants to the podium

Dennis Dixon, the applicants' agent, BC Consultants, Inc., 12600 Fairfax Circle, Suite 100, Fairfax, Virginia, reaffirmed the affidavit.

At the direction of the Chairman, 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 applicants requested a reduction to minimum yard requirements based on an error in building location to permit an addition to remain 8.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 4.0 feet, or 33 percent, was requested.

Ms. Hedrick responded to questions from Mr. Hart concerning the standards for latticework and plant hangers that were permissible under the Ordinance. She noted that a deck was considered an addition because of those amenities.

Mr. Dixon presented the special permit request as outlined in the statement of justification submitted with the application. He said before purchasing the property, the Fennells were informed that the deck was built in a wrong location, but went through with the purchase because they liked the house and neighborhood and would apply for a special permit to allow the deck to remain. Mr. Dixon said there were several letters given to the previous owner from neighbors who supported the deck, and they were included with the Fennells' statement of justification.

~ ~ ~ August 7, 2007, WILLIAM J. FENNELL AND KATHERINE I. FENNELL, SP 2007-PR-058, continued from Page 313

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

Mr. Byers moved to approve SP 2007-PR-058 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM J. FENNELL AND KATHERINE I. FENNELL, SP 2007-PR-058 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 22.8 ft. from rear lot line and 8.0 ft. from side lot line. Located at 2405 North Park Ct. on approx. 12,503 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((44)) 14. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 7, 2007; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the applicants met all the requirements, A through G, based on the mistake in building location.

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

~ ~ ~ August 7, 2007, WILLIAM J. FENNELL AND KATHERINE I. FENNELL, SP 2007-PR-058, continued from Page 314

unreasonable hardship upon the owner.

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

1. This special permit is approved for the location of the addition (deck with lattice enclosure and plant hanger), as shown on the plat prepared by BC Consultants dated May 29, 2007, as submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the addition (deck with lattice enclosure and plant hanger), shall be diligently pursued and obtained within 90 days of final approval or this special permit shall be null and void.
3. Prior to approval of a building permit, an Administrative Reduction shall be obtained from the Department of Planning and Zoning for the addition (deck with lattice enclosure and plant hanger) to remain 22.8 feet from the rear lot line. If this approval as is not granted, the deck shall be reduced in size to meet Zoning Ordinance requirements.

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

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

//

~ ~ ~ August 7, 2007, Scheduled case of:

9:00 A.M. HALEH MERRIKH, SP 2007-DR-051 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 1932 Kirby Rd. on approx. 18,613 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((1)) 50.

Chairman Ribble noted that SP 2007-DR-051 had been administratively moved to August 14, 2007, at 9:00 a.m., for notices.

//

~ ~ ~ August 7, 2007, Scheduled case of:

9:00 A.M. RICHARD P. KENNEY, SP 2007-SP-056 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line such that side yards total 15.7 ft. Located at 7309 Skibbereen Pl. on approx. 9,125 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 93.

Chairman Ribble called the applicant to the podium.

Richard P. Kenney, 7309 Skibbereen Place, Springfield, Virginia, reaffirmed the affidavit.

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. The applicant requested a reduction of certain yard requirements to permit an addition 6.0 feet from the side lot line such that side yards totaled 15.7 feet. The applicant proposed to enclose an existing carport for use as a garage. The carport was approximately 283 square feet in size. A minimum side yard of 8.0 feet and total side yards of 20 feet are required; therefore, reductions of 2.0 feet and 4.3 feet were requested. Staff recommended approval of SP 2007-SP-056 subject to the proposed development conditions.

~ ~ ~ August 7, 2007, RICHARD P. KENNEY, SP 2007-SP-056, continued from Page 315

Mr. Kenney presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to put up two walls and a door; that the existing carport had been built with the house, and that the proposal was harmonious with the neighborhood.

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

Mr. Hart moved to approve SP 2007-SP-056 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD P. KENNEY, SP 2007-SP-056 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line such that side yards total 15.7 ft. Located at 7309 Skibbereen Pl. on approx. 9,125 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 93. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 7, 2007; 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 rationale in the staff report is adopted.
4. This is an enclosure of an existing carport that already has a substantial roof and attic above it.
5. Based on the record before the Board, there would not be any significant 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). 8-922, Provisions for Reduction of Certain Yard Requirements, 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 (283 square foot garage) of the existing garage addition as shown on the plat prepared by Larry N. Scartz, dated April 6, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (2,500 existing square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions

~ ~ ~ August 7, 2007, RICHARD P. KENNEY, SP 2007-SP-056, continued from Page 316

that meet minimum requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to 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. Ms. Gibb and Mr. Beard were absent from the meeting.

//

~ ~ ~ August 7, 2007, Scheduled case of:

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

Chairman Ribble noted that SP 2007-LE-029 had been administratively moved to October 16, 2007, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ August 7, 2007, Scheduled case of:

9:00 A.M. CHARLOTTE MARIE BROWN, SP 2007-LE-059 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 26.7 ft. from front lot line of a corner lot. Located at 3401 and 3403 Collard St. on approx. 18,672 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 145 and 146.

Chairman Ribble called the applicant to the podium.

Charlotte M. Brown, 3401 Collard Street, Alexandria, Virginia, reaffirmed the affidavit.

At the direction of the Chairman, 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 as contained in the staff report. The applicant requested a reduction of certain yard requirements to permit removal of an existing addition and construction of a one-story addition with a basement 26.7 feet from the eastern front lot line of a corner lot. A minimum front yard of 35 feet is required; therefore, a reduction of 8.3 feet was requested. Staff recommended approval of SP 2007-LE-059 subject to the proposed development conditions.

Rebecca Bostick, architect of the project, 1819 Drury Lane, Alexandria, Virginia, said the existing one-story addition would be removed and an addition rebuilt in the same footprint to include a basement. Under the current Ordinance standards, because of the house's age, the existing addition was already within the setback; therefore, the requested addition would be within the front yard setback.

~ ~ ~ August 7, 2007, CHARLOTTE MARIE BROWN, SP 2007-LE-059, continued from Page 317

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

Mr. Smith moved to approve SP 2007-LE-059 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLOTTE MARIE BROWN, SP 2007-LE-059 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 26.7 ft. from front lot line of a corner lot. Located at 3401 and 3403 Collard St. on approx. 18,672 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 145 and 146. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 7, 2007; 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). 8-922, Provisions for Reduction of Certain Yard Requirements, 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 875 square feet) of the proposed addition as shown on the plat prepared by Dominion Surveyors, dated March 6, 2006, signed April 30, 2007, by Rebecca L.G. Bostick, for the proposed addition, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,490 square feet including the by-right addition) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings 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.

~ ~ ~ August 7, 2007, CHARLOTTE MARIE BROWN, SP 2007-LE-059, continued from Page 318

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

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

//

~ ~ ~ August 7, 2007, Scheduled case of:

9:30 A.M. GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ, A 2007-LE-014, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of the revocation of a Non-Residential Use Permit/Dance Permit for a dance floor accessory to an eating establishment for operating in violation of Zoning Ordinance provisions. Located at 6705 Springfield Mail on approx. 7,103 sq. ft. of land zoned C-7, H-C and SC. Lee District. Tax Map 90-2 ((13)) 5A1.

Chairman Ribble noted that A 2007-LE-014 had been administratively moved to August 14, 2007, at 9:30 a.m., for ads.

//

~ ~ ~ August 7, 2007, Scheduled case of:

9:30 A.M. 6121 COLUMBIA PIKE L.L.C., A 2007-MA-019, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard on property in the PDH-12 District in violation of Zoning Ordinance provisions. Located at 6121 Columbia Pi. on approx. 2.68 ac. of land zoned PDH-12 and H-C. Mason District. Tax Map 61-4 ((4)) 157

Chairman Ribble noted that A 2007-MA-019 had been administratively moved to October 16, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ August 7, 2007, Scheduled case of:

9:30 A.M. 6121 COLUMBIA PIKE L.L.C., A 2007-MA-020, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a motor vehicle storage and impoundment yard on property in the PDH-12 District in violation of Zoning Ordinance provisions. Located at 6121 Columbia Pi. on approx. 2.68 ac. of land zoned PDH-12 and H-C. Mason District. Tax Map 61-4 ((4)) 157.

Chairman Ribble noted that A 2007-MA-020 had been administratively moved to October 16, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ August 7, 2007, Scheduled case of:

9:30 A.M. SPRINGFIELD MASONIC LODGE 217 A.F. & A.M., A 2007-LE-017, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory storage structure without a valid building permit and is allowing the use of the property that is not in conformance with the limitations of Special Permit S-189-77 in violation of Zoning Ordinance provisions. Located at 7001 Backlick Rd. on approx. 1.45 ac.

~ ~ ~ August 7, 2007, SPRINGFIELD MASONIC LODGE 217 A.F. & A.M., A 2007-LE-017, continued from Page 319

of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19.

Chairman Ribble noted that A 2007-LE-017 had been administratively moved to November 11, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ August 7, 2007, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, L.L.C., A 2007-DR-018, 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.

Chairman Ribble noted that A 2007-DR-018 had been administratively moved to September 25, 2007, at 9:30 a.m., at the appellant's request, and subsequently had been withdrawn.

//

~ ~ ~ August 7, 2007, After Agenda Item:

Request for Intent to Defer
Great Latin Restaurants, L.C. T/A Cerro Grande Café, A 2007-LE-014

Chairman Ribble said that the Board had received a request for an intent to defer A 2007-LE-014 as noted in the August 1, 2007 letter from the appellant's counsel.

Douglas McKinley, the appellant's agent, McKinley & Bornmann, PLC, 100 North Pitt Street, Suite 201, Alexandria, Virginia, requested a deferral. He said the hearing, which was originally scheduled for August 7, 2007, had been rescheduled without notice to August 14th. On July 20th a voicemail from the County had been left to inform him of the change, but it was retrieved July 27th upon his return from a trip out of the country. He had been previously scheduled to be in a bankruptcy court August 14th and would not be present for the rescheduled Board of Zoning Appeals (BZA) hearing due to his scheduling conflict. Mr. McKinley requested that the Board reschedule the public hearing in fairness to the appellant.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, said staff did not support the deferral request. In 2005, the appellant was operating a dance hall with a dance floor of 700 square feet and was advised by staff that a special permit was required for a dance floor of that size. Staff had offered their assistance with the special permit process. Ms. Collins said the appellant chose not to seek a special permit, but had promised to reduce the size of the dance floor, which had not been done. Since 2005, Fairfax County Police had been called to the establishment over 50 times for criminal and misdemeanor activities, including large fights, malicious wounding by security guards, vehicle tampering, counterfeiting, and drunk and disorderly conduct. Ms. Collins said a police captain was present to speak to the matter. A letter from the manager of Springfield Mall stated that the appellant frequently had over 200 patrons on the dance floor after 10:00 p.m., and the appellant's security guards were armed with dangerous weapons, which directly violated their lease. Staff had received letters from neighboring homeowners and from Springfield Mall management stating they did not support any type of dance hall on the property and requested the BZA uphold the Zoning Administrator. Ms. Collins noted that there had been an advertising error regarding the tax map number for the August 7th hearing, but the appellant also listed the wrong tax map number on his application.

Ms. Collins responded to questions from Mr. Hammack concerning how the tax map error could have occurred, noting there were a number of individual parcels located within the Springfield Mall property, and only after a site visit was the mistake discovered.

Discussion followed between Ms. Collins and Mr. Hart regarding the public hearing's rescheduling, the legal

~ ~ ~ August 7, 2007, After Agenda Items, continued from Page 320

advertisement, timeframe of when staff had informed Mr. McKinley of the schedule change, and culpability for the error in the advertisement which resulted in the change in schedule.

In response to a question from Mr. Hart regarding whether re-advertising was necessary for a deferral or an intent to defer was sufficient, Susan Langdon, Chief, Special Permit and Variance Branch, said the Board could issue an intent to defer, but the deferral could not actually be approved until the date the hearing was currently scheduled, August 14, 2007, and it would have to be re-advertised.

Chairman Ribble called for speakers to address the question of a deferral.

Captain Maggie DeBoard, Commander of the Franconia District Police Station, came forward to speak. She said Springfield Mall, including the Cerro Grande Café, fell within her district, and as police commander for two and a half years, there were significant problems generated from the restaurant's late night activity involving the dance floor, the music, and afterhours entertainment. The activities were a continued concern which warranted large-scale police response that drained the district's resources, and there were safety issues for the officers, the neighboring residences, and even other locations because of reduced police availability due to the large increase of manpower coverage necessary at the restaurant's site. Captain DeBoard said her continued concerns were the length of time to resolve the matter, the required continued police monitoring, and safety concerns for her officers, people in the establishment, and citizens in the area.

Chairman Ribble asked whether officers were stationed at the restaurant around closing time. Captain DeBoard said there were two permanent officers assigned to the mall during the operating hours of the mall itself, who worked until approximately 10:00 p.m. She said that when late night activities at the restaurant were occurring, it usually required her to supply eight to ten officers to sit in the area until approximately 2:00 a.m. because when patrons exited the establishment, there were typically fights and other problems. She said the restaurant was the only business at the mall that was open past 10:00 p.m.

In response to a question from Mr. Byers regarding the restaurant's armed guards, Captain DeBoard said she had recently been informed by the mall that the restaurant had retained armed security guards, which raised issues with the mall management. She said that in the past any security guards on the restaurant property had not been sufficient to deal with the problems. They were typically hired to deal with problems inside the establishment, and the problems which had occurred typically happened when people exited at the end of the evening.

Mr. Hammack asked how long Captain DeBoard had been working with zoning regarding the restaurant. She said she and zoning had been constantly working together on the matter for approximately one and a half years.

Responding to a question from Mr. Hammack, Michael R. Congleton, Senior Deputy Zoning Administrator, Zoning Administration Division, explained the timeline and reasons for the revocation of the non-residential use permit. He noted that staff engaged in numerous meetings with the appellant to clarify what was and was not permitted, and he had offered to assist the appellant in applying for the necessary permits. He said staff was continually assured that the appellant would abide by the rules and regulations and fully understood what the requirements were; however, the operators of the establishment continued to violate the Zoning Ordinance. Mr. Congleton said that because the situation presented a continuing danger to the public and public safety personnel, he felt a deferral of the issue until September would put the public at risk, and he urged the BZA to go forward with the hearing on August 14, 2007. He suggested that the BZA ask Mr. McKinley and his client to refrain from the dance hall activity until the appeal was heard if the BZA decided a deferral was appropriate.

In response to a question from Mr. Hart, Ms. Langdon said explained the general overview of the case scheduling process and the reason for the appeal's scheduled date.

Mr. Congleton addressed Mr. Hart's comments concerning the selection of the public hearing dates for the Cerro Grande Café, and the continuation of the activities that warranted a resolution of the matter. He said that if Mr. McKinley and his client agreed not to hold dance hall events in the interim, staff would have no objection to the appeal being deferred until September. He added that staff appreciated the Board's consideration to move up those appeals that dealt with public safety.

~ ~ ~ August 7, 2007, After Agenda Items, continued from Page 321

Addressing a question from Mr. Hammack, Mr. McKinley said the police activity on record was inflammatory, inaccurate, false, and had been tossed out by a prosecutor. Mr. McKinley listed noteworthy events, timeframes of actions and activities, staff's and Springfield Mall's involvement, his client's procedural actions, ensuing legal actions, and the appellant's position on the basis for the appeal and the County's actions as the reasons for his client not agreeing to discontinue the use until after a public hearing. Mr. McKinley said that if Mr. Congleton wanted to make the certification to the Board regarding a certificate of stay under Virginia Code 15.2-2311B, he should do so.

Mr. Hammack said the evidence submitted had been contested, and there were a number of concerns by the Zoning Administrator who cited 51 police calls over a two-year history of the site. It was the Zoning Administrator's position that those reasons warranted a denial. Mr. Hammack said a reason to defer the hearing was because of the scheduling conflict of the appellant's agent; however, he was concerned that a notice of violation or revocation could have been issued earlier if there was such danger to the public. Mr. Hammack said all the facts were not known, but he thought if the situation were ongoing for two years, it was a little disingenuous to argue that a one-month continuance was a huge threat to public safety. He noted that a Code section seemed to allow the Zoning Department to take a position in writing that there was a threat to public safety, but the Zoning Department seemed unwilling to do that. From personal experience, he knew the difficulty of obtaining a continuance in a bankruptcy court, and he thought it was staff's mistake that the notifications were inaccurate.

Mr. Hammack moved to approve the request for an intent to defer A 2007-LE-014 to September 11, 2007, at 9:30 a.m., at the appellant's request. Mr. Hart seconded the motion.

Mr. Byers said he would not support a deferral. He said staff's typical procedure when citing a violation was to work with whoever was doing the violation and offer help to resolve the issues. Mr. Byers said that from Mr. Congleton's statements, there were a number of communications with the appellant and his attorney over a period of time, and he understood why the matter could reach the point of a grave situation. The situation had not begun on day one, as there were not 51 police calls on day one. It was a continuum, which Mr. Byers said he had concern about, and he thought there were multiply opportunities for the appellant to meet his obligations over the period of time, yet it was not done. Mr. Byers voiced his position on the difficulty getting in contact with Mr. McKinley. He stated that during his two years on the Board, he could not recall ever having a station commander come before the Board, and he was concerned that there were armed people involved. In his judgment, the County's public safety personnel and its residents were continually put at risk. Mr. Byers stated that the matter needed to be decided sooner rather than later, and he thought the matter should be deferred to the professional judgment of zoning staff and the police officers.

Mr. Hart said he felt Mr. McKinley had done nothing wrong with respect to the scheduling, and he suggested the appeal be listed last on the August 14, 2007 agenda and perhaps Mr. McKinley would be able to attend at that time, and the question of whether to defer or not could be revisited.

Mr. Congleton said he concurred with Mr. Byers' recollection of the facts. He had met with the appellant in his office, provided them with a special permit application, discussed the issue, and the appellant decided not to pursue a special permit and would operate within the regulations of the current Zoning Ordinance.

Mr. McKinley stated that he had never been in Mr. Congleton's office. He said Mr. Congleton may have been referring to a meeting which took place prior to the change in ownership which had occurred since the matter started, but he thought it was wrong to make factual determinations based on representations when the appellant was just requesting a deferral.

Mr. Congleton said Mr. McKinley was not the appellant's attorney at the time of the meeting to which he had referred; however, the principals involved in 2005 were the same principals currently. At the time of the meeting, the appellant was not represented by counsel.

Discussion ensued regarding the continuance of the appeal, the appellant ceasing all activities determined illegal by staff or contrary to the appellant's lease, the permitted activities, and the problems occurring after the restaurant closed.

Mr. Congleton said staff had considered certifying that the operation was a threat to public safety, but the only issue in the appeal was the dancing without a dance permit, which had not been disputed by the

~ ~ ~ August 7, 2007, After Agenda Items, continued from Page 322

appellant. If the dancing in the facility was directly causing the incidents, he would have sought a certification, but it was the patrons entering and leaving the facility that caused the problems. He said he could not say there was a direct relationship between the issuance of a dance hall permit and the incidents, so he had to look at the overall operation.

Mr. Hammack asked whether there would still be people exiting the building at 2:00 a.m., being disruptive, and draining the commander's resources if the restaurant reduced the dance floor to the allowed 403 feet. Mr. Congleton replied affirmatively; however, he said if the facility closed at the time shown in its lease, he did not think the situation would be the same. Mr. Hammack asked whether a violation of the lease was a private matter between the landlord and the tenant and how Zoning Enforcement came into that. Mr. Congleton said that was correct, but his concern was that the patronage of the facility based on the nightclub use, not the eating establishment use, was causing severe public safety problems. He said the restaurant was not in violation of the Zoning Ordinance for staying open until 2:00 a.m., but was in violation for operating a dance hall without a special permit from the BZA and operating without a dance permit issued by the Zoning Administrator.

Chairman Ribble noted that there was a motion on the floor. Mr. Hart made a substitute motion to table Mr. Hammack's motion until August 14, 2007. Mr. Byers seconded the motion.

Mr. Hart said he thought the best plan was for the BZA to be flexible and try to wait for Mr. McKinley to arrive on August 14th, and if it ended up being impossible for Mr. McKinley to be present, a vote could be taken on Mr. Hammack's motion at that point.

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

//

~ ~ ~ August 7, 2007, After Agenda Item:

Request for Reconsideration
Trustees of the Mount Pleasant Baptist Church, SPA 95-H-062-03

Chairman Ribble noted that the Board had received a request for reconsideration regarding SPA 95-H-062-03.

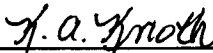
No motion was made; therefore, the request for reconsideration was denied.

//

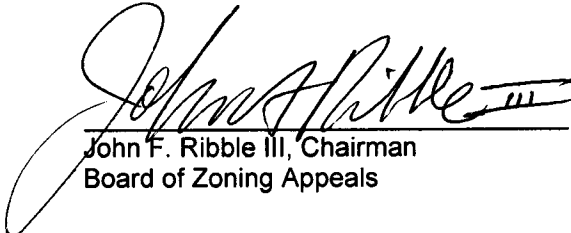
As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

Minutes by: Paula A. McFarland

Approved on: July 18, 2012



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 14, 2007. The following Board Members were present: Chairman John F. Ribble III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard and Thomas Smith were absent from the meeting.

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

~ ~ ~ August 14, 2007, Scheduled case of:

9:00 A.M. JOHN N. NASSIKAS, SP 2007-DR-061 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in a front yard. Located at 6115 Ramshorn Pl. on approx. 1.35 ac. of land zoned R-2. Dranesville District. Tax Map 31-2 ((5)) A.

Chairman Ribble called the applicant to the podium.

John Nassikas, 6115 Ramshorn Place, McLean, Virginia, reaffirmed the affidavit.

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

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

Mr. Hart, Ms. Hedrick, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the location of the subject fence and a fence on an adjacent parcel.

Mr. Nassikas presented the special permit request as outlined in the statement of justification submitted with the application. He said the fence, which was attractive and provided privacy, had originally been built at seven feet in height to replace a deteriorated six-foot high fence, but had since been reduced to six feet. Mr. Nassikas said he had the overall support of the neighborhood, with a couple exceptions. He agreed with the proposed development conditions. He said the outlet road, which he owned, maintained, and paid taxes on, was part of Parcel A.

Mr. Hart, Ms. Langdon, Mr. Nassikas, and Bruce Miller, Zoning Enforcement Branch, discussed the plat, surveying of the property, and the location and height of the fence for which the application had been submitted and the neighbor's fence. Ms. Langdon stated that staff had a condition that said "as per what is shown on the plat," and regardless of the note on the plat that indicated the plat was not to be used for the construction of fences, staff was conditioning the existing fence as it was shown on the plat. She said the applicant would be held to whatever was in the development conditions.

At Chairman Ribble's request, Ms. Hedrick provided a copy of the deed to the Board.

Chairman Ribble called for speakers.

Julie Andre, 1225 Somerset Drive, McLean, Virginia, came forward to speak in opposition to the application. She said the new fence was not located in the same place as the previous one. Ms. Andre said the area where the fence now extended had always been open space, and the fence blocked access to people in the neighborhood, subjecting them to the dangers of rush hour traffic. She questioned whether the applicant owned any of the three strips of land and said a petition in protest had been signed by 12 neighbors bordering the applicant's property.

Mr. Hart, Ms. Gibb, Chairman Ribble, and Ms. Hedrick discussed the deeds, deed book entries, and the discrepancies in the records; the applicant's ownership of the property; and the previous appeal from the applicant heard by the Board in 2005.

In answer to questions from Chairman Ribble, Ms. Andre stated that she did not own any fee title to the 10-foot outlet road; however, Lot 32 adjoined it, and there was a 100-foot shared boundary with a 10-foot outlet road. Ms. Andre said that since that strip had been open for the last 100 years, she assumed she had the right to use it, but there was nothing in her deed that indicated she had a right to do so.

~ ~ ~ August 14, 2007, JOHN N. NASSIKAS, SP 2007-DR-061, continued from Page 325

In his rebuttal statement, Mr. Nassikas said that the neighbor who owned Lot 31, which was the most contiguous fence line to his, had objected to the height. He had spoken to that neighbor, who indicated that if the fence was reduced to six feet, he would have no issue. Mr. Nassikas said that despite Ms. Andre's indication that there had been a petition signed by 12 of his neighbors, it was not related to the special permit application. He said he and his family had maintained the outlet road since purchasing the property in 2001. Mr. Nassikas stated that the neighbors bordered the road with their own fences that extended to Merchant Lane, and if they did not have a fence, they recognized that portion was his property.

Ms. Gibb said the deed the Board had a copy of said together with a 10-foot outlet road. The deed from William Merchant to Elmer and Mae Seaton was for the 13 acres, which was where the parcel came from, and it referenced conveying a road 10 feet wide.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-DR-061 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN N. NASSIKAS, SP 2007-DR-061 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in a front yard. Located at 6115 Ramshorn Pl. on approx. 1.35 ac. of land zoned R-2. Dranesville District. Tax Map 31-2 ((5)) A. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 14, 2007; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 1.35 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. 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated May 24, 2007, as submitted with this application and is not transferable to other land. Notwithstanding anything to the contrary on the plat, the deed book reference should be Deed Book 494, Page 494.
2. The 6.0 foot high fence shall not extend north of the corner of Lots 31 and 32.

This approval, 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 4-0. Mr. Hammack was not present for the vote.

~ ~ ~ August 14, 2007, JOHN N. NASSIKAS, SP 2007-DR-061, continued from Page 326

Mr. Beard and Mr. Smith were absent from the meeting.

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:00 A.M. DANIEL G. & CYNTHIA L. TAYLOR, SP 2007-SP-065 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 6.2 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 17.0 ft. from rear lot line. Located at 9510 Tinker Ct. on approx. 10,116 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((11)) 39.

Chairman Ribble called the applicants to the podium.

Daniel Taylor, 9510 Tinker Court, Burke, Virginia, reaffirmed the affidavit.

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

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SP-065, subject to the proposed development conditions.

Mr. Taylor presented the special permit request as outlined in the statement of justification submitted with the application. He said the storage shed was there when they moved in. The addition would enclose an existing two-tiered deck at the rear of the house to make it a three-season room for additional living space to enjoy the outdoors without insects.

Mr. Hart, Chairman Ribble, and Mr. Taylor discussed the basketball hoop located in the front of the house, the flags displayed on the property, and that the shed had no electrical outlets.

Referring to Condition 5, Mr. Byers asked why staff was now asking for a water quality impact assessment. Ms. Hedrick indicated that it was being done at the request of the Department of Public Works and Environmental Services (DPWES). The assessment was requested because the structure was being constructed within a resource protection area, and although it was considered redevelopment, DPWES was requiring that the applicant provide the assessment.

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

Mr. Hart moved to approve SP 2007-SP-065 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL G. & CYNTHIA L. TAYLOR, SP 2007-SP-065 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 6.2 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 17.0 ft. from rear lot line. Located at 9510 Tinker Ct. on approx. 10,116 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((11)) 39. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 14, 2007; and

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

1. The applicants are the owners of the land.
2. The Board had a staff recommendation of approval.
3. The rationale in the staff report is adopted.
4. This was a very slight addition that is up in the air over an existing deck.
5. There would not be significant negative impact on anybody.
6. The shed has been in its location apparently for a number of years without complaint.
7. From the photographs, the shed appears to be consistent with the neighborhood and concealed by the landscaping.
8. The application meets all the submission requirements set forth in Sect. 8-922 and as contained in the standard motion.

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

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

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

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

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

1. These conditions shall be recorded by the applicants among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the addition (one story addition on posts, with existing lower level deck underneath for a total of 256 square feet), and accessory storage structure, as shown on the plat prepared by Alexandria Surveys International, LLC, dated April 4, 2007, as submitted with this application and is not transferable to other land.

~ ~ ~ August 14, 2007, DANIEL G. & CYNTHIA L. TAYLOR, SP 2007-SP-065, continued from Page 328

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,500 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to approval of a building permit, the applicants shall submit and have approved by the Department of Public Works and Environmental Services (DPWES) a Water Quality Impact Assessment.

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

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

Mr. Byers seconded the motion, which carried by a vote of 4-0-1. Mr. Hammack abstained from the vote. Mr. Beard and Mr. Smith were absent from the meeting.

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:00 A.M. HALEH MERRIKH, SP 2007-DR-051 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 1932 Kirby Rd. on approx. 18,613 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((1)) 50. (Admin. moved from 8/7/07 for notices)

Chairman Ribble called the applicant to the podium.

Hoosein Salek-Nejad, 1932 Kirby Road, McLean, Virginia, the applicant's husband and agent, reaffirmed the affidavit.

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

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Based upon traffic, parking, and safety issues, staff recommended denial of SP 2007-DR-051.

Ms. Gibb, Mr. Hammack, Mr. Varga, Susan Langdon, Chief, Special Permit and Variance Branch, and Michael Davis, Fairfax County Department of Transportation, discussed the changes the approval of the application would allow; the manhole cover, stormwater inlets, curb inlet racks, and stormwater easement running through the backyard, which was not shown on the plat, but had not been vacated; the safety issues in the play area; the traffic issues and whether a left-turn lane on Kirby Road was warranted as a result of the traffic from the facility; the sight distance issues resulting from pillars on the subject property, foliage on an adjacent property, the curved and downhill slope of the road, and insufficient space in the driveway to maneuver to safely enter and exit; and inadequate parking.

Mr. Salek-Nejad presented the special permit request as outlined in the statement of justification submitted

~ ~ ~ August 14, 2007, HALEH MERRIKH, SP 2007-DR-051, continued from Page 329

with the application. He said the stormwater easement was covered with grass, and the only exposed parts were the concrete and metal on top of the inlets. The inlets were only three and a half inches wide, and no child could go through them. He said the inlets belonged to the County, but if the Board agreed, he would install a fence around the inlets to enclose them. Mr. Salek-Nejad said the corner of Kirby Road and Barbee Street was wide enough to accommodate traffic from the property, and the driveway had been widened and could easily accommodate six cars. In answer to Ms. Gibb's question, Mr. Salek-Nejad said his two children lived in the home, and he and his wife were not currently operating a daycare facility.

Mr. Hart and Mr. Salek-Nejad discussed the changes that had been made to the driveway, how the vehicles would maneuver in the driveway to exit, the suggestion of a right-turn only sign to require exiting cars to only turn right onto Kirby Road, and cars parked in the driveway would not block access to the garage.

Mr. Hammack and Mr. Salek-Nejad discussed the letters received in opposition to the application, with Mr. Salek-Nejad stating that he had no intention of running any business from the house other than the daycare facility, and he met the people he dealt with as a real estate investor at their offices.

Chairman Ribble called for speakers.

The following speakers came forward to speak in opposition to the application: Andrew Ryman, 1913 Barbee Street, McLean, Virginia; and Tracie Peschke, 1903 Barbee Street, McLean, Virginia. They voiced the following concerns: there was no shortage of daycare in McLean; the proposed changes were not harmonious with the neighborhood; traffic, parking, and safety issues; the negative noise impact from the children; and, drainage, safety, and insect infestation issues concerning the culverts. Ms. Peschke submitted a letter for the record on behalf of Molly de Marcellus dated August 8, 2007.

In his rebuttal, Mr. Salek-Nejad said Ms. Peschke's comment that Ms. De Marcellus could not be present at the hearing because of daycare problems confirmed his statement that childcare was needed in the neighborhood. He said Mr. Ryman's comment that there were several available daycare facilities within a one-mile radius of his home was inaccurate. Mr. Salek-Nejad said the only place they could find that had openings to care for his children was 25 minutes away from their home. With respect to Ms. Peschke's comment about notifying the neighbors of the plans, he said all abutting property owners had been advised by certified mail, and he had provided the receipts to staff as indicated in the regulations.

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

Ms. Gibb moved to deny SP 2007-DR-051 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HALEH MERRIKH, SP 2007-DR-051 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 1932 Kirby Rd. on approx. 18,613 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((1)) 50. (Admin. moved from 8/7/07 for notices). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 14, 2007; and

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

1. The applicant is the owner of the land.
2. The applicant did not meet the required standards for a special permit under the circumstances based on the staff report and the transportation analysis of the site access.

~ ~ ~ August 14, 2007, HALEH MERRIKH, SP 2007-DR-051, continued from Page 330

3. The stormwater inlets issue could be resolved.
4. The onsite parking could probably be resolved.
5. There is discomfort about Kirby Road and many cars trying to maneuver in and out.
6. The present application is not sufficient.

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. 3-303 of the Zoning Ordinance.

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

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

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:00 A.M. OLD DOMINION BASEBALL/SOFTBALL TRAINING, LLC D/B/A FROZEN ROPES, SP 2007-SU-060 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a commercial recreational facility. Located at 4080 Walney Rd. on approx. 4.46 ac. of land zoned I-5 and HC. Sully District. Tax Map 34-4 ((11)) A5.

Chairman Ribble called the applicant to the podium.

Michelle Rosati, Holland & Knight LLP, 1600 Tysons Boulevard, McLean, Virginia, the applicant's agent, reaffirmed the affidavit.

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

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SU-060, subject to the proposed development conditions.

Mr. Hart, Mr. Varga, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed signage, with Mr. Varga saying staff had not proposed a development conditions regarding signage; however, the applicant would be subject to the requirements in the Zoning Ordinance.

Ms. Rosati presented the special permit request as outlined in the statement of justification submitted with the application. She said the application was for an indoor baseball and softball training facility intended for children from a very young age to approximately 18. The center would be used for teaching biomechanics, video analysis, sports psychology, strength training and conditioning, individualized coaching and training, and would contain indoor batting cages. Ms. Rosati said Frozen Ropes was one of 36 franchises throughout the United States, the operating hours were limited, and a maximum of five employees and 31 children would be on site at any one time. She said there was no direct access to Walney Road, and access would be off Westmore Street. Ms. Rosati said the proposal had been presented to the Sully District Land Use Committee and been well received.

In answer to Mr. Hart's question, Mr. Byers said the name Frozen Ropes referred to a line drive hit very hard.

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

Mr. Byers moved to approve SP 2007-SU-060 for the reasons stated in the Resolution.

//

~ ~ ~ August 14, 2007, OLD DOMINION BASEBALL/SOFTBALL TRAINING, LLC D/B/A FROZEN ROPES, SP 2007-SU-060, continued from Page 331

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

OLD DOMINION BASEBALL/SOFTBALL TRAINING, LLC D/B/A FROZEN ROPES, SP 2007-SU-060 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a commercial recreational facility. Located at 4080 Walney Rd. on approx. 4.46 ac. of land zoned I-5 and HC. Sully District. Tax Map 34-4 ((11)) A5. 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 14, 2007; and

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

1. The present zoning is I-5/HC.
2. The area of the lot is 4.46 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. 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 only, Old Dominion Baseball/Softball Training, LLC, d/b/a Frozen Ropes and is not transferable without further action of this Board, and is for the location indicated on the application, 4080 Walney 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 Harold A. Logan dated March 1, 2007, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. 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 square footage associated with the use shall be limited to 12,000 square feet.
6. The maximum number of patrons shall not exceed 30 at any time.
7. The maximum number of employees on site shall not exceed 5 at any time.
8. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.
9. Signage shall be in accordance with the Fairfax County 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.

~ ~ ~ August 14, 2007, OLD DOMINION BASEBALL/SOFTBALL TRAINING, LLC D/B/A FROZEN ROPES, SP 2007-SU-060, continued from Page 332

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 4-0. Chairman Ribble was not present for the vote. Mr. Beard and Mr. Smith were absent from the meeting.

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:00 A.M. WINCHESTER HOMES INC. D/B/A CAMBERLEY HOMES, SP 2007-DR-063 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a subdivision sales office. Located at on the E. side of Great Falls St. and N. side of Stockwell Manor Dr. on approx. 21,161 sq. ft. of land zoned PDH-5. Dranesville District. Tax Map 40-2 ((48)) A pt.

Chairman Ribble called the applicant to the podium.

Aaron Shriber, Hunton & Williams LLP, 1751 Pinnacle Drive, McLean, Virginia, the applicant's agent, reaffirmed the affidavit.

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

Mr. Hart gave 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. Staff recommended approval of SP 2007-DR-063, subject to the revised proposed development conditions.

Mr. Shriber presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant was requesting an extension of the two-year temporary special permit for a sales office approved on August 25, 2005, for three more years or until all units were sold. He said there were a few townhouses that had not been built yet and needed to be sold. He said the attractive trailer existed and served as a community room during the time it was not being used for office sales. Mr. Shriber stated that no new construction or site modifications were being proposed, and the applicant agreed with the development conditions.

In answer to a question from Chairman Ribble, Mr. Shriber said he had seen one letter in opposition from Mr. and Mrs. Robert Coates dated August 13, 2007.

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

Mr. Hart moved to approve SP 2007-DR-063 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WINCHESTER HOMES INC. D/B/A CAMBERLEY HOMES, SP 2007-DR-063 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a subdivision sales office. Located on the E. side of Great Falls St. and N. side of Stockwell Manor Dr. on approx. 21,161 sq. ft. of land zoned PDH-5. Dranesville District. Tax Map 40-2 ((48)) A pt. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ August 14, 2007, WINCHESTER HOMES INC. D/B/A CAMBERLEY HOMES, SP 2007-DR-063, continued from Page 333

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2007; and

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

1. The Board has a staff recommendation of approval.
2. The rationale in the staff report is adopted.
3. From the photographs, it appears to be an attractive structure as these go and compatible with what is around it.
4. The Board has a letter of opposition. There are a number of issues in the letter, but for the most part, they are issues dealing with a disagreement with the underlying approval and the configuration of the transportation network or complaints regarding construction activity or work in the VDOT right-of-way, which are unrelated to the issues before the Board, even if otherwise meritorious issues, and could be handled some other way, either through noise complaints or through VDOT, and do not affect the ability to have a temporary sales office.
5. The objective of everyone ought to be to get the community finished, get the townhouses sold, and get the temporary trailer out of there. By approving the special permit, the Board is facilitating that conclusion to the development.

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

THAT the applicant has presented testimony indicating compliance with 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. 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, Winchester Homes Inc. d/b/a Camberley Homes, and is not transferable without further action of this Board, and is for the location indicated on the application, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Michael J. Gallagher dated June 7, 2007, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. 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 total number of parking spaces within the subject property shall be limited to 10, as shown on the special permit plat. All parking shall be onsite.
6. The maximum hours of operation for the temporary subdivision sales office shall be 10:30 a.m. to 6:30 p.m. daily.
7. The temporary subdivision sales office trailer shall be removed from the site upon completion of house sales onsite or within 36 months of the BZA approval date, whichever comes first.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with

~ ~ ~ August 14, 2007, WINCHESTER HOMES INC. D/B/A CAMBERLEY HOMES, SP 2007-DR-063, continued from Page 334

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 trailer has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:00 A.M. WILLIAM A. LINNE II, SP 2007-PR-062 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.4 ft. from side lot line and 2.8 feet from rear lot line and reduction of certain yard requirements to permit construction of addition 18.0 ft. from the front lot line. Located at 2830 Meadow La. on approx. 8,301 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((11)) 36.

Chairman Ribble noted that SP 2007-PR-062 had been administratively moved to September 11, 2007, at 9:00 a.m., for notices.

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:00 A.M. KIMBERLY K. RICHER, SP 2007-SU-064 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of a roofed deck 31.0 ft. from the front lot line. Located at 6453 Gristmill Square La. on approx. 13,847 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((5)) 395.

Chairman Ribble called the applicant to the podium.

Kimberly Richer, 6453 Gristmill Square Lane, Centreville, Virginia, reaffirmed the affidavit.

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

Greg Chase, Staff Coordinator, made staff's presentation as contained in the staff report.

Ms. Richer presented the special permit request as outlined in the statement of justification submitted with the application. She said she was requesting approval to build a front porch and had obtained approval from the homeowners association as well as her neighbors. She said the porch would be architecturally compatible with the home and would afford her the same opportunities as the neighbors to enhance the home's appearance and increase its value.

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

Ms. Gibb moved to approve SP 2007-SU-064 for the reasons stated in the Resolution.

//

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

KIMBERLY K. RICHER, SP 2007-SU-064 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of a roofed deck 31.0 ft. from the front lot line. Located at 6453 Gristmill Square La. on approx. 13,847 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((5)) 395. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 14, 2007; 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 roofed deck (porch) as shown on the plat prepared by B.W. Smith and Associates, Inc., dated through April 20, 2007, 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. Hart seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Smith were absent from the meeting.

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:00 A.M. LERICK S. KEBECK, SP 2007-BR-041 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 9536 Braddock Rd. on approx. 13,291 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-3 ((3)) 4. (Admin. moved from 7/17/07 for notices)

Chairman Ribble called the applicant to the podium.

Lerick Kebeck, 9536 Braddock Road, Fairfax, Virginia, reaffirmed the affidavit.

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

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-BR-041, subject to the proposed development conditions.

In response to questions from Mr. Hammack, Mr. Chase confirmed that the property in question had an accessory dwelling unit approved originally in 1989 and renewed in 1994 and 1999. In 2004 the Zoning Administrator sent a letter to the owners informing them the five-year period was over, and filing for a renewal was necessary. The owner did not renew the permit, and the kitchen function had been removed in compliance with the accessory use no longer being approved. Mr. Chase said the property was sold to the applicant in 2006, having been marketed with an accessory dwelling, and the applicant shortly thereafter received a notice of violation for an illegal accessory unit. He said an e-mail had been sent by Zoning Enforcement staff in 2004 acknowledging that the kitchen had been removed. Mr. Chase said a complaint had been filed and investigated by Zoning Enforcement staff in 2006 after the applicant purchased the home, and the applicant was informed it was necessary to obtain a special permit to allow the accessory dwelling use.

Ms. Kebeck presented the special permit request as outlined in the statement of justification submitted with the application. She said she purchased the property in April of 2006 and had not been able to use it because of the issue before the Board. She said that when she bought the property, neither the owner nor the realtor told her the permit was not valid and a new one was needed. Ms. Kebeck said she had been working with County staff to comply with all the conditions required for an accessory dwelling.

In response to questions from Mr. Hammack, Ms. Kebeck said that when she purchased the property, it had been represented to her as an independent, self-contained unit, including a kitchen, and that was how it was advertised and shown to her. She said the previous owner had assured her that he had a valid permit for the accessory dwelling. Mr. Hammack asked if the title agency that settled the property had told her there were covenants or conditions attached to the unit that would require her to reapply to transfer the accessory dwelling unit to her name, and Ms. Kebeck said she had not been advised of any problems and was not made aware there were any until she spoke to County staff.

In response to questions from Mr. Hart, Mr. Chase said the documents distributed to the Board contained a memorandum from Steve Mason, Zoning Enforcement Branch, that verified the kitchen had been removed in December of 2004 and a document regarding the sale of the property that indicated the presence of the kitchen. He said the applicant had no way of knowing a permit was required when she bought the property. In response to Mr. Hart's suggestion that an inspector look at the stove to ensure it was in conformance with the standards, Susan Langdon, Chief, Special Permit and Variance Branch, said staff could add a condition that required the accessory dwelling unit meet all standards.

Mr. Hammack and Mr. Chase discussed Development Condition 6, recordation of the conditions in the land use records, the tracking system used to determine when the five-year approval had expired, and the subsequent inspection to ensure the kitchen had been removed if the approval was not extended.

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

Mr. Hammack moved to approve SP 2007-BR-041 for the reasons stated in the Resolution.

//

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

LERICK S. KEBECK, SP 2007-BR-041 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 9536 Braddock Rd. on approx. 13,291 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-3 ((3)) 4. (Admin. moved from 7/17/07 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 August 14, 2007; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2 Cluster.
3. The area of the lot is 13,291 square feet.
4. The reasons given by staff for approval are incorporated.
5. It is noted that the Board actually approved the application originally in 1981.

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

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

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

1. This approval is granted to the applicant only, Lerick S. Kebeck, and is not transferable without further action of this Board, and is for the location indicated on the application, 9536 Braddock Road (13,291 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 Fursteneau Surveying, dated March 31, 2006, revised to February 9, 2007, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and 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 480 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 or otherwise conveyed,

~ ~ ~ August 14, 2007, LERICK S. KEBECK, SP 2007-BR-041, continued from Page 338

the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

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

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

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

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:30 A.M. JED L. GOEHRING, A 2007-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, has erected an accessory storage structure that exceeds eight and one-half feet in height, which does not comply with the minimum yard requirements for the R-1 District and was erected without a valid Building Permit, all in violation of Zoning Ordinance provisions. Located at 6111 Ramshorn Pl. on approx. 43,527 sq. ft. of land zoned R-1 and R-2. Dranesville District. Tax Map 31-2 ((5)) 8 and 31-2 ((1)) 124C. (Deferred from 7/10/07 at appl. req.)

Chairman Ribble noted that the Board had received a request from the appellant for a deferral to October 2, 2007.

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

Jayne Collins, Zoning Administration Division, stated that the appellant had indicated to staff he would file for a special permit which would, if approved, allow him to keep the accessory structures where they were, and staff supported the deferral request.

Byers moved to defer A 2007-DR-009 to October 2, 2007, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Smith were absent from the meeting.

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:30 A.M. GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ, A 2007-LE-014, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of the revocation of a Non-Residential Use Permit/Dance Permit for a dance floor accessory to an eating establishment for operating in violation of Zoning Ordinance provisions. Located at 6705 Springfield Mall on approx. 7,103 sq. ft. of land zoned C-7, H-C and SC. Lee District. Tax Map 90-2 ((13)) 5A1. (Admin. moved from 8/7/07 for ads)

Mavis Stanfield, Deputy Zoning Administrator, Zoning Administration Division, stated that the appellant's attorney had been contacted, and he was on his way from his office in Alexandria to the hearing.

Chairman Ribble stated that A 2007-LE-014 would be continued after the Closed Session to allow the

~ ~ ~ August 14, 2007, GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ, A 2007-LE-014, continued from Page 339

attorney time to arrive.

//

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 the case of Voorhees vs. BZA, At Law No. 2007-9484; Dunn Loring Improvement Association Incorporated and Trustees of the Dunn Loring Parks vs. BZA, the Vietnamese Evangelical Church of the Christian and Missionary Alliance, and the Vietnamese Christian and Missionary Alliance Church, No. 2007-9460; McLean Bible Church vs. BZA, No. 2006-8305; Jackson vs. BZA, No. 2006-10122; Virginia Equity Solutions vs. BZA, No. 05-6316; 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 5-0. Mr. Beard and Mr. Smith were absent from the meeting.

The meeting recessed at 11:33 a.m. and reconvened at 11:53 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 4-0. Mr. Byers was not present for the vote. Mr. Beard and Mr. Smith were absent from the meeting.

//

Mr. Hart moved that the Board authorize Mr. Hammack to send a letter to Anthony Griffin, County Executive, regarding discussion held during Closed Session concerning the Voorhees case. Ms. Gibb seconded the motion, which carried by a vote of 4--0. Mr. Byers was not present for the vote. Mr. Beard and Mr. Smith were absent from the meeting

//

Responding to Chairman Ribble's question concerning when the 2008 BZA meeting dates would be scheduled, Kathleen Knoth, Clerk to the Board of Zoning Appeals, stated that the dates would be determined once the County holiday schedule was announced in September.

//

~ ~ ~ August 14, 2007, Scheduled case of:

9:30 A.M. GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ, A 2007-LE-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of the revocation of a Non-Residential Use Permit/Dance Permit for a dance floor accessory to an eating establishment for operating in violation of Zoning Ordinance provisions. Located at 6705 Springfield Mall on approx. 7,103 sq. ft. of land zoned C-7, H-C and SC. Lee District. Tax Map 90-2 ((13)) 5A1. (Admin. moved from 8/7/07 for ads)

Douglas McKinley, McKinley & Bornmann PLC, 100 N. Pitt Street, Alexandria, Virginia, the applicant's agent, requested the hearing be deferred. He said he was unable to get some of the people scheduled to speak on behalf of the appellant to appear today, and he was unable to complete a response to the staff report because he did not yet have all the documents and photographs to substantiate his comments. He said he thought there were several errors in the report. Mr. McKinley said County staff indicated there was a danger to public safety if the use continued, but staff needed to certify that statement if they thought it accurate. He stated that if the revocation being appealed was upheld, it would destroy the appellant's business, and he wanted to ensure the appellant had a fair hearing.

Mr. Hammack noted that a letter dated July 25, 2007, from Michael Love, the General Manager of Springfield Mall, referenced 51 incidents in Cerro Grande, including drunk and disorderly conduct, assaults, counterfeiting, drug possession, and vehicle tampering. The letter stated that the incidents had taken place

~ ~ ~ August 14, 2007, GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ, A 2007-LE-014, continued from Page 340

within the restaurant, but Mr. Hammack said it appeared many of the incidents had taken place in the parking lot. Mr. Hammack stated that it was not within the jurisdiction of the Board to involve itself in civil issues between a landlord and tenant, but in order to have a fair hearing where factual issues could be developed would require preparation. Mr. Hammack moved to defer A 2007-LE-014 to September 11, 2007, at 9:30 a.m. Mr. Hart seconded the motion for discussion.

Mr. Hart said he wanted to know if anything had changed since the previously scheduled hearing date the week prior and who was not able to be present. He referenced a memorandum indicating the appellant had been out of the country.

Captain Maggie Deboard, Commander, Franconia Police Station, stated on August 10, 2007, as part of an alcohol sting operation in the Franconia District, officers approached approximately 18 businesses with underage police cadets who attempted to purchase alcohol. Cerro Grande was one of the businesses and was one of five establishments cited for serving alcohol to two underage cadets without checking identification. She said the bartender at the Cerro Grande was an illegal immigrant who had no identification, been cited previously for an illegal attempt to enter the United States, and was transported to the jail. Captain Deboard said the police department continued to have issues with Cerro Grande.

Mr. McKinley said the appellant anticipated having the president of the Hispanic Chamber of Commerce and an owner of another establishment similar to Cerro Grande testify regarding the adverse effect of closing the restaurant's dance operation. He said the restaurant owner's representative had been abroad and just returned; however, due to some medical procedures he had recently undergone, he was not able to attend today. Mr. McKinley said the accusation described by Captain Deboard was not a conviction, and he had heard a different story with respect to the accusation and the alleged 51 incidents and felonies and would be able to demonstrate that none of the felonies took place.

Mr. Hammack noted that the 51 incidents reported by the mall manager occurred between June of 2005 and April of 2007, two years before enforcement activities took place. He said the Board did not have any jurisdiction over general district or circuit court matters and was addressing a zoning issue, and if someone was assaulted in the parking lot, it was not within the Board's purview. Mr. Hammack said it appeared to him the Board was being used to air other issues, and if the accusations were urgent, action should have been taken earlier. He stated that Mr. McKinley's request for a continuance was justified.


The motion carried by a vote of 4-0. Mr. Byers was not present for the vote. Mr. Beard and Mr. Smith were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:15 p.m.

Minutes by: Kathleen A. Knoth

Approved on: November 5, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 11, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; and Paul W. Hammack, Jr. Nancy E. Gibb and Norman P. Byers were absent from the meeting.

Chairman Ribble called the meeting to order at 9:03 a.m. He called for a moment of silence in memory of the September 11th terrorist attack in 2001, the many victims, and their families. He said, in one sense, the tragedy hit particularly close to home in that one of the staff member's had lost her mother.

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

~ ~ ~ September 11, 2007, Scheduled case of:

9:00 A.M. AIMAN ELKHATIB, SP 2007-SP-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 addition to remain 6.4 ft. from side lot line. Located at 5925 One Penny Dr. on approx. 1.85 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((3)) 22. (Decision deferred from 6/5/07)

Chairman Ribble noted that SP 2007-SP-030 had been deferred for decision only to allow the applicant time to remove the addition of a partially enclosed carport.

Deborah Hedrick, Staff Coordinator, informed the Board that her recent site visit found the carport was removed, and she had provided the Board with pictures evidencing the fact. Ms. Hedrick said the applicant requested to withdraw his application.

Mr. Hammack moved to accept the withdrawal of SP 2007-SP-030. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting.

//

~ ~ ~ September 11, 2007, Scheduled case of:

9:00 A.M. DONALD J. MCCARTHY, SP 2007-MA-001 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 8.2 ft. with eave 7.5 ft. from side lot line and to permit an accessory dwelling unit. Located at 3915 Glenbrook Rd. on approx. 1.47 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 20A. (Admin. moved from 3/20/07 and 5/1/07 at appl. req.)

Chairman Ribble noted that SP 2007-MA-001 had been administratively moved to April 1, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ September 11, 2007, Scheduled case of:

9:00 A.M. HAMLET SWIM CLUB, INC., SPA 74-D-037-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-D-037 previously approved for a swim club to permit a building addition and site modifications. Located at 8209 Dunsinane Ct. on approx. 4.33 ac. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) A1 and B1.

Chairman Ribble noted that SPA 74-D-037-03 had been administratively moved to October 23, 2007, at 9:00 a.m., for ads.

//

~ ~ ~ September 11, 2007, Scheduled case of:

9:00 A.M. STEVEN C. BROWN, JR., AND KELLY JENKINS-BROWN, SP 2007-DR-066 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 22.8 ft. from the front lot line. Located at 6604 Moly Dr. on approx. 10,318 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((6)) 33.

Chairman Ribble called the applicants to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals, (BZA) was complete and accurate. Kelly Jenkins-Brown and Steven Brown, 6604 Moly Drive, Falls Church, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The subject parcel was located at 6604 Moly Drive, in the Westmorland Subdivision, in the Dranesville District. The subject property and surrounding properties were zoned R-4 and were developed with single-family detached dwellings. The request was to permit a reduction to minimum yard requirements based on an error in building location to permit to permit a roofed deck to remain 22.8 feet from the front lot. A minimum front yard of 30 feet is required; therefore, a reduction of 7.2 feet was requested.

Mr. Chase and Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to questions from Mr. Hart concerning permits, setbacks, the building plan design, the building permit and plans that were contained in the file and questions concerning the issuance of a demolition permit.

Paul H. Barkley, Jr., the applicants' architect, 311 Chestnut Street, Falls Church, Virginia, presented the special permit request as outlined in the statement of justification submitted with the application. He said he prepared the drawings for the applicants' dream house, which included the front porch, and showed the house positioned to meet the front yard setback. A surveyor prepared the site plan which was approved. The building permit was issued and construction commenced. When the applicants requested an amendment to the permit to extend the porch, it was discovered that the house was within the setback. The surveyor's site plan had not shown the front porch. Mr. Barkley said that error was missed by himself, the applicants, and County staff when the building permit was issued. Mr. Barkley requested the Board's consideration to take care of the error that resulted through no fault of any action taken by the applicants.

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

Mr. Hammack moved to approve SP 2007-DR-066 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN C. BROWN, JR., AND KELLY JENKINS-BROWN, SP 2007-DR-066 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 22.8 ft. from the front lot line. Located at 6604 Moly Dr. on approx. 10,318 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((6)) 33. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 11, 2007; and

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

~ ~ ~ September 11, 2007, STEVEN C. BROWN, JR., AND KELLY JENKINS-BROWN, SP 2007-DR-066,
continued from Page 344

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with Sect. 8-006 and have satisfied the required standards set forth under that section, in particular, that the non-compliance was done in good faith with no fault of the property owner.
3. The error was a result of an error in building location subsequent to the issuance of the building 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 the roofed deck, as shown on the plat prepared by SDE, Inc., dated January 11, 2007, signed January 22, 2007, submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the roofed deck addition shall be 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. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting.

//

~ ~ ~ September 11, 2007, Scheduled case of:

9:00 A.M. WILLIAM A. LINNE II, SP 2007-PR-062 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.4 ft. from side lot line and 2.8 feet from rear lot line and reduction of certain yard requirements to permit construction of addition 18.0 ft. and roofed deck 20.7 ft. from the front lot line. Located at 2830 Meadow La. On approx. 8,301 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((11)) 36. (Admin. moved from 8/14/07 for notices)

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William A. Linne, 2830 Meadow Lane, 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 reduction to the minimum yard requirements based on an error in the building location to permit an accessory storage structure to remain 2.4 feet from the side lot line and 2.8 feet from the rear lot line and reduction of certain yard requirements to permit construction of additions 18 feet and 20.7 feet from the front lot line. A minimum side yard of 10 feet, minimum rear yard of 13.5 feet, and minimum front yard of 30 feet are required; therefore, reductions of 7.7 feet, 10.7 feet, 12 feet, and 9.3 feet, respectively, were requested. Staff recommended approval of SP 2007-PR-062 for the construction of the additions subject to the proposed development conditions.

Mr. Linne presented the special permit request as outlined in the statement of justification submitted with the application. He proposed to add a garage with living space above it, a portico to be built over an existing stoop for shelter and protection from the elements, and an existing shed to remain. He said his house was built in 1938, and typical of the homes many years ago, had limited space. He said more space was necessary for his family's needs. Mr. Linne said they loved the neighborhood, enjoyed close relations with the neighbors, and had no intention of moving. He noted that the house was grandfathered and sat 20 feet from the lot line, and any addition automatically encroached into the setback. Concerning the shed, he said there never had been a complaint about it, and the neighbors all supported it. Mr. Linne noted that staff had received several letters in support, and he asked that the BZA vote in favor of his application.

In response to a question from Mr. Hart regarding the garage, Mr. Linne said the garage would hold two cars parked one in front of the other,

Mr. Hart asked whether a shed on a neighboring property reflected in a photograph had received approval. Susan C. Langdon, Chief, Special Permit and Variance Branch, said she was unsure, but if it was under 8.5 feet in height, it would be okay. Mr. Linne said the shed was under the minimum requirements and could go up to the property line.

Chairman Ribble called for speakers in support.

Mathew Koch, 2832 Meadow Lane, Falls Church, Virginia, came forward to speak. He said he and his neighbors had no objection to Mr. Linne's proposal. He said Mr. Linne made great efforts to work with the neighbors to ensure that the project would be aesthetically pleasing, and he attempted to accommodate any concerns.

Chairman Ribble noted there were several letters of support in the file, and he closed the public hearing.

Mr. Hart moved to approve SP 2007-PR-062 for the reasons stated in the Resolution.

//

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

WILLIAM A. LINNE II, SP 2007-PR-062 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.4 ft. from side lot line and 2.8 feet from rear lot line and reduction of certain yard requirements to permit construction of addition 18.0 ft. and roofed deck 20.7 ft. from the front lot line. Located at 2830 Meadow La. on approx. 8,301 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((11)) 36. (Admin. moved from 8/14/07 for notices) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 11, 2007; 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 rationale in the staff report is adopted.
4. There are several letters in support.
5. There does not seem to be any opposition.
6. Based on the record and photographs, there does not appear to be any significant negative impact on anybody.
7. There is an existing screened-in-porch essentially as the addition, and although the addition is taller and larger, it is not out of keeping with the character of the neighborhood.
8. The shed has been there already for several years.
9. It would be a hardship to relocate the shed.
10. The shed is consistent with the photographs of other sheds in the neighborhood.
11. It is a fairly substantial shed, but it does not seem to be as close to the line as the shed right next to it, which is almost as high.
12. No purpose would be served requiring the shed to be relocated.
13. The findings in the standard motion 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(s). 8-922, Provisions for Reduction of Certain Yard Requirements, 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

~ ~ ~ September 11, 2007, WILLIAM A. LINNE II, SP 2007-PR-062, continued from Page 347

applicable zoning district regulations.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the addition (two story garage addition for a total of 1,392 square feet), portico and shed as shown on the plat prepared by Dominion Surveyors, Inc., dated February 2, 2007, as revised through June 6, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,737 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Building permits and final inspections for the shed shall be diligently pursued and obtained within 90 days of approval or the special permit for the shed 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.

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

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

//

~ ~ ~ September 11, 2007, Scheduled case of:

9:30 A.M. GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ, A 2007-LE-014, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of the revocation of a Non-Residential Use Permit/Dance Permit for a dance floor accessory to an eating establishment

~ ~ ~ September 11, 2007, GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ,
A 2007-LE-014, continued from Page 348

for operating in violation of Zoning Ordinance provisions. Located at 6705 Springfield Mall on approx. 7,103 sq. ft. of land zoned C-7, H-C and SC. Lee District. Tax Map 90-2 ((13)) 5A1. (Admin. moved from 8/7/07 for ads) (Deferred from 8/14/07 at appl. req.)

Chairman Ribble called the appellant to the podium.

Douglas E. McKinley, the appellant's agent, 100 North Pitt Street, Suite 201, Alexandria, Virginia, came forward.

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

Michael R. Congleton, Senior Deputy Zoning Administrator, Zoning Enforcement/Property Maintenance, presented staff's position as set forth in the staff report dated August 7, 2007. He said the only issue that day was the revocation of the Cerro Grande Café's dance hall license, and the appellant's appeal challenged the Zoning Administrator's authority to revoke the license on the grounds that the action was arbitrary and inconsistent with normal procedures. Mr. Congleton outlined the use's background, listing pertinent dates, staff actions, Zoning Ordinance standards and requirements for the use, violations issued, documents submitted by the appellant, staff's reasons for the revocation of the appellant's non-residential use permits (Non-RUPs), and the specific language cited regarding the violation and revocation. He noted that neither the violation nor the revocation were appealed. Because no appeal was filed for the principal use and the dance permit, it became an "unchallenged fact" that the facility's operation violated the Zoning Ordinance. Mr. Congleton said he met with the facility's owner/manager/president of Great Latin Restaurants, L.C., Enrico Barraza, and with the information provided staff, a new Non-RUP for the eating establishment and a new Non-RUP for a separate dance permit were issued on June 30, 2005. Mr. Congleton said he offered Mr. Barraza his assistance with applying for a special permit to the BZA for the dance hall, was advised they did not want to establish a dance hall, and was assured they would abide by all regulations. Mr. Congleton said the owners prepared a scaled drawing that delineated the dance floor area at 403 square feet which accompanied the Non-RUP application. He noted the Non-RUP applications contained the applicant's statement certifying that the information was complete and correct, and the use would conform to the Zoning Ordinance.

Mr. Congleton said that in response to a complaint, a June 13, 2007 inspection of the facility found the dance floor was approximately 800 square feet, and the property's use, again, constituted a dance hall which was only allowed by special permit through BZA approval. Another notice of violation was issued, and the eating establishment and the dance hall Non-RUPs were revoked; however, that same day the appellant submitted an application for the eating establishment and a dance permit. A Non-RUP for the eating establishment was subsequently issued. By letter dated April 23, 2007, Mr. Congleton said he denied the appellant's April 20, 2007 request to issue a dance permit for the establishment, and his letter stated the denial was appealable to the County Executive. Mr. Congleton said the notice of violation he issued on June 13, 2007, mandated immediate cessation of the facility's activity due to a threat to health and safety. That action and the immediate revocation of the Non-RUP were part of normal procedures the Zoning Enforcement Branch employed under certain circumstances. Mr. Congleton quoted Sect. 27-1-5 of the Fairfax County Code concerning a revocation or denial of a permit being appealed in writing to the County Executive, and based on that Code requirement, he concluded that the BZA had no statutory authority to issue or re-issue any dance permit that was denied or revoked as all such authority rested with the County Executive. Mr. Congleton said that as the dance permit authorized under the Code section was revoked and a new application for the permit was denied, any appeal must be made to the County Executive and not to the Board of Zoning Appeals.

Mr. Congleton responded a question from Mr. Beard confirming that, as an agent of the Zoning Administrator, he had the authority to revoke the Cerro Grande Café's permit. He explained his reasoning for his determination, which included the fact that complaints were received from the community and police department regarding possible zoning violations, the appellant's misrepresentation of the facility's proposed use, the facility's advertisements and website, various events and contests the café hosted that clearly were those typical of a nightclub, and the fact that approval of the Non-RUPs had been based on false statements and misrepresentation by Cerro Grande. The intent was clear to operate a dance hall outside the parameters of the Zoning Ordinance. Mr. Congleton said Mr. Barraza's representation was consistent

~ ~ ~ September 11, 2007, GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ,
A 2007-LE-014, continued from Page 349

throughout the process, and he was served and accepted both notices of violation and was well aware of the regulations.

Mr. Congleton responded to questions from Mr. Hart regarding notification, revocation, and enforcement procedures, BZA jurisdiction on hearing such appeals, the matter of misrepresentation, and the definition of specific Ordinance language. Mr. Congleton stated that there were no false statements on the applications, but based on the appellant's actions, it was his determination that it was not their intent to operate in conformance to the Zoning Ordinance.

Mr. Congleton and Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, responded to questions from Mr. Hart regarding permits that were issued, explanation and clarification of several drawings in the record, and the measurements and expansion of the dance floor.

Mr. Congleton responded to questions from Mr. Smith concerning whether the Board must find misrepresentation versus a violation of the Zoning Ordinance to uphold the Zoning Administrator's determination. He added that there was no dispute that the appellant violated Ordinance standards.

Discussion ensued regarding the facility's website advertising upcoming events, contests, and entertainment sponsored by the restaurant/nightclub. It was noted that the advertisements specifically referred to it as a nightclub.

In response to questions from Mr. Beard, Mr. Congleton explained the specifics that determined the issuance of a violation. He responded to questions from Mr. Hammack concerning on-site investigations during the commission of a violation and how he measured the dance floor. Mr. Congleton stated the dates and specific language of the revocations and that it was his opinion that it was the best course of action in revoking a permit immediately and not allowing a time period to cure it. Mr. Congleton noted that at the August 14, 2007 hearing when Mr. McKinley requested a deferral to this date, the appellant was in violation, and Mr. McKinley specifically stated that his client would continue to run the operation. He outlined the usual times he conducted on-site inspections and said that throughout a year, he would conduct several dozen after 9:00 p.m. and that most of his staff performed site inspections once a week after 9:00 p.m.

Mr. McKinley presented the arguments forming the basis for the appeal. He said apparently Mr. Congleton had already made his mind up on April 13, 2007, because during staff's after midnight inspection of Cerro Grande Café, Mr. Congleton's letter of revocation was already prepared with only the date to be filled in. Mr. McKinley said his client's business would be destroyed if the revocation stood, and it was wrong and unreasonable that staff's justification for not allowing his client an opportunity to correct the violation was because of a situation that occurred over a year before. He explained the layout of the dance floor, materials used, the misunderstanding concerning the delineation of the dance floor, the right to appeal and correct the revocation, and the County's violation of their appeal right by behaving in an unlawful manner by enacting the revocation. Mr. McKinley noted that the appellant had corrected the issue of the dance floor size by raising the floor's wooden base, thereby clearly delineating the dance floor area. He conceded that his client probably should not have advertised as a nightclub, but the term "nightclub" was not mentioned in the Zoning Ordinance. The term was a matter of personal interpretation. He stated that the establishment was no longer advertised as a nightclub, the dance floor area was delineated, and his client corrected the violations and was in compliance. He said he believed the County's action was arbitrary and intended to harm, and the Board should not uphold the Zoning Administrator's determination because the matter was not a conscious, malevolent intent to violate the Zoning Ordinance. He said the required engineering costs were around \$90,000, there were no operating dance halls in the County, and it would not seem a prudent business decision to invest such an amount to become a "test case." Mr. McKinley said he thought it unfair to conclude that his client malevolently intended to exceed the permitted dance floor area, that the issue was fully corrected, and under the circumstances, the Non-RUP's revocation should be held incorrect and unjustified.

Mr. McKinley responded to questions from Mr. Smith concerning the appellant's web advertisements for special events and contests posted after the revocations, and he explained how, as defined in the Ordinance, one could consider such activities as accessory uses to eating establishments. He noted that the advertisements were not of current events and apparently had not been removed after the restaurant's dance component was shut down. Mr. McKinley explained the importance dancing had for the

~ ~ ~ September 11, 2007, GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ,
A 2007-LE-014, continued from Page 350

Spanish/Mexican culture.

Mr. Congleton responded to a question from Mr. Hart concerning staff's position and procedure when issuing a violation and a revocation and the specific Ordinance language sections referenced. Mr. Congleton said his decision that the appellant not be permitted time to cure the violation was based on the particular evening's situation and past situations he experienced there, and that his position to simultaneously serve the notice of violation and revoke the Non-RUP was authorized under the Code. Mr. Congleton explained the applicability of several Code subsections and various permitted actions taken.

In response to a question from Mr. Beard, Mr. Congleton said a copy of the notice of violation was also sent to the property owner.

Mr. Beard questioned the appellant's lease, and Mr. McKinley said the lease was in good standing, however, a notice had been issued by the landlord, Springfield Mall, that they considered the lease in default because of the revocation of the Non-RUP. He said the landlord said that due to the decline in patronage as a result of the closure of the dance component, the income to the landlord was affected, and, therefore, it was a violation. He believed the landlord was wrong and their notice was not correct.

Mr. McKinley said Springfield Mall had been acquired by a New York company, Vornado Realty Trust, and Vornado offered to buy out his client's lease; however, the deal was moot due to the revocation of the Non-RUP. He said his client opposed the proposal, and during negotiations Vornado's representative told Cerro Grande's representatives they were disliked, as were their kind, and they wanted them out of the mall.

Mr. McKinley summarized his client's current situation with the size of the dance floor and said he thought the mistake was inadvertent and that it had been corrected. He did not see what the harm to the County was, but the harm to the business was to destroy it.

Mr. Congleton responded to Mr. Hammack's questions concerning various entertainments that an eating establishment could offer. Based on the April 13th inspection, it was evident to him that the appellant had changed the use from an eating establishment to the principal use of a dance hall. The County permitted an eating establishment with an accessory use of dancing and entertainment, but he had observed that the dinner component was closed at 10:00 p.m., tables and chairs were moved to open an approximate area of 700 to 800 square feet, patrons lined up at the front door paying a \$20.00 to \$30.00 entrance fee per person, and liquor was available.

Mr. Congleton explained staff's position concerning the Ordinance's definition of a dancing establishment, then listed the sequence of actions taken by Cerro Grande Café. He said he thought Mr. McKinley's argument about the operation was interesting and should be heard, but regarding the revocation of the dance permit, the proper venue was the County Executive and not the Board of Zoning Appeals. Mr. Congleton referenced Mr. McKinley's statement that "the restaurant would not survive without the dance permit," stating he found it interesting that a principal use was dependent upon an accessory use in order to survive where an accessory use was only to complement a principal use. Mr. Congleton said it appeared that the dance hall operation was the principal use, and the eating establishment was accessory, and the avenue to rectify the situation was to obtain a special permit from the BZA. He said he thought Mr. McKinley's \$90,000 estimate for Cerro Grande to come into compliance was high. Mr. Congleton said he would be glad to assist Mr. McKinley and the appellant through the application process.

Mr. McKinley said the restaurant operated daily, while the dance activity took place during the evenings Thursday through Sunday. He conceded that the dance facility provided a greater part of the income; however, the majority of the operating time was the restaurant use. Mr. McKinley addressed the issue of the Board's jurisdiction noting that the April 13th revocation notice contained advice that it was appealable to the BZA; however, after the appellant filed his appeal, the Zoning Administrator informed his client that they had no jurisdiction. The subsequent BZA hearing determined that the Board did have jurisdiction, but the Zoning Administrator did not agree. Mr. McKinley said that the matter was already decided and should no longer be before the Board. The matter before the Board should only be the revocation with no opportunity to correct, which would destroy the business, was unfair, and should not be upheld.

Addressing Mr. Smith's comments concerning the April 13th letter, Mr. Congleton explained that it was

~ ~ ~ September 11, 2007, GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ,
A 2007-LE-014, continued from Page 351

standard language to advise one to appeal a revocation to the BZA. In his subsequent conversations with Mr. McKinley, which were followed up with a letter, he advised him that the avenue for the appeal of the dance permit's revocation was to the County Executive. Mr. Congleton concurred with a comment from Mr. Smith that an applicant had the right to appeal any action of the Zoning Administrator that related to the Zoning Ordinance, which in this case was the revocation of a Non-RUP which served as the vehicle for the dance permit.

Mr. Smith said the Non-RUP and the dance permit were now before the Board, but theoretically, the Board's position could be that the Non-RUP's revocation was inappropriate and should stay in place, while the dance permit was outside the Board's jurisdiction and should go to the County Executive.

Mr. Congleton responded to questions from the Board members concerning the April 13th revocation letter and ensuing June correspondence letters, saying that the revocation was proper at the time. He noted that the June letters advised the appellant to direct the matter to the County Executive with no time limit, and the April 13th letter had revoked the dance permit because of the Zoning Ordinance violation on-site in accordance with Chapter 27 of the County Code. He said he advised Mr. McKinley in writing that the dance permit denial was appealable to the Office of the County Executive in accordance with the Code. The appellant then submitted a separate application in June for the dance permit.

Chairman Ribble called for speakers.

Elmer Arias, 6815 Barnack Drive, Springfield, Virginia, came forward to speak. He said he was the president of the San Salvador Chamber of Commerce, a restaurant owner himself for 13 years, that the majority of the Chamber's 280 members were restaurant owners, and he understood what Cerro Grande was going through. He said Cerro Grande was the first Spanish business in the Springfield area. Mr. Arias said he held a very successful event in his restaurant in 2005 which was attended by Chairman Connolly, the State Delegate, and the Chief of Police, and that the format was understanding the Spanish community. Mr. Arias said Cerro Grande was a very nice establishment, and it often hosted fundraising events, which was very nice for the community.

The following speakers came forward to speak: Oswaldo Salinas, 5406 Wycklow Court, Alexandria, Virginia; Hugo Flores, address inaudible, who stated he was the owner of the five-star Sports House Grill Restaurant in Arlington, Virginia; Jesus Rios, 9973 Mallow Court, Manassas, Virginia; Tommy Clark, Vice President of United Protective Services, no address given; Luisa Henriquez, 5501 Carlin Springs Road, Falls Church, Virginia; Ramon Goodwin, 98 North Hampton Boulevard, Stafford, Virginia; Gloria Savales (phonetic), no address given; Alvaro Salguero (phonetic), 4048 Summer Hollow Court, Chantilly, Virginia; Dina Lopez, 13304 Huntington Lane, Woodbridge, Virginia; Sonia Osorto, 6301 Hibbling Avenue, Springfield, Virginia; Grace Canales, 5914 Ridge View Drive, Annandale, Virginia; Charlotte Matias (phonetic), 4700 Olde Forge Court, Fairfax, Virginia; Jose Viera, 2932 Mount Vernon Avenue, Alexandria, Virginia; Prisca Almonte, 12012 Hudson Road, Silver Springs, Maryland; Maritza Ortiz, 8038 Capistrano Place, Alexandria, Virginia. They spoke about Cerro Grande's numerous ethnic and festive benefits offered to its Spanish patrons, the importance and love of dancing to the Spanish culture, the variety of food selections offered, the large number of loyal patrons who regularly attended, the pleasure of dancing and socializing, the dress code, and the safe environment and excellent security.

Chairman Ribble asked whether staff had anything to add.

Mr. Congleton complimented Mr. Barraza on his customers' loyalty, saying it was obvious they enjoyed his operation. He said that the issue was not the operation of an eating establishment, which was allowed by right, but the fact that on April 13, 2007, the use was that of a dance hall, a violation of the Zoning Ordinance, and based on the provisions of the County Code, Chapters 112 and 27, the Zoning Administrator revoked the dance permit as represented by the Non-RUP. On April 13th, Cerro Grande Café made an application for a new Non-RUP for both an eating establishment, which was approved, and a dance permit. It was his determination of April 23rd that it was not appropriate to reissue the dance permit and verbally and in writing advised the appellant of his right to appeal to the County Executive, saying that the proper venue for Mr. McKinley to make a case to receive a dance permit was to the County Executive. Mr. Congleton said he did not believe the BZA had the authority to issue a dance permit under the provisions of Chapter 27. He requested that the Zoning Administrator's position be upheld.

~ ~ ~ September 11, 2007, GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ,
A 2007-LE-014, continued from Page 352

In response to a question from Mr. Smith concerning allowing the appellant an appropriate time to cure the violation, Mr. Congleton explained that on April 13th he thought the most prudent course of action to protect and promote the health, safety, and welfare of County residents was requesting the immediate cessation of the dancing activity as he had fears for the patrons' safety because it was not inspected by either the building inspector or Fire Marshall, and regardless of the dance floor size, 403 or 800 square feet, to continue the dancing component was a violation of the Ordinance.

Chairman Ribble asked Mr. McKinley if he had additional comments.

Mr. McKinley said the State Code gave his client the right to continue to operate; it was unlawful for Mr. Congleton to threaten them with arrest for continuing; and, it was the Board's decision to determine that Mr. Congleton's decision was unlawful. He noted the many citizens present who attested to the enjoyment they had at Cerro Grand and the safety of the facility. Mr. McKinley said it seemed apparent there was no danger in the restaurant's operation.

Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold-in-part and overturn-in-part the determination of the Zoning Administrator. He said he would uphold the Zoning Administrator on the factual issue of whether on April 12, 2007, the dance floor exceeded 403 square feet. He would overturn the Zoning Administrator on the issue of whether the use was converted to a dance hall use, and he would overturn the Zoning Administrator on the revocation of the Non-RUP or the combined Non-RUP and dance permit. He said it was unusual that the Zoning Administrator would revoke a Non-RUP without first issuing a violation, and he thought something like that was supposed to be done by a judge at the end of an enforcement proceeding or series of events. There were provisions in the Ordinance which allowed the Zoning Administrator to revoke a Non-RUP, but that power was constrained by the terms of the Ordinance and had to be exercised only in accordance with the wording in the Ordinance. The April 13th letter articulated two bases for the revocation; first, that the Zoning Administrator was revoking under Sect. 18-707 and secondly under Par. 3 of Sect. 18-901. With respect to Sect. 18-707, he concluded that there was no misrepresentation of fact or false statement by the appellant. He thought reliance on Sect. 18-707 was plainly wrong and was not supported by Virginia law in that an actual misrepresentation must relate to a present factor or preexisting set of facts, not promises as to future events. What seemed to have happened here was that an application was made for a Non-RUP for a certain square footage of dance floor, and then a couple of years later the dance floor had expanded for at least one night, and there was dancing in an area larger than the dance floor. Mr. Hart stated that there was no basis to revoke a Non-RUP based on expectations as to future events. He did not think Sect. 18-707 could be applied in that context, and that determination was plainly wrong. With respect to Sub-Sect. 3 of 18-901, he thought the issue was somewhat closer, but as he read Sub-Sect. 3, he thought the Board had to read all the language together and would conclude that the plain language of the Ordinance required that if the Zoning Administrator was going to revoke a Non-RUP to terminate a zoning violation, that upon becoming aware of any violation of any provision of the Ordinance, the Zoning Administrator would serve a notice of violation on the person committing or permitting the use, and the notice would require the violation to cease within a reasonable time as was specified in the notice. As in other places in the Ordinance, the use of the term "shall" was mandatory. He thought it required the issuance of a violation notice, and it also required that the notice provide a reasonable time for the violation to cease. The rest of Sub-Sect. 3 dealt with what happened after the notice was sent and the violation had not ceased within the reasonable time. He thought only if the notice was given and the use had not ceased could the Zoning Administrator revoke a Non-RUP under Sect. 18-901-3.

Mr. Hart said that although Mr. Congleton was present at the café and testified he had not observed food being served, he acknowledged that he had not entered the kitchen. Mr. Hart said to the extent the evidence suggested the premises had changed from an eating establishment to a dance hall, he believed that had been satisfactorily rebutted by the appellant. The restaurant's use had continued, and they continued to serve food throughout the week. The food service was available at any time the establishment was open, and that was confirmed to some extent by the speakers as to fajitas, appetizers, and other food served. Mr. Hart said that he thought to the extent of trying to evaluate whether the dancing use was accessory to the restaurant use, he thought that would take more than one visit on one night without looking in the kitchen to determine that the use had changed from a restaurant to a dance hall. He said his conclusion, based on the evidence before the Board, was the appellant had rebutted the conclusion that the use was converted to that

of a dance hall.

Mr. Hart referenced the issues concerning Chapter 27, stating he did not believe that the determination needed to be reached. It appeared to him it was an afterthought, that it was not contained in the April 13th letter. He said it was not a part of anything that led up to the notice of violation, and it was somewhat premature to deal with whether there were other violations or future violations under Chapter 27. He said that to the extent some finding was appropriate, he would conclude that there had been no legal authority presented to the Board that a County could by Ordinance restrict the scope of appeals to the Board related to zoning issues, and it was somewhat disingenuous to contend that the dancing permit in this case was something different. He said that no separate document had been presented to the Board that showed that a dancing permit in Fairfax County was issued any other way than through a Non-RUP. Mr. Hart said the April 13th letter stated that the violation of the Zoning Ordinance had resulted in the revocation of the dancing permit, which was the same document as Non-RUP A032705, that a revocation of a Non-RUP was a zoning issue, and he would conclude that based on the record before the Board, the document revoked was a zoning document. Mr. Hart said they were both the same thing, and it would be an appropriate appeal to the BZA, but that was not to say that there was not some alternate procedure under which someone could appeal something to the County Executive with no time limit. He said he was not reaching the issue nor did he think it necessary to reach the issue of whether someone might avail themselves to that option. Mr. Hart stated that it was his conclusion that there was nothing in the State Code which would prevent someone from appealing a combined Non-RUP/dancing permit to the Board, particularly where there was not anything separated, where it was the same document and where the notice of violation, in accordance with the State Code, stated clearly at the end that they could appeal it to the BZA as well as the time limits, the filing fees, and everything they were supposed to do.

Mr. Hart said he would conclude that Mr. McKinley was right in that a finding of fact was necessary. He said the filing of the appeal operated to stay enforcement activity to the extent that the argument was that the revocation had required immediate cessation, notwithstanding the pendency of the appeal. The State Code contradicted that, in that the appellant could continue to operate pending a judicial resolution, and he did not think the Zoning Administrator had at least in this case, the sort of a "nuclear weapon power" that was exercised there. Mr. Hart said that if a Non-RUP was going to be revoked, absent extraordinary circumstances, he thought that a judge had to do it at the end of an enforcement case in court. The Zoning Administrator could not do it up front unless there was a typical misrepresentation of fact, or in accordance with Sub-Sect. 3 of 18-901, which required prior notice and a reasonable time, which apparently had not happened.

Mr. Hart stated that for the purpose of these findings, he was not reaching any future violations or whether other violations could or should be issued. He said he was suggesting that ordinarily in a situation like this, if a dance floor was expanded over time, whether inadvertently or by mistake, the proper course of action would be to issue a zoning violation with a reasonable time to cure the violation, that violation could then be appealed if there were some dispute about it, but, for whatever reason, that procedural path was not taken.

Mr. Hart said he believed his comments would be sufficient for the findings of fact and conclusions of law. He restated his motion, saying that the April 13th determination be upheld as to the factual issue of the dance floor being over 403 square feet on April 13th, but overturned on the issue of whether the use was converted to a dance hall and overturned on the issue of the revocation of the Non-RUP.

Mr. Smith seconded the motion. He requested Mr. Hart's clarification on a matter discussed at a previous meeting, that the Zoning Administrator could have issued a certification that there was a public health, safety, or welfare issue after the zoning violation, but chose not to do that. Mr. Hart said he meant to have addressed that matter because when he made all the observations about what happened, he had not meant to suggest that the Zoning Administrator, under appropriate circumstances, could not avail himself/herself of the procedural option to shut one down. There were certain actions that could be taken, and the Zoning Administrator could go to court on a lot of things, but typically they did not. He referenced the court order cited by Mr. McKinley that was pertinent to the case. He noted that there also were agencies or officials, such as the Fire Marshall or Health Department, when appropriate because of a danger, could shut somebody down; however, he was not sure that the size of a dance floor was quite the same thing. Mr. Hart

~ ~ ~ September 11, 2007, GREAT LATIN RESTAURANTS, L.C. T/A CERRO GRANDE CAFÉ,
A 2007-LE-014, continued from Page 354

said that based on the record before them, what seemed to have happened was an unusual procedure with the revocation by letter, but without following certification or anything else.

Chairman Ribble called for the vote. The motion carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting. The Zoning Administrator was upheld-in-part and overturned-in-part, as stated by Mr. Hart.

Mr. Congleton requested clarification on whether it was the Board's intent that the original Non-RUP and dance permit be reissued, whether or not a new permit was necessary, or whether the Board had a preference on the matter. Mr. Hart said the Board's focus of its determination that day was whether or not the April 13th revocation was wrong. He said the Board had no mandamus powers that a permit must or must not be issued, and that either side, staff or the appellant, had other relief available by asking a judge for injunctive or mandamus relief.

//

~ ~ ~ September 11, 2007, 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) (Admin. moved from 12/12/06 for notices and from 1/30/07 and 3/6/07 at appl. req.)

Chairman Ribble noted that A 2006-PR-034 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that was correct.

//

~ ~ ~ September 11, 2007, 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 and 5/1/07 at appl. req.) (Deferred from 5/2/06 at appl. req.) (Admin. moved from 12/5/06 for ads)

Chairman Ribble noted that A 2005-DR-061 had been administratively moved to December 4, 2007, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ September 11, 2007, Scheduled case of:

9:30 A.M. HOME PROPERTIES MOUNT VERNON, LLC, A 2007-MV-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard and an accessory use (a fence) on property which does not have an approved principle use in the C-8 District all in violation of Zoning Ordinance provisions. Located on approx. 1.49 ac. of land zoned C-8, CRD and H-C. Mount Vernon District. Tax Map 93-3 ((2)) (2) 1A.

Chairman Ribble noted that A 2007-MV-004 had been administratively moved to November 27, 2007, at 9:30

~ ~ ~ September 11, 2007, HOME PROPERTIES MOUNT VERNON, LLC, A 2007-MV-004, continued from Page 355

a.m., at the appellant's request.

//

The meeting recessed at 12:00 noon and reconvened at 12:11 p.m.

//

~ ~ ~ September 11, 2007, After Agenda Item:

Request for Additional Time
Trustees of Singh Sabha Gurdwara, Church, SP 99-S-058

Mr. Beard moved to approve 12 months of Additional Time. Mr. Hammack and Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting. The new expiration date was October 21, 2008.

//

~ ~ ~ September 11, 2007, After Agenda Item:

Request for Additional Time
Trustees of Lighthouse Baptist Church, SP 2004-LE-053

Mr. Smith moved to approve 12 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting. The new expiration date was June 7, 2008.

//

~ ~ ~ September 11, 2007, After Agenda Item:

Request for Additional Time
Odalys Smith and Virginia I. Carbonell, SPA 94-Y-055-2

Mr. Hammack moved to approve 12 months of Additional Time. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting. The new expiration date was May 29, 2009.

//

~ ~ ~ September 11, 2007, After Agenda Item:

Request for Additional Time
Trustees of Beacon Hill Missionary Baptist Church, SP 2004-HM-013

Mr. Hammack moved to approve 24 months of Additional Time. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting. The new expiration date was April 19, 2009.

//

~ ~ ~ September 11, 2007, After Agenda Item:

Request for Additional Time
Oakwood L.L.C., VC 2004-LE-119

Mr. Hart questioned why the applicant requested 30 months of additional time. Susan C. Langdon, Chief,

~ ~ ~ September 11, 2007, After Agenda Items, continued from Page 356

Special Permit and Variance Branch, said the applicant's letter stated that there were unforeseen delays in the site plan processing because of geotechnical and soils issues discovered after the original design process. It was anticipated that a good deal of time was needed to complete the necessary process.

Mr. Smith moved to approve 30 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting. The new expiration date was January 18, 2010.

//

~ ~ ~ September 11, 2007, After Agenda Item:

Approval of March 23, 2004 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 4-0-1. Mr. Smith abstained from the vote. Ms. Gibb and Mr. Byers were absent from the meeting.

Discussion ensued regarding the matter of the minutes, why there was a backlog, the difficulty with synopsis, the required and necessary detail, the availability of playback equipment, the shortage of staff, the complication of each case's subject matter, the various lengths of public hearings, the consideration for and pending discussion of a revised standard for preparation, the assured storage and retrieval of the information/documentation, the estimated time for recordation to be made current, the recent substantial increase in court cases and the time-consuming complexity of the preparation for litigation, the difficulty estimating the completion time for a set of minutes, and staff's continued effort and professionalism addressing the recordation of minutes.

//

~ ~ ~ September 11, 2007, After Agenda Item:

Consideration of Acceptance Application for Appeal filed by Forrest J. Hatcher

Mr. Hammack said it seemed to him that this was a request of Mr. Hatcher for the Board to reconsider its earlier decision, but he thought it was too late as Mr. Hatcher apparently had not appealed the Board's earlier decision to the courts. He noted that in the September 4, 2007 memorandum prepared by Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, staff gave reasons for the request's non-acceptance, particularly Mr. Hatcher's failure to file forms with the necessary parties. Mr. Hammack said the Board acted on this some time prior, and he thought the matter was decided.

Chairman Ribble acknowledge Mr. Hatcher's presence and allowed him three minutes to address the Board.

Forrest J. Hatcher, 2747 Oldewood Drive, Falls Church, Virginia, acknowledged it was his mistake about the filing process as he had not retained an agent and because of his unfamiliarity with the process, a good amount of time had elapsed. He said he sought to resolve the issues. He had moved one of the sheds and would submit photos evidencing its relocation. Mr. Hatcher noted it would be quite expensive if he had to tear the shed down, and many of his neighbors had sheds with the same circumstances. He referenced a mistake in staff's report where the shed's setback was recorded as 25 feet from the rear property line instead of the correct 50 feet. Mr. Hatcher requested the same exemption previously given him by the BZA, that the shed remain approximately six inches to one foot from the property line. He said he brought documentation from the Park Authority evidencing their agreement with him, and he noted that a Virginia Electric power line easement was the sole neighbor on one side and would not be affected.

At Chairman Ribble's request of staff for its comments, Ms. Stanfield said Charles Cohenour, Zoning Enforcement Branch, was the inspector working with Mr. Hatcher, and apparently Mr. Hatcher was unaware of the setback requirement. She said Mr. Cohenour had advised Mr. Hatcher accordingly and would continue to work with him to resolve the violation.

Mr. Hart said he understood Mr. Hatcher's situation was that several years prior Mr. Hatcher had filed two

~ ~ ~ September 11, 2007, After Agenda Items, continued from Page 357

applications, a variance for a giant fence/net to shield his yard from errant golf balls from the Park Authority's golf course next door and a special permit for several additions that were added to his house over the years and the location of several sheds. He recalled that the Board approved several things, but not everything. He stated the procedure for filing an appeal. He noted that Mr. Hatcher had omitted or neglected several of the required steps, and he informed Mr. Hatcher how and why his appeal to the BZA was neither proper nor possible. Mr. Hart said the matter for appeal was too late, and one could not appeal a BZA determination to the BZA.

Chairman Ribble called for a motion.

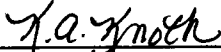
Mr. Hammack moved that the Board not accept the appeal filed by Forrest J. Hatcher for the reasons set forth in the September 4, 2007 memorandum of Mavis Stanfield, and because it appeared to be an appeal of a BZA decision made in February of 2006, at which time no appeal to the Circuit Court had been made. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting.

//

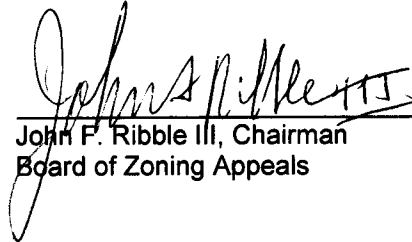
As there was no other business to come before the Board, the meeting was adjourned at 12:40 p.m.

Minutes by: Paula A. McFarland / Kathleen A. Knoth

Approved on: October 17, 2012



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 18, 2007. The following Board Members were present: Vice Chairman Paul W. Hammack, Jr.; V. Max Beard; Nancy E. Gibb; James R. Hart; and Thomas Smith. Chairman John F. Ribble III and Norman P. Byers were absent from the meeting.

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

~ ~ ~ September 18, 2007, Scheduled case of:

9:00 A.M. DANIEL AND DAWN GALVIN, SP 2007-SP-057 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit an existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 12841 Mount Royal La. on approx. 10,437 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-4 ((3)) (46) 3.

Vice Chairman Hammack called the applicants to the podium.

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

Daniel Galvin, 12841 Mount Royal Lane, Springfield, Virginia, reaffirmed the affidavit.

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

Mr. Galvin presented the special permit request as outlined in the statement of justification submitted with the application. He said there were no sight distance issues, and he intended to install landscaping along the fence. He said a four-foot high fence would not provide privacy, and his two small dogs were safer with a higher fence. He said there were 51 other homes in the area with similar fences, and he referenced a petition with 149 signatures of his neighbors who were in support of the fence remaining. Mr. Galvin said the plat showed a 6-foot 1-inch fence, but that was the height of the posts, and the fence itself was six feet high or less in some places.

Mr. Hart, Ms. Hedrick, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed proposed Condition 2 regarding the reduction of the fence height, with Ms. Langdon stating that the Ordinance allowed the posts to be up to four inches higher. Ms. Hedrick said that after the staff report had been published, she had confirmed with the applicants that only the posts measured over six feet, and staff supported deleting Condition 2.

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

Mr. Hart moved to approve SP 2007-SP-057 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL AND DAWN GALVIN, SP 2007-SP-057 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit an existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 12841 Mount Royal La. on approx. 10,437 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-4 ((3)) (46) 3. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 18, 2007; and

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

~ ~ ~ September 18, 2007, DANIEL AND DAWN GALVIN, SP 2007-SP-057, continued from Page 359

1. The applicants are the owners of the land.
2. The applicants have presented testimony showing compliance with the required standards for a special permit.
3. Based on the record before the Board, the fence is in keeping with the neighborhood.
4. There is a logical reason why this portion of this lot should be fenced this way.
5. Based on the photographs, it's not going to have any significant negative impact on anyone.

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

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

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

1. This special permit is approved for the location of a fence in the front yard as shown on the plat prepared by Kendall Consulting, Inc., dated March 2, 2007, as revised through May 25, 2007, as submitted with this application and is not transferable to other land.

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

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

//

~ ~ ~ September 18, 2007, Scheduled case of:

9:00 A.M. NV HOMES, INC., VC 2007-MV-002 Appl. under Sect(s). 2-503 of the Zoning Ordinance to permit an individual sewage disposal system to be located on a separate lot from the principal use. Located at 9199 Marovelli Forest Dr. on approx. 1.16 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((7)) 24 and E pt.

Vice Chairman Hammack noted that VC 2007-MV-002 had been administratively moved to October 2, 2007, at 9:30 a.m., at the applicant's request.

//

~ ~ ~ September 18, 2007, Scheduled case of:

9:00 A.M. ROBERT H. ROCKEFELLER, TRUSTEE, SP 2007-MV-067 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 16.6 feet from the rear lot line. Located at 8423 Silverdale Ct. on approx. 11,001 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 98-3 ((8)) 16.

Vice Chairman Hammack called the applicant to the podium.

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

Robert H. Rockefeller, 8423 Silverdale Court, Lorton, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-MV-067, subject to the proposed development conditions.

Mr. Hart, Mr. Chase, and Mr. Rockefeller discussed an alternate location to the rear of the garage for the addition, with Mr. Chase stating that the applicant had selected the proposed location because it could be

~ ~ ~ September 18, 2007, ROBERT H. ROCKEFELLER, TRUSTEE, SP 2007-MV-067, continued from Page 360

accessed from inside the home, whereas the alternate location suggested by Mr. Hart could not be due to the configuration of the kitchen.

Mr. Rockefeller presented the special permit request as outlined in the statement of justification submitted with the application. He said the sunroom addition would increase the value of the home and provide space for his son to play. He noted that the property backed up to woods, and there was no structure within 100 feet of the rear of the lot. Mr. Rockefeller said he had obtained approval from his homeowners association, no one had expressed objections, none of the neighbors would be able to see the sunroom, and the exterior would be the same as the existing home.

In response to Mr. Hart's comment regarding play equipment encroaching several feet into the adjoining property, Mr. Rockefeller said the play equipment had been there when he bought the property, and it could be moved if necessary. Mr. Hart clarified that he was not saying it was necessary to move it, but by approving the sunroom, the Board was not approving the location of the play equipment.

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

Ms. Gibb moved to approve SP 2007-MV-067 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT H. ROCKEFELLER, TRUSTEE, SP 2007-MV-067 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 16.6 feet from the rear lot line. Located at 8423 Silverdale Ct. on approx. 11,001 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 98-3 ((8)) 16. 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 18, 2007; 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). 8-922 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 280 square feet) of the proposed additions as shown on the plat prepared by Facility Engineering Associates, dated February 24, 2007, revised June 15, 2007, as submitted with this application and is not transferable to other land.

~ ~ ~ September 18, 2007, ROBERT H. ROCKEFELLER, TRUSTEE, SP 2007-MV-067, continued from Page 361

3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,512 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings included Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ September 18, 2007, Scheduled case of:

9:00 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, 7/18/06, and 5/1/07 at appl. req.) (Deferred from 10/3/06 at appellants' request) (Admin. moved from 1/9/07 for notices)

Vice Chairman Hammack noted that A 2006-LE-007 had been withdrawn.

//

~ ~ ~ September 18, 2007, Scheduled case of:

9:00 A.M. DAVID L. BROWN AND MARY ELLEN BROWN, A 2006-DR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, child's play equipment, a patio, and outdoor storage, all located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1840 Patton Te. On approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 21. (Indefinitely deferred from acceptance) (Reactivated from indefinitely deferred). (Admin. moved from 4/10/07 and 5/15/07 at appl. req.)

Vice Chairman Hammack noted that A 2006-DR-012 had been administratively moved to January 8, 2008, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ September 18, 2007, Scheduled case of:

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

Vice Chairman Hammack noted that A 2007-MA-011 had been administratively moved to November 27, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ September 18, 2007, Scheduled case of:

9:00 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 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. (Admin. moved from 10/31/06, 2/27/07 and 7/10/07 at appl. req.)

Vice Chairman Hammack noted that A 2006-BR-044 had been withdrawn.

//

~ ~ ~ September 18, 2007, Scheduled case of:

9:00 A.M. FEDERAL, INC., A 2007-SU-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor's office and shop on property in the I-3 District and has erected structures without approved building permits in violation of Zoning Ordinance provisions. Located at 14847 and 14905 Murdock St. on approx. 4.11 ac. of land zoned I-3, AN and WS. Sully District. Tax Map 33-2 ((2)) 20D and 20B.

Vice Chairman Hammack noted that A 2007-SU-022 had been administratively moved to December 4, 2007, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ September 18, 2007, Scheduled case of:

9:00 A.M. NUTLEY STREET, LLC, A 2007-PR-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the addition of soil in the floodplain on property located at Tax Map 48-4 ((1)) 12 occurred without the requisite approvals in violation of Zoning Ordinance provisions. Located at 3050 Nutley St. on approx. 13.52 ac. of land zoned C-3, C-6, C-8 and H-C. Providence District. Tax Map 48-4 ((1)) 12. (Admin. moved from 7/17/07.) (Reconsideration granted on 7/31/07.)

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

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in a memorandum dated September 11, 2007, from Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division.

In response to a question from Mr. Beard, Ms. Collins confirmed that the Board was being asked to hear staff's determination concerning illegal fill throughout the site.

Don Lacquement, Engineer, Department of Public Works and Environmental Services (DPWES), showed

drawings of the 3,000 cubic yards of fill beginning with the bulge where a large sediment basin had been and extending to a natural drainage swale depicted by an indentation in the floodplain area. He explained that field work had been done between 1962 and 1969 of the Accotink Creek Watershed, and he displayed a United States Geological Survey (USGS) cross section done at that time at the location of the current fill and a cross section showing the current conditions. He said that his analysis showed that there was fill in the area of the bulge and three feet of fill all the way to the edge of the floodplain channel. Mr. Lacquement said the addition of the fill constricted the channel and raised the water surface upstream of the constriction.

Discussions ensued regarding the impacts of the constriction; the various options for removing the fill; the timeframe in which the fill was placed as evidenced by the topography included in the early submissions of the site plans and aerial photography; the applicable provisions having been in place since 1959; the use of the terms "natural condition" and "original condition"; the removal of the temporary silt basins and restoration to natural condition referenced in Note 11 of the drawing Siltation and Erosion Control, Pan American Shopping Center; sedimentation from Accotink Creek not being the cause of the volume of fill found; the inspector's authority to determine whether drainage has been stabilized; the refunding of the bond to the builder indicating the area was stabilized; the completion certificate signed by Philip Yates on July 7, 1983, indicating all applicable codes and ordinances had been met was issued in error because the basin had not been restored; the existence of legal authority indicating an error cannot estop the Zoning Administrator from enforcing the Zoning Ordinance; reliance on approvals; definitions of discretionary and nondiscretionary errors; and there being no discretion as to whether or not to allow the fill to remain based on the fact that it constricts or interferes with the natural drainage.

(The meeting recessed at 10:56 a.m. and reconvened at 11:05 a.m.)

Jerry Emrich, Walsh, Colucci, Lubeley, Emrich & Terpak, 2200 Clarendon Boulevard, Arlington, Virginia, the appellant's agent, presented the arguments forming the basis for the appeal. Mr. Emrich stated that Keith Martin, Sack, Harris & Martin, 8270 Greensboro Drive, McLean, Virginia would also be representing the appellant. Mr. Emrich said the appellant's position was that the fill was not illegal, and the aerial map showed the berms were placed prior to April 2nd, 1978. Mr. Emrich said that although the importance of the floodplain is understood in 2007, the issue before the Board was what the Ordinance required and how it was interpreted and applied when the approvals occurred, and the documentation indicated compliance. The floodplain studies were approved and relied upon, and the 60-day Rule in Sect. 2311 applied. Mr. Emrich said the floodplain and resource protection area studies were required because the USGS map and elevations were not considered acceptable. The County required the appellant to go out and do a field-run survey, and that was what occurred. He said there was conformance with the ordinances at the time of the approval, and the County could not retroactively apply new ordinances or provisions.

Discussions ensued regarding Attachment 3 to the staff report, the deed of dedication and easement agreement; the Zoning Ordinance giving the Director of DPWES the administrative power over floodplain regulations, the right to require and approve floodplain studies, and the obligation to determine that the Zoning Ordinance provisions had been satisfied; the appellant's engineer, Clayton Tock, Urban Engineering, determining that the drainage way continued to function as a drainage way with the elevation being slightly higher and lower in some places; the timeframe of the preparation of the USGS data; and whether any evidence existed or there were any persons who would have information regarding the circumstances at the time of the approvals.

Mr. Martin explained the process the appellant had gone through regarding the special exception application for the property, including the request that their engineers revise the generalized development plan to reflect the 100-year floodplain line, which was resubmitted on February 6, 2007, to be included in the March 1, 2007 staff report. In response to a question from Mr. Hart regarding whether the revision had been requested so the application would be in compliance with the approved floodplain study, Mr. Martin confirmed that it was.

Mr. Hart noted that the revision submitted on February 8, 2007, was 69 days before the issuance of the violation on April 18, 2007, and he asked staff to confirm the timing and that the revision was made at the request of staff so the special exception application drawings would conform to the approved floodplain study. Eileen McLane, Zoning Administrator, Zoning Administration Division, said that was correct, but all of the approvals and staff's recommendation had been based on the fact that the information originally submitted by the appellant did not show there was illegal fill. She said that once it was determined the fill was illegal, staff reversed the recommendation.

~ ~ ~ September 18, 2007, NUTLEY STREET, LLC, A 2007-PR-013, continued from Page 364

Discussions ensued regarding the difference in opinions of Mr. Lacquement and Mr. Tock concerning whether or not there had been interference with the use as a natural drainage way; the current approach of increased sensitivity to matters of the floodplain which was not included in the applicable Zoning Ordinance at the time; the USGS mapping of the floodplain and the subsequent plats being based on conditions that currently did not exist; the possibility of amending the special exception application to include fill in the floodplain; removing enough fill to result in no hydraulic impact upstream; the appellant's decision not to amend the special exception application because it was anticipated it would result in a negative staff recommendation; litigation of the matter in court; the 1974 deed of dedication and easement and that the County enters into such agreements without inspecting the property; the size of the easement remaining the same as the USGS easement adopted in 1972; the installation of sewer lines by the County not being responsible for generating the volume of fill found; and the notes on the silt basin restoration plan stamped December 2, 1974.

In response to questions from Mr. Smith, Mr. Tock said the stream was functioning as a drainage way. He said that using the same flow as used in the USGS study, there was an increase in water surface in the bulge area, but the water surface elevation was actually lower upstream from there, and the drainage way was conveying the runoff through the floodplain.

Responding to questions from Mr. Beard, Mr. Tock and Mr. Lacquement both said they had not been to the property after a significant rainfall. Mr. Lacquement said he would not expect it to be a condition where hip waders would be needed. Jonathan Myers, Washington Property Company, said they were the purchasers of the property, and he had been there the morning after a substantial rain. He said the stream functioned as a normal stream, with water flowing, no backup, and no ponding effect.

Jan Brodie, County Attorney's Office, clarified that the plat attached to the approved easement agreement stated that, on the floodplain, no use shall be made nor shall any improvements be made to this easement which would in any way interfere with the natural drainage. Discussion ensued regarding what uses would be allowed in the easements.

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

Mr. Smith moved to overturn the determination of the Zoning Administrator for the reasons identified at the July 24, 2007 hearing. He said the facts in the case were not clear because it involved interpreting what happened 25 to 40 years ago. It was not clear what people reviewed, what they thought at the time, what methodology they used, or when the fill was placed on the property. He said the original zoning violation letter referenced that it was placed in the early 1980s, but a current report referenced it was in 1977 or 1978. It also was not clear who put the fill there, and there were questions about whether it was even the County. Mr. Smith said it was additionally not clear that the fill so constricted the floodplain as to interfere with its uses as a natural drainage way. There was conflicting testimony from the County and from the appellant's engineer, both professional engineers, both giving legitimate opinions. Mr. Smith said this involved interpretation, there was ambiguity in the language, and as a consequence, that impacted the question of whether it was nondiscretionary under the 60-day Rule. He said the current conditions had existed for approximately 30 years with no complaints of drainage problems, and there had been testimony that it appeared to function as a natural stream. Mr. Smith said he could not conclude there was a clear violation of the 1971 Ordinance, and he thought that was the applicable Ordinance because there had been no indication the fill was placed subsequent to adoption of the 1978 Ordinance.

Mr. Smith said that with respect to 15.2-2311C, there was clear testimony at the previous hearing that there had been reliance and good faith by the appellant on the County's issuance of the permits decades ago, including the 1983 certificate of completion. He said he understood the County's position that it was based on a mistake; however, it was relied upon after the 1995 adoption of the statute when the appellant purchased the property and proceeded with the expense of the various land use permits. Mr. Smith said there was good faith reliance on the 2006 floodplain study, the resource protection area study, and the staff report.

Mr. Smith said he believed the DPWES officials constituted other administrative officers, and it would not be appropriate for the Zoning Administrator to have others make decisions and have the statute not apply when it was dealing with a Zoning Ordinance interpretation.

~ ~ ~ September 18, 2007, NUTLEY STREET, LLC, A 2007-PR-013, continued from Page 365

Ms. Gibb seconded the motion.

Mr. Hart indicated he would support the motion. He said the approval of the floodplain study, although done by DPWES, was a determination under Sect. 2-902 of the Zoning Ordinance, which expressly provided that the regulations were created to preserve and protect floodplains in as natural a state as possible. He said certain things were delegated to the Director of DPWES under Sect. 2-902. The Director has certain authority to make approvals, which Mr. Hart said he would conclude would be discretionary rather than nondiscretionary in the subject case. Mr. Hart said those things seemed to be judgment calls, but it was a discretionary error and the kind of determination that was contemplated by the statute.

Mr. Hart said more than 60 days elapsed between the approval of the floodplain study and the April 18 violation notice, and that was the clearest point. After the approval of the floodplain study, a determination under 2-902 and relied upon by the applicant in pursuing the special exception and continuing to spend money on it, it was too late to change it. He said he would also conclude there were a series of other earlier determinations to which the same analysis could be applied. He said he did not believe the staff report March 1st determination alone would be subject to the 60-day Rule because it was only 49 days, but in addition to the floodplain study, the revision request earlier than February 8th to show the new floodplain study lines would have incorporated the earlier determinations.

Mr. Hart said that under the plain language of the 1971 Ordinance, under 30-3.6.3, some fill would have been allowed in the floodplain as long as it did not interfere with its uses as a natural drainage way. It was not a prohibition on all fill. He said that because of the various approvals and certifications at the end of construction, someone would have had to conclude that what existed did not interfere with the uses as a natural drainage way.

Mr. Beard indicated he would support the motion. He said he agreed with the comments from Mr. Smith, Mr. Hart, and Ms. Gibb and thought "reliance" was an underlying word, especially given the time factor.

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

//

~ ~ ~ September 18, 2007, After Agenda Item:

Approval of March 16, 2004 Minutes

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

//

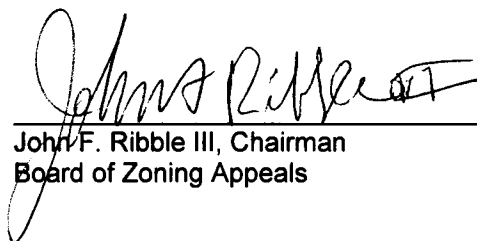
As there was no other business to come before the Board, the meeting was adjourned at 12:42 p.m.

Minutes by: Shannon M. Keane / Kathleen A. Knoth

Approved on: November 19, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 25, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Norman P. Byers was absent from the meeting.

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

~ ~ ~ September 25, 2007, Scheduled case of:

9:00 A.M. MARY A. SALINAS, VC 2007-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.07 ft. with eave 5.05 ft. from rear lot line and 3.34 ft. with eave 2.14 ft. from side lot line. Located at 6706 Farragut Ave. on approx. 7,200 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((13)) (3) 35.

Chairman Ribble called the applicant to the podium.

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

Mary Salinas, 6706 Farragut Avenue, Falls Church, Virginia, reaffirmed the affidavit.

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

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Hart's questions concerning processing variances and special permits, required fees, deferral of the variance, submission of a special permit, and she clarified items on the plat.

Ms. Salinas presented the variance request as outlined in the statement of justification submitted with the application. She said the garage was needed to store her father's machinery and equipment and provide protection from theft and the elements.

Discussion ensued regarding the Cochran Case, the Board's difficulty approving a variance under the strict "all reasonable beneficial use" standard, and alternatives for the applicant. Mr. Beard said approving a variance was not uncommon before the Supreme Court ruling, which explained the neighbors' variances pointed out by the applicant. Mr. Hart outlined the history of the applicable standards governing the approval of a variance. He explained that the Board of Supervisors amended the Ordinance with a new category of special permits for reductions of minimum yard requirements. He suggested the applicant reconsider the garage's location and consult staff regarding a special permit.

Ms. Salinas asked the Board to defer its decision.

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

Mr. Hammack moved to defer decision on VC 2007-PR-003 to December 18, 2007, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

//

~ ~ ~ September 25, 2007, Scheduled case of:

9:00 A.M. MICHAEL BRATTI, SP 2007-DR-074 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 2025 Franklin Ave. on approx. 20,471 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 2.

Chairman Ribble called the applicant to the podium.

Michael Bratti, 2025 Franklin Avenue, McLean, Virginia, reaffirmed the affidavit.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or

~ ~ ~ September 25, 2007, MICHAEL BRATTI, SP 2007-DR-074, continued from Page 367

affirmed that their testimony would be the truth, and the public hearing was opened.

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

Mr. Bratti presented the special permit request as outlined in the statement of justification submitted with the application. He said the fence provided privacy, safety, and security for his family. Mr. Bratti said several of his neighbors, including those directly across the street, expressed to him that they had no problem with a six-foot fence.

In response to questions from Mr. Beard, Bratti said the fence was installed in 2003 or 2004. Ms. Hedrick said the matter was initiated by a complaint. Bruce Miller, Property Maintenance Zoning Enforcement Inspector, said the complaint was received in 2004. The applicant appealed the notice of violation during the time the Board of Supervisors was in the process of amending the Ordinance regarding special permits, and the Board deferred the appeal to allow Mr. Bratti the opportunity to apply for a special permit.

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

Mr. Hart moved to approve SP 2007-DR-074 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL BRATTI, SP 2007-DR-074 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 2025 Franklin Ave. on approx. 20,471 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 2. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 25, 2007; and

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

1. The applicant is the owner of the land.
2. This is a reasonable request under these circumstances.
3. As the record shows, the topography of the lot is such that Virginia Avenue is much higher than Franklin Avenue, and a 4.0 foot fence really doesn't do much of anything to someone standing on Virginia Avenue.
4. The fence was consistent with many other fences in the neighborhood, and the next-door neighbor's fence was taller than the applicant's.
5. A 6.0-foot fence is not out of keeping with the neighborhood.
6. It meets all the additional standards in Sect. 8-923.
7. There will not be a sight distance problem.
8. It will not have a negative impact on anybody.
9. It creates a functional back yard on the same side of the house as several other neighbors have for a functional back yard.
10. The applicant's lot is not the sole through lot between Franklin and Virginia Avenues.
11. There appears to be no opposition expressed that identifies any impacts on anybody.
12. Based on the file photographs, it is obvious that the applicable standards were met.

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

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

~ ~ ~ September 25, 2007, MICHAEL BRATTI, SP 2007-DR-074, continued from Page 368

contained in Sect. 8-923, of the Zoning Ordinance.

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

1. This special permit is approved for the location of a fence as shown on the plat prepared by William E. Ramsey, P.C., dated June 16, 2003 as revised through June 2, 2004 and revised by Alexander George Zaras, dated July 12, 2007, as submitted with this application and is not transferable to other land.

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

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

//

~ ~ ~ September 25, 2007, Scheduled case of:

9:00 A.M. WILLIAM O. LOCHRIDGE & SHARON L. LOCHRIDGE, SP 2007-BR-068 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 6.0 ft. and 8.7 ft. from side lot line. Located at 4820 Red Fox Dr. on approx. 11,200 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((6)) 73.

Chairman Ribble called the applicants to the podium.

Sharon L. and William O. Lochridge, 4820 Red Fox Drive, Annandale, Virginia, reaffirmed the affidavit.

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

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Subsequent to the staff report's publication, it was determined that a stone wall would need to be altered or removed during construction, and the applicants obtained a letter from their neighbor indicating that damage to the trees was not a factor because the trees would be removed in the near future. Staff recommended approval of SP 2007-BR-068, subject to the proposed development conditions, with the deletion of Condition 5.

Mr. Varga responded to Mr. Hart's questions concerning shifting the garage and porch and the reasons for the dimensions and locations requested.

Mr. Lochridge presented the special permit request as outlined in the statement of justification submitted with the application. He explained the reasons for the home's redesign, necessity for the additions, possibility of tree damage, and the matter of the stone wall.

In response to a question from Ms. Gibb, Susan C. Langdon, Chief, Special Permit and Variance Branch, stated that deleting Condition 5 was appropriate because the neighbor had no objection to the tree removal.

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

Ms. Gibb moved to approve SP 2007-BR-068 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM O. LOCHRIDGE & SHARON L. LOCHRIDGE, SP 2007-BR-068 Appl. under Sect(s). 8-922 of the

~ ~ ~ September 25, 2007, WILLIAM O. LOCHRIDGE & SHARON L. LOCHRIDGE, SP 2007-BR-068, continued from Page 369

Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 6.0 ft. and 8.7 ft. from side lot line. Located at 4820 Red Fox Dr. on approx. 11,200 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((6)) 73. 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 25, 2007; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the applicants have met the required special permit standards 1 through 6.
3. Staff has recommended approval.
4. The applicants' testimony indicates that much thought was given to the location of the garage based on where the neighbor's garage is located.
5. The garage is architecturally pleasing because it has been moved forward and placed even with the front of the house.
6. The design causes an intrusion into the side yard.
7. The proposal is consistent with the neighborhood.

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

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

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

1. These conditions shall be recorded by the applicant among the land 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 (1,175 square feet) of the proposed additions as shown on the plat prepared by George M. O'Quinn, dated May 17, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (2,411 square feet) that existed at the time of the first or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

~ ~ ~ September 25, 2007, WILLIAM O. LOCHRIDGE & SHARON L. LOCHRIDGE, SP 2007-BR-068,
continued from Page 370

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

//

~ ~ ~ September 25, 2007, Scheduled case of:

9:00 A.M. BEE HO LEE, SP 2007-MA-075 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7138 Lanier St. on approx. 13,180 sq. ft. of land zoned R-4 and HC. Mason District. Tax Map 71-1 ((17)) (1) 1 and 71-1 ((23)) 1A.

Chairman Ribble called the applicant to the podium.

Bee Ho Lee, 7138 Lanier Street, Annandale, Virginia, came forward. Richard Nguyen, 6521 Arlington Boulevard, Suite 101, Falls Church, Virginia, the applicant's agent, reaffirmed the affidavit.

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

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-MA-075, subject to the proposed development conditions.

Mr. Smith, Mr. Hart, Chairman Ribble, and Susan C. Langdon, Chief, Special Permit and Variance Branch, discussed the development conditions, installation and maintenance of landscaping, an accessory structure, the lot's size and front yard determination, the parking area's reconfiguration and delineation, the height of the fence, the removal of a walkway, and prohibition of signage. Ms. Langdon said the applicant redesigned the site to address the Virginia Department of Transportation's (VDOT) determination regarding the entrance and proximity to the intersection of John Marr and Backlick Roads, and VDOT's review resulted in the development conditions for the number of clients, time between visits, and hours of operation outside peak traffic hours. She said staff determined that the application met the required standard of having the appearance of a single-family dwelling by requesting landscaping, additional screening, and the parking area off Backlick Road be reduced in size. She said it was not unusual for a corner lot to have two entrances and two parking areas.

Mr. Nguyen presented the special permit request as outlined in the statement of justification submitted with the application. He said Mr. Lee had been a licensed acupuncturist with a separate office since 1999, and due to financial reasons, he began practicing from his home office in December of 2006. A notice of violation had been issued, and he ceased operations from the home and worked with the County on plans that would result in a home office and address the neighbors' needs and concerns.

Mr. Beard, Mr. Smith, Mr. Hart, Mr. Hammack, Mr. Varga, and Mr. Nguyen discussed the number of daily clients, traffic generated by the business, needle disposal, the applicant's compliance with the cessation of business on the subject property, a fence and shed located on the property, parking being prohibited on the grass, removal of a walkway, solutions to potential ingress/egress difficulties, whether the business could successfully operate within the limits of the conditions, and although the applicant held a degree in acupuncture and herbal medicine, the business being acupuncture only with no herbal medicine.

Chairman Ribble called for speakers. He noted that the Board had received several letters in opposition.

Ben Glass, 7105 Jayhawk Street, Annandale, Virginia, came forward to speak in opposition to the application. He said he had lived in the Crestwood Manor Subdivision since 1960 and was a member of the architectural control committee. Mr. Glass said the subdivision was designed with the small lots to the north of Lots 1 through 15 and the stockade fence to prohibit access between the residential and commercial areas. He also said he did not agree that there would be no additional traffic on Lanier Street.

~ ~ ~ September 25, 2007, BEE HO LEE, SP 2007-MA-075, continued from Page 371

Mr. Hart, Mr. Smith, Ms. Gibb, Mr. Glass, and Ms. Langdon discussed vehicular flow, signalization, traffic impacts, and VDOT's determination that there were no issues with the application after the business operations were adjusted.

In his rebuttal, Mr. Nguyen clarified the hours the applicant would receive patients. He said the special permit would provide incentive for the applicant to improve the property, which would benefit the neighborhood, and he could make a living out of his home.

Mr. Smith, Mr. Beard, Mr. Hart, Ms. Langdon, and Mr. Nguyen discussed monitoring and enforcement of the conditions, reducing the parking spaces, a time limit for the approval so the Board could review whether there had been violations or complaints, ways to direct traffic to take specific routes, the width of the entrance to the parking area, signage, and similar applications.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-MA-075, with modifications to the development conditions and the following findings of fact:

- 1) The applicant is the owner of the land.
- 2) The property is presently zoned R-4 and HC.
- 3) The area of the lot is 13,180 square feet.
- 4) The applicant has presented testimony indicating compliance with the general standards for special permit uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sects. 8-903 and 8-907 of the Zoning Ordinance.

Ms. Gibb seconded the motion.

Mr. Hart said he was unable to support an approval at that time, although he generally agreed that under certain circumstances the property might have an approvable home professional office. He said he agreed with the development conditions as modified by Mr. Smith, but he thought the parking lot entrance would conflict with traffic, and Standard 4 was not met. Mr. Hart suggested a short deferral to obtain additional information related to the transportation problem.

Mr. Smith said he had the identical concern voiced by Mr. Hart, and he requested VDOT's confirmation of its determination in light of the concerns raised by the Board.

Mr. Beard said he would not support the motion due to the traffic concerns, and he did not feel it was in keeping with the Comprehensive Plan.

Amending his motion, Mr. Smith moved to defer decision on SP 2007-MA-075 to October 16, 2007, at 9:00 a.m., for VDOT's reconsideration and/or confirmation of its prior determination in light of the Board's discussion. Ms. Gibb seconded the amended motion.

Mr. Hart requested that VDOT address several issues, the location and width of the parking area entrance, a proposed sign on Backlick Road to indicate the entrance, a sidewalk on John Marr Drive, and ways to discourage U-turns or left turns going west in a safe manner. Chairman Ribble suggested VDOT consider an entrance on Lanier Street instead of Backlick Road.

Mr. Hammack said the Backlick Road entrance did not satisfy several required Ordinance standards. He said the Saturday hours of operation were an issue because it made it more a commercial project and less compatible with a residential neighborhood.

Chairman Ribble called for the vote.

The motion to defer decision to October 16, 2007, at 9:00 a.m., carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Byers was absent from the meeting.

//

~ ~ ~ September 25, 2007, Scheduled case of:

9:00 A.M. JANET COCHRAN, SP 2007-MV-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of a roofed deck 16.1 ft. from front lot line. Located at 2503 Fairhaven Ave. on approx. 6,946 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 29.

Chairman Ribble called the applicant to the podium.

Janet Cochran, 2503 Fairhaven Avenue, Alexandria, Virginia, reaffirmed the affidavit.

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

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-MV-070, subject to the proposed development conditions.

Ms. Cochran presented the special permit request as outlined in the statement of justification submitted with the application. She said the existing awning allowed rain to pass behind it which damaged the door to the point it had to be replaced. The roof of the house had recently been replaced, and she wanted the roof over the porch to match, with recessed lighting that would not bother the neighbors. The porch would be enlarged, but would not extend any further to the front. The covered porch would provide additional space for the family which was needed because the house was small.

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

Mr. Beard moved to approve SP 2007-MV-070 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JANET COCHRAN, SP 2007-MV-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of a roofed deck 16.1 ft. from front lot line. Located at 2503 Fairhaven Ave. on approx. 6,946 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 29. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 25, 2007; and

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

1. The applicant is the owner of the land.
2. The application is pretty standard.
3. The proposal is architecturally compatible with the neighborhood.
4. As evidenced by a neighbor's letter of support, the proposal is an improvement to the neighborhood.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for

~ ~ ~ September 25, 2007, JANET COCHRAN, SP 2007-MV-070, continued from Page 373

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 210 square feet) of the proposed additions as shown on the plat prepared by Larry N. Scartz, Land Surveyor, dated May 11, 2007, 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. The porch shall be consistent with the architectural renderings 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

//

~ ~ ~ September 25, 2007, Scheduled case of:

9:00 A.M. KERMIT C. ZIEG, JR., SP 2007-MV-071 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 9.6 ft. from side lot line and 24.0 ft. from rear lot line. Located at 1400 Alexandria Ave. on approx. 20,561 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 4B.

Chairman Ribble called the applicant to the podium.

Kermit C. Zieg, Jr., 1400 Alexandria Avenue, Alexandria, Virginia, reaffirmed the affidavit.

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

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-MV-071, subject to the proposed development conditions.

Mr. Zieg presented the special permit request as outlined in the statement of justification submitted with the application. He said the large deck could not be used because of the mosquito problem. The screened porch would be within the footprint of the existing deck, allow his family to enjoy the outdoors, and was consistent with his neighbor's screened porch.

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

Mr. Hammack moved to approve SP 2007-MV-071 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KERMIT C. ZIEG, JR., SP 2007-MV-071 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit

~ ~ ~ September 25, 2007, KERMIT C. ZIEG, JR., SP 2007-MV-071, continued from Page 374

reduction of certain yard requirements to permit construction of addition 9.6 ft. from side lot line and 24.0 ft. from rear lot line. Located at 1400 Alexandria Ave. on approx. 20,561 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 4B. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 25, 2007; and

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

1. The applicant is the owner of the land.
2. The proposed development does not adversely impact the use or enjoyment of any adjacent 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. 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 418 square feet) of the proposed additions as shown on the plat prepared by Larry N. Scartz, Land Surveyor, dated February 21, 2006 and revised by Rebecca L.G. Bostick (Architect), dated April 20, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling (4,570 square feet) that existed at the time of the first expansion regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The additions shall be consistent with the architectural renderings included Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ September 25, 2007, Scheduled case of:

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

Chairman Ribble noted that the Board had received a request to defer decision on A 2006-PR-056 to December 11, 2007.

Mr. Hammack moved to defer decision on A 2006-PR5-056 to December 11, 2007, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

//

~ ~ ~ September 25, 2007, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, L.L.C., A 2007-DR-018, 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 8/7/07 at appl. req.)

Chairman Ribble noted that A 2007-DR-018 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that the application had been withdrawn, stating that the noise wall had been constructed and inspected.

//

~ ~ ~ September 25, 2007, Scheduled case of:

9:30 A.M. ANNANDALE PLAZA, LLC, A 2007-MA-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has installed or has allowed to be installed two building-mounted signs on property in the C-8 District without valid sign permits or building permits in violation of Zoning Ordinance provisions. Located at 7326/7328 Little River Tp. on approx. 42,794 sq. ft. of land zoned C-8, H-C, SC and ARD. Mason District. Tax Map 71-1 ((1)) 80.

Chairman Ribble noted that A 2007-MA-012 had been administratively moved to December 4, 2007, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant's special exception application had been accepted, which would resolve the violation, and the Planning Commission would hold the public hearing in November.

//

~ ~ ~ September 25, 2007, 2004, After Agenda Item:

Approval of March 30, 2004 Minutes

Mr. Hammack moved to approve the March 30, 2004 minutes. Mr. Beard seconded the motion, which carried by a vote of 5-0-1. Mr. Smith abstained from the vote. Mr. Byers was absent from the meeting.

//

~ ~ ~ September 25, 2007, After Agenda Item:

Request for Additional Time
Trustees of Virginia Presbyterian, SPA 90-L-050-2

Mr. Hart moved to approve 24 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting. The new expiration date was September 1, 2009.

//

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 Horner vs. BZA, in Circuit Court of Fairfax County, No. 067696; Lee vs. Fairfax County in Circuit Court of Fairfax County, No. 04221391; Voorhees vs. BZA in Circuit Court of Fairfax County, No. 079484, and the appeal to the United States Supreme Court; and discussion regarding the approval of the BZA's 2008 meeting dates; 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. Byers was absent from the meeting.

The meeting recessed at 11:35 a.m. and reconvened at 12:04 p.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. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

//

~ ~ ~ September 25, 2007, After Agenda Item:

Approval of BZA Meeting Dates for 2008

Mr. Hammack noted the dates which the Board would not meet and moved to approve the 2008 meeting dates. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

//

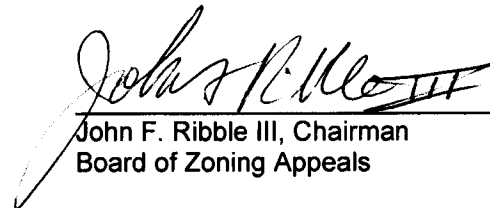
As there was no other business to come before the Board, the meeting was adjourned at 12:15 p.m.

Minutes by: Paula A. McFarland / Kathleen A. Knoth

Approved on: August 6, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 2, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

//

~ ~ ~ October 2, 2007, Scheduled case of:

9:00 A.M. MAHLON DENNIS HARRISON, SP 2007-MA-069 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.5 ft. with eave 1.2 ft. from the rear lot line and 2.7 ft. with eave 1.3 ft. from the side lot line. Located at 3064 Valley La. on approx. 11,198 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((11)) 197.

Chairman Ribble called the applicant to the podium.

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

Mahlon Dennis Harrison, 3064 Valley Lane, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an accessory storage structure, a shed measuring 16 feet in height, to remain 2.5 feet with eave 1.2 feet from the rear lot line and 2.7 feet with eave 1.3 feet from the side lot line. A minimum rear yard of 16 feet and minimum side yard of 12 feet are required; however, eaves are permitted to extend 3.0 feet into the rear and side yards; therefore, modifications of 13.5 feet, 11.8 feet, 9.3 feet, and 7.7 feet, respectively, were requested.

In response to a question from Mr. Hart, Ms. Hedrick stated that a complaint was called in to the Zoning Enforcement Office regarding the location of the shed.

Mr. Harrison presented the special permit request as outlined in the statement of justification submitted with the application. He gave a brief history of the shed, noting that he had replaced a dilapidated metal shed which had been on the property in the same location when he purchased the property. Mr. Harrison stated that the shed sat at the bottom of a steep hill, which was the flattest area on his property. He noted that there was no other level location in his yard to move the shed. Mr. Harrison asked that he be allowed to keep the shed, stating that he built the shed in good faith, unaware that a permit was necessary.

In response to a question from Chairman Ribble, Mr. Harrison said he believed the previous shed was 10 by 10 feet, but was unsure of its height.

Mr. Hammack asked how far the previous shed was from the property line. Mr. Harrison responded that it was about six feet from the back and six feet from the side.

Mr. Hart and Mr. Harrison discussed the replacement shed, with Mr. Harrison noting that there was no electric service or plumbing in the shed. Mr. Harrison said the shed was basically complete and was light grey in color, but he would be willing to paint it a more neutral earth tone. In response to a question from Mr. Hart, Mr. Harrison said that staff had not asked him to plant anything around the shed, but he would be willing to do so.

Chairman Ribble called for speakers.

Patrick Harkins, 3062 Valley Lane, Falls Church, Virginia, came forward to speak. He said he had lived immediately adjacent to the subject property for 23 years and had seen many changes in the neighborhood, including erections of sheds, garages, additions, and other types of improvements to property by residents, most of which had been positive improvements, and the work done by the applicant fit well within those boundaries. He asked the Board to approve the application.

~ ~ ~ October 2, 2007, MAHLON DENNIS HARRISON, SP 2007-MA-069, continued from Page 379

Chairman Ribble noted that the Board had received a petition to approve the application which contained approximately eight names.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-MA-069 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MAHLON DENNIS HARRISON, SP 2007-MA-069 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.5 ft. with eave 1.2 ft. from the rear lot line and 2.7 ft. with eave 1.3 ft. from the side lot line. Located at 3064 Valley La. on approx. 11,198 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((11)) 197. 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 2, 2007; 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

~ ~ ~ October 2, 2007, MAHLON DENNIS HARRISON, SP 2007-MA-069, continued from Page 380

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 Land Surveying Services, dated November 1, 2006, as revised through March 19, 2007, as submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the addition shall be diligently pursued and obtained within 90 days of final approval or this special permit shall be null and void.
3. The structure shall be painted with a neutral earth tone color.

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

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

//

Before calling the next case, Chairman Ribble congratulated Mr. Hammack on his recent election to the Bar Counsel for the Virginia State Bar Association.

//

~ ~ ~ October 2, 2007, Scheduled case of:

9:00 A.M. CAROLYN DAY HECOX, SP 2007-SP-072 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8830 Lake Hill Dr. on approx. 3.04 ac. of land zoned R-1. Springfield District. Tax Map 106-1 ((3)) 12.

Chairman Ribble called the applicant to the podium.

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

Carolyn Hecox, 8830 Lake Hill Drive, Lorton, Virginia, reaffirmed the affidavit.

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 on the second story of the detached garage, consisting of one bedroom, a kitchen, a family room, and a handicapped accessible bathroom. He said the applicant proposed to live in the accessory dwelling and rent out the primary home. Mr. Varga stated that a notice of violation was issued to the applicant for two separate dwelling units on the property, noting that Danny Forshee from Zoning Enforcement was present to answer any questions about the violation. Staff recommended approval of SP 2007-SP-072 subject to the revised proposed development conditions.

Mr. Hart and Mr. Varga discussed the location of the freestanding garage, with Mr. Varga pointing out that the garage was built in the wrong location and would need an administrative waiver.

In response to a question from Mr. Byers, Mr. Varga stated that he believed that the violation had been reported by a neighbor.

Ms. Hecox presented the special permit request as outlined in the statement of justification submitted with the application. She distributed copies of an appraisal done one year prior which showed the County's estimate of 1,084 square feet of living space for the second story of the garage to be incorrect, as it measured 1,064 square feet on the new plat. Likewise, instead of comprising 29.7 percent of the total square feet of the main building, it was actually 24 percent. Ms. Hecox addressed the location of the garage,

~ ~ ~ October 2, 2007, CAROLYN DAY HECOX, SP 2007-SP-072, continued from Page 381

stating that a County inspector had measured and approved the location after the footers had been moved farther out. She also referenced the 50-foot road easement and 40-foot setback requirement, stating that she did not feel she should have to apply for an administrative reduction to allow the garage to remain 36.2 feet, with eave 33.2 feet, from the front lot line since the County again approved the garage location when she applied for the installation of underground electric wiring.

Susan Langdon, Chief, Special Permits and Variance Branch, stated that an administrative approval was required. She said the building permit was approved for a detached three-car garage 40 feet from the front lot line. Since the garage was less than that, it needed to be rectified.

Mr. Hart stated his understanding of the two lot constraints: one was a future road, and the other was a 50-foot building restriction line. At some point in time, the 50-foot road was vacated, but the 50-foot building restriction line was not. He said the applicant's engineer was still showing the 50-foot building restriction line on the drawing, and the structure would conflict with that. Mr. Hart pointed out that the Board was not addressing the issue of the remaining covenant, but only the Zoning Ordinance issues. Ms. Hecox responded that she possessed the necessary paperwork to have the covenant removed and would do so.

Chairman Ribble called for speakers.

Laura and Stephen Landers, 8829 Lake Hill Drive, Lorton, Virginia, came forward to speak. They stated their opposition to the application. They said the 13 neighboring homes to the applicant all had septic systems, with their home being at the lowest level. Ms. Landers was concerned with maintaining the natural balance of the area and felt the septic runoff would be disturbed with the additional tenants. Mr. Landers said he believed that the applicant could add additional tenants in the main house, which would further exacerbate the septic issue.

Mr. Hart and Ms. Langdon discussed the septic field, with Ms. Langdon stating that although staff had not checked the size and capability of the septic field, they believed the detached garage would need a separate septic field or some type of separate approval. Mr. Hart said he felt there should be some documentation from the Health Department about the capacity of the septic field. Ms. Langdon said the Zoning Ordinance only required special permit plats to show the location of a well and/or septic field or an indication that the property is served by public water and/or sewer.

In her rebuttal, Ms. Hecox provided a diagram of the property which showed the house on the right, the accessory dwelling on the left, and the septic field sitting right in between. She said there had been an expansion to the septic field by the previous owner, noting that it could service five bedrooms. Ms. Hecox stated that the overflow from the septic field would never go down into the pond because the pond was downhill on the other side of the property.

Mr. Hammack and Ms. Hecox discussed the garage addition, with Ms. Hecox stating that the original plans showed the accessory dwelling unit on the second floor when the garage addition was constructed. She did not recall if the kitchen and dining room were delineated.

In response to a question from Mr. Hammack, Ms. Langdon stated that the building permit had been approved for a detached three-car garage and did not relieve the owner from obtaining the permits the County required.

Mr. Beard asked if someone changed an approved loft into living quarters and applied for plumbing and electrical permits, did the inspector pull the plans. Ms. Langdon said that the plans would be reviewed by the inspector, but they would not be aware if a kitchen had been requested or approved. Mr. Beard said this would be a theoretical back door route.

In response to a question from Mr. Beard, Charles Forshee, Zoning Enforcement Branch, stated that he had never been on the property. All his contact with the applicant had been on the phone where Ms. Hecox told him that she wanted to turn the main house into two living quarters and she would live over the garage. Mr. Forshee had told her that she would have to apply for a special permit. Mr. Beard said he felt the matter should be deferred until it could be determined what was approved, what was not approved, and where the septic field was located.

~ ~ ~ October 2, 2007, CAROLYN DAY HECOX, SP 2007-SP-072, continued from Page 382

Mr. Hart said he would like to see the building permit and the plans that went with the building permit. He also wanted to verify if the kitchen and the bathroom for the loft area were on the plans or not.

In response to a question from Mr. Hart, Ms. Langdon said that one family or up to four non-related people could live in the main dwelling. She stated that it could not be divided up into more living spaces and there could not be a second kitchen.

Chairman Ribble closed the public hearing.

Mr. Byers moved to defer decision on SP 2007-SP-072 to October 30, 2007, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 2, 2007, Scheduled case of:

9:00 A.M. CHRISTINA WRIGHT DJEMMAL, SP 2007-DR-080 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.1 ft. from front lot line. Located at 6923 Tyndale St. on approx. 10,660 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((32)) 13

Chairman Ribble noted that the applicant had requested a deferral. Ms. Gibb moved to defer SP 2007-DR-080 to November 27, 2007, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 2, 2007, Scheduled case of:

9:00 A.M. NV HOMES, INC., VC 2007-MV-002 Appl. under Sect(s). 2-503 of the Zoning Ordinance to permit an individual sewage disposal system to be located on a separate lot from the principal use. Located at 9199 Marovelli Forest Dr. on approx. 1.16 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((7)) 24 and E pt. (Admin. moved from 9/18/07 at appl. req.)

Chairman Ribble noted that VC 2007-MV-002 had been administratively moved to October 30, 2007, at 9:00 a.m., for notices.

//

~ ~ ~ October 2, 2007, Scheduled case of:

9:00 A.M. RICHARD B. ROSSE AND DEBORAH H. ROSSE, SP 2007-MA-073 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 18.2 ft. from rear lot line. Located at 3402 Siesta Dr. on approx. 8,925 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((26)) 28.

Chairman Ribble called the applicants to the podium.

Deborah H. Rosse and Richard B. Rosse, 3402 Siesta Drive, Falls Church, Virginia, reaffirmed the affidavit.

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 a special permit to allow construction of an addition 18.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a reduction of 6.8 feet was requested. Staff recommended approval of SP 2007-MA-073 subject to the proposed development conditions.

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

~ ~ ~ October 2, 2007, RICHARD B. ROSSE AND DEBORAH H. ROSSE, SP 2007-MA-073, continued from Page 383

application. Mr. Rosse said the current kitchen and dining room were too small for their family of five, and they wished to replace them with larger rooms.

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

Mr. Hart moved to approve SP 2007-MA-073 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD B. ROSSE AND DEBORAH H. ROSSE, SP 2007-MA-073 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 18.2 ft. from rear lot line. Located at 3402 Siesta Dr. on approx. 8,925 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((26)) 28. 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 2, 2007; 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 showing compliance with the required standards for this type of special permit.
3. The Board has a favorable recommendation from staff.
4. The Board would adopt the rationale in the staff report.
5. The lot is relatively shallow; it is only 105 feet deep.
6. The way that the addition has been designed, it will be virtually impossible to see it from anywhere but the rear.
7. From the photographs, the impact of the addition in that location would not have a significant negative impact on anyone.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 873 square feet) of the proposed additions as shown on the plat prepared by William E. Ramsey, Land Surveyor, dated October 25, 2006, and signed November 22, 2006 as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling (2,713 square feet) that existed at the time of the first expansion regardless of whether such addition

~ ~ ~ October 2, 2007, RICHARD B. ROSSE AND DEBORAH H. ROSSE, SP 2007-MA-073, continued from Page 384

complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings included in Attachment 1 to these conditions.
5. Notwithstanding the addition as shown the special permit plat, a deck may be constructed as shown on the architectural renderings provided that the deck meets the provisions of Sections 2-412 and 10-103.3 of the Zoning Ordinance.

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

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

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

//

~ ~ ~ October 2, 2007, Scheduled case of:

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

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

Chairman Ribble noted that the appellant had requested deferrals.

Jayne Collins, Zoning Administration Division, stated that staff supported the deferral request. She said the appellant's site plan would shortly be approved, which would clear the violations.

Chairman Ribble called for speakers to address the question of the deferral requests; there was no response.

Ms. Gibb moved to continue A 2006-PR-040 to March 4, 2008, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

~ ~ ~ October 2, 2007, ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-040 and A 2006-PR-043, continued from Page 385

Ms. Gibb moved to continue A 2006-PR-043 to March 4, 2008, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 2, 2007, Scheduled case of:

9:30 A.M. RAJESH PATEL AND REKHA PATEL, A 2007-SU-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an electric fence erected on a lot of less than two acres in the R-1 District is in violation of Zoning Ordinance provisions. Located at 2721 Valestra Ci. on approx. 1.6 ac. of land zoned R-1. Sully District. Tax Map 37-3 ((8)) 93.

Chairman Ribble called the appellants to the podium.

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

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. The appeal was of a determination that an electric fence was erected on a lot of less than two acres in the R-1 District, which was in violation of Zoning Ordinance provisions. She said the electric fence was located inside two conventional non-electric fences which were on the outer perimeter of the lot. Ms. Collins noted that all three fences met the Ordinance definition of a fence, but it was unlawful for anyone to construct, install, or maintain an electric fence on a lot of less than two acres. She stated that a battery provided the current for the appellants' fence which emitted a pulsating electric shock to train nuisance animals to avoid the fence. Ms. Collins said a battery operated electric fence was still an electric fence, as it was immaterial how the electric current was produced.

In response to a question from Mr. Hart, Ms. Collins said the Ordinance did not have a separate definition for electric fences, and she was not aware of the Zoning Administrator making a prior determination regarding battery powered electric fences.

Mr. Smith asked what would happen if the Board affirmed the decision of the Zoning Administrator. Ms. Collins said the appellants would have to turn the electricity off.

Mr. Patel presented the arguments forming the basis for the appeal. He said he believed the main argument was the difference between electric versus battery power, noting that the County did not differentiate between the two. Mr. Patel pointed out that it was not a fixed fence and he moved it about the property to protect his plants from deer. He said the product he used provided no more than 0.14 jolts, which was less than the shock experienced with static electricity. In contrast, Mr. Patel said that if he had two acres, he could use 60 to 80 jolts, enough power to give the neighbor's cat curly hair. He said he felt the reason for the neighbor's complaint was due to other issues between them, noting that the fence had been in operation since 2003 without complaint.

In response to a question from Mr. Beard, Mr. Patel said he needed the electric fence to protect his plants from deer, noting that they came and basically demolished everything he planted. He said the protected area was approximately ten linear feet. Mr. Patel stated that the fence was on the interior of his property, not near the property line. He said someone would have to come onto his property to touch the electric wire.

Mr. Beard and Mr. Patel discussed the collars worn by dogs for invisible fencing, with Mr. Patel noting that they were capable of producing nine jolts, much more than the 0.14 jolt his fence created.

Mr. Hart noted that the manufacturer of the applicants' fence considered it an electric fence, and he asked Mr. Patel why he felt it was not. Mr. Patel said it was a matter of terminology, and he did not think a battery operated fence should be considered electric. He pointed out that the Zoning Ordinance terminology had not been adjusted since 1960 and may need to be updated to address battery operated fencing.

Mr. Hart and Mr. Patel discussed the fencing, with Mr. Patel stating that it was not a fence and was not

~ ~ ~ October 2, 2007, RAJESH PATEL AND REKHA PATEL, A 2007-SU-023, continued from Page 386

dangerous. He described it as a liquid fence since he moved it from place to place on the property to restrict deer entry.

Chairman Ribble made a disclosure and indicated that he would recuse himself from the public hearing. Vice Chairman Hammack assumed the chair.

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

Mr. Patel said that the ruling was that he used the product in a fence formation, not for him using it inside his property surrounding plants.

Responding to a question from Mr. Beard, Mr. Patel discussed the type of fencing he used and how he moved it around his property.

Mr. Byers referenced a letter from the homeowners association stating that fences must be approved by the architectural review committee, something the appellants had not done. Mr. Patel reiterated his contention that the product was not a fence. He said his 1.6-acre property was not fenced.

In response to a question from Ms. Gibb, Mr. Patel showed the Board where the fencing was located on the plat and stated that it extended 5 to 15 feet.

Vice Chairman Hammack called for speakers; there was no response.

Ms. Collins stated that the electrical current was the issue, and she was not aware of any previous cases dealing with electrical fencing. Vice Chairman Hammack said he believed the Board did have a previous electric fencing application dealing with containment of animals a few years prior.

Vice Chairman Hammack closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She believed the Zoning Administrator was correct in her interpretation that the applicant, under paragraph 5b of Sect. 10-103, had constructed, installed, or maintained an electric fence upon a lot of less than two acres. Ms. Gibb acknowledged that it was operated by a battery, but she was persuaded that regardless, there was an electric current, even if it was a small voltage. By the advertising that the manufacturer itself made, it described it as electric. She said the purpose of the Zoning Ordinance in restricting the use of such a fence in less than two acres was to prevent the use of these kinds of things in areas where there were more people. Ms. Gibb said a lot of people struggled with the deer issue, but she felt the Ordinance was plain.

Mr. Smith seconded the motion.

Mr. Hart stated his support for the motion based on the materials provided by the manufacturer of the product.

Vice Chairman Hammack called for the vote. The motion carried by a vote of 6-0. Chairman Ribble recused himself from the hearing.

//

~ ~ ~ October 2, 2007, Scheduled case of:

9:30 A.M. LEWIS MOORE, A 2007-LE-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and a junk yard on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 4706 Eaton Pl. on approx. 12,750 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (D) 15.

Chairman Ribble called the appellant to the podium.

~ ~ ~ October 2, 2007, LEWIS MOORE, A 2007-LE-024, continued from Page 387

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

Jayne Collins, Staff Coordinator, Zoning Administration Division, stated that staff had met with the appellant and his attorney on the property the prior Tuesday and discussed what needed to be done to bring the property into compliance. She said Mr. Moore had agreed to bring the property up to Code requirements. Staff recommended a deferral for three months to allow the appellant time to complete the improvements. Ms. Collins recommended January 29, 2008, for the next public hearing.

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

Mr. Smith moved to defer A 2007-LE-024 to January 29, 2008, at 9:30 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

Mr. Hart, Ms. Gibb, and Mr. Beard discussed the pictures of nearby junkyards which were included in the staff report. Roy Biedler, Senior Zoning Inspector, Zoning Enforcement Branch, explained that the investigations were complaint driven, and he had informed the appellant that he needed to call his office and provide specific addresses for him to investigate.

//

~ ~ ~ October 2, 2007, Scheduled case of:

9:30 A.M. JED L. GOEHRING, A 2007-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, has erected an accessory storage structure that exceeds eight and one-half feet in height, which does not comply with the minimum yard requirements for the R-1 District and was erected without a valid Building Permit, all in violation of Zoning Ordinance provisions. Located at 6111 Ramshorn Pl. on approx. 43,527 sq. ft. of land zoned R-1 and R-2. Dranesville District. Tax Map 31-2 ((5)) 8 and 31-2 ((1)) 124C. (Deferred from 7/10/07 and 8/14/07 at appl. req.)

Chairman Ribble noted that A 2007-DR-009 had been administratively moved to November 6, 2007, at 9:30 a.m., for notices.

//

~ ~ ~ October 2, 2007, After Agenda Item:

Request for Additional Time
Jerold and Nancy Jurentkuff, VC 99-H-191

Mr. Hammack moved to approve 30 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was March 14, 2010.

//

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 v. BZA in the Circuit Court of Fairfax County, 06-8305, and in the U.S. District Court for the Eastern District of Virginia, 106CV769; Lee v. BZA in the Circuit Court of Fairfax County, 04-221391; the petition to the Supreme Court of the United States regarding Voorhees v. BZA in the Circuit Court of Fairfax County, 07-9484; and meeting dates for 2008; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion which carried by a vote of 7-0.

The meeting recessed at 10:53 a.m. and reconvened at 11:21 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,

~ ~ ~ October 2, 2007, continued from Page 388

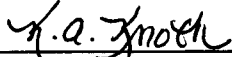
discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

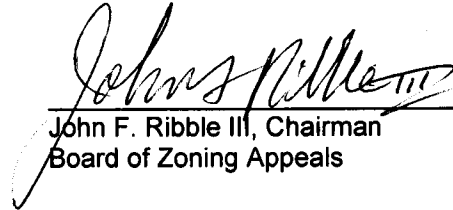
As there was no other business to come before the Board, the meeting was adjourned at 11:22 a.m.

Minutes by: Suzanne Frazier

Approved on: October 3, 2012



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 16, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ October 16, 2007, Scheduled case of:

9:00 A.M. ELAINE METLIN AND ANDREW CLARK, SP 2007-DR-081 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. 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 Ribble called the applicants to the podium.

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

Chairman Ribble 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 Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were requesting special permit approval to permit an existing fence with a maximum fence height of 6.0 feet to remain in the front yard of a corner lot. The Zoning Ordinance permits a fence with a maximum height of 4.0 feet in a front yard; therefore, a modification of 2.0 feet was requested.

Susan Langdon, Chief, Special Permit and Variance Branch, responded to questions from Mr. Hart concerning the plat, the delineation of the front yard, and the Department of Transportation's position on the right-of-way and expectation for the removal of structures within it.

Ms. Metlin presented the special permit request as outlined in the statement of justification submitted with the application. She said the fence existed when she purchased the property, and she was unaware it was in violation until a neighbor, who had put up a fence which had been found to be in violation, reported other fences in the area. Ms. Metlin said the property was unique with three front yards, a slope, and a brook, and she believed she met all the requirements of Sect. 8-923. She said her neighbors supported the application, and she would comply with all conditions and sight line requirements and would remove the fence from the public right-of-way.

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

Mr. Hammack moved to approve SP 2007-DR-081 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELAINE METLIN AND ANDREW CLARK, SP 2007-DR-081 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. 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. 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

~ ~ ~ October 16, 2007, ELAINE METLIN AND ANDREW CLARK, SP 2007-DR-081, continued from Page 391

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 16, 2007; 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. 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location of a fence in the front yards as shown on the plat prepared by Stephen L. Moore, dated December 5, 2005, as revised through April 3, 2006, as submitted with this application and is not transferable to other land.
2. Notwithstanding what is depicted on the plat, all portions of the existing fence which are currently located on public right-of-way shall be relocated onto the application property.
3. The location of the fence shall meet sight distance requirements per Sect. 2-505 of the Zoning Ordinance.
4. The maximum height of the fence shall be 6.0 feet, excluding the gates/gateposts.

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

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

//

~ ~ ~ October 16, 2007, Scheduled case of:

9:00 A.M. RONALD C. AND GLYNDA B. HUGHES, SP 2007-LE-078 Appl. under Sect(s) 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 9.0 ft. from side lot line and 4.2 ft. from rear lot line and reduction of certain yard requirements to permit construction of roofed deck 23.0 ft. from front lot line. Located at 4814 Upland Dr. on approx. 11,168 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (D) 11.

Chairman Ribble called the applicants to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ronald C. Hughes, 4814 Upland Drive, Alexandria, Virginia, 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 to allow a reduction to the minimum yard requirements based on an error in building location to permit a 198-square-foot shed, which was 11.3 feet in height, to remain 9.0 feet from the side lot line and 4.2 feet from the rear lot line. A minimum side yard of 12 feet and minimum rear yard equal to the height of the shed, 11.3 feet, are required; therefore, reductions of 3.0 feet and 7.1 feet, respectively, were requested. The applicants also requested a reduction of certain yard requirements to

~ ~ ~ October 16, 2007, RONALD C. AND GLYNDA B. HUGHES, SP 2007-LE-078, continued from Page 392

permit the construction of a triangular extension 23 feet from the front lot line, to complete the architectural appearance of the existing roofed deck or porch. A minimum front yard of 30 feet is required; therefore, a reduction of 7.0 feet was requested. Staff recommended approval of SP 2007-LE-078 for the roofed deck subject to the proposed development conditions.

At Mr. Hart's request, Susan C. Langdon, Chief, Special Permit and Variance Branch, indicated the areas on the plat where the fence was located utilizing the overhead viewer.

Mr. Hughes presented the special permit request as outlined in the statement of justification submitted with the application. He said the fence and shed were there when he purchased the house 30 years prior. He upgraded the fence because of its dilapidated condition, but it remained in the same line. He said the minimum yard issues arose as a result of the placement of the house on the lot, the fact that the backyard was extremely small, and his lot was considered a corner lot, even though the home faced Upland Drive. He considered that frontage to be the front yard. Mr. Hughes said the requested special permit would allow completion of the covered front porch extension, which would make the house more symmetrical, afford curb appeal, and increase property value. He said the shed was a necessity for storage, it sat on a concrete slab, and removing it would create both a financial and physical hardship because there was no storage area for tools, lawn furniture, bicycles, camping equipment and such. He said a garage was not permitted due to variance requirements.

In response to Mr. Byers' suggestion to lower the front fence from six to four feet, Mr. Hughes explained the lengthy process he underwent to comply with the permit requirements. He noted that throughout his older neighborhood there were numerous conditions exactly as his, and lowering the fence greatly reduced the design symmetry.

Mr. Byers said the County did not go out looking for zoning violations, that someone would have had to bring the matter to staff's attention. He said cases heard by the BZA were adjudicated fairly across the board, and if other fences had to be lowered to four feet in accordance with the Zoning Ordinance or if they were approved by the BZA through a special permit to remain at six feet, that the Board looked for that uniformity.

Mr. Hart asked whether the fence would no longer be in the front yard if the front corner of the fence was pulled back 3.5 feet. Ms. Langdon said that was correct. She said the applicant could also add the fence to the application, but it would require a deferral to re-advertise the hearing.

Mr. Hughes said he wanted the decision to go forward that day, and he would pull the fence corner back.

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

Mr. Byers moved to approve SP 2007-LE-078 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD C. AND GLYNDA B. HUGHES, SP 2007-LE-078 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 9.0 ft. from side lot line and 4.2 ft. from rear lot line and reduction of certain yard requirements to permit construction of roofed deck 23.0 ft. from front lot line. Located at 4814 Upland Dr. on approx. 11,168 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (D) 11. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

~ ~ ~ October 16, 2007, RONALD C. AND GLYNDA B. HUGHES, SP 2007-LE-078, continued from Page 393

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 16, 2007; and

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

1. The applicants are the owners of the land.
2. The application has a recommendation for approval from staff.

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

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the 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 (50 square feet) of the proposed roofed deck addition as shown on the plat prepared by Patrick A. Eckert, dated May 2, 2007, as submitted with this application, and is not transferable to other land.
3. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
4. Building permits and final inspections for the shed shall be diligently pursued and obtained within 90 days of final approval of this application or the shed shall be removed or brought into compliance with Zoning Ordinance requirements.

~ ~ ~ October 16, 2007, RONALD C. AND GLYNDA B. HUGHES, SP 2007-LE-078, continued from Page 394

5. The existing portion of the fence located in the front yard shall be moved out of the front yard.

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

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

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

//

~ ~ ~ October 16, 2007, Scheduled case of:

9:00 A.M. SEBLEWANGLE ZEWDIE, SP 2007-LE-082 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 9.8 ft. from side lot line and accessory storage structure to remain 3.5 ft. from side lot line and 3.6 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition 9.8 ft. from side lot line. Located at 6630 Lenclair St. on approx. 12,308 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((16)) 2.

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Seblewangle Zewdie, 6630 Lenclair Street, 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 reduction to minimum yard requirements based on an error in building location to permit an existing one-story, 1,620-square-foot dwelling to remain 9.8 feet from the side lot line; an approximately 232 square foot, 9.2-foot tall shed to remain 3.5 feet from the side lot line and 3.6 feet from the rear lot line; and, a reduction of certain yard requirements to permit the construction of a 380-square-foot, two-story dwelling addition 9.8 feet from the side lot line, and the construction of a 1,477-square-foot, second-story addition on top of the footprint of the existing dwelling. A minimum side yard of 15 feet and minimum rear yard equal to the height of the shed, 9.2 feet, were required; therefore, reductions of 5.2 feet, 11.5 feet, 5.6 feet, and 5.2 feet, respectively, were requested. Staff recommended approval of SP 2007-LE-082 for the additions subject to the proposed development conditions.

Mr. Hart asked how tall the new house would be. Mr. Varga said it would be 27.5 feet. Susan Langdon, Chief, Special Permit and Variance Branch, said that because it would be a pitch roof, it would be measured mid-roof. Mr. Hart asked whether of top of the ridge would be somewhat higher than that. Ms. Langdon said it would be.

Ms. Zewdie presented the special permit request as outlined in the statement of justification submitted with the application. She said they built the house 12 years prior and were not aware of the setback violation. Ms. Zewdie said they planned to covert the existing attic into a bedroom because of the increased size of her family and the need for more room.

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

~ ~ ~ October 16, 2007, SEBLEWANGLE ZEWDIE, SP 2007-LE-082, continued from Page 395

Mr. Hart moved to approve SP 2007-LE-082 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SEBLEWANGLE ZEWDIE, SP 2007-LE-082 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 9.8 ft. from side lot line and accessory storage structure to remain 3.5 ft. from side lot line and 3.6 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition 9.8 ft. from side lot line. Located at 6630 Lenclair St. on approx. 12,308 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((16)) 2. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 16, 2007; 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 Board has a favorable staff recommendation.
4. The rationale in the staff report is adopted.
5. Although it is a close call to have a second floor addition with a pretty high roofline for an attic above going into the minimum yard, and scale of the addition compared to the existing house is about or a little more than double what is there already, from looking at pictures of other homes in the neighborhood, the house will be very nice, and it will not have a negative impact on the neighbors in this particular situation.
6. Also adopted are the findings in the standard 8-922 resolution, that all the additional standards have been met.

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

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

~ ~ ~ October 16, 2007, SEBLEWANGLE ZEWDIE, SP 2007-LE-082, continued from Page 396

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the 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 (1,857 square feet) of the proposed 2-story and second story additions, the existing dwelling, and the accessory storage structures as shown on the plat prepared by Patrick A. Eckert, dated May 22, 2007, as submitted with this application, and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (1,620 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The additions shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Building permits and final inspections for the shed shall be diligently pursued and obtained within 90 days of final approval of this application or the shed shall be removed or brought into compliance with Zoning Ordinance requirements.

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

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

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

//

~ ~ ~ October 16, 2007, Scheduled case of:

9:00 A.M. BEE HO LEE, SP 2007-MA-075 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7138 Lanier St. on approx. 13,180 sq. ft. of

~ ~ ~ October 16, 2007, BEE HO LEE, SP 2007-MA-075, continued from Page 397

land zoned R-4 and HC. Mason District. Tax Map 71-1 ((17)) (1) 1 and 71-1 ((23)) 1A.
(Decision deferred from 9/25/07)

Chairman Ribble noted that SP 2007-MA-075 had previously been deferred for decision. He said information from the Department of Transportation was forthcoming, and staff would provide results of its research on the origin of restrictions on outlots.

Mr. Byers recused himself from the public hearing.

Stephen Varga, Staff Coordinator, discussed his October 16, 2007 memorandum. He said the Board of Zoning Appeals deferred decision on SP 2007-MA-075 to allow time for staff to collect additional information regarding the BZA's transportation concerns and answer questions relating to the outlot located on-site. He noted that Michael Davis from the Department of Transportation was present to address transportation concerns.

Mr. Varga said it appeared that Outlot 1-A was created in 1967 as one of 15 outlots created as part of a public transportation easement along the south side of John Marr Drive. Attachment 1 contained a copy of the deed which appeared to grant use of the outlot for public sidewalk purposes beginning at Outlot 1-A and going through a portion of Outlot 10-A, and the deed specifically referenced a six-foot high board-on-board fence to be maintained by the "agency" holding the easement. Mr. Varga noted that Attachment 2 contained revised proposed development conditions dated October 16, 2007, and that the changes included the addition of Development Conditions 13, 14, and 15.

Mr. Hart said he understood that because the application involved the lot and the outlot, it was considered combined for certain purposes, and even if the lot standing alone would have a backyard that would not quite come to the street, because there was an outlot which was part of it, for Ordinance purposes, it was considered a front yard. Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff had looked into the issue and did not get a definitive answer. She said staff looked further into the issue of the outlot, why it was created, and why the fence was there, and because of the deed and what went along with it, a fence had been permitted, and it was an easement or some type of outlot that was involved for public street purposes. Ms. Langdon said staff believed the six-foot fence was permitted in the yard.

Mr. Hart said the deed did not reference the shed. Ms. Langdon said that for that reason and because staff did not get a definitive answer on whether the yard was considered a front yard, the condition was added regarding relocating the shed to where it would be legal if it was considered a front yard, and the applicant had agreed.

Mr. Hart said he understood from the memo and deed that even if the BZA wanted the driveway to come out on John Marr Drive, it could not be done because it would require approval from the Board of Supervisors. Ms. Langdon said staff believed that was correct, but Michael Davis from the Department of Transportation was present and could address it.

Mr. Hart said he was concerned that the entrance shown on the plat conflicted with the intersection, and the location of the entrance with the stripe for the stoplight halfway through it created a problem if people were coming either south on Backlick or west on John Marr or coming out of the subject property. He said he wondered whether the optimal place for the driveway to come out would be on Lanier Street instead of halfway through the stripe at the stoplight. Mr. Davis said that based on the commitment of only four patients per day coming to the site during the off-peak hours, transportation had determined that the existing entrance would be okay, although it was not the optimal location for the entrance. He said that subsequent to the prior public hearing, the application had been reviewed again, and recommendations had been made to Planning and Zoning with regard to further directing traffic to the site, which included signage on the site directing people to make a right turn only from the entrance as well as proposing to have the operator of the use give specific information to patients when they were coming to the site that they should come northbound on Backlick Road and access the site by turning right into the site.

Mr. Beard asked who would be responsible for erecting the sign on the applicant's property to direct a right turn only. Mr. Davis said it would be a private sign put in by the applicant to discourage people from making a left turn.

~ ~ ~ October 16, 2007, BEE HO LEE, SP 2007-MA-075, continued from Page 398

Mr. Hart asked whether it would be allowable under Condition 15 for someone could go from the driveway coming out to the street and then go west on John Marr. Ms. Langdon said it would because Condition 15 said no left turns out of the driveway onto Backlick, but did not say where someone could go afterwards.

Mr. Hart said he did not see anything in the conditions regarding consulting with the patients and giving directions regarding how to access the site. Ms. Langdon said that could be added to the conditions.

Mr. Hart asked whether it would be preferable or a safer point if the driveway swung around to Lanier just past the side of the house and came out about where the current driveway was located. Mr. Davis said it would be a safer point of access to the site from a transportation perspective.

Mr. Hart asked if a one-car driveway entrance would be wide enough and perfectly safe or needed to be wider. Mr. Davis said that generally speaking, with an office or commercial use, the preference would be that it meet the Virginia Department of Transportation (VDOT) entrance requirements, but he did not know if that would be waived or VDOT would otherwise say it would be okay given the nature of the use and the expected amount of traffic.

Mr. Hart whether staff felt the character of the neighborhood would be negatively impacted if the parking area was located in the same place, but the driveway was around the side of the house. Ms. Langdon said staff had been trying to keep the front of the house that was located within the neighborhood more looking like a residence, and if there was going to be some impact, it would be better on the side away from the neighborhood. With only four patients per day during off-peak hours, staff thought the entrance on Backlick Road was a better solution than paving the whole front yard or having a driveway around to the other front on Backlick Road.

Mr. Smith asked whether it would be illegal to enter or exit the property in a manner that would require someone to cross a double yellow line. Mr. Davis said that there were many entrances on Backlick Road where a double yellow line existed, and there were no legal restrictions as far as that was concerned. The double yellow line, in and of itself, did not legally prevent anyone from making any sort of left- or right-turn movement.

Mr. Smith moved to approve SP 2007-MA-075 for the reasons stated in the Resolution. Mr. Hart seconded the motion.

Mr. Beard commented on the close proximity of the proposed use to a commercial enterprise and that he saw such neighborhoods as very vulnerable, and they deserved special attention. He said he thought the application had issues that affected the neighbors, including transportation issues, and for those reasons he could not support the motion to approve.

Mr. Hammack concurred with Mr. Beard's comments. He thought there were conflicting traffic, parking, and signage issues, and he did not think the application met Standard 3 under 8-006, that it would be harmonious with and would not adversely affect the use or development of the neighboring properties.

Mr. Hart stated his concern over parking and the entrance location. He said he was willing to support Mr. Smith's motion to approve for one year to see what happened.

Chairman Ribble said he had difficulty with the Backlick Road entrance, but would be willing to further defer the decision for a new design.

Chairman Ribble called for the vote. The motion to approve the application failed by a vote of 2-3; therefore, the application was denied.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BEE HO LEE, SP 2007-MA-075 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7138 Lanier St. on approx. 13,180 sq. ft. of and zoned R-4 and HC. Mason District. Tax Map 71-1 ((17)) (1) 1 and 71-1 ((23)) 1A. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 16, 2007; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4, HC.
3. The area of the lot is 13,180 square feet.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-907 of the Zoning Ordinance.

Mr. Hart seconded the motion, which **FAILED**** by a vote of 2-3; **THEREFORE, THE APPLICATION WAS DENIED.** Messieurs Beard, Hammack, and Ribble voted against the motion. Mr. Byers recused himself. Ms. Gibb was absent from the meeting.

Mr. Hart moved to waive the 12-month wait period for refiling an application. Mr. Smith seconded the motion, which carried by a vote of 6-0.

**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.

//

~ ~ ~ October 16, 2007, Scheduled case of:

9:00 A.M. TODD A. GLISSMAN, SP 2007-DR-077 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 2051 Haycock Rd. on approx. 15,191 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((31)) 31.

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Teresa Grim, the applicant's agent, 1169 Old Stage Court, McLean, 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 of certain yard requirements to permit the construction of an addition, specifically a garage, 6.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a reduction of 6.0 feet was requested. Staff recommended approval of SP 2007-DR-077 subject to the proposed development conditions.

~ ~ ~ October 16, 2007, TODD A. GLISSMAN, SP 2007-DR-077, continued from Page 400

Mr. Hart asked if the garage was considered an attached garage because of the breezeway. Mr. Chase said it was. Mr. Hart asked if the applicant could have had a detached garage. Susan Langdon, Chief, Special Permit and Variance Branch, said there could not have been a detached garage in the front yard, but as long as it was completely in the side yard, the applicant could have requested a detached garage.

Mr. Hart asked if the heavy line that appeared to go through the middle of the house was the resource protection area (RPA) line. Mr. Chase said that was correct. He said the house had been built in 1959, and the RPA line was established in 2003. Mr. Hart asked whether the construction of the garage would stay out of the RPA. Mr. Chase said he understood that it would, but there was a development condition which required the applicant to apply for and obtain approval of an RPA exception prior to the issuance of a building permit if it was determined necessary by the Department of Public Works and Environmental Services.

Ms. Grim presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant sought to stay within the neighborhood design by keeping everything in scale and set back from the front property line. Ms. Grim said the applicant did not want to block the neighbor's views, the neighborhood homes resembled little jewel boxes, and the applicant wanted to keep his home in that scale.

Mr. Beard asked whether any concerns had been voiced by the neighbor immediately adjacent to the addition. Ms. Grim said there had not. Mr. Chase stated that he had received a telephone call from the adjacent neighbor, and he had voiced no objection and was, in fact, in support of the application.

Ms. Grim said there had been a lot of positive feedback concerning the proposed garage and development on the site in general. She said that to place garages on homes in this neighborhood was fairly difficult because the lots were small, but the people wanted to stay in the houses and not build up or tear the houses down and start over.

Mr. Hart noted that there were slopes toward the back and side, and he asked whether a level garage could be constructed without grading equipment going into the RPA. Ms. Grim said there was room on the side, six feet in the setback, where equipment would be able to move around. She said there should be enough room in the back. There was already an existing driveway, and the applicant was trying to build in a location to keep the disruption of the site to a minimum.

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

Mr. Beard moved to approve SP 2007-DR-077 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TODD A. GLISSMAN, SP 2007-DR-077 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 2051 Haycock Rd. on approx. 15,191 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((31)) 31. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 16, 2007; and

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

~ ~ ~ October 16, 2007, TODD A. GLISSMAN, SP 2007-DR-077, continued from Page 401

1. The applicant is the owner of the land.
2. Staff has recommended approval.
3. The proposed addition is harmonious with the neighborhood.

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

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

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

1. These conditions shall be recorded by the applicant among the land 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 326 square feet) of the proposed garage addition as shown on the plat prepared by Alexandria Surveys, dated June 5, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling (1,614 square feet) that existed at the time of the first expansion regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. Prior to the issuance of a building permit for the addition, the applicant shall apply for and gain approval of an RPA Exception if determined necessary by DPWES.
5. Foundation plantings shall be provided adjacent to the northern side of the garage to visually soften the appearance of the structure from the adjacent property to the north.
6. The garage shall be consistent with the architectural renderings 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. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ October 16, 2007, Scheduled case of:

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

~ ~ ~ October 16, 2007, THE WESLEYAN CHURCH CORPORATION, D/B/A UNITED WESLEYAN CHURCH, SP 2007-LE-029, continued from Page 402

8/7/07 at appl. req.)

Chairman Ribble noted that SP 2007-LE-029 had been administratively moved to January 8, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 16, 2007, Scheduled case of:

9:00 A.M. ADAM LOVE DBA GROUND ONE LANDSCAPE CO., A 2007-PR-005 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a use and is allowing outdoor storage, which does not meet the minimum yard requirements for the I-5 District, without an approved site plan in violation of Zoning Ordinance provisions. Located at 8522 Lee Hwy. on approx. 1.48 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3 ((1)) 65. (Deferred from 6/26/07)

Chairman Ribble noted that the Board had received a request for a deferral to December 11, 2007.

Mavis E. Stanfield, Deputy Zoning Administration for Appeals, Zoning Administration Division, said the appellant had submitted a site plan as directed by the zoning inspector, and staff expected compliance at some point.

Mr. Beard moved to defer A 2007-PR-005 to December 11, 2007, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ October 16, 2007, Scheduled case of:

9:30 A.M. 6121 COLUMBIA PIKE L.L.C., A 2007-MA-019, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard on property in the PDH-12 District in violation of Zoning Ordinance provisions. Located at 6121 Columbia Pi. on approx. 2.68 ac. of land zoned PDH-12 and H-C. Mason District. Tax Map 61-4 ((4)) 157. (Admin. moved from 8/7/07 at appl. req.)

Chairman Ribble noted that A 2007-MA-019 had been administratively moved to January 8, 2008, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ October 16, 2007, Scheduled case of:

9:30 A.M. 6121 COLUMBIA PIKE L.L.C., A 2007-MA-020, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a motor vehicle storage and impoundment yard on property in the PDH-12 District in violation of Zoning Ordinance provisions. Located at 6121 Columbia Pi. on approx. 2.68 ac. of land zoned PDH-12 and H-C. Mason District. Tax Map 61-4 ((4)) 157. (Admin. moved from 8/7/07 at appl. req.)

Chairman Ribble noted that A 2007-MA-020 had been administratively moved to January 8, 2008, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, responded to a question from Mr. Byers concerning administrative moves. She explained that with this particular situation there were sanitary sewer issues that precluded the development of the property as the appellant proposed, and staff was awaiting the resolution of that matter.

~ ~ ~ October 16, 2007, 6121 COLUMBIA PIKE L.L.C., A 2007-MA-020, continued from Page 403

Mr. Byers said that this case was one where a storage yard had been established, and that use was in violation. He noted that there had been a long period of time since the notice of violation, and having been deferred once already with a new deferral date into January of 2008, that length of time concerned him.

Ms. Stanfield responded to a question from Mr. Hart by stating that the reason for the violation was that the appellant had rezoned the property; however, there was a storm sewer issue that prevented them from developing the property in accordance with the approved rezoning application. The other uses were established in the interim for the appellant to get some kind of profitable use out of the property. Ms. Stanfield added that the appellant hoped to soon have the issue resolved relating to the sewer.

//

~ ~ ~ October 16, 2007, Scheduled case of:

9:30 A.M. AMERICAN TURKISH FRIENDSHIP ASSOCIATION (ATFA), A 2007-PR-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant's use of property in the I-4 District as a meeting facility and/or educational center and a Public Benefit Association, without a proffer condition amendment, Special Exception approval or a valid Non-Residential Use Permit, is not in substantial conformance with the conditions of Proffer Condition Amendment PCA 82-P-084-1 in violation of Zoning Ordinance provisions. Located at 1776 Old Meadow Rd. on approx. 28,305 sq. ft. of land zoned I-4. Providence District. Tax Map 29-4 ((6)) 94B.

Chairman Ribble noted that A 2007-PR-025 had been administratively moved to January 15, 2008, at 9:30 a.m., at the appellant's request.

Mr. Byers voiced his concern over the ongoing violation. He noted that there was no proffer condition amendment, the appellant had no special exception approval, and there was no valid residential use permit.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said staff received information from the appellant which gave detailed information on how they were using the building. She said staff was in the process of examining whether the notice of violation should be in effect. She said the issue was whether the use was an office use or a public benefit association. Ms. Stanfield said the organization provided many different services to its members, the appellant had represented to staff that those services were provided off-site, not in the building, and that much of the communication was via internet through their website. Staff's analysis compared the appellant's information with that of other Fairfax County public benefit associations under special exception.

//

~ ~ ~ October 16, 2007, After Agenda Item:

Request for Additional Time
Unitarian Universalist Church, SPA 90-C-026-2

Mr. Hart moved to approve 24 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was September 4, 2009.

//

~ ~ ~ October 16, 2007, After Agenda Item:

Approval of April 20, 2004 Minutes

Mr. Beard moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 5-0-1. Mr. Smith abstained from the vote. Ms. Gibb was absent from the meeting.

//

~ ~ ~ October 16, 2007, After Agenda Item:

Request for Additional Time
Golf Park, Inc. & Hunter Mill East, LLC, SPA 91-C-070-4

Mr. Hammack asked staff the reason why the case was taking such a long time. He said the special permit amendment had been granted over six years ago.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicant had not yet established everything approved under the most recent approval. She noted that the record contained the applicant's letter which disagreed with staff's interpretation of what establishing the use meant. Staff sent an interpretation response letter with a memorandum stating that if the additional time were approved, almost eight years had passed since original approval, and staff may not support more additional time requests. Ms. Langdon said it was hopeful that the applicant would now understand staff's position on establishing the use, and would decide whether he wanted to proceed with the new clubhouse and other uses.

Mr. Hart noted that six months had elapsed since the applicant's letter was received; six months passed before staff's response letter; and, almost six months passed before the matter came before the Board for consideration.

Discussion ensued regarding similar cases, various timelines for staff responses, necessity for research, staff's current workload, interfacing with other County agencies, communication between staff and an application's principals, and that some cases took some time to process.

Mr. Byers said he wanted to know whether anything had been done since 2001 and whether anything was contemplated to be done.

Ms. Langdon suggested that if the Board deferred its decision, staff would request the applicant to come before the Board and address their questions.

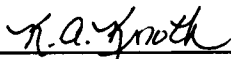
Mr. Beard moved to defer the decision on the request for additional time regarding SPA 91-C-070-4 to December 11, 2007. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

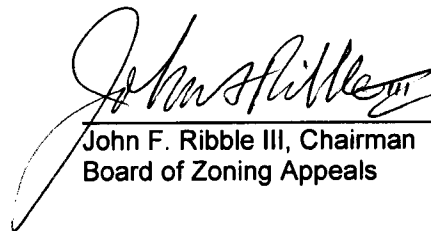
As there was no other business to come before the Board, the meeting was adjourned at 10:55 a.m.

Minutes by: Paula A. McFarland

Approved on: July 25, 2012



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 23, 2007. The following Board Members were present: Chairman John F. Ribble; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ October 23, 2007, Scheduled case of:

9:00 A.M. MICHELE E. ROSE, SP 2007-DR-084 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 950 Spencer Rd. on approx. 30,482 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-3 ((7)) 5.

Chairman Ribble called the applicant to the podium.

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

Michelle Rose, 950 Spencer Road, McLean, Virginia, reaffirmed the affidavit.

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

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed whether the fence on the Saigon Road side was located on the applicant's property or encroached onto the neighbor's property. Ms. Langdon suggested that the Board add a condition that the fence be moved onto the property.

Ms. Rose presented the special permit request as outlined in the statement of justification submitted with the application. She said that when she moved into the house, the first thing she wanted to do was have a fence built for her young child and dog, primarily for safety due to the steep incline. She wanted an iron fence that would fit in with the property and landscape so it would be nonintrusive. She said she was never advised by the contractor that a fence permit was needed, but if she had known, she would have applied for it. She stated that a smaller fence would look awkward because of the big house and yard.

Mr. Byers and Ms. Rose discussed the terms of the written contract with Long Fence.

Ms. Langdon stated that looking at the plat, Lot 4 had a chain-link fence on it. She said that along the southwest corner of Lot 5, that fence was on the line, and on the southeast corner, it was off 0.1. Discussion ensued between Ms. Langdon, Mr. Hart, and the applicant about the location of the two fences and how close they were to each other.

Chairman Ribble called for speakers.

Annette Benzio-Belkin, 949 Spencer Road, McLean, Virginia, came forward to speak. She stated that it was not necessary for the fence to be six feet for small children. She said that she also should be allowed to have a six-foot high fence if the applicant was allowed to have one.

Mr. Hart explained the Zoning Ordinance allowed everyone to have a four-foot high fence by right and up to six feet in height if it met certain criteria. He explained the hearing process and the criteria which needed to be met.

In her rebuttal, Ms. Rose stated that she concurred concerning the applicability of the Ordinance granting everyone the same ability to apply.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-DR-084 for the reasons stated in the Resolution.

//

~ ~ ~ October 23, 2007, MICHELE E. ROSE, SP 2007-DR-084, continued from Page 407

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHELE E. ROSE, SP 2007-DR-084 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 950 Spencer Rd. on approx. 30,482 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-3 ((7)) 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 October 23, 2007; and

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

1. The applicant is the owner of the land.
2. The Board received a number of letters in support of the application as well as one in opposition.

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

THAT the applicant has presented testimony indicating compliance with 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). 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by Dominion Surveyors, Inc., dated July 20, 2007, as submitted with this application and is not transferable to other land.

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

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

//

~ ~ ~ October 23, 2007, Scheduled case of:

9:00 A.M. JAMES AMERY, SP 2007-BR-086 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 7450 Long Pine Dr. on approx. 12,185 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (61) 5.

Chairman Ribble called the applicant to the podium.

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

Chett Cochill, the applicant's agent, 2 Beechtree Court, Fredericksburg, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hart, Mr. Beard, Mr. Varga, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the recommendation from the Urban Forester to prune a maple tree located on an adjacent property so the branches would not overhang the proposed new garage.

~ ~ ~ October 23, 2007, JAMES AMERY, SP 2007-BR-086, continued from Page 408

Mr. Cochill presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would be a garage attached to a single-story dwelling which would be the same length as the dwelling. Mr. Cochill said the maple tree could use trimming and could be done.

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

Mr. Byers moved to approve SP 2007-BR-086 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES AMERY, SP 2007-BR-086 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 7450 Long Pine Dr. on approx. 12,185 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (61) 5. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 23, 2007; and

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

1. The applicant is the owner of the land.
2. The Board has determined that the application meets all of the submission requirements set forth in Sect. 8-922.
3. Staff 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. 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 (550 square foot garage addition) as shown on the plat prepared by Ivan G. Moody and dated June 19, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (2,340 feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on

~ ~ ~ October 23, 2007, JAMES AMERY, SP 2007-BR-086, continued from Page 409

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

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

//

~ ~ ~ October 23, 2007, Scheduled case of:

9:00 A.M. HAMLET SWIM CLUB, INC., SPA 74-D-037-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-D-037 previously approved for a swim club to permit a building addition and site modifications. Located at 8209 Dunsinane Ct. on approx. 4.33 ac. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) A1 and B1. (Admin. moved from 9/11/07 for ads)

Chairman Ribble noted that the Board had received a request from the applicant for a deferral to December 11, 2007.

Chairman Ribble called for speaker to address the question of the deferral request. There was no response.

Mr. Hart moved to defer SPA 74-D-037-03 December 11, 2007, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 23, 2007, 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. 8,213 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602. (Admin. moved from 8/9/05, 12/13/05, and 7/24/07 at appl. req.) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred)

Chairman Ribble noted that A 2005-MV-018 had been administratively moved to January 15, 2008, at 9:30 a.m., at the appellants' request.

Mr. Byers commented on the number of times the hearing had been rescheduled and asked why appeals were continually being moved for no reason. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that there had been some progress on the application, which was why staff recommended another deferral. She said a special permit had been submitted, and it took time for the application process to move forward. She said deficiencies in the application had to be resolved and a plat obtained, but staff would not recommend any further deferrals.

//

~ ~ ~ October 23, 2007, 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) (Indefinitely deferred from 8/1/06) (Reactivated from indefinitely deferred) (Admin. moved from 7/24/07 at appl. req.)

Chairman Ribble noted that A 2005-SP-045 had been administratively moved to January 8, 2008, at 9:30 a.m., at the appellant's request.

Mr. Hammack asked why the deferral had been requested. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the subject property was a large lot. The appellant had initially considered a re-subdivision to create an outlot so the yard designations could be changed, which was a lengthy process, and it had been determined it was not feasible. The appellant was in the process of constructing an addition to the house, which would increase the area of the side yard. Ms. Stanfield said the appellant had committed to submitting a special permit application for the fence and may have taken the accessory structure down or it would be encompassed in the new modified side yard. She said staff would not support any additional deferral requests in the future.

//

~ ~ ~ October 23, 2007, Scheduled case of:

9:30 A.M. MICHAEL AND CYNTHIA ARONOFF, A 2007-HM-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a storage yard on property in the R-E District in conjunction with a home-based business without an approved Home Occupation permit in violation of Zoning Ordinance provisions. Located at 2218 Nobehar Dr. on approx. 43,585 sq. ft. of land zoned R-E. Hunter Mill District. Tax Map 27-3 ((5)) 12A.

Chairman Ribble noted that A 2007-HM-027 had been administratively moved to December 18, 2007, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ October 23, 2007, Scheduled case of:

9:30 A.M. SHREVECREST HOMEOWNERS ASSOCIATION, A 2007-PR-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height is not located in the minimum required front yard on property in the R-3 District and is, therefore, not in violation of Zoning Ordinance provisions. Located at 2431 Nottingham Dr. on approx. 9,356 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((16)) 12.

Chairman Ribble noted that A 2007-PR-028 had been withdrawn.

//

~ ~ ~ October 23, 2007, After Agenda Item:

Request for Intent to Defer
Vienna Heritage Center, SP 2007-DR-085

Mr. Hammack moved to approve the request for an intent to defer SP 2007-DR-085 to January 29, 2008, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 23, 2007, After Agenda Item:

Request for Intent to Defer
Dung N. Nguyen, SP 2007-MA-092

Mr. Hammack moved to approve the request for an intent to defer SP 2007-MA-092 to November 27, 2007, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

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 vs. Board of Zoning Appeals in the Circuit Court of Fairfax County, Number 06-8305, and the companion case in the U.S. Federal District Court of Alexandria, Number 1-06CV769; Voorhees vs. Board of Zoning Appeals in the Supreme Court of the United States, Number 07383; and the Nutley Road decision; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 9:41 a.m. and reconvened at 10:26 a.m.

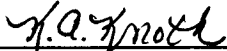
Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session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

//

As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

Minutes by: John W. Cooper / Kathleen A. Knoth

Approved on: July 30, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble, 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 30, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Thomas Smith was absent from the meeting.

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

~ ~ ~ October 30, 2007, Scheduled case of:

9:00 A.M. ROBERT H. & ANJALI M. SUES, SP 2007-PR-088 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 3228 Highland La. on approx. 1.31 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((8)) 20A.

Chairman Ribble called the applicants to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals, (BZA) was complete and accurate. Anjali M. Sues, 3228 Highland Lane, Fairfax, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested special permit approval to permit an existing fence with a maximum fence height of 6.0 feet to remain in the front yard. The Zoning Ordinance allows a maximum fence height of 4.0 feet in a front yard; therefore, a modification of 2.0 feet was requested.

Ms. Sues presented the special permit request as outlined in the statement of justification submitted with the application. She summarized a history of the property, the current situation, and said that the application met all the Zoning Ordinance special permit criteria. She said the special permit was warranted because the lot was irregularly shaped, and the house was not centrally located on the property. Ms. Sues said reducing the fence height would expose undesired views to neighbors of a portion of the garage and an open field. She said the fence met special permit standard criteria because it was in character and harmonious with existing on-site development and the neighborhood. The fence did not adversely impact the use and enjoyment of other properties, but rather enhanced the beauty and serenity of the quiet, country-looking Highland Lane, and its removal would require removal of several established hardwood trees and various vegetation which afforded privacy. Ms. Sues said her neighbors appreciated and supported keeping the fence in its current location and height. She requested the Board include a development condition with the option that the applicants could seek Virginia Department of Transportation's (VDOT) permission to leave the fence in its current location, or entertain any other solution that granted a special permit to enable the fence to remain. Ms. Sues said that their process of pursuing the special permit application had required significant time and financial expenses with the community's best interest in hand.

Chairman Ribble asked if the fence was the same fence that had existed since 1970. Ms. Sues said it had been maintained by replacing boards, but the fence had not been replaced.

Mr. Byers questioned the probability of VDOT allowing a waiver of its right-of-way, and Ms. Hedrick referenced a previous application where VDOT stated that they could not build on private property, and they did not want people to build on theirs. She stated that VDOT had a permit process to request a structure to remain on VDOT property.

Mr. Hart explained to the applicant that the Board had no control of a right-of-way; therefore, it was not within the Board's purview to approve the fence in that location. He said he thought it unlikely that VDOT would agree, although he had no problem with it. He made a suggestion regarding keeping the trees along the realigned fence line.

Chairman Ribble called for speakers.

Arthur Klekner, 8504 Crestview Drive, Fairfax, Virginia, came forward to speak. He said he was a neighbor to the applicants' property for 40 years, and with his professional federal government background, he understood the need for rules and regulations that dealt with such matters. He said he lacked knowledge pertaining to County code, but he thought a zoning code that necessitated an appeal of a 30-year-old fence that was two feet higher than that allowed by the current code was ludicrous and unfair. He said he thought a statute of limitations should be applied to the applicants' situation. He said that law enforcement and County resources were expended even considering such a minor situation and recommended that the Board favorably consider the applicants' application, that the appropriate zoning board modify the zoning codes that dealt with prior minor infractions, and some type of grandfather provision be provided similar to the statute of limitations in the criminal justice system.

Diane Baker, 3221 Highland Lane, Fairfax, Virginia, came forward to speak. She said she represented many of the neighbors, all of whom liked the fence and the surrounding vegetation, and that all thought it enhanced the neighborhood's appearance. Ms. Baker said she appreciated the applicants' good citizenship with their commitment to follow through and resolve the matter. She respectfully asked that the Board find some sort of avenue to come to a positive resolution.

Fran Wallingford, 3311 Mantua Drive, Fairfax, Virginia, came forward to speak. She said she was a member of the Pine Ridge Civic Association and co-chair of the Land Use Committee, with Dr. Sues as secretary. She gave a brief history of the Pine Ridge area. She said there had been 18 properties cited for fence height violations, and at that time there was no outcry from the Board or community members that the heights should be lowered. The Board took no position on those cases, and it was a matter each individual property owner was to deal with. Ms. Wallingford said it was shortly after those violations had been issued that the County looked at changing the Zoning Ordinance that allowed a way to deal with the fence height issues. She referenced another case where there had been an encroachment that involved a private use of a public property, but indicated Pine Ridge's situation was different. She said probably 90 percent of the properties encroached. The neighborhood had no curb or gutter, and homeowners planted out to the asphalt. Ms. Wallingford said the homeowners association's problem was with structures and setting precedents. She said that the County owned the Highland Lane land; it was the right of the County to act; and, the County in the past told citizens it was their property and their problem. She stated that this was the County's problem, and they needed to address it.

In her rebuttal, Ms. Sues said they were not before the Board to discuss any position of the Pine Ridge Civic Association. They sought to resolve a community-wide issue and hoped the Board's decision would provide a favorable motion that could allow them to resolve the issue.

Chairman Ribble closed the public hearing.

Mr. Byers said that there were issues between public right-of-way versus personal property, and he thought that, if allowed, it would bring more problems down the road than what was resolved. He said he tended to be more conservative and stricter in that regard, and through his experience, he thought there was very little chance that VDOT would grant a waiver for the subject application.

Mr. Byers moved to approve SP 2007-PR-088 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Ms. Gibb noted that Ms. Wallingford represented herself, not her homeowners association, and she was reluctant to conclude that there was action by the homeowners association. She said she was unsure of the exact distance for the fence into the right-of-way. She said she would be willing to allow the applicant time to work with VDOT to resolve the matter.

Mr. Beard said that it seemed the community-wide issue was not resolved.

Discussion ensued among the Board members regarding a deferral to allow the applicants time to resolve the matter through VDOT and/or for staff to develop language for a development condition concerning seeking a remedy between VDOT and the applicants; the matter of whether the community-wide issue was resolved; the simplicity of dealing with fence procedures prior to the landmarked Cochran case; citing an individual owner with a fence violation and having it pointed out that there were many other similar fences in a neighborhood; encroachment into a VDOT right-of-way; previous similar cases; adoption of amendments to

~ ~ ~ October 30, 2007, ROBERT H. & ANJALI M. SUES, SP 2007-PR-088, continued from Page 414

the Zoning Ordinance concerning fences; the matter of the fence's height; the fact that the applicants had not made the error, the fence had existed for 30 years; and, the fact that historically the BZA's position was that it had no authority to approve a fence that was not on the applicant's property.

Mr. Byers noted that VDOT would always retain the right-of-way option to widen a road.

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

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT H. & ANJALI M. SUES, SP 2007-PR-088 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 3228 Highland La. on approx. 1.31 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((8)) 20A. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 30, 2007; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.31 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. 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by Certified Real Estate Services, LLC, dated June 14, 2007, as submitted with this application and is not transferable to other land.
2. Notwithstanding what is depicted on the plat, all portions of the existing fence which are currently located on public right-of-way shall be relocated onto the application 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.

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

//

~ ~ ~ October 30, 2007, Scheduled case of:

9:00 A.M. DUNG N. NGUYEN, SP 2007-MA-092 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7730 Little River Tnpk. on approx. 17,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((5)) 10.

Chairman Ribble noted that the Board had previously issued an intent to defer SP 2007-MA-092 to November 27, 2007.

Mr. Hammack moved to defer SP 2007-MA-092 to November 27, 2007, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

Chairman Ribble asked if there was any discussion regarding the deferral request of the Nguyen case.

Mr. Hart noted a neighbor's complaint letter pointing out numerous commercial signage and amounts of asphalted areas in the neighborhood. He suggested an inspector make a site visit to advise the Board of the situation before the BZA heard the matter.

//

~ ~ ~ October 30, 2007, Scheduled case of:

9:00 A.M. VIENNA HERITAGE CENTER, SP 2007-DR-085 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 10602 Leesburg Pi. on approx. 2.23 of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 49.

Chairman Ribble noted that the Board had received a request for a deferral to January 29, 2008.

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

Mr. Hammack moved to defer SP 2007-DR-085 to January 29, 2008 at 9:00 a.m., at the applicant's request. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

//

~ ~ ~ October 30, 2007, Scheduled case of:

9:00 A.M. NV HOMES, INC., VC 2007-MV-002 Appl. under Sect(s). 2-503 of the Zoning Ordinance to permit an individual sewage disposal system to be located on a separate lot from the principal use. Located at 9199 Marovelli Forest Dr. on approx. 1.35 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((7)) 24 and E pt. (Admin. moved from 9/18/07 at appl. req.) (Admin. moved from 10/2/07 for ads)

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, the applicant's agent, Sack, Harris & Martin, P.C., 8270 Greensboro Drive, Suite 810, McLean, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an individual sewage disposal system to be located on a separate lot from the principal use. The application property consisted of two non-contiguous lots. Lot 24 contained a dwelling, and the future Outlot E, which would be formed from the subdivision of existing Lot E, was currently undeveloped with a few evergreen and small deciduous trees. The individual sewage disposal system proposed was a Puraflo system, and it would be located in the rear portion of Outlot E. The proposal necessitated the installation of a private force main approximately 75 feet in length beneath Marovelli Forest Drive leading from Lot 24 to the approved septic field located at the rear of the future Outlot E. Subsequent to construction of the dwelling on the subject property in the summer of 2005, the applicant contacted the Fairfax County Health Department to obtain a permit to construct the septic field, which had been approved

~ ~ ~ October 30, 2007, NV HOMES, INC., VC 2007-MV-002, continued from Page 416

on the grading plan. After completion of an on-site review, the Health Department rescinded its approval due to changes in the subsurface soil conditions.

Subsequently, the applicant's soil engineer performed testing slightly uphill from the previous septic field to locate a new field, and a revised septic field design was submitted and approved by the Health Department on February 1, 2006. Mr. Varga stated that the applicant again contacted the Health Department for a permit to construct the newly designed field, but a permit was not issued because of similar subsurface soil concerns. The dwelling was completed at that point and was ready for occupancy except for completion of the septic system. A sales contract for Lot 24 and the constructed home had been pending for almost a year.

The applicant reviewed alternative locations for a septic field; however, by that time, dwellings had been constructed on adjacent Lots 23 and 25, and options to locate a septic field were limited. The owners of adjacent Lot 25 declined to have a boundary line adjustment performed to locate a septic field for the subject property closer to Marovelli Forest Drive.

The applicant could not locate a field closer to Lot 23 due to the installation of a well on the property, despite the availability of public water, and according to the applicant, the installation of the well occurred without proper permitting.

The Nirvana Palace Subdivision, including the subject property, was located outside of the sanitary sewer service area; therefore, a septic field is the only option of providing a method of sewage disposal.

The applicant received documentation from the Health Department that determined Lot 24 could not support an adequate septic field, and it was determined that the best solution was to locate the septic field on future Outlot E.

In order for the septic field to be located on Outlot E, a force main would have to be installed under Marovelli Forest Drive, a public street, and the Virginia Department of Transportation (VDOT) had indicated that a permit would be required to allow a private force main in the public right-of-way. The applicant worked in close contact with VDOT regarding the application process to gain approval for the construction of the pipe with VDOT issuing a letter that allowed the installation of a private force main under the roadway. The letter indicated that, with adoption of the terms listed, the proposed application would not create any significant additional impacts on the surrounding public street system. A development condition was incorporated to ensure that the applicant fulfilled the terms.

Discussion ensued regarding the septic field, the initial configuration of the lots, the definition of an outlot, proposed landscaping and screening, and the necessity of a Non-Residential Use Permit.

Mr. Martin presented the variance request as outlined in the statement of justification submitted with the application. He responded to the Board's questions concerning a recently submitted subdivision plan, the lots' proposed reconfiguration, and the creation and elimination of lots. Mr. Martin informed the Board of the dire straits his client was suffering because of the extenuating circumstances regarding the finalization of the matter. He said that the unfortunate situation was nobody's fault, and either the Puraflo system or a septic field were the only solutions, that there was no other alternative. Mr. Martin stated that the applicant's situation clearly met the Cochran standard of all reasonable use of the property being denied. He said the owners would be responsible for all maintenance and upkeep.

Mr. Martin responded to questions concerning the septic field, the percolation factor, the surrounding development, the water table, topography of the septic field, the failsafe backup, and whether a standard proposal should be crafted that would meet and resolve similar, albeit quite infrequent, situations in the future.

Kelly Atkinson, Land Design Consultants, Inc., 9401 Centreville Road, Suite 300, Manassas, Virginia, responded to the Board's questions regarding the percolation procedure.

Mr. Martin listed the timeline of the testing, the various approvals, and the progression of the dwelling's

~ ~ ~ October 30, 2007, NV HOMES, INC., VC 2007-MV-002, continued from Page 417

construction.

Discussion ensued regarding the installation of a well on an adjoining lot and its subsequent impact for the water and septic system on the subject property.

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

Mr. Hammack moved to defer the application for one week. The motion was seconded by Mr. Hart. After a brief discussion, the motion was withdrawn.

Mr. Byers moved to approve VC 2007-MV-002 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NV HOMES, INC., VC 2007-MV-002 Appl. under Sect(s). 2-503 of the Zoning Ordinance to permit an individual sewage disposal system to be located on a separate lot from the principal use. Located at 9199 Marovelli Forest Dr. on approx. 1.35 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((7)) 24 and E pt. (Admin. moved from 9/18/07 at appl. req.) (Admin. moved from 10/2/07 for ads) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 30, 2007; 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 1.35 acres.
4. The subject property was acquired in good faith.
5. Based on the processes the County has in place, everyone did the correct thing.
6. The Board is satisfied that the processes by the County and the applicant were followed.
7. The solution is reasonable.
8. It is determined that there exists an extraordinary situation or condition of the subject property.
9. The strict application of the Ordinance would produce undue hardship, which is not generally shared by other properties in the same zoning district in the same vicinity.
10. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property.
11. The applicant is essentially saying that if the variance is not approved, demolition would be in order.
12. This application differs from other cases heard by the BZA because it is not self-inflicted.
13. The fact was that the soil condition changed.
14. The applicants made a reasonable effort to seek a resolution from the property owners of Lots 23 and 25, which failed.

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;

~ ~ ~ October 30, 2007, NV HOMES, INC., VC 2007-MV-002, continued from Page 418

- 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 an individual sewage disposal system for Lot 24 to be located on the proposed Outlot E, as shown on the plat prepared by Matthew T. Marshall, dated June, 2007. 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 for this lot. A certified copy of the recordation shall be provided to DPWES prior to issuance of the grading plan for proposed Outlot E.
2. The deed of title to proposed Outlot E shall be conveyed to the new ownership only with the deed of title to Lot 24. The title owner of Lot 24 shall be prohibited from conveying title to Lot 24 without conveying title to Outlot E containing the septic system. All sales contracts associated with the subject property shall contain a disclosure of the location of the septic field on a separate lot and shall state that transfer of ownership of Lot 24 shall require transfer of ownership of Outlot E. Such disclosure shall also contain a written statement notifying all prospective owners of the maintenance requirements associated with the Puraflo system, as set forth in the manufacturers' guidelines that shall be attached to the sales contract.
3. Prior to grading plan approval for the installation of the septic system, a Hold Harmless agreement shall be executed with the County for all adverse effects which may arise as a result of the location of a septic field on a lot separate from the dwelling it serves.
4. Prior to any land disturbing activity, both a grading plan and a tree preservation plan showing the improvements on proposed Outlot E shall be submitted to the Department of Public Works and Environmental Services (DPWES), including Urban Forest Management (UFM), for review and approval. The plan shall depict preservation of trees, to the extent possible, as determined feasible by the Urban Forester, and the limits of clearing and grading which protect the trees. Prior to any land disturbing activities for construction, if deemed necessary by the Urban Forester, a pre-construction conference shall be held on site between DPWES and representatives of the applicant to include the construction site superintendent responsible for on-site construction activities for the

~ ~ ~ October 30, 2007, NV HOMES, INC., VC 2007-MV-002, continued from Page 419

purpose of discussing the limits of clearing and grading, areas of tree preservation and the erosion and sedimentation control plan to be implemented during construction. The limits of clearing and grading shall be strictly adhered to.

5. Prior to any land disturbing activities for Outlot E, a landscaping plan shall be submitted to DPWES, including Urban Forest Management, to show the provision of additional vegetation to be planted around the perimeter of the septic system with the intent of providing additional screening of the system. Type, size and number of plantings shall be determined in consultation with Urban Forest Management.
6. The installation of the forcemain beneath Marovelli Forest Drive shall meet all specifications, including but not limited to:
 - The owner/developer must submit a Land Use Permit for the installation accompanied by a continuous cash bond in the amount of \$15,000.00.
 - The owner must submit a Covenant of Perpetual Maintenance outlining the required maintenance schedule for the system, and agreeing to conduct that maintenance as required. This agreement must protect the Commonwealth of Virginia from any and all liability associated with the installation, use, or maintenance of this installation. All maintenance is to be monitored and reports submitted to the appropriate Fairfax County agency and made available to the Virginia Department of Transportation (VDOT) upon request. The Covenant of Perpetual Maintenance must be signed by the property owners, notarized, and recorded in the Land Records of Fairfax County in such a manner that all subsequent property owners are bound by this agreement.
 - The installation of the casing under Marovelli Forest Drive, should be by "jack & bore" with no open cut within the proposed right of way. The casing shall extend a minimum of 10 feet outside of the right of way on both ends and be a minimum of 5 feet deep as it passes under the right of way.
 - The installation shall meet all specifications and standards of Fairfax County and the Commonwealth of Virginia.
7. Notwithstanding what is depicted on the plat, no other structures or uses, including driveways shall be located on Outlot E.

This approval, 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 of the septic field system has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ October 30, 2007, Scheduled case of:

9:00 A.M. CAROLYN DAY HECOX, SP 2007-SP-072 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8830 Lake Hill Dr. on approx. 3.04 ac. of land zoned R-1. Springfield District. Tax Map 106-1 ((3)) 12. (Decision deferred from 10/2/07)

Chairman Ribble noted that the Board had received a request for a deferral of the decision to December 4, 2007.

Ms. Gibb moved to defer decision on SP 2007-SP-072 to December 4, 2007, at 9:00 a.m., at the applicant's

~ ~ ~ October 30, 2007, CAROLYN DAY HECOX, SP 2007-SP-072, continued from Page 420

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

//

~ ~ ~ October 30, 2007, 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. (Admin. moved from 12/5/06, 2/6/07, 4/10/07, and 7/10/07 at appl. req.)

Chairman Ribble noted that A 2006-DR-054 had been administratively moved to February 5, 2008, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff would not support any further deferral requests. She explained the situation regarding a grading plan, noting that the appellant wanted to work out a few details before withdrawing the appeal.

//

~ ~ ~ October 30, 2007, Scheduled case of:

9:30 A.M. NVR, INC./NV HOMES C/O JERRY JOHNSON, A 2007-MV-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a septic field for Lot 24 of the Nirvana Palace Subdivision may not be located across the street on a new Outlot O under Zoning Ordinance provisions. Located at 9199 Marovelli Forest Dr. on approx. 55,000 sq. ft. of land zoned R-1. Mount Vernon District. Tax Map 106-4 ((7)) 24 and pt. E. (Admin. moved from 7/31/07 at appl. req.)

Chairman Ribble noted that A 2007-MV-016 had been administratively moved to December 11, 2007, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff expected to soon receive a withdrawal letter from the appellant.

//

~ ~ ~ October 30, 2007, Scheduled case of:

9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11.

Chairman Ribble called the appellant to the podium.

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

William B. Lawson, Jr., 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, identified himself as representing the appellant with regard to having a fence in excess of four feet in the front yard and also

~ ~ ~ October 30, 2007, SHERRY BROWN, A 2007-MV-030, continued from Page 421

assisting with compliance of the appellant's other violations. He said Ms. Brown was working diligently with staff to cure them. Mr. Lawson asked for a deferral to allow time to file a special permit application to address the fence height matter.

Jayne Collins, Staff Coordinator, Zoning Administration Division, said staff would support a three-month deferral to allow the appellant time to submit a special permit applicant and reduce the number of dwelling units to one. She suggested a date of January 29, 2008.

Chairman Ribble called for speakers to address the question of a deferral; there was no response.

Mr. Lawson indicated his agreement with the January 29, 2008 date.

Mr. Hammack moved to defer A 2007-MV-030 to January 29, 2008, at 9:30 a.m., at the appellant's request. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

//

~ ~ ~ October 30, 2007, Scheduled case of:

9:30 A.M. NICK AND HELEN PITTAS, A 2007-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining two separate dwelling units on a single lot on property in the R-1 District and are allowing the occupancy of the units by two families, in violation of Zoning Ordinance provisions. Located at 6227 Villa St. on approx. 20,485 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((3)) L.

Chairman Ribble noted that A 2007-LE-031 had been administratively withdrawn.

Jayne Collins, Staff Coordinator, Zoning Administration Division, informed the Board that the notice of violation had been reissued.

//

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 BZA v. Board of Supervisors in the Circuit Court of Fairfax County, No. 0611777; McLean Bible Church v. BZA in Circuit Court of Fairfax County, No. 068305, and the companion case in the U.S. District Court of the Eastern District of Virginia, No. 1-06CV769; and two consolidated cases to be heard in the Fairfax County Circuit Court, Board of Supervisors v. BZA, No. 0614988 and No. 0610952; Lee v. BZA in the Circuit Court of Fairfax County, No. 04221391; the appeal of the Nutley Road decision; and the BZA meeting calendar; 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. Smith was absent from the meeting.

The meeting recessed at 11:03 a.m. and reconvened at 11:22 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

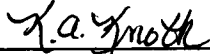
//

~ ~ ~ October 30, 2007, NAME/NUMBER, continued from Page 422

As there was no other business to come before the Board, the meeting was adjourned at 11:23 a.m.

Minutes by: Paula A. McFarland

Approved on: July 25, 2012



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 6, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ November 6, 2007, Scheduled case of:

9:00 A.M. MULIA PRIBADI, SP 2007-MA-097 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit addition to remain 8.0 ft. with eave 7.0 ft. and 12.6 ft. with eave 9.9 ft. and accessory storage structures to remain 2.2 ft. and 1.5 ft. with eave 1.0 ft. from one side lot line and deck to remain 10.0 ft. from other side lot line. Located at 6412 Recreation La. on approx. 18,296 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((18)) 2A.

Chairman Ribble called the applicant to the podium.

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

Mulia Pribadi, 6412 Recreation Lane, Falls Church, Virginia, reaffirmed the affidavit.

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

Mr. Pribadi presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he had lived in his home for more than 24 years and had not known until recently there were problems with the addition he had made to the house. When he purchased the property in 1983, the deck and a three-sided carport enclosure were part of the structure, and when he built the addition at the rear of the house in 1988, he enclosed the carport entirely, ensuring it was in harmony with the neighborhood. Mr. Pribadi said no other structural changes had been made except the wall on the front side of the carport. He said the sheds had been built in the rear of the house, were not visible from the street, were surrounded by tall, mature trees, faced the woods to the north, and his neighbors to the rear could see the sheds only after the trees lost their foliage. He said that because the house did not have a basement, the sheds were needed for storage, and it would be a hardship to remove them. He stated that he had trusted the contractor to obtain the necessary permits for the addition at the rear of the home built in 1988, and it had been designed and built by the same architect/contractor who had built the deck. He said most of the houses in the neighborhood were similar in style and had decks.

Discussions ensued regarding the location of the sheds and the concrete foundations; the terrain; the sheds having been constructed by a contractor and containing no electricity, heat, or water; the enclosed carport having electricity; the original building permit showing the carport and a deck with no permit for the carport enclosure; the discrepancies between what was shown on the plat and what had been built; and the propane tanks located in the easement installed and owned by Suburban Propane that provided service to the applicant's property.

Chairman Ribble called for speakers.

Kathleen Sue Miller, 6414 Recreation Lane, Falls Church, Virginia, came forward to speak in support of the application.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2007-MA-097 for the reasons stated in the Resolution.

//

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

MULIA PRIBADI, SP 2007-MA-097 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit additions to remain 8.0 ft. with eave 7.0 ft. and 12.6 ft. with eave 9.9 ft. and accessory storage structures to remain 2.2 ft. and 1.5 ft. with eave 1.0 ft. from one side lot line and deck to remain 10.0 ft. from other side lot line. Located at 6412 Recreation La. on approx. 18,296 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((18)) 2A. 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 6, 2007; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony that the applicant has met the required Standards A through G regarding errors in building location.
3. Based on the testimony of the applicant, the sheds contain no plumbing or electricity and cannot be moved because they have cement floors.
4. The Board had testimony by neighbors that they were fine with the sheds.
5. The sheds cannot be moved because there is a steep incline.
6. The house was built in its present location prior to the purchase by the applicant.

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.

~ ~ ~ November 6, 2007, MULIA PRIBADI, SP 2007-MA-097, continued from Page 426

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, addition to the rear of the dwelling; accessory storage structures and deck, as shown on the plat prepared by Dominion Surveyors, Inc., dated June 28, 2007, as submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the garage addition and deck shall be diligently pursued and obtained within 120 days of final approval or the special permit for these additions shall be null and void.
3. This special permit does not impair or supersede any existing easements on the site, including specifically the five-foot maintenance and construction easement identified on the plat.

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

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

//

~ ~ ~ November 6, 2007, Scheduled case of:

9:00 A.M. JOHN STEVEN AND SHARON L. JUDGE, SPA 84-M-078 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 84-M-078 to permit reduction of certain yard requirements to permit addition to remain 27.0 ft. from front lot line of a corner lot. Located at 4109 Sleepy Hollow Rd. on approx. 12,194 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((22)) 114.

Chairman Ribble called the applicants to the podium.

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

Steven Judge, 4109 Sleepy Hollow Road, Annandale, Virginia, reaffirmed the affidavit.

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

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 84-M-078, subject to the proposed development conditions.

Mr. Judge presented the special permit amendment request as outlined in the statement of justification submitted with the application. He explained that in 2005 he had solicited bids from builders to enclose the carport, and none of them mentioned a need for a special permit. Construction of the walls, ceiling, wiring, and the purchase of matching siding and brick were completed. In August of 2005, the builder received a call from the Zoning Enforcement Division indicating that a variance had been granted in 1985 for a carport, and whether a garage would be permitted under that variance needed to be determined, so construction was halted. He explained that he had twice requested administrative relief, had numerous conversations with enforcement, zoning personnel, and other County officials, and had been told that until an unrelated litigation matter had been resolved, there was no avenue for him to obtain permission to complete construction. He said he said he received a call from the Enforcement Division in January of 2007 informing him that he would have to seek approval from the Board. Mr. Judge said the garage was situated atop the existing cement pad for the carport; the footprint had not been increased or altered; and, he wanted to erect walls on three sides of the carport and install a double garage door, as had been done to many of the homes in his neighborhood. He said that when he had suspended construction in the summer of 2005, all that remained to be completed was some masonry work, installation of the siding, completing the finishing work around two windows, and hanging the garage doors. Since that time, the unfinished status of the exterior had been subjected to rain

~ ~ ~ November 6, 2007, JOHN STEVEN AND SHARON L. JUDGE, SPA 84-M-078, continued from Page 427

and cold, and significant damage had been done to the drywall, which would have to be replaced. Mr. Judge said he knew of no one in opposition to the enclosure of the carport, and 26 of his neighbors had signed a petition in support and would be happy when the project was completed.

Discussions ensued regarding the distance the garage would encroach into the setback, the location of the fence, and administrative relief had not been possible because the original special permit approval had been done under Sect. 8-916 of the Zoning Ordinance in 1984, and no further intrusion into the yard could be granted without an amendment to the original special permit that allowed the carport's construction in its location.

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

Mr. Byers moved to approve SPA 84-M-078 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN STEVEN AND SHARON L. JUDGE, SPA 84-M-078 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 84-M-078 to permit reduction of certain yard requirements to permit addition to remain 27.0 ft. from front lot line of a corner lot. Located at 4109 Sleepy Hollow Rd. on approx. 12,194 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((22)) 114. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2007; and

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

1. The applicants are the owners of the land.
2. The applicants meet all the submission requirements set forth in Sect. 8-922.
3. Staff recommended approval based on the rationale stated 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. 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 applicants among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (483 square feet) of a two car garage addition, as shown on the plat prepared by Dominion Surveyors, Inc., dated September 21, 2006, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,527 square feet) regardless of whether such

~ ~ ~ November 6, 2007, JOHN STEVEN AND SHARON L. JUDGE, SPA 84-M-078, continued from Page 428

addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be architecturally compatible with the dwelling.
5. Building permits and final inspections for the addition shall be diligently pursued 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. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ November 6, 2007, Scheduled case of:

9:00 A.M. MICHAEL & DONNA CASEY, SP 2007-MA-089 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.4 ft. from rear lot line. Located at 7420 Carmine St. on approx. 10,502 sq. ft. of land zoned R-1. Mason District. Tax Map 71-1 ((10)) 2.

Chairman Ribble called the applicants to the podium.

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

Donna Casey, 7420 Carmine Street, Annandale, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-MA-089, subject to the proposed development conditions.

Ms. Casey presented the special permit request as outlined in the statement of justification submitted with the application. She said the existing porch was five feet too close to the property line between her lot and the wooded lot behind, and it had deteriorated and would be completely reconstructed in the same footprint. She said the porch would have no windows, screening, heating, or air conditioning, and no shrubbery or trees would be removed.

In response to a question from Mr. Beard, Ms. Casey stated that the cost of drawing the plat was \$2,300 in addition to the fee of \$235 for the special permit application, and the fees did not include any other expenses associated with the application.

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

Mr. Hart moved to approve SP 2007-MA-089 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL & DONNA CASEY, SP 2007-MA-089 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.4 ft. from rear lot line. Located at 7420 Carmine St. on approx. 10,502 sq. ft. of land zoned R-1. Mason District. Tax Map 71-1

~ ~ ~ November 6, 2007, MICHAEL & DONNA CASEY, SP 2007-MA-089, continued from Page 429

((10)) 2. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2007; 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 showing compliance with the required standards for this type of special permit.
3. The Board has a favorable staff recommendation.
4. This is a very modest application to replace an existing screened porch in exactly the same place.
5. Even though the porch has been there for a long time, apparently it was not constructed with a permit and is too close to the lot line now.
6. Based on the photographs, there would not be any negative impact on anyone.
7. There is mature vegetation.
8. The new porch would be consistent with and an improvement over the appearance of the existing porch which is falling down.
9. The Board determined that the application meets all the submission requirements set forth in Sect. 8-922 and meets all the additional standards in the Sect. 8-922 motion.

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

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

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

1. These conditions shall be recorded by the applicants 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 (288 square foot screen porch addition) as shown on the plat prepared by Ronald J. Keller, dated June 6, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (2,461 feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

~ ~ ~ November 6, 2007, MICHAEL & DONNA CASEY, SP 2007-MA-089, continued from Page 430

for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must 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.

//

~ ~ ~ November 6, 2007, Scheduled case of:

9:00 A.M. MICHAEL THOMAS, SP 2007-DR-091 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of second story addition 8.3 ft. from side lot line and roofed deck 24.7 ft. from front lot line of a corner lot. Located at 2357 Brilyn Pl. on approx. 7,341 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((12)) 36.

Chairman Ribble called the applicant to the podium.

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

Michael Thomas, 2357 Brilyn Place, Falls Church, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-DR-091, subject to the proposed development conditions.

Jennifer Thomas, 2357 Brilyn Place, Falls Church, Virginia, presented the special permit request as outlined in the statement of justification submitted with the application. She said that in attempting to file for a building permit, she and her husband found out that the home built in 1951 did not comply with current zoning. She said the proposed second-story addition would be over the original footprint of the home and would be compatible with the homes being built and renovated in the neighborhood. She said there was an existing covered porch that needed to be extended a few feet so the front door could be moved, and it would then appear to be a center hall home. She stated that her neighbors were in support of the application, and three letters of support had been submitted for the file.

Discussions ensued regarding a shed located in the corner of the lot, a 10-foot utility easement, and the location of the fence.

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

Mr. Smith moved to approve SP 2007-DR-091 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL THOMAS, SP 2007-DR-091 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of second story addition 8.3 ft. from side lot line and roofed deck 24.7 ft. from front lot line of a corner lot. Located at 2357 Brilyn Pl. on approx. 7,341 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((12)) 36. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2007; and

~ ~ ~ November 6, 2007, MICHAEL THOMAS, SP 2007-DR-091, continued from Page 431

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

1. The applicant is the owner of the land.
2. The Board has determined that the application meets all the submission requirements of Sect. 8-922 and the resulting requirements set forth in that section.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (914 square foot second story addition and 183 square foot roofed deck) as shown on the plat prepared by George M. O'Quinn, dated July 30, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (1,828 feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. This special permit does not impair or supersede any existing easements on the site, including specifically the 10-foot utilities easement identified on the plat.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to 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.

//

~ ~ ~ November 6, 2007, Scheduled case of:

9:00 A.M. MARION W. AND MARY I. KUHLMAN, SP 2007-SU-095 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side and rear lot lines. Located at 4321 General Kearny Ct. on approx. 10,962 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 39.

~ ~ ~ November 6, 2007, MARION W. AND MARY I. KUHLMAN, SP 2007-SU-095, continued from Page 432

Chairman Ribble called the applicants to the podium.

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

Marion Kuhlman, 4321 General Kearny Court, Chantilly, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SU-095, subject to the proposed development conditions.

Mr. Kuhlman presented the special permit request as outlined in the statement of justification submitted with the application. He said the screened deck would allow his family to enjoy the backyard. He said the deck would not adversely impact the surrounding properties, and his neighbors had not expressed any opposition.

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

Mr. Beard moved to approve SP 2007-SU-095 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARION W. AND MARY I. KUHLMAN, SP 2007-SU-095 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side and rear lot lines. Located at 4321 General Kearny Ct. on approx. 10,962 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 39. 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 6, 2007; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the applicants meet all the submission requirements as set forth in Sect. 8-922 and subsequent requirements.

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

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

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

1. These conditions shall be recorded by the applicants 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 (440 square foot screened-in porch addition) as shown on the plat prepared by George M. O'Quinn, dated June 19, 2007, revised August 14, 2007, as submitted with this application and is not transferable to other land.

~ ~ ~ November 6, 2007, MARION W. AND MARY I. KUHLMAN, SP 2007-SU-095, continued from Page 433

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (4,266 feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ November 6, 2007, Scheduled case of:

9:00 A.M. BRUCE W. HALL AND LAURIE BEYER HALL, SP 2007-PR-093 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.0 ft. from rear lot line and 2.1 ft. from the side lot line and to permit reduction of minimum yard requirements to permit construction of additions 5.3 ft. and 9.9 ft. from side lot line. Located at 2904 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((8)) 21.

Chairman Ribble called the applicants to the podium.

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

Laurie Beyer Hall, 2904 Meadow Lane, Falls Church, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-PR-093, subject to the proposed development conditions.

Ms. Hall presented the special permit request as outlined in the statement of justification submitted with the application. She said her small home was built in the 1940s, and the addition of a screened porch would give her family some extra space. She stated that they did not know the shed was a problem until the plat was drawn, and it had been constructed in its current location to provide additional storage and allow her children to have a larger area to play. Ms. Hall said there was a manhole and sewer drainage area on the other side of the property, so there was very limited space to place the shed. In response to a question from Ms. Gibb, Ms. Hall said her neighbors on both sides had sheds on the same fence line.

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

Mr. Hammack moved to approve SP 2007-PR-093 for the reasons stated in the Resolution.

//

~ ~ ~ November 6, 2007, BRUCE W. HALL AND LAURIE BEYER HALL, SP 2007-PR-093, continued from Page 434

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BRUCE W. HALL AND LAURIE BEYER HALL, SP 2007-PR-093 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.0 ft. from rear lot line and 2.1 ft. from the side lot line and to permit reduction of minimum yard requirements to permit construction of additions 5.3 ft. and 9.9 ft. from side lot line. Located at 2904 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((8)) 21. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2007; and

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

1. The applicants are the owners of the land.
2. The Board has a favorable staff recommendation.
3. The applicants meet the six specified criteria set forth in the Ordinance, specifically set forth on the motion form.

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

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

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

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

~ ~ ~ November 6, 2007, BRUCE W. HALL AND LAURIE BEYER HALL, SP 2007-PR-093, continued from Page 435

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

1. These conditions shall be recorded by the applicants among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the additions (a total of 350 square feet), and shed as shown on the plat prepared by Dominion Surveyors, Inc., dated May 16, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,970 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ November 6, 2007, Scheduled case of:

9:00 A.M. WILLIAM T. TORPEY, SP 2007-SP-094 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of a second story addition 35.1 ft. and 39.0 ft. from the front lot lines. Located at 11513 Havenner Rd. on approx. 26,016 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-4 ((9)) 806.

Chairman Ribble called the applicant to the podium.

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

Tu Phong, 41893 White Mountain Court, Aldie, Virginia, the applicant's agent, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report.

Discussions ensued regarding Development Condition 4, the septic field, the possibility that items located in the area may have to be removed, and typically staff not making recommendations on applications for modifications to certain R-C lots.

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

~ ~ ~ November 6, 2007, WILLIAM T. TORPEY, SP 2007-SP-094, continued from Page 436

the application. He said the house had been built in 1982 under Zoning District R-4, and under zoning requirements at that time, the location for the addition would have been acceptable. He said the existing garage roof would be removed, and a master bedroom would be constructed above the garage. He explained that if the porch was set back six inches from the front of the new addition on top of the garage, a special permit would not have been necessary, but the applicant wanted the addition to be in harmony with the property.

Mr. Chase said the existing footprint would not meet current requirements, and the application was being presented to legitimize the construction.

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

Mr. Byers moved to approve SP 2007-SP-094 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM T. TORPEY, SP 2007-SP-094 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of a second story addition 35.1 ft. and 39.0 ft. from the front lot lines. Located at 11513 Havenner Rd. on approx. 26,016 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-4 ((9)) 806. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2007; 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 an addition as shown on the plat prepared by Dominion Surveyors, Inc., dated April 24, 2007, revised August 24, 2007, 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.

~ ~ ~ November 6, 2007, WILLIAM T. TORPEY, SP 2007-SP-094, continued from Page 437

4. As determined necessary by the Fairfax County Health Department at the time of building permit review, the applicant shall remove items such as the patio, benches, fountain and/or other structures or items within the area designated as the "approximate location septic field." These structures or items shall be removed prior to the issuance of a building permit.

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

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

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

//

~ ~ ~ November 6, 2007, Scheduled case of:

9:00 A.M. HARINDER S. GILL, SP 2007-SP-096 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification of certain R-C lots to permit construction of addition 17.1 ft. from side lot line. Located at 11317 Edenderry Dr. on approx. 29,215 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((3)) 28.

Chairman Ribble called the applicant to the podium.

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

Harinder Gill, 11317 Edenderry Drive, Fairfax, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Gill presented the special permit request as outlined in the statement of justification submitted with the application. He said his family needed more living space, and the addition would provide that with no impact on adjoining properties. Mr. Gill said he had applied for two permits that had been accepted, and he had started construction; however, the last part of the six-foot addition was the area that affected the setback requirements.

In response to questions from Mr. Hart, Mr. Gill confirmed that the bump out indicated on the drawing was on the main level of the house because he had a walk-out basement, and the reference on the plat to a second-story addition was not actually the second story of the house, but rather the area located above the basement.

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

Mr. Hart moved to approve SP 2007-SP-096 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HARINDER S. GILL, SP 2007-SP-096 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification of certain R-C lots to permit construction of addition 17.1 ft. from side lot line. Located at 11317 Edenderry Dr. on approx. 29,215 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((3))

~ ~ ~ November 6, 2007, HARINDER S. GILL, SP 2007-SP-096, continued from Page 438

28. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2007; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicant has presented testimony showing compliance with the required standards in the standard R-C Lot motion.
7. There will not be any significant negative impact on anyone.
8. Based on the drawings, this is a very slight bump out to an existing house.
9. It is heavily wooded behind the addition.
10. The site backs to a common area parcel.
11. There is no neighbor that is directly impacted.

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 Dominion Surveyors, Inc., dated May 7, 2007, 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 and the elevations submitted with the application.

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

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

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

//

~ ~ ~ November 6, 2007, 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. (Admin. moved from 11/7/06 at appl. req.) (Decision deferred from 1/23/07)

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

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in a memorandum dated October 30, 2007.

Discussions ensued regarding the definitions of a front lot line and a pipestem lot, determinations of side and front yards, how they would apply to the subject property which abutted on both sides of the driveway, the locations to which the structure could be moved, the dimensions referenced in the Public Facilities Manual for the width of a driveway of 24 feet with a minimum of 18 feet that would be paved, the pipestem serving only the subject lot, the delineation of an electric easement, the wording of "ingress/egress easement" being more appropriate than "driveway," other carports in the area having been removed as a result of a similar situation, and the case coming before the Board because a complaint had been received from one of the appellant's neighbors stating that one structure had been replaced with a larger one.

Daniel Sturdivant, 6317 Foxboro Court, Alexandria, Virginia, presented the arguments forming the basis for the appeal and submitted photographs of his home to the Board. He stated that he purchased his home in 1978 and had built a two-car carport and enclosed the existing deck in 1979. He said he knew he needed a permit for the deck, but was not aware that one was required for the carport. Mr. Sturdivant said he later replaced the carport, and the replacement was aesthetically pleasing, compatible with neighboring homes, and could not be seen from the street.

Chairman Ribble called for speakers.

Mark Archer, 5306 Foxboro Court, Alexandria, Virginia; and Charles Lloyd, 5321 Foxboro Court, Alexandria, Virginia, came forward to speak in support of the appeal.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said the carport was attractive, not obtrusive, and seemed like it was in a logical place; however, under the Zoning Ordinance, she was convinced it was in the front yard and was an accessory structure. Ms. Gibb stated that she thought the appellant's lot was a pipestem lot, and she believed it was the appellant's driveway. Ms. Gibb adopted the rationale in the staff report and the presentation made by staff. Mr. Hammack seconded the motion.

Mr. Hammack stated that the Board had required one of the appellant's neighbors to remove a structure almost identical to his, and even though he was sympathetic to Mr. Sturdivant's arguments and thought the structure was in a logical location with respect to the house and driveway, staff had pointed out that it could be put in what would be the functional rear yard. It would probably involve more impervious surface, which would be undesirable. Mr. Hammack said as long as the Board felt that the Zoning Administrator's interpretation was correct, it should be upheld, and he agreed with staff on the appeal.

Mr. Beard said he could not support the motion, stating that he thought this was a unique situation, and the Board existed because of that type of situation.

Mr. Hart said he would abstain from the vote because he did not believe this was a front yard. He also said that with the plain language of the Ordinance, which the Board was constrained to follow, the structure was in the front yard. Mr. Hart stated that regardless of whether it was a front or side yard, it was not allowed under the Ordinance and was still a violation. He said the Board did not have the discretion to allow the structure procedurally. The issue before the Board was a determination that there was a violation because there was an accessory structure in a front yard, and the Board could uphold the determination, uphold it in part, or reverse it. Mr. Hart stated that, in his view, the determination was correct except that it was not a front yard, and that needed to be dealt with administratively. Mr. Hart suggested the appellant raise the

~ ~ ~ November 6, 2007, DANIEL F. STURDIVANT, II, A 2006-LE-038, continued from Page 440

overall issue with his district Supervisor and shift the carport to a location touching the house to resolve the violation.

The motion carried by a vote of 5-1-1. Mr. Beard voted against the motion. Mr. Hart abstained from the vote.

Mr. Hart requested that the two definitions he had mentioned earlier be placed on the Work Program, and instead of "driveway," it should say something like "whether paved or unpaved" or "ingress/egress way" or something similar so the definition went more closely with what the intent probably was. Ms. Stanfield stated that staff recognized there were many changes that needed to be made to the definitions, and she would convey the request to the members working on the program.

Mr. Byers asked if his memory was correct that this was a case where that appellant was in the wrong place at the wrong time and there had been an argument between other neighbors or a violation that escalated into involving everyone in the area. Ms. Stanfield said he was correct, and unfortunately the Zoning Administration Division had a lot of appellants in that type situation.

//

~ ~ ~ November 6, 2007, Scheduled case of:

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

Chairman Ribble noted that A 2007-LE-017 had been administratively moved to February 26, 2008, at 9:30 a.m., at the appellant's request.

Ms. Stanfield said the appellant had filed applications for a special exception and special permit which, if granted, would cure the violations.

//

~ ~ ~ November 6, 2007, Scheduled case of:

9:30 A.M. ACCURATE TOWING AND STORAGE, INC., A 2007-PR-032 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Motor Vehicle Storage and Impoundment Yard on property in the I-4 and I-5 Districts without a valid Non-Residential Use Permit and without an approved site plan, in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Concurrent with A 2007-PR-033.)

9:30 A.M. MARY R. GREENE, TRUSTEE, A 2007-PR-033 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a Motor Vehicle Storage and Impoundment Yard and a Storage Yard on property in the I-4 and I-5 Districts without a valid Non-Residential Use Permit and without an approved site plan, in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Concurrent with A 2007-PR-032.)

Chairman Ribble noted that A 2007-PR-032 and A 2007-PR-033 had been administratively moved to February 26, 2008, at 9:30 a.m., at the appellants' request.

Ms. Stanfield said one of the appellants was the tenant, and the other was the property owner. She said she anticipated the appeals would be deferred again to allow for submission and approval of a site plan.

~ ~ ~ November 6, 2007, ACCURATE TOWING AND STORAGE, INC., A 2007-PR-032, and MARY R. GREENE, TRUSTEE, A 2007-PR-033, continued from Page 441

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing if and when the appeals came before the Board.

//

~ ~ ~ November 6, 2007, Scheduled case of:

9:30 A.M. JED L. GOEHRING, A 2007-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, has erected an accessory storage structure that exceeds eight and one-half feet in height, which does not comply with the minimum yard requirements for the R-1 District and was erected without a valid Building Permit, all in violation of Zoning Ordinance provisions. Located at 6111 Ramshorn Pl. on approx. 43,527 sq. ft. of land zoned R-1 and R-2. Dranesville District. Tax Map 31-2 ((5)) 8 and 31-2 ((1)) 124C. (Deferred from 7/10/07 and 8/14/07 at appl. req.) (Admin. moved from 10/2/07 for notices)

Chairman Ribble noted that A 2007-DR-009 had been withdrawn.

//

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 BZA vs. Board of Supervisors in the Circuit Court of Fairfax County, No. 06-11777; the McLean Bible Church in the Circuit Court of Fairfax County, No. 06-8305, and the companion case in the U.S. District Court for the Eastern District of Virginia, No. 1-06CV769; Virginia Equity Solutions vs. BZA in the Supreme Court of Virginia, No. 05-6316; McLean vs. BZA in Nutley Street LLC in the Circuit Court of Fairfax County, No. 07-12668; and Dunn, McCormick, and McPherson vs. Connelly in the Circuit Court of Fairfax County, 06-10960; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Byers seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:17 a.m. and reconvened at 11:32 a.m.

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

//

As there was no other business to come before the Board, the meeting was adjourned at 11:32 a.m.

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

Approved on: January 7, 2015

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble

John F. Ribble, 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 27, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ November 27, 2007, Scheduled case of:

9:00 A.M. BARBARA L. BATTEN, SP 2004-MV-056 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit one accessory storage structure 6.2 feet from a side lot line and another 4.1 feet from a side lot line and 2.8 feet from a rear lot line, deck 1.8 feet and roofed deck 5.1 feet from a side lot line and deck 4.0 feet from other side lot line to remain and reduction to certain yard requirements to permit construction of addition 16.2 feet from front lot line. Located at 2417 Fairhaven Ave. on approx. 7,769 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 23. (Admin. moved from 12/21/04 and 3/15/05 at appl. req.) (Indefinitely deferred from 4/26/05 at appl. req.) (Reactivated from indefinitely deferred)

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barbara Batten, 2417 Fairhaven Avenue, Alexandria, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, 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 16.2 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, a modification of 13.8 feet, or 46 percent, was requested. Staff recommends approval of SP 2004-MV-056 for the addition subject to the proposed development conditions. The applicant also requested a reduction to the minimum yard requirements based on errors in building locations to permit an accessory storage structure to remain 6.2 feet from the western side lot line; another accessory storage structure to remain 4.1 feet from the western side lot line and 2.8 feet from the rear lot line; a deck to remain 1.8 feet from the western side lot line; a roofed deck to remain 5.1 feet from the western side lot line; and another deck to remain 4.0 feet from the eastern side lot line. The Zoning Ordinance requires a minimum side yard of 10 feet; therefore, modifications of 3.8 feet, 5.9 feet, 3.2 feet, 4.9 feet, and 1.0 foot were requested. A minimum rear yard of 11.4 feet is required for the shed; therefore, a modification of 8.6 feet was requested to the rear lot line.

Ms. Hedrick and Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Hart's questions concerning a tree box as a landscape feature, the difference between this case and a previous case, and the necessity for consistency in a decision.

Ms. Batten presented the special permit request as outlined in the statement of justification submitted with the application. She said the circa 1940s home already had the decks, ramps, and one of the sheds, which was built by her brother for their parents' accessibility, before she purchased the house in 1997. She said because of her mother's disability, she sought to construct a 120-square-foot addition that enclosed and slightly enlarged an existing screened porch to create an accessible entrance for her mother's wheelchair. Ms. Batten explained the reasons for the tree box and the history of the sheds.

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

In response to a question from Mr. Beard, Ms. Hedrick said the error was brought to the County's attention during the application acceptance review process and was not under violation.

Mr. Hammack moved to approve SP 2004-MV-056 for the reasons stated in the Resolution.

//

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

BARBARA L. BATTEN, SP 2004-MV-056 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit one accessory storage structure 6.2 feet from a side lot line and another 4.1 feet from a side lot line and 2.8 feet from a rear lot line, deck 1.8 feet and roofed deck 5.1 feet from a side lot line and deck 4.0 feet from other side lot line to remain and reduction to certain yard requirements to permit construction of addition 16.2 feet from front lot line. Located at 2417 Fairhaven Ave. on approx. 7,769 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 23. (Admin. moved from 12/21/04 and 3/15/05 at appl. req.) (Indefinitely deferred from 4/26/05 at appl. req.) (Reactivated from indefinitely deferred) 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 27, 2007; and

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

1. The applicant is the owner of the land.
2. Except for the deck in the back corner of the yard, the other errors were committed prior to the applicant's purchase of the property.
3. With respect to the shed in the back corner of the lot, according to the staff report, it is only a tenth of a foot too high or it would have met the 8 ½ foot standard.
4. The shed should not cause any unreasonable impact on the neighbors and the property.
5. The Standards under Sect. 8-914 have been met.
6. The Board has a favorable staff report.

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

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

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

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

~ ~ ~ November 27, 2007, BARBARA L. BATTEN, SP 2004-MV-056, continued from Page 444

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (120 square feet) of an addition and accessory storage structures (sheds) and decks, as shown on the plat prepared by Dominion Surveyors, Inc., dated August 27, 2007 and as revised through October 11, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,941 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Building permits and final inspections for the decks shall be diligently pursued and obtained within 120 days of final approval or the special permit for these additions 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.

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

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

//

~ ~ ~ November 27, 2007, Scheduled case of:

9:00 A.M. THADDEUS J. GODLEWSKI, TRUSTEE, SP 2007-SP-098 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.5 ft. from rear lot line. Located at 5110 Whisper Willow Dr. on approx. 8,080 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 55-3 ((10)) 37.

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and

~ ~ ~ November 27, 2007, THADDEUS J. GODLEWSKI, TRUSTEE, SP 2007-SP-098, continued from Page 445

accurate. Thaddeus Godlewski, 5110 Whisper Willow Drive, Fairfax, Virginia, 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 the reduction of certain yard requirements to permit the construction of a 143-square-foot screened porch addition 15.5 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a reduction of 9.5 feet was requested. Staff recommended approval of SP 2007-SP-098 subject to the proposed development conditions.

Mr. Godlewski presented the special permit request as outlined in the statement of justification submitted with the application. He said he and his wife sought to build the screened porch on the deck to enjoy the deck more often, especially during the summer months, without being bothered by mosquitoes. He said he obtained a building permit in September of 1997 for the deck, and the proposed screened porch would be of similar material and be harmonious with the surroundings. He had the homeowners' association architectural review committee's approval for the screened porch. Additionally, there were numerous similar decks and porches in his neighborhood, and his porch was well screened from the neighbors by thick, mature trees and vegetation.

Mr. Godlewski responded to Mr. Hart's question concerning an adjoining neighbor's letter, citing a potential visual obstruction caused by the enclosure.

Chairman Ribble called for speakers.

Xiaojing Liu, 5112 Whisper Willow Drive, Fairfax, Virginia, came forward to speak. She noted that the trees along the south side property line did not block her view of the applicant's deck, and the porch's enclosure would be entirely visible from her backyard.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-SP-098 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THADDEUS J. GODLEWSKI, TRUSTEE, SP 2007-SP-098 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.5 ft. from rear lot line. Located at 5110 Whisper Willow Dr. on approx. 8,080 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 55-3 ((10)) 37. 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 27, 2007; 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 testified that his neighborhood's homeowners association's Architectural Review Board approved the design.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special

~ ~ ~ November 27, 2007, THADDEUS J. GODLEWSKI, TRUSTEE, SP 2007-SP-098, continued from Page 446

Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (143 square foot screened porch addition) as shown on the plat prepared by Larry N. Scartz and dated July 3, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,393 feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ November 27, 2007, Scheduled case of:

9:00 A.M ELIZABETH WADLE, SP 2007-MA-105 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.8 ft. from side lot line. Located at 3814 Lakeview Ter. on approx. 13,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 112.

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elizabeth Ann Wadle, 3814 Lakeview Terrace, Falls Church, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested special permit approval to permit the reduction of certain yard requirements for the construction of an addition consisting of a garage, an enlarged kitchen, and a storage area, 7.8 feet from the side lot line.

~ ~ ~ November 27, 2007, ELIZABETH WADLE, SP 2007-MA-105, continued from Page 447

The addition would replace an existing carport and breezeway and would not encroach closer to the side lot line than the current carport. A minimum side yard of 15 feet is required; therefore, a reduction of 7.2 feet was requested. Staff recommended approval of SP 2007-MA-105 subject to the proposed development conditions.

Ms. Wadle presented the special permit request as outlined in the statement of justification submitted with the application. The circa 1956 split-level house was purchased in 1999, and she sought to update it and improve the curb appeal. She said enclosing the carport was for functional usage and security, and her neighbors were eager for the outcome of the hearing because they also hoped to enclose their carports.

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

Mr. Hart moved to approve SP 2007-MA-105 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELIZABETH WADLE, SP 2007-MA-105 Appl. under Sect(s) 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.8 ft. from side lot line. Located at 3814 Lakeview Ter. on approx. 13,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 112. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 27, 2007; and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The applicant has presented testimony showing compliance with the requirements for this type of special permit.
4. The proposal is, for the most part, an enclosure of the existing carport and breezeway.
5. When these homes were built in the 1950s, many just had carports and, in today's world, many of those carports have been enclosed.
6. This proposal will be consistent with other approvals in the neighborhood, and the expectations regarding homes in the 21st Century.
7. There is some existing vegetation, and even from the second floor looking down, looking at the way the proposal is designed in the drawings, there would not be any significant 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. 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.

~ ~ ~ November 27, 2007, ELIZABETH WADLE, SP 2007-MA-105, continued from Page 448

- 2 This special permit is approved for the location and size (578 square foot addition) as shown on the plat prepared by David L. Mayne and dated July 21, 2007 as revised through July 24, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (2,582 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall comply with the current Chesapeake Bay Ordinance requirements. An exception for the addition shall be obtained, if necessary, from the Department of Public Works and Environmental Services (DPWES), prior to construction.
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 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.

//

~ ~ ~ November 27, 2007, Scheduled case of:

9:00 A.M. DUNG N. NGUYEN, SP 2007-MA-092 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7730 Little River Tnpk. on approx. 17,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((5)) 10. (Deferred from 10/30/07 at appl. req.)

Chairman Ribble called the applicant to the podium.

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 Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sara Mariska, the applicant's agent, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for a home professional office to operate a doctor's office for an internal medicine practice. The home was a 1½-story, single-family, detached dwelling. The office would be located in the basement and a portion of the first floor of the dwelling, with access through a door in the front of the structure at the basement level. The proposed hours of operation were 10:00 a.m. to 6:00 p.m.

~ ~ ~ November 27, 2007, DUNG N. NGUYEN, SP 2007-MA-092, continued from Page 449

Monday through Friday, and the applicant indicated that no more than eight clients would be seen per day. Mr. Chase stated that a violation notice noted in the staff report was for a previous owner, not the applicant. Staff recommended approval of SP 2007-MA-092 subject to the proposed development conditions.

Mr. Chase responded to the Board's questions concerning similar applications, approvals, and any violations cited in the vicinity. He noted that the Department of Transportation had no transportation issues.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Hammack's questions concerning commercial revitalization and commercially leased properties in the area.

Discussion ensued regarding the hours of operation, possibility of patient overlaps arriving and leaving from an appointment, removal of medical waste, layout and provision of parking, and clarification of several development conditions.

Ms. Mariska presented the special permit request as outlined in the statement of justification submitted with the application. She explained that the doctor, who would perform the majority of treatment on his patients, sought to downsize his practice in anticipation of retirement and in order to spend more time with his family. She noted that the doctor's sole staff person would answer phones and schedule appointments. The dwelling was his residence, and his home would remain harmonious with the neighborhood and would not appear as a commercial enterprise. Ms. Mariska said the applicant worked diligently with staff and the community in crafting pertinent development conditions that addressed neighborhood issues and concerns. She noted that there were numerous concessions agreed to, including limiting the hours of operation, scheduling medical waste pickups, signage, landscaping for screening, and redesigning the parking lot. Ms. Mariska stated that the applicant met the Zoning Ordinance standards for a home professional office.

Ms. Mariska responded to the Board's questions concerning signage and several meetings with the neighbors. She explained the scope of the doctor's practice and accreditation and a brief history of the zoning violation. She said that Mrs. Park, Dr. Nguyen's wife, was the actual owner of the property.

Vice Chairman Hammack assumed the Chair.

In response to a question from Mr. Hart, Ms. Langdon explained staff's proposed development condition relating to scheduling and parking provisions for emergency appointments.

Mr. Byers voiced his concern about allowing a lot of pavement in a residential neighborhood.

Discussion ensued regarding parking on the site and on the street. Mr. Smith suggested a development condition stipulating parking on the street only in cases of an emergency appointment.

Ms. Mariska responded to questions from Mr. Smith regarding the floor layout, percentage that would be committed to office space, and the equipment the doctor would be using.

In response to a question from Mr. Hammack, Ms. Mariska explained the retirement plans of the applicant.

Mr. Beard stated his opinion on imposing, monitoring, and enforcing development conditions, and his concern over the parking situation in a residential neighborhood.

Ms. Langdon explained staff's rationale when suggesting development conditions with regard to parking. She noted that the application was for a home office use, and staff's intention was to balance the residential component with the needs of a professional use. She also discussed Mr. Smith's concern with providing landscaping for screening and buffering.

Vice Chairman Hammack called for speakers.

David Bier, 4021 Hirst Drive, Annandale, Virginia, came forward to speak, and the oath was administered to him. Mr. Bier stated his concerns over the lease, the inadequacy of the parking, the floor layout, the disposal of medical waste, and that the suggested one-year review time would be too late, as the blight created from paving the parking lot, erecting a sign, and vegetation being razed would have already occurred.

~ ~ ~ November 27, 2007, DUNG N. NGUYEN, SP 2007-MA-092, continued from Page 450

Susan Long, 4005 Estabrook Drive, Annandale, Virginia, came forward to speak. She said her older, 1940s, residential neighborhood was stable, and its residents had consistently opposed special permission to convert houses into home office uses. She cited signage issues, parking, parking lot pavement, the presence of medical waste, on-hand prescription drugs, and the possibility of break-ins as negative impacts that warranted the application's denial. She said Ms. Park also purchased the house next-door, and she was concerned about its planned use and precedence of such zoning exceptions. Ms. Long questioned why an exception should be made for a new owner over the opposition and interest of the many long-time Fairfax County residents that lived in the neighborhood.

Discussion ensued between Ms. Long and the Board members regarding the other property owned by Ms. Park, the percentage and grandfathering of parking permitted under the Ordinance, subsequent inspections, requirements for a home professional office, applicability of staff's development conditions, violations versus complaints, and necessity for building permits.

Lara Weaver, 4033 Estabrook Drive, Annandale, Virginia, came forward to speak. She said she was well acquainted with the neighborhood and its struggles. She pointed out the discrepancies between Fairfax County's Comprehensive Plan for Annandale, the residential versus commercial zoning, special permits for home businesses, and that she believed the application was contrary to the Plan's recommendation for Annandale.

Vice Chairman Hammack requested that the speakers keep their comments to three minutes or less.

Rose Guinan, 4032 Estabrook Drive, Annandale, Virginia, came forward to speak. She identified herself as the president of the civic association, stating that approval of the use would have a significant negative impact on the character and charm of her neighborhood. She noted that the neighborhood should not be charged with keeping an eye on such uses to assure compliance and that its approval would be a destabilizing influence, and a commercial encroachment only opened the door to more such non-residential uses. She said the use would change the character of the neighborhood forever, and it appeared that non-residents of the neighborhood were purchasing property and converting them into businesses with no consideration for the long-term residents of the neighborhood who sought to keep their homes residential. She submitted for the record a petition in opposition.

Peggy Little, 4031 Estabrook Drive, Annandale, Virginia, came forward to speak. Referencing several photographs, she pointed out how Mrs. Park's properties, located at the entrance of their development, were not in keeping with the well-kept, landscaped appearances of the other properties.

Tom Burke, 4027 Estabrook Drive, Annandale, Virginia, came forward to speak. He said that the neighborhood meetings with the applicant consisted of the applicant and his wife listing what they proposed, not from neighbor suggestions. He said he was concerned about what could happen after Dr. Nguyen retired or sold the property. There would be no obligation on the new owners to keep the development conditions, and the neighborhood could find itself starting from the beginning to fight to preserve the residential harmony of the neighborhood.

In her rebuttal, Ms. Mariska addressed the points the residents raised regarding residing on the property and said the applicants intended to remove the gravel driveway. She maintained that the house would remain residential looking because there would be no signage and no structural alterations.

Mr. Smith moved to defer decision on SP 2007-MA-092 to December 18, 2007, at 9:00 a.m. Mr. Hart seconded the motion.

Mr. Hart said that his reasons for deferring the decision involved issues with parking, medical waste, landscaping, similarity of another previous application, the appearance of residential versus commercial uses of the parking lot, the practicality of a time limit on the use, the removal and relocation of some of the gravel, vehicular access from a particular direction, the encroachment of home businesses into residential areas, the inter-relationship between properties, and the appropriateness of a non-residential use in a residential area if all Ordinance criteria were met.

Mr. Beard said he could not support the motion because there was pressure on the neighborhood from commercialization, and great care should be taken in those areas as to what was permitted. He said the

~ ~ ~ November 27, 2007, DUNG N. NGUYEN, SP 2007-MA-092, continued from Page 451

imposing of multiple development conditions would make the neighbors a type of compliance police. Mr. Beard said he thought the case should not be deferred, but denied.

Mr. Byers said he agreed with Mr. Beard's position. He said that although the Plan was a guide, not a rule, he did not believe the case was in the spirit of the Plan, and there was a real concern about maintaining the integrity of residential areas in the County. Mr. Beard said he did not believe the development conditions were workable or realistic.

Vice Chairman Hammack called for a vote.

The motion to defer SP 2007-MA-092 failed by a vote of 2-3. Vice Chairman Hammack, Mr. Beard, and Mr. Byers voted against the motion. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

Mr. Smith made a substitute motion to deny SP 2007-MA-092.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DUNG N. NGUYEN, SP 2007-MA-092 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7730 Little River Tnpk. on approx. 17,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((5)) 10. (Deferred from 10/30/07 at appl. req.) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 27, 2007; and

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

1. The applicant is the lessee of the land.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-907 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 4-0-1. Mr. Hart abstained from the vote. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

//

~ ~ ~ November 27, 2007, Scheduled case of:

9:00 A.M. CHRISTINA WRIGHT DJEMMAL, SP 2007-DR-080 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.1 ft. from front lot line. Located at 6923 Tyndale St. on approx. 10,660 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((32)) 13. (Deferred from 10/2/07 at appl. req.)

Vice Chairman Hammack noted that SP 2007-DR-080 had been administratively moved to December 18, 2007, at 9:00 a.m., for notices.

//

~ ~ ~ November 27, 2007, Scheduled case of:

9:30 A.M. JENNIFER KNIGHT, A 2007-BR-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established and allowed the occupancy of a second dwelling unit on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 4617 Lawn Ct. on approx. 24,211 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-1 ((5)) 89B. (Decision deferred from 6/26/07)

Vice Chairman Hammack called the appellant to the podium.

Chairman Ribble resumed the Chair.

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

In response to a question from Chairman Ribble, Jayne M. Collins, Staff Coordinator, Zoning Administration Division, confirmed that the appeal was deferred for decision.

Laura Fitzner, 4617 Lawn Court, Fairfax, Virginia, the property manager and resident of the property, presented the arguments forming the basis for the appeal. She said the original case was heard by the Supreme Court and not yet decided, and she requested a deferral of the decision until after the Court's decision.

Chairman Ribble called for speakers to address the question of a deferral; there was no response.

Ms. Collins stated staff did not support a deferral. There were still two dwelling units in the house.

Ms. Fitzner responded to Mr. Hart's questions concerning the military status and current residence of the appellant, Ms. Knight.

Mr. Smith commented about the case's history and the Ordinance standards and definition for the use. He said he was prepared to vote on the matter.

Discussion ensued between the Board members regarding the procedure for processing an appeal and further deferring the decision.

Mr. Byers said he agreed with Mr. Smith's position that the Board should act on the case. A decision of another court would not have any bearing on the subject case's decision.

Ms. Fitzner read a letter from Ms. Knight concerning what she considered the County's intrusive actions and the unfair and incorrect determinations made concerning her situation and property.

Mr. Beard moved to uphold the determination of the Zoning Administrator. Mr. Smith seconded the motion.

Discussion ensued regarding the Board's purview to stipulate specific requirements of the appellant.

Mr. Hart commented on the Board's general accommodation of persons unable to appear at their public hearing. He stated that on the record before them, he did not believe the appellant met her burden of showing that the Zoning Administrator was plainly wrong, and he would adopt staff's conclusions regarding the basement's features.

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

//

~ ~ ~ November 27, 2007, 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.

~ ~ ~ November 27, 2007, MICHAEL BRATTI AND GINNI BRATTI, A 2005-DR-009, continued from Page 453

req.) (Deferred from 6/28/05, 7/19/05, and 12/20/05) (Indefinitely deferred from 2/14/06) (Reactivated from indefinitely deferred) (Deferred from 7/24/07 at appl. req.)

Chairman Ribble noted that A 2005-DR-009 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that the application had been withdrawn, explaining that there was a special permit approved for the fence that was the subject of the violation; and, therefore, the appellants withdrew their appeal application.

//

~ ~ ~ November 27, 2007, Scheduled case of:

9:30 A.M. HOME PROPERTIES MOUNT VERNON, LLC, A 2007-MV-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard and an accessory use (a fence) on property which does not have an approved principle use in the C-8 District all in violation of Zoning Ordinance provisions. Located on approx. 1.49 ac. of land zoned C-8, CRD and H-C. Mount Vernon District. Tax Map 93-3 ((2)) (2) 1A.

Chairman Ribble noted that A 2007-MV-004 had been administratively moved to January 29, 2008, at 9:30 a.m., at the appellant's request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that the application had been administratively moved, and the appellant was in the process of clearing the violation.

//

~ ~ ~ November 27, 2007, Scheduled case of:

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

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to February 12, 2008, at 9:30 a.m., at the appellants' request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that the application had been administratively moved, and the appellants were in the process of filing a special exception application which would clear the violation.

//

~ ~ ~ November 27, 2007, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by James W. Dillon and Party

Mr. Hart made a disclosure and indicated that he would recuse himself.

At Mr. Byers' request, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, indicated the locations of the appellant's property and the property which was the subject of the appeal.

~ ~ ~ November 27, 2007, After Agenda Items, continued from Page 454

James W. Dillon, 6610 Thurlton Drive, Alexandria, Virginia, came forward to speak, and the oath was administered to him. He referred to Ms. Stanfield's November 16, 2007 memorandum and said he disagreed with staff's position and believed his development, along with several adjoining neighborhoods, required notification of the October 4, 2007 Planning Commission meeting for a proffered condition amendment and associated final development plan amendment. He said they had a right to be heard, but were denied that right because they received no notice of the meeting date. He quoted the Ordinance standards concerning notification and pointed out properties that were or were not notified. He said he was unsure whether it was a coincidence or on purpose that his and the other residents in the vicinity were excluded as he and his neighbors were those who would be most adversely impacted by the proposed towers.

Discussion ensued between Mr. Dillon and members of the Board regarding what transpired before and after the Planning Commission hearing and those not notified. Mr. Byers said that the developer gave proper notice to the homeowners' association, and it was the homeowners' association's responsibility to notify the individual unit owners.

Discussion ensued between Mr. Dillon and members of the Board regarding Mr. Dillon's understanding and position on the legal requirements of notification. Mr. Beard asked if it was Mr. Dillon's position the developer should have sent individual notices to each of the unit owners while the developer, concurred with by the Planning Commission, contended it made its legal obligation by notifying the homeowners' association. Mr. Beard commented that the matter appeared to be something the courts should decide.

Ms. Stanfield informed the Board that the required signage was posted by staff.

Mr. Smith stated it was his opinion that Mr. Dillon could raise the question on appeal; however, he did not think it was appropriately heard before the Board of Zoning Appeals.

Chairman Ribble called for a motion on the acceptance request.

Mr. Hammack said he appreciated the arguments made by Mr. Dillon, and complimented him on his work; however, he thought the Board of Zoning Appeals was not the right body to grant relief. He named other avenues that were pertinent for Mr. Dillon to pursue.

Mr. Hammack moved that the Board of Zoning Appeals not accept the appeal filed by James W. Dillon and party. Mr. Smith 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.

Mr. Hammack suggested that Mr. Dillon use the BZA's decision as grounds when he went to court. Mr. Dillon said he appreciated the information.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:35 p.m.

Minutes by: Paula A. McFarland

Approved on:



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 4, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ December 4, 2007, Scheduled cases of:

- 9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7874 Promontory Ct. on approx. 4,803 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 25.
- 9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-101 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7865 Frick Wy. on approx. 4,670 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 28A.
- 9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-102 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7884 Train Ct. on approx. 4,618 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 19.
- 9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-103 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7864 Frick Wy. on approx. 4,803 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 31.
- 9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-104 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7875 Promontory Ct. on approx. 4,803 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 22.

Chairman Ribble called the applicant to the podium.

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

Gregory Riegle, McGuire Woods LLC, 1750 Tyson's Boulevard, McLean, Virginia, the applicant's agent, reaffirmed the affidavit.

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

Discussions ensued regarding the lots having not been designated as corner lots so sight distance requirements did not apply, there having been no other previous applications for fences on similar lots where two streets intersected with one yard not considered a front yard, the information on the fences having not been shown on the final development plan approved by the Board of Supervisors in the original rezoning, the determination that the applicant had the option of applying for a final development plan amendment or a special permit, and the applications having been correctly advertised.

Mr. Riegle presented the special permit requests as outlined in the statements of justification submitted with the applications. He said the fences had been in place since the houses had been built in 2002 with no complaints, and it was the only private outdoor space the homeowners had. Every lot in the subdivision had a privacy fence, and the fences were identical. He said the reduction in height that would be required if the applications were not approved would create a more disharmonious situation throughout the community. In response to questions from Mr. Hammack, Mr. Riegle said fences did not require a building permit, they had been constructed without awareness that there were multiple front yards on some of the lots, and the problem had been discovered approximately two years ago.

~ ~ ~ December 4, 2007, THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100, SP 2007-PR-101, SP 2007-PR-102, SP 2007-PR-103, and SP 2007-PR-104, continued from Page 457

Bruce Miller, Property Maintenance Zoning Enforcement Inspector, Zoning Enforcement Branch, said the problem had been brought to Zoning Enforcement by a Department of Public Works and Environmental Services site inspector who had been inspecting improvements on the site and noticed the fences. He said the applications had been awaiting approval of the amendment to the Zoning Ordinance to allow special permits for fences greater than four feet in front yards.

Further discussions ensued regarding sight distance issues, the houses being located five feet from the street within the sight distance triangle referenced in the Zoning Ordinance, and the outlot along the entire street.

In response to questions from Mr. Hart, Ms. Langdon said the outlot ran along all of Frick Way on both sides as it did on the other side streets. Mr. Riegle said Coal Train was a public road with sidewalks on both sides, and Frick Way was a private street.

Mr. Riegle said the section of the Ordinance dealing with sight distance had been written many years ago to address traditional intersecting public streets with much higher volumes of traffic than would be in the Morgan Chase subdivision, and the sidewalk on the opposite side of Coal Train would permit passage without any intersecting traffic.

Mr. Hart asked Mr. Riegle to address Standard 2 of Section 8-006 of the Zoning Ordinance dealing with proposed uses being in harmony with the general purpose and intent of applicable zoning district regulations. He said he thought the standard addressed the safety of pedestrians, and there should not be any corners a person could not see around. He said that perhaps there was a technical reason the lots were not corner lots. Mr. Riegle said the P District Ordinance provisions had to be balanced in its interpretation to afford quality living environments and appropriate outdoor spaces. He said the fences created a harmonious image in the community, and a lower fence would look out of character.

Chairman Ribble called for speakers.

Charles Browning, 7865 Frick Way, Dunn Loring, Virginia, came forward to speak in support of the applications.

Chairman Ribble closed the public hearing.

Mr. Hammack said the Board had required fences be moved in the past for safety reasons, and he thought the fences should be moved back. He said he could not support the applications because he was concerned about the danger to children. Mr. Hammack moved to deny SP 2007-PR-100. He said the applicant had not presented testimony indicating compliance with the general standards for special permit uses in Section 8-006 and additional standards for the use as contained in the appropriate or applicable sections of the Zoning Ordinance. Mr. Hart seconded the motion.

Mr. Hart said the Ordinance required that a use shall be such that pedestrian and vehicular traffic associated with the use would not be hazardous or conflict with the existing and anticipated traffic in the neighborhood. He said he thought there could be a way to notch off a corner of the fences as a compromise so there could still be a little fenced area. He said one of the problems was the corner lots were about the same size as the interior lots, and in conventional districts or other P Districts, corner lots were usually wider to make room for a useable outdoor space. Mr. Hart said he could not support approving the application because it did not satisfy Subsections 2 and 4 of Sect. 8-006. He said the purpose of the Ordinance requiring the sight distance triangle at a corner was so there would be no accidents, and there being a small strip that created an interior lot was less important than the safety of motorists and pedestrians. He said he would be willing to give the applicant a chance to work with modifying the corner.

Mr. Beard said he was sympathetic with the points outlined by Mr. Hart; however, it was an after the fact situation that could not be resolved by dropping the fence height two feet, and he could not support the motion.

Mr. Hammack said some consideration should be given to safety, and if the fence was cut down to four feet,

~ ~ ~ December 4, 2007, THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100, SP 2007-PR-101, SP 2007-PR-102, SP 2007-PR-103, and SP 2007-PR-104, continued from Page 458

it would give someone a better chance to observe a small child that would not be seen at six feet. He said the solution was to pull the fence in to give better sight distance, and safety trumped the homeowner's convenience. Mr. Hammack said he did not disagree with Mr. Riegler, and the reason the fence was put there could be understood. It was not in the special exception, and if the Board of Supervisors wanted to approve it, they could. He said he would agree to a deferral, but he could not support the application.

Mr. Byers said he would support the motion due to safety concerns. He said he understood that it was after the fact, but if he was sitting at the stop sign on the public road, even though it was going into an access road with private driveways, he would not be able to see around the corner. Mr. Byers said he also took into consideration the points made by Mr. Hart and Mr. Hammack about the Ordinance, and he would support the motion.

The motion carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Hammack moved to waive the 12-month waiting period for refileing an application. Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Hammack moved to defer decision on SP 2007-PR-101, SP 2007-PR-102, SP 2007-PR-103, and SP 2007-PR-104 to January 8, 2008, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Discussion ensued concerning when and how the motion to deny SP 2007-PR-100 could be submitted for reconsideration.

Mr. Hart moved to reconsider the decision on SP 2007-PR-100 and to defer decision to January 8, 2008, 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.

//

~ ~ ~ December 4, 2007, Scheduled case of:

9:00 A.M. CAROLYN DAY HECOX, SP 2007-SP-072 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8830 Lake Hill Dr. on approx. 3.04 ac. of land zoned R-1. Springfield District. Tax Map 106-1 ((3)) 12. (Decision deferred from 10/2/07.) (Decision deferred from 10/30/07 at appl. req.)

Chairman Ribble noted that SP 2007-SP-072 had been deferred for decision only to allow time for the applicant to address issues concerning a septic field and occupancy of the main dwelling.

Susan Langdon, Chief, Special Permit and Variance Branch, said information received at the meeting from the Health Department was being distributed to the Board.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2006-SP-072, subject to the proposed development conditions. Mr. Varga stated that Danny Forshee, Property Maintenance Enforcement Inspector, Zoning Enforcement Branch, and Marty Shannon, Health Department, were present to answer questions.

Mr. Hart and Mr. Varga discussed the drain field, the document distributed to the Board by Mr. Shannon, the house having been approved for three bedrooms with no garbage disposal, and there currently being more than that connected to the drain field.

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

In response to questions from Mr. Hart, Mr. Shannon said the original septic field had been designated in 1959 and connected for a three-bedroom house with no garbage disposal. He said the Health Department records did not show any additional plumbing with the 1981 addition, only that the front end of the house was

brought out to where it would encroach on the two nearest drain field lines. A modification had been made to the septic system which deleted two original drain field lines and added two new lines to accommodate the encroachment with no expansion to the system. Staff was not aware plumbing had been installed in the addition, so it had not been inspected. In 1999 when the garage was added, Mr. Shannon said the Health Department staff asked the applicant if any plumbing would be involved, and they had been told no, that it was a garage with nothing above it, and based on that, the application was approved. Mr. Shannon said that a licensed plumber was required to do the work, and the County was required to inspect any connection to the septic field for both the 1981 and 1999 additions. He explained that the Plumbing Department was responsible for connections to tanks in 1981, but later in the early 1980s, the Health Department assumed responsibility for sewer connections starting from five feet out from the house to the septic tank because they found too many connections had been made improperly. He said, in the applicant's case, an improper connection had been made to the 1981 addition, and the plumber had run the line into the septic tank incorrectly, which had not been observed until last week when he inspected the site. When the plumbing was connected from the garage addition, Mr. Hecox had incorrectly run the line over the septic field and then into the improper connection into the septic tank. He stated that his inspection had revealed many problems, and staff had to determine how to correct them. In answer to Mr. Hart's question, Mr. Shannon said he had not inspected the inside of the house and did not know whether there were garbage disposals.

In response to questions from Mr. Beard, Mr. Shannon said the septic field was in a failed condition, and when an inspection was done, staff uncovered the distribution box and tank and discovered the improper connection to the septic tank and raw sewage going under the field directly into the septic field without treatment. There were six drain field lines, five of which were working and one backing up; however, no sewage was coming to the surface. Mr. Shannon said Mr. Beard was correct that every year a change to the distribution box had to be made, but the effluent was supposed to go to the septic tank first, and what had happened was the backed up line was bypassing the tank and going directly into the distribution box. He said, in his opinion, the septic tank on the applicant's property would not have taken care of the hookups to the garage and house, and if the Health Department had known in 1999 that there would be living quarters above the garage, staff would have notified the homeowner because the septic field was only designed for a maximum of three bedrooms. Mr. Shannon said the property was a potential hazard, and although there was currently no sewage on the ground surface, the main house was not occupied. He said there were two or three people living in the accessory dwelling, and the system was under-utilized. He agreed with Mr. Beard that if the septic tank was hooked up for the original use, there could be an imminent failure.

Chairman Ribble called the applicant to the podium. Carolyn Hecox, 830 Lake Hill Drive, Lorton, Virginia, came forward, and the oath was administered to her.

Ms. Hecox said she was surprised with Mr. Shannon's findings with respect to the 1981 septic field connection, which occurred prior to her owning the property. Mr. Shannon, the team who uncovered the fields, and her husband had discussed several options to correct the problems, and a photo camera would be used later in the week to scope the clogged drain, determine how far it went, and clean it out. A soil sample had been taken, and results were expected at the end of the week. She said the problems would be corrected by working with the Health Department to ensure compliance, and she had requested a deferral regarding the accessory dwelling permit and was told that was not recommended because the issues were being corrected. Ms. Hecox said that if staff recommended a separate system for the accessory dwelling unit, the corrections would be made, and there might be a possible expansion of the existing field to accommodate the flow. She said only two rooms in the main house were being occupied, and the septic field was not being overstressed and would not be until the system was in compliance.

In response to questions from Mr. Hart, Ms. Hecox said her husband, who was not a licensed plumber, had connected the garage to the septic field, but everything had been corrected except the connection going into the box that was not correctly installed in 1981, but was being resolved. She said that when the measurements were completed and the Health Department reviewed them, the driveway and the slab they installed would not encroach on the septic field. She said the failed line under the driveway might be abandoned and another one installed avoiding the driveway. Ms. Hecox said there were no garbage disposals in the house or garage and no kitchen appliances in the basement, but there was a wet bar with plumbing. She said that when a complaint was filed in January, the house was empty, and they were in the process of renovation. When Mr. Forshee inspected the premises, he told them no cooking appliances were allowed in the basement, the electrical outlet that had been installed for a planned stove had since been removed, and they had no plan to install kitchen facilities on the lower level of the house.

~ ~ ~ December 4, 2007, CAROLYN DAY HECOX, SP 2007-SP-072, continued from Page 460

Mr. Byers moved to deny SP 2007-SP-072 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CAROLYN DAY HECOX, SP 2007-SP-072 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8830 Lake Hill Dr. on approx. 3.04 ac. of land zoned R-1. Springfield District. Tax Map 106-1 ((3)) 12. (Decision deferred from 10/2/07) (Decision deferred from 10/30/07 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 December 4, 2007; 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 3.04 acres.
4. The rationale is based on an e-mail from Charles "Danny" Forshee dated the 4th of December, 2007, at 7:09 a.m., to Susan Langdon and Stephen F. Varga.
5. A recent investigation by Mr. Forshee and the Health Department indicated significant damage and malfunction of the septic system due to un-permitted sewer line connections from the garage and main house by the owner.
6. A concrete pad and driveway was also constructed over the drain field in violation of Chapter 68.1 of the Fairfax County Code.
7. Health Department approval of the detached garage in 1999 did not include plumbing fixtures or bedrooms.
8. There may have to be a redesign of the existing septic system. This may require abandonment of drain field lines located under the driveway, addition of new lines, and the addition of a pumping system.
9. Approval of the garage apartment would additionally require expansion of the existing system or installation of a new sewage disposal system.
10. The available area for addition drain field is limited and may not be possible.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance.

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

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

//

~ ~ ~ December 4, 2007, Scheduled case of:

9:00 A.M. JOHN F. VAN WERT, JR., TRUSTEE AND JACQUELYN VAN WERT, TRUSTEE, SP 2007-PR-099 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 21.1 ft. from rear lot line. Located at 8705 Westwood Forest La. on approx. 10,080 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-1 ((19)) (2) 20A.

~ ~ ~ December 4, 2007, JOHN F. VAN WERT, JR., TRUSTEE AND JACQUELYN VAN WERT, TRUSTEE, SP 2007-PR-099, continued from Page 461

Chairman Ribble called the applicants to the podium.

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

Jeremy Fleming, Sun Design Remodeling Specialties, Inc., 5795-B Burke Center Parkway, Burke, Virginia, the applicant's agent, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-PR-099, subject to the proposed development conditions.

Mr. Fleming presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant was requesting approval to build a larger family room and enlarge the existing kitchen.

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

Mr. Hart moved to approve SP 2007-PR-099 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN F. VAN WERT, JR., TRUSTEE AND JACQUELYN VAN WERT, TRUSTEE, SP 2007-PR-099 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 21.1 ft. from rear lot line. Located at 8705 Westwood Forest La. on approx. 10,080 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-1 ((19)) (2) 20A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 2007; 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 showing compliance with required standards for this category of special permit.
3. The Board has a favorable staff recommendation.
4. The rationale in the staff report is adopted.
5. This is a pipestem lot, which is somewhat unusual.
6. The lot is less than a quarter acre.
7. The house is positioned almost on just the rear half of what is left of the lot after the driveway so that the rear wall of the existing house is fairly close to the back side.
8. The parcel backs up to common area open space that is heavily vegetated.
9. The extension of the family room to the rear would not negatively impact anybody.
10. The Board had no opposition expressed to it.
11. The extension would not really be seen by anyone.

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

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

~ ~ ~ December 4, 2007, JOHN F. VAN WERT, JR., TRUSTEE AND JACQUELYN VAN WERT, TRUSTEE, SP 2007-PR-099, continued from Page 462

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 676 square feet) of the proposed addition as shown on the plat prepared by Alexandria Surveys International, LLC dated June 27, 2007, revised September 4, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,523 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. Prior to the issuance of a building permit for the addition, the applicant shall apply for and gain approval of an RPA Exception if determined necessary by DPWES.
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. 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.

//

~ ~ ~ December 4, 2007, Scheduled case of:

9:00 A.M. SCOTT W. STETSON, SP 2007-SP-106 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line such that side yards total 21.1 ft. Located at 6816 Grey Fox Dr. on approx. 12,072 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 410.

Chairman Ribble noted that SP 2007-SP-106 had been administratively moved to February 5, 2008, at 9:00 a.m., for notices.

//

~ ~ ~ December 4, 2007, Scheduled case of:

9:00 A.M. MARGARET TOTTEN HOPKINS, SP 2007-DR-108 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.0 ft. with eave 6.1 ft. from side lot line such that side

~ ~ ~ December 4, 2007, MARGARET TOTTEN HOPKINS, SP 2007-DR-108, continued from Page 463

yards total 22.0 ft. Located at 8024 Birnam Wood Dr. on approx. 18,718 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 297.

Chairman Ribble called the applicant to the podium.

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

Margret Totten Hopkins, 8024 Birnam Wood Drive, McLean, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report.

Ms. Hopkins presented the special permit request as outlined in the statement of justification submitted with the application. She said a two-car garage had been built in place of a carport by a prior owner who did not obtain a building permit.

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

Mr. Smith moved to approve SP 2007-DR-108 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGARET TOTTEN HOPKINS, SP 2007-DR-108 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.0 ft. with eave 6.1 ft. from side lot line such that side yards total 22.0 ft. Located at 8024 Birnam Wood Dr. on approx. 18,718 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 297. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 2007; 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

~ ~ ~ December 4, 2007, MARGARET TOTTEN HOPKINS, SP 2007-DR-108, continued from Page 464

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, as shown on the plat prepared by Dominion Surveyors, Inc., dated August 22, 2007, as submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the garage addition shall be 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. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ December 4, 2007, 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) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred) (Admin. moved from 7/24/07 at appl. req.)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellants' application for a special permit for the fence had been accepted, and they requested a deferral of the appeal.

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

Mr. Beard moved to defer decision on A 2004-SP-025 to March 18, 2008, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ December 4, 2007, 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.

~ ~ ~ December 4, 2007, ANDREW CLARK AND ELAINE METLIN, A 2005-DR-061, continued from Page 465

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, 5/1/07, and 9/11/07 at appl. req.) (Deferred from 5/2/06 at appl. req.) (Admin. moved from 12/5/06 for ads)

Chairman Ribble noted that A 2005-DR-061 had been administratively moved to January 29, 2008, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ December 4, 2007, Scheduled case of:

9:30 A.M. ANNANDALE PLAZA, LLC, A 2007-MA-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has installed or has allowed to be installed two building-mounted signs on property in the C-8 District without valid sign permits or building permits in violation of Zoning Ordinance provisions. Located at 7326/7328 Little River Tp. on approx. 42,794 sq. ft. of land zoned C-8, H-C, SC and ARD. Mason District. Tax Map 71-1 ((1)) 80.

Chairman Ribble noted that A 2007-MA-012 had been administratively moved to February 12, 2008, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ December 4, 2007, Scheduled case of:

9:30 A.M. FEDERAL, INC., A 2007-SU-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor's office and shop on property in the I-3 District and has erected structures without approved building permits in violation of Zoning Ordinance provisions. Located at 14847 and 14905 Murdock St. on approx. 4.11 ac. of land zoned I-3, AN and WS. Sully District. Tax Map 33-2 ((2)) 20D and 20B. (Admin. moved from 9/18/07 at appl. req.)

Chairman Ribble noted that A 2007-SU-022 had been administratively moved to February 5, 2008, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ December 4, 2007, Scheduled case of:

9:30 A.M. DAVID B. KAHN, A 2007-DR-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory storage structure (shed), which is located in the front yard of a through lot located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 6348 Munhall Ct. on approx. 15,036 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((25)) 17.

Chairman Ribble called the appellant to the podium.

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

Andrew Hushour, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated November 27, 2007.

In response to questions from Mr. Hammack, Mr. Hushour said the garden shed shown on the 1978 plat was not the shed in question. The shed related to the appeal was located approximately 20 to 25 feet from the property line along the frontage of Carlin Lane and had been constructed in 2003 or 2004. Bruce Miller, Property Maintenance Enforcement Inspector, Zoning Enforcement Branch, said a complaint had been received by Zoning Enforcement.

~ ~ ~ December 4, 2007, DAVID B. KAHN, A 2007-DR-034, continued from Page 466

In response to questions from Mr. Hart regarding the creation of the through lot, Mr. Hushour said the subdivision plat dated July 6, 1965, showed the 25-foot wide rectangular strip below Lots 18 and 19 was dedicated for public street purposes.

Mr. Smith said the Board would not have much discretion on the matter because a public street had been dedicated at the time the plat was recorded, and it was a through lot. He said functionally the area where the shed was located appeared to be a backyard, and the shed did not appear to be obtrusive. He asked whether there was any other recourse for the appellant to retain the shed if the Board upheld the determination. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said it could have been resolved with a variance prior to 2004, but there currently was no known remedy, and the shed would have to be relocated.

Mr. Hammack and Mr. Hushour discussed the dedication of the 25-foot right-of-way in 1965 and later construction of Carlin Lane, with Mr. Hushour stating that Carlin Lane was currently part of the state road system, and the portion adjacent to the subject lot was the last piece constructed.

In response to a question from Mr. Beard regarding whether the appellant had any grandfathered protection, Ms. Stanfield said if the shed had been built without a street behind it and a street was subsequently created, the shed would be described as legally nonconforming, but the street predated the construction of the shed. Mr. Hushour said the road had been completed in piecemeal fashion in the 30-year period from 1965 to 1995.

David B. Kahn, 6348 Munhall Court, McLean, Virginia, presented the arguments forming the basis for the appeal. He said he could not dispute the fact that there was a street in front and behind his property, but there was a steep hillside in the rear leading to Carlin Lane. He explained that before Carlin Lane was put through, the hill was higher with the hump of the hill right behind his house, and when he objected to the road going through, he had been advised that the hump presented a sight hazard and had to be cut down. He said Carlin Lane was now located below the top line of his property, and the shed was barely visible from Carlin Lane, did not present a hazard or impediment, was not unsightly, and added value to the property. Mr. Kahn said that when the previous shed rusted and became decrepit, he had replaced it with the new shed over a gravel bed for drainage and had not been aware he had two front yards. He said his neighbors had no problems with leaving the shed in its location, and he presented a list of names to the Board. He said the options given to him by the County of tearing it down would result in a large economic loss, moving it would make it more visible to the front of the property, and there would not be enough clearance to move the shed 15 feet from the side lot line.

Discussions ensued regarding the replacement of the previous shed, the adjacent locations of the sheds, the installation of the original shed being in 1978 with a permit, areas available for the relocation of the shed, an error in building location application not being applicable for the shed, the possibility of expanding or enclosing the carport to provide more storage, attaching the shed to the house as an addition, and the possibility of pouring a concrete patio between the house and the existing location of the shed.

Chairman Ribble called for speakers.

Carolyn Michael, 6347 Munhall Court, McLean, Virginia, came forward to speak, stating that she lived next door to the appellant. She said the original shed was small, rusted, and an eyesore, and she had planted a hedge to hide it from her view. She said the current shed was larger, looked like a small house, and sat against the hedge. She said the intention had always been that the street was a public thoroughway. Ms. Michael said the appellant had a doorway coming up from his recreation room into the backyard with a steep stairwell, but there was no patio, and several trees would have to be removed for a walkway or patio between the house and the shed. Ms. Michael said the new shed was visible from Carlin Lane and Munhall Court, and she submitted photographs of the shed.

Chairman Ribble closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. He said it was clear the Board could not in good faith overturn the determination. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ December 4, 2007, After Agenda Item:

Request for Additional Time
Terry L. Plummer, V 2003-HM-173

Mr. Hammack moved to approve 12 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was August 24, 2008.

//

~ ~ ~ December 4, 2007, After Agenda Item:

Request for Additional Time
Home Properties Virginia Village, LLC, SP 2004-MA-060

Mr. Hammack moved to approve 12 months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was September 9, 2008.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

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

Approved on: January 7, 2015

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 11, 2007. The following Board Members were present: Chairman John F. Ribble III; Thomas Smith; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ December 11, 2007, Scheduled case of:

9:00 A.M. FRANK M. KNOTT, TRUSTEE AND REGINA M. KNOTT, TRUSTEE, SP 2007-DR-111 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 19.3 ft. from rear lot line. Located at 10708 Wynkoop Dr. on approx. 23,226 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-1 ((7)) 4.

Chairman Ribble called the applicants to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Regina Knott, 10708 Wynkoop Drive, 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 special permit to allow a reduction of certain yard requirements to permit construction of an addition 19.3 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a modification of 5.7 feet was requested. Staff recommended approval of SP 2007-DR-111 subject to the proposed development conditions.

Mr. Hart said that although the staff report noted that measures should be taken to protect 18-inch diameter maple tree, he did not see any mention of the tree in the development conditions. He asked what the status was of the issue. Ms. Hedrick said Urban Forest Management suggested a method to save the tree, but had not required the tree be saved, so staff had not included a development condition regarding the tree.

Ms. Knott presented the special permit request as outlined in the statement of justification submitted with the application. She said the subject lot was oddly shaped and located at the end of a pipestem driveway, with the house situated in the only way possible based on the location of the driveway, but it left a very narrow backyard. The main part of the backyard was located on the side by the garage and was taken up primarily by the septic field. The proposed three-season room would require only a modest encroachment into the required setback and was the most convenient location because an existing sliding glass door opened to an existing patio. The patio was in disrepair and needed to be repaired in some way, and she believed the proposed addition would provide reasonable beneficial use and would be in harmony with the applicants' house and the neighborhood. She said they had spoken with a certified arborist regarding the maple tree, who had viewed the tree and believed there would be no problem retaining the tree during and after construction.

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

Mr. Hammack moved to approve SP 2007-DR-111 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK M. KNOTT, TRUSTEE AND REGINA M. KNOTT, TRUSTEE, SP 2007-DR-111 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 19.3 ft. from rear lot line. Located at 10708 Wynkoop Dr. on approx. 23,226 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-1 ((7)) 4. Mr. Hammack moved that the Board of Zoning Appeals

~ ~ ~ December 11, 2007, FRANK M. KNOTT, TRUSTEE AND REGINA M. KNOTT, TRUSTEE,
SP 2007-DR-111, continued from Page 469

adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2007; and

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

1. The applicants are the owners of the land.
2. The residence is constructed on a pipestem lot; placed toward the rear of the property, and is further constrained by the septic field on one side.
3. Behind the property is a homeowners association's undeveloped property, and beyond that is Georgetown Pike.
4. The Board has a favorable staff report.
5. The Board has determined that the applicants met the six standards set forth in the Ordinance.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (376 square feet) of a sunroom addition, as shown on the plat prepared by Kendall Consulting, Inc., dated June 18, 2007 as revised through October 1, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,977 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:00 A.M. PATRICK F. MCCLAFFERTY, SP 2007-HM-114 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 11300 Dockside Cr. on approx. 3,154 of land zoned PRC. Hunter Mill District. Tax Map 26-2 ((12)) (2) 36.

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patrick F. McClafferty, 11300 Dockside Circle, Reston, 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 limitation on the keeping of animals to permit the keeping of three adult dogs on the property. Sect. 2-512 of the Zoning Ordinance permitted the keeping of two dogs on the subject 3,154-square-foot property by right.

In response to a question from Mr. Hart, Susan C. Langdon, Chief, Special Permit and Variance Branch, said the application's notification was correct.

Mr. McClafferty presented the special permit request as outlined in the statement of justification submitted with the application. He said there were only three dogs residing in his house, and he took good care of his dogs and always picked up the waste. He stated that his dogs were not vicious, and he loved his animals. He said his daughter brought her two Chihuahuas during her visits, and they barked, but measures were taken to quiet them. He said the dogs resided in Philadelphia where his daughter attended school. Mr. McClafferty requested permission to keep one dog over the limit.

Mr. Hammack asked how long the applicant had owned the tree dogs. Mr. McClafferty said six years for two of them and three and a half years for the third one.

In response to a question from Mr. Hammack, Ms. Langdon said the Zoning Ordinance did not specifically address the matter of visiting animals and the period of time they could stay.

Mr. Hart referred to a letter received from the board of directors of the applicant's homeowners association and several other letters which contained complaints about waste not being picked up from the open space area when the dogs were taken outside. He asked who was responsible for taking the dogs out. Mr. McClafferty said he and his son took them out, and his daughter when she was there, but he stated that the waste was picked up and put into bags.

Mr. Hart asked about an incident referenced in a letter from the homeowners association which said one of the applicant's dogs had bit a neighbor's dog two years prior, but there had been no report made to the authorities because the other dog's owner was afraid of retaliation. Mr. McClafferty said he had seen the letter, but he was unaware of any incident occurring.

Mr. Beard asked the age and life expectancy of the oldest dog. Mr. McClafferty said it was six years old, and he had previously had two Labradors who had lived to be 15 years old, but he thought the life expectancy was 10 to 12 years. He said he had a 10-and-a-half-year-old Labrador put to sleep on Halloween due to an illness.

Ms. Gibb said he would like to hear from the inspector who had visited the site. Leo Conrad, Senior Zoning Inspector, Zoning Enforcement Branch, said that when he visited the site, no one responded when he knocked on the door. He saw one dog in the window and heard two dogs barking in the background. He went around to the rear of the property and saw no fence and no animal waste in the back or side yard. Mr. Conrad said he put a posting on the door and left. He said he received a telephone call from Mr. McClafferty a few days later who was upset because he had been cited for the dogs. Mr. Conrad said he advised Mr. McClafferty that he could apply for a special permit.

Mr. Smith asked whether the applicant had received any other zoning or homeowners association violations during the time he owned the property. Mr. McClafferty said he had received the usual complaints regarding

~ ~ ~ December 11, 2007, PATRICK F. MCCLAFFERTY, SP 2007-HM-114, continued from Page 471

soot on the chimney, bushes needing to be cut, painting required, and storing his lawn mower on his back deck. He said the people in his neighborhood did not like one another and often complained.

In response to a question from Mr. Byers regarding whether the notice of violation was issued as the result of a complaint, Mr. Conrad said a complaint had been received.

Mr. Beard asked whether the applicant ever walked his dogs without a leash. Mr. McClafferty said he did not.

Ms. Gibb asked whether the original complaint was for four dogs and had been received before one of the applicant's dogs was euthanized in October. Mr. Conrad said the complaint had referenced three pit bulls and two Chihuahuas, and the applicant had admitted at the time that he had four dogs.

In response to a question from Ms. Gibb regarding the frequency of the visits of the applicant's daughter with her Chihuahuas, Mr. McClafferty said she stayed approximately once a month for two to three days.

Ms. Gibb said she had been surprised by the number of letters received and the fact that so many mentioned fear of retribution. Mr. McClafferty said his neighborhood seemed to be made up of dog people and not-dog people, and there were no friendly relationships with one another. He said he was not surprised by the response considering the placard put in his yard regarding the hearing and the opportunity for people to write in. He said he was a certified public accountant for the government. There was no record of him causing harm to anyone. He had no criminal record and had never attacked anyone. He said he was passionate about dogs, but it was completely untrue that he would harm anyone and he did not understand the comments.

In response to a question from Mr. Byers regarding whether the applicant had a security clearance in his position with the government, Mr. McClafferty said he had a secret clearance.

Mr. Hart asked whether there should be a development condition to address how many extra dogs could visit and the frequency of visits so there would not be six to eight dogs present on a regular basis that could be making too much noise and mess and bothering the neighbors. Ms. Langdon said the issue had never been addressed because there was nothing in the Zoning Ordinance which prohibited having guests that have dogs. She said staff would attempt to craft a condition if the Board wanted one.

A discussion ensued between Mr. Hart and Ms. Langdon regarding an unrelated application where the applicant was involved with an animal rescue group, and the Board had imposed limits regarding the fostering of animals. Ms. Langdon said the approval was limited to the applicant's own two dogs and one or two other foster dogs, but she was unsure whether a time limitation had also been imposed.

Mr. McClafferty said he did not intend to allow anyone with dogs to come visit for an extended period of time.

Chairman Ribble called for speakers.

Brian McClafferty, 11300 Dockside Circle, Reston, Virginia, came forward to speak, and the oath was administered to him. He said the dogs were well taken care of and completely safe around small children. The family constantly picked up after the dogs. With regard to the letters about dogs barking, Mr. McClafferty said groups of five to six of the neighbors would stand in front of their house for 30 minutes, and it was normal for a dog to bark when a group of people stood outside its house.

Chairman Ribble closed the public hearing.

Mr. Byers moved to deny SP 2007-HM-114 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Mr. Beard said he thought the BZA had set somewhat of a precedent of allowing people who had an extra animal to retain the animal until its demise, and he would not support the motion and would offer an alternative motion if Mr. Byers' motion failed.

Mr. Hammack said a townhouse was a small property for three dogs the size of the applicant's and even

~ ~ ~ December 11, 2007, PATRICK F. MCCLAFFERTY, SP 2007-HM-114, continued from Page 472

more so when other pets are brought there by family members for several days each month. In light of the fact the dogs had been with the applicant for up to six years, Mr. Hammack offered an amendment to the motion that he be given 90 days to find a suitable home for one of the animals. Mr. Byers and Mr. Smith agreed to the amendment.

Mr. Beard said that telling a pet owner they had 90 days to get rid of one of their pets was like telling someone you had 90 days to pick which one of your children to get rid of. He said he thought situations like this called for some compassion, and the applicant should be allowed to retain the animals until one of them had passed away.

Ms. Gibb said she was slightly troubled that none of the people in opposition came to the hearing, but the letters were all different rather than being a case where one person had written a letter and it was copied. The letters referred to long-standing troubling things. She said when her family had lived on an Air Force base and they were told they had to get rid of their dog, they instead moved.

Mr. Hart said he thought the BZA had occasionally allowed a third dog in a townhouse, but the townhouses probably had fenced yards, and the dogs were smaller. The BZA had to view matters on a case-by-case basis, and he was troubled by the number of letters received and the spontaneity of them. He said there seemed to be an undercurrent in the neighborhood and a lot of attention to having three dogs in a townhouse. He did not like the idea of telling someone they could not keep a dog they had for a number of years, but three dogs in a townhouse in the subject situation seemed to be having an undue impact on the neighbors. Given the record before the Board, Mr. Hart said he would agree with the 90-day scenario for placing the third dog. He said that understanding what a visiting dog was and how the Board could allow or disallow that should be considered as an addition to the work program for the future.

Chairman Ribble called for the vote. The motion as amended carried by a vote of 6-1. Mr. Beard voted against the motion.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK F. MCCLAFFERTY, SP 2007-HM-114 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 11300 Dockside Cr. on approx. 3,154 of land zoned PRC. Hunter Mill District. Tax Map 26-2 ((12)) (2) 36. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2007; 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 PRC.
3. The area of the lot is 3,154 square feet.
4. The special permit request specifically does not meet criteria noted in paragraphs 1 through 4 under Sect. 8-006.
5. There were four derogatory letters from the neighbors as well as an official letter from the Board of Directors of the homeowners association that states it does not support the application.
6. It behooves the Board to support the homeowner's association position that takes a stand from the standpoint of how their community is going to be run in accordance with the Zoning Ordinance.
7. Four dogs are allowed at 12,500 square feet. When the Board has afforded in the past an additional animal, it typically was in a 10,500 to 11,000 square-foot single-family home, with the capability for some type of fence.

~ ~ ~ December 11, 2007, PATRICK F. MCCLAFFERTY, SP 2007-HM-114, continued from Page 473

8. The subject property is 3,154 square feet within a planned townhouse community, and in this particular case, it is too many animals in the conditions as they exist.
9. The applicant shall be given 90 days to find a suitable home for one of the animals to reduce the number from three to two.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-917 of the Zoning Ordinance.

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

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

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:00 A.M. MIKE WASSERMAN & TIFFANY LIU, SP 2007-HM-112 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.6 ft. from side lot line. Located at 1931 Baton Dr. on approx. 15,002 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-3 ((11)) 66.

Chairman Ribble called the applicants to the podium.

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

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mike Wasserman, 1931 Baton Drive, Vienna, 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 of certain yard requirements to permit the construction of a one-story garage addition 10.6 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a reduction of 4.4 feet was requested. The garage would replace the existing carport and would encroach 0.7 feet closer to the side lot line than the existing carport. Staff recommended approval of SP 2007-HM-112 subject to the proposed development conditions.

Mr. Wasserman presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to enclose an existing carport to allow for additional storage space.

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

Mr. Hart moved to approve SP 2007-HM-112 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MIKE WASSERMAN & TIFFANY LIU, SP 2007-HM-112 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.6 ft. from side lot line. Located at 1931 Baton Dr. on approx. 15,002 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-3 ((11)) 66. 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

~ ~ ~ December 11, 2007, MIKE WASSERMAN & TIFFANY LIU, SP 2007-HM-112, continued from
Page 474

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2007; and

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

1. The applicants are the owners of the land.
2. The Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. This is a very modest request.
5. This is an enclosure of an existing carport, which is pretty substantial to begin with.
6. The roof is already there, and the enclosure of the carport will only bring it a few inches closer to the side line.
7. Based on the photographs and the existing vegetation, there would be no significant 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. 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 (237 square foot addition) as shown on the plat prepared by David L. Mayne and dated July 25, 2007 as revised through August 13, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (1,462 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:00 A.M. CONNIE AND BILL GRIFFIN, SP 2007-BR-113 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.9 ft. from side lot line. Located at 4704 Playfield St. on approx. 15,643 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((7)) (5) 26.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Connie Griffin, 4704 Playfield Street, Annandale, 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 for the reduction of certain yard requirements to allow the construction of a two-story addition 7.9 feet from the side lot line. The proposed 22.6-foot tall addition would consist of 954 square feet and contain a garage and second floor master bedroom and bathroom. The applicant would be constructing a covered porch along the front of the house by right. The two-story addition would be located 10.4 feet closer to the southern lot line than the existing dwelling. A minimum side yard of 15 feet is required; therefore, a reduction of 7.1 feet was requested. Staff recommended approval of SP 2007-BR-113 subject to the proposed development conditions.

Ms. Griffin presented the special permit request as outlined in the statement of justification submitted with the application. She said the lot was unusually shaped, and they needed additional space because the house was a little cramped. They loved their neighborhood, and they did not want to move. Ms. Griffin stated that their neighbors supported the proposal.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2007-BR-113 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CONNIE AND BILL GRIFFIN, SP 2007-BR-113 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.9 ft. from side lot line. Located at 4704 Playfield St. on approx. 15,643 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((7)) (5) 26. 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 11, 2007; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The Board has determined that the applicants have met Standards 1 through 6.
3. The Board has a staff report that recommends approval.
4. The applicants have testified that there will not be an impact on the neighbors, which looks from photographs that there will not be.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922

~ ~ ~ December 11, 2007, CONNIE AND BILL GRIFFIN, SP 2007-BR-113, continued from Page 476

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 (954 square foot addition) as shown on the plat prepared by George M. O'Quinn and dated July 23, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (2,627 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:00 A.M. HAMLET SWIM CLUB, INC., SPA 74-D-037-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-D-037 previously approved for a swim club to permit a building addition and site modifications. Located at 8209 Dunsinane Ct. on approx. 4.33 ac. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) A1 and B1. (Admin. moved from 9/11/07 for ads) (Deferred from 10/23/07 at appl. req.)

Chairman Ribble noted that the Board had received a request for a deferral regarding SPA 74-D-037-03. He called for speakers to address the question of the deferral request; there was no response.

Mr. Hammack moved to defer SPA 74-D-037-03 to March 11, 2008, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:00 A.M. JOSEPH AND DAVINA E. ALEXANDER, SP 2007-LE-115 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 6107 Craft Rd. on approx. 10,695 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (E) 16.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing.

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, the applicants' agent, Jane Kelsey & Associates, Inc., 4041 Autumn Court, 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 a reduction of certain yard requirements to permit construction of an addition 6.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a reduction of 6.0 feet was requested. Staff recommends approval of SP 2007-LE-115 subject to the proposed development conditions.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicants wanted to add a small addition for an exercise room to the house they had owned since 1967. She said staff's support of the application was appreciated, and all the details were in the report. Ms. Kelsey said there was only one location for the addition due to the shape of the lot, and they hoped that allowing additions in older neighborhoods would help keep the neighborhoods viable and allow people to reside there for a long period of time. She said informational letters with a copy of the plat and an explanation of what was proposed to be constructed were sent to the same people who received legal notice, and the contiguous property owner who would be the closest to the addition submitted a letter in support of the application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-LE-115 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH AND DAVINA E. ALEXANDER, SP 2007-LE-115 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 6107 Craft Rd. on approx. 10,695 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (E) 16. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2007; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The property is zoned R-3.
3. The application meets all the submission requirements in Sect. 8-922 of the Zoning Ordinance.
4. The staff report recommends approval.
5. The analysis of the applicant's, as stated today, and that of staff's is agreed with.

~ ~ ~ December 11, 2007, JOSEPH AND DAVINA E. ALEXANDER, SP 2007-LE-115, continued from Page 478

6. The addition is relatively modest in size.
7. The addition is consistent with the previously approved variance.
8. The addition will be no closer to the side lot line than the previous addition that was approved in 1989.
9. The neighbor who is directly impacted supports the proposal.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 156 square feet) of the proposed garage addition as shown on the plat prepared by Alexandria Surveys, dated July 25, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling (2,649 square feet) that existed at the time of the first expansion regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single-family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The garage shall be consistent with the architectural renderings 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.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:00 A.M. JOHN M. TERHAR, SPA 96-Y-050 Appl. under Sect(s). 8-913 of the Zoning Ordinance to amend SP 96-Y-050 to permit modification to certain R-C lots to permit construction of addition 12.6 ft. from side lot line and 32.6 ft. from front lot line. Located at 15113 Bernadette Ct. on approx. 10,560 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 404.

Chairman Ribble called the applicant to the podium.

~ ~ ~ December 11, 2007, JOHN M. TERHAR, SPA 96-Y-050, continued from Page 479

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Terhar, 15113 Bernadette Court, Chantilly, 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 modification to minimum yard requirements for certain R-C lots to permit construction of a garage addition to be located 12.6 feet from a side lot line and 32.6 feet from the front lot line. A minimum side yard of 20 feet and minimum front yard of 40 feet are required; therefore, modifications of 7.4 feet and 7.4 feet were requested.

At Mr. Beard's request, Susan C. Langdon, clarified that staff did not make recommendations on R-C applications.

Mr. Terhar presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Terhar said other houses on the same street as his home had garages in the same location as he was proposing, so it would fit in with the general neighborhood and increase property values.

Mr. Hart asked whether the garage would be wide enough to pull a car in and open the door with the rectangular feature in the garage that was reflected on the plat. Mr. Terhar said that was the location where a chimney would have been located if there had been one, but they did not have a fireplace or a chimney. He said it would not block a car.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SPA 96-Y-050 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN M. TERHAR, SPA 96-Y-050 Appl. under Sect(s). 8-913 of the Zoning Ordinance to amend SP 96-Y-050 to permit modification to certain R-C lots to permit construction of addition 12.6 ft. from side lot line and 32.6 ft. from front lot line. Located at 15113 Bernadette Ct. on approx. 10,560 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 404. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2007; 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. As the applicant has stated, the proposal is in keeping with other improvements in the proximity.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ December 11, 2007, JOHN M. TERHAR, SPA 96-Y-050, continued from Page 480

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 garage addition as shown on the plat prepared by Deputy Land Surveying, dated April 5, 1989, revised by John M. Terhar, dated October 4, 2007, 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.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:30 A.M. CHANG B. KWON, A 2007-PR-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Personal Service Establishment on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 7500 Arlington Bv. on approx. 9,899 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((17)) 90.

Chairman Ribble noted that A 2007-PR-035 had been withdrawn.

Jayne Collins, Staff Coordinator, Zoning Administration Division, confirmed that the appeal had been withdrawn, and the violation had been cleared.

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:30 A.M. NVR, INC./NV HOMES C/O JERRY JOHNSON, A 2007-MV-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a septic field for Lot 24 of the Nirvana Palace Subdivision may not be located across the street on a new Outlot O under Zoning Ordinance provisions. Located at 9199 Marovelli Forest Dr. on approx. 55,000 sq. ft. of land zoned R-1. Mount Vernon District. Tax Map 106-4 ((7)) 24 and pt. E. (Admin. moved from 7/31/07 and 10/30/07 at appl. req.)

Chairman Ribble noted that A 2007-MV-016 had been withdrawn.

Jayne Collins, Staff Coordinator, Zoning Administration Division, confirmed that the appeal had been withdrawn, and the Board had recently approved a special permit.

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:30 A.M. G. RAY WORLEY, SR. AND ESTELLA C. (H.) WORLEY, A 2006-PR-056 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining two dwelling units on a single lot located in the R-3 District in violation of Zoning Ordinance provisions. Located at 2537 Gallows Rd. on approx. 15,375 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 4B. (Admin. moved from 12/12/06 at appl. req.) (Admin. moved from 1/30/07) (Decision deferred from 3/6/07, 6/5/07, and 9/25/07)

Chairman Ribble noted that the Board had received a request to defer decision on A 2006-PR-056 to April 8, 2008.

Jayne Collins, Staff Coordinator, Zoning Administration Division, said the appellants submitted a special permit application, which staff was awaiting its acceptance, and it would go before the Board.

Chairman Ribble called for speakers to address the question of the deferral request; there was no response.

Mr. Hammack moved to defer decision on A 2006-PR-056 to April 8, 2008, at 9:30 a.m., at the appellants' request. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 11, 2007, Scheduled case of:

9:30 A.M. ADAM LOVE DBA GROUND ONE LANDSCAPE CO., A 2007-PR-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a use and is allowing outdoor storage, which does not meet the minimum yard requirements for the I-5 District, without an approved site plan in violation of Zoning Ordinance provisions. Located at 8522 Lee Hwy. on approx. 1.48 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3 ((1)) 65. (Deferred from 6/26/07) (Deferred from 10/16/07 at appl. req.)

Chairman Ribble noted that the Board had received a request to defer A 2007-PR-005 to April 1, 2008.

Jayne Collins, Staff Coordinator, Zoning Administration Division, said Mr. Love recently submitted a minor site plan to the Department of Public Works and Environmental Services, and if approved, its implementation would clear the violation.

Chairman Ribble called for speakers to address the question of the deferral request; there was no response.

Mr. Byers moved to defer A 2007-PR-005 to April 1, 2008, at 9:30 a.m., at the appellant's request. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 11, 2007, After Agenda Item:

Request for Additional Time
Golf Park, Inc. & Hunter Mill East, LLC, SPA 91-C-070-4
(Deferred from October 16, 2007)

Susan C. Langdon, Chief, Special Permit and Variance Branch, confirmed that staff had recommended 30 months of additional time to April 24, 2009. She said the Board had previously requested the applicant be present to speak, and he was in attendance.

Chairman Ribble called the applicant to the podium.

John M. Thoburn, Golf Park, Inc., 1630 Hunter Mill Road, Vienna, Virginia, came forward to speak. Mr. Thoburn said he would like the Board to grant an indefinite amount of additional time. He said he and Zoning Administrator disagreed over whether or not the special permit amendment was subject to expiring. He said the special permit amendment said that it would expire within a certain amount of time if the use was not established or construction diligently pursued, and given that the driving range had been open and operating

~ ~ ~ December 11, 2007, After Agenda Items, continued from Page 482

for over a decade under prior special permit amendments, clearly the use was established. Mr. Thoburn said he was unable to get an answer from William Shoup, the previous Zoning Administrator, as to what had to be done under the current special permit amendment to qualify for a revised non-residential use permit (Non-RUP) and permanently vest the special permit amendment.

Mr. Thoburn said the special permit amendment had been filed to allow the trees that had been planted at the driving range to remain in the locations in which they had been planted and not to require that they be moved. He said that several weeks before the hearing was scheduled, the County planted trees and shrubs on the property to preempt the issue, and by the time of the public hearing on the special permit amendment, three of the trees had died. Part of what the Board had done in approving the special permit amendment was to allow the three trees to not have to be replanted. Mr. Thoburn said that if the Board did not grant additional time, it would put them back into the position of the prior special permit amendment, which would then say more trees had to be planted.

Mr. Thoburn said one of the other things done in the most recent special permit amendment was to delete the prohibition on having a jukebox operating on the property. He said he had asked Mr. Shoup if putting a jukebox in the clubhouse would be enough to establish the use under the special permit amendment to get a revised Non-RUP, but he was unable to answer the question.

Mr. Thoburn explained that in court it was argued that because a revised Non-RUP had not been issued and the lighting had been taken out, he was operating under the prior special permit, and there was no zoning violation taking place. The judge had said they could not go back to the old special permit and had to operate under the new special permit amendment even though they did not have a revised Non-RUP.

Mr. Thoburn said the third special permit amendment had clearly allowed them to have a larger clubhouse and put in lighting, and after the County had planted the trees and shrubs, a revised Non-RUP had been issued under the third special permit amendment despite the fact that everything was not done that was allowed under the special permit amendment.

Mr. Thoburn said that the stage now was that the County had taken the position that unless he did everything he was allowed to do and constructed it all, then he had not done enough to get a revised Non-RUP, which he said he did not agree with, but did not want to have to litigate. He said the easier solution was to come back to the Board every 30 months and ask for more time. He said he thought everything would sort itself out within five years because by then the County would have most likely granted some reasonable development rights on the property.

Mr. Thoburn said the County had put him in the tax district for the rail, and he was paying an additional 25 percent real estate taxes on the majority of the driving range for the rail district. He said that part of the legal obligation that the County had when someone was put in a rail district was that you could not take away any of the zoning rights that they had at the time they were put in the district, so if the Board denied his request for additional time to establish the use, the Board would be taking away zoning rights, which would open the door for him to litigate against the rail tax district.

Mr. Hart said that ordinarily when someone asked for an extension of time, it was because they had not done construction that they still wanted to do, and in reading the correspondence with the Zoning Administrator, there was obviously a disagreement about whether something else needed to be done, but it was not clear whether the applicant was asking for more time to build a building or install lights. He asked whether that was something the applicant still wanted to do or was disagreeing that it needed to be done. Mr. Thoburn said he disagreed that he had not vested the right to do that at any time in the future if he chose to do so. He said he thought establishing the use of the driving range vested his right to do whatever he was allowed to do within the application that had been approved.

Mr. Hart said he thought the driving range use had been established with the first special permit. He asked whether Mr. Thoburn still wanted to build the clubhouse and put the lighting in. Mr. Thoburn said there currently was a clubhouse that was a modular building, and at some point he might want to replace the clubhouse with a newer building that would be within the footprint of what he was allowed to do. He said he would like to add covered tees and lights, but that was predicated on whether or not the County allowed him some reasonable development rights. Mr. Thoburn said he wanted to keep the option open because it could happen in the future.

~ ~ ~ December 11, 2007, After Agenda Items, continued from Page 483

Mr. Hart asked whether there was any appeal pending regarding the determination of the Zoning Administrator as to what needed to be done or if it occurred more than 30 days prior and had not been appealed. Ms. Langdon said there was no appeal pending.

Mr. Hart asked what the effect would be if someone had a use, had a Non-RUP, had approval to do a larger building and make changes that had not been done for several years, time had been extended and was going to run out again, and time was not again extended. He asked if the applicant would still keep what he had. Ms. Langdon said the applicant could keep what he had on the site, but the additional items that were requested under the fourth amendment would go away. He would not be able to establish those additional uses. She said the items included some additional lighting, a bigger clubhouse, and some other miscellaneous items on the site. The conditions stated that those uses needed to be established by getting a new Non-RUP, which the applicant had not done. The Non-RUP that the applicant was operating under had been issued in June of 2001, and the fourth special permit amendment had been approved in October of 2001. She said a Non-RUP had not been obtained since the approval of the amendment, and the applicant would certainly have gotten one if he had built the clubhouse.

Mr. Thoburn said the larger clubhouse, the lights, and covered tee structure were approved in the prior special permit, so it was his position that even if the most recent special permit amendment expired, he was still entitled to do what had been approved in his prior special permit, which had been vested because a Non-RUP had been issued. He said the only thing of any consequence that changed with the most recent amendment was to allow some dead trees to not be replanted and to get rid of some of the more ridiculous conditions that had originally been written to satisfy the Hunter Mill Defense League.

Mr. Hart said he thought there had been a lot of changes on the lighting and more than just changing the bushes. Ms. Langdon said she believed Mr. Hart was correct. She said that where the question arose as to whether the third amendment would still be valid or not was the point it says the special permit shall automatically expire unless the use has been established or construction has commenced and been diligently prosecuted. Certain improvements were approved under the third amendment, and if part of that was completed, based on the applicant's testimony, and the applicant had not continued to diligently pursue those, then he would lose his right to pursue. Ms. Langdon said then the question arose of what was diligently pursued. If it had been two, three, five, or ten years since some of the improvements had been finished and no other work had been done on the site, the right to do what had not been completed under the previous special permit amendment was probably lost. She said approving additional time at this point would definitely allow the applicant to continue the right to do what was under the fourth amendment.

Mr. Hart asked whether some old violation would be revived or the applicant would be put into violation if the time was not further extended. Ms. Langdon said she was not aware that the applicant would be put into nonconformance, but it would be determined by the Zoning Administrator, and she was not certain.

Mr. Hart said he understood the applicant wanted to be able to indefinitely do the improvements, and staff had recommended an extension to April 24, 2009, which seemed arbitrary to him. Whenever an amendment or anything had occurred on the property, there had been a lot of interest from the neighbors, and with transportation changes or other changes in the neighborhood, Mr. Hart said at some point it made sense to review again to determine if the use then made a significantly different impact or the context in which the application is evaluated had changed. Mr. Hart asked what staff's reason was for 2009. Ms. Langdon said the date was 30 months from when the previous additional time approval for the special permit would have expired. She said the request had been reviewed, and staff did not object to additional time being granted. If the Board granted the current request and another request was received in 2009, Ms. Langdon said there could be changes then that staff felt needed to be evaluated, and another amendment could be needed.

Mr. Thoburn said the operative language was that the applicant had to either establish the use or diligently pursue construction, and he would argue that he had clearly established the use by opening the driving range, and there would be no expiration on the special permit amendment. Mr. Hart said the difficulty the Board would have in accepting the position was that as of April of 2007 they had a letter from the Zoning Administrator determining that the use had not been established and other things needed to be done to implement the special permit amendment, and the determination had not been appealed. Mr. Hart said that since no appeal had been filed, it would be a thing decided, and the Board was left with only the question of whether or not to grant additional time.

~ ~ ~ December 11, 2007, After Agenda Items, continued from Page 484

Mr. Byers said he knew there had been a revision of the transportation plan in 2006, and he asked whether it had been reviewed and a determination made that there had been no implication in the subject area. Ms. Langdon said that was correct.

Mr. Thoburn said he did not think that if a Zoning Administrator sent a letter that was clearly in error, he had to appeal it, but if the time was extended, then another letter would be sent which would create an appealable issue if the Board felt that was what he needed to procedurally do. He added that he had not replanted the trees which had died, so he would be in violation of the Zoning Ordinance, and the specter would be raised of having the County come out with police officers to escort a tree company to plant more trees on the property as they had previously done.

Mr. Beard questioned why the Board was involved in the issue if the use had been established, and if it had not been established, why the Board was continuing to perpetrate something that was not going to happen. Mr. Hart said his recollection was that in the application that was pending around the 9-11 terrorist attack, Mr. Thoburn had a driving range use, there had been some enforcement decision that had been appealed, and the Board upheld or upheld-in-part the Zoning Administrator as to whether all of the landscaping that had been planted was depicted on the special permit plat. The decision went to court, and the County Attorney's Office sought to either close the use or if it continued, to make the applicant put in the bushes that were on the drawing that went with the development conditions that authorized the use. Mr. Hart said that while that was ongoing, the applicant had filed an application to amend the special permit to conform the landscaping to what existed rather than complete what was on the original plat. There was some further expansion of the buildings permitted and some adjustment to hours of operation and types of food that could or could not be served. There were also some sophisticated plans about additional lighting or under what conditions the lighting would be allowed, and the additional lighting was not present at the time. There were some other changes to the site and minor changes made to the landscaping. Mr. Hart said it had been a difficult case with a lot of attention in the community, and mostly what existed was the way it was approved, but there was an old condition about jukeboxes that was deleted. He said the motion was an extraordinarily difficult motion to work out all the conditions, and the Board's final decision was somewhere in between what the applicant and staff wanted.

Mr. Beard asked whether the special permit was put in jeopardy from the standpoint of establishing use by the applicant filing to amend the special permit. Ms. Langdon said that each time a special permit or amendment was approved, a new base was established from where the use had to be established again, but the applicant was still operating under the existing special permit.

Chairman Ribble called for speakers to address the question of the additional time request; there was no response.

Mr. Hart moved to approve 30 months of additional time. He said that would perpetuate the status quo a little longer, and there would be an intervening cycle for the North County Annual Plan Review, so if something changed, it could be revisited if the use had not been built and more was needed. He noted that staff did not oppose the request even in light of the applicant seeming somewhat lukewarm about continuing with doing what the Zoning Administrator said was required. The additional time would give more flexibility to revisit it, and 30 months was what staff had recommended. Mr. Smith seconded the motion.

Mr. Beard stated he would not support the motion because, notwithstanding past events or court decisions, based on what had been presented before the Board, he thought the use had been established. He said he was unsure why the matter was before the Board, and as far as he was concerned, the Board was perpetrating an unresolved issue.

Chairman Ribble called for the vote. The motion carried by a vote of 4-2-1. Mr. Byers and Mr. Beard voted against the motion. Mr. Hammack abstained from the vote. The new expiration date was April 24, 2009.

//

~ ~ ~ December 11, 2007, After Agenda Item:

Request for Waiver of the 12-Month Waiting Period for Refiling an Application
Carolyn Day Hecox, SP 2007-SP-072

Mr. Byers said he understood from staff that the applicant was still in nonconformance with the Board's previous decision, and because of that fact, he was not inclined to grant the 12-month waiver.

Mr. Hart asked whether the applicant could renew the request at a later date if the septic problems were cleared up and the health department blessed what was there. Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicant could at any time ask for the waiver or could automatically apply again after one year.

Mr. Hammack said he was unsure whether the applicant was asking for a request for reconsideration or for waiving the one-year period. Ms. Langdon said she had spoken and corresponded with the applicant, and the applicant was asking for a waiver of the one-year waiting period because she wanted to file again.

No motion was made; therefore, the request was denied.

//

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 BZA v. BOS in the Circuit Court of Fairfax, 0611777, that had been appealed to the Supreme Court of Virginia; McLean Bible Church, the federal case in U.S. District Court for the Eastern District of Virginia, 106CV769; BOS v. BZA in the Circuit Court of Fairfax, 0614988; one of the Vorhees v. BZA cases that had been appealed to the Supreme Court of the United States, in the Supreme Court Record 07-383; and a brief discussion on the Golf Park, Inc., v. Hunter Mill Estates LLC, SPA 91-C-070-4, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Smith seconded the motion.

Mr. Smith stated that in other applications the Board had approved at the hearing, the language stated that special permits expired 30 months after the date of approval unless construction has commenced and had been diligently prosecuted. He asked whether the language earlier discussed in the Golf Park, Inc., matter was no longer being used or only applied in certain types of special permits. He said he found the language to be somewhat ambiguous, and it had caused trouble for the Board. Mr. Smith said he thought establishing the use referred to the use in the special permit amendment, but it was confusing because there had been so many things in the special permit amendment.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the language used depended on what the applicants were proposing to do, and if all that was being proposed was construction, it was either constructed or not. With some other uses, there may be no construction involved. She said the language was tailored to what was proposed.

Ms. Langdon confirmed for Mr. Beard that the language had not been extracted or eradicated as a result of the Golf Park, Inc., matter.

The motion to enter into Closed Session carried by a vote of 7-0.

The meeting recessed at 10:58 a.m. and reconvened at 11:33 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 7-0.

//

~ ~ ~ December 11, 2007, continued from Page 486

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 / Kathleen A. Knoth

Approved on: September 19, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 18, 2007. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ December 18, 2007, Scheduled case of:

9:00 A.M. MARY A. SALINAS, VC 2007-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.07 ft. with eave 5.05 ft. from rear lot line and 3.34 ft. with eave 2.14 ft. from side lot line. Located at 6706 Farragut Ave. on approx. 7,200 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((13)) (3) 35. (Decision deferred from 9/25/07)

Chairman Ribble noted that VC 2007-PR-003 had been withdrawn.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:00 A.M. CYNTHIA G. CUNNINGHAM, SP 2007-HM-107 Appl. under Sect(s). 8-917 and 8-923 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals and to permit fence greater than 4.0 ft. in height to remain in a front yard. Located at 1544 Coat Ridge Rd. on approx. 9,468 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 11-3 ((3)) 73.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Cynthia Cunningham, 1544 Coat Ridge Road, Herndon, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Ms. Cunningham presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she was requesting approval to allow three greyhounds she had rescued after they were retired from racing, and the life expectancy of a greyhound was between 12 to 14 years. They were well cared for and more sociable now than at first, and the dogs barked infrequently and only in situations such as someone being in the yard, knocking at the door or when other dogs were in the vicinity. Ms. Cunningham said letters of support and a signed petition had been submitted to the Board, and she did not know she was in violation of the Ordinance when the fence was installed by the contractor. She said her single-family home with a fenced yard could easily accommodate the three dogs.

Discussions ensued regarding the amount of time the dogs were outside, the dogs not being out when the neighbor's dogs were out to eliminate excess barking, the applicant's father and his small dog visiting once per year, and the triangular fenced area on the plat containing utility boxes and mulched rose bushes with no maintenance problems.

Chairman Ribble called for speakers.

The following speakers came forward to speak in support of the application: Diane Hankey, 1541 Malvern Hill Place, Herndon, Virginia; John Stockman, 12018 Lake Newport Road, Herndon, Virginia; Jennifer Hanat, 1542 Malvern Hill Place, Herndon, Virginia; Pamela Auble, 1542 Coat Ridge Road, Herndon, Virginia; Karen Knox, 1546 Coat Ridge Road, Herndon, Virginia; Colleen Stanley, 1540 Coat Ridge Road, Herndon, Virginia; Michael Von Husen, 1552 Coat Ridge Road, Herndon, Virginia; Constance Chenault, 1538 Coat Ridge Road, Herndon, Virginia; and David Vargas, no address given. Their main points dealt with the Hankeys revoking their signatures on the Glass petition because they believed the purpose of the petition was misrepresented to them; first-hand observations of the welfare and care of the dogs indicating they were

~ ~ ~ December 18, 2007, CYNTHIA G. CUNNINGHAM, SP 2007-HM-107, continued from Page 489

gentle, clean, well fed, and well cared for; use of a daily dog walking service; barking being kept to a minimum; supporting Ms. Cunningham and commending her efforts to provide a safe and loving home for rescued animals; the dog named Silver being particularly traumatized from racing when Ms. Cunningham got him and becoming more sociable under her care; and the Cunningham home, grounds and fence being well maintained..

John Glass, 12029 Winding Way Drive, Herndon, Virginia, came forward to speak in opposition to the application. He voiced concerns regarding barking since Silver had been adopted and his house being adversely impacted. A recording was played of dogs barking. He said the barking was a nuisance, and Ms. Cunningham should abide by the Ordinance and find another home for Silver.

In response to question from Mr. Byers, Mr. Smith, and Ms. Gibb, Mr. Glass said the recording of the barking had been done a week before the meeting from inside his sunroom. He said he recognized the barking of the applicant's dogs, and before she obtained Silver, it was not a problem. Mr. Glass said when the applicant's door and windows were open, Silver barked out the front door if there was any commotion. He said the problem arose mainly when the applicant was away from the house and on the weekends. Mr. Glass said the doors were open on Thanksgiving Day, and there was a lot of barking that afternoon. He said he rarely heard barking from the other two dogs before Silver was obtained. Mr. Glass said the barking of the applicant's dogs was obvious to him, and he was not bothered by any other dogs barking, only Silver's barking.

Ms. Gibb stated that the way the Ordinance was written, a person could have two dogs, not what kind, and the applicant could choose to keep Silver. Ms. Gibb noted that other neighbors indicated that they did not hear much barking.

Mr. Hart noted that the development conditions indicated three dogs, and he thought that was how the application had been advertised. He said one of the speakers referenced allowing a fourth dog on the premises, and he assumed that was not a part of the application. Ms. Hedrick stated that the applicant had asked that in the event of a family emergency or if something happened to her parents, who had a small dog, she be allowed to take that dog into her home. She stated that the development condition was to allow the three greyhounds to remain with the ability to have the other dog. In response to Mr. Hart asking if there was a time limit on allowing the fourth dog in an emergency situation, Ms. Hedrick said no. Susan Langdon, Chief, Special Permit and Variance Branch, said the advertisement was for the keeping of animals, and staff did not specify the number, which allowed staff to increase the number if necessary.

In her rebuttal, Ms. Cunningham said she was aware of the fact that barking annoyed neighbors, and it annoyed her as well. She disagreed that Silver barked all Thanksgiving afternoon because she was at home, would not have allowed incessant barking, and would have shut the door if it was open. She said when Mr. Glass had approached her regarding the barking, her upstairs windows had been open, and she made sure her windows and doors were closed when she left the house. Ms. Cunningham said Ray, her first dog, was the loudest dog heard on the tape, not Silver.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-HM-107 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CYNTHIA G. CUNNINGHAM, SP 2007-HM-107 Appl. under Sect(s). 8-917 and 8-923 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals and to permit fence greater than 4.0 ft. in height to remain in a front yard. Located at 1544 Coat Ridge Rd. on approx. 9,468 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 11-3 ((3)) 73. 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

~ ~ ~ December 18, 2007, CYNTHIA G. CUNNINGHAM, SP 2007-HM-107, continued from Page 490

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2007; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 Cluster.
3. The area of the lot is 9,468 square feet.
4. This is a fenced yard.
5. The square footage of 9,468 feet is relatively close to the 12,500.
6. By right, the applicant could have two animals up to the square footage.
7. There is clear indication that the animals are well cared for and loved.
8. The applicant, at considerable expense, has hired a dog walker on a daily basis.
9. The applicant appears to be doing a valuable community service by rescuing unwanted animals.
10. The applicant has broad community 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). 8-917 and 8-923 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, Cynthia G. Cunningham, and is not transferable without further action of this Board, and is for the location indicated on the application, 1544 Coat Ridge Road (9,468 square feet), and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection to County officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing three (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. The applicant shall also have the ability to maintain one (1) additional dog if required due to a family emergency.
4. The yard area where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards

Mr. Smith and Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:00 A.M. THOMAS C. GIBSON/ARVA SUZANNE GIBSON, SP 2007-DR-109 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 38.2 ft. from front lot line and reduction of certain yard requirements to permit construction of addition 41.1 ft. from the

~ ~ ~ December 18, 2007, THOMAS C. GIBSON/ARVA SUZANNE GIBSON, SP 2007-DR-109, continued from Page 491

front lot line of a corner lot. Located at 1103 Peppertree Dr. on approx. 40,000 sq. ft. of land zoned R-E. Dranesville District. Tax Map 19-2 ((10)) 23.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Thomas Gibson and Suzanne Gibson, 1103 Peppertree Drive, Great Falls, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-DR-109 for the addition, subject to the proposed development conditions.

Mr. Gibson presented the special permit request as outlined in the statement of justification submitted with the application. He said the purpose of the addition was to locate the family and sleeping rooms on one floor, and it would blend with the house and neighboring houses. He said that with the exception of the view up the driveway, the property was heavily wooded and did not provide any view of the house. Mr. Gibson said the neighborhood association had endorsed the plans, and none of the neighbors had expressed any concerns.

Chairman Ribble called for speakers.

Robin Kent, 9295 Ivy Tree Lane, Great Falls, Virginia, came forward to speak in support of the application. He said he was a member of homeowners' association board, and the board members supported the application.

In response to a question from Mr. Hammack, Mr. Gibson said the patio had existed when he purchased the house, and no modifications were currently planned.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-DR-109 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS C. GIBSON/ARVA SUZANNE GIBSON, SP 2007-DR-109 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 38.2 ft. from front lot line and reduction of certain yard requirements to permit construction of addition 41.1 ft. from the front lot line of a corner lot. Located at 1103 Peppertree Dr. on approx. 40,000 sq. ft. of land zoned R-E. Dranesville District. Tax Map 19-2 ((10)) 23. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2007; 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.
3. The Board had a favorable staff recommendation.

~ ~ ~ December 18, 2007, THOMAS C. GIBSON/ARVA SUZANNE GIBSON, SP 2007-DR-109, continued from Page 492

4. The rationale in the staff report was adopted.
5. Both of the requests were fairly modest.
6. With respect to the deck or patio in the front, the point at which it is closest to the street, the 38.2 feet, is actually at the bottom of the steps where it is almost impossible to see it.
7. From the photographs, it is very difficult to tell that there is anything sticking out in front of the house.
8. No one would be negatively impacted.
9. Many homes have similar garden features, walkways or something, and this is not too far off from that.
10. With respect to the addition in the rear, the lot is a corner lot with double front yards.
11. The way that the septic tank and the septic field have been placed, it would be difficult to make the addition go behind the screened porch or in other places on the lot.
12. Where the addition has been put is a logical place.
13. The way that the addition has been designed and massed combined with the topography, the lot sort of dips down in that direction, and the addition is an extension on sort of what would be a walk-out.
14. The part that is sticking out the most, the canopy, is at an intermediate point, and the massing of the addition is sort of lower than it could otherwise be.
15. There would be no significant negative impact on anybody.
16. From the drawings, it appears to be a very attractive modification to the house.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, and Sect. 8-922, Provisions for Reduction of Certain Yard Requirements, of the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided

~ ~ ~ December 18, 2007, THOMAS C. GIBSON/ARVA SUZANNE GIBSON, SP 2007-DR-109, continued from Page 493

to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 2,192 square feet) of a dwelling addition as shown on the plat prepared by Thomas W. Kendall, dated July 10, 2007, as revised through September 21, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,715 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:00 A.M. HARRY F. AND KAREN E. PARKER, SP 2007-BR-110 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.2 ft. from front lot line. Located at 8701 Braeburn Dr. on approx. 12,791 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 270.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Harry Parker and Karen Parker, 8701 Braeburn Drive, Annandale, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended denial of SP 2007-BR-110.

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the location of the minimum front yard and building restriction line, alternative locations for the addition, a utility easement located in the vicinity of the proposed addition, reduction of the size of the addition, and the proposed footprint of the addition being within the drip line of a tree.

Mr. Parker presented the special permit request as outlined in the statement of justification submitted with the application. He submitted documents to the Board consisting of a letter of explanation, a special permit

~ ~ ~ December 18, 2007, HARRY F. AND KAREN E. PARKER, SP 2007-BR-110, continued from Page 494

plat, photographs of nearby renovated homes, including a carport that had been converted into a family room with a two-car garage and the enclosure of a carport into a room with the original driveway remaining, letters of support, and two alternate architect's site plans. He said the new plat showed the garage was approximately four to five inches from the easement, and he thought the homes he described served as precedents and indicated the proposed addition was in harmony with neighboring properties. He displayed alternate plans that reoriented the addition so a special permit would not be required, stating that it would substantially reduce the backyard area, prevent visibility between the addition and adjoining lot on Ponderosa Drive, cause security concerns, and adversely impact the resale value of the home. Mr. Parker stated that the kitchen window and entrance to the basement would be blocked if the addition was set back, and the suggestion of a skylight was not feasible because there were bedrooms located above the kitchen. He said the square footage originally submitted was for the first floor and carport only, and the correct total footage for the current dwelling was 2,716 square feet, which included all internal living space, the uncovered patio, and the existing carport. He said staff's position in the report that the dwelling would be increased by 70 percent was incorrect, and the actual increase would be 47 percent of the total dwelling. Mr. Parker said that based on the language in the staff report regarding the standards being met, he did not understand why staff recommended denial.

Ms. Parker stated that in clearing for electric wires, the electric company butchered the tree referenced earlier. She said they hired an arborist who recommended they not try to save the tree.

Ms. Langdon said the statement in the staff report that the application met the standards in Sections 8-006 and 8-922 was incorrect and should state that the application did not meet the standards, and staff had laid out the two standards staff felt it did not meet. She said she understood the applicant to say the square footage included the carport and uncovered patio, but they would not be counted as square footage, and staff did not include those.

Mr. Hart said Standard 9 required the BZA to determine the proposed reduction represented the minimum amount necessary to accommodate the proposed structure on the lot and noted that the applicants had submitted additional schemes that had been prepared by their architect showing alternative configurations. Mr. Hart and the applicants discussed the alternative configurations, with the applicants explaining why the alternatives were not desirable.

In response to questions from Ms. Gibb, Ms. Langdon stated that research had shown there were no other front yard variances approved in the neighborhood. She said there were some side yard variances, and the photographs submitted at the meeting by the applicants did not show anything that was out of character. She said the alternate layouts submitted by the applicant showed how the addition could be added without obtaining a special permit, and the layouts appeared to blend in with the neighborhood. Ms. Langdon said there were other garages in the neighborhood that met all minimum yards and did not require a variance or special permit.

In response to a question from Chairman Ribble, Mr. Parker said the photograph showing a corner lot with modifications was located at 8634 Braeburn Drive, diagonally to their house, and their proposal was similar. Ms. Langdon said staff did not show any type of variance or special permit approved for the addition at 8634 Braeburn, and the addition appeared to be even with the front of the house. Mr. Parker said he was referring to the Ponderosa frontage, not Braeburn, and it appeared to him that it encroached on that frontage like his addition would.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2007-BR-110 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HARRY F. AND KAREN E. PARKER, SP 2007-BR-110 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.2 ft. from front lot line.

~ ~ ~ December 18, 2007, HARRY F. AND KAREN E. PARKER, SP 2007-BR-110, continued from Page 495

Located at 8701 Braeburn Dr. on approx. 12,791 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 270. 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 18, 2007; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have worked really hard to make this fit in.
3. The drawings done by the architect were persuasive that he could not find anyplace else in the neighborhood.
4. The applicants have presented testimony that they have complied with the six required standards for a special permit.
5. Although the Board had a staff report that recommended denial based on not meeting Standards 7 and 9 of Ordinance 8-922, the Board found that the applicants presented testimony and evidence that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, and scale of surrounding structures, topography, existing vegetation, and the preservation of significant trees as determined by the Director.
6. Consistent with Number 9, the Board can determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot.
7. With respect to Number 7, based on the photographs that the applicants submitted of the neighboring properties and proposed site plans that were drawn by the applicants' architect, the applicants have shown us that they are siting the proposed addition in the best place possible and has tried to make it outside the restricted area as much as possible.
8. To locate the addition anywhere else is not possible.
9. The applicants are doing their best to preserve the large oak tree.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the addition (1,368 sq. ft., two story garage and living room addition) as shown on the plat prepared by George M. O'Quinn and dated September 6, 2007 as revised through November 26, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (1,947 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.

~ ~ ~ December 18, 2007, HARRY F. AND KAREN E. PARKER, SP 2007-BR-110, continued from Page 496

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Upon completion of the new driveway, the applicant shall remove the existing concrete driveway, scarify the area, and replant it with grass.

This approval, 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 4-3. Mr. Hart, Mr. Byers, and Mr. Hammack voted against the motion.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:00 A.M. CHRISTINA WRIGHT DJEMMAL, SP 2007-DR-080 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 23.1 ft. from the front lot line and 7.67 ft. from the side lot line. Located at 6923 Tyndale St. on approx. 10,660 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((32)) 13. (Deferred from 10/2/07 at appl. req.) (Admin. moved from 11/27/07 for notices.)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Christina Djemmal, 6923 Tyndale Street, McLean, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. On October 2, 2007, the Board deferred SP 2007-DR-080 at the applicant's request to allow the applicant time to address staff concerns. The application had since been revised, and staff recommended approval of SP 2007-DR-080, subject to the revised development conditions.

Mr. Smith and Mr. Varga discussed the revision to the application increasing the width and decreasing the depth and the dimensions of a standard garage. Mr. Varga agreed with Mr. Beard that persons who had collector cars required more room to facilitate their needs, and standard size garages were not always imposed.

Ms. Djemmal presented the special permit request as outlined in the statement of justification submitted with the application. She said that the proposal had been modified from a two-car garage to one and one half, and the garage addition would accommodate her two cars, one being an antique. Ms. Djemmal said they had considered other options, but her children played in the backyard; there was a slope on the side of the driveway; a side-loading garage was not an option due to the lack of turning space; and, the lot was narrow.

In answer to a question from Mr. Hart, Ms. Djemmal said the antique car was a 1961 Citroen. Mr. Hart and Ms. Djemmal discussed placement of the cars, the length and width of the garage, and how both cars could be accommodated. Mr. Hart expressed concern that space in a 17-foot garage would be very tight. Ms. Djemmal said her second car was a Mini Cooper and would fit easily on the left side of the garage.

Chairman Ribble called for speakers.

~ ~ ~ December 18, 2007, CHRISTINA WRIGHT DJEMMAL, SP 2007-DR-080, continued from Page 497

Bengt Bostrom, 6924 Tyndale Street, McLean, Virginia, came forward to speak in opposition to the application. He said that although the second proposal was better than the original, the structure was still too large, and there were no other garages that size in the neighborhood of small lots.

In her rebuttal, Ms. Djemmal said the proposed garage was smaller than the 18 feet mentioned by Mr. Bostrom.

Mr. Smith asked the applicant to respond to the concern expressed by Carol Schremp in a December 17, 2007 e-mail about staff's recommendation that three evergreen trees be planted along the eastern property line. Ms. Djemmal said she had discussed the situation with the neighbors that would border the side of the proposed garage and had been told they wanted to wait until the structure was completed and would give her feedback concerning the type of landscaping they thought would be appropriate. Ms. Djemmal said she was willing to plant whatever her neighbors suggested.

Mr. Smith moved to approve SP 2007-DR-080 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTINA WRIGHT DJEMMAL, SP 2007-DR-080 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 23.1 ft. from the front lot line and 7.67 ft. from the side lot line. Located at 6923 Tyndale St. on approx. 10,660 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((32)) 13. (Deferred from 10/2/07 at appl. req.) (Admin. moved from 11/27/07 for notices) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2007; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property is zoned R-3.
3. The applicant has worked with the staff in presenting a much improved revised plat to address the concerns that have been raised.
4. This is a reasonable approach to the garage to accommodate the need.
5. It meets the requirements of Sect. 8-922.
6. It is in character with the existing on-site development in terms of location, height, bulk, and scale.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for the Provisions for Reduction of Certain Yard Requirements as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the 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 (708 square foot garage addition) as shown on the plat prepared by Curtis L. McAllister, as submitted with this application and dated as revised

~ ~ ~ December 18, 2007, CHRISTINA WRIGHT DJEMMAL, SP 2007-DR-080, continued from Page 498

through November 14, 2007, and is not transferable to other land.

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (3,216 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment A to these conditions.
5. A minimum of three evergreen trees or comparable shrubbery a minimum of 5.0 feet in height at time of planting shall be planted between the proposed garage and western lot line. In addition, foundation plantings shall be provided around the sides of the garage to soften the appearance of the addition. All plant material shall be installed prior to a final building inspection. The plant material shall be maintained with mulch and watering as necessary and shall be replaced with like kind material if any plants die or become hazardous.

This approval, 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 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.

//

The meeting recessed at 11:17 a.m. and reconvened at 11:23 a.m.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:00 A.M. MARGARET TOTTEN HOPKINS, SP 2007-DR-108 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.0 ft. with eave 6.1 ft. from side lot line such that side yards total 22.0 ft. Located at 8024 Birnam Wood Dr. on approx. 18,718 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 297.

Chairman Ribble noted that SP 2007-DR-108 had been heard and approved by the Board on December 4, 2007.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:00 A.M. RIVERSIDE GARDENS RECREATION ASSOCIATION, SPA 71-V-216-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 71-V-216 previously approved for community swimming pool to permit building additions, site modifications, increase in membership and change in development conditions. Located at 8633 Buckboard Dr. on

~ ~ ~ December 18, 2007, RIVERSIDE GARDENS RECREATION ASSOCIATION, SPA 71-V-216-02, continued from Page 499

approx. 3.52 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 42A and 43.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Chairman Ribble made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Chris Gilliam, 1910 Bridal Lane, Alexandria, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 71-V-216-02, subject to the proposed development conditions.

Mr. Gilliam presented the special permit request as outlined in the statement of justification submitted with the application. He said David Grant, President of the Riverside Gardens Pool Association; Reed Dudley, surveyor, Runyon, Dudley Associates; and Al Johnson, prior president of the association; were present to answer questions. Mr. Gilliam said the swim/tennis club had been in existence since the mid-'60s, and no major renovations had been done except for an extension of the pool approximately eight years ago. He said the structure was in need of a minor expansion to add handicap facilities and bathrooms, a storage facility, and to extend the patio area.

Mr. Beard and Mr. Gilliam discussed why an increase in membership was needed and from where new members would come. David Grant, 1902 Stirrup Lane, Alexandria, Virginia, said the wait list in the off season was approximately 30 to 40 people, and in the spring the list was brought down to zero. Two years prior, the association went below membership of 225. The pool was the smallest in the area. Cost of maintaining the pool had risen, and membership was static, but expenses continued to increase. Mr. Grant said there was no cash reserve, and increasing membership would help with expenses.

Mr. Beard expressed concern regarding traffic and whether the current capacity accommodated those interested in joining. Mr. Grant said approximately 90 percent of the membership lived within the Riverside Gardens community, and the parking lot was almost never full with the exception of the 4th of July party and swim meets. He said increasing membership by 50 persons would not impact traffic in the neighborhood, and the cap on membership had caused the association to turn away some people. As people moved in and out of the neighborhood, five to ten people would remain on the waiting list, and being able to provide the proposed site modifications would help them to retain current members and encourage new memberships.

Mr. Beard, Mr. Hart, Mr. Grant, and Al Johnson, 8428 Sulky Court, Alexandria, Virginia, discussed correspondence the Board received concerning the upkeep of the property, with Mr. Grant and Mr. Johnson outlining the actions taken to resolve the issues.

Discussions ensued regarding the five-foot wide concrete sidewalk the applicant was being requested to construct to replace an existing four-foot wide asphalt walkway; the deteriorated condition of the existing walkway; the locations of the existing walkway and proposed sidewalk and whether they were in the right-of-way or on private property; the cost of installing and maintaining the sidewalk and the possible damage to existing trees during its construction; the nexus between the sidewalk and the 50-person pool membership increase; the sidewalk being referenced in the County Trails Plan; addressing the sidewalk during the site plan process making a development condition unnecessary; and the applicant's desire to close the gate located on the walkway to avoid further property damage.

In response to a question from Chairman Ribble, Mr. Chase said the present association membership of 225 had been approved in the 1970s and carried forward.

Discussions ensued regarding the hours of operation from 9:00 a.m. to 9:00 p.m., with pool operation for the general membership beginning at 11:00 a.m., and participants arriving as early as 8:00 a.m. for swim meet events.

~ ~ ~ December 18, 2007, RIVERSIDE GARDENS RECREATION ASSOCIATION, SPA 71-V-216-02,
continued from Page 500

Responding to questions from Mr. Smith, Mr. Gilliam pointed out the location of the conservation easement. Mr. Dudley said his company had shown on the plat a means for satisfying the requirements of the Chesapeake Bay Ordinance by showing a conservation easement, which was a proposal and had not been recorded. He said it was his thought that a good portion of the trail meandered through the area, and a conservation easement that protected the vegetation would be compatible.

Chairman Ribble called for speakers.

Charles Wilbur, 8705 Triumph Court, Alexandria, Virginia, came forward to speak in opposition to the application. He said Supervisor Gerry Hyland had been instrumental in the building of the asphalt walkway, and at the time it provided a needed sidewalk, but had since deteriorated. Mr. Wilbur said there had been past problems involving noisy parties on Friday and Saturday evenings, and there was concern that if the membership increased, there could be a tendency to return to the old ways. He requested the Board deny the addition of 50 people to the membership roster.

Discussions ensued regarding the development conditions remaining in effect if the membership increased, the past problem having involved loud outdoor amplified music, and contacting Zoning Enforcement if issues arose.

Discussions ensued regarding how the asphalt trail came to be located on private property and shown on the Comprehensive Plan.

In his rebuttal, Mr. Grant said the association had obtained all necessary permits for their social events; the situation with loud teen parties 10 to 15 years before had been eliminated; citizen complaints should be voiced directly to the center staff who would take immediate action; the purpose of increasing enrollment by 50 members was to help with member retention and financial issues. Mr. Grant said that although the association was willing to work with staff with respect to other alternatives, the \$30,000 quoted for the sidewalk was over 60 percent of the association's operating budget for a pool management company and would be difficult for them to handle financially.

Further discussion ensued regarding the location of the trail on private property, whether the applicant had the right to secure its borders as a result of the vandalism problems, and the determination being made during the site plan process concerning whether the walkway required replacement and who would be responsible for the replacement and maintenance costs.

Mr. Byers suggested Condition 15 be removed.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SPA 71-V-216-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RIVERSIDE GARDENS RECREATION ASSOCIATION, SPA 71-V-216-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 71-V-216 previously approved for community swimming pool to permit building additions, site modifications, increase in membership and change in development conditions. Located at 8633 Buckboard Dr. on approx. 3.52 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 42A and 43. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2007; and

~ ~ ~ December 18, 2007, RIVERSIDE GARDENS RECREATION ASSOCIATION, SPA 71-V-216-02,
continued from Page 501

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The area of the property is 3.52 acres.
3. The zoning is R-3.
4. There is to be a slight increase in pervious area which the applicant has seen fit to set aside a conservation easement.
5. Throughout the testimony given, various concerns that were expressed have been addressed insofar as the reasoning for additional membership and additional site modifications.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 3-303 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, Riverside Gardens Recreation Association and is not transferable without further action of this Board, and is for the location indicated on the application, 8633 Buckboard Drive, and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s) structure(s) and/or use(s) indicated on the special permit plat prepared by Runyon, Dudley, Associates, and dated September 27, 2007, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The hours of operation shall be limited to 9 AM to 9 PM, except that for league meets the pool may open at 8 AM and for swim team practice 7:30 AM limited to the swim team members.
6. 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. Three (3) weeknight parties may be permitted per year, provided written notification is submitted to all contiguous property owners.
 - Shall not extend beyond 12:00 midnight.
7. Existing vegetation along all lot lines and the proposed additional plantings as shown on the special permit amendment plat and the existing fencing shall be deemed to satisfy the transitional screening and barrier requirements.
8. There shall be a maximum number of 275 family memberships.
9. Parking shall be provided on site as shown on the special permit plat. All parking shall be on site.
10. All lighting shall be directed on site and the tennis courts shall not be lighted. All lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
11. All noise from loud speakers shall be confined to the site.

~ ~ ~ December 18, 2007, RIVERSIDE GARDENS RECREATION ASSOCIATION, SPA 71-V-216-02,
continued from Page 502

12. During discharge of swimming pool waters, the following operational procedures shall be implemented:

- Sufficient amount of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range from pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.
- If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

13. Signs shall be in conformance with Article 12, Signs.

14. Stormwater management and Best Management Practices measures shall be provided as determined by DPWES. If any structural facilities are required, no existing or proposed vegetation as shown on the special permit amendment plat shall be removed to install the structures.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently pursued. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:00 A.M. JERUSALEM BAPTIST CHURCH, SPA 73-S-113 Appl. under Sect(s). 3-C03 of the Zoning Ordinance amend SP 73-S-113 previously approved for church to permit the addition of a child care center, building additions, increase in seats and site modifications. Located at 5424 Ox Rd. on approx. 13.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 52, 54 and 55A.

Chairman Ribble noted that SPA 73-S-113 had been administratively moved to February 26, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:30 A.M. DAVID F. COUNTS AND PAIGE COUNTS, A 2007-PR-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a swimming pool and brick patio, which do not comply with the minimum yard requirements of the R-1 District, and a fence in excess of four feet in height, which is located in the front yard of the property, are all in violation of Zoning Ordinance provisions. Located at 10315 Dunfries Rd. on approx. 1.085 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((28)) 1. (Indefinitely deferred from acceptance) (Reactivated from indefinitely deferred)

~ ~ ~ December 18, 2007, DAVID F. COUNTS AND PAIGE COUNTS, A 2007-PR-003, continued from Page 503

Chairman Ribble noted that A 2007-PR-003 had been withdrawn.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:30 A.M. JOHN HO, A 2007-MV-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure (two-story playhouse) that is located in the front yard of a corner lot is in violation of Zoning Ordinance provisions. Located at 4306 Ferry Landing Rd. on approx. 22,500 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((3)) (L) 298.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John Ho, 4306 Ferry Landing Rd., Alexandria, Virginia, reaffirmed the affidavit.

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the memorandum dated December 11, 2007.

Discussion ensued regarding the size and location of the sandbox, with Ms. Collins stating that the entire play area was 200 square feet, and it had to be less than 100 square feet to be legal.

Mr. Ho presented the arguments forming the basis for the appeal. He said everyone in the neighborhood approved of the playhouse and sandbox he had built for his children, with the exception of his next-door neighbor. He said the sandbox was smaller than the elevated deck and was screened to keep insects out, and the play area was located to allow a view of the children from the kitchen window.

Mr. Beard complimented the appellant on the appearance of the playhouse, and in response to his question, Mr. Ho said the playhouse and sandbox were built in June.

Mr. Hammack noted that the appeal was narrowly based on the determination of the Zoning Administrator that the playhouse and sandbox were in the front yard where they were not allowed. He asked the appellant to explain why he thought the determination was in error. Mr. Ho said the property was a corner lot with small front and side yards, and the only place they could put the play equipment was its current location.

Discussion ensued regarding the relocation of the playhouse, with Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, saying that if the playhouse was placed on the ground and it was less than seven feet in height, there were areas where it could be located.

The following speakers came forward in support of the application: Betty Fagan, no address given, Alexandria, Virginia; and Hun Lee, no address given, Alexandria, Virginia. Ms. Fagan submitted photographs to the Board showing the property surrounded by evergreens, which hid the structure from the side and back even in the winter.

Marcus Lundmark, 9323 Craig Avenue, Alexandria, Virginia, came forward to speak in opposition to the application. He voiced concerns regarding the value of his property being affected, violation of the rules for accessory structures and setting a precedent for other accessory structures, the view of the structure from his property, the structure not being harmonious with the surroundings, and the risk of children falling from the two-story playhouse. He said Grist Mill Park was well designed and had a large playground with safe play apparatus.

Ms. Collins said that as the playhouse and sandbox were currently configured, it could not be located in either of the front yards. If the appellant separated the two structures, the sandbox was less than seven feet in height and could go anywhere in the side or rear yard, and if the playhouse was over seven feet in height, it had to be placed at a distance equal to its height from the rear lot line and meet the side yard setback of 15

~ ~ ~ December 18, 2007, JOHN HO, A 2007-MV-036, continued from Page 504

feet.

Chairman Ribble closed the public hearing.

Mr. Hammack stated that the issue before the Board was whether the determination of the Zoning Administrator was correct, and unless the Board felt the Zoning Administrator had erred, its obligation was to uphold the Zoning Administrator. He said that based on the record, the Zoning Administrator was correct, and the appellant would have to reconfigure and relocate the play area. Mr. Hammack moved to uphold the determination of the Zoning Administrator. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Smith and Ms. Gibb were not present for the vote.

//

~ ~ ~ December 18, 2007, Scheduled case of:

9:30 A.M. MICHAEL AND CYNTHIA ARONOFF, A 2007-HM-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a storage yard on property in the R-E District in conjunction with a home-based business without an approved Home Occupation permit in violation of Zoning Ordinance provisions. Located at 2218 Nobehar Dr. on approx. 43,585 sq. ft. of land zoned R-E. Hunter Mill District. Tax Map 27-3 ((5)) 12A. (Admin. moved from 10/23/07 at appl. req.)

Chairman Ribble noted that A 2007-HM-027 had been withdrawn.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:50 p.m.

Minutes by: Mary A. Pascoe / Kathleen A. Knoth

Approved on: January 28, 2015

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III
John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 8, 2008. The following Board Members were present: Chairman John F. Ribble III; Tom Smith; V. Max Beard; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. He announced that it was time for the Board to elect its officers and called for a motion.

Mr. Beard moved to re-appoint Nancy Gibb as Secretary; Paul Hammack as Vice Chairman, and John Ribble as Chairman. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

There were no other Board matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ January 8, 2008, Scheduled case of:

9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7874 Promontory Ct. on approx. 4,803 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 25. (Decision deferred from 12/4/07)

9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-101 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7865 Frick Wy. on approx. 4,670 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 28A. (Decision deferred from 12/4/07)

9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-102 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7884 Train Ct. on approx. 4,618 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 19. (Decision deferred from 12/4/07)

9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-103 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7864 Frick Wy. on approx. 4,803 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 31. (Decision deferred from 12/4/07)

9:00 A.M. THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-104 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7875 Promontory Ct. on approx. 4,803 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 22. (Decision deferred from 12/4/07)

Chairman Ribble said the five special permits would be heard concurrently; they had been deferred for decision only; and, the requested information was distributed that morning.

At the suggestion of Mr. Hart, Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff would craft a development condition to address a potential safety issue with the height of a parabolic mirror that would be reviewed by the Department of Transportation. For Mr. Hart's information, she said staff would review the fence heights of several other homes in the vicinity to determine whether Ordinance standards for a P District were applicable to assure a fair, consistent imposition of the requirements.

Discussion ensued regarding measurement of sight distances from stop signs and general sight distances.

Gregory A. Riegler, McGuireWoods LLP, 1750 Tysons Boulevard, Suite 1800, McLean, Virginia, responded to Mr. Hammack's questions concerning sight distances, that sight distances did not always start from where a stop sign was placed, those considerations of when the lot is determined a corner lot, and some of the

~ ~ ~ January 8, 2008, THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100, SP 2007-PR-101, SP 2007-PR-102, SP 2007-PR-103, and SP 2007-PR-104, continued from Page 507

circumstances when staff defaults to the Virginia Department of Transportation's standards.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-PR-100 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7874 Promontory Ct. on approx. 4,803 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 25. (Decision deferred from 12/4/07) 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 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the developers 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. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and maximum height of a fence as shown on the plat prepared by Urban Engineering & Assoc., Inc., dated January 10, 2007 as revised through August 15, 2007, as submitted with this application and is not transferable to other land.
2. To reasonably ensure the visibility of persons traveling southbound on eastern-most sidewalk on Cole Train Drive, the applicant shall install a parabolic type mirror at the intersection of the private street that provides access to Coal Train Drive.
3. The mirror will be placed to maximize safety for pedestrian and bicycle traffic; this will be done in coordination with the appropriate state and local agencies.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

Mr. Hammack moved to approve SP 2007PR-101 for the reasons stated in the Resolution.

//

~ ~ ~ January 8, 2008, THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100, SP 2007-PR-101, SP 2007-PR-102, SP 2007-PR-103, and SP 2007-PR-104, continued from Page 508

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-101 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7865 Frick Wy. on approx. 4,670 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 28A. (Decision deferred from 12/4/07) 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 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the developers of the land.
2. The title owners of the property are Paul and Julia A. Pasmanik.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and maximum height of a fence as shown on the plat prepared by Urban Engineering & Assoc., Inc., dated January 10, 2007 as revised through August 15, 2007, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

Mr. Hammack moved to approve SP 2007-PR-102 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-102 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7884 Train Ct. on approx. 4,618 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 19. (Decision deferred from 12/4/07) 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

~ ~ ~ January 8, 2008, THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100, SP 2007-PR-101, SP 2007-PR-102, SP 2007-PR-103, and SP 2007-PR-104, continued from Page 509

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the developers of the land.
2. The title owners of the property are Justin I. and Sondra McFadden.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and maximum height of a fence as shown on the plat prepared by Urban Engineering & Assoc., Inc., dated January 10, 2007 as revised through August 15, 2007, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

Mr. Hammack moved to approve SP 2007-PR-103 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-103 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7864 Frick Wy. on approx. 4,803 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 31. (Decision deferred from 12/4/07) 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 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the developers of the land.
2. The title owners of the property are Charles M. and Lani F. Browning.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923

~ ~ ~ January 8, 2008, THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100, SP 2007-PR-101, SP 2007-PR-102, SP 2007-PR-103, and SP 2007-PR-104, continued from Page 510

of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and maximum height of a fence as shown on the plat prepared by Urban Engineering & Assoc., Inc., dated January 10, 2007 as revised through August 15, 2007, as submitted with this application and is not transferable to other land.
2. To reasonably ensure the visibility of persons traveling southbound on eastern-most sidewalk on Cole Train Drive, the applicant shall install a parabolic type mirror at the intersection of the private street that provides access to Coal Train Drive.
3. The mirror will be placed to maximize safety for pedestrian and bicycle traffic; this will be done in coordination with the appropriate state and local agencies.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

Mr. Hammack moved to approve SP 2007-PR-104 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-104 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7875 Promontory Ct. on approx. 4,803 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-4 ((52)) 22. (Decision deferred from 12/4/07) 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 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the developers of the land.
2. The title owner of the property is Ann M. Liu.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

~ ~ ~ January 8, 2008, THE CHRISTOPHER COMPANIES D/B/A CHRISTOPHER MANAGEMENT, INC., SP 2007-PR-100, SP 2007-PR-101, SP 2007-PR-102, SP 2007-PR-103, and SP 2007-PR-104, continued from Page 511

1. This special permit is approved for the location and maximum height of a fence as shown on the plat prepared by Urban Engineering & Assoc., Inc., dated January 10, 2007 as revised through August 15, 2007, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 8, 2008, Scheduled case of:

9:00 A.M. SHERREL D. CHASTAIN & JILL P. CHASTAIN, SP 2007-SP-119 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 21.6 ft. from rear lot line. Located at 6112 Lee-Brooke Pl. on approx. 9,434 sq. ft. of land zoned R-5 (Cluster). Springfield District. Tax Map 79-3 ((22)) 12.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Robert H. Clark, RH Clark Construction L.L.C., 11855 Parkgate Drive, Nokesville, Virginia, the applicant's agent, reaffirmed for affidavit.

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 21.6 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a modification of 3.4 feet, or 14 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 of SP 2007-SP-119 subject to the proposed development conditions.

Mr. Clark presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would not adversely affect the neighboring properties, faced common property that would never be developed, would blend perfectly with the house, and that the applicants resided there for years with no intention of moving and wanted their child to continue attending her school.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-SP-119 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHERREL D. CHASTAIN & JILL P. CHASTAIN, SP 2007-SP-119 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 21.6 ft. from rear lot line. Located at 6112 Lee-Brooke Pl. on approx. 9,434 sq. ft. of land zoned R-5 (Cluster). Springfield District. Tax Map 79-3 ((22)) 12. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

~ ~ ~ January 8, 2008, SHERREL D. CHASTAIN & JILL P. CHASTAIN, SP 2007-SP-119, continued from Page 512

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The staff recommends approval.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (524 square feet) of a two story addition, as shown on the plat prepared by Larry N. Scartz, dated January 17, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,089 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to approval of a building permit, the applicants shall submit and have approved by the Department of Public Works and Environmental Services (DPWES) a Water Quality Impact Assessment.
6. The addition shall comply with the current Chesapeake Bay Ordinance requirements. An exception for the addition shall be obtained, if necessary, from the Department of Public Works and Environmental Services (DPWES), prior to construction.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 8, 2008, Scheduled case of:

9:00 A.M. ZHIMING XUE, SP 2007-SP-121 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 13.0 ft. from side lot line. Located at 11127 Robert Carter Rd. on approx. 20,675 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-4 ((8)) 546.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Zhiming Xue, 11127 Robert Carter Road, Fairfax Station, 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 special permit to permit a modification to minimum yard requirements for certain R-C lots to permit construction of a deck to be located 13 feet from the side lot line. The deck met the minimum yard requirements of the R-1 Cluster District, which was applicable to the lot on July 26, 1982. In the R-1 Cluster District, a minimum side yard of 12 feet is required.

Discussion ensued regarding the home's existing latticework, required heights that permit latticework, and an interpretation of a deck versus an addition.

Mr. Xue presented the special permit request as outlined in the statement of justification submitted with the application. He addressed the Board's concern about the latticework. He said the latticework was pre-existing when he purchased the house five years prior, and his proposal had the support of his homeowners association and the neighbors.

Ms. Langdon concurred with Mr. Byers' understanding of homeowners association rules relating to County Ordinance requirements concerning latticework.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-SP-121 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ZHIMING XUE, SP 2007-SP-121 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 13.0 ft. from side lot line. Located at 11127 Robert Carter Rd. on approx. 20,675 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-4 ((8)) 546. 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 8, 2008; 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.

~ ~ ~ January 8, 2008, ZHIMING XUE, SP 2007-SP-121, continued from Page 514

6. The applicant has presented testimony showing compliance with the required standards for this type of special permit.
7. This is a relatively modest application; it is just a replacement of an old existing deck.
8. The new deck will certainly be an improvement over what is there.
9. The lot is sort of bat-winged shaped, and the narrow point of the lot where the house is placed makes it difficult to have a deck on the rear of the house.
10. The proposed location seems to be the logical place to put the deck.
11. With regard to the lattice work and whether it constitutes an addition, there is a concern to be consistent; however, that matter can be dealt with another day.
12. The applicant has agreed to go forward without the lattice, and with that understanding, the application meets the required standards.
13. This does not seem to have any significant negative impact on anybody based on the photographs and the placement of the house, the neighbors, and existing vegetation.

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 Dewberry & Davis, dated September 27, 1982, as revised by Zhiming Xue, September 9, 2007, 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. No lattice shall be installed below the deck floor.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 8, 2008, Scheduled case of:

9:00 A.M. MARGINOT, CHARLES F. AND JOANNE P., SP 2007-PR-117 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.9 ft. from side lot line. Located at 2582 Plum Tree Ct. on approx. 11,442 sq. ft. of land zoned R-3. Providence District. Tax Map 38-3 ((40)) 13.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

~ ~ ~ January 8, 2008, MARGINOT, CHARLES F. AND JOANNE P., SP 2007-PR-117, continued from Page 515

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Arif H. Hodzic, Hodzic Architects, P.C., 1003 Snapper Cove Lane, Pasadena, Maryland, the applicant's agent, 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 the reduction of certain yard requirements to permit the construction of a garage addition 6.9 feet from the side lot line. The proposed 185-square-foot garage addition would provide for the storage of a second car. Staff concluded that the subject application was in harmony with the Comprehensive Plan, in conformance with the applicable Zoning Ordinance provisions, and recommended approval of SP-2007-PR-117 subject to the proposed development conditions.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicants purchased their home in 1978 and were now both retired. He said their house was the only home on the cul-de-sac built on an irregular shaped lot, and the lot was so narrow, only a one-car garage could be constructed. The applicants sought to construct a one-story garage extension to park their cars to be inside and out of inclement weather. He addressed staff's concern regarding several bushes.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-PR-117 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGINOT, CHARLES F. AND JOANNE P., SP 2007-PR-117 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.9 ft. from side lot line. Located at 2582 Plum Tree Ct. on approx. 11,442 sq. ft. of land zoned R-3. Providence District. Tax Map 38-3 ((40)) 13. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The application meets all the submission requirements.
3. The application is consistent with the construction and architecture of the dwelling as well as the surrounding neighborhood.
4. The proposal is supported by at least two of the neighbors.
5. The applicant has agreed to conditions for the protection of existing shrubbery.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for

~ ~ ~ January 8, 2008, MARGINOT, CHARLES F. AND JOANNE P., SP 2007-PR-117, continued from Page 516

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 (185 sq. ft. garage addition) as shown on the plat prepared by Laura L. Scott and dated August 23, 2007 (signed September 4, 2007), as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (4,158 sq. ft.) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. Prior to commencement of construction, tree protection fencing shall be installed between the location of the proposed addition and the dripline of the two Holly trees located along the western property line. The protective fencing shall remain intact during the entire construction process.
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 establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 8, 2008, Scheduled case of:

9:00 A.M. FOUAD MOUMEN, SP 2007-PR-118 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.0 ft. from side lot line. Located at 3118 Covington St. on approx. 21,927 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((4)) 8.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Fouad Moumen, 3118 Covington Street, Fairfax, Virginia, 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 the reduction of certain yard requirements to permit the construction of a 15-foot high, 576-square-foot accessory structure, which comprised a detached garage, 10 feet from the north side lot line, to the rear of the dwelling, featuring siding construction. Staff believed that the structure could be located in other areas of the lot and that the applicant had not considered alternate

~ ~ ~ January 8, 2008, FOUAD MOUMEN, SP 2007-PR-118, continued from Page 517

areas of the lot, which would represent a minimum request. Neither the layout, nor the orientation of the existing dwelling prevented the construction of the detached garage within the available building envelope on site. The lot was not oddly-shaped, and contained no other accessory structures which would prevent the construction of the detached garage outside minimum yards. No issues regarding steep slopes prevented the construction of the detached garage in any part of the property, and the detached garage could be constructed in many locations in the rear yard without removing any trees or significant vegetation. The structure could be placed as close as 15 feet to the rear lot line. The allowance of a 20-foot side yard provided for the location of the detached garage in an area of the lot which did not greatly affect the use of the rear yard. Staff believed the application was not in conformance with the applicable Zoning Ordinance provisions and recommended denial.

Mr. Varga addressed Mr. Beard's question concerning an alternate location that might create impervious areas and disturb landscape plantings and existing vegetation.

Discussion ensued regarding the application meeting Standard 9 of Sect. 8-922; clarification of the garage's location; existing vegetation; and shifting the garage slightly to the right as recommended by staff.

Mr. Moumen presented the special permit request as outlined in the statement of justification submitted with the application. He pointed out that he had a letter from his neighbor supporting his request. He said his proposed location would least affect his neighbor's property, cause no disturbance to existing vegetation, and afforded an accessible access and exit to the garage.

Chairman Ribble called for speakers.

Tim Moumen, 5284 Meadow Estates Drive, Fairfax, Virginia, came forward to speak in support of the application. Identifying himself as the applicant's son, he said nowadays as much green space as possible should be kept. He noted that with staff's proposed location, he was concerned about his mother's difficulty navigating into the garage as well as the distance his parents must walk to the garage. He said he thought it made little sense for such a distance separating a garage from the house. Mr. Moumen commented on a neighbor's garage.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2007-PR-118 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Discussion ensued regarding Mr. Hammack's concern with the Ordinance language that stipulated the word "shall" being mandatory; that particular factors must be considered; the specification of alternate available locations be considered; the fact that the large back yard afforded other locations and the garage could be smaller; and, staff's position all of which were good points.

Concurring with Mr. Hammack's statements, Mr. Byers said he could not support the motion. He said he found there was no flexibility regarding the word "shall" of Standard 9. He noted staff's factual presentation that the proposed location did not represent the minimum amount of reduction necessary to accommodate the garage on the lot; that neither the layout nor the orientation of the existing dwelling prevented the construction of the garage within the available building envelope on the site; that the lot was not oddly shaped and contained no accessory structures that would prevent the garage's construction outside the minimum yards; that there were no issues regarding steep slopes that would prevent the garage's location in other areas of the lot; and, the garage could be placed in other locations in the rear yard without removing trees or significant vegetation.

Mr. Hart stated that he could not support the motion. He commented on the applicability of Standard 9 and the fact that there were other locations available. He pointed out several alternate locations.

Mr. Smith said he thought the situation was a close call, but he would support the motion because the Board had discretion when applying a special permit. He noted that there would be a reduction in impervious surface with the special permit and that it was a relatively minimal modification. He listed several specific factors that Standard 9 stipulated could be included, but were not limited to.

~ ~ ~ January 8, 2008, FOUAD MOUMEN, SP 2007-PR-118, continued from Page 518

Mr. Beard commented that the Board should not lose sight of the fact that the applicant wanted to do something with his own property, not whatever the governing authority was telling him to do.

Chairman Ribble commented that indeed this was a close call, but he would not support the motion.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FOUAD MOUMEN, SP 2007-PR-118 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.0 ft. from side lot line. Located at 3118 Covington St. on approx. 21,927 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((4)) 8. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. This application is a matter of interpretation on the part of staff and somewhat of a property – rights issue.
3. This is a reasonable request.
4. The reality of this situation is that it falls within the parameters of new ordinances as are understood by this Board member.
5. There has been no opposition from the neighbors.
6. The applicant has made a case for his proposal.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**.

Mr. Smith seconded the motion, which **FAILED*** by a vote of 2-4. **THEREFORE, THE APPLICATION WAS DENIED.** Messieurs Ribble, Hart, Byers, and Hammack voted against the motion. Ms. Gibb was 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.

Mr. Hammack moved to waive the 12-month wait period for refileing an application. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 8, Scheduled case of:

9:00 A.M. WILDER SOTO, SP 2007-MA-131 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 3.4 ft. and deck 2.5 ft. from side lot line. Located at 4003 Estabrook Dr. on approx. 14,720 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((5)) 27.

~ ~ ~ January 8, 2008, WILDER SOTO, SP 2007-MA-131, continued from Page 519

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chairman Ribble asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edwin Soto, 3508 6th Street South, Arlington, 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 request was to permit a reduction to minimum yard requirements based on an error in building location to permit a dwelling to remain 3.4 feet and deck 2.5 feet from the side lot line. The applicant purchased the house in July 2005. In May and July, the applicant was issued two Notice of Violation letters from the Zoning Enforcement Branch, which included a violation that an addition was constructed on the east side of the property which did not meet the required 15-foot side yard requirement. The applicant indicated that a previous owner constructed the addition, with no record of a permit, prior to his purchase of the house.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Hart's question concerning the applicant obtaining a building permit. She said staff makes no recommendation on building in error applications, but in order for the applicant to keep the addition, he must obtain a building permit, and to acquire the permit, he must comply with County requirements for approval of the permit.

Mr. Soto presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition was there when he purchased the home, and he only made several exterior changes to improve the appearance. He said to raze the structure would be very expensive, perhaps \$35,000, and to date, there were no neighbor comments opposing the application.

Mr. Hammack referred to a two-page petition in opposition contained in the file.

Mr. Soto responded to questions regarding the pre-existing condition of the addition and the few subsequent cosmetic improvements he completed.

Chairman Ribble called for speakers.

Susan Long, 4005 Estabrook Drive, Annandale, Virginia, came forward to speak. She stated that the unit was vacant because the applicant had been recently convicted of running a boardinghouse; the property was an eye-sore; it lessened property values; and, it was not harmonious with the neighborhood. She said she was concerned about the possibility of fires because there was an ancient furnace, a poorly maintained fireplace and chimney, and a wood-burning stove, and her property was in danger because of the close proximity of the applicant's house. Ms. Long noted that a petition opposing the special permit was signed by every homeowner who received notification of the public hearing. She said the applicant had no respect for County laws and no regard for good relations with his neighbors. Ms. Long said the advertisement for the sale of the property listed that there was ample parking, two kitchens, and two living rooms, and it was obvious the applicant sought to sell it as a boardinghouse.

Rose Guinan, 4032 Estabrook Drive, Annandale, Virginia, came forward to speak for herself and her husband. She said she opposed the request because it allowed the continued illegal use of the property for multiple individuals and/or families to reside in a single-family dwelling. There was an established residential community of close-knit, caring owners who took pride in and cherished their neighborhood and often monitored certain properties because the owners continually abused the County's zoning and health regulations. Ms. Guinan said that since the subject property was purchased by Mr. Soto, he was the worst violator. She said they were successful in the past opposing the assaults on their neighborhood, and she hoped the Board would take into consideration their concerns and they would again be successful in maintaining the community they loved.

In response to Mr. Hart's question, Michael Congleton, Senior Deputy Zoning Administrator, Zoning Enforcement/Property Maintenance, said there were only two outstanding violations on the property, the location of the dwelling and the deck.

In rebuttal, Mr. Soto said he thought the neighbors' concerns were mixed up with the number of people who

~ ~ ~ January 8, 2008, WILDER SOTO, SP 2007-MA-131, continued from Page 520

were living in the house and had nothing to do with the safety and improvement of the property; that Ms. Guinan's problems were with previous tenants, not the current proposal to take care of the house.

Chairman Ribble closed the public hearing.

Stating he would make his motion for purposes of discussion, Mr. Hammack moved to deny SP 2007-MA-131.

Mr. Beard said he always believed neighborhoods located next to commercial areas deserved tender care. He said that because the applicant stated under oath that the conditions prevailed when he purchased the property, he found it to be a separate issue, notwithstanding the property's history.

Mr. Hart said he would support the motion, and he concluded that under Section 8-006, General Standards 2 and 3 were not met.

Mr. Byers agreed with Mr. Hart concerning Standards 2 and 3. He also noted that the safety issue remained even after the property was sold because either it must come into Code or be demolished. He said he thought it was the applicant's responsibility.

Mr. Hammack said he would move for a deferral if Mr. Soto was interested in retaining professional assistance with getting the unit into compliance.

Mr. Smith said he agreed with the comments of Mr. Hammack, Mr. Byers, and Mr. Hart and would support a deferral if the applicant requested it.

Mr. Soto declined a deferral.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILDER SOTO, SP 2007-MA-131 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 3.4 ft. and deck 2.5 ft. from side lot line. Located at 4003 Estabrook Dr. on approx. 14,720 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((5)) 27. 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 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has determined that the area exceeds 10 percent of the measurement involved.
3. Based on the testimony before the Board today, it is difficult to find that the applicant has met Standard C, that the reduction will not impair the purpose or intent of the Ordinance.
4. The applicant has not met Standard D, that it will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
5. The applicant has not met Standard E, that it will not create an unsafe condition with respect to both other property and public streets.
6. It is found that the applicant does not comply with all of the required standards.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ January 8, 2008, WILDER SOTO, SP 2007-MA-131, continued from Page 521

That the applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Byers seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 8, 2008, Scheduled case of:

9:00 A.M. THE WESLEYAN CORPORATION, D/B/A UNITED WESLEYAN CHURCH, SP 2007-LE-029 Appl. under Sect(s). 3-303 of the Zoning Ordinance for an existing church to permit addition, increase in seats and site modifications. Located at 5502 Trin St. on approx. 4.31 ac. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 91A and 94A. (Admin. moved from 6/5/07, 8/7/07, and 10/16/07 at appl. req.)

Chairman Ribble noted that SP 2007-LE-029 had been indefinitely deferred at the applicant's request.

Susan C. Langdon, Chief, Special Permit and Variance Branch, acknowledged the request was correct.

//

~ ~ ~ January 8, 2008, Scheduled case of:

9:30 A.M. DAVID L. BROWN AND MARY ELLEN BROWN, A 2006-DR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, child's play equipment, a patio, and outdoor storage, all located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1840 Patton Te. On approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 21. (Indefinitely deferred from acceptance) (Reactivated from indefinitely deferred). (Admin. moved from 4/10/07, 5/15/07, and 9/18/07 at appl. req.)

Chairman Ribble noted that A 2006-DR-012 had been administratively moved to April 8, 2008, at 9:30 a.m., at the appellants' request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said the applicant recently submitted a special permit application, which she believed would be accepted shortly.

//

~ ~ ~ January 8, 2008, Scheduled case of:

9:30 A.M. 6121 COLUMBIA PIKE L.L.C., A 2007-MA-019, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard on property in the PDH-12 District in violation of Zoning Ordinance provisions. Located at 6121 Columbia Pi. on approx. 2.68 ac. of land zoned PDH-12 and H-C. Mason District. Tax Map 61-4 ((4)) 157. (Admin. moved from 8/7/07 and 10/16/07 at appl. req.)

Chairman Ribble noted that A 2007-MA-019 had been administratively moved to March 11, 2008, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator, said that that was correct.

//

~ ~ ~ January 8, 2008, Scheduled case of:

9:30 A.M. 6121 COLUMBIA PIKE L.L.C., A 2007-MA-020, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a motor vehicle storage and impoundment yard on property in the PDH-12 District in violation of Zoning Ordinance provisions. Located at 6121 Columbia Pi. on approx. 2.68 ac. of land zoned PDH-12 and H-C. Mason District. Tax Map 61-4 ((4)) 157. (Admin. moved from 8/7/07 3and 10/16/07 at appl. req.)

Chairman Ribble noted that A 2007-MA-020 had been administratively moved to March 11, 2008, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She responded to Mr. Byers' question concerning the various uses, potential rezoning, and status of the violations.

Discussion ensued regarding the history of the property's proposed and current uses and development. Ms. Stanfield said it was her understanding the appellant was working with the Board of Supervisors who gave them until March to clear the violations.

//

~ ~ ~ January 8, 2008, 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) (Indefinitely deferred from 8/1/06) (Reactivated from indefinitely deferred) (Admin. moved from 7/24/07 and 10/23/07 at appl. req.)

Chairman Ribble noted that A 2005-SP-045 had been administratively moved to March 4, 2008, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said the application was before the Board on numerous occasions, and the appellant had addressed the violation with a special permit application, which was expected to be accepted very soon.

//

~ ~ ~ January 8, 2008, After Agenda Item:

Request for Additional Time
Wakefield Chapel Recreation Association, Inc., SPA 76-A-022-2

Mr. Hammack moved to approve six months of Additional Time. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was May 30, 2008.

//

~ ~ ~ January 8, 2008, After Agenda Item:

Request for Additional Time
Tuckahoe Recreation Club, Inc., SPA-82-D-055-4.

Mr. Hammack moved to approve 30 months of Additional Time. Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was June 21, 2010.

//

~ ~ ~ January 8, 2008, continued from Page 523

As there was no other business to come before the Board, the meeting was adjourned at 11:02 a.m.

Minutes by: Paula A. McFarland

Approved on: November 3, 2009

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble, 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 15, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 8:59 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ January 15, 2008, Scheduled case of:

9:00 A.M. DONNA CARTER, SP 2007-MA-123 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 30.5 ft. with eave 30.1 ft. from front lot line and 12.3 ft. with eave 11.7 ft. from side lot line, carport 20.7 ft. from front lot line and accessory structure to remain 6.8 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6200 Beachway Dr. on approx. 14,241 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 919.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Donna Carter, 6200 Beachway Drive, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Hedrick said that although the applicant was proposing to remove the portion of the addition which protruded into the storm sewer easement, staff believed the request should go forward with the addition to remain 12.3 feet with eave 11.7 feet from a side lot line since staff did not have dimensions with the removal of the protrusion. She said a memorandum had been distributed to the Board on January 8, 2008, with revised development conditions to address the issue. She stated that the carport, which was located 20.7 feet from a front lot line, was proposed to be removed entirely by the applicant subsequent to the publication of the staff report, so that request had been withdrawn, and revised development conditions had been distributed which removed the carport from the development conditions. A development condition had also been added to address the issues of the eaves to remain from the front and side lot lines as an administrative reduction.

Mr. Hart and Ms. Hedrick discussed the removal of the carport and alterations to the garage.

Ms. Carter presented the special permit request as outlined in the statement of justification submitted with the application. She said that with the exception of the play equipment, all of the errors in location existed when the house was purchased five years prior, and the six-foot high fence protected her children and prevented her dog from escaping the yard.

Mr. Hart, Ms. Carter, and Ms. Hedrick discussed the measurements of the fence height, removal of portions above six feet, the effect the alterations to the garage would have on the roof, and permission having been obtained from Land Development Services for the roof and cement platform to remain in the sewer easement.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-MA-123 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DONNA CARTER, SP 2007-MA-123 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 30.5 ft. with eave 30.1 ft. from front lot line and 12.3 ft. with eave 11.7 ft. from side lot line, carport 20.7 ft. from

~ ~ ~ January 15, 2008, DONNA CARTER, SP 2007-MA-123, continued from Page 525

front lot line (**THE APPLICANT WITHDREW THE REQUEST FOR THE CARPORT**), and accessory structure to remain 6.8 ft. from side lot line, and to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6200 Beachway Dr. on approx. 14,241 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 919. 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 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses; and the additional standards for this use as contained in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location; and, Sect. 8-923, Provisions for Increase in Fence and/or Wall Height in Any Front Yard, of the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of the garage addition, accessory structure (playhouse), and fence, as shown on the plat prepared by Dominion Surveyors Inc., dated June 13, 2007, as revised through October 16, 2007, as submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the garage addition shall be diligently pursued and obtained

~ ~ ~ January 15, 2008, DONNA CARTER, SP 2007-MA-123, continued from Page 526

within 120 days of final approval or the special permit for this addition shall be null and void.

3. Notwithstanding what is shown on the special permit plat, the applicant shall remove the portion of the garage addition which extends into the 15 foot storm sewer easement.
4. An Administrative Reduction shall be obtained from the Department of Planning and Zoning for the eaves to the addition located 30.1 feet (or 6%) from the front lot line and 11.7 feet (or 3%) from the side lot line to remain. If this approval is not granted, the eaves shall be reduced in size to meet Zoning Ordinance requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:00 A.M. PHYLLIS J. PARKER, TRUSTEE FOR PHYLLIS J. PARKER, REVOCABLE TRUST AND WAYNE B. PARKER, TRUSTEE FOR WAYNE B. PARKER REVOCABLE TRUST, SP 2007-BR-126 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.3 ft. from rear lot line. Located at 4535 Gilberston Rd. on approx. 10,500 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-2 ((8)) 95.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Kia Biron, the applicant's agent, 1719 Rupert Street, McLean, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-BR-126, subject to the proposed development conditions.

Mr. Biron presented the special permit request as outlined in the statement of justification submitted with the application. He said the screen porch would maintain the same footprint as the existing deck, be compatible with the surrounding neighborhood, and would not infringe upon anyone's property.

Mr. Hart and Mr. Biron discussed an e-mail received from Celeste and Stephen Delahunty, with Mr. Biron stating that there would be no visual impact or devaluation to the Delahunty property, and only screens would be installed.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-BR-126 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PHYLLIS J. PARKER, TRUSTEE FOR PHYLLIS J. PARKER, REVOCABLE TRUST AND WAYNE B. PARKER, TRUSTEE FOR WAYNE B. PARKER REVOCABLE TRUST, SP 2007-BR-126 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.3 ft. from rear lot line. Located at 4535 Gilberston Rd. on approx. 10,500 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-2 ((8)) 95. Mr. Byers moved that the Board of

~ ~ ~ January 15, 2008, PHYLLIS J. PARKER, TRUSTEE FOR PHYLLIS J. PARKER, REVOCABLE TRUST AND WAYNE B. PARKER, TRUSTEE FOR WAYNE B. PARKER REVOCABLE TRUST, SP 2007-BR-126, continued from Page 527

Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants do, in fact, meet all of the submission requirements set forth in Sect. 8-922.
3. It was noted that staff recommended approval.
4. The concerns raised in the letter from the standpoint of the neighbor have been adequately addressed.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for the Provisions of Reduction of Certain Yard Requirements as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (224 square feet) of a screen porch addition, as shown on the plat prepared by Larry N. Scartz, dated August 10, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,840 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:00 A.M. TASNEEM ZIA AHMAD D/B/A OAKHILL MONTESSORI, SP 2007-SU-128 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home child care facility. Located at 3305 West Ox Rd. on approx. 38,459 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 54.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Tasneem Ahmad, 3305 West Ox Road, Herndon, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. He said that subsequent to the completion of the special permit plat, the applicant installed an asphalt circular turnaround in the front yard facing West Ox Road in order to address neighbors' concerns regarding child pickup and drop-off. Mr. Varga said the addition of the circular turnaround appeared to exceed the 25 percent impervious area permitted in a front yard, was unnecessary because there were sufficient parking and turnaround areas on the southern side of the house, and detracted from the residential nature of the property. Staff recommended denial of SP 2007-SU-128.

Ms. Ahmad presented the special permit request as outlined in the statement of justification submitted with the application. She said she had received a letter from the County stating that she would have to remove part of the driveway because it detracted from the neighborhood, and she submitted photographs of other similar driveways in the area. Ms. Ahmad said the two parking spaces in the carport would no longer be available because the carport was to be converted into a sunroom. She said she was concerned about traffic backing up on Colewood Street if the circular driveway was removed, and she did not want to impact the neighborhood. Ms. Ahmad said she planted trees to shield the property and had received several compliments from neighbors on the appearance of her yard.

Discussions ensued regarding the applicant's plan to convert the carport into a sunroom and whether a reduction to the minimum yard would be necessary, the available parking, the residential character of the property being affected by the circular driveway, reduction of impervious surface to meet the 25 percent coverage limitation, the Board being unable to use the unrevised plat on which to base their decision, and whether the applicant wanted to go forward with the current application and file a special permit for the sunroom at a later date or incorporate enclosing the carport into the current application, with Ms. Ahmad saying she wanted to proceed with the current application.

Naseer Ahmad, the applicant's husband, 3305 West Ox Road, Herndon, Virginia, said that within the next three weeks he could provide the Board with a copy of a revised plat showing where the turnaround and parking spaces were located.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on SP 2007-SU-128 to February 5, 2008, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF LAUREL GROVE BAPTIST CHURCH, VC 2007-LE-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reconstruction of church 20.0 ft. with stairs 14.0 ft. from front lot line. Located at 6834 Beulah St. on approx. 20,362 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((1)) 25 (Concurrent with SP 2007-LE-122).

9:00 A.M. TRUSTEES OF LAUREL GROVE BAPTIST CHURCH, SP 2007-LE-122 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reconstruction of a church. Located at 6834 Beulah St. on approx. 20,362 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((1)) 25 (Concurrent with VC 2007-LE-004).

~ ~ ~ January 15, 2008, TRUSTEES OF LAUREL GROVE BAPTIST CHURCH, VC 2007-LE-004 and SP 2007-LE-122, continued from Page 529

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Peter Juanpere, the applicant's agent, 10201 Lee Highway, Fairfax, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-LE-122, subject to the proposed development conditions.

Discussions ensued regarding there being no other avenue besides a variance the applicant could pursue to rebuild the front portion of the church, which had been destroyed by an electrical fire, using the same foundation; the cemetery behind the church limiting where the structure could be located; the plat and conditions having been revised to address the landscaping and parking concerns identified in the staff report with the number of parking spaces being reduced to 19 and seats in the church reduced to 76; other possible uses of the property; and the church not being a legally non-conforming use because the rear section had been added without permit approval.

Mr. Juanpere presented the variance and special permit requests as outlined in the statements of justification submitted with the applications. He noted that the church had been established in 1884 and was the oldest African-American church in continuous use in Fairfax County. He said it was the applicant's understanding that the addition in the rear of the church was built in 1952, and in looking through the records, he thought a special permit or special exception had been obtained at that time, but not for the whole rear addition, only for a certain portion of the addition. He stated that adjacent to the church property was the Laurel Grove School, which was one of the first African-American schools in the county, and the whole site surrounding the school would be developed with additional parking spaces. Mr. Juanpere said that if the church could not build on its existing foundation, it would render the property useless, and no one would want to build a residential home in the middle of a parking lot fronting on Beulah Street. He stated that when Beulah Street had been widened, a portion of the church property had been taken. Mr. Juanpere said the church was under the assumption that all the parking spaces belonged to them; however, in looking at some of the original deeds from 1884, they discovered that the parking spaces shown in dotted line were not part of the church's original property. He said that given the fact the church lost property when Beulah Street was expanded and there was a historical cemetery directly behind it, a historical school next to it, and development going on around it, the applicant asked to be allowed to rebuild on its original foundations.

Mr. Hart and Mr. Juanpere discussed how much of the structure could be rebuilt on the existing foundation with a special permit and no variance, the setback and parking issues involved with building a larger church, the church owning one half acre with most of it being occupied by the adjacent cemetery, the cemetery being defined by a fence, but there being no record to indicate whether any graves were located outside the fence, and options considered to rebuild the church.

Mr. Hart asked whether the applicant had discussions with the Supervisor's office concerning an ordinance amendment that would allow the church to rebuild without triggering the variance standards. Mr. Juanpere said it had been discussed, but there had been a change of supervisors, and the avenue was not explored. Mr. Juanpere presented letters of support from the Lewin Park Civic Association and the Laurel Grove School Association.

Mr. Hart said he would have no difficulty with the church rebuilding, but he thought the Ordinance should allow a structure to be replaced if there was a fire. He said he was troubled by the application of the variance standards to the application following the Virginia Supreme Court decision regarding the Cochran case and the current standard being that the BZA had to conclude that the Ordinance interfered with all reasonable beneficial use of a property as a threshold matter.

Chairman Ribble called for speakers.

The following speakers came forward to speak: Cassie Watson, 5619 Morton Road, Alexandria, Virginia; Delores Comer, 8017 Hammond Street, Alexandria, Virginia; Angela Morral, 6519 Morning Glen Court, Alexandria, Virginia; Purvis Dawson, member and Chairman of the Deacon Board, Calvary Road Baptist

~ ~ ~ January 15, 2008, TRUSTEES OF LAUREL GROVE BAPTIST CHURCH, VC 2007-LE-004 and SP 2007-LE-122, continued from Page 530

Church, 6811 Beulah Street, Alexandria, Virginia; and Edward Young, Pastor of Laurel Grove Baptist Church, 6834 Beulah Street, Alexandria, Virginia. They spoke about the history of the church, the fire that destroyed it, the widening of Beulah Street several times which resulted in the church losing frontage. The pastor of the Calvary Road Baptist Church and its 1500 members supported the application and had donated over \$10,000 to Laurel Grove Baptist Church to assist with rebuilding. Letters of support and a petition containing 439 signatures were submitted for the record.

Following Ms. Comer's testimony Mr. Byes asked her if the County had designated the church as a historic site. Ms. Comer said the document had been written, but the status had not yet been determined.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve VC 2007-LE-004 for the reasons stated in the Resolution.

//

REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF LAUREL GROVE BAPTIST CHURCH, VC 2007-LE-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reconstruction of church 20.0 ft. with stairs 14.0 ft. from front lot line. Located at 6834 Beulah St. on approx. 20,362 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((1)) 25 (Concurrent with SP 2007-LE-122). Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 20,362 square feet.
4. The subject property was acquired in good faith.
5. The property has at least one of the following characteristics, including specifically an extraordinary situation or condition on the property, including the cemetery on the site, the fact that the use had been in existence since the 1800s.
6. It is a relatively small parcel.
7. The condition or situation of the subject property or the intended use of the subject property is not so generally recurring in nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board as an amendment to the Zoning Ordinance.
8. The strict application of the Ordinance would produce undue hardship.
9. Under the Cochran decision, recognizing that means the BZA has to make an interference with all reasonable beneficial uses of the property taken as a whole.
10. There is a road that has been widened considerably.
11. The relatively small parcel, the cemetery behind the church, which could lead to problems relative to water and sewer in the event of a relocation.
12. The church being surrounding by a church, school, and office building uses does not seem suitable then for a residential use under its current zoning.
13. The undue hardship is not shared generally by other properties in the same zoning district in the same vicinity.
14. The strict application of the Ordinance here would prohibit or unreasonably restrict all reasonable

~ ~ ~ January 15, 2008, TRUSTEES OF LAUREL GROVE BAPTIST CHURCH, VC 2007-LE-004 and SP 2007-LE-122, continued from Page 531

use of the property.

15. This will not be a substantial detriment to the adjacent property, who, in fact, support it.
16. There was no opposition at the public hearing.
17. The Board had letters and speakers in support of the applications.
18. The character of the zoning district will not be changed by the granting of the variance.
19. It is consistent with the way it's been a long, long time.
20. As supported by staff and others, the variance will be in harmony with the intended spirit and purposes of the Ordinance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - F. 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 approval is granted to the applicant only, Trustees of Laurel Grove Baptist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 6834 Beulah 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 Charles F. Dunlap and dated August 30, 2007 as revised through January 8, 2008, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

~ ~ ~ January 15, 2008, TRUSTEES OF LAUREL GROVE BAPTIST CHURCH, VC 2007-LE-004 and SP 2007-LE-122, continued from Page 532

4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The number of seats in the sanctuary shall not exceed 76.
6. Parking shall be provided as shown on the special permit plat. All parking for the use shall be on site.
7. If lighting is provided it shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. There shall be no up lighting on site, including any sign or the building, and lights shall be turned off when the site is not in use.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sects.8-015 and 18-401 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. Beard seconded the motion, which carried by a vote of 6-0. Mr. Gibb was absent from the meeting.

//

Following the motion to approve the variance, Mr. Hart, Mr. Byers, and Mr. Hammack gave their reasons for supporting the motion, and Chairman Ribble indicated his support.

Mr. Smith moved to approve SP 2007-LE-122 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF LAUREL GROVE BAPTIST CHURCH, SP 2007-LE-122 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit reconstruction of a church. Located at 6834 Beulah St. on approx. 20,362 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((1)) 25 (Concurrent with VC 2007-LE-004). Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 15, 2008; 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

~ ~ ~ January 15, 2008, TRUSTEES OF LAUREL GROVE BAPTIST CHURCH, VC 2007-LE-004 and SP 2007-LE-122, continued from Page 533

Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Trustees of Laurel Grove Baptist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 6834 Beulah 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 Charles F. Dunlap and dated August 30, 2007 as revised through January 8, 2008, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The number of seats in the sanctuary shall not exceed 76.
6. Parking shall be provided as shown on the special permit plat. All parking for the use shall be on site.
7. If lighting is provided it shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. There shall be no up lighting on site, including any sign or the building, and lights shall be turned off when the site is not in use.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sects. 8-015 and 18-401 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. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:00 A.M. MARS PAN-CHRISTOPHER REAL ESTATE, LLC, SPA 97-B-024 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 97-B-024 previously approved for kennel with ancillary veterinary hospital to permit change in permittee. Located at 10998 Clara Barton Dr. on approx. 33,280 sq. ft. of land zoned R-1. Braddock District. Tax Map 77-1 ((2)) 11.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

~ ~ ~ January 15, 2008, MARSPAN-CHRISTOPHER REAL ESTATE, LLC, SPA 97-B-024, continued from Page 534

Mark Jenkins, the applicant's agent, 2701 Chain Bridge Road, Vienna, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 97-B-024, subject to the proposed development conditions.

Mr. Chase confirmed for Mr. Beard that the application was for a change of ownership only.

Mr. Jenkins presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said Development Condition 6 had been discussed with staff, and staff had confirmed the condition limited the number of employees to ten at any one time on the site, not the total number of employees.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SPA 97-B-024 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARSPAN-CHRISTOPHER REAL ESTATE, LLC, SPA 97-B-024 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 97-B-024 previously approved for kennel with ancillary veterinary hospital to permit change in permittee. Located at 10998 Clara Barton Dr. on approx. 33,280 sq. ft. of land zoned R-1. Braddock District. Tax Map 77-1 ((2)) 11. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the property lot is 33,280 square feet.
4. Staff supports the approval.
5. This is just a change of ownership for the business that will continue on as it has.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant, Marspan-Christopher Real Estate, LLC, only and is not transferable without further action of this Board, and is for the location indicated on the application, 10998 Clara Barton 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, dated April 16, 1997 as revised through July 10, 1997, 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 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 area of the building utilized for an ancillary veterinary hospital shall not exceed 40% of the total gross floor area of the building. All grooming activities shall be associated with the kennel use and all grooming and veterinary hospital activities shall be ancillary to the kennel use. The kennel and ancillary veterinary hospital shall be located entirely within the structure except for the periodic walking of animals that are leashed and supervised. There shall be provisions to board a total of 70 animals, with no more than 50 animals boarding overnight.
6. The maximum number of employees shall not exceed ten (10) at any one time.
7. A minimum of 15 parking spaces shall be provided on the site. All parking for the use shall be on-site as shown on the special permit plat.
8. The hours of operation for the kennel shall be limited to 6:00 a.m. to 9:00 p.m. seven days a week. The hours of operation for the ancillary veterinary hospital shall be limited to 8 a.m. to 7:00 p.m. Monday through Saturday, and 10:00 a.m. to 2 p.m. Sunday.
9. The barrier requirements along all property boundaries shall be waived. The transitional screening requirements shall be modified to the existing transitional screening on site and maintained as follows:

North

Transitional Screening shall be provided along the northern property boundary within a planted strip with a minimum of 20 feet, as shown on the sketch contained as Exhibit A, for the purpose of maintaining the residential appearance of the building. Natural vegetation may be utilized where possible for transitional screening. The exact number, type and extent of the plant materials are subject to the determination of Urban Forest Management, DPWES.

East

Transitional Screening shall be provided along the eastern property boundary within a planted strip with a minimum of 25 feet, with the exception of the area surrounding the sanitary sewer lateral, as shown on special permit plat, for the purpose of maintaining the residential appearance of the site. Natural vegetation may be utilized where possible for transitional screening. The exact number, type and extent of the plant materials are subject to the determination of Urban Forest Management, DPWES.

South

Transitional Screening shall be provided along the southern property boundary within a planted strip with a minimum width of 25 feet, as shown on the special permit plat, for the purpose of softening the visual impact of the parking lot from the adjacent child care center. Natural vegetation may be utilized where possible for transitional screening. The exact number, type and extent of the plant materials are subject to the determination of Urban Forest Management, DPWES.

~ ~ ~ January 15, 2008, MARSPAN-CHRISTOPHER REAL ESTATE, LLC, SPA 97-B-024, continued from Page 536

West

Landscaping shall be provided along the western property boundary within a planted strip which ranges from 13 feet to 32 feet, as shown on the sketch contained as Exhibit A, in order to maintain a residential appearance which complements the residential neighborhood on the west side of Route 123. This landscaping may be subject to the review and approval of Urban Forest Management, DPWES and if necessary, with VDOT.

10. The kennel and ancillary veterinary hospital shall be in general accordance with the conceptual elevation contained in Attachment A.
11. All signage shall be in accordance with Article 12, Signs, of the Zoning Ordinance.
12. The operation of the kennel and ancillary veterinary hospital shall be approved by the Health Department prior to the issuance of a Non-RUP.

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. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:00 A.M. DUNCAN W. AND GERD S. RITCHIE, SP 2007-DR-127 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.5 ft. from side lot line. Located at 10921 Beach Mill Rd. on approx. 42,367 sq. ft. of land zoned R-E. Dranesville District. Tax Map 3-3 ((7)) 5.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Duncan W. and Gerd S. Richie, 10921 Beach Mill Road, Great Falls, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-DR-127, subject to the proposed development conditions.

In response to a question from Mr. Hammack, Mr. Chase stated that Parcel A surrounding the applicants' property was the homeowners association's open space parcel.

Mr. Richie presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would be in conformance with the neighborhood; the design and construction of the proposed garage would be consistent with the house with the same siding, roof, and windows; and the east side of the lot was the best location due to the drain field and its proximity to the house.

~ ~ ~ January 15, 2008, DUNCAN W. AND GERD S. RITCHIE, SP 2007-DR-127, continued from Page 537

Mr. Hart and Mr. Ritchie discussed how the driveway would be installed without interfering with the septic field.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-DR-127 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DUNCAN W. AND GERD S. RITCHIE, SP 2007-DR-127 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.5 ft. from side lot line. Located at 10921 Beach Mill Rd. on approx. 42,367 sq. ft. of land zoned R-E. Dranesville District. Tax Map 3-3 ((7)) 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 January 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The Board has a favorable staff report.
3. The Board has determined that the applicants meet the six required standards for granting the application.
4. The reduction in yard requirement is adjacent to open space and would not adversely affect anyone else in the neighborhood.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for the Provisions of Reduction of Certain Yard Requirements as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and size (approximately 576 square feet) of the proposed detached garage as shown on the plat prepared by Dominion Surveyors dated July 2, 2007, revised October 12, 2007, as submitted with this application and is not transferable to other land.
2. The garage shall be consistent with the architectural renderings included as Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount

~ ~ ~ January 15, 2008, DUNCAN W. AND GERD S. RITCHIE, SP 2007-DR-127, continued from Page 538

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.

//

The meeting recessed at 10:59 a.m. and reconvened at 11:06 a.m.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:00 A.M. ABHIMANYU DADOO, SP 2007-SP-124 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 13132 Pennypacker La. on approx. 8,684 sq. ft. of land zoned R-3 and WS. Springfield District. Tax Map 45-3 ((2)) (15) 5.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Abhimanyu Dadoo, 13132 Pennypacker Lane, Fairfax, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SP-124, subject to the proposed development conditions.

Mr. Dadoo presented the special permit request as outlined in the statement of justification submitted with the application. He said his parents would live in the accessory dwelling unit, which would include a bedroom, bathroom, and kitchen.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-SP-124 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ABHIMANYU DADOO, SP 2007-SP-124 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 13132 Pennypacker La. on approx. 8,684 sq. ft. of land zoned R-3 and WS. Springfield District. Tax Map 45-3 ((2)) (15) 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 January 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 Cluster.
3. The area of the lot is 8,684 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ January 15, 2008, ABHIMANYU DADOO, SP 2007-SP-124, continued from Page 539

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Abhimanyu Dadoo, and is not transferable without further action of this Board, and is for the location indicated on the application, 13132 Pennypacker Lane (8,684 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 Dominion Surveyors, dated September 27, 2007 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and 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 1,225 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 or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. Parking shall be provided as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:00 A.M. POPLAR TREE, L.L.C., SP 2007-SU-130 Appl. under Sect(s) 6-104 of the Zoning Ordinance to permit a subdivision sales office. Located at 4653 Autumn Glory Way on approx. 16,260 sq. ft. of land zoned PDH-2. Sully District. Tax Map 44-4 ((19)) 49.

~ ~ ~ January 15, 2008, POPLAR TREE, L.L.C., SP 2007-SU-130, continued from Page 540

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jeff Lastner, the applicant's agent, Vice President, WCI Mid-Atlantic U.S. Region, Inc., 2100 Reston Parkway, Reston, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SU-130, subject to the proposed development conditions.

Mr. Lastner presented the special permit request as outlined in the statement of justification submitted with the application. He said the original approval for the sales office had expired, but there were 22 units remaining to be sold, and because of the slowdown of the real estate market, more time was needed.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-SU-130 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

POPLAR TREE, L.L.C., SP 2007-SU-130 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a subdivision sales office. Located at 4653 Autumn Glory Way on approx. 16,260 sq. ft. of land zoned PDH-2. Sully District. Tax Map 44-4 ((19)) 49. 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 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is PDH-2.
3. The area of the lot is 16,260 square feet.
4. The Board has a favorable staff recommendation.
5. The rationale in the staff report is adopted.
6. It takes longer these days to sell new homes than it used to, and the applicant needs more time to complete the subdivision.
7. Leaving this as a model home will not have any negative impact of 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). 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, Poplar Tree, LLC and is not transferable without further action of this Board, and is for the location indicated on the application, 4653 Autumn Glory Lane, and is not transferable to other land.

~ ~ ~ January 15, 2008, POPLAR TREE, L.L.C., SP 2007-SU-130, continued from Page 541

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 Michael Gallagher, Urban Engineering dated June 28, 2007 as revised through September 24, 2007 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Parking shall be provided in the driveway as shown on the special permit plat. All parking shall be onsite.
6. The maximum hours of operation for the subdivision sales office shall be 10:00 a.m. to 6:00 p.m. daily.
7. The use of the property as a subdivision sales office shall cease upon completion of house sales in the Poplar Park subdivision.

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 and Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Gibb was absent from the meeting.

//

~ ~ ~ January 15, 2008, 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. 8,213 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602. (Admin. moved from 8/9/05, 12/13/05, 7/24/07, and 10/23/07 at appl. req.) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred)

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jayne Collins, Staff Coordinator, Zoning Administration Division, said the appellants had filed a special permit application to allow the fence to remain at six feet in height in the front yard, and the application had been accepted. She said staff was supportive of a deferral for four months to allow the process to take place, and the appellants were agreeable to the deferral.

Chairman Ribble called for speakers to address the deferral request; there was no response.

Mr. Smith moved to defer A 2005-MV-018 to April 29, 2008, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:30 A.M. AMERICAN TURKISH FRIENDSHIP ASSOCIATION (ATFA), A 2007-PR-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant's use of property in the I-4 District as a meeting facility and/or educational center and a Public Benefit Association, without a proffer condition amendment, Special Exception approval or a valid Non-Residential Use Permit, is not in substantial conformance with the conditions of Proffer Condition Amendment PCA 82-P-084-1 in violation of Zoning Ordinance provisions. Located at 1776 Old Meadow Rd. on approx. 28,305 sq. ft. of land zoned I-4. Providence District. Tax Map 29-4 ((6)) 94B. (Admin. moved from 10/16/07 at appl. req.)

Chairman Ribble noted that A 2007-PR-025 had been administratively moved to March 4, 2008, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:30 A.M. ARPA ENTERPRISES, INC., A 2007-PR-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has enlarged or changed the use of the property without approved site plans or building permits and is operating a junk yard and a storage yard in the C-8 and Highway Corridor Overlay Districts in violation of Zoning Ordinance provisions. Located at 7463 Lee Hwy. on approx. 1.03 ac. of land zoned C-8 and HC. Providence District. Tax Map 50-3 ((15)) B.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jayne Collins, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 8, 2008. She submitted photographs taken the day before the meeting and two letters.

Mr. Beard and Ms. Collins discussed the outside lift located on the property, with Ms. Collins saying it was not allowed on the appellant's property because it was not shown on the approved site plan, and the use was not currently permitted in the district.

Mr. Smith, Ms. Collins, and Chuck Cohenour, Inspector, Zoning Enforcement Branch, discussed the storing of inoperable, abandoned, or wrecked vehicles on the property, with Ms. Collins stating that the property was located within a Highway Corridor Overlay District, which allowed inoperable vehicles to be stored for 48 hours and restricted the number of such vehicles to four.

Mr. Smith noted that the complaint had been filed by the Police Department. Mr. Cohenour stated that he had taken the complaint from Captain McGowan of the McLean District Station, who indicated calls had been received regarding the number of vehicles on the subject property from people living on Lawrence Drive, which bordered the appellant's property. Mr. Cohenour said Captain McGowan's brought to his attention three other properties also in violation, and one was being processed by the County Attorney's Office with the other two under notice.

Discussions ensued regarding there being no approved site plan for the lift and cargo container, a permit being unobtainable for the cargo container, more than four inoperable or wrecked vehicles being on the property with some being parked on a sewer easement obstructing access if work on the sewer was necessary and some vehicles from the appellant's business being parked on property owned by Gellman Trust. It was stated that 44 cars, trucks, and vans were observed on December 4, 2007, and at least 15 vehicles on January 14, 2008.

Bill Baskin, the appellant's agent, 301 Park Avenue, Falls Church, Virginia, presented the arguments forming the basis for the appeal. He introduced Mr. Vartanian, tenant, and Mr. Fitzpatrick, an employee whose father had been the previous operator of the premises since 1970. He stated that the staff report incorrectly noted that the appellant had added the two-arm automobile lift and a cargo storage container. He said they had existed on the property for many years. Mr. Baskin said the appellant did not purchase inoperable vehicles at auction or bring them to his property; however, some of his customers bought vehicles at auction and had them brought to the appellant's establishment to be repaired to pass inspection, and those vehicles did not have to be attended to as quickly as a vehicle brought in for immediate repair. He acknowledged that there

were some inoperable vehicles on the site, which would be the case on any service repair site. Mr. Baskin said there were no abandoned or junk vehicles. They were there to be repaired and moved out. Mr. Baskin said there were no vehicles parked outside of the appellant's leased property.

Mr. Smith said the Highway Corridor Overlay District restricted inoperable vehicles to four and Mr. Baskin had just acknowledged that there were inoperable vehicles being repaired on the appellant's premises, and he asked Mr. Baskin if he was aware of the restriction. Mr. Baskin suggested that Mr. Vartanian explain to the Board how many inoperable vehicles were on the premises at any one time.

Discussions ensued regarding the 1967 site plan showing an unpaved area and not showing the lift and cargo container. Brian Fitzpatrick, 3138 Holloway Road, Falls Church, Virginia, said the unpaved area had always contained grass and bushes, and no one was parking there

Discussions ensued regarding whether vehicles would be considered inoperable if they had no tags or registrations but were mechanically operable, whether the vehicle repair use must be subordinate to the filling station use, and at what point a special exception permit must be obtained for vehicle light service repairs.

Mr. Baskin said what the County claimed was an expansion of the use, and it would seem necessary to show what the use was prior to the expansion and that it had changed from what had been done previously, and he did not think that had been established. He said the appellant had owned and operated the station for the last eight months, and Mr. Fitzgerald was a current employee and had worked at the station since he was very young.

Mr. Fitzpatrick stated that the current work was the same as it had been when his father had purchased the station in 1970, noting that he was 12 years old when he began working for him. In response to a question from Mr. Hart, Mr. Fitzpatrick said the proportion of the automobile repair business was the same as it had been.

Gagik Vartanian, 7801 Thor Drive, Annandale, Virginia, described the station's use and noted that the term "inoperable" applied to vehicles that could not be repaired, not to the vehicles parked on his site which were not licensed but could be operated. He said he did not operate a junkyard. With respect to the number of vehicles located on the property, he said the number had been reduced from 44 to 15 because the owners had picked up their vehicles. He said he did not buy cars at auction or bring them to his lot with the intention of selling them. He said the operation of his business was basically the same as it had been when Mr. Fitzpatrick owned the station. Mr. Vartanian said he worked with several automobile dealers and explained that they brought vehicles needing repair to his shop, and they did not require immediate attention. He said that when his normal repair business was slow, he would bring some of those vehicles into the bays to be repaired. When that was accomplished, the dealers would pick them up at their leisure, and he had given notice to the dealers that they had to pick up their vehicles. He said a tow truck was necessary to his business, and he did not consider his to be in violation. He said other businesses within the vicinity had containers on their properties, and the one on his property had been there since 1937 and was used to store tires and oil. With respect to the lift, he said it was on the property when he bought it. He stated that he had purchased the property next door because his business had doubled, and he questioned why he could not use his property for parking. Mr. Vartanian stated that he could not afford to apply for a special exception. Referring to the photograph that showed tires lying on the ground, he explained that they were picked up every two weeks by a tire disposal service. He also indicated that the boat shown in one of the photographs had been removed. Mr. Vartanian said he was doing his best to come into compliance.

In response to a question from Mr. Beard, Mr. Vartanian said the facility was a Virginia inspection station.

Mr. Beard and Mr. Vartanian discussed the definition of a storage yard and two photographs depicting a Range Rover with no tags that Mr. Vartanian said belonged to him.

In response to questions from Mr. Beard, Ms. Collins said outside lifts would be grandfathered if they were shown on the original site plan and the use was not expanded beyond what existed on the effective date of the current Ordinance. She said if the lift on the owner's property was not shown in the 1967 site plan, it would be in violation if it was an expansion of the use, and she referenced the certificate of occupancy which was Attachment 5 to the staff report. Ms. Collins said staff considered the lift to be an additional bay, which

~ ~ ~ January 15, 2008, ARPA ENTERPRISES, INC., A 2007-PR-039, continued from Page 544

was an expansion of the use.

Mr. Vartanian said he had not expanded his service area, but had reduced it when he purchased the property by turning a bay into an inspection bay. He stated that he had removed the lift and put it outside because it was old. He said he had three bays with lifts inside and one outside, and the other bay which did not have a lift was used for inspections.

In response to questions from Mr. Beard, Mr. Vartanian said he rarely sold vehicles, and when one was deemed to be unsalvageable, the person who owned it would ask him to get rid of it. He again stated that he did not go to automobile auctions. Mr. Vartanian said he worked with other auto repair shops, such as collision shops, about once every two months. If one of his customers got into an accident and had the vehicle towed to his shop, he would send it out for repair, and if the vehicle could be repaired, it would be done. If not, the collision shop would discard it.

Mr. Hart and Mr. Vartanian discussed what the increase in business entailed, with Mr. Vartanian saying it had to do with inspections and minor repairs that came from that.

Mr. Hart and Ms. Collins discussed the site plan, the approval by the Board of Zoning Appeals in 1963 of the erection of pump islands 30 feet from the right-of-way line, the issuance of a building permit in 1964, and the approval of the non-residential use permit in 1966.

Mr. Vartanian stated that the container was installed by the Shell Oil Company. He said Shell returned to the County in 1967 because they were erecting stations for the purpose of selling tires. He stated that a branded gas station would have their dealers sell their own oil and their own brand of tires, and to do that, storage containers were required because there was no room in a three-bay station to store hundreds of tires. Mr. Vartanian said nothing had changed at the station since then, noting there had always been two pumps and three bays.

Mr. Hart asked whether a container storing tires for sale as an accessory use would be subject to a 50-square-foot limitation or not be considered accessory outdoor storage. Ms. Collins said the container would be subject to outdoor storage. Mr. Hart said it was his understanding that under the definition of a service station, 50 square feet for goods offered for sale was allowed, which would include tires. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that was correct. Ms. Collins said she would have to check whether that provision was in place in 1967.

Mr. Beard referred to page 8 of the Zoning Administrator's position that contained a reference to enlarging the service station beyond that which existed on August 14, 1978, which was subsequent to the 1967 site plan, and asked how that pertained to the appeal. Ms. Collins said that related to the fact that it was allowed in the district when it was established and when service stations became a special exception use in that district; however, if it was expanded, then a special exception would be required. She said that provisions of paragraph 1 of 15.102 limited an owner to what existed on the effective date of the current Ordinance, which was August 14, 1978, and if anyone wanted to expand beyond what existed on that date, a special exception would be required. Mr. Beard asked if staff was stating that the lift was not on the station's premises in 1978. Ms. Collins said it not legally there in 1978 because it was not shown on the site plan, and staff did not know what was on the site in 1978.

In response to questions from Mr. Smith, Mr. Vartanian stated that he had taken the lift outdoors to replace an existing one that was not safe to operate. He called attention to marks on the concrete left by the other lift. He said he had always had three lifts, whether they were inside or outside. He stated that Mr. Fitzpatrick had four lifts, three inside and one outside, and he had reduced that number by one.

Ms. Collins said it was staff's position that the use had been enlarged, and if the appellant wished to continue the use as it currently existed, he would have to obtain a special exception. Otherwise, he would have to reduce it to what was in existence when the site plan was approved. She said staff was aware of the other violations in the area, and they had been investigated by the Zoning Enforcement Branch. Some of the people were trying to bring their property into compliance; and additional notices of violation would soon be issued for other violations in the same area.

Mr. Smith asked if there had been any effort to resolve the appeal with agreed upon conditions on the

~ ~ ~ January 15, 2008, ARPA ENTERPRISES, INC., A 2007-PR-039, continued from Page 545

number of cars by either the County or the owner and what would happen if the Board affirmed the determination. Ms. Stanfield said that if the Board upheld the Zoning Administrator's decision, Mr. Cohenour could continue to work with the appellant to bring the site into compliance and to come to an agreement suitable to both parties.

Mr. Fitzpatrick stated that the container and the lift had been placed on the site by Shell Oil Company, and Shell was very picky about what they did and ensured everything was done by the book. He said his father would get eight pallets of oil and 200 tires at a time. There were two containers on the premises then, and his father had gotten rid of one. Mr. Fitzpatrick said the tanks had been replaced twice, the last time in 2000. The Stage 2 vapor recovery lines for emissions by the back lift and the shed had been inspected by County, State, and Weights and Measures inspectors on numerous occasions, and with all those inspections, if there were any violations associated with the site, someone would have pointed them out before now. He stated that Shell had put the roof on, which had been replaced twice, and there were brick walls attached to the container which was still removable.

Chairman Ribble closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. He said he felt comfortable with the context of the conversation going on between the appellant and staff about the good intentions of harmoniously working things out. Mr. Byers seconded the motion.

Mr. Hart moved to amend the motion to uphold-in-part the determination of the Zoning Administrator because he would have concluded that under the definitions on the record before the Board as well as the pictures, the use was a storage yard rather than a junkyard. He also said he would not conclude that a building permit was required for the cargo container, although he would agree that the things that were not shown on the 1967 site plan would now require a site plan and were still in violation, but not for all of the reasons stated by the Zoning Administrator. Mr. Beard and Mr. Byers accepted the amended motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 15, 2008, Scheduled case of:

9:30 A.M. BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and Environmental Services to approve a grading plan to allow the construction of two dwelling units on two lots which previously had been developed with one dwelling. Located at 8741 Cherry Dr. and 3029 Chichester Ln. on approx. 29,924 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 111A and 112A.

9:30 A.M. BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-052 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and Environmental Services to issue building permits to allow the construction of two dwelling units on two lots previously developed with one dwelling unit. Located at 8741 Cherry Dr. and 3029 Chichester Ln. on approx. 29,924 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 111A and 112A.

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

H. Kendrick Sanders, Gilman, Sanders & Brown, PLC, 3905 Railroad Avenue, Fairfax, Virginia, counsel for Whitestone Investments, Inc., the property owner, said the Board of Supervisors was appealing the issuance of building permits by the Department of Public Works and Environmental Services (DPWES) and an approval of a grading plan by DPWES for his client's property. He said the party opposite the Board of Supervisors was the Zoning Administrator, who opposed the appeals of the Board of Supervisors, placing his client squarely in the middle between the two entities. Mr. Sanders asked the Board of Zoning Appeals (BZA) to understand that he had the right to be heard to the same extent as the attorneys for the Board of

~ ~ ~ January 15, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 546

Supervisors and the Zoning Administrator, who were arguing over his client's property.

Mr. Hammack asked for input from the attorneys involved as well as the Zoning Administrator because he wanted to be clear about what the BZA was supposed to do, noting that all the BZA had was a copy of the handwritten order dated October 12, 2007, in which Circuit Court Judge Roush ordered that the demurs and pleas in bar were overruled and the petition for writ of mandamus was granted. He asked what the BZA was supposed to do under the writ of mandamus and for clarification as to whether the BZA was supposed to determine if it had authority to hear the case, or if under the judge's ruling, the BZA was supposed to hear it, notwithstanding all the legal arguments that perhaps it did not have jurisdiction to hear it.

David Stoner, Greenhan, Taves, Pandak, and Stoner, 14520 Avion Parkway, Chantilly, Virginia, counsel for the Board of Supervisors, said it was inherent in the judge's order that she found the BZA had jurisdiction. He said the judge did not find the appeal was timely, but ruled that timeliness was not an issue the BZA could decide without accepting the appeal. Mr. Sanders said he agreed that the Court sent the case back to the BZA without comment, and in a public hearing, the BZA was to make decisions on whatever issues were raised. Mr. Stoner added that he believed the judge required that a public hearing be held. Mr. Sanders said he thought there was agreement that the timeliness of the appeal was an issue for the public hearing. John Foote, Walsh, Colucci, Lubeley, Emrich & Walsh, 4310 Prince William Parkway, Prince William, Virginia, representing the Zoning Administrator, stated that he believed what the judge said was the BZA should have held a public hearing. He said he believed the cases were back before the Board for consideration of all the claims and defenses that could be raised. He said he thought that all the lawyers believed that the issue was whether the appeals were timely filed and, assuming that they were, whether the Zoning Administrator was substantively correct with respect to all the matters. Mr. Foote introduced his associate, Virginia Robinson, who would make the presentation on behalf of the Zoning Administrator.

Further discussions ensued regarding interpretation of the Court order, what it required of the BZA, and the BZA's jurisdiction.

Ms. Robinson stated that the consolidated appeals were brought by the Board of Supervisors contesting the April 28, 2006 approval by DPWES of a grading plan for two lots in the Fairhill on the Boulevard subdivision and the subsequent July 31, 2006 issuance of two building permits for those lots. She said when the appeals were first presented, the BZA decided that the appeals were untimely and rejected them without a full hearing. The rejections were appealed to the Circuit Court and remanded back without any substantive ruling to the BZA for a full hearing. She said it was still the contention of the Zoning Administrator that the appeals were untimely and were not challenges to zoning determinations, but an attempt to end run around the fact that the actual zoning determinations were not timely challenged and were now a thing decided under *Gwinn v. Alward*. Ms. Robinson said that even if the appeals were somewhat timely, the Zoning Administrator believed that the appeals should still fail as the grading plan and building permits were properly issued for the lots. She stated that in 1941 the first County Zoning Ordinance was enacted, and it zoned the subject property as rural residential. The Ordinance was amended in 1941, 1943, and 1951 to provide grandfathering for lots recorded prior to the enactment of the Ordinance. In 1945 a revised plat for the Fairhill subdivision was approved by the Zoning Administrator, the Planning Commission, and the County Surveyor and was recorded in 1946 as part of a deed of vacation, rededication, and correction, and the revised plat contained the same number of lots as the original two. She stated that if those plats were compared to the 1945 plat with what had been recorded in 1938 and 1939, they would appear to be virtually identical, and it was hard to tell what the differences were between them because the deed of vacation, rededication, and correction stated that its purpose was to correct numerous and sundry errors and discrepancies in the dimensions, courses, and distances of the lots and tracts in the subdivision.

Ms. Robinson said there were numerous translation errors in the original two plats that needed to be corrected. She pointed out that although the revised plat contained some minor changes in the lot distances, it was the opinion of the County Surveyor, as set forth in Attachment 20 to the staff report, that the changes to the lots themselves were so negligible as to be well below the customarily accepted margin of error, and the only two changes that related to the subject lots were one of .24 feet for the distance of one line and the other of .04 feet for the distance of another line on the lots. The deed of corrections stated that it was vacating the prior plats because otherwise there would have been two valid plats; however, all it did was provide minor corrections necessitated by the revised survey. All 178 lots in the subdivision remained basically as they were before the plat was revised with a few small changes. She stated that in 1952 a

~ ~ ~ January 15, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 547

building permit was issued for a one-story dwelling unit on the three lots; a second permit was issued later that year to allow construction of a carport and a shed for that dwelling unit; and, that dwelling remained on the subject lots until after the approval in 2005 of the minor lot line adjustment.

Ms. Robinson said that in 2003 the Subdivision Ordinance was amended to validate certain lots that had been illegally created by metes and bounds rather than by plat, and in 2004 both the Zoning and Subdivision Ordinances were amended to allow validation of certain lots similar to the subject lots that did not meet the width or area requirements for their zoning at the time of creation, but contained a structure as of March 9, 2004, which had been occupied in the preceding five years.

On January 19, 2005, Ms. Robinson said the Department of Public Works and Environmental Services issued a lot validation referred to in some of the materials as a buildable lot determination for the subject lots, which was issued after review by the Zoning Administrator's staff. The validation stated that the subject lots did not meet the current Zoning Ordinance requirements for lot area or width, but were grandfathered under the 1941 Zoning Ordinance and further stated that the lots were valid under the Subdivision Ordinance for which a building permit could issue by right, by special permit, or by special exception provided all the Zoning Ordinance regulations were met.

In March of 2005, Ms. Robinson said the owner of the subject lots submitted a minor lot line adjustment to DPWES to create two lots from the original three, and on April 19, 2005, the Zoning Administrator's staff and the DPWES staff met with the owner and some neighbors to discuss the proposed adjustment, explained that the lots were grandfathered under the 1941 Zoning Ordinance, and the Ordinance provisions did not apply to those lots. The minor lot line adjustment was in accordance with Section 2-405.1 B(1), which did allow a subdivision for a minor adjustment of lot lines as long as that subdivision consolidated land area of contiguous lots only and did not aggravate any previous known compliance.

Ms. Robinson stated that on June 6, 2005, Mary Ann Tsai, Zoning Administration Division, wrote a letter responding to an inquiry by an adjoining property owner and reiterated the position taken by staff that the explanation given at the April 19, 2005 hearing that the two lots in question, which were grandfathered under the 1941 Ordinance, were not subject to its requirements.

Ms. Robinson stated that on August 4, 2005, DPWES approved the minor lot line adjustment based on the previous determinations made by the Zoning Administrator, and on April 28, 2006, DPWES approved a rough grading plan for the subject lots. On July 31, 2006, two building permits were issued for the lots, and it was the position of the Zoning Administrator that those appeals concerning grading plan and building permit issuances were ultimately appeals of a thing already decided. She explained that there were multiple zoning determinations related to the lots that could have been challenged, such as the January of 2005 buildable lot determination, the June of 2005 letter from Mary Ann Tsai to the adjoining property owner, the August of 2005 approval by the Zoning Administrator of the minor lot line adjustment plat, and, none of those determinations were timely appealed within the 30-day period for appeals.

Ms. Robinson said that whether or not the Board had notice of those determinations was immaterial, as explained in the staff report's discussion of Judge Bellows' decision in the Crucible case in which the judge held that the 30-day period for appealing a zoning determination began to run from the date of zoning determination, even for parties without notice. She said the Zoning Administration staff did not think that case was important because to them the notice issue was a nonstarter based on the judge's decision, which was that the writ was not accepted by the Supreme Court and was returned as having been substantially correct.

Ms. Robinson said the Board of Supervisors was now trying to get around the finality of those determinations by arguing that the approval of the grading plan and the issuance of the building permits were somehow independent zoning determinations that were subject to challenge even though the Board's own applications for appeal noted that the appeal not only dealt with the grading plan and the building permits, but also to related decisions which it identified as the buildable lot determination, the Mary Ann Tsai letter, and the approval of the minor lot line adjustment plat. She said the decisions of the relevant departmental officials on the issuance of the grading plan and the building permits were not independent zoning determinations, but were predicated on the previous determinations of the Zoning Administrator. Ms. Robinson said the *Code of Virginia* gave the Zoning Administrator the statutory authority to administer and enforce the Zoning

~ ~ ~ January 15, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 548

Ordinance, and Sect. 18-103 of the Ordinance stated that the Zoning Administrator shall administer and interpret the Zoning Ordinance, and every question involving the interpretation of the Zoning Ordinance shall be presented to the Zoning Administrator for a decision.

Ms. Robinson said the Board of Supervisors' argument was that even where the Zoning Administrator had made multiple previous determinations on a permit, she could still be second-guessed by any office in the County, and such an interpretation would completely negate the statutory purpose of the Office of the Zoning Administrator, which was to have consistent, identifiable, and final authority to interpret the Ordinance. She said the Zoning Administrator would serve no purpose and have no effect if her determinations were never final, but constantly subject to review instead of being independent zoning determinations. Ms. Robinson said the approval of the grading plan and the issuance of the building permit were ministerial acts taken in accordance with the previous determinations of the Zoning Administrator. She said the requirement in the Zoning Ordinance that the Director of DPWES comply with the Zoning Ordinance in his approval of grading plans meant that the Director must implement those portions of the Zoning Ordinance that did not require interpretation by the Zoning Administrator consistent with the Zoning Ordinance, and if they required interpretation, they had to rely on the judgment of the Director. Ms. Robinson said that in the event the Director erroneously decided that a zoning provision did not require interpretation and made an independent determination rather than relying on previous determinations of the Zoning Administrator, that would be appealable, but that was not what happened in the subject case.

Ms. Robinson said the Board of Supervisors also sought to characterize the prior determinations of the Zoning Administrator as nondiscretionary, but those determinations were not incorrect, and the issue of whether they were discretionary or not was a nonstarter.

Ms. Robinson said that for all the reasons presented, the Zoning Administrator remained steadfast in her position that the appeals were both untimely challenges to a thing decided, and nothing in Judge Roush's ruling remanding the appeals to the BZA precluded it from finding that the appeals were not timely. She said the Zoning Administrator urged the BZA to dismiss both appeals as untimely; however, if the BZA decided that the appeals were timely, it was the position of the Zoning Administrator that the grading plan approval and building permit issuance were proper under the Zoning and Subdivision Ordinances.

Ms. Robinson said the lots at issue were not subject to the size and width requirements of the Zoning Ordinance because they were grandfathered under the provisions of the 1941 Ordinance. She said it was the contention of the Board of Supervisors that the grandfathering was irrelevant because those lots were unbuildable and could not meet yard requirements; however, because a lot would require a variance did not mean that it was not buildable. Ms. Robinson said the lots were and had always been buildable because of the application of the grandfathering provisions of the 1941 Zoning Ordinance that exempted them from the application of the Zoning requirements, and nothing about the 1946 deed of correction changed that because the revised plat was a correction of minor errors in the original plats. She said that if the 1946 deed of correction had somehow subjected the Fairhill subdivision to the 1941 Zoning Ordinance, then all of the building permits it had issued for the lots in the subdivision over the past 60 years had been issued in error, including the 1952 building permit that the Board of Supervisors asserted in its appeals was valid. She stated that the Board of Supervisors contended that the 1952 building permit that authorized the construction of one house on the three lots served to consolidate those lots for all future purposes, and the 1952 building permit had no such effect on the legal character of the lots.

Ms. Robinson referenced the appeal to the Circuit Court of the Concerned Citizens of Hollin Hall Village in which Judge McKay ruled in favor of the Zoning Administrator's contention that consolidation by building permit was not a legal lot consolidation and did not constitute a subdivision; therefore, the issuance of the 1952 building permit had no effect on the grandfathering of the subject lot, on the legal character of those lots, nor did the 2005 minor lot line adjustment alter the grandfathered status of the lots because it only consolidated contiguous lots pursuant to Sect. 2-405 of the Zoning Ordinance. She stated that the Board of Supervisors' claim that the minor lot line adjustment aggravated the prior noncompliance was premised on the Board of Supervisors' argument that the lots were consolidated to only one lot by the 1952 building permit, and once that argument was rejected, it was necessary to reject the argument that the 2005 minor lot line adjustment subjected the lots to the Zoning Ordinance because they aggravated the noncompliance on the lot. Ms. Robinson said the determination that the lots at issue were legal buildable lots was correct when it was made by the Zoning Administrator and remained correct even if the approval of the grading plan and

the issuance of the building permits were somehow independent appealable Zoning determinations.

At Mr. Beard's request, Mr. Foote explained what Ms. Robinson meant when she said that just because a lot needed a variance did not mean it was not buildable. He said that if the lot dimensions would technically make the lot unbuildable, that would actually create a circumstance in which a variance would be appropriate under Virginia law. If it was a question of making a house smaller, it could be done, and the practical reality was that an average size house could be built on the lots because there was a building pad there. He said it was a part of the Board of Supervisors' overall argument, which he did not want the BZA to get wrapped up in because what was being said was that there were larger, more global issues with respect to whether the 1946 plat had any effect on the questions. Mr. Foote stated that the issue concerning whether a buildable lot was one that could actually be built upon may become metaphysical, but the answer was that the zoning determination did not mean that ultimately a house could not be built on it if there were appropriate approvals or an appropriate size house.

Mr. Hammack referenced the deed of vacation and noted that the attorney who had drawn it up got all of the property owners to sign the deed. Many of them owned one lot, and others owned between two and four. He asked if Mr. Stoner was stating that the other smaller lots would not be properly developed. He asked how counsel could address the fact that all of those homeowners had signed the deed, and they could have small lots. He said there was no testimony available on all the lots, and the BZA was dealing only with the lots under appeal. Mr. Hammack said that if it was the County's position that 2/10ths of an inch on a deed vacating and adjusting a lot line because of a surveyor's error would invalidate the three lots which had been adjusted into two, he wanted to be told that that also dealt with the other lots in the subdivision.

Mr. Stoner replied that he was not asking the BZA to determine that the deed of vacation in 1946 effectively wiped out the previous subdivision and started afresh. He said they had made that argument on grounds of appeal, but the BZA did not need to decide that.

Mr. Hammack said counsel had stated that the BZA had to start with a premise that the deed in 1946 was incorrect, and it was counsel's argument that one of the appeals began with 1946, and the 1939 deeds had not been acknowledged.

Mr. Stoner said had been addressed in a footnote, and there were dual arguments, that being one of them. The other argument that he was making was that even under the 1941 Zoning Ordinance, the property was developable only as a single lot with one dwelling. Mr. Hammack said the lots had been recorded in 1939 before the Ordinance was passed. Mr. Stoner agreed, but said the grandfathering provision of the 1941 Ordinance was not unlike the current one in the sense that while lots that pre-existed were exempted with regard to size and shape requirement, they still had to comply with yard and setback requirements.

Mr. Hammack referred to the 2003 statute enacted by the Board of Supervisors, other attempts that were made to validate the metes and bounds lots, and the 1946 change in the deed of vacation. He asked if the BZA had to ignore the 1941, 1943, and 1951 Ordinances that precluded the zoning regulations to previously recorded lots and the more recent 2003 statute because they had no effect.

Mr. Stoner said no, because the central issue in the case was the grandfathering provision of Sect. 2-405. The property was grandfathered and protected by Sect. 2-405, and the question was could it be developed with more than one dwelling unit. He said properties that were subject to 2-405 still had to meet minimum yard requirements, and if there was a lot that was too small or narrow and could not meet them, then it would have to be combined with another lot or a variance would have to be obtained. He said the Zoning Administrator had said as much in Exhibit 2A attached to the letter in Exhibit 2 that indicated the determination involved two adjacent 50-foot wide lots in the Fairhill subdivision; therefore, neighbors of that property were in the same situation as original interior Lots 112 and 113. Mr. Stoner said the Zoning Administrator had stated that in order to develop those lots, the owners had to either combine them or obtain a variance. They had applied to the BZA for a variance and had been denied. Mr. Stoner read from remarks made by the BZA in its decision for denial. He said the application of the yard in the 1941 Zoning Ordinance setback requirements meant that the lot could only be developed with one house, and that had not changed. The 1952 building permit memorialized that in a form that the current Zoning Ordinance recognized. He read from the definition of a lot in the current Zoning Ordinance, which stated that it was defined in one of four ways, one of which being a building permit, and in this case the building permit from 1952 remained in place

~ ~ ~ January 15, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 550

until the middle of 2006, well after the grading plan approval that was being challenged.

Mr. Stoner said that under the terms of the Ordinance, it was one lot because it could not be developed in any other way, whether one was looking at the 1942 Ordinance or any of the Ordinances intervening up to the R-1 regulations that were applicable today. He said the yard requirements meant that there was no building envelope for more than one dwelling, which was the same situation with respect to the two interior lots; therefore, there was no discretion on anyone's part to say that the property was capable of being developed with more than one dwelling unit. He referenced the definition of grandfathering provisions and stated that a subdivision generally would be cause to lose the exemption, but there was an exception for minor lot line adjustments which could not increase the number of lots. Mr. Stoner said what had been allowed to go forward was a doubling of the density on the owner's property, and since the 1941 Zoning Ordinance, it was capable of being developed as only one lot; however, with the approval of the minor lot line adjustment, the only apparent reason for that was to increase the density. Mr. Stoner said that although the minor lot line adjustment plan did not explicitly indicate there was the intention to develop each of the resulting lots with a house, it became apparent with the grading plan where actual house footprints were shown, and that was what occasioned the appeal.

Mr. Stoner said he was not talking about matters of judgment because the property was capable of supporting only one house, and no one, including the Zoning Administrator, had the authority to say that a minor lot line adjustment could be approved to create two buildable lots. The only way to read the minor lot line adjustment consistently with the grandfathering provisions was to say that even though it read the lines, they still constituted one lot. The building permit from 1952 was still applicable, and there was no basis under Sect. 2-405 to allow a doubling of the density.

In response to a question from Mr. Hammack, Mr. Stoner said he was somewhat familiar with the decision in the Hollin Hall case. Mr. Hammack said the fact that there was a building permit that allowed a house to be constructed on two lots did not change the fact that those were underlying lots for purposes of later development if they met applicable requirements. He asked if Mr. Stoner thought that had any application in the subject case. Mr. Stoner said no, because based on his understanding of that case, it did not involve lot line adjustments, and it was a situation where houses that originally straddled lot lines were to be removed and new houses constructed within the confines of the original lots. He said that was a huge distinction from the subject case because there was a minor lot line adjustment serving as a Trojan horse to create two buildable lots where there were not before. He said the three original subdivided lots could not be built upon separately, unlike the Hollin Hall case.

Mr. Hammack asked if the purchasers of those lots in 1939 could have put three houses on them. Mr. Stoner said they could have before the zoning restrictions; however, since 1941, the answer was no.

In response to questions from by Mr. Hammack, Mr. Stoner discussed lot line adjustments, increased density, decreases in density in the plan subdivision as originally platted, whether such determinations would be considered a reduction, reference to Sect. 2-405's definition of lot line, three subdivided lots having been developed as a single lot and permitted as a single lot with the capability of development only as a single lot which was one lot under the Zoning Ordinance regardless of how many subdivision lots there were, the number of lots could not be increased, calculating density not being in lots per acre but in dwelling units per acre, which posed the question of how many dwelling units were capable of being put on less than a 30,000-square-foot property, what was allowed by right in the R-1 District, and grandfathered property.

Mr. Hammack stated that Mr. Stoner indicated the word "lot" had to be looked at within the construction of the Ordinance and said he did not understand why the 2003 Ordinance amendment that dealt specifically with this type of lot could not be applied. He said he was not satisfied with Mr. Stoner's explanation because it did not apply to validation of the lots. Mr. Stoner said the Board did not have to decide that, and he was not contesting the validity with respect to the 1946 deed of vacation. He said his assumptions were based on the 1939 subdivision which was operative, corrected in 1946, and was the subject property that was grandfathered.

Mr. Hammack asked if Mr. Stoner was withdrawing the argument concerning the 1946 deed. Mr. Stoner said he was. He stated that he did not think, based on the Board of Supervisors' argument and grounds of appeal, that the BZA had to rule in the Board of Supervisors' favor because in the grounds of appeal and

~ ~ ~ January 15, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 551

everything they had argued since, the second line of argument was the one that he had been making, that the subject property had consistently been developable only as a single lot.

Mr. Hammack stated that Mr. Stoner's firm represented the Board of Supervisors, and the Zoning Administrator was an officer defined under the statute of the Ordinance. He asked if Mr. Stoner was contending that the Zoning Administrator was not the valid administrator for the County Board in the administration of the Zoning Ordinance. Mr. Stoner said no; however, this was an unusual situation, and he did not think that circumstance deprived the Board of Supervisors of the ability to challenge a decision that it was convinced was absolutely incorrect and was not a matter of any exercise of discretion. He said the question as to whether there could be more than one dwelling unit on a lot was very fundamental.

Mr. Hammack said it was argued frequently by attorneys, and sometimes the County Attorney when they represented the County Board, that the BZA was to give reasonable interpretations of the Zoning Administrator's validity, and they were supposed to uphold her decisions unless they found that she had erred in arriving at such a decision. He asked if Mr. Stoner found that principle did not apply in the subject case. Mr. Stoner replied that typically great weight would be given to consistent administrative interpretations by the Zoning Administrator; however, there was no proof that on the whole there was a consistent administrative interpretation in every respect. He said it was also a principle of law which had been cited that where even a long-standing administrative interpretation did not square with the plain language of an Ordinance, it was the plain language that ruled. Mr. Stoner said the Zoning Ordinance clearly had a definition of lot that did not square with the one the Zoning Administrator and others had used, and where the Zoning Ordinance had a particular term that it defined, it had to be used.

Mr. Hammack asked Mr. Stoner what his response was to the Zoning Administrator's arguments that the Board of Supervisors did not appeal within 30 or 60 days as may be applicable. Mr. Stoner replied that he understood the arguments, and if he was the Zoning Administrator, he would make the same ones, but Sect. 15.2-2311 that governed such appeals stated that non-discretionary errors could be corrected beyond 30 or 60 days or at any time. He referred to the number of cases out of the Supreme Court that stated that local administrative officials did not have the authority, by issuing a permit or some other sort of approval, to effectively rewrite an ordinance, and locality was not estopped from returning at a later date to withdraw a permit or approval or from stating that something had to be torn down, and that was among the types of non-discretionary errors the statute contemplated.

Mr. Hammack said the 30-day statute provided 30 days to appeal a decision of the Zoning Administrator or other official, and the 60-day statute had language in it to the effect that if someone relied on it to their detriment, then the 60 days would run, unless it was a non-discretionary error. He said that when the subject cases had been heard as an after agenda item, Mr. Sanders had entered substantial evidence concerning the reliance his client had made on the various letters of the Zoning Administrator as well as the money that had been invested in the process and properties. He asked Mr. Stoner for his response to Mr. Sander's statement. Mr. Stoner said he was not contesting whether the Amans relied on any particular decision, which was not the issue, although it was unfortunate. He said those decisions served to muddy the waters and created more sympathy for the landowner. Mr. Stoner said that where there were errors that did not involve discretion, if there was only one lot, it could not be increased by virtue of a lot line adjustment, and that was the bottom line.

Mr. Hammack said he recalled that there was a deed of adjustment that was recorded and was not included in the staff report, and he asked for a copy. He said he thought that a member of the zoning staff and someone in the County Attorney's Office had reviewed the laws, certified that the property was in compliance, signed off on it, and all the evidence available should be included in the information presented to the BZA. He asked Mr. Stoner to address the deed having been put on record that acknowledged the lot line as a proper adjustment. Mr. Stoner replied that he had seen the deed and would provide the BZA with a copy. He acknowledged that an attorney in the County Attorney's Office had reviewed the substance of the deed or attached plat and had approved it as to form.

Chairman Ribble asked if the Director of DPWES had signed off on the document. Mr. Stoner said the plat had been signed off by DPWES, and he would defer to whatever the document said because it could have the Director's signature. Mr. Foote stated that Exhibit 217 in the staff report contained a copy of the recorded plat. Mr. Stoner said it was the plat, not the deed. Chairman Ribble stated that nowadays the director

~ ~ ~ January 15, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 552

signed off on that type of document. Mr. Stoner said he assumed that had happened in this case. He noted that someone reviewing a minor lot line adjustment plat would not make a determination with respect to a deed and whether recordation of the plat would serve to create two buildable lots or would affect any grandfathering status under Sect. 2-405. He said the person would be looking at the document to determine if it was a deed that followed the form and whether the necessary signatures were on the plat, and it was clear that the plat had been approved by the required parties.

Mr. Smith referred to the Nutley Street LLC case currently on appeal in the Circuit Court and indicated that he was trying to determine the issue of jurisdiction. He said Sect. 15.2-2311 indicated that an appeal could be taken from a decision of the Zoning Administrator or another administrative officer in the administration or enforcement of this article, which he assumed was the language Mr. Stoner was relying on. Mr. Stoner acknowledged that in terms of statutory language, he was relying on it. Mr. Smith said that in the Nutley Street case, there had been a DPWES permit issued that was relied upon by the property owner, and the question of the 60-day rule had been raised. He said he thought the Zoning Administrator had taken a similar, consistent position now, as supported by the County Attorney's Office, that took the position that the 60-day rule did not apply to the permit in that case because it was not a permit that had been based on a zoning decision issued by the Zoning Administrator. Mr. Smith said Sect. 15.2-2311C had similar language, based on a decision by the Zoning Administrator or other administrative officer. He asked if the County was taking consistent positions.

Eileen McLane, Zoning Administrator, Zoning Administration Division, provided information on the Nutley Street appeal in which the appellant was relying on a certificate of completion on which the Zoning Administrator had signed off. She said the appellant in the Nutley case had also indicated that they had subsequently submitted a re-designation application for the floodplain, which was approved by DPWES and then revoked based on information that the fill was not legal and the floodplain should not be re-designated. She confirmed that staff had stated that the revocation was not under the BZA's jurisdiction because it was not a Zoning Administrator's determination. She said there were a number of issues in the Nutley case that did not parallel with the subject case.

Mr. Sanders said it was his understanding that the issue of the 1945 plat was off the table insofar as being a grounds upon which the BZA could independently rule in the Board of Supervisors' favor. He displayed a drawing showing the three lots in question and the square footage, indicating that the lots had been re-divided into two. He said there were many different sized lots within the subdivision. He said he disagreed with Mr. Stoner's statements that there had never been two developable lots on the property, stating that was factually incorrect. Mr. Sanders said two houses could legally be built on the property in question in the current R-1 District, but he did agree with Mr. Stoner's argument that it could not be done because the corner lot could not be built on independently. He said he was not suggesting that someone would build a 10-foot house on the corner lot, but the question was could that be done legally. He said Mr. Stoner's second argument was that in 1952 a home had been built on the property in question, and he believed the actual dimensions were similar to the drawing referenced earlier. He said he agreed that one building permit had been issued for the three lots. He said it was Mr. Stoner's and the Board's argument that when the permit was issued, the three lots became one, even though they were three lots of record. He said Mr. Stoner had not asked the question concerning what would happen if that house burned down or was demolished because the three lots were still of record, and there was nothing to prevent development in any other formation. He said the Zoning Administrator's report had cited that point in a case specifically ruled on by Circuit Court Judge McKay. He stated that if someone owned two legal lots, built a large house on both, the two lots would be treated as one, and a building permit could be obtained. If that house was torn down to build two houses on the lots, it would be legal because there was nothing in the Ordinance to indicate otherwise. Mr. Sanders said he also disagreed with the Board of Supervisors' premise that there could never have been more than one house, and by re-dividing the lots into two larger ones, the density of the property would be increased. He said there had always been two homes on those lots. He said he believed the memorandum he had submitted earlier was correct, noting that the letter in Exhibit B was crucial because it had never been presented before today. Mr. Sanders stated that the deed of subdivision for the minor lot lines Mr. Hammack had referred to earlier was in the record and had been signed by the Assistant County Attorney, which stated that it had been approved on behalf of the Board of Supervisors as to form and then was signed off by DPWES for recording.

Mr. Sanders said he agreed with Mr. Hammack's comment that DPWES had signed off as to compliance

~ ~ ~ January 15, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 553

with applicable regulations. It was important because there were meetings with County staff and citizens, and at least one member of the Board of Supervisors was copied on the letters attached to the staff report. He said there was a lot of thought and consideration given by County staff in making their determination before the deed was actually prepared, and if that had not been done, the minor lot line adjustment would not have been approved.

Mr. Sanders said the fact was that the deed went through the full process and was recorded, and that could not have taken place if the Zoning Administrator had not approved it. He said that had not been appealed, and Mr. Aman, in his letter dated November 15, 2004, said he was considering the purchase of the three lots, specifically asked the Zoning Administrator if the lots in question fell under the grandfathering of Sect. 2-405, indicated he wanted to redesign them, and asked if there would be any problems. Mr. Sanders said Mr. Aman did not know that Mr. Wheeler had been lobbying with the Board of Supervisors and the neighbors, stating that the buildable lot determination was wrong, and as a result, his client had encountered additional expenses and problems.

Short of the County's appealing the decisions to issue building permits or grading plans, Mr. Hammack asked if the Board of Supervisors would have had any other form of recourse to correct the error and could they have gone to court to set the deed aside outside of this type of appeal. Mr. Sanders said he did not know why the Board could not have gone to court. He said that within the past few years, the Board of Supervisors had been allowed to appeal a decision made by the BZA if it had something important to do with the Zoning Ordinance, but before that, no one thought the Board of Supervisors had the right to step into the middle of a case such as the subject one and act like a landowner. He said he supposed the Board of Supervisors could bring an injunctive action; however, it seemed to him that they could direct staff not to approve the building permit. He said he did not have an answer. He said the Board had appealed the building permit and grading plan, but he did not know that they actually had standing to do that. Mr. Sanders said the problem was with these appeals, the issues had already been decided in earlier approvals, and they were too late because they were trying to revisit an old issue. He said he was sure that if the Board had it to do over again, they would have preempted the BZA and appealed the buildable lot determination and the June 5, 2005 letter to Mr. Wheeler, the complainant. He said everyone else had reconfirmed the buildable lot opinion of the Zoning Administrator in writing, and he did not know why the Board of Supervisors had not written one because they were a bar just like the attorneys present were.

Chairman Ribble called for speakers.

John Wheeler, 8729 Cherry Drive, Fairfax, Virginia, came forward to speak. Mr. Wheeler read from a prepared statement and explained why he and his neighbors were opposed to the determination by DPWES to approve a building permit and grading plan to allow the construction of two dwelling units on two lots which previously had been developed with one dwelling. He referred to meetings and correspondence between himself and County staff concerning his opposition to the application. He referenced a memorandum dated November 21, 2005, from John Foster, Assistant County Attorney, to William Shoup, Administrator, Zoning Administration Division, stating that the lots did not meet the area or frontage requirements of the Zoning Ordinance in effect in 1946 and were, therefore, illegally subdivided, and under the 1941, 1952, and current Zoning Ordinances, it was the opinion of the County Attorney's Office that Lots 111, 112, and 113 were illegal lots.

Mr. Hammack asked if Mr. Wheeler had appealed any of the letters he had received from the Zoning Administrator or anyone else within 30 days. Mr. Wheeler said he had not appealed the letter from Mary Ann Tsai because he had been told by Mr. Shoup that he did not have any right to appeal.

Mr. Hammack asked Mr. Wheeler what evidence he had of Mr. Foster's rejection of the lot line adjustment. Mr. Wheeler said he had submitted a copy to the BZA of the letter from Mr. Foster to Mr. Shoup. At Mr. Hammack's request, Mr. Wheeler provided the BZA with a copy of Mr. Shoup's memorandum to Patrick Taves, Deputy County Attorney, dated July 14, 2005, and Mr. Foster's reply dated November 21, 2005, which stated that the lots in question were not valid buildable lots under the Fairfax County Zoning Ordinance. Mr. Hammack requested that staff make copies for the BZA members and include one in the record.

Mr. Foote said he and the Zoning Administrator were familiar with Mr. Foster's memorandum, and the Zoning

~ ~ ~ January 15, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 554

Administrator was not bound to that opinion. He said he rejected it because the County Attorney's Office had no authority to make such decisions. He expressed surprise that there was a copy of the memorandum from Mr. Foster because it had been written as an attorney-client communication and was not to be released to the public.

In response to a question from Mr. Hammack, Mr. Foote stated that the plat had been recorded and approved by the County on August 12, 2005. Ms. McLane said the plat had been recorded on August 16, 2005. Mr. Hammack said the recordation preceded the memorandum referenced earlier. Ms. McLane stated that the Zoning Administrator's Office had never changed its opinion. The June 5, 2005 letter stood, was never rescinded, was never reissued, and it stood after the fact that the Zoning staff had received the advice from John Foster.

Mr. Byers asked Ms. McLane why her office subsequently went to the County Attorney if the letter was executed on June 5, 2005. Ms. McLane said she was not Zoning Administrator at the time, but it was her understanding that Mr. Wheeler was a very persistent individual that continually requested of the Zoning Administrator at that time that he obtain an opinion from the County Attorney. She acknowledged that, as Mr. Wheeler had said earlier, Mr. Shoup had declined and then decided that he would do it.

Mr. Foote said he had been retained six months after the June letter. The reason was that the Zoning Administrator anticipated litigation, and he assumed Mr. Shoup may have had the same concerns and consulted the County Attorney's Office.

In response to a comment made by Mr. Byers that the request by the Zoning Administrator for a legal opinion and the legal opinion that was rendered was after the fact, Mr. Foote said that even if the opinion was rendered before the fact, it would have no binding effect on the Zoning Administrator. Mr. Foote said it was important to note that the opinion that was rendered was with respect to the 1946 plat which had been removed from consideration by the Board of Supervisors. A copy of the opinion was presented to the Board.

Mr. Sanders said he had requested copies of the memoranda from the Zoning Administrator and the County Attorney's Office through the Freedom of Information Act and had not received them. He requested that he be given copies.

Mr. Foote said the Zoning Administrator/County Attorney's memoranda were not released by the Zoning Administrator's Office, but by a person who had received a copy. In response to a question by Mr. Hammack, Mr. Wheeler agreed to have them placed in the record.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision on A 2006-PR-028 and A 2006-PR-052 to January 29, 2008, at 9:30 a.m. Mr. Smith and Mr. Beard 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.

//

As there was no other business to come before the Board, the meeting was adjourned at 2:36 p.m.

Minutes by: Mary A. Pascoe / Kathleen A. Knoth

Approved on: March 11, 2015

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 29, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:01 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ January 29, 2008, Scheduled case of:

9:00 A.M. FITZGIBBONS, LORETTA & ERNEST, SP 2007-MV-129 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 8822 Lagrange St. on approx. 10,640 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 25.

Chairman Ribble noted that SP 2007-MV-129 had been administratively moved to February 12, 2008, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:00 A.M. HAI & JUDITH NGUYEN, SP 2007-HM-135 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition such that side yards total 21.1 ft. Located at 9614 Verdict Dr. on approx. 19,793 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((18)) 166.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Stephen Garner, 129 Park Street, N.E., Vienna, Virginia, the applicants' agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a reduction of certain yard requirements to permit construction of a garage addition such that side yards totaled 21.1 feet. The purpose was to replace an existing carport with a two-car garage. A minimum total side yard of 24 feet is required; therefore, a reduction of 2.9 feet was requested. Staff recommended approval of SP 2007-HM-135 subject to the proposed development conditions.

Mr. Hart noted that the plat was labeled as a deck and drawings showed lattice underneath. He asked if the calculations or development conditions would change anything. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the application met the minimum yard requirement for an addition.

Mr. Garner presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition was requested because the applicants wanted to enclose the garage, and the design they had chosen would enhance the look of the property.

Mr. Nguyen reiterated Mr. Garner's statement and said the addition would be compatible with the neighborhood.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-HM-135 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HAI & JUDITH NGUYEN, SP 2007-HM-135 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition such that side yards total 21.1 ft. Located at 9614 Verdict Dr. on approx. 19,793 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((18)) 166. 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 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The Board has a favorable staff report.
3. The analysis in the staff report is adopted.
4. The reduction is minimal.
5. There is no impact on surrounding properties.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (498 square feet) of an addition, as shown on the plat prepared by DRS Architecture, dated October 31, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,761 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the

~ ~ ~ January 29, 2008, HAI & JUDITH NGUYEN, SP 2007-HM-135, continued from Page 558

special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:00 A.M. FRED R. CALL, III, SP 2007-BR-140 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 such that side yards total 20.7 ft. Located at 5089 Coleridge Dr. on approx. 11,643 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 202.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Fred Call, 5089 Coleridge Drive, Fairfax, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit the dwelling to remain such that the side yards totaled 20.7 feet. A minimum total side yards of 24 feet is required; therefore, a reduction of 3.3 feet was requested.

Mr. Call presented the special permit request as outlined in the statement of justification submitted with the application. He said he was requesting the permit to enable him to enlarge the rear of the kitchen and an upstairs master bedroom and bath. He said the existing structure was too large and had been approved in 1981 and had been built prior to his ownership. He stated that to tear the existing structure down or replace it would be cost prohibitive.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-BR-140 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRED R. CALL, III, SP 2007-BR-140 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 such that side yards total 20.7 ft. Located at 5089 Coleridge Dr. on approx. 11,643 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 202. 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 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with Sect(s). 8-006 and 8-914.

~ ~ ~ January 29, 2008, FRED R. CALL, III, SP 2007-BR-140, continued from Page 559

3. The Board has determined that the application meets criteria A through G.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This special permit is approved for the location of the dwelling as shown on the plat prepared by Larry N. Scartz, dated August 21, 2007, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:00 A.M. FRED MICHAEL MCCARROLL, SP 2007-LE-132 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.5 ft. from rear lot line and 6.7 ft. from side lot line. Located at 6303 Alderman Dr. on approx. 5,779 sq. ft. of land zoned PDH-4. Lee District. Tax Map 100-1 ((11)) (3) 29.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would

~ ~ ~ January 29, 2008, FRED MICHAEL MCCARROLL, SP 2007-LE-132, continued from Page 560

be the truth.

Fred McCarroll, 6303 Alderman Drive, Kingstown, Virginia, reaffirmed the affidavit.

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 of certain yard requirements to permit construction of a sunroom addition 12.5 feet from the rear lot line and 6.7 feet from a side lot line. A minimum rear yard of 25 feet and minimum side yard of 8.0 feet are required; therefore, reductions of 12.5 feet and 1.3 feet, respectively, were requested. Staff recommended approval of SP 2007-LE-132 subject to the proposed development conditions.

Mr. McCarroll presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition was being requested because his wife wanted a sunroom for entertaining and to enjoy privately.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-LE-132 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRED MICHAEL MCCARROLL, SP 2007-LE-132 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.5 ft. from rear lot line and 6.7 ft. from side lot line. Located at 6303 Alderman Dr. on approx. 5,779 sq. ft. of land zoned PDH-4. Lee District. Tax Map 100-1 ((11)) (3) 29. 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 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. This is a P District, and these are very small lots for single-family homes.
5. The subject house is less than six feet from the rear lot line, all along its back where the chimney sticks out.
6. There is really no where to put much of anything on the back of the house.
7. The sunroom is proposed on top of an existing deck, to one side, that backs up to homeowners open space and a Virginia Electric Power Company easement.
8. Based on the record before the Board, it does not appear that there would be any significant negative impact on anybody.
9. The location is the logical place; it is really the only place to put an addition on this lot.
10. This is a very modest sunroom that only sticks out nine feet.
11. The applicant has met the appropriate standards in Sect. 8-922.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

~ ~ ~ January 29, 2008, FRED MICHAEL MCCARROLL, SP 2007-LE-132, continued from Page 561

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 126 square feet) of the proposed sun room addition as shown on the plat prepared by Dominion Surveyors, Inc., dated August 20, 2007, revised to October 23, 2007 as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,182 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings included Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:00 A.M. LEE A. & GAIL S. ESKRIDGE, SP 2007-PR-133 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 21.5 ft. from the rear lot line. Located at 7435 Masonville Dr. on approx. 17,542 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 31.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Lee Eskridge, 7435 Masonville Drive, Falls Church, Virginia, reaffirmed the affidavit.

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 of certain yard requirements to permit construction of a one-story garage addition with basement 21.5 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a reduction of 3.5 feet was requested. Staff recommended approval of SP 2007-PR-133 subject to the proposed development conditions.

Mr. Eskridge presented the special permit request as outlined in the statement of justification submitted with

~ ~ ~ January 29, 2008, LEE A. & GAIL S. ESKRIDGE, SP 2007-PR-133, continued from Page 562

the application. He said that in 2005 Fairfax County and Virginia Department of Transportation widened Gallows Road behind his house and took between four and a half and eight feet of land across the back property line which put his yard over the setback limit. He stated that according to the plans he had drawn up before the taking, they had been within their setback line. He said he and his sons liked to work on cars and wanted to have an enclosed garage in which to work. He noted that the addition would be compatible with the neighborhood.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2007-PR-133 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LEE A. & GAIL S. ESKRIDGE, SP 2007-PR-133 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 21.5 ft. from the rear lot line. Located at 7435 Masonville Dr. on approx. 17,542 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 31. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Staff has made a favorable recommendation of approval.
3. The application is for a minor encroachment into the setback.
4. Only one corner of the addition is going to be into the Gallows Road side of the setback, a few feet.
5. Until the widening of Gallows Road, according to the applicants' testimony, the addition would have been by right and not into the setback.
6. There appears to be very little impact on the adjacent property owners.
7. The proposal is compatible with the surrounding developments.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 2,296 square feet) of the proposed garage addition as shown on the plat prepared by Dominion Surveyors, September 25, 2006 revised to October 30, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling

~ ~ ~ January 29, 2008, LEE A. & GAIL S. ESKRIDGE, SP 2007-PR-133, continued from Page 563

(2,479 square feet) that existed at the time of the first expansion regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single-family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The garage shall be consistent with the architectural renderings 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. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:00 A.M. CAROLE E. AND WILLIAM V. TRANAVITCH, SP 2007-SP-136 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7503 Amkin Ct. on approx. 5.01 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-4 ((8)) 16.

Chairman Ribble noted that SP 2007-SP-136 had been administratively moved to February 12, 2008, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:00 A.M. VIENNA HERITAGE CENTER, SP 2007-DR-085 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 10602 Leesburg Pi. on approx. 2.23 of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 49. (Deferred from 10/30/07 at appl. req.)

Chairman Ribble noted that the Board had received a request for a deferral regarding SP 2007-DR-085.

In answer to a question from Mr. Hart, Susan Langdon, Chief, Special Permit and Variance Branch, said Mr. McBride and the applicant had agreed to a date of April 1, 2008.

Mr. Hart moved to defer SP 2007-DR-085 to April 1, 2008, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2007-SU-125 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 Ribble called the applicant to the podium.

~ ~ ~ January 29, 2008, TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2007-SU-125, continued from Page 564

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Stephen Fox, Law Office of Stephen K. Fox, 10511 Judicial Drive, Fairfax, Virginia, the applicant's agent, reaffirmed the affidavit.

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 13,690-square-foot church with 350 seats, 147 parking spaces, an underground stormwater management facility, and approximately 49.8 percent undisturbed open space. The existing single-family dwelling, pool, and shed would be removed. Mr. Varga said that on April 24, 2007, the Board had denied a previous application submitted by the applicant which proposed construction of a 16,265-square-foot church building with 450 seats, a parking lot for 150 vehicles, and approximately 38 percent undisturbed open space. Staff recommended approval of SP 2007-SU-125 subject to the proposed development conditions.

Mr. Hart noted that according to Condition 16, the Park Authority's Cultural Resource Management and Protection Section (CRMPS) would be asked to complete a Phase II archeological assessment on the subject property. He asked staff if the prehistoric or Civil War sites were anticipated to be located in the disturbed or undisturbed area. Assuming that the CRMPS found something, Mr. Hart asked if the applicant would have to return to the Board for a special permit amendment.

Susan Langdon, Chief, Special Permit and Variance Branch, said staff was not sure where the components were, and that was the reason for the Phase II study. She said staff understood that the applicant would allow the study to take place before construction began. She said staff also understood that the study would not stop construction because the material would probably be removed from the site if it was found. She stated that staff would be agreeable to whatever the Park Authority determined was appropriate.

Mr. Hart and staff discussed the provisions in Condition 18 with respect to possible frontage improvements if warranted by the Virginia Department of Transportation (VDOT) and the Fairfax County Department of Transportation (DOT). Ms. Langdon concurred with Mr. Hart's statement that the development condition was written in such a way that if VDOT required a longer period of time than was shown on the plat, the applicant would not have to return for an special permit amendment.

Mr. Smith noted that there was a waiver requested of the barrier and transitional screening requirements and asked if a modification of the trail requirement had been requested. Ms. Langdon said that was correct; however, the trail modification would have to be approved at site plan. She said the Board of Zoning Appeals could approve the modification and waiver of transitional screening and barriers, but it was not under the Board's purview to waive or modify a trail. She noted that the development conditions had been written to approve a modification as shown on the plat for the transitional screening and barrier requirements.

In response to Chairman Ribble's question concerning Condition 16, Ms. Langdon said the condition had been written so that prior to the beginning of construction, the CRMPS would work with the applicant. In response to Chairman Ribble's comment that it could delay construction for a long time, Ms. Langdon said the Park Authority was used to working under those conditions, and if the application was approved, the Park Authority would not have to wait for approval of the site plan to access the site and could work with the applicant on that.

Mr. Fox presented the special permit request as outlined in the statement of justification submitted with the application. He introduced Eileen Carroll, planner for the church building committee, and Pastor Spencer Isaacs. He addressed the questions raised by members of the Board with respect to the land disturbing areas and gave a history of the application and topographical conditions. He noted that the application had been scaled down from the original application that had been denied. He stated that the concern was largely in an area that was proposed not to be disturbed and was contiguous with park property. He said he did not think that any artifacts or evidence of human occupation would be found on the church's property. Mr. Fox indicated that he was going to recommend to the Board that the right of the Park Authority be limited to 90 to 120 days after notice to perform the archeological testing and assessment because he did not think that the day before the site plan was approved would be a good time for the Park Authority to say they needed to do the study. He commented on the issues raised at the previous hearings and itemized what had been done to

~ ~ ~ January 29, 2008, TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2007-SU-125, continued from Page 565

scale everything down.

Mr. Fox called attention to the previous submission concerning the direction of the outfall, the Park Authority's request that the applicant change the direction of the outfall toward the existing sanitary sewer, and referenced the plan that displayed the changes that had been made. He said the Northern Virginia Regional Park Authority (NVRPA) Board had the authority to grant a license or easement. NVRPA retained an outside engineer to review the applicant's engineer's work, and the agency that would determine the outfall was DPWES during the site plan process. The applicant could take the report to the NVRPA, show them the County's determination, and request a report. He stated that the applicant had submitted an application to the NVRPA, and they were waiting until the County submitted its engineering report.

Mr. Fox referred to the architectural renderings that showed the intentions of the applicant, noting that the photographs did not show the level of landscaping that would be placed around the site. He stated that at staff's request several of the parking spaces had been eliminated to create additional landscape islands. Mr. Fox said that daily services would not be held, only one mid-week prayer meeting at which approximately 20 people would be in attendance.

With reference to Condition 13 concerning lighting, Mr. Fox indicated that the applicant did not want to be confined to Bollard style lighting fixtures, and they would be willing to work with whomever at the time of site plan to have a sequencing of the lights to minimize any excessive illumination. He explained that the Bollard style of lighting was approximately four feet in height and would not cast enough light throughout a very dark site.

Referring to Condition 16, Mr. Fox suggested adding a sentence that would read, "FCPA shall have 90 or 120 days from receipt of notice from applicant to perform the Phase II archeological assessment."

A discussion ensued with Board members, Ms. Langdon, and Mr. Fox concerning the following: up to a 12-foot lighting maximum permitted under Article 14 of the Ordinance if the Board were to delete the Bollard lighting; an explanation as to why staff was requesting the exclusive use of four-foot Bollard lights; Bollard lighting had been used for many years in the R-C District to keep the lights down and preserve the rule of character of an area rather than permitting taller lights that could be seen from a distance; security lights could be kept on; staff considered a maximum of four-foot Bollard type lighting to be sufficient for security; staff could not respond to a question concerning the type of lighting that had been approved at the veterinarian's building located a few lots away; Capital Worship Church located in the area had Bollard type lighting; the applicant considered Bollard lighting to be too restrictive in such a dark area and would consider a plan designed to minimize illumination off-site; lighting requirements should be consistent with other church sites in the area; low lighting could be too restrictive by not allowing sufficient illumination to assist people in locating a church or home; the parking lot standards did not indicate a maximum height limitation for lighting; lighting issues were not discussed with the citizen's association; reference was made to the development conditions contained in the St. Mary's Church application which was not in the R-C District; St. Mary's had not been restricted to Bollard type lighting; glare from lighting would always be a concern; lighting conditions as they existed now were not a problem, but years from now they would be, and there was currently a proliferation in the R-C District; staff supported the development conditions in the staff report; had staff known ahead of time that the applicant was going to request a specific time limit for the assessment, they would have spoken to the Park Authority to be sure that would allow them sufficient time to complete their study; staff expressed concern about such an addition to the development condition; a terminus was needed by the applicant, and they were willing to move the time limit up to 180 days; any intent by the applicant to turn the lights on and off often did not work because they could accidentally be left on; Bollard type lights were acceptable to the applicant if they were placed only in the front of the church; and for security reasons greater lighting was needed at the back of the parking lot, they would be turned off after church activities, and the Bollard lights would remain on in the evening.

Chairman Ribble called for speakers.

The following speakers came forward to speak: Spencer Isaac, Pastor, New Mount Zoar Baptist Church, 7127 Ordway Road, Centreville, Virginia; and Lonza K. Tines, no address given, project chairman for the church. They spoke about the redesign of the church as an improvement over the original application, their appreciation for staff's help, and requested that the application be approved.

~ ~ ~ January 29, 2008, TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2007-SU-125, continued from Page 566

Mr. Smith said he was sympathetic to the applicant's comments concerning Bollard type lighting and security. He suggested that staff and the Board accept three-quarters of the lighting as Bollard style and allow the applicant the opportunity to provide additional lighting in certain areas where security was an issue.

Ms. Langdon pointed out that Condition 13 said lights shall be turned off when the site is not in use except for security lighting. She said that if the Board felt that for security reasons there should be some taller lighting and designated an area for it, staff would not object.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-SU-125 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Mr. Hart suggested that in Condition 13 the lights not located in the three-quarter area should be capped at a height of 12 feet, shielded, downward directed, and designed to minimize rather than eliminate glare; the applicant had a somewhat challenging site to work with, noting that it was difficult within the R-C District to make a non-residential use fit on a lot of five acres or less that was already impacted by some easements, to have 50 percent undisturbed open space and have room for parking and stormwater management. He felt the redesign would mitigate impacts on the water quality of the Occoquan Reservoir.

Mr. Byers agreed with Mr. Hart that the application was much better than the last. He said the concern with Condition 13 was the location of the lighting. He said there was a greater probability of spillover lighting with residences, and that was his concern. He said he would be more comfortable if he knew what had been approved for the veterinarian building and St. Mary's Church and stressed that the County had to be consistent.

Chairman Ribble asked Mr. Fox if the condition that stated that the church would hold one mid-week evening meeting until 9:00 p.m. was correct. Mr. Fox replied that it was. Mr. Fox indicated that there would be a maximum of 20 to 25 people attending the evening service which was the purpose of having security lights on.

Mr. Hammack stated that he was on the board of a condominium association where the lights were 30 to 40 feet high around the parking lot and office building, and they had received complaints from people constantly stating that it was too dark in the parking lot. He said that lighting was not there only for the security of the building, but to prevent vandalism and persons who had no reason to be on the property. With respect to lighting restrictions in the R-C District, he noted that security issues were the same in those areas as in others.

Mr. Hammack said he would support the motion and suggested a change to Condition 13 as a friendly amendment. He said he hoped that the ratio of 25 percent would give the applicant enough lighting. He said it was his understanding that if the site was not in use, everything except security lights would be turned off.

Mr. Smith accepted the amendment.

Responding to a question from Mr. Hart concerning the lighting at St. Mary's, Ms. Langdon stated that the provision of full cut-off fixtures was required under the performance standards, and it was not necessary to state it in this application.

Chairman Ribble called for the vote. The motion carried by a vote of 7-0.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2007-SU-125 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

~ ~ ~ January 29, 2008, TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2007-SU-125, continued from Page 567

R-C and WS. Sully District. Tax Map 74-1 ((1)) 2. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 5.95 acres.
4. The applicant has worked hard to miniaturize its prior application reducing the square footage of the church; reducing the number of seats; reducing the parking; and reducing the FAR on the site, which is now at about half of that permissible.
5. The application has the support of staff and the Western Fairfax County Citizens Association, and the applicant has worked hard to accommodate all of those concerns in mitigating impacts on the water quality of the Occoquan Reservoir.
6. The applicant has gone to great lengths to address all concerns that were raised in the previous BZA hearing.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Trustees of New Mount Zoar Baptist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 7127 Ordway 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 Jack E. Rinker dated August 17, 2007 as revised through January 8, 2008, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the sanctuary shall be 350.
6. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.
7. All open space areas outside of the areas of clearing and grading shall be preserved and designated as perpetually undisturbed open space. A minimum of 49.8 percent of the site shall be retained as perpetually undisturbed open space.
8. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as

~ ~ ~ January 29, 2008, TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2007-SU-125,
continued from Page 568

required by the Chesapeake Bay Preservation Ordinance (CBPO) and the Water Supply Protection Overlay District (WS), unless waived or modified by the Department of Public Works and Environmental Services (DPWES). Low Impact Development (LIDs) shall be provided where possible as determined appropriate by the Department of Public Works and Environmental Services (DPWES).

9. A tree preservation and restoration plan shall be submitted to Urban Forest Management (UFM) for review and approval at the time of site plan review. This plan shall designate the limits of clearing as delineated on the special permit plat and require that the area outside of the limits of clearing and grading be preserved and labeled as "perpetually undisturbed open space." The restoration plan shall be developed with the intention of re-vegetating and restoring the perpetually undisturbed open space to its natural habitat. Species shall be predominantly Virginia Pine and cedars, but may also include white pine, loblolly pine, short-leaf pine or other native evergreen varieties. No existing wooded areas may be disturbed to plant the restoration material. The applicant may maintain the undisturbed open space as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural succession takes over. There shall be no mowing of grass in the perpetually undisturbed open space.
10. A landscaping plan shall be developed and implemented to provide additional transitional screening landscaping over and above that shown on the special permit plat comprising of evergreens around the perimeter of the northern, southern, and western lot lines and smaller evergreen shrubs along the edge of the parking lot to satisfy transitional screening requirements. The size, type, and number of supplemental trees and shrubs shall be as approved by UFM. Transitional screening shall be modified along the eastern lot line to allow existing vegetation to meet transitional screening requirements.
11. The barrier requirement shall be provided as shown on the special permit plat.
12. The limits of clearing and grading shall be no greater than that shown on the special permit plat. The proposed tree save areas and open space shall remain undisturbed. These areas 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 has been properly installed.
13. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance, provided that Bollard-style lighting not exceeding 4 feet in height shall make up approximately three-fourths of the lighting on the site and shall be used on walkways and around the building. The remaining lighting fixtures shall not exceed 12 feet in height to provide security lighting in the parking lot and shall be shielded and projected downward to minimize glare. There shall be no uplighting on site, including any sign or the building, and lights shall be turned off when the site is not in use except for security lighting.
14. The maximum height of the building shall not exceed 40 feet.
15. The design of the church shall be generally consistent with the architectural rendering as depicted on pages A2-1 and A2-2 of the special permit plat as shown on Attachment 1 to the special permit development conditions.
16. Prior to any land disturbing activities the applicant shall permit staff from the Fairfax County Park Authority Cultural Resource Management and Protection Section (CRMPS) to complete a Phase II archeological assessment on the subject property. The Fairfax County Park Authority shall have 180 days from receipt of written notice from the applicant to complete the archeological assessment.

~ ~ ~ January 29, 2008, TRUSTEES OF NEW MOUNT ZOAR BAPTIST CHURCH, SP 2007-SU-125,
continued from Page 569

17. The applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way of 35 feet from the centerline of Ordway Road and a 26-foot cross section from the centerline to the face of the curb across the site's entire frontage and provide a right turn taper.
18. Frontage improvements shall be provided as shown on the special permit plat, notwithstanding that an updated warrant study shall be provided at the time of site plan review if determined necessary by the Virginia Department of Transportation (VDOT) or the Fairfax County Department of Transportation (DOT), and changes to the turn lanes shall be made accordingly if required.

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. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:30 A.M. LEWIS MOORE, A 2007-LE-024 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and a junk yard on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 4706 Eaton Pl. on approx. 12,750 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (D) 15. (Deferred from 10/2/07)

Chairman Ribble noted that the Board had received a request for a deferral regarding A 2007-LE-024.

Mr. Beard moved to defer A 2007-LE-024 to September 23, 2008, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11. (Deferred from 10/30/07)

Chairman Ribble noted that the Board had received a request for a deferral regarding A 2007-MV-030.

Mr. Smith moved to defer A 2007-MV-030 to March 25, 2008, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:30 A.M. HOME PROPERTIES MOUNT VERNON, LLC, A 2007-MV-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard and an accessory use (a fence) on property which does not have an approved principle use in the C-8 District all in violation of Zoning Ordinance provisions. Located on approx. 1.49 ac. of land zoned C-8, CRD and H-C. Mount Vernon District. Tax Map 93-3 ((2)) (2) 1A. (Admin. moved from 11/27/07 at appl. req.)

Chairman Ribble noted that A 2007-MV-004 had been administratively moved to March 18, 2008, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ January 29, 2008, 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, 5/1/07, 9/11/07, and 12/4/07 at appl. req.) (Deferred from 5/2/06 at appl. req.) (Admin. moved from 12/5/06 for ads)

Chairman Ribble noted that A 2005-DR-061 had been withdrawn.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:30 A.M. HOMETOWN AUDUBON, LLC, A 2007-LE-040

Chairman Ribble noted that A 2007-LE-040 had been withdrawn.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:30 A.M. JEFFREY M. HOFFMAN AND MARINA F. HOFFMAN, A 2007-MA-041

Chairman Ribble noted that A 2007-MA-041 had been withdrawn.

//

~ ~ ~ January 29, 2008, Scheduled case of:

9:30 A.M. BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and Environmental Services to approve a grading plan to allow the construction of two dwelling units on two lots which previously had been developed with one dwelling. Located at 8741 Cherry Dr. and 3029 Chichester Ln. on approx. 29,924 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 111A and 112A. (Decision deferred from 1/15/08)

9:30 A.M. BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-052 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and Environmental Services to issue building permits to allow the construction of two dwelling units on two lots previously developed with one dwelling unit. Located at 8741 Cherry Dr. and 3029 Chichester Ln. on approx. 29,924 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 111A and 112A. (Decision deferred from 1/15/08)

The following is a verbatim transcript of the proceedings had in this matter:

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 571

CHAIRMAN RIBBLE: The next case is Board of Supervisors of Fairfax County, Appeal 2006-PR-028, to be heard concurrently with Board of Supervisors of Fairfax County, Appeal 2006-PR-052. These were deferred for decision only and to get additional information from Mr. Stoner, I believe.

MS. GIBB: Mr. Chairman.

CHAIRMAN RIBBLE: Ms. Gibb.

MS. GIBB: I have to recuse myself from this case.

CHAIRMAN RIBBLE: Thank you.

MR. HART: Mr. Chairman.

CHAIRMAN RIBBLE: Yes, sir.

MR. HART: I, too, am going to recuse myself. Thank you.

CHAIRMAN RIBBLE: Thank you.

MR. BEARD: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Beard.

MR. BEARD: Before we get started here, I had some information forwarded to me by one of the attorneys in this case, and -- which I don't like happening in appeal situations because, I think as the lawyers call it, I feel it's some kind of ex parte communication, if you will. But my question goes specifically to this communication, if everyone involved was furnished it. That's one. That's kind of my concern about this. When we're furnished documents -- and I'm sorry Mr. Hart isn't here to address this, but when we're furnished documents outside the system, if you will, the certainty of which others are provided it or not provided it. So that's my question, and I would like to reiterate, especially to the professionals that appear before this Board, I don't want communication outside the system, so I'm on record as saying that. Thank you.

CHAIRMAN RIBBLE: Thank you.

MR. SANDERS: Mr. Chairman, I can answer the direct question. Of course, as an attorney, I provided it to all parties, all the other attorneys. Yep, it was my letter. I mailed it to you.

MR. BEARD: I think you should get on the mike here.

CHAIRMAN RIBBLE: Mr. Sanders, if you want to get on the microphone.

MR. SANDERS: No. Yeah.

MR. HAMMACK: And the memo he sent us last night.

MR. SANDERS: I mailed it to both.

MR. BEARD: But, you see, if we're going to discuss this, I don't know that. I'm not aware of that, so that's -- and, again, I'm not an attorney, so I'm asking and I'm just saying that I want to be on record not only -- and I'm not -- certainly not taking you to task. I'm just saying I want to be on record with not only the attorneys, but various other professionals that appear here, that I don't want communication directed at me that's not -- that really doesn't come through the system because I don't know if everyone else got it and what's happening.

MR. SANDERS: No attorney, as far as I know -- I certainly would not provide you with anything that wasn't given to all parties.

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 572

MR. BEARD: Again, you understand where I'm coming from. I don't understand --

MR. SANDERS: Let me finish that. The only reason I did is rebuttal, I thought, was permitted, and it got lost in the shuffle. That's all, why I did it.

CHAIRMAN RIBBLE: Well, traditionally, we just ask for additional comments, and I think Mr. Foote said he didn't have any. Mr. Stoner said he didn't have any. I don't think you said anything maybe, but...

MR. HAMMACK: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: Yeah, well, since the issue's been raised, I'll ask Mr. Sanders a question, a follow-up question, if you'd come down. Did you send a copy of your --

CHAIRMAN RIBBLE: Let him identify himself for the record.

MR. SANDERS: I'm Ken Sanders, attorney for the landowner, Whitestone.

MR. HAMMACK: And did you send a copy of it to Mr. Wheeler?

MR. SANDERS: Not to Mr. Wheeler, no. No. I sent it to Mr. Foote and to Mr. Stoner. Mr. Stoner said he didn't receive it, but, I mean, that's treated just like a pleading. I would not file anything with the Board that I didn't send to the other parties.

MR. HAMMACK: Of course.

MR. SANDERS: And, again, as I prefaced the letter, the only reason I did it, and you all had a right to tear it up, was the fact that I do not recall being given the opportunity to respond to Mr. Wheeler at the hearing. I specifically remember the public hearing being closed, and that was the end of the matter, but that's the only reason it was done.

CHAIRMAN RIBBLE: Okay. Look, I don't mind entertaining a motion to reopen the hearing to let all sides have five minutes just to be on the right page here.

MR. HAMMACK: Mr. Chairman, that's what I was going to suggest, maybe even less than five, three minutes.

CHAIRMAN RIBBLE: Well, we can decide whatever we want to do decide right now. You can make a motion to reopen the hearing and limit the rebuttal to whatever time you'd like to limit it.

MR. HAMMACK: I'll move that we reopen the hearing and allow the attorneys, if they wish, to make any kind of response that they might feel appropriate to Mr. Sander's memorandum.

CHAIRMAN RIBBLE: Do I hear a second?

MR. SMITH: Second.

MR. BEARD: I didn't -- Mr. Chairman, I didn't hear a time limitation.

MR. HAMMACK: Well, it's a very short three minutes.

CHAIRMAN RIBBLE: Three minutes.

MR. BEARD: Fine. I just didn't hear it. Thank you.

CHAIRMAN RIBBLE: Hear a second?

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 573

MR. SMITH: Second.

CHAIRMAN RIBBLE: Seconded by Mr. Smith. All those in favor?

MR. BEARD, MR. SMITH, MR. BYERS, MR. HAMMACK, CHAIRMAN RIBBLE: Aye.

CHAIRMAN RIBBLE: Opposed? Okay. Mr. Sanders, you're welcome to start off with your three minutes, if you'd like.

MR. SANDERS: I think I may have said about everything I can say, and I said it in my letter, which was intended to -- for the purpose that I said. I just felt that I was not given the opportunity to respond to assertions made by opponents, and, therefore, I did that. And I did send it, according to my records, to everyone, and I'm sure Mr. Foote -- Mr. Foote, did you receive that copy? Mr. Foote received it, and I did send it to Mr. Stoner. And I sent it to staff, I mean to the Clerk of the Board, and asked her to distribute it. I did fax it because I had fax numbers of two or three, I believe, members, just because of time. But, again, that was the sole purpose of it, and it says what it says. I really have nothing to add to it unless you have questions about what I said in the letter. I was -- I would have said that had I -- if I misunderstood the Chairman last time, I apologize. I felt as though the hearing went on long enough.

CHAIRMAN RIBBLE: Maybe you've preempted the others.

MR. SANDERS: I felt as though I was -- that I should have been an opportunity to respond to Mr. Wheeler's assertions then. I didn't feel I was, and that's the sole reason I did it. Thank you.

CHAIRMAN RIBBLE: Thank you. Mr. Foote.

MR. FOOTE: Mr. Chairman, John Foote, representing the Zoning Administrator. We have nothing to add, sir, unless you have questions.

CHAIRMAN RIBBLE: Thank you. Mr. Stoner.

MR. STONER: Thank you, Mr. Chairman. Briefly, I am confident that Mr. Sanders did send the letter to me. Unfortunately, I didn't receive it, but I've had a chance to review it briefly this morning. Just a couple of points with respect to the property, I think Mr. Sanders conceded in his presentation to you two weeks ago that any way you cut it, Lot -- the original Lot 111, the corner lot, has never been buildable under the regulations that existed in 1941. Under the current R-1 regulations, there is no way to build a house on that lot. You can't meet any of the minimum yard requirements and do so. So even under his calculation, there is at a maximum -- there's never been more than two building lots on this property, at least since the 1941 Zoning Ordinance.

Assuming that to be the case, and I think there's a strong case to be made that there hasn't been more than one building lot since then, as I argued before you before, but even if there had been two, under the Zoning Ordinance, Section 2-405, if you're going in a scenario where you're going from two lots to two lots in a minor lot line adjustment, the requirement is that the lots after the adjustment have to be the same size as they were before, only reconfigured. That's simply not the case here. We're left with a lot that's 11,000 square feet and one that's a little less than 19,000 square feet. That was not the breakdown of the lot sizes before, even if you don't accept that there was only one building lot established either under the 1941 Ordinance or by the building permit that encompassed the entirety of the lot and which was still in effect when this lot line adjustment was approved.

I would point out, too, that 2-405.B(2) prohibits any minor lot line adjustment from creating any new noncompliance or aggravating any noncompliance. In fact, if you treat that minor lot line adjustment as creating two buildable lots, it does that. You go from having obviously one lot of 29,000-some-odd feet to two lots. Even if you had two lots before, because the lot sizes are different, you're aggravating a nonconformity with respect to lot area. Because the existing house was still there, you're obviously creating a nonconformity with respect to its side and rear yards. All this is explained in our original grounds of appeal. It sounds like my time is up, so with that, I will -- I'll rest.

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 574

MR. BEARD: Mr. Chairman.

CHAIRMAN RIBBLE: Thank you. Mr. Beard.

MR. BEARD: Mr. Stoner, it's interesting that -- what would you happen to say then about if this deed of vacation and resubdivision had eliminated the grandfathering? Would it not, as outlined here, have made the lots illegal outlots?

MR. STONER: Well, if I understand your question, let me say first, as I believe I said when we were here before, I'm not pressing that issue. I'm -- I've effectively withdrawn the argument that the vacation in 1946 effectively wiped the slate clean and required them to start afresh. That said, if you look at what was recorded in 1946, clearly none of the three subdivided lots, Lots 111, 112, 113, none of them could have been developed independently. In fact, no two could have been developed independently, as I showed in the graphic that I attached to the submission that I gave you just before the meeting last time. The only way to develop this property at that time was as a whole. That was the only way to develop it and meet the minimum yard requirements of even the 1941 Zoning Ordinance, and that had to be done. The only thing if - we've accepted that they're grandfathered with respect to the 1941 Ordinance, but all they were grandfathered with respect to was lot size and shape, not unlike 2-405 today. To develop a property then, you still had to meet your yard and setback requirements. The only way to do that was to develop the three lots together.

MR. BEARD: That's an interesting argument about the status of the building permit then had that happened. Thank you.

MR. BYERS: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Byers.

MR. BYERS: I'd like to ask Mr. Stoner a question --

CHAIRMAN RIBBLE: Go ahead.

MR. BYERS: -- if I may. What's the legal definition of notice?

MR. STONER: I would have to pull out my Black's Law dictionary, Mr. Byers, to give you a reliable definition. Notice, and there can be different kinds of notice, too, actual notice or constructive notice, constructive notice being notice that's not actually received, but that for all legal intents and purposes has been given.

MR. BYERS: Is it written?

MR. STONER: Notice doesn't have to be necessarily, no. If there's -- there typically is a requirement the notice be in writing, but I don't think by definition notice has to be in writing. Otherwise, there wouldn't be requirements for specifically written notice.

MR. BYERS: The reason I ask that is I read carefully your letter or memorandum dated the 15th of January, 2008, and on page 4, you indicate, of course, the Board could not have appealed these -- those decisions because it had no notice of them. And I notice that the Providence District Supervisor was, in fact, copied on Mary Ann Tsai's letter of the 6th of June, 2005, and I would think that given the fact that that supervisor is a member of the Board of Supervisors, the supervisors were, in fact, provided notice. I'm just asking whether that's --

MR. STONER: Sure, and that's a fair question. I would say I am not hinging our argument on the fact that the Board of Supervisors didn't have notice back in 2005. I think there are other reasons why those decisions either didn't go to the heart of the issue that we're presenting now or involved nondiscretionary errors. That said, I think that this is a bit of a gray area in the law, I'll be the first to admit, and Mr. Foote's been involved in a case involving this issue. I would not concede that notice to one member of the Board is notice to the Board. For example, in Virginia law, to affect proper service of process on a Board of

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 575

Supervisors, it's not sufficient to serve only one member of the Board. You would serve each member of the Board. That's a requirement, for example, where a county official is being sued. Then each member of the governing body must also be served with that lawsuit.

MR. BYERS: That's true if the entire Board or that employee is being sued, but if you're talking about one magisterial district, then there may be a different requirement. It's not at-large. It's directed to one supervisor. I don't want to belabor that, but I --

MR. STONER: Sure.

MR. BYERS: -- I did want to get that because that's your -- that's in your correspondence.

MR. STONER: Yes.

MR. BYERS: And I wanted to make sure I understood it.

MR. SMITH: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Smith.

MR. SMITH: I guess I had a similar question. I mean, you know, as I looked at this, and I'll tell you some of my thinking and then ask a question, this issue of the -- you know, of whether the building permits or grading permit is, you know, is appealable to the BZA, it seems to me that that is appealable under this language of 15.2-2311 where it references the admin- -- Zoning Administrator or other administrative officer. And I think that's my view, and that's sort of a consistent position in my interpretation of 2311C, which is different than the Zoning Administrator's interpretation because I went through the Nutley Street case as well. But I also think that when you go -- then you look at that and it's premised upon these prior decisions of the Zoning Administrator, the 2005, January and June decisions. You've got the buildable lot determination approval, and that went unappealed.

And then your position is that there was no notice, and, of course, you know, my view is, well, you had a copy to a supervisor, but it was also a decision of the Zoning Administrator, you know, an employee of the County. It's hard pressed for me to -- you know, to believe that the County doesn't have notice of that, of its own agent, its employee, and then add to that the Crucible case that Mr. Foote presented, it just seems to me that -- that seems to me a pretty -- I don't agree that the notice argument would preclude the application of the 60-day rule.

And then you have the final issue is whether it's a nondiscretionary error, and, you know, what is that. And I -- so my question to you, is that -- my inclination is that that -- this is not a nondiscretionary error. You gave an example of a nondiscretionary error. You know, you're building an apartment complex in a residential district. Well, we all know that, you know, that's a nondiscretionary error. We know it when we see it. But something like this where, you know, reasonable minds can differ and it seems to me you have a well-reasoned opinion from the Zoning Administrator, you disagree with it, and -- but nevertheless it doesn't seem to me to rise to the level of a nondiscretionary error, but can you define your definition of that?

MR. STONER: Well, I think it's clearly an error that is not -- does involve merely the exercise of discretion or judgment, and I apologize to the extent that I'm sounding circular, but where the Ordinance, in effect, ties the Zoning Administrator's hands or where the Zoning Administrator has obviously left out a piece of the analysis in coming to a conclusion. I think that is what would be involved in a nondiscretionary error.

In that vein, let me say, for example, the buildable lot determination does not say that there are three individually buildable lots. It doesn't say how many lots there are actually. It speaks of Lots 111, 112, and 113, but it does say they would have to meet all setback requirements. Well, the fact of the matter is that there is absolutely no way Lot 11 could ever meet setback requirements. The June 2005 letter from Mary Ann Tsai to Mr. Wheeler completely overlooks 2-405.B(2), which is the provision that requires that any minor lot line adjustment not increase density, not create any new lots or outlots, and not create or aggravate any nonconformity. It completely ignores that; whereas, the Ordinance is quite unambiguous on that point. You have to -- for a minor lot line adjustment not to -- for grandfathering to be preserved, notwithstanding a minor

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 576

lot line adjustment, that minor lot line adjustment has to meet 2-405.B(1) and B(2). If you look at that letter, there is no reference to B(2).

MR. SMITH: Thank you.

MR. BEARD: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Beard.

MR. BEARD: Again, you know, we talk about this out front here because we're a public body, so my question is, I just can't get -- and since we're talking about this, I can't get past the point that -- you know, in all deference to Judge Roush's ruling, I can't get by -- past the fact that this is not a proper appeal. I mean, notwithstanding timeliness from a jurisdiction standpoint, I mean, I can't get it in my head that we should be making a decision that relates to DPWES and building permits. I'm just not there, as my colleague, Mr. Smith, seems to be, with 15.2-2311, I guess that's the -- so help me out. Perhaps you can help me out.

CHAIRMAN RIBBLE: I think somewhere along the line we're going to get a motion, and we can discuss all these things a little bit further.

MR. BEARD: Well...

MR. HAMMACK: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: Since we've opened up again, I have two questions for Mr. Stoner because his arguments are challenging, to say the least, but dealing with notice to the Board of Supervisors, correct me if I'm wrong, but isn't -- aren't there some circumstances when notice to the County Attorney serves as legal notice to the Board of Supervisors?

MR. STONER: Yes, that's right. If a suit is against the governing body, then the County Attorney can be served.

MR. HAMMACK: And that would --

MR. STONER: Yes.

MR. HAMMACK: -- satisfy notice requirements?

MR. STONER: Yes. And, again, I don't want to see you going down the road appearing to think that we're basing our argument, our case, our request to you to look at these issues that, to some degree at least, were touched on in 2005 on the ground that the Board of Supervisors didn't have notice at that time. I think the Board did not have notice. I think that -- I offered that as simply rationale for you so you could understand why you didn't see an appeal then.

MR. HAMMACK: Well --

MR. STONER: But I'm not saying that's why we're appealing now.

MR. HAMMACK: Well, the problem is that we hear the arguments from the County Attorney's Office regularly that if you don't appeal within 30 days or 60 days, you're just plain dead in the water, lost your rights, but the follow-up question to that is, how do you reconcile the deed of resubdivision that's dated May 19, 2005, which is signed by a County attorney, as not being notice to the Board of Supervisors if they -- if you argue that they were really not on notice? And, further, the follow-up question to that is, in this deed under miscellaneous it says this deed shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. This deed may be executed in counterparts, each of which shall be deemed an original, which together shall be constitute one and the same instrument. This deed is in accordance with the statutes of Virginia and ordinances in force in Fairfax County governing the platting and subdivision of

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 577

land and is approved by the proper authorities as evidenced by their endorsement hereto and the plat. And the plat itself has no less than five approvals signed off by the Zoning Administrator or various authorities in Fairfax, and it is signed by an Assistant County Attorney and by a representative of Department of Zoning, and this is in 2005. How do you reconcile that the County Board isn't -- if it's not actual notice, it's certainly constructive notice. Do you have any response to that?

MR. STONER: Sure. First, I think you'll note, and I don't have that date in front me, but as I recall, the Assistant County Attorney who signed it signed it approved as to form, so he was approving merely the form of the document.

Second, with respect to the minor lot line adjustment, the fact that it depicts Lots 111A and 112A does not in and of itself make Lots 111A and 112A independently buildable. The requirements of 2-405 simply say if you have a minor lot line adjustment, then if it is not to cost you the grandfathering that you get in the first paragraph of 2-405, then it has to meet certain requirements. It doesn't say as long as you have a minor lot line adjustment, you're all right. It says a minor lot line adjustment that meets these specific requirements, and I submit that the boilerplate language in that deed of subdivision or resubdivision is not stating any position as to whether after this minor lot line adjustment, Lots 111A and 112A can be developed as two building lots. You have two lots out there to subdivide the lots, I put in quotations, just as you had Lots 111, 112, and 113 before, which could not each independently be built upon. They were still subdivided lots, but - and you could say in certain respects they complied, but that didn't mean that they could be built upon.

MR. HAMMACK: Well, whether they could be built upon would depend on whether they meet whatever the requirements are today. You know, let me come back to this deed. It's true that the Assistant County Attorney signed under a line that says approved as to form, but immediately above that it says executed and approved on behalf of the Board of Supervisors of Fairfax County, Virginia, by authority granted by that Board, and the Assistant County Attorney signs under that as well as the Assistant Director of Land Development Services. So if -- what you're telling me, I mean, is that someone could come in and get a lot line adjustment and have it go through the whole process and then if somebody on the Board of Supervisors didn't like it, they could challenge that even though their own agents had executed the deed approving it, and, I mean, somehow that just doesn't settle very well, at least with my line of thinking on --

MR. STONER: I totally understand that --

MR. HAMMACK: -- (inaudible) handled administratively.

MR. STONER: -- Mr. Hammack. I understand that, and I would prefer not to be making that particular argument to you, but I think you have to recognize that it's also limited to instances of nondiscretionary errors. And, yes, you need to find that this was a nondiscretionary error to the extent that there was an error, and, again, there are certain things which the Zoning Administrator or Mr. Sanders put before you as supposedly having decided the issue back in 2005 which I submit did not, the buildable lot determination being one. It did not say how many lots you actually had. It's entirely conceivable, and I submit it's the case here, that you might have had three lots that were grandfathered, subdivided lots that were grandfathered, that were susceptible of only one building. So that's a very severe limitation on the ability of the Board or anyone else for that matter, and it's not just the Board, but in this case it is the Board of Supervisors, to come in somewhat late in the game to say, wait a minute, this is something that the Zoning Ordinance simply doesn't allow. It's not something that would happen day in and day out, I submit. And you recall, too, that I've cited some cases out of the Supreme Court where things had actually been built, and the Court said, well, as unfortunate as it might be, what you build didn't conform with the Zoning Ordinance, and it's got to come down. The Segaloff (phonetic) case is the preeminent case, was the first one along those lines.

CHAIRMAN RIBBLE: Mr. Byers, you have a question?

MR. BYERS: Well, actually, Mr. Stoner kind of touched on it. I would be interested to know if there is any, during you long legal research on this particular case, where there is any precedent in the Commonwealth where an elected body or an executive body in fact sued its professional staff or appealed a decision of its professional staff on issues like this.

MR. STONER: I wasn't looking for that, so I might have actually come across a case where it happened and

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 578

didn't take note of it. Nothing springs to mind, but that's not to say there is not an example of it out there. I -- I'm sorry.

MR. BYERS: Okay.

MR. STONER: I'd like to be able to tell you one off the top of my head. Mr. Foote, in his years of experience, might know of something, but -- and it could be that it hasn't happened. I just don't recall.

MR. BYERS: Okay. Thank you.

CHAIRMAN RIBBLE: The public hearing is closed. Mr. Hammack.

MR. HAMMACK: Mr. Chairman. Bear with me, this is a long motion, and, Mr. Beard, I'm going to try to address your question somewhere in it.

MR. BEARD: I guess you took my motion, but go ahead.

MR. HAMMACK: If you'd like it, I'd be happy to give it to you.

MR. BEARD: That's quite all right. Go ahead.

MR. HAMMACK: I have some findings of fact to make, and I hope this will all make sense. In any event, these are Appeals A 2006-PR-028, an appeal of the issuance of a grading plan by DPWES, the appeal being made by the Board of Supervisors, and A 2006-PR-052, also the issuance of a building permit by DPWES and the appeal being made by the Board of Supervisors. The two appeals are determinations made by the Department of Public Works and Environmental Services of the approvals of grading plan and building permits, respectively, to allow the construction of two detached dwelling units on two lots that previously had been developed with one dwelling unit, did not comply with the Zoning Ordinance provision.

The subject property consists of two lots. Lot 111A is an 18,924-square-foot corner lot which abuts Chichester Lane to the west and Cherry Drive to the north, and Lot 112A is an 11,000-square-foot interior lot abutting Cherry Drive to the north. Lot 111A is undeveloped at this time, and Lot 112A is developed with a two-story single-family detached dwelling constructed in 2007.

These two appeals have been before the Board of Zoning Appeals before and heard in public hearing as After Agenda items. At the time, these -- I gather these, our After Agenda items, are not advertised as public hearings, so I don't know whether that qualifies as a public hearing or not or whether that was a reason that the judge or the court referred these back to us. However, on both of these occasions, the BZA declined to accept the appeals of the Board of Supervisors for reasons set forth in the record that was taken at that time, and I'm not going to go into those arguments. They're part of the record for the court to consider if the court wanted to consider it. Both of our decisions not to accept the appeals were appealed to the Circuit Court, consolidated for trial, and following certain motions regarding, I gather, primarily procedural arguments, I wasn't there and haven't really looked at the file, the court issued a writ of mandamus ordering the BZA to hear and determine these appeals, so if for no other reason, we are -- have been directed by the court to hear these cases and make a decision on the grounds that we feel are appropriate.

At the commencement of the hearing two weeks ago, counsel for the parties basically informed the BZA that the appeal should be treated, I think, as de novo appeals, but as any other appeals. The applicable principles that the Board, I think, should apply in determining or making our decision are at least minimally the following: The BZA should give weight to determine -- to determinations of the Zoning Administrator and uphold the decisions of the Zoning Administrator unless it finds that the Zoning Administrator was clearly erroneous along in the ap -- in the administration of the Zoning Ordinance. In this regard, historical consistency by the Zoning Administrator in the interpretation and enforcement of the Zoning Ordinance is also to be given weight. It's my further understanding that the burden of proof to establish that the Zoning Administrator erred is on the appellant, and in this case that would be the Board of Supervisors.

Since the hearing on January 15th, 2008, when the decision was deferred, I have had the opportunity, and I assume the rest of the Board has had the opportunity, to read the letter dated January 15, 2008, submitted

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 579

by Mr. Stoner, counsel to the Board of Supervisors, and the memorandum submitted by Mr. Sanders on behalf of Whitestone Investments, the property owner. I would further note that at the January 15th hearing, the Board of Supervisors withdrew one of its arguments with respect to the deed of vacation being recorded in 1946. Between the staff report prepared by Mr. Foote on behalf of the Zoning Administrator, the memorandum submitted by Mr. Sanders and Mr. Stoner at the BZA has been given established legal precedent and argument in support of the respective positions of the parties and actually cited applicable law necessary to make the decision as the BZA is mandated to do so.

All things considered, I think the argument set forth by Mr. Foote on behalf of the Zoning Administrator and Mr. Sanders on behalf of Whitestone are the stronger arguments and more convincing arguments in determination of this case, and while the arguments set forth by Mr. Stoner are interesting and challenging, do not establish that the Zoning Administrator erred or support the proposition that the Zoning Administrator's determinations should be overturned. Accordingly, I'm going to make a motion to affirm the determinations or actions by the Zoning Administrator in both appeals. In arriving in these decisions, make the following findings of fact, they're fairly lengthy. These facts are based upon the testimony and exhibits which have been submitted by the parties and the arguments and testimony presented at the hearing. I don't think that these facts are really controverted.

On November 17, 1938, the deed of dedication and plat creating Fairhill on the Boulevard Subdivision, Section 1, was recorded in Fairfax County land records.

On June 26, 1939, the deed of dedication and plat creating Fairhill on the Boulevard Subdivision, Section 2, was recorded in Fairfax County land records in Liber Book N-13, page 62. The subject properties that are involved in this appeal are located within this section of the subdivision.

On March 1st, 1941, the first Zoning Ordinance in the County became effective, at which time the subject properties was rezoned RR, rural residential district, now R-1.

On November 24th, 1945, the revised subdivision plat for Sections 1 and 2 of Fairhill on the Boulevard was signed as approved by the Zoning Administrator and Planning Commission and on November 26, 1945, was signed as approved by the County Engineer.

On March 26, 1946, the deed of vacation, rededica- -- dedication and correction along with the revised plat noted, along with the revised plat, were recorded in the Fairfax County land records in Deed Book 481, page 415. That plat stated that there were numerous and sundry errors and discrepancies in the dimensions, courses, and distances of the lots and traces contained within the boundaries of the subdivision and that this deed was intended to correct those errors.

The Zoning Ordinance was amended in 1941, 1943, 1951 to preclude the application of Zoning Ordinance regulations to previously recorded lots with respect to their size and shape, thereby protecting lots such as those in Fairhill on the Boulevard.

On January 24th, 1952, Building Permit Number 779 was approved for the construction of a one-story brick and frame building unit straddling the lot line between Lots 112 and 113 and encompassing what was then Lots 111, 12, and 13.

On August 4th, 1952, Building Permit Number 2227 was approved to add a carport and storage shed on the subject properties.

On March 24th, 2003, the Subdivision Ordinance was amended to validate certain lots created prior to March 25th, 19- -- March 25th, 2003, that had been illegally created by metes and bounds rather than the required plat and provided, among other things, that the lots either meet the lot area and lot width requirements of the Zoning Ordinance in effect at the time of the creation or predated the Zoning Ordinance.

On March 8th, 2004, the Zoning Ordinance along with the Subdivision Ordinance was amended to allow validation of lots that did not meet applicable lot area and/or lot width requirements at the time of creation, but contained a principal structure on March 9th, 2004, which was occupied at any time between March 9th, 1999m and March 19th, 2004.

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 580

On January 19th, 2005, a Lot Validation Number 8922-LV-002-1 was issued by the Department of Public Works and Environmental Services. The determination was based on the zoning evaluation conducted by staff in the Zoning Administration Division, concluded that the subject Lots 111, 112, and 113 did not meet the current Zoning Ordinance requirements for lot width and/or lot area, but that the grandfathering provisions of the 1941 Zoning Ordinance were applicable. It was further determined that the subject lots were considered valid lots under the Subdivision Ordinance, and a building permit may be issued for the development of a use permitted by right, by special permit, by special exception on each of the lots provided County Zoning Ordinance regulations were met.

In March 2005, Whitestone Investments, Inc., submitted a minor lot line adjustment to DPWES to create two lots from the original three lots.

On April 19th, 2005, the Zoning Administration staff, DPWES staff, the property owner, and several neighbors met to discuss the proposed lot line adjustment. At the meeting, the Zoning Administration Division staff explained the grandfathering provisions of the 1941 Zoning Ordinance, and DPS staff addressed the minor lot line adjustment application that proposed to subdivide Lots 112 -- 111, 112, and 113 from three lots to two lots through a minor lot line adjustment in accordance with paragraph 1.B(1) of Section 2-405 of the Zoning Ordinance and Subdivision Ordinance.

On May 6, 2005, a revised minor lot line adjustment application was submitted to DPWES. By letter dated June 6, 2005, Mr. Wheeler, an abutting property owner -- to Mr. Wheeler, an abutting property owner, from Mary Ann Tsai, Zoning Administration Division, an explanation was provided as to the Zoning Administrator's determination that the consolidation and redevelopment of the subject properties was permissible under the Zoning Ordinance. The determination was based on the proposition that the 1946 re-plat of the subdivision was so minor as to be of no determinative legal consequence as evidenced by the 1945 approval of the re-plat by the Zoning Administrator, the Planning Commission, and the County Surveyor. The term -- the determine set forth -- the determination set forth in this letter was not appealed by Mr. Wheeler or by the Providence District Supervisor, who received a copy of the determination.

On August 4th, 2005, minor lot line adjustment 8922-RP-005-2 was approved by DPWES, creating Lots 111A and 112A from the original Lots 111, 112, and 113, and was subsequently recorded on August 16, 2005. Parenthetically, I would note that this deed I asked Mr. Stoner about during the conclusion of his testimony, it is signed by a member of the County Attorney's Office, a member of the Zoning Administration staff. It states that it's in compliance with all county and state laws and ordinances and done on behalf of the County Board of Supervisors.

On April 28, 2006, grading plan 82 -- 8922-INF-006-3 and 8922-INF-007-3 for Lots 111A and 112A was approved by DPWES. The grading plan shows one dwelling to be constructed on each of the two newly created lots.

On May 23rd, 2006, Appeal Application A 2006-PR-028 was received in the Zoning Administration Commission. It was an appeal of the approval of the rough grading plan by DPWES on April 28th of 2006.

A memorandum dated July 24, 2006, from counsel to the Zoning Administrator to the BZA set forth the Zoning Administrator's position that the appeal application did not constitute a proper appeal in accordance with the provisions of Part 3 of Article 18 of the Zoning Ordinance. The reasons for that are, one, the issue was not properly before the BZA because their appeal -- there is an appeal -- because it is an appeal -- it was an appeal of the approval of a grading plan, not a zoning determination, and, therefore, the BZA had no jurisdiction, and, second, the appeal application was not timely filed because the underlying zoning determination that was the basis of all the subsequent decisions was rendered in 2005, far more than 30 days prior to the filing the application.

With respect to the first issue, that it's not jurisdictional, I think that we don't have to get to that issue in this hearing. I'll say this is parenthetical. It's not a finding of fact. It's really argument, but we don't have to get to that issue because I think in the course of the hearings it's been established that there might be a narrow group of cases where an appeal of a determination by DPWES might be appealable to the BZA, and the example set forth in Mr. Stoner's memorandum is a good example. If DPWES issued a building permit for a high-rise building in an R-1 District, that would -- that might very well constitute a nondiscretionary error. I

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 581

don't think we have to get to that issue for the further the reason that we're mandated to make a determination in this case, and I think the other grounds can be addressed, and I'll get down to them later.

On July 6, 2006, the Zoning Permit Review Branch reviewed and provided zoning approval of a building permit, Applications Number 052791345 and Number 053125150, and on July 31st, 2006, building permits were issued by DPWES for the construction of two single-family detached dwelling units on subject Lots 111A and 112A.

Then on July 21st, 2006, Vickie McEntire, Fairfax County Supervisor, provided a memorandum to the Zoning Administrator concluding that the 1945 revised plat, Sections 1 and 2 of Fairhill on the Boulevard, recorded in 1946 was simply a correction of the original plats from '38 and '39, and she noted -- stated that the corrections were well below the customarily accepted margin of error for plats of this period and should be viewed as insignificant changes. I realize that the Board of Supervisors has for practical purposes maybe withdrawn this, that basis for the appeal, but I think it's still a finding of fact that we should adopt, the court may want to consider because I'm sure some of the same arguments will be set forth at the Circuit Court.

On August 30th, 2006, Appeal Application A 2006-PR-052 was received in the Zoning Administration Division, and that was the appeal of the issuance of the building permits.

On October 24th -- I'm sorry. On October 16th, in another memorandum to the BZA, the Zoning Administrator set forth basically the same arguments that she did previously, but she also argued that the Zoning Administrator -- that the appeals were not timely filed because they weren't filed within 30 days of the underlying zoning determinations that had served as a basis for all subsequent decisions. And it was further argued that the Zoning Administrator's position wasn't appealed within 30 days when she signed off on the building permit, although I note that the appeal of the building permit was within 30 days.

In any event, the appeals in Application A 2006-PR-028 and A 2006-PR-052 were consolidated and sent over to the Circuit Court of Fairfax.

I also wanted to make a finding of fact, and I think it's in -- it's -- it may be in the findings already, but that the deed of subdivision was signed off on by the County Attorney and the Zoning Administrator, was recorded in August, August 2005.

Now, the -- to continue with some additional findings of fact, that no appeal by the Board of Supervisors or any other party was taken of the lot validation determination in 2005, that no appeal of the letter dated April 19th -- I'm sorry -- of the April 19th, 2005 meeting in which County staff, Mary Ann Tsai, met with community members and explained the process that was going on and the determinations that had been made, was taken. And I think that's an -- we've had cases like this before where we've been told that if a -- the Zoning Administrator or the representative makes a determination in a public hearing like that, it is appealable, and although this isn't one of the basis specifically cited by the Zoning Administrator, it seems to me it's another possible determination which could have been appealed and wasn't by any member.

In addition, no appeal of the June 6th, 2005 letter addressed to Mr. Wheeler and the Providence District Supervisor was made within the 30 days, and no appeal of the Zoning Administrator signing off on the building permit was made within 30 days. In my mind, the failure of parties to appeal these determinations make them things decided in the -- under the case of *Quinn versus Alward*, 235 Virginia 616, 369 Southeast 2nd 410, decided in 1988. These were not -- these decisions involved were zoning decisions, and they, in my mind -- that's the basis for the determination that they were not timely appealed and that those decisions become, in effect, sort of the law of this case. They are the decisions that allowed the lot line adjustment to be made. It seems like, as I review the record, that the Zoning Administrator and her predecessors have consistently and uniformly interpreted and applied the Code and the Zoning Ordinances to this subdivision and others that may have been created in similar fashion of this subdivision for 60 years, and I'll say others created in a similar fashion.

The position taken by the Zoning Admin- -- by the Board of Supervisors seems that it would ignore the consistent administrative interpretation and application of these laws to these older subdivisions, and also it would seem to ignore the Zoning Ordinance amendments in 2003 and later that validated these metes and bounds lots for the purposes to ensure that they were valid lots. If we were to decide otherwise, it might cast

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 582

some question as to the validity of many of the lots in Fairhill on the Boulevard and also in other subdivisions that were created under a similar process. Given the fact that the zoning decisions were -- determinations were made that allowed the lot line adjustment, I don't consider the issuance of the grading plans and building permits to be nondiscretionary errors for purposes of this case. I'm not trying to extend that beyond this case. There may be times when they are, and there may be times when they're not.

As far as the law of the case goes, I think we have some very good law to support the decision of the Zoning Administrator and which I would rely on. One case, *Crucible, Inc., versus BZA*, decided by Judge Bellows of the Fairfax County Circuit Court, hearing a case that actually originated in Stafford County, ruled that the 30 days within which to appeal a zoning determination runs from the date of the determination even against parties without notice, and that would include a party such as the Zoning -- the Boards of Supervisors. In addition, there is cited in the Zoning Administrator's staff report the case styled *Board of Supervisors versus Board of Zoning Appeals*, 268 Virginia 441, 604, Southeast 2nd 7, a 2004 case, held that the Zoning Administrator is agent for the Board of Supervisors, so, I mean, it's hard to picture that if your agent has been delegated authority to do things that you're not on at least constructive notice, if not actual notice, of what is going on, but, I mean, I don't think you really have to get to the notice. Well, you do have to get to the notice issue. You don't have to get to the notice issue of whether the Board itself, all seven or all members were on actual notice because under the -- I think under the established Supreme Court law, they were simply by virtue of the decisions of the Zoning Administrator, and the *Crucible* case would have run -- the notice run against them in any event.

In any event, Code Section 15.2-2311 allows appeals to the Board of Zoning Appeals for any person aggrieved and requires that determination to be made within 30 days under 2311A. The underlying zoning determinations in this case were not appealed. The ones I cited earlier, three, maybe four, maybe even more if somebody really sat down and combed the transcript, were not appealed.

In addition, we have -- the other case I wanted to cite. In addition, I wanted to cite the case of *Concerned Citizens of Hollin Hall Village versus County of Fairfax Board of Zoning Appeals* that was decided by Judge MacKay, in which she ruled that the Zoning Administrator's contention that subdivision by building permit is not a legal lot consolidation and does not constitute a subdivision. I think that has some application in this case and the other Hollin Hall cases. I'm not sure which one was which, but one of them went up to the Supreme Court of Virginia, and I think effectively that determination was upheld. See what else I have here.

In any event, it seems like this is a case in which the underlying zoning issues were surfaced, although they involved appeals of decisions of DPWES, and that would seem to give us jurisdiction to hear the case and make these determinations, but we don't have to reach that. The court has told us to hear the case and make our decision, and I think we can make it on these grounds. I think that the failure of the Board of Supervisors to appeal the determinations or take actions appropriate, whatever would be required, of things being done by their agents within the time, the 30-day limit, you know, gives us things decided, and you can't go back and change what was not appealed or corrected within the 30 days.

Oh, I know the other thing. The other issue is the issue of the 60 days. It's under 15.2-2311C. It's the nondiscretionary issue. I don't feel that these are nondiscretionary, as I mentioned earlier, but the 60-day provision, paragraph C, fit the language in here, but if a person that relies on the determinations of the Zoning Administrator to their detriment, and in this case I would find that Whitestone Development expended money and in reliance on determinations that were not appealed within 60 days under Subsection C of 2311 and that the issuance of the building permit and the grading plans were not nondiscretionary because of the underlying zoning decisions, and, therefore, I would uphold the decisions of the Zoning Administrator in both cases.

MR. SMITH: Second.

CHAIRMAN RIBBLE: The motion is seconded by Mr. Smith. Discussion?

MR. BEARD: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Beard.

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 583

MR. HAMMACK: Well, maybe I should say uphold the decisions of -- (inaudible) -- of DPWES -- of DPWES to -- I've been using Board of Supervisors sometimes where I should have DPWES, so -- but the decisions of DPWES to issue the grading plan and to -- for the building permit approval.

CHAIRMAN RIBBLE: You understand that, Mr. Smith?

MR. SMITH: Second.

CHAIRMAN RIBBLE: Thank you. Mr. Beard, did you have something?

MR. BEARD: Okay. Question, and, again, this is all so voluminous, but based upon this writ, will this -- will we not be setting a precedent here by hearing this case? Are we not setting a precedent with hearing the case?

MR. HAMMACK: My response is that first I think there are classic cases which might involve DPWES approvals that this Board will hear, be able to hear appeals from. In this particular case, the Board of Supervisors has raised the issue of whether the determinations of DPWES are in accordance with underlying zoning approvals and regulations, so it has a zoning component. The Zoning Administrator does sign off on the building permit, and the Board of Supervisors has even argued in its rather interesting, but -- argument that in certain cases, if, let's say, the high-rise building permit were signed off on, that an appeal to this Board would be appropriate because it would be in violation of the Zoning Ordinance. So I think there are probably a narrow group of cases, if the underlying zoning evaluation is either attacked or raised in a proper fashion, that this board may be hearing some of these cases even though we have basically been told we didn't have jurisdiction in many of the cases in the past, but also we're under a writ of mandamus to hear, I think. That -- when the court tells you you have to hear the case, that, of course, changes things a little bit. I mean, we been told by circuit courts -- we've had appeals come back to us on occasion and asked to make findings of fact and conclusions of law because we didn't perhaps elaborate the reasons for our decision. Well, of course, this case comes back without any real instruction from the court, but it seems to me that we're being asked to hear the case, make a determination, and it does involve underlying zoning determinations, and --

MR. BEARD: Mr. Chairman, we're having a --

MR. HAMMACK: So I don't know. I can't -- it's based upon all of the evidence and the arguments. I mean, these are the reasons we -- I think the Board felt that it didn't have jurisdiction in part because all -- I mean, you could see when it was presented to us earlier that appeals hadn't been taken of the underlying zoning determination, so --

MR. BEARD: So, Mr. Chairman, real quickly, I -- so I certainly don't want to be contemptuous of the court, but I feel that I'm being forced to vote on something that I don't feel has -- we have jurisdiction on, and if I -- as you said, the writ didn't have any specific instructions. As far as I'm concerned, I look at it and go, well, we don't have the authority to hear this. So I want to get past that, but I do want to go on record as saying, you know, I'm going to be forced, unless I recuse myself, to vote on something that I don't think we have the authority to, and if we do vote it, which obviously we're going to, I certainly think that we're setting a precedent, that we're going down a path that we haven't been before.

MR. HAMMACK: To respond --

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: The -- I asked for the transcripts of the two hearings where we declined to take -- to hear the case, and, I mean, many of the same issues came up. The 30-day issue, the 60-day issue, those are all in there. I don't know what counsel argued to the judge. I mean, I certainly wasn't there. The judge's ruling was a handwritten writ of mandamus written by one of the attorneys at the conclusion of the arguments involving procedural issues and other things, and I'm not even sure what was argued. But the judge did issue a writ that asked us to hear the case, and under those circumstances, I think we can't decline to hear the case. You have to set forth your findings of fact and conclusions of law. If you felt that we're deciding it on incorrect grounds, I mean, I think you could make a substitute motion. I didn't feel that -- I don't know -- just the posture in which it is returned to us, that that was what was wanted by the

~ ~ ~ January 29, 2008, BOARD OF SUPERVISORS OF FAIRFAX COUNTY, A 2006-PR-028 and A 2006-PR-052, continued from Page 584

judge because I thought that the jurisdictional issues were raised earlier, and apparently -- I don't know -- maybe rejected by the judge. I don't think it's precedent setting for us because we're being asked to do something. We're not assuming the jurisdiction. If you assume the jurisdiction when it came to us the first time for each appeal and we were told we didn't have jurisdiction, then I think we might be setting a precedent in a sense, although we don't set precedents because we're a judicial body. We're a board. But when it comes back to us, it's sent back to us to hear the case, it's treated as a new case, so I don't know. I have -- as I mentioned earlier, in the back of my mind, I have some, I'll say, concerns about whether the way these cases come up on the after agenda docket as after agenda items, that that might not have something to do with the writ of mandamus because they're not advertised for public hearing. If that's --

MR. BEARD: Mr. Chairman.

CHAIRMAN RIBBLE: Yes.

MR. BEARD: I understand he's got to leave, and I'll just ask one quick question here. Do you think that if I abstain by voting that I'm in contempt of court? Would you think -- I don't have any legal advice here, you know.

MR. SMITH: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Smith.

MR. SMITH: Could I just suggest, it seems to me that you're in agreement with the conclusion, but for different reasons, so if you just note for the record that you're going to support the motion, but for a different reason, and then vote in favor of it, it seems to me like that might be a reasonable way to handle it.

MR. BEARD: Thank you.

MR. HAMMACK: You see, to put it a different way, we had the same conclusions before, but we didn't give reasons.

MR. BEARD: Okay. All right.

MR. HAMMACK: So I don't know. I don't really know the answer.

MR. BEARD: All right. Okay. Okay. All right. Okay. All right.

CHAIRMAN RIBBLE: Could you repeat your findings of fact.

(Audience laughter.)

CHAIRMAN RIBBLE: Further discussion? All those in favor of the motion signify by saying aye.

MR. BEARD, MR. SMITH, MR. BYERS, MR. HAMMACK, CHAIRMAN RIBBLE: Aye.

CHAIRMAN RIBBLE: Opposed? The vote is unanimous, and the decision of the Zoning Administrator is upheld in both instances.

//

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 of Fairfax County, A 2006-PR-028 and A 2006-PR-052; Board of Zoning Appeals vs. Board of Supervisors, in the Supreme Court of Virginia, Record 071395, Circuit Court Number 2006-11777, and general legal 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 7-0.

~ ~ ~ January 29, 2008, continued from Page 585

The meeting recessed at 11:42 p.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. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Smith was not present for the vote.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

Minutes by: Paula A. McFarland / Mary A. Pascoe

Approved on: October 24, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble

John F. Ribble, 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 5, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ February 5, 2008, Scheduled case of:

9:00 A.M. ADAM JAY RUTTENBERG, SP 2007-DR-144 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 10.6 ft. from the side lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 2021 Franklin Ave. on approx. 21,599 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 4.

Chairman Ribble noted that SP 2007-DR-144 had been administratively moved to February 12, 2008, at 9:00 a.m., for ads.

//

~ ~ ~ February 5, 2008, Scheduled case of:

9:00 A.M. ELIZABETH F. PFORR, SP 2007-LE-138 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit addition 7.3 ft. with eave 6.8 ft. from side lot line such that side yards total 17.3 ft. and eaves total 14.8 ft. and accessory storage structure 3.0 ft. with eave 2.8 ft. from rear lot line to remain. Located at 7721 Hayfield Rd. on approx. 8,713 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 100-2 ((2)) 310.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Elizabeth Pforr, 7721 Hayfield Road, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Hedrick noted that the Board had received a memorandum at the hearing which included a revised table indicating that the eaves were not a permitted extension on the addition because they were not 10 feet above ground. She said the eave would be handled as an administrative reduction because it was less than a 10 percent error.

Mr. Hart and Ms. Hedrick discussed a photograph of the rear sheds, with Ms. Hedrick stating that one of the sheds belonged to the applicant, the other to the adjacent property owner, and the sheds were separated by a chain-link fence.

In response to a question from Mr. Hart regarding whether there were any regulations concerning the placement of sheds containing combustible chemicals relative to other sheds or property lines, Susan Langdon, Chief, Special Permit and Variance Branch, responded that staff had not been informed by the Fire Marshall of any requirement.

Ms. Pforr presented the special permit request as outlined in the statement of justification submitted with the application. She said the enclosure of the existing carport had been done to improve its appearance and enable her family to secure valuable equipment and their vehicle. She said the carport and shed had been built over 30 years ago and were in poor condition at the time the home was purchased.

Chairman Ribble called for speakers.

Paul Pforr, 7721 Hayfield Road, Alexandria, Virginia, came forward to speak, stating he had built the garage where an existing carport with a foundation had been located. He said the supports, framing, and headers

~ ~ ~ February 5, 2008, ELIZABETH F. PFORR, SP 2007-LE-138, continued from Page 587

were existing, and the only thing he had done was erect the three walls and add the doors. He said his neighbor had told him the shed had been there since the house was built. Mr. Pforr said the shed was very sturdy, on a solid foundation, and he had put new siding and a new roof on it.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-LE-138 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELIZABETH F. PFORR, SP 2007-LE-138 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit addition 7.3 ft. with eave 6.8 ft. from side lot line such that side yards total 17.3 ft. and eaves total 14.8 ft. and accessory storage structure 3.0 ft. with eave 2.8 ft. from rear lot line to remain. Located at 7721 Hayfield Rd. on approx. 8,713 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 100-2 ((2)) 310. 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 5, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony satisfying the criteria set forth in paragraphs A through G, the subsections under that Code section.

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

~ ~ ~ February 5, 2008, ELIZABETH F. PFORR, SP 2007-LE-138, continued from Page 588

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 with eaves and an accessory storage structure, as shown on the plat prepared by Dominion Surveyors, Inc., dated July 9, 2007, as revised through October 16, 2007, as submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the garage addition shall be diligently pursued and obtained within 120 days of final approval or the special permit for the addition shall be null and void.
3. Prior to approval of a building permit, an Administrative Reduction shall be obtained from the Department of Planning and Zoning for the garage addition to remain 7.3 feet from the side lot line. If this approval is not granted, the addition shall be reduced in size to meet Zoning Ordinance requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 5, 2008, Scheduled case of:

9:00 A.M. JAMES I. & JOAN C. LANE, SP 2007-SP-141 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 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.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James Lane, 12419 Popes Head Road, Clifton, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Lane presented the special permit request as outlined in the statement of justification submitted with the application. He said he had relied on the fence contractor who had misled him. Mr. Lane said he had filed an appeal, and the Board of Zoning Appeals subpoenaed the contractor, who refused to appear before the Board. Mr. Lane said the fence did not cause any sight distance issues, and he thought the fenced area was the backyard.

In response to questions from Mr. Hart, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that she had received confirmation from the Prince William County Sheriff's Office that the subpoena had been issued to the address the County had, but the contractor had not responded. Mr. Hart said that if someone had forged an approval, as the applicant contended the contractor had, it was a serious matter and should be investigated. Ms. Stanfield said staff would follow up on the matter.

In response to a question from Chairman Ribble, Mr. Lane said he had had a contract with the contractor, but

~ ~ ~ February 5, 2008, JAMES I. & JOAN C. LANE, SP 2007-SP-141, continued from Page 589

did not have it at the hearing. He said the contracts had been included with the appeal application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-SP-141 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES I. & JOAN C. LANE, SP 2007-SP-141 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 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. 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 5, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 25,276 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by BC Consultants, dated August 20, 2007, signed August 31, 2007, 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. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 5, 2008, Scheduled case of:

9:00 A.M. SCOTT W. STETSON, SP 2007-SP-106 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line such that side yards total 21.1 ft. Located at 6816 Grey Fox Dr. on approx. 12,072 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 410. (Admin. moved from 12/4/07 for notices)

Chairman Ribble called the applicant to the podium.

~ ~ ~ February 5, 2008, SCOTT W. STETSON, SP 2007-SP-106, continued from Page 590

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Scott W. Stetson, 6816 Grey Fox Drive, Springfield, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SP-106, subject to the proposed development conditions.

Mr. Stetson presented the special permit request as outlined in the statement of justification submitted with the application. He said the existing deck needed to be replaced, and when he had applied for a building permit for a new roofed deck, he was told that the original deck had never been permitted.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-SP-106 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT W. STETSON, SP 2007-SP-106 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line such that side yards total 21.1 ft. Located at 6816 Grey Fox Dr. on approx. 12,072 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 410. (Admin. moved from 12/4/07 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 February 5, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has a staff report with a staff recommendation of approval.
3. The rationale in the staff report is adopted.
4. This is a replacement of an existing deck with a screened porch on top of it.
5. Because of the design of the house, this is really the only logical place to put the porch.
6. The proposed location is adjacent to wooded open space and park land with mature trees on it.
7. Because of the orientation of the lot, the proposed structure would not have any negative impact on anybody.
8. No one would be able to see the proposed structure.
9. The Board has determined that the application meets all of the standards in the Sect. 8-922 motion.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

~ ~ ~ February 5, 2008, SCOTT W. STETSON, SP 2007-SP-106, continued from Page 591

2. This special permit is approved for the location and size (approximately 166 square feet) of the proposed screened porch addition as shown on the plat prepared by Alexandria Surveys, dated May 8, 2007 and revised to August 28, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,820 square feet existing) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The screen porch shall be consistent with the architectural renderings included Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 5, 2008, Scheduled case of:

9:00 A.M. DENNIS A. KRAY & JANNET V. KRAY, SP 2007-DR-137 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line. Located at 6624 Hallwood Ave. on approx. 15,900 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((5)) 43.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Dennis Kray, 6624 Hallwood Avenue, Falls Church, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-DR-137, subject to the proposed development conditions.

Mr. Kray presented the special permit request as outlined in the statement of justification submitted with the application. He said a peaked roof would alleviate the problems with the current flat roof and would allow him to add another bathroom and office.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2007-DR-137 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DENNIS A. KRAY & JANNET V. KRAY, SP 2007-DR-137 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line. Located at 6624 Hallwood Ave. on approx. 15,900 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((5)) 43. 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 5, 2008; 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 of the application.
3. The rationale of the staff is adopted.
4. There are very tall mature trees which surround the lot and would minimize any impact of the addition on the neighbors.
5. These are very narrow lots.
6. There does not appear to be any other location for the addition.
7. The Board has determined that the application has met all of the Requirements 1 through 6.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. 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 1,373 square feet) of the proposed two story addition as shown on the plat prepared by Suburban Development Engineering, June 6, 2007 and signed October 30, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,567 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
5. 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.

~ ~ ~ February 5, 2008, DENNIS A. KRAY & JANNET V. KRAY, SP 2007-DR-137, continued from Page 593

This approval, 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 7-0.

//

~ ~ ~ February 5, 2008, Scheduled case of:

9:00 A.M. BOSS, TERRY D. & BOSS, SUSAN D., SP 2007-SU-139 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with VC 2007-SU-005).

9:00 A.M. BOSS, TERRY D. & SUSAN D., VC 2007-SU-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with SP 2007-SU-139).

Chairman Ribble noted that SP 2007-SU-139 and VC 2007-SU-005 had been administratively moved to February 12, 2008, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ February 5, 2008, Scheduled case of:

9:00 A.M. TASNEEM ZIA AHMAD D/B/A OAKHILL MONTESSORI, SP 2007-SU-128 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home child care facility. Located at 3305 West Ox Rd. on approx. 38,459 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 54. (Decision deferred from 1/15/08)

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the applicant's agent, reaffirmed the revised affidavit dated January 24, 2008.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SU-128, subject to the proposed development conditions.

In answer to a question from Chairman Ribble, Susan Langdon, Chief, Special Permit and Variance Branch, said up to 25 percent of the front yard was allowed to be impervious surface.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said the plat before the Board showed that 27 percent of the front yard was covered in impervious surface, 242 square feet would be removed to reduce it to 25 percent, and it would be in character with the area. She said the applicant agreed with the development conditions. Ms. Kelsey said

~ ~ ~ February 5, 2008, TASNEEM ZIA AHMAD D/B/A OAKHILL MONTESSORI, SP 2007-SU-128, continued from Page 594

there would be six parking spaces with the circular driveway. She noted that there were evergreens planted around the front of the property which would screen the circular area and indicated that the applicant would not object to additional evergreens being planted if the Board thought there was a concern. Ms. Kelsey noted that all along West Ox Road other driveways had been widened and turnarounds added after the widening of the road.

In response to a question from Mr. Hammack concerning enclosing the carport and the applicant's desire to make renovations to the house in the future which might change the parking arrangements, Ms. Kelsey stated that the applicant planned to go forward with the carport being open and understood she had to abide by the development conditions and plat and would have to file a new application if she decided to make any changes.

Discussions ensued regarding the current and past enrollment; the gap between the date the child care began and the issuance of the state license; whether fire, health, and safety inspections had been done during that time; the difference in the number of children allowed by the state and county; violations found during the two inspections conducted as part of the state licensing process and their resolution; the development conditions stating that the approval shall not relieve the applicant from compliance with the provisions of any applicable Ordinance regulations or adopted standard; the Board's consideration of the applications from the land use point of view only; and the agencies to which copies of the staff reports are sent and the process by which they respond if there are concerns.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-SU-128 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TASNEEM ZIA AHMAD D/B/A OAKHILL MONTESSORI, SP 2007-SU-128 Appl. under Sect(s) 3-103 of the Zoning Ordinance to permit a home child care facility. Located at 3305 West Ox Rd. on approx. 38,459 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 54. (Decision deferred from 1/15/08). Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 5, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 38,459 square feet.
4. There is a recommendation from staff for approval.
5. Three additional children are being added to what can be done by right without coming to the Board of Zoning Appeals.
6. The applicant has addressed the concerns raised initially from the Board relative to impervious surface in the front yard by removing 242 square feet of impervious surface.
7. The applicant has planted evergreen trees in the front, which provide screening from West Ox Road.
8. It does appear to be consistent with some of the other uses, the reference to the dental office also on West Ox Road.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ February 5, 2008, TASNEEM ZIA AHMAD D/B/A OAKHILL MONTESSORI, SP 2007-SU-128,
continued from Page 595

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant, Tasneem Zia Ahmad DBA Oak Hill Montessori, only and is not transferable without further action of this Board, and is for the location indicated on the application, 3305 West 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 George M. O'Quinn, dated July 31, 2007 as revised through January 30, 2008, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum hours of operation of the home child care facility shall be limited to 7:30 a.m. to 6:00 p.m., Monday through Friday.
5. The maximum number of 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 up to four (4) spaces in the driveway for the child care facility. All parking shall be on-site.
8. The maximum total daily enrollment shall not exceed ten (10) children at any one time.
9. There shall be no signage associated with the home child care facility.
10. Prior to the establishment of the use, the applicant shall remove at least 242 square feet of impervious surfacing, scarify the area, and replant with grass and/or shrubbery, such that the West Ox Road-facing front yard contains less than 25% impervious surfacing as stipulated in Article 11 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, including specifically the requirements of Sects. 8-305.1B and 8-305.1F. 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 5-1. Mr. Byers voted against the motion. Mr. Hart recused himself from the hearing.

//

~ ~ ~ February 5, 2008, 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. (Admin. moved from 12/5/06, 2/6/07, 4/10/07, 7/10/07, and 10/30/07 at appl. req.)

Chairman Ribble noted that A 2006-DR-054 had been withdrawn.

//

~ ~ ~ February 5, 2008, Scheduled case of:

9:30 A.M. FEDERAL, INC., A 2007-SU-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor's office and shop on property in the I-3 District and has erected structures without approved building permits in violation of Zoning Ordinance provisions. Located at 14847 and 14905 Murdock St. on approx. 4.11 ac. of land zoned I-3, AN and WS. Sully District. Tax Map 33-2 ((2)) 20D and 20B. (Admin. moved from 9/18/07 and 12/4/07 at appl. req.)

Chairman Ribble noted that A 2007-SU-022 had been withdrawn.

//

~ ~ ~ February 5, 2008, Scheduled case of:

9:30 A.M. ERIK DORN & JENNIFER DORN, A 2007-MV-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are occupying the property without the required Residential Use Permit in violation of Zoning Ordinance provisions. Located at 1200 Chadwick Av. On approx. 7,500 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-4 ((20)) (C) 5.

Chairman Ribble noted that A 2007-MV-042 had been administratively moved to April 1, 2008, and subsequently withdrawn.

//

~ ~ ~ February 5, 2008, After Agenda Item:

Request for Reconsideration
Sherry Brown, A 2007-MV-030

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the request was to reconsider the action taken by the Board at the January 29, 2008 meeting to defer A 2007-MV-030 to May 25, 2008, and instead defer the appeal to April 1, 2008. She said there were no other cases scheduled for May 25, 2008, and the appellant's representative agreed to the April 1, 2008 date.

Chairman Ribble called for speakers to address the request; there was no response.

Mr. Hammack moved to reconsider the action taken by the Board at the January 29, 2008 meeting and defer A 2007-MV-030 to April 1, 2008, at 9:30 a.m. Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 5, 2008, continued from Page 597

As there was no other business to come before the Board, the meeting was adjourned at 10:08 a.m.

Minutes by: Mary A. Pascoe / Kathleen A. Knoth

Approved on: January 28, 2015

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 12, 2008. The following Board Members were present: Chairman John F. Ribble III; Tom Smith; V. Max Beard; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr., was absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m.

Mr. Byers recognized Nicholas LaCoke, a member of the Leadership Class of 2008, who was present to observe how a County board or commission worked.

Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. MORRIS, PATRICK & SUSAN, SP 2007-DR-145 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.1 ft. from side lot line. Located at 6010 Balsam Dr. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((16)) 17.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Stephen F. Perlik, the applicants' agent, SEI Design Build, Inc., 260 Cedar Lane, S.E., Suite A1, Vienna, Virginia, reaffirmed the affidavit.

Kelli Goddard-Sobers, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow the construction of an addition, specifically the enclosure of a screened porch into a family room, 10.1 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a modification of 4.9 feet or 33 percent was requested. She noted that the only change in the staff report was the date of the plat contained in the development conditions. Ms. Goddard-Sobers said staff believed the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions and recommended approval.

Mr. Perlik presented the special permit request as outlined in the statement of justification submitted with the application. He said the request was very simple, to enclose an existing porch with no changes to the footprint, and would afford the owners more use and enjoyment of their property.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-DR-145 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MORRIS, PATRICK & SUSAN, SP 2007-DR-145 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.1 ft. from side lot line. Located at 6010 Balsam Dr. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((16)) 17. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 12, 2008; and

WHEREAS, the Board has made the following findings of fact:

~ ~ ~ February 12, 2008, MORRIS, PATRICK & SUSAN, SP 2007-DR-145, continued from Page 599

1. The applicants are the owners of the land.
2. The Board has determined that the application meets all of the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 245.3 square feet) of the proposed addition as shown on the plat prepared by Rice Associates, P.C., dated June 12, 1993, as revised through January 23, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling (2,527 square feet) that existed at the time of the first expansion regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. ADAM JAY RUTTENBERG, SP 2007-DR-144 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck 10.6 ft. from one side lot line, dwelling 12.2 ft. from other side lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 2021 Franklin Ave. on approx. 21,599 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 4. (Admin. moved from 2/5/08 for ads)

Chairman Ribble called the applicant to the podium.

~ ~ ~ February 12, 2008, ADAM JAY RUTTENBERG, SP 2007-DR-144, continued from Page 600

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Adam Jay Rutenberg, 2021 Franklin Avenue, McLean, Virginia, reaffirmed the affidavit.

Kelli Goddard-Sobers, 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 errors in building location to permit a roofed deck to remain 10.6 feet from one side lot line and the dwelling to remain 12.2 feet from the other side lot line. A minimum side yard of 15 feet is required. Additionally, a fence greater than 4.0 feet in height was requested to remain in the front yard. The fence varied in height from 5.0 to 5.3 feet. A maximum fence height of 4.0 feet is permitted. The lot was a through lot, and the fence was located in the area used as a rear yard. Revised proposed development conditions dated February 12, 2008, and an updated statement of justification were distributed at the hearing.

Responding to a question from Mr. Hart, Ms. Goddard-Sobers said a complaint about the fence brought it to the attention of staff.

Mr. Rutenberg presented the special permit request as outlined in the statement of justification submitted with the application. With regard to the fence, he noted that because of the lot's topography, certain areas of Virginia Avenue sat approximately 50 feet above the first floor of the house. He said a dispute between two neighbors prompted the complaint that brought the County's attention to the neighborhood's fences. Because the house was built in 1953, it did not comply with current setback requirements. He said he obtained two special permit applications for errors in building location, one for the side of the house with the porch and the other for the opposite side of the house. A 2001 renovation built an addition and a second floor. The permit included the porch as part of the first floor. The plans showed the porch as part of the renovation, which added a roof to the second floor and re-shingled and painted the porch portion of the house. Mr. Rutenberg requested that the Board not require another permit for the porch built in 1953 and renovated in 2001. He said the shed had been in its current location for well over 20 years, but he was unsure exactly when it was built and what the zoning regulations were at the time. Mr. Rutenberg asked the Board to consider the shed a legally existing nonconforming structure and allow it to remain in the location. He said there was no place for the shed to be relocated because of the topography of the lot, and there would be no storage area for lawn equipment without it.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to questions from Mr. Hart concerning the prior building permit applications and why the 60-day rule would not apply to the applicant's shed since it had been shown on the drawings. She clarified that the building permit was approved for the improvements to the home, not the shed, although the shed was shown on the plat. Ms. Langdon said the Zoning Ordinance had never permitted accessory structures or sheds in a front yard, and when a property was a through lot, both sides were considered front yards.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-DR-144 for the reasons stated in the Resolution. Mr. Byers seconded the motion.

Mr. Smith said he wanted to find a way to allow the shed to remain because it seemed like a reasonable place for the shed, but he said the Board did not have much discretion in this case. He said Virginia Avenue was not shown on the plat that had been approved, and he thought this may have come under the nondiscretionary provision. He said that he did not know that the reliance was present that would be required under the 60-day rule because the shed predated the issuance of the permit. Mr. Smith said that he would support the motion.

Chairman Ribble called for the vote. The motion carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

COUNTY OF FAIRFAX, VIRGINIA**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

ADAM JAY RUTTENBERG, SP 2007-DR-144 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck 10.6 ft. from one side lot line, dwelling 12.2 ft. from other side lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 2021 Franklin Ave. on approx. 21,599 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 4. (Admin. moved from 2/5/08 for ads) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 12, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. With regard to the addition, on the record before the Board, the house has been where it is now relative to the side lot lines for a very long time; it does not seem to have created any problem.
3. From the photographs, there is not a significant negative impact based on the locations of the structure itself.
4. With respect to the fence, the issue is fairly simple. With the topography and the placement of the fence, the yard slopes down very severely from the street, and where the fence is at the edge of the lot, it is already pushed down, and with the vegetation you cannot really see but the very top of the fence, and it seems quite low.
5. The fence would not have any significant negative impact on anybody, particularly from the upside, which is where you would see it from the street.
6. It makes a difference, though, from the downside because if the fence had to be lowered, it would really serve no function at all; it screens nothing.
7. The Board has had other fence issues on this street, and on a case-by-case basis, there is nothing wrong with this particular fence in this kind of configuration.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect(s). 8-923 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ February 12, 2008, ADAM JAY RUTTENBERG, SP 2007-DR-144, continued from Page 602

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, dwelling and location and maximum height of a fence as shown on the plat prepared by Kendall Consulting, Inc., dated April 16, 2007, as submitted with this application and is not transferable to other land.
2. Building permits and final inspections for the roofed deck shall be diligently pursued and obtained within 120 days, unless the applicant produces documentation that previous building permit approval and final inspections were obtained or the special permit for the roofed deck shall be null and void.
3. The frame shed shall be removed from the site or moved to a location in compliance with the Zoning Ordinance regulations within 180 days of final approval of the special permit.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. FITZGIBBONS, LORETTA & ERNEST, SP 2007-MV-129 Appl. under Sect(s) 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 8822 Lagrange St. on approx. 10,640 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 25. (Admin. moved from 1/29/08 at appl. req.)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Arif H. Hodzic, the applicants' agent, Hodzic Architects, P.C., 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit a reduction of certain yard requirements to allow construction of an addition 6.0 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 6.0 feet or 50 percent was requested. Staff recommended approval of SP 2007-MV-0129 subject to the proposed development conditions.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said the owners wanted to remain in their house, but they required some assistance and wanted their daughter and son-in-law to live with them. He said the house was fairly small for two families. The request was to add a second bathroom and slightly enlarge two bedrooms in the only logical area at the side of the house, bringing it six feet from the side lot line. He said a neighbor had built a similar addition.

Chairman Ribble called for speakers.

~ ~ ~ February 12, 2008, FITZGIBBONS, LORETTA & ERNEST, SP 2007-MV-129, continued from Page 603

Michael Robinson, 8826 Lagrange Street, Lorton, Virginia, came forward to speak, and the oath was administered to him. Mr. Robinson said he was a long-time neighbor of the applicants who currently needed a handicap accessible bathroom, that it was a quality of life issue and a necessity.

Ms. Hedrick responded to questions from Mr. Hart regarding percentages of rear and front yard coverage. She said the property met the requirements.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2007-MV-129 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FITZGIBBONS, LORETTA & ERNEST, SP 2007-MV-129 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 8822 Lagrange St. on approx. 10,640 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 25. (Admin. moved from 1/29/08 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 12, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The Board has a favorable staff report.
3. The applicant's agent has presented testimony that the applicant is simply adding a very modest addition.
4. The Board has several letters of support and a petition by the neighbors.
5. There seems that there will be very little impact on the neighborhood.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (247 square feet) of an addition, as shown on the plat prepared by Alexandria Surveys International LLC, dated August 30, 2007, as certified January 4, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,520 square feet) regardless of whether such

~ ~ ~ February 12, 2008, FITZGIBBONS, LORETTA & ERNEST, SP 2007-MV-129, continued from Page 604

addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage.

Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. MELISSA CAUTHEN, SP 2007-SU-148 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 13161 Brynwood Ct. on approx. 11,607 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((4)) (9) 14.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Melissa A. Cauthen, 13161 Brynwood Court, Oak Hill, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit a modification to the limitation on the keeping of animals to permit three adult dogs. The subject property was 11,600 square feet in size, and Section 2-512 of the Zoning Ordinance permitted the keeping of two dogs by right on the property.

Ms. Cauthen presented the special permit request as outlined in the statement of justification submitted with the application. She said the three dogs were rescued from homeless dog organizations. She said she and Michele Williamson, the other lessee, had demonstrated they were responsible pet owners. She noted that the dogs underwent professional training, an underground invisible electric fence had been installed at great expense to ensure the dogs were fully contained in the yard at all times, the dogs were properly licensed, spayed, regularly walked on leashes when off the property, and when out in their own yard, either she or Ms. Williamson were outside with them to supervise. Ms. Cauthen said her immediate neighbors all found the dogs friendly, well-behaved, and they supported the request. She referenced several of the neighbors' letters supporting the special permit that were submitted.

In response to a question from Mr. Byers, Leo Conrad, Senior Zoning Inspector, Zoning Enforcement Branch, clarified that his site visit and subsequent issuance of a notice of violation was due to a complaint. He said that throughout his interaction with the applicant, she was courteous and professional.

In response to questions from Mr. Hart, Susan C. Langdon, Chief, Special Permit and Variance Branch, said

~ ~ ~ February 12, 2008, MELISSA CAUTHEN, SP 2007-SU-148, continued from Page 605

there was no requirement in the Zoning Ordinance that a fence be present, but the Board could add a condition regarding the maintenance of the electric fence, as the Board had done in a previous application. In response to a question from Mr. Hart concerning whether a condition regarding the electric fence maintenance would be reasonable in light of the yard not being fenced and other conditions allowed the dogs to be out unattended, Ms. Langdon said the applicant had submitted the information regarding the electric fence, and staff had taken that into consideration. Ms. Cauthen agreed to a condition requiring the electric fence be maintained.

In response to a question from Ms. Gibb, Mr. Conrad said the complaint was based on the number of dogs on the property.

Mr. Beard asked whether a condition would be included that one of the dogs would not be replaced if it died and whether the applicant would agree with the condition. Ms. Hedrick said Condition 3 addressed the matter of replacing a dog after one died. Ms. Cauthen agreed to the condition.

Mr. Smith said the condition regarding the dogs not being left outdoors unattended for continuous periods of longer than 30 minutes seemed like too short an amount of time if they were well behaved and not barking. He asked what the history was of the condition. Ms. Hedrick said it was a standard development condition that staff included with all dog applications because most of the time applications resulted from noise complaints. Ms. Cauthen agreed to the condition.

Ms. Cauthen said there had been a single complaint that brought the County out, and it had been an emergency situation where she took Ms. Williamson to the emergency room and returned home very late. She let the dogs out into the backyard, and one dog barked three times. She had noticed the lights of a neighbor's home turn on and assumed their children had been wakened by the three barks. Ms. Cauthen said the next day a County inspector came out and issued a notice of violation. She said there had been no other complaints, and it had been an unusual situation.

Chairman Ribble called for speakers.

Craig Ritchie, 13215 Wren House Lane, Herndon, Virginia, came forward to speak. He said he had managed the subject property for the owners for years, and his in-laws lived next door. He said the tenants were great, and he thought the situation was ridiculous that a neighbor had complained. He noted that the tenants immediately improved the house's maintenance, kept a very clean home and yard, the neighbors were happy, and everyone seemed appreciative of them. Mr. Ritchie said they were responsible pet owners and considerate of their neighbors, even changing the fence at great expense to ensure the dogs would not startle pedestrians. He stated that he was before the Board to support the tenants, and as their landlord, if they were not good tenants, he would be there to push them out.

Michele Williamson, 13161 Brynwood Court, Oak Hill, Virginia, the owner of one of the dogs, came forward to speak, and the oath was administered to her. She said all the neighbors had underground electric fences, but if required to put up a conventional fence to be permitted to keep the three dogs, it would be done. She said she was concerned that it could cause an issue as there were no fences in the front yards of the neighbors' homes.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-SU-148 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MELISSA CAUTHEN, SP 2007-SU-148 Appl. under Sect(s) 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 13161 Brynwood Ct. on approx. 11,607 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((4)) (9) 14. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ February 12, 2008, MELISSA CAUTHEN, SP 2007-SU-148, continued from Page 606

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the property.
2. The present zoning is PDH-2.
3. The area of the lot is 11,607 square feet.
4. The applicant has taken great care to ensure that the dogs are cared for, licensed, have been to obedience school, and have been spayed.
5. There are letters of support from directly impacted neighbors.
6. The applicant has maintained an electric fence system.
7. The lot abuts open space in the back of the property.
8. This seems an appropriate lot for dogs.
9. With just 893 square feet more, it would be a by-right use for four dogs, as noted by the applicant.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant/lessee only, Melissa A. Cauthen, and lessee Michelle Williamson, and is not transferable without further action of this Board, and is for the location indicated on the application, 13161 Brynwood Court (11,607 square feet) and is not transferable to other land.
2. The applicant/lessee 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/lessees' 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 area where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.
6. The applicant shall maintain the existing electric or other comparable fence on the 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.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. BOSS, TERRY D. & BOSS, SUSAN D., SP 2007-SU-139 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with VC 2007-SU-005). (Admin. moved from 2/5/08 at appl. req.)

9:00 A.M. BOSS, TERRY D. & SUSAN D., VC 2007-SU-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with SP 2007-SU-139). (Admin. moved from 2/5/08 at appl. req.)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Arif H. Hodzic, the applicants' agent, Hodzic Architects, P.C., 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a reduction of certain yard requirements to permit construction of a two-story addition 15 feet from the rear lot line and to remove an existing second-story wooden deck with a stairwell and replace it with a new stairwell and deck. The proposed addition would provide space for a recreation room and kitchen. The applicants also requested a variance to permit greater than 30 percent minimum rear yard coverage. Staff recommended approval of SP 2007-SU-139 subject to the proposed development conditions.

In response to questions from Mr. Hart, Mr. Varga said staff did not make a recommendation on the variance, the applicants had not proposed a design that met the yard coverage requirement, and staff had no opinion on whether the 30 percent coverage interfered with all reasonable use of the property taken as a whole.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to a question from Mr. Beard concerning the swimming pool building permit. She said that it met the 30 percent minimum yard coverage requirement at the time, and the permit showed no decking.

Mr. Hodzic presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He explained the design of the deck, noting that its size could be reduced to better meet the 30 percent standard.

Discussion ensued regarding the 30 percent coverage matter, the effect of the Cochran decision on variance applications, and possible design reconfigurations.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to defer SP 2007-SU-139 and VC 2007-SU-005 to March 18, 2008, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. MAYSA K. MOULHEM, SP 2007-SP-147 Appl. under Sect(s). 3-503, 8-914 and 8-923 of the Zoning Ordinance to permit a home child care facility, reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6126 Glen Oaks Ct. on approx. 7,493 sq. ft. of land zoned R-5. Springfield District. Tax Map 79-3 ((23)) 22A.

Chairman Ribble called the applicant to the podium.

~ ~ ~ February 12, 2008, MAYSA K. MOULHEM, SP 2007-SP-147, continued from Page 608

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

William M. Baskin, Jr., the applicant's agent, Baskin, Jackson, Hansbarger & Duffett, PC, 301 Park Avenue, Falls Church, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a home child care facility for up to ten children, to reduce the minimum yard requirements based on an error in building location to permit a wooden deck to remain, and to allow an existing fence measuring between five and six feet high to remain in the front yard of a corner lot. Staff recommended denial regarding the child care facility due to concerns that the drop-off and pickup times would overlap, inadequate space in the driveway for more than one patron at a time, and safety issues concerning parking and exiting the site.

Mr. Smith asked whether the driveway could be widened to provide more parking. Mr. Varga said that had not been proposed by the applicant. Susan C. Langdon, Chief, Special Permit and Variance Branch, said there was no minimum or maximum pavement allowed in a front yard of a property zoned R-5.

Mr. Hart asked whether any paperwork had been found regarding the deck and whether it had been built in the wrong place and inspected. Mr. Varga said there had been no building permit in the files regarding the construction of the deck. Mr. Hart asked whether it would be possible for the applicant to obtain a building permit for the elevated wooden deck at 1.6 feet from the lot line. Ms. Langdon said she was not aware of there being a prohibition, the adjacent area was open space, but she did not know the answer.

Mr. Smith noted that there was a curb cut on Glen Oaks Court, and he wondered if a curb cut could be done on Center Road to provide a circular driveway so people would not have to turn around. Ms. Langdon said the applicant would have to apply to the Virginia Department of Transportation, but based on the amount of traffic on Center Road and the location of the high school across the street, she questioned whether transportation would support an exit on Center Road.

Mr. Baskin presented the special permit request as outlined in the statement of justification submitted with the application. He said the deck and fence were there when the applicant moved into the house, and the applicant had been unaware of the Ordinance violation until the permit application for the daycare use had been submitted. The child care facility had been in operation since 1994 under the mistaken belief that a state license was all that was required. Mr. Baskin explained the drop-off and pickup schedule and said no problems had been encountered in the past. He said he would look into increasing onsite parking if it was an issue that would prevent the Board from approving the application. Mr. Baskin said there was a separate entrance for the child care at the rear of the house. The child care was done in the lower level of the house, and people entered directly into that part of the house.

Discussion ensued between Ms. Gibb and Mr. Baskin regarding parking, the usual number of children, and drop-off/pickup times.

Maysa K. Moulhem, 6126 Glen Oaks Court, Springfield, Virginia, came forward to speak. She said she was a single parent, had operated the daycare since 1994, and the business made it possible for her to meet her bills while contributing to the community and helping parents. She said there had been no problems with parking during the dropping off and picking up of the children. Her son parked in the street, and she parked in the garage, along with one of her employees who parked in the garage at times, but she could ask the employee to park in the garage permanently. Ms. Moulhem said in the past she had two full-time assistants, which she would like to continue because lower ratios resulted in better quality care for the children.

Mr. Hart said the proposed development conditions only allowed one employee. He asked whether the parents turned off their engines and walked the children around to the back door during drop-offs. Ms. Moulhem said she handled conferences with parents on weekends or afterhours and asked all the parents to keep the visits brief when dropping off or picking up. Usually parents were on the premises for four or five minutes.

Mr. Hart asked whether there was something other than the parking issue that was driving staff's denial recommendation. Ms. Langdon said the parking issues were a symptom of the size and location of the site,

~ ~ ~ February 12, 2008, MAYSA K. MOULHEM, SP 2007-SP-147, continued from Page 609

and adding additional parking would raise the issues of how close the property was located to the corner and how traffic coming in and out may be affected. The lot was very small with very small street frontage. She said staff's condition was that parking shall be onsite, so parking on the street was not considered, and if there was any overflow onto the street, there was barely enough space between the driveway and the corner to be able to park safely.

Mr. Hart noted that in some of the photographs, there was a portable basketball hoop that could complicate the parking situation. He asked if it was always in that location. Ms. Moulhem said it had been, but she thought if it was moved, two cars could easily be parked one behind the other on the driveway, which would allow a total of four spaces. She said the hoop had been used by her son when he was younger and did not need to remain.

Mr. Beard asked how many children could be cared for by right if the special permit was denied. Ms. Langdon said seven would be allowed.

Chairman Ribble called for speakers.

William Dingfelder, 6124 Glen Oaks Court, Springfield, Virginia, came forward to speak. He said he had moved in next door to the subject property 20 years prior, and the deck and fence were already there and had been put up by the original builder. He said the brief parking for drop-offs and pickups had seldom reached a point where it had caused any serious obstruction and never had seriously interfered with his enjoyment of his property. He said he believed the daycare had been run very professionally with minimal impact on his and nearby properties. Mr. Dingfelder recommended that the Board find in favor of the applicant.

Mr. Byers said he had driven by the site, and the street was relatively narrow, with cars parked on both sides. There were a multiplicity of cars parked in the cul-de-sac, and the houses were extraordinarily close together with extremely short driveways. He said Mr. Dingfelder was not impacted because he lived to one side, but the house across the street was impacted. Mr. Byers noted that the development conditions said one assistant, but a state inspector had indicated that on January 29th there were three people present, exclusive of the applicant. Mr. Byers said he was concerned about where they parked because someone had to park on the street. He said it was extraordinarily difficult coming off Center Road because of the high school, and he did not know how it could work. Mr. Dingfelder said it was a difficult place, but it had been working for 14 years. He said the applicant had not asked for anything different than had been going on for the 14 years, and he was present to testify that it had not had much of an effect on him.

Chairman Ribble asked whether Mr. Baskin wanted to comment on the two letters received by the Board. Mr. Baskin said the opposition was to any additional use of the property or intensification of the use, and the applicant was asking only to continue what she had been doing. He said the applicant had not had the proper permit and had not understood a special permit was needed, but it was an understandable mistake because when she had obtained a state license, the County Health Department had inspected.

In response to a question from Mr. Hart regarding how much time would be needed to look at the parking redesign issue and interact with staff, Mr. Baskin said it would probably involve an engineer and getting estimates in terms of cost, and he suggested the end of March or early April.

Chairman Ribble closed the public hearing.

Mr. Byers moved to defer the decision on SP 2007-SP-147 to April 8, 2008, at 9:00 a.m., to give the applicant's agent an opportunity to coordinate with engineers from the standpoint of parking. He said that although the Board only looked at land use, he had concerns based on information he had obtained from State Social Services, and he would like to see that rectified. The applicant had three assistants, and only one would be allowed. The applicant had not been present during the times required by the State, which had been a repeat violation determined during unannounced visits. Mr. Byers said there had been a series of violations which he thought the State had concern about and he would like to have addressed. Mr. Hart seconded the motion.

Ms. Gibb asked whether the applicant's agent was clear regarding what he was to address. Mr. Baskin said he hoped to get copies of the inspection reports referenced by Mr. Byers. Mr. Byers said they were available

~ ~ ~ February 12, 2008, MAYSA K. MOULHEM, SP 2007-SP-147, continued from Page 610

online, but he would provide Mr. Baskin with a copy. He said the Board was specifically deferring based upon the parking issues. Mr. Baskin said he would be happy to look into the other issues as well.

Ms. Gibb said she had been ready for a final vote, but she would support the motion. She said the child care had operated since 1994, and the applicant was not asking for a more intense use than what she had been doing. The Board had received two letters in opposition, but the people had not felt strongly enough to come to the hearing to speak. She said a neighbor who lived next door had testified that he had not been impacted. Ms. Gibb said home child care centers provided an invaluable service, and the Board had to balance the service provided with the stringent requirements of the Zoning Ordinance. She said she was disappointed about the parking issues, and if it had worked for 14 years, it could continue to work as it had. Ms. Gibb said the Board needed to give the working parents in Fairfax County a break and help find places for their children to get child care.

Mr. Hart said that he would support the motion. He said child care was needed, but the subject lot was very small and was located on a corner, with a fairly busy street, across from a high school with children that perhaps did not always pay attention when they were driving. There were impact issues with some of the neighbors, and he would like to see if the parking situation could be made safer.

Ms. Gibb said that one of the people who had written said they did not want a business in the neighborhood, and a giant driveway in the front yard would look like a business.

Chairman Ribble called for the vote.

The motion carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance for a place of worship to permit change in development conditions. Located at 4525 Pleasant Valley Rd. on approx. 6.81 ac. of land zoned R-C, AN, and WS. Sully District. Tax Map 33-3 ((1)) 5.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Chaman Puri, the applicant's agent, 1002 Eaton Drive, McLean, Virginia, reaffirmed the affidavit.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit a change in the development condition which restricted all parking to be on-site to allow a shuttle to transport worshippers from an off-site parking location to the worship center. The off-site parking location would be at a nearby office park where there would be no parking conflict with the office park businesses because the offices did not operate on weekends or evenings. Staff recommended approval of SPA 87-S-012-02 subject to the proposed development conditions.

Ms. Gibb assumed the Chair.

Mr. Puri presented the special permit request as outlined in the statement of justification submitted with the application. He asked the persons present who supported the application to briefly stand. He said the temple's parking was adequate for the usual weekend services, but for the periodic special occasions, festivals, and other services that were held, some occasionally on a weekday evening, it was inadequate. The applicant suggested several modifications to staff's proposed development conditions, addressing a necessity for weekday and weekend shuttle services, locating and purchasing an appropriate off-site parking site which would require only a zoning office approval instead of the Board of Zoning Appeals, the matter of parking on Lafayette Center Drive, to either delete or extend the two-year time for reapplying for a special

~ ~ ~ February 12, 2008, BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-02, continued from Page 611

permit to five years as two years was not feasible to complete the process of locating, rezoning, and developing another site, and if a parcel was found contiguous to the temple's, the conditions that would apply.

Chairman Ribble resumed the Chair.

Shiva Pant, 12912 Oak Lawn Place, Herndon, Virginia, came forward to speak. He said the temple had been in existence for several years, and when the land was purchased to build it, the lot had been zoned for a church. The congregation continually tried to have good relations with the neighbors, and because of the congregation's growth, they tried to relieve the parking situation by providing a shuttle service so people would not park on residential streets. Mr. Pant said a zoning violation had been issued because the special permit mandated that all parking be on-site. He said they had met with the neighbors, who understood the situation and were cooperative. The temple currently paid a Fairfax County police officer to control traffic on Pleasant Valley Road on special occasions and ensure the congregation was not parking on the street. The temple wanted the congregation to be allowed to continue to park on Lafayette Center Drive and take a shuttle to the temple. He said there had never been a problem with parking on Lafayette Center Drive because no one else parked there in the evenings and on weekends. Making arrangements with a nearby church for parking in the evenings had been discussed, but was not implemented because Pleasant Valley Road had no sidewalks. He said that many of the events were held on the weekends even though the occasion being celebrated actually fell on a weekday, but a few had to be celebrated on the actual day. Mr. Pant said the two-year limitation for filing for an extension would be problematic because the filing process had taken nearly a year.

Discussions ensued between Mr. Byers, Mr. Hart, Mr. Pant, and Mr. Puri regarding the heavy traffic along Pleasant Valley Drive, scheduling temple services to alleviate the traffic congestion, discussions with the Park Authority regarding utilization of their parking lot, the acquisition of a small triangular parcel for pedestrian traffic between the temple and the park property, future plans for construction of a walkway or sidewalk, and the hours of services.

Mr. Hart asked if it would be better to word a development condition to reference the Park Authority agreement instead of having non-residential streets as another variable. Susan C. Langdon, Chief, Special Permit and Variance Branch, said the development conditions, except for the one concerning the two-year limitation, were based upon what the applicant had requested for staff to review. Staff had only found out within the past couple days that the applicant wanted other considerations that staff had not reviewed, and staff had not seen the conditions proposed by the applicant until the previous afternoon. She said the representative from the Department of Transportation could not be at the hearing, but transportation had been very concerned about a proposal for off-site parking, the effect it could have on the business park, and the general issue of parking off-site for a special permit or special exception use. Ms. Langdon said that without consulting transportation, she was unsure whether staff would support any of the recently submitted changes. She said staff had repeatedly requested the applicant obtain a formal parking agreement for the use with Lafayette Business Park and had been informed that they could not, and when asked by staff for other proposed parking locations, staff was repeatedly told the public street in the business park. The possibility of putting a trail through the adjacent parcel owned by the applicant to get to parking at the park property had not been reviewed by staff. Staff had not contacted the Park Authority, looked at a connection to get back and forth, looked at the evening use, or consulted with transportation regarding the changes in the conditions proposed by the applicant. Ms. Langdon said transportation had requested the two-year limitation because they wanted the use to come back for a review of how the parking had worked and whether any complaints from the business park had been received. She said there had been discussions about the applicant's use of the 33-acre site across the street, and the applicant had shown very extensive development plans for that. Ms. Langdon said that when it was built, it would hopefully fix the parking problems, but an amendment to the special permit would be required.

Chairman Ribble asked whether parts of the business park were public and private parking. Ms. Langdon said she understood the ring road was a public street, which was where the applicant wanted to park. Staff preferred the applicant obtain a shared parking agreement with other uses, but the applicant did not want to do that.

Mr. Pant said the parking on Lafayette Center Drive had been sufficient during the time the shuttle was in

~ ~ ~ February 12, 2008, BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-02, continued from Page 612

operation. There had not been a need and was no intention to park inside the business park. He said the reason they did not want the condition to only say Lafayette Center Drive was in case they were able to work out some arrangement in the future with the golf course, the park, or the church. Mr. Pant said there had been a meeting over the weekend with the temple board, and the proposed changes resulted from the meeting. He said staff was correct in that they had responded to what the temple had originally applied for.

Mr. Hart asked whether any of the special events would overlap with a regular workday. Mr. Puri said temple's services were always on holidays, weekends, or in the evenings, but never during the day on weekdays. In response to a question from Mr. Hart regarding the increase in the number of events from 12 to 18, Mr. Puri said 12 was generally fine, but sometimes a learned person came into the area and gave a discourse continuously for five days in the evening, which may occur once in five years.

Mr. Hart said the area on Pleasant Valley Road had been horrible on Sunday mornings for a while, and then it had gotten much better a couple years before the hearing. He asked if that had been because of the shuttle. Mr. Pant said that if it had been within the last couple of years, the temple had stopped the special events after the zoning violation had been received, and the shuttle was no longer operating.

Mr. Hart said that if there was to be off-site parking, it would be safer to use the golf course parking lot because it was closer and off the flow of traffic. He said that even if there was a shuttle back and forth to Lafayette, people sometimes might try to walk, and the road would be dangerous for pedestrians because it was very dark with trees coming right down to the pavement. He asked what the status was of the discussions regarding use of the golf course parking. Mr. Pant said there had been no recent discussions, they would like interim legitimacy to be able to park on Lafayette Center Drive because it was a public street and did not impact anyone, but the temple could again speak with the Park Authority.

Mr. Puri said someone from the neighborhood had suggested the temple swap the triangular parcel of land in exchange for the Park Authority's permission to park at the golf course, and the temple had been looking at all avenues to have parking as close to the temple as possible for the safety of the congregation. He said the temple's ultimate interest was not to park on Lafayette Center Drive. It was to find someplace close by. Mr. Puri said 32 acres of land across the street were under contract and could provide a parking solution, but the development there would be a few years in the future. Mr. Hart said he thought that may have been part of the rationale for the two-year limitation, that within two years there would be more specificity as to what the alternate parking arrangement would be, and without the limitation, the parking on Lafayette Center would be semi-permanent. He said putting a cap on it of two years would create an incentive to work something out.

In response to questions from Mr. Beard regarding the number of seats of 250 and 87 parking spaces provided when only 63 were required, Mr. Puri said the number of seats had not increased, but there were occasions during festivals when there were more than 250 people present, and families did not always come in the same car. He said that during the regular services, there were no parking problems.

Mr. Byers said staff should make a visit to the area to investigate the opportunity for off-street parking and question the private property owners on Lafayette Center Drive regarding whether there were problems with parking. He said he thought the Board would be reluctant to approve a special permit for five years if after six months a plethora of complaints were received. Mr. Byers said he agreed with staff that the development conditions proposed by the applicant needed further review and input from staff.

Mr. Pant requested that if the Board granted a two-year approval, the opportunity be available for an extension of three additional years that could be approved administratively by zoning if no complaints had been received. Mr. Byers asked whether it would be possible to include a condition for an approval of five years with a review by the BZA or staff at two years. Ms. Langdon said staff would work on a condition concerning a review after two years.

Chairman Ribble called for speakers.

Rajeev Khanna, no address given, Grand Chairman of Rajdhani Mandir, came forward to speak. He said he had been going to the temple for ten years and had three children. Because of his volunteer work, he stayed at the temple for a longer duration than the rest of the family. His son and daughter generally drove separately so they could leave from there to go to school and other activities, so their family of five that used

~ ~ ~ February 12, 2008, BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-02, continued from Page 613

to arrive in one car was currently bringing three cars. Mr. Khanna said the temple was aware there was a parking problem, was actively seeking a solution, and had met with the citizens association.

Scott Miller, 4341 Cub Run Road, Chantilly, Virginia, came forward to speak. He said he supported staff's recommendations, but was agitated about the discussion regarding an expansion of 33 acres for the temple. He said the information the neighborhood received only referenced a shuttle service and did not mention expanding the site. He stated that he and his neighbors opposed any expansion of any religious facility along Pleasant Valley Road because the traffic already was a disaster. He said the shuttle was the correct answer, and he was annoyed that it had been shut down. Mr. Miller said that if any of the religious facilities expanded, along with the additional constraint of the proximity to the airport and runway, property values would continue to go down.

In response to questions from Mr. Hart, Mr. Miller said the increase in events had not been discussed with the neighbors, nor any other details. What had been discussed was that the temple had proposed to legally restart a shuttle service to and from Lafayette Business Park.

In response to a question from Mr. Hart concerning the timeframe, Ms. Langdon said that a deferral to March 4, 2008, was the minimum time necessary for staff to review the issues, coordinate with transportation, and craft development conditions.

Sharad Masood (phonetic), 4531 Cub Run Road, Chantilly, Virginia, came forward to speak. He said he was a next-door neighbor to the temple, and a shuttle service would be helpful.

Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on SPA 87-S-012-02 to March 4, 2008, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. TRACY DOVE, SP 2007-LE-143 Appl. under Sect(s). 8-914, 8-922 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.4 ft. from side lot line, reduction of certain yard requirements to permit construction of addition 25.5 ft. from front lot line and to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 6413 Joyce Rd. on approx. 22,783 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((15)) 18.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Tracy Dove, 6413 Joyce Road, Alexandria, Virginia, reaffirmed the affidavit.

Greg Chase, Senior 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 an accessory storage structure to remain 3.4 feet from a side lot line, a reduction of certain yard requirements to permit construction of an addition 25.5 feet from the side lot line, and to permit a fence 4.0 feet in height to remain in the front yard. Staff recommended approval of the reduction to certain yard requirements pursuant to Sect. 8-922 of the Zoning Ordinance subject to the proposed development conditions.

Ms. Dove presented the special permit request as outlined in the statement of justification submitted with the application. She said she was requesting a special permit to build a 25-foot-by-22-foot family room off the kitchen, and the current living room would be used as a dining room. Because it was a corner lot, she had two front yards. She said the house would remain a one-level ranch, and there would be no adverse effect

~ ~ ~ February 12, 2008, TRACY DOVE, SP 2007-LE-143, continued from Page 614

on the neighborhood. Ms. Dove said she had spoken with numerous neighbors, and none had voiced any concerns about the addition. The shed and fence existed when she purchased the property, and she was unaware they were in violation until the special permit had been submitted.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2007-LE-143 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRACY DOVE, SP 2007-LE-143 Appl. under Sect(s). 8-914, 8-922 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.4 ft. from side lot line, reduction of certain yard requirements to permit construction of addition 25.5 ft. from front lot line and to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 6413 Joyce Rd. on approx. 22,783 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((15)) 18. 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 12, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has a favorable staff report.
3. The applicant has presented testimony that the shed and the fence were there when they purchased the property.
4. There is no impact, it appears, on adjoining property.
5. It appears that the applicant has met standards A through G of Sect. 8-914 of the Zoning Ordinance.
6. With respect to the special permit, this is a fairly modest addition on one side of the house.
7. The addition will be compatible with the existing house and with the neighborhood.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect(s). 8-922, 8-923 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

~ ~ ~ February 12, 2008, TRACY DOVE, SP 2007-LE-143, continued from Page 615

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the addition (a total of 528 square feet), shed 3.6 feet from side lot line and 6 foot high fence in front yard as shown on the plat prepared by DiGiulian and Associates, dated July 18, 2007 and revised to November 12, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,608 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. CAROLE E. AND WILLIAM V. TRANAVITCH, SP 2007-SP-136 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7503 Amkin Ct. on approx. 5.01 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-4 ((8)) 16. (Admin. moved from 1/29/08 at appl. req.)

Chairman Ribble called the applicants to the podium.

~ ~ ~ February 12, 2008, CAROLE E. AND WILLIAM V. TRANAVITCH, SP 2007-SP-136, continued from Page 616

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Arif H. Hodzic, AIA, the applicants' agent, 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit for an accessory dwelling unit in which the applicants' 90-year-old mother who needed family assistance would reside. The 742-square-foot accessory dwelling would be located on the lower level of the existing structure and would comprise 23 percent of the total floor area. The applicants would continue to reside in the primary dwelling. Staff recommended approval of SP 2007-SP-136 subject to the proposed development conditions.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said the accessory dwelling unit would accommodate the owners' elderly mother. He said that although the unit was called an accessory dwelling, it was a part of and would be attached to the house.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith move to approve SP 2007-SP-136 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CAROLE E. AND WILLIAM V. TRANAVITCH, SP 2007-SP-136 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7503 Amkin Ct. on approx. 5.01 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-4 ((8)) 16. (Admin. moved from 1/29/08 at appl. req.) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 12, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 5.01 acres.
4. The application comes with a recommendation for approval from staff.
5. The Board agrees with the recommendations and analysis of staff in the staff report.
6. It is a large five-acre lot, and even with the addition, it will now have 4,066 square feet.
7. It seems like a reasonable use.
8. It is consistent with the requirements for accessory dwelling units in Sect. 8-918.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

~ ~ ~ February 12, 2008, CAROLE E. AND WILLIAM V. TRANAVITCH, SP 2007-SP-136, continued from Page 617

1. This approval is granted to the applicants only, William V. and Carole E. Tranavitch, and is not transferable without further action of this Board, and is for the location indicated on the application, 7503 Amkin Court (5.01 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 Alexandria Surveys International, dated September 6, 2007, and revised to October 2, 2007 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and 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 742 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 or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. Parking shall be provided as shown on the special permit plat.
10. All required permits and inspections, including Health Department permits relating to septic sewer system approval, shall be obtained prior to occupation of the accessory dwelling unit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:00 A.M. SYED ALI HUVJERI ISLAMIC CENTER, SP 2007-LE-142 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 3435 Franconia Rd. on approx. 39,480 sq. ft. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 48.

~ ~ ~ February 12, 2008, SYED ALI HUVJERI ISLAMIC CENTER, SP 2007-LE-142, continued from Page 618

Chairman Ribble noted that SP 2007-LE-142 had been administratively moved to April 4, 2008, at 9:00 a.m., at the applicant's request.

Susan C. Langdon, Chief, Special Permit and Variance Branch, confirmed that was correct.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:30 A.M. ANNANDALE PLAZA, LLC, A 2007-MA-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has installed or has allowed to be installed two building-mounted signs on property in the C-8 District without valid sign permits or building permits in violation of Zoning Ordinance provisions. Located at 7326/7328 Little River Tp. on approx. 42,794 sq. ft. of land zoned C-8, H-C, SC and CRD. Mason District. Tax Map 71-1 ((1)) 80. (Admin. moved from 7/17/07, 9/25/07, and 12/4/07 at appl. req.)

Chairman Ribble noted that A 2007-MA-012 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said the appellant had been able to get approval for a special exception that allowed them to keep the signs that were previously in violation.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:30 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, and 11/27/07 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to April 1, 2008, at 9:30 a.m., at the appellants' request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said the appellants were pursuing a special exception approval and had a contract with a civil engineer to prepare the plats.

//

~ ~ ~ February 12, 2008, Scheduled case of:

9:30 A.M. CHRISTOPHER L. HARROP, LOUNG K. HARROP, HIEU HOANG LE, A 2007-MA-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established and are operating a rooming house, have converted a single family dwelling into four separate dwelling units, and have erected an accessory storage structure (shed) that does not meet minimum yard requirements all on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 6106 Vista Dr. on approx. 13,500 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((15)) 6.

Chairman Ribble noted that A 2007-MA-045 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said staff received a request for a withdrawal. The appellants had removed a great deal of the violations from the property and were in the process of attempting to attain building permits to rectify some of the building code issues as well.

//

~ ~ ~ February 12, 2008, After Agenda Item:

Request for Waiver of the 12-month Waiting Period for Refiling an Application
Carolyn Day Hecox, SP 2007-SP-072

In response to a question from Mr. Hart, Susan C. Langdon, Chief, Special Permit and Variance Branch, said Zoning Enforcement forwarded the case to the County Attorney, and as far as staff was aware, an action by the Board would not have any bearing on the case. Zoning Enforcement staff indicated to her that the applicant would not be approved for several issues, the accessory dwelling unit and a building permit to allow the garage's top level be an accessory dwelling unit. To allow the applicant's request required approval of a special permit for an accessory dwelling unit, and that action brought her back to where they started. Ms. Langdon said the applicant had indicated she wanted to come before the Board, request a waiver of the 12-month waiting period again, and if approved, reapply for the accessory dwelling unit. Ms. Langdon said the Board had denied the waiver request the week following the public hearing.

Addressing a question from Ms. Gibb, Ms. Langdon said County staff did no inspections without approved building permits. She said that for several of the applicant's violations, permits were obtained; however, no permit would be approved for those things denied when the accessory dwelling unit was denied.

No motion was made; therefore, the request was denied.

//


As there was no other business to come before the Board, the meeting was adjourned at 11:50 a.m.

Minutes by: Paula A. McFarland

Approved on: July 11, 2012



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 26, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:01 a.m. He asked if there were any matters to bring before the Board.

Susan C. Langdon, Chief, Special Permit and Variance Branch, introduced Suzanne Frazier, the new Deputy Clerk to the Board.

Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals, and called for the first scheduled case.

~ ~ ~ February 26, 2008, Scheduled case of:

9:00 A.M. DENNIS J. O'CONNOR, SP 2007-PR-152 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.2 ft. from rear lot line. Located at 2703 Willow Dr. on approx. 13,996 sq. ft. of land zoned R-2 (Cluster). Providence District. Tax Map 37-4 ((18)) 5.

Chairman Ribble noted that SP 2007-PR-152 had been administratively moved to March 11, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 26, 2008, Scheduled case of:

9:00 A.M. HOWARD V. AND DONNA SINCLAIR, SP 2007-DR-150 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard. Located at 894 Helga Pl. on approx. 31,518 sq. ft. of land zoned PDH-1. Dranesville District. Tax Map 21-3 ((26)) 20.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Howard V. Sinclair, 894 Helga Place, McLean, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow construction of a 6.0 foot high metal fence in the front yard. The maximum fence height allowed in the front yard is 4.0 feet; therefore, a modification of 2.0 feet was requested.

The applicant presented the special permit request as outlined in the statement of justification submitted with the application. He noted that his property was located right off the Beltway and was not a gated community. The applicant said that a steady stream of cars exited the Beltway into his neighborhood. He stated that it was not only a nuisance, but he was concerned about his security and safety since there had been numerous break-ins and vandalism throughout the community. The applicant said the increased height of the fence would serve as a deterrent to the aforementioned safety concerns.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-DR-150 for the reasons stated in the Resolution.

//

~ ~ ~ February 26, 2008, HOWARD V. AND DONNA SINCLAIR, SP 2007-DR-150, continued from Page 621

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HOWARD V. AND DONNA SINCLAIR, SP 2007-DR-150 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard. Located at 894 Helga Pl. on approx. 31,518 sq. ft. of land zoned PDH-1. Dranesville District. Tax Map 21-3 ((26)) 20. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 26, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The proposed fence is located well back from the front property line; from the plat, it looks like it could be 20 or 25 feet.
3. The lot faces open space on the other sides of the property.
4. The applicants meet all the standards in Sect. 8-006.
5. The proposed use will be harmonious with and will not adversely affect the use and development of the neighboring properties.
6. The proposed fence is warranted based upon such factors to include but not limited to orientation or location of the principal structure on the lot and the orientation and location of nearby offsite structures, topography, and concerns relating to safety or noise, and that it will be in character with the existing on site development and meets the other standards as well.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by Dominion Surveyors, Inc., dated August 29, 2007 as revised through January 30, 2008, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ February 26, 2008, Scheduled case of:

9:00 A.M. JUN LU, SP 2007-DR-149 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.7 ft. from side lot line. Located at 7029 Old Dominion Dr. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((12)) 62.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would

~ ~ ~ February 26, 2008, JUN LU, SP 2007-DR-149, continued from Page 622

be the truth.

Jun Lu, 7029 Old Dominion Drive, McLean, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow for the reduction of certain yard requirements to permit the construction of a two-story addition 7.7 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, a reduction of 4.3 feet was requested. The proposed 858-square-foot addition would provide for the storage of a second car and a fourth bedroom, respectively. The applicant would also expand an existing bedroom by right. Staff recommended approval of SP 2007-DR-149 subject to the proposed development conditions.

The applicant presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition was requested because his family needed more living space since the arrival of two of his children, specifically another bedroom.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2007-DR-149 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JUN LU, SP 2007-DR-149 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.7 ft. from side lot line. Located at 7029 Old Dominion Dr. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((12)) 62. 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 26, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has determined that the application meets all of the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (858 square foot garage addition with second story living space) as shown on the plat prepared by Michael N. Hughes and dated March

~ ~ ~ February 26, 2008, JUN LU, SP 2007-DR-149, continued from Page 623

25, 2007 as revised through September 15, 2007, as submitted with this application and is not transferable to other land.

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (1,852 square feet) that existed at the time of the first expansion request regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.
4. Prior to commencement of construction, tree protection fencing shall be installed between the location of the proposed addition and the dripline of the cedar trees located along the western property line. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading.
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.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ February 26, 2008, Scheduled case of:

9:00 A.M. THE TRUSTEES OF MARANATHA BAPTIST CHURCH, SP 2007-MA-153 Appl. under Sect(s). 3-303 of the Zoning Ordinance for an existing church to permit reconstruction of a parsonage. Located at 3511 Annandale Rd. on approx. 2.7 ac. of land zoned R-3. Mason District. Tax Map 60-3 ((1)) 7 and 7A.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Rev. Brian Webb, the applicant's agent, 5405 Queensberry Avenue, Springfield, Virginia, reaffirmed the affidavit.

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 for an existing church to permit the reconstruction of an approximately 3,500-square-foot parsonage with full basement and two associated parking spaces. Staff recommended approval of the application with adoption of the proposed development conditions.

A discussion ensued between Mr. Hart and Ms. Langdon regarding the language contained in Development Condition 9, specifically concerning which parking lot was being approved. Ms. Langdon suggested adding the word "future" in front of "parking" to clarify the development condition.

Mr. Hart and Ms. Langdon discussed whether the future additions shown on the site plan had been approved with the initial site plan. Ms. Langdon said that the future additions would have to come back through for a new building permit.

The applicant's agent presented the special permit request as outlined in the statement of justification submitted with the application. He clarified for the Board that the church was not seeking approval of the future additions noted on the original site plan. He stated that rebuilding the parsonage, which had been

~ ~ ~ February 26, 2008, THE TRUSTEES OF MARANATHA BAPTIST CHURCH, SP 2007-MA-153, continued from Page 624

destroyed by fire, would not substantially change the church property since originally built in 1972.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-MA-153 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE TRUSTEES OF MARANATHA BAPTIST CHURCH, SP 2007-MA-153 Appl. under Sect(s). 3-303 of the Zoning Ordinance for an existing church to permit reconstruction of a parsonage. Located at 3511 Annandale Rd. on approx. 2.7 ac. of land zoned R-3. Mason District. Tax Map 60-3 ((1)) 7 and 7A. 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 26, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a special permit.
3. The Board has a favorable staff recommendation.
4. The rationale in the staff report is adopted.
5. This is a very slight application to replace a parsonage that burnt down in almost exactly the same location.
6. There will be no significant differences between what was there a couple years ago and what will be there afterwards.
7. There will be no significant negative impact on anybody based on the record before the Board.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 Maranatha Baptist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 3511 Annandale 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 plats (two sheets) prepared by Patton, Harris, and Rust (first sheet) and Gregory J. Budnik (second sheet) dated July 31, 1972 as revised through October 3, 1972 (first sheet) and June 25, 2007 (second sheet), 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.

~ ~ ~ February 26, 2008, THE TRUSTEES OF MARANATHA BAPTIST CHURCH, SP 2007-MA-153,
continued from Page 625

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 110.
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 and landscaping as shown on the special permit plat to meet the transitional screening requirements.
8. The barrier requirement shall be waived along all lot lines.
9. Notwithstanding that shown on the first page of the special permit plat, the "future" additions and "future" parking lot as shown are not approved with this special permit. The existing parking lot is approved with this special permit, in its current configuration.
10. Tree cover calculations shall be provided to DPWES at the time of site plan review/building plan review. The required tree cover shall be provided on site unless waived or modified by DPWES.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ February 26, 2008, Scheduled case of:

9:00 A.M. ELIZABETH G. BUDAY, SP 2007-DR-151 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.9 ft. from side lot line and 1.0 ft. from rear lot line, deck to remain 5.2 ft. from side lot line, accessory storage structure to remain 0.2 ft. from side lot line, and addition to remain 9.5 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 11.3 ft. from side lot line and 24.7 ft. from rear lot line. Located at 6253 North Kensington St. on approx. 9,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (9) 39.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Elizabeth G. Buday, 6253 North Kensington Street, McLean, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The application included five special permit requests. The first request was to permit reductions to minimum yard requirements based on an error in building location to permit an accessory structure, a playhouse, to remain 3.9 feet from a side lot line and 1.0 feet from the rear lot line. The second request was to permit a reduction of certain yard requirements based on error in building location to permit a deck, an at-grade patio, to remain 5.2 feet from a side lot line. The third request was to permit a reduction of certain yard requirements based on error in building location to permit an accessory storage structure, a shed, to remain 0.2 feet from a side lot line. The fourth request was to permit a reduction of certain yard requirements based on error in building location to permit an addition, an enclosure of the original carport, to remain 9.5 feet from a side lot line. The fifth request was to permit reductions of certain yard requirements to permit construction of a screen porch addition 11.3 feet from a side lot line and 24.7 feet from the rear lot line. A minimum side yard of 15 feet and minimum rear yard of 11.1 feet for the accessory structure, playhouse, and minimum rear yard of 25 feet for

~ ~ ~ February 26, 2008, ELIZABETH G. BUDAY, SP 2007-DR-151, continued from Page 626

the screen porch are required; however, decks are permitted to extend 5.0 feet into the minimum side yard; therefore, reductions of 11.1 feet, 10 feet, 4.8 feet, 14.8 feet, 5.5 feet, 3.7 feet, and 0.3 feet, respectively, were requested. Staff recommended approval of SP 2007-DR-151 for the construction of the addition subject to the proposed development conditions.

Mr. Chase responded to a question from Mr. Hammack, noting that it was not staff policy to make recommendations concerning errors in building locations.

Mr. Smith and Mr. Chase discussed the setback requirements for the shed, with Mr. Chase stating that the shed was over the 8.5 foot setback allowed by right.

Mr. Hart and Ms. Langdon discussed whether there were any possible alternative locations for the playhouse and shed that would not need a special permit or variance, both agreeing that the subject property was very narrow. Ms. Langdon confirmed that short of a variance, there would be no place for the applicant to build a shed.

The applicant presented the special permit request as outlined in the statement of justification submitted with the application, noting that the shed, playhouse, carport, and patio required reduction of yard requirements based upon errors in building locations. She stated that the stone patio and carport were in existence when she purchased the property in 1996, and she did not know a permit was required when the shed or playhouse were constructed. The applicant stated that the playhouse would be removed in four years, when her daughter reached the age of 11. She also noted that her neighbors at the rear of the property had never complained about the shed or playhouse. The applicant then submitted a letter from the homeowner who shared the property line that abutted the playhouse, shed, and carport, who stated there had never been an issue with any of the structures.

Mr. Smith asked the applicant if she would agree to a development condition which stated that the playhouse would be removed within five years; she concurred.

Mr. Chase and Mr. Beard discussed whether there had been a complaint concerning the playhouse, with Mr. Chase noting that a neighbor had only asked that when the playhouse was no longer needed, that it be taken down.

Mr. Ribble and Ms. Langdon discussed whether all the structures were included in the development conditions. Ms. Langdon added that the words "and other structures as advertised" could be added as clarification.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-DR-151 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELIZABETH G. BUDAY, SP 2007-DR-151 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.9 ft. from side lot line and 1.0 ft. from rear lot line, deck to remain 5.2 ft. from side lot line, accessory storage structure to remain 0.2 ft. from side lot line, and addition to remain 9.5 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 11.3 ft. from side lot line and 24.7 ft. from rear lot line. Located at 6253 North Kensington St. on approx. 9,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (9) 39. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

~ ~ ~ February 26, 2008, ELIZABETH G. BUDAY, SP 2007-DR-151, continued from Page 627

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 26, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property is zoned R-2.
3. It is a long relatively narrow lot.
4. The patio, walkway, and carport pre-existed the applicant's purchase of the property.
5. The shed is literally inches off what would otherwise be permitted by right.
6. Staff provided a good justification for the proposed screening of the deck and how that is harmonious with the rest of the community.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, and Sect. 8-922, Provisions for Reduction of Certain Yard Requirements, of the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the screen porch addition (a total of 324 square feet) and others structures as advertised, as shown on the plat prepared by Land Development Consultants, Inc., dated August 5, 2007 and revised to November 15, 2007 as submitted with this application and is not transferable to other land.

~ ~ ~ February 26, 2008, ELIZABETH G. BUDAY, SP 2007-DR-151, continued from Page 628

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,765 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. This special permit is approved for the playhouse for a period of five years.

This approval, 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.

//

~ ~ ~ February 26, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD, SPA 85-C-003-04 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 previously approved for church and private school of general education to permit increase in enrollment. Located at 2351 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A.

Chairman Ribble noted that SPA 85-C-003-04 had been administratively moved to April 15, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 26, 2008, Scheduled case of:

9:00 A.M. JERUSALEM BAPTIST CHURCH, SPA 73-S-113 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 73-S-113 previously approved for church to permit the addition of a child care center, building additions, increase in seats and site modifications. Located at 5424 Ox Rd. on approx. 13.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 52, 54 and 55A. (Admin. moved from 12/18/07 at appl. req.)

Chairman Ribble noted that SPA 73-S-113 had been administratively moved to April 1, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 26, 2008, Scheduled case of:

9:30 A.M. ACCURATE TOWING AND STORAGE, INC., A 2007-PR-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Motor Vehicle Storage and Impoundment Yard on property in the I-4 and I-5 Districts without a valid Non-Residential Use Permit and without an approved site plan, in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Concurrent with A 2007-PR-033) (Admin. moved from 11/6/08 at appl. req.)

9:30 A.M. MARY R. GREENE, TRUSTEE, A 2007-PR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a Motor

~ ~ ~ February 26, 2008, ACCURATE TOWING AND STORAGE, INC., A 2007-PR-032 and MARY R. GREENE, TRUSTEE, A 2007-PR-033, continued from Page 629

Vehicle Storage and Impoundment Yard and a Storage Yard on property in the I-4 and I-5 Districts without a valid Non-Residential Use Permit and without an approved site plan, in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Concurrent with A 2007-PR-032) (Admin. moved from 11/6/07 at appl. req.)

Chairman Ribble noted that A 2007-PR-032 and A 2007-PR-033 had been administratively moved to May 20, 2008, at 9:30 a.m., at the appellants' request.

Ms. Collins stated that the applicants had obtained an engineer and would be submitting a site plan very soon.

Mr. Hart stated that he would be recusing himself when these applications are heard.

//

~ ~ ~ February 26, 2008, Scheduled case of:

9:30 A.M. SPRINGFIELD MASONIC LODGE 217 A.F. & A.M., A 2007-LE-017, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory storage structure without a valid building permit and is allowing the use of the property that is not in conformance with the limitations of Special Permit S-189-77 in violation of Zoning Ordinance provisions. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. (Admin. moved from 8/7/07 and 11/6/07 at appl. req.)

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Jayne Collins, Zoning Administration Division, presented staff's position as set forth in the staff report. She noted that the appellant had recently submitted a revised special permit application and plat for a place of worship on the subject property. Once accepted by Zoning Evaluation Division, it would be scheduled for public hearing and, if approved, would resolve the place of worship zoning violation.

Mr. Hart and Ms. Collins discussed that approval of a special permit for a place of worship and a special exception for a private club would resolve the zoning violations. Ms. Collins noted the need for administrative approval to allow the shed to remain on the property since it was not shown on the special permit plat, and the need for a building permit after approval was obtained.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, and Mr. Hart discussed proceeding with the appeal versus deferring it. Ms. Stanfield pointed out that although they had been waiting for plat changes since September of 2007, they had only received the revised plat the prior day. They also discussed the time necessary to review the new plat. Ms. Stanfield stated that the submission was a good faith effort, but needed some revisions. She said another two to three months would be necessary.

Mr. Beard and Leo Conrad, Senior Zoning Inspector, discussed the trailer violation on the property, specifically noting that the trailer had been removed.

The appellant's agent, Larry Johnson, Esquire, presented the arguments forming the basis for the appeal. He stated that he was also a member of the lodge. Mr. Johnson explained that the plat submission had been time consuming because another member of the lodge had been donating his time to revise the plat.

As there were no speakers, Chairman Ribble closed the public hearing. Mr. Beard moved to defer decision on A 2007-LE-017 to May 13, 2008. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ February 26, 2008, continued from Page 630

As there was no other business to come before the Board, the meeting was adjourned at 10:00 a.m.

Minutes by: Suzanne L. Frazier

Approved on: May 12, 2009

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 4, 2008. The following Board Members were present: Chairman John F. Ribble III; Tom Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

Chairman Ribble called the meeting to order at 9:03 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ March 4, 2008, Scheduled case of:

9:00 A.M. JUSTIN L. FERGUSON, SP 2007-SP-155 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 8212 Dabney Ave. on approx. 12,867 sq. ft. of land zoned R-3. Springfield District. Tax Map 79-4 ((2)) 179.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Justin L. Ferguson, 8212 Dabney Avenue, Springfield, Virginia reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

In response to Mr. Hart's question, Jason Gibbs, Zoning Enforcement Branch, said a complaint was received about a six-foot high fence built in a front yard of a corner lot.

Mr. Ferguson presented the special permit request as outlined in the statement of justification submitted with the application. He said in his neighborhood and all over Fairfax County, there were similar six-foot fences, and his contractor, Long Fence Company, had told him the new fence could be built in the same location as the four-foot chain-link fence it replaced. Mr. Ferguson said the fence was needed for his daughter's safety, to keep his dogs within the yard and prevent them from barking at pedestrians, and privacy, and it added value to his home. He said there were no sight distance issues, and he had been told by his neighbors that they had no problem with the fence.

Chairman Ribble called for speakers.

Cand Mercado, 6100 Kerkam Court, Springfield, Virginia; and Deborah Stutz, 6106 Fernleigh Boulevard, Springfield, Virginia, came forward to speak in support of the application.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-SP-155 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JUSTIN L. FERGUSON, SP 2007-SP-155 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 8212 Dabney Ave. on approx. 12,867 sq. ft. of land zoned R-3. Springfield District. Tax Map 79-4 ((2)) 179. 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 4, 2008; and

~ ~ ~ March 4, 2008, JUSTIN L. FERGUSON, SP 2007-SP-155, continued from Page 633

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant generally cited security, safety, privacy, and the increase in land values to support the application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by Dominion Surveyors Inc., dated August 17, 2007, as revised through November 27, 2007, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 4, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF THE UNITED CHRISTIAN PARISH OF RESTON, VIRGINIA, SPA 87-C-018-02 (church with child care and nursery school with enrollment of more than 100 students daily)

Chairman Ribble noted that SPA 87-C-018-02 had been administratively moved to April 1, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ March 4, 2008, Scheduled case of:

9:00 A.M. BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance for a place of worship to permit change in development conditions. Located at 4525 Pleasant Valley Rd. on approx. 6.81 ac. of land zoned R-C, AN, and WS. Sully District. Tax Map 33-3 ((1)) 5. (Decision deferred from 2/12/08)

Chairman Ribble noted that SPA 87-S-012-02 had been deferred for decision only.

Mr. Byers moved to deny SPA 87-S-012-02 citing several concerns, including the significant increase in vehicular traffic due to the substantial growth along Pleasant Valley Road since the original special permit approval, compliance with Paragraphs 3 and 4 of Sect. 8-006, the enforceability of and adherence to development conditions, no mitigation alternatives regarding traffic other than requesting approval of an off-site shuttle service which would cause disruption in the community, the probability that people would continue to park where it was most convenient rather than using the shuttle service, the use of the shuttle service encouraging an increase in attendance at the temple which would exacerbate the problem, and structures continuing to be built along a narrow, winding, two-lane road. The motion failed for lack of a second.

Mr. Hart said he was troubled by a number of issues, but would be willing to look at how the shuttle worked for a limited time and re-evaluate at that point.

~ ~ ~ March 4, 2008, BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-02, continued from Page 634

Responding to Ms. Gibb's comment that she thought there was testimony that the traffic issues had dramatically cleared up when the shuttle was running, but the traffic issues worsened when the shuttle stopped, Mr. Hart said he thought that the situation improved dramatically after the temple stopped having special events.

Mr. Hart moved to approve SPA 87-S-012-02 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Smith said he had concerns about the enforcement issues and suggested a one-year approval. Chairman Ribble said he could support one year.

Mr. Hart amended the motion to a one-year approval. Mr. Smith seconded the amended motion. The motion carried by a vote of 4-1-1. Mr. Byers voted against the motion. Mr. Hammack abstained from the vote. Mr. Beard was absent from the meeting.

Mr. Hart said the situation was ongoing and involved more than this particular use and lot. He moved that the Board recommend that the Board of Supervisors look at the intersection of Herndon Avenue and Pleasant Valley Road in the context of the upcoming spot improvements to determine whether any safety modifications could be made. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS

BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance for a place of worship to permit change in development conditions. Located at 4525 Pleasant Valley Rd. on approx. 6.81 ac. of land zoned R-C, AN, and WS. Sully District. Tax Map 33-3 ((1)) 5. (Decision deferred from 2/12/08) 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 4, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has a staff report recommending approval, although not all its determinations are agreed with.
3. The applicant has presented testimony showing compliance with the required standards.
4. This is a difficult situation, but under case law, the Board can impose development conditions to mitigate impacts in the area of transportation; however, in the area of transportation improvements, the Board's power is somewhat limited.
5. The Board may require road improvements that are directly addressing impacts attributable to the use itself, but not to deal with external problems or problems caused by other factors.
6. There are a lot of problems in the area, but a lot of it is attributed to Loudoun County commuter traffic, which has changed a lot in the years since the application was approved.
7. The traffic situation does not really have anything to do with the temple, although the temple itself has experienced some growth as well.
8. The temple's growth has affected its ability to have events that more than fill up the parking lot.
9. While it may not be perfect, the solution staff identified to allow parking in off hours on Lafayette Center Drive and the shuttle to bring people to the temple is the appropriate thing to do at this time.
10. This is not an ideal or permanent solution; the temple will have to determine whether long term the

~ ~ ~ March 4, 2008, BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-02, continued from Page 635

- site works for that sort of activity.
11. The temple will have to determine whether there is some way to stagger the events during the day, as other facilities have done, or make some arrangement with the churches across the street or the golf course parking lot nearby, or some other arrangement.
 12. For the purposes of the special permit amendment, the standards for this use have been satisfied with some modifications to the conditions.
 13. Concerning the 33 acres across the street, the Board's action today does not in any way touch the 33 acres. The Board is not making any recommendation of whether or not the property may be a good or bad idea or as a parking solution or anything else. If an application comes in some day on that, the Board will review it on its own merits.
 14. In the R-C District, it would be better to have a shuttle occasionally than to increase the percentage of disturbed open space or increase the amount of impervious surface, such as a bigger parking lot.
 15. This solution is a more environmentally friendly approach to the continued problem with parking capacity for special events, whether Christmas or Easter, at other churches or the special events at the temple.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This special permit is granted only for the purpose, structure and/or use indicated on the special permit plat approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved special permit plat by Pritam L. Asora dated October 31, 1995 as revised through October, 1996, and these development conditions.
5. The maximum number of seats in the main area of worship shall be 250 with a corresponding minimum of 63 parking spaces. The maximum number of parking spaces on site shall be 87. All parking for this use shall be on site, except on weekend days or weekday nights after 7:00 P.M. numbering no more than 12 per year, upon which the Mandir temple hosts a special event. Special event attendees shall park along Lafayette Center Drive only. On special event days, a private shuttle shall be hired and run directly from designated pick up locations along Lafayette Center Drive to the Mandir temple prior to the event, and run directly from the Mandir temple to designated drop off locations along Lafayette Center Drive. The shuttle shall not pick up or drop off special event attendees along Pleasant Valley Road. The applicant shall provide shuttle operation dates, times, routes, and ridership counts to County staff upon request. This special permit approval shall automatically expire one (1) year after the Board of Zoning Appeals' approval date.
6. Transitional Screening 2 shall be provided along all lot lines. Existing vegetation may be used to partially satisfy this requirement but supplementation with evergreen trees and shrubs to the satisfaction of the County Arborist shall be provided.
7. The limits of clearing and grading shall be as shown on the special permit plat.
8. The barrier requirement shall be waived.
9. The floor area ratio (FAR) shall be limited to 0.03.
10. There shall be no organized outdoor activity associated with this special permit use.
11. The maximum building height shall be 40 feet to the top of the domes.
12. Best Management Practices shall be provided to the satisfaction of the Director, Department of Public Works and Environmental Services.
13. The entrance to the site shall be relocated to align with Herndon Avenue at such time as Pleasant

~ ~ ~ March 4, 2008, BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-02, continued from Page 636

Valley Road is improved to a divided facility. If agreement from the adjacent land owner on Lot 6 for the property necessary to locate the church driveway on Lot 6 is not obtained, interparcel access shall be provided to Lot 6 to facilitate future realignment of the church driveway.

14. Any proposed lighting of the parking areas shall be in accordance with the following:
 - a. The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - b. The lights shall focus directly onto the subject property.
 - c. Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
15. If signs are provided, they shall not be lit.
16. There shall be no noise generated off-site by the temple, in accordance with County noise ordinances, except as related to off-site parking, as permitted in development condition 5.
17. There shall be no more than two (2) priests, or one (1) priest with his family, residing on site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, three (3) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to commence 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 4-1-1. Mr. Byers voted against the motion. Mr. Hammack abstained from the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 4, 2008, Scheduled case of:

9:00 A.M. JAMES E. MARKHAM, SP 2007-LE-154 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 7.5 ft. from the side lot line. Located at 4120 Main St. on approx. 20,625 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((2)) 9.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James E. Markham, 4120 Main Street, Alexandria, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-LE-154, subject to the proposed development conditions.

Mr. Hart and Mr. Chase discussed an alternative location for the garage and the trees in the proximity.

Mr. Markham presented the special permit request as outlined in the statement of justification submitted with the application. He noted the narrowness of his lot. He said that the location of the proposed garage directly behind the existing garage was selected to keep the structures aligned with the driveway, save surrounding vegetation, not disturb a nature habitat, and keep the open space on the left center of the property as all the garages in the neighborhood were located on the right edge of the property lines.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2007-LE-154 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES E. MARKHAM, SP 2007-LE-154 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 7.5 ft. from the side lot line. Located at 4120 Main St. on approx. 20,625 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((2)) 9. 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 4, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony that he wants to build the garage in an area which is aligned as closely as possible to his existing driveway.
3. The applicant is trying to save some trees and overgrown shrubbery in the middle of his lot for woodland creatures.
4. The location of the garage is in harmony with the location of garages in his neighborhood.
5. The staff report recommends approval.
6. The Board determined that the applicant has met Requirements 1 through 6.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and size (approximately 894 square feet) of the proposed detached garage as shown on the plat prepared by Dominion Surveyors Inc. dated July 2, 2007, as submitted with this application and is not transferable to other land.
2. The garage shall be consistent with the architectural renderings included as Attachment 1 to these conditions.
3. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
4. Prior to approval of final building inspections for the new garage, the existing one car garage shall be removed.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 4, 2008, Scheduled case of:

9:00 A.M. DEBORAH BRODERICK, SP 2007-SU-156 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 13633 Old Chatwood Pl. on approx. 9,024 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 69.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Deborah Broderick, 13633 Old Chatwood Place, Chantilly, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-SU-156, subject to the proposed development conditions.

Ms. Broderick presented the special permit request as outlined in the statement of justification submitted with the application. She said her family had lived in the house for years, raised their children, contributed to the community, intended to retire there, and the basement renovation would provide a living area for her elderly mother.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2007-SU-156 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DEBORAH BRODERICK, SP 2007-SU-156 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 13633 Old Chatwood Pl. on approx. 9,024 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 69. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 4, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-5 and WS.
3. The area of the lot is 9,024 square feet.
4. The applicant will convert the basement, which will give her the full use of the house to care for the applicant's mother.
5. The use will not be disruptive to the neighborhood in any way.
6. The use will provide an important function.
7. This use is entirely appropriate.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

~ ~ ~ March 4, 2008, DEBORAH BRODERICK, SP 2007-SU-156, continued from Page 639

1. This approval is granted to the applicant only, Deborah Broderick, and is not transferable without further action of this Board, and is for the location indicated on the application, 13633 Old Chatwood Place (9,024 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 Greenhorne and O'Mara, Inc., dated August 24, 1989 and signed by the applicant November 28, 2007 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and 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 664 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 or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. Parking shall be provided as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 4, 2008, Scheduled case of:

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an establishment for processing of earthen materials, which is not a permitted use in the I-5 District, and operating without site plan, Non-Residential Use and Building Permit approval for storage structure and other structures on property zoned I-5 and H-C in violation of Zoning Ordinance provisions. Located at 2809 Old Lee Hwy. on approx. 1.128 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 65A. (Admin. moved from 10/24/06 at appl. req.) (Continued from 2/27/07, 6/12/07, and 10/2/07)

~ ~ ~ March 4, 2008, ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-040 and A 2006-PR-043, continued from Page 640

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has expanded the use of property zoned I-5 and H-C without valid site plan and Non-Residential Use Permit approvals and established outdoor storage that exceeds allowable total area and is located in minimum required front yard in violation of Zoning Ordinance provisions. Located at 8524 & 8524A Lee Hwy. on approx. 1.35 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 67 & 65B. (Admin. moved from 10/24/06 at appl. req.) (Continued from 2/27/07, 6/12/07, and 10/2/07)

Chairman Ribble noted that the Board had received a deferral request.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, said the appellant's site plan had been approved, and additional time was needed to complete the process. She said staff supported the deferral.

Mr. Hammack moved to continue A 2006-PR-040 and A 2006-PR-043 to July 8, 2008, at 9:30 a.m. at the appellant's request. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 4, 2008, 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 138 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) (Indefinitely deferred from 8/1/06) (Reactivated from indefinitely deferred) (Admin. moved from 7/24/07, 10/23/07, and 1/8/08 at appl. req.)

Chairman Ribble noted that A 2005-SP-045 had been administratively moved to April 29, 2008, at 9:30 a.m., at the appellant's request.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, said the appellant had applied for a special permit for the fence, which would be heard on March 18, 2008.

//

~ ~ ~ March 4, 2008, Scheduled case of:

9:30 A.M. AMERICAN TURKISH FRIENDSHIP ASSOCIATION (ATFA), A 2007-PR-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant's use of property in the I-4 District as a meeting facility and/or educational center and a Public Benefit Association, without a proffer condition amendment, Special Exception approval or a valid Non-Residential Use Permit, is not in substantial conformance with the conditions of Proffer Condition Amendment PCA 82-P-084-1 in violation of Zoning Ordinance provisions. Located at 1776 Old Meadow Rd. on approx. 28,305 sq. ft. of land zoned I-4. Providence District. Tax Map 29-4 ((6)) 94B. (Admin. moved from 10/16/07 and 1/15/08 at appl. req.)

Chairman Ribble noted that A 2007-PR-025 had been administratively moved to September 16, 2008, at 9:30 a.m., at the appellant's request.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, said the appellant planned to move to a different location and vacate the property prior to the requested date.

//

~ ~ ~ March 4, 2008, continued from Page 641

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 BZA v. BOS, 71395, in the Supreme Court of Virginia; BOS v. BZA, CL-2006-14988, CL 2006-10952, CL-2008-2729, in the Circuit Court of Fairfax; Lee v. BZA, 04221391, in the Circuit Court of Fairfax and appealed to the Supreme Court; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

The meeting recessed at 10:03 a.m. and reconvened at 10:17 a.m.

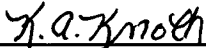
Mr. Hammack noted that an additional case was discussed during the Closed Session, Voorhees v. BZA, CL 2007-9484, and the companion case 06-2456. With that addition, Mr. Hammack then moved that the Board of Zoning Appeals certify that to the best of its knowledge, only public business matters lawfully 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 10:20 a.m.

Minutes by: Paula A. McFarland

Approved on: September 17, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 11, 2008. The following Board Members were present: Chairman John F. Ribble III; Tom Smith; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr.; Mr. Beard and Mr. Byers were absent from the meeting.

Chairman Ribble called the meeting to order at 9:04 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ March 11, 2008, Scheduled case of:

9:00 A.M. DENNIS J. O'CONNOR, SP 2007-PR-152 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.2 ft. from rear lot line. Located at 2703 Willow Dr. on approx. 13,996 sq. ft. of land zoned R-2 (Cluster). Providence District. Tax Map 37-4 ((18)) 5. (Admin. moved from 2/26/08 at appl. req.)

Chairman Ribble called the applicant to the podium.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Dennis J. O'Connor, 2703 Willow Drive, Vienna, Virginia, reaffirmed the affidavit.

Kelli Goddard-Sobers, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction of certain yard requirements to permit construction of an addition 13.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a reduction of 11.8 feet was requested. Staff recommended approval of SP 2007-PR-152 subject to the proposed development conditions.

Ms. Goddard-Sobers responded to a question from Mr. Hart regarding the resource protection area (RPA), noting that in 2004, the RPA was in place after the applicant had constructed the previous addition. She verified the location of the entire house as being within the RPA. Mr. Hart and Ms. Goddard-Sobers discussed the proposed screened porch that would replace the current deck and underlying shed. Ms. Goddard-Sobers stated that there would be no structure underneath the screened porch.

Mr. O'Connor presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the application would allow the replacement a 25-year-old deck with a screened porch.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2007-PR-152 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DENNIS J. O'CONNOR, SP 2007-PR-152 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.2 ft. from rear lot line. Located at 2703 Willow Dr. on approx. 13,996 sq. ft. of land zoned R-2 (Cluster). Providence District. Tax Map 37-4 ((18)) 5. (Admin. moved from 2/26/08 at appl. req.). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 11, 2008; and

~ ~ ~ March 11, 2008, DENNIS J. O'CONNOR, SP 2007-PR-152, continued from Page 643

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. This is the replacement of an existing deck with a screened in porch.
3. The Board has a favorable staff recommendation.
4. The applicant has met the six standards outlined in Sect. 8-922 of the Ordinance.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 250 square feet) of the proposed addition as shown on the plat prepared by Dominion Surveyors Inc., dated September 28, 2007, as revised through November 26, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling (4,529 square feet) that existed at the time of the first expansion regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. Prior to the issuance of a building permit for the addition, the applicant shall provide a Water Quality Impact Assessment and apply for and gain approval of an RPA Exception if determined necessary by DPWES.
5. The addition shall be consistent with the architectural renderings 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.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Byers were absent from the meeting.

//

~ ~ ~ March 11, 2008, Scheduled case of:

9:00 A.M. EASTWOOD PROPERTIES, INC., SP 2007-MA-159 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit expansion of an existing cemetery. Located at 6271 Lincolnia Rd. on approx. 1.14 ac. of land zoned R-2. Mason District. Tax Map 72-2 ((1)) 39.

Chairman Ribble called the applicant to the podium.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Lori Greenlief, the applicant's agent, 1750 Tysons Boulevard, Suite 1800, McLean, Virginia, reaffirmed the affidavit.

William O'Donnell, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit expansion of an existing cemetery on approximately 1.14 acres of land zoned R-2. Staff recommended approval of SP 2007-MA-159 subject to the proposed development conditions.

Mr. Hart and Mr. O'Donnell discussed Development Condition 8, noting that new headstones would be allowed.

In response to a question from Mr. Hart regarding Development Condition 10, Mr. O'Donnell stated that the applicant would fund a historic marker if one is merited by the History Commission. Mr. Hart asked that the wording be modified to reflect that the applicant or maintenance/management entity be responsible for funding a historic marker, if found necessary.

Mr. Hart and Mr. O'Donnell discussed the proposed parking requirements for the cemetery, noting that there were currently no designated parking spaces. Mr. O'Donnell stated that the eight requested spaces and overflow parking along the access road would be adequate for the cemetery.

Ms. Greenlief presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she and Greg Riegler, both from McGuire, Woods, and Paul Johnson, from CPJ Associates, were available to answer any questions. Ms. Greenlief noted that the cemetery dated back to the early to mid-1900's, with crooked or fallen headstones, uneven pathways, and overgrown brush and trees, all of which would be improved with approval of this application. She said that the applicant had met with the surrounding communities; Ms. Girard (phonetic), representing the families in the cemetery; and Mr. Curry (phonetic), president of the Charleston Square HOA, who had submitted a letter in support of application for the record. Ms. Greenlief stated her agreement with the proposed development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2007-MA-159 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EASTWOOD PROPERTIES, INC., SP 2007-MA-159 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit expansion of an existing cemetery. Located at 6271 Lincolnia Rd. on approx. 1.14 ac. of land zoned R-2. Mason District. Tax Map 72-2 ((1)) 39. 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 11, 2008; and

WHEREAS, the Board has made the following findings of fact:

~ ~ ~ March 11, 2008, EASTWOOD PROPERTIES, INC., SP 2007-MA-159, continued from Page 645

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. The use is consistent with what is provided in the Comprehensive Plan.
5. There was no opposition.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Eastwood Properties, Inc., with the exception of a possible transfer of ownership to the entity required in Development Condition 9, is not transferable without further action of this Board, and is for the location indicated on the application, 6271 Lincoln Road, (1.14 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 CPJ Associates, dated December 14, 2007, with revisions through February 22, 2008, and approved with this application, as qualified by these development conditions.
3. 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.
4. A landscape plan shall be submitted concurrent with site plan review and shall be subject to the review and approval of the Urban Forest Management Department (UFM). Any dead or dying plantings may be removed as approved by UFM.
5. The applicant shall conform strictly to the limits of clearing and grading as shown on the SP Plat, subject to the installation of utilities and/or trails as determined necessary by the Director of DPWES. If it is determined necessary to install utilities within of the limits of clearing and grading as shown on the SP Plat, they shall be located in the least disruptive manner necessary as determined by UFM.
6. Notwithstanding what is shown on the SP Plat, minimum tree cover requirements shall be met unless modified by the Director of DPWES. The small shrubs depicted along the southern and western property lines may be replaced with evergreen trees a minimum of 6 feet in height at the time of planting and/or shade trees with a minimum 2 inch caliper at the time of planting to help meet the tree cover requirement as determined by UFM. Additional evergreen trees with a minimum of 6 feet in height and/or shade trees with a minimum of 2 inch caliper may be planted throughout the site to meet the tree cover requirement as determined by UFM.
7. All signs shall be in conformance with the provisions of Article 12 of the Zoning Ordinance.
8. Additional improvements within the limits of the existing cemetery shall include, but not be limited to, straightening existing headstones; replacing/repairing broken pathways; and providing supplemental landscaping as determined by UFM.
9. The applicant shall conform to the provisions in Chapter 3 of Title 57 of the Code of Virginia. To provide for ongoing maintenance and management of the cemetery use, the Applicant shall facilitate the establishment of a not-for-profit or a private cemetery company organized under the relevant provisions of the Code of Virginia to operate the cemetery. Written evidence documenting the formation of this company shall be provided to Fairfax County prior to the issuance of a Non-Residential Use Permit (Non-RUP).

~ ~ ~ March 11, 2008, EASTWOOD PROPERTIES, INC., SP 2007-MA-159, continued from Page 646

10. Coordination with the History Commission shall be performed to determine if a historic marker is merited on the cemetery site. If a historic marker is merited, the marker shall be provided and funded by the applicant or the entity established in Development Condition 9 according to the specifications of the History Commission.
11. Storm water Management and Best Management Practices shall be provided, as approved by DPWES, in the areas shown on the SP Plat. If the proposed facilities are not in substantial conformance with the SP Plat, then a SPA application may be required.
12. The 4 foot high sign and the metal fence located to the south of the entrance as depicted on the SP Plat shall be placed in the least damaging way and location to the existing trees as determined by UFM.

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. Smith and Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Byers were absent from the meeting.

//

~ ~ ~ March 11, 2008, Scheduled case of:

9:00 A.M. HAMLET SWIM CLUB, INC., SPA 74-D-037-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-D-037 previously approved for a swim club to permit a building addition and site modifications. Located at 8209 Dunsinane Ct. on approx. 4.33 ac. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) A1 and B1. (Admin. moved from 9/11/07 for ads) (Deferred from 10/23/07 and 12/11/07 at appl. req.)

Chairman Ribble noted that SPA 74-D-037-03 had been administratively moved to April 15, 2008, at 9:00 a.m., for ads.

//

~ ~ ~ March 11, 2008, Scheduled case of:

9:00 A.M. JOSE F. MONTES, SP 2007-SU-157 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.0 ft. from rear lot line. Located at 13510 Gordon Ct. on approx. 11,009 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 79.

Chairman Ribble called the applicant to the podium.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Jose F. Montes, 13510 Gordon Court, Oak Hill, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the

~ ~ ~ March 11, 2008, JOSE F. MONTES, SP 2007-SU-157, continued from Page 647

staff report. The applicant requested a special permit to allow a reduction to certain yard requirements to permit the construction of a 288-square-foot screen porch, 18 feet from the rear lot line. The screen porch would occupy the same location as a deck which had recently been removed by the applicant due to deterioration. A minimum rear yard of 25 feet is required; therefore, a reduction of 7.0 feet was requested. Staff recommended approval of SP 2007-SU-157 subject to the proposed development conditions.

Mr. Montes presented the special permit request as outlined in the statement of justification submitted with the application. He stated that his deck had become unsafe and he wished to build a screened porch in the same basic area.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2007-SU-157 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSE F. MONTES, SP 2007-SU-157 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.0 ft. from rear lot line. Located at 13510 Gordon Ct. on approx. 11,009 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 79. 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 11, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has a favorable staff report; staff recommends approval.
3. The applicant is seeking to build a screened in porch in the exact same location as a deck that had already existed and had to be removed because it had deteriorated.
4. The screened porch would not have any impact on the neighbors.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 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 addition (288 square foot screen porch) as shown on the plat prepared by Timothy J. Farrell and dated October 5, 2007, as revised through November 30, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of any addition(s) to the existing principal structure may be up to 150 percent of the total gross floor area of the dwelling (2,500 square feet) that existed at the time of the first expansion request

~ ~ ~ March 11, 2008, JOSE F. MONTES, SP 2007-SU-157, continued from Page 648

regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum requirements shall be permitted without an amendment to this special permit.

4. The screen porch shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Byers were absent from the meeting.

//

~ ~ ~ March 11, 2008, Scheduled case of:

9:00 A.M. MADELEINE MUELLER/ROBERT MUELLER, SP 2007-SP-158 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 20.4 ft. with eave 19.4 ft. from front lot line and to permit reduction of certain yard requirements to permit addition 17.6 ft. from front lot line. Located at 13608 Bridgeland La. on approx. 8,845 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 65-2 ((6)) 257.

Chairman Ribble called the applicants to the podium.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Madeleine Mueller, 13608 Bridgeland Lane, Clifton, Virginia, reaffirmed the affidavit.

Greg Chase, Senior 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 a dwelling to remain 20.4 feet with eave 19.4 feet from the front lot line and to permit a reduction of certain yard requirements to allow construction of an addition 17.6 feet from the front lot line. Staff recommended approval of SP 2007-SP-158 subject to the proposed development conditions.

In response to Mr. Hart's question regarding the house being built in the wrong location, Mr. Chase stated that it was a building permit oversight, since the plat had not shown lot line distances. He stated that the applicant was not at fault.

Ms. Mueller presented the special permit request as outlined in the statement of justification submitted with the application. She addressed the error in building location, noting that as the third owner of the home, the error was not their fault. Regarding the proposed addition, she stated that it would blend in with the surrounding homes in terms of material, size, and scale, but would be virtually invisible due to a natural screen of tall evergreen trees.

As there were no speakers, Chairman Ribble closed the public hearing.

~ ~ ~ March 11, 2008, MADELEINE MUELLER/ROBERT MUELLER, SP 2007-SP-158, continued from Page 649

Mr. Smith moved to approve SP 2007-SP-158 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MADELEINE MUELLER/ROBERT MUELLER, SP 2007-SP-158 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 20.4 ft. with eave 19.4 ft. from front lot line and to permit reduction of certain yard requirements to permit addition 17.6 ft. from front lot line. Located at 13608 Bridgeland La. on approx. 8,845 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 65-2 ((6)) 257. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 11, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The Board agreed with the favorable recommendation and analysis in the staff report.
3. There would be minimal impact on the neighborhood.
4. It is consistent with the Comprehensive Plan and in harmony with the surrounding neighborhood.
5. As mentioned by the applicant, there is screening.
6. Relative to the mistake, as the third owners of the home, it was not their fault.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, and Sect. 8-922, Provisions for Reduction of Certain Yard Requirements, of the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate

~ ~ ~ March 11, 2008, MADELEINE MUELLER/ROBERT MUELLER, SP 2007-SP-158, continued from Page 650

vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the one story addition (a total of 178 square feet), and dwelling as shown on the plat prepared by Dominion Surveyors, Inc., dated July 19, 2007, revised to November 27, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,049 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Byers were absent from the meeting.

//

~ ~ ~ March 11, 2008, Scheduled case of:

9:30 A.M. 6121 COLUMBIA PIKE L.L.C., A 2007-MA-019, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard on property in the PDH-12 District in violation of Zoning Ordinance provisions. Located at 6121 Columbia Pi. on approx. 2.68 ac. of land zoned PDH-12 and H-C. Mason District. Tax Map 61-4 ((1)) 157. (Admin. moved from 8/7/07, 10/16/07, and 1/8/08 at appl. req.)

9:30 A.M. 6121 COLUMBIA PIKE L.L.C., A 2007-MA-020, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a motor vehicle storage and impoundment yard on property in the PDH-12 District in violation of Zoning Ordinance provisions. Located at 6121 Columbia Pike on approx. 2.68 ac. of land zoned PDH-12 and H-C. Mason District. Tax Map 61-4 ((4)) 157. (Admin. moved from 8/7/07, 10/16/07, and

~ ~ ~ March 11, 2008, 6121 COLUMBIA PIKE L.L.C., A 2007-MA-019 and A 2007-MA-020, continued from Page 651

1/8/08 at appl. req.)

Chairman Ribble noted that A 2007-MA-019 and A 2007-MA-020 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the applicant was currently working with Zoning Enforcement staff to clear the violations.

//

~ ~ ~ March 11, 2008, Scheduled case of:

9:30 A.M. NIZAM AHMED, A 2007-MA-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory storage structure (shed) has been erected that exceeds eight and one-half feet in height and that does not meet the bulk regulation as it applies to the minimum side yard requirement for the R-3 District in violation of Zoning Ordinance provisions. Located at 3906 Fairfax Pw. on approx. 10,500 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-3 ((9)) 20.

Chairman Ribble noted that A 2007-MA-046 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the violation had been cleared.

//

~ ~ ~ March 11, 2008, After Agenda Item:

Request for Additional Time
Elsie D. Weigel, VC 2004-MV-112

Jane Kelsey, representing the applicant, stated her concurrence with the staff's recommendation for 30 months of additional time.

Mr. Hammack moved to approve 30 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself. Mr. Beard and Mr. Byers were absent from the meeting. The new expiration date was June 7, 2010.

//

~ ~ ~ March 11, 2008, After Agenda Item:

Request for Additional Time
Trustees of St. Paul's Episcopal Church, SPA 98-M-036-2

Mr. Hart moved to approve 12 months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Byers were absent from the meeting. The new expiration date was November 11, 2008.

//

~ ~ ~ March 11, 2008, After Agenda Item:

Request for Additional Time
Buddhist Association of America, SPA 87-V-070

Ms. Gibb moved to approve 12 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Byers were absent from the meeting. The new expiration date was November 5, 2008.

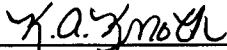
//

~ ~ ~ March 11, 2008, continued from Page 652

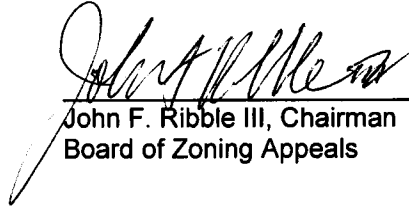
As there was no other business to come before the Board, the meeting was adjourned at 9:40 a.m.

Minutes by: Suzanne L. Frazier

Approved on: April 16, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 18, 2008. The following Board Members were present: Chairman John F. Ribble III; Tom Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

Chairman Ribble called the meeting to order at 9:04 a.m. He asked if there were any Board Matters.

Mr. Hammack moved that the Board support the reappointment of Nancy E. Gibb to the Board of Zoning Appeals for another five-year term. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals.

~ ~ ~ March 18, 2008, Scheduled case of:

9:00 A.M. JOANNE LOISELET, SP 2008-SP-005 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 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.

Chairman Ribble called the applicant to the podium.

Keith C. Martin, the applicant's agent, Sack Harris & Martin, P.C., 8270 Greensboro Drive, Suite 810, McLean, Virginia, reaffirmed the affidavit.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Kelli Goddard-Sobers, Staff Coordinator, made staff's presentation as contained in the staff report. She noted that revised development conditions dated March 18th had been distributed to the Board members.

Mr. Martin presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant built the fence in what she thought was a side yard after her two children were attacked by a neighbor's dog. The applicant was unaware that she had two front yards and a six-foot fence was not allowed. Mr. Martin said the applicant had removed the shed which was in violation and would move the playhouse into the rear yard. He submitted letters in support from the abutting neighbors.

In response to Mr. Hammack's question, Mr. Martin said the revised development conditions dated March 18, 2008, were acceptable.

Mr. Hart asked if the location of the house at 13.8 feet from the side lot line was permitted in the R-C District. Ms. Goddard-Sobers said it had previously been approved under the R-1 Cluster, so it was acceptable at the time.

In response to Mr. Hart's question, Mr. Martin said the applicant had no objection to shifting the portion of the fence located in the right-of-way.

Mr. Hammack noted that the house appeared to have been built outside the 20- and 40-foot restriction lines. Mr. Martin said the house had been built in 1980, and at the time the setback was 30 feet. The zoning was changed to R-C in 1982, and the Ordinance said that any structure built prior to that would be legal under the prior Ordinance. He said he had filed for an administrative setback request for the front stoop that was located 29.7 feet from the lot line, and the Zoning Administrator had authority to make an administrative reduction for the 0.3 feet.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-SP-005 for the reasons stated in the Resolution.

//

~ ~ ~ March 18, 2008, JOANNE LOISELET, SP 2008-SP-005, continued from Page 655

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOANNE LOISELET, SP 2008-SP-005 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 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. 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 18, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the six required standards set forth in the Ordinance specifically outlined in the Standard Resolution form.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This Special Permit is approved for the location and maximum height of a fence as shown on the plat prepared by Stephen L. Moore Land Surveying, Inc. dated December 15, 2006, as revised through December 27, 2007 as submitted with this application and is not transferable to other land.
2. Notwithstanding what is depicted on the plat, within 60 days of approval of this special permit, all portions of the existing fence which are currently located on public right-of-way shall be relocated onto the application property.
3. Within 60 days of approval of this special permit the wood shed, swing set and playhouse on site shall be removed and/or brought into conformance with Zoning Ordinance requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 18, 2008, Scheduled case of:

9:00 A.M. JOHN N. GERACIMOS AND MEI LEE STROM, SP 2008-MV-001 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.0 ft. from side lot line and to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 2104 Windsor Rd. on approx. 8,213 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602.

Chairman Ribble called the applicants to the podium.

~ ~ ~ March 18, 2008, JOHN N. GERACIMOS AND MEI LEE STROM, SP 2008-MV-001, continued from Page 656

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John Geracimos, 2104 Windsor Road, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Hedrick noted that staff had distributed revised development conditions to the Board which reflected the relocation of the portion of the fence on the front lot line where it was off the application property and in public right-of-way.

Mr. Geracimos presented the special permit request as outlined in the statement of justification submitted with the application. He clarified that there actually were three requests; an error in building location for a deck in the rear yard; a fence in the front yard; and a second fence in what was technically considered the other front yard. He said the fence along Windsor Road, as well as the deck, were already there when he purchased the home in 1998. He said to modify the fence and deck would be very expensive. Mr. Geracimos said he had removed the chain-link fence and replaced it with the other higher wooden fence for screening and privacy. Mr. Geracimos stated that the fence mirrored two other fences in the immediate neighborhood, and there was no sight distance issue. He listed the reasons the fence satisfied the requirements for Sect. 8-923. Mr. Geracimos said he had submitted written statements from all the adjacent neighbors, with the exception of Mr. Olmi, in support of the fence, and on May 13, 2007, Mr. Olmi had verbally indicated to him he had no objection to the fence.

In response a question from Mr. Byers regarding the proposed development conditions, Ms. Hedrick said the development condition could be changed to reflect a range in height of the fences from 4.8 to 6.0 feet.

Discussion ensued regarding the proximity of the applicants' fence to a Virginia Department of Transportation's (VDOT) public right-of-way, a neighbor's fence location, and whether the fence on Lot C was a permitted fence.

Ms. Gibb suggested that Mr. Geracimos have his engineer review the survey to determine the property lines. Mr. Geracimos said he would.

Chairman Ribble called for speakers.

James Mansfield, 4184 University Drive, Suite 100, Fairfax, Virginia, came forward to speak in opposition to the fence at its current height. He said he was counsel for Mr. Olmi, and there were covenants that ran with the land which restricted fence heights to four feet.

Ms. Gibb and Mr. Mansfield discussed why there were numerous cars on Mr. Olmi's property.

Mr. Mansfield said Mr. Olmi believed Mr. Geracimos' fence was within the right-of-way, and it obstructed his view of traffic on Windsor Road. Mr. Smith asked whether Mr. Olmi objected to both fences and the deck. Mr. Mansfield said the deck was not mentioned.

Mr. Smith, Mr. Hammack, Chairman Ribble, and Mr. Mansfield discussed the covenants Mr. Mansfield had referenced, which properties and fences they applied to, and previous enforcement efforts. At Chairman Ribble's request, Mr. Mansfield submitted a copy of the master deed of restriction which he said applied to all of the properties the Olmi family developed.

In his rebuttal, Mr. Geracimos said he did not believe the Board had authority concerning covenants or their enforcement. He said there were many fences in Belle Haven in excess of four feet in height, and Mr. Olmi had never raised objections regarding fences with other owners. Mr. Geracimos showed photographs that he said showed the fence had no impact on line of sight. He said there were frequently many cars parked on Mr. Olmi's property, and it looked like a commercial establishment.

Mr. Hart suggested one or two months would be reasonable for Mr. Geracimos to address the issues of the lack of a title report, the survey, the fence location, and the dimension of the front yard. Mr. Hart and Mr. Geracimos discussed repairs to the deck.

~ ~ ~ March 18, 2008, JOHN N. GERACIMOS AND MEI LEE STROM, SP 2008-MV-001, continued from Page 657

Chairman Ribble closed the public hearing.

Mr. Byers moved to defer decision on SP 2008-MV-001 to May 20, 2008, at 9:00 a.m. He asked staff to determine whether there was a sight distance issue. Ms. Hedrick said that because it was not a corner lot, there were no Ordinance requirements. She said that Sect. 2-505 applied to a corner lot that came to a point, but was not applicable to the subject property.

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

Ms. Gibb suggested the applicant get a title report so his surveyor could determine whether the applicant actually owned the property in the right-of-way. Mr. Hammack asked the applicant inform staff once the title examination was complete so staff could compare it with the proposed development conditions.

Mr. Hart suggested that the applicant consult a professional regarding the title work, reviewing the drawing which showed a strip added along the street to the lot next door and reduction of the right-of-way width.

//

~ ~ ~ March 18, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02

Chairman Ribble noted that SPA 82-D-047-02 had been administratively moved to April 15, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ March 18, 2008, Scheduled case of:

9:00 A.M. BOSS, TERRY D. & BOSS, SUSAN D., SP 2007-SU-139 Appl. under Sect(s) 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with VC 2007-SU-005). (Admin. moved from 2/5/08 at appl. req.) (Decision deferred from 2/12/08)

9:00 A.M. BOSS, TERRY D. & SUSAN D., VC 2007-SU-005 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with SP 2007-SU-139). (Admin. moved from 2/5/08 (Decision deferred from 2/12/08)

Chairman Ribble noted that SP 2007-SU-139 and VC 2007-SU-005 had been deferred for decision only.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicants had requested another deferral of the decision.

Mr. Hart moved to defer decision on SP 2007-SU-139 and VC 2007-SU-005 to May 20, 2008, at 9:00 a.m., at the applicants' request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 18, 2008, Scheduled case of:

9:30 A.M. HOME PROPERTIES MOUNT VERNON, LLC, A 2007-MV-004 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard and an accessory use (a fence) on property which does not have an approved principle use in the C-8 District all in violation of Zoning Ordinance provisions.

~ ~ ~ March 18, 2008, HOME PROPERTIES MOUNT VERNON, LLC, A 2007-MV-004, continued from Page 658

Located on approx. 1.49 ac. of land zoned C-8, CRD and H-C. Mount Vernon District. Tax Map 93-3 ((2)) (2) 1A. (Admin. moved from 11/27/07 and 1/29/08 at appl. req.)

Chairman Ribble noted that a withdrawal was pending on A 2007-MV-004.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff had received the withdrawal request, and all the violations had been cleared.

//

~ ~ ~ March 18, 2008, 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.) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred)

Chairman Ribble noted that A 2005-DR-026 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appeal had been withdrawn because the Board had approved a special permit which rectified the violation.

//

~ ~ ~ March 18, 2008, 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, 7/19/05, 8/2/05, 10/11/05, and 12/4/07) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred) (Admin. moved from 7/24/07 at appl. req.)

Chairman Ribble noted that A 2004-SP-025 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that the appeal had been withdrawn because the Board had approved a special permit which rectified the violation.

//

~ ~ ~ March 18, 2008, After Agenda Item:

Request for Additional Time
Trustees of St. Paul's Lutheran Church, SPA 93-P-046-2

Mr. Byers moved to approve 36 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was December 14, 2010.

//

~ ~ ~ March 18, 2008, After Agenda Item:

Request for Additional Time
Maroun S. Bechara and Barbara M. Bechara, VC 2003-HM-185

Mr. Hammack moved to approve 18 months of additional time. Ms. Gibb and Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was August 25, 2009.

//

~ ~ ~ March 18, 2008, After Agenda Item:

Request for Additional Time
The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of
Arlington, Virginia, and His Successor in Office (St. Clare Church), SP A 88-S-091

Mr. Hammack moved to approve 18 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was October 14, 2008.

//

~ ~ ~ March 18, 2008, After Agenda Item:

Request for Additional Time
Mok Yang Presbyterian Church, SPA 95-S-071

Ms. Gibb 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 October 14, 2008.

//

~ ~ ~ March 18, 2008, After Agenda Item:

Request for Additional Time
Harco I, Inc. d/b/a Fast Eddie's Billiard Café, SPA 92-L-047-2

Mr. Hammack moved to approve nine months of additional time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself. Mr. Beard was absent from the meeting. The new expiration date was July 12, 2008.

//

~ ~ ~ March 18, 2008, After Agenda Item:

Request for Additional Time
Ekklesia US, SPA 00-Y-050.

Mr. Hart discussed the length of time requested, the difficulty of and split vote on the original application, and the other development in the vicinity. He asked staff to address the length of time requested.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said a site plan was in process, but some issues had come up, and staff wanted to give the applicant time to commence construction.

Regina Petruzzi-Neumann, present on behalf of John Farrell, McCandlish Lillard, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, came forward to speak, and the oath was administered to her. She said there had been several issues, of which she did not know the specifics, which had prevented the approval of the building permit.

Mr. Byers asked what the issues were. Ms. Langdon said the staff coordinator working with the applicant was not present, and if the Board deferred the request, she would find out what the issues involved.

~ ~ ~ March 18, 2008, After Agenda Items, continued from Page 660

Mr. Byers moved to defer the applicant's additional time request to April 1, 2008. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

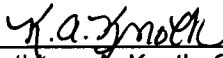
Mr. Hart requested that information be provided at the April 1st meeting regarding what appeared to be an abandoned school bus on the subject property.

//

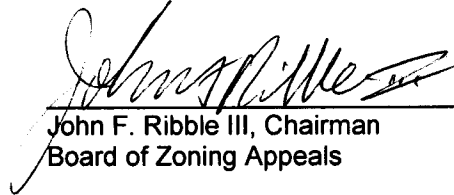
As there was no other business to come before the Board, the meeting was adjourned at 10:15 a.m.

Minutes by: Kathleen A. Knoth

Approved on: July 23, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 1, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ April 1, 2008, Scheduled case of:

9:00 A.M. DONALD J. MCCARTHY, SP 2007-MA-001 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 8.2 ft. with eave 7.5 ft. from side lot line and to permit an accessory dwelling unit. Located at 3915 Glenbrook Rd. on approx. 1.47 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 20A. (Admin. moved from 3/20/07, 5/1/07, and 9/11/07 at appl. req.)

Chairman Ribble noted that SP 2007-MA-001 had been administratively moved to October 7, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:00 A.M. WILLIAM M. MCGEEHAN, SP 2008-LE-003 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.6 ft. from side lot line such that side yards total 18.3 ft. Located at 4523 Flintstone Rd. on approx. 11,905 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-1 ((10)) 6124.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

William A. McGeehan, 4523 Flintstone Road, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-LE-003, subject to the proposed development conditions.

Mr. McGeehan presented the special permit request as outlined in the statement of justification submitted with the application. The addition attached to the house would provide a workshop and additional storage space. He said the design would be in character with the house, and he had the support of his neighbors and the homeowners association.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-LE-003 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM M. MCGEEHAN, SP 2008-LE-003 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.6 ft. from side lot line such that side yards total 18.3 ft. Located at 4523 Flintstone Rd. on approx. 11,905 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-1 ((10)) 6124. 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

~ ~ ~ April 1, 2008, WILLIAM M. MCGEEHAN, SP 2008-LE-003, continued from Page 663

applicable State and County Codes and with the by-laws of 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 1, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has determined that the application meets all the submission requirements, and the other five required standards that are required in order to grant this application.
3. The Board has a favorable recommendation from the staff.
4. Looking at the plat, the lot is somewhat narrow.
5. The proposed construction is at the widest part of the yard.
6. The proposed construction does not impact either of the dwelling units, Numbers 6125 or 6126, in any way that is adverse or out of character with the neighborhood.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (200 square feet) of an addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated September 12, 2007, as revised through January 2, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,348 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF THE UNITED CHRISTIAN PARISH OF RESTON, VIRGINIA, SPA 87-C-018-02 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 87-C-018 previously approved for church and nursery school to permit an increase in enrollment. Located at 11506 North Shore Dr. on approx. 4.26 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 6 and 13. (Admin. moved from 3/4/08 at appl. req.)

Chairman Ribble noted that the applicant had requested a deferral to June 3, 2008

Mr. Hart moved to defer SPA 87-C-018-02 to June 3, 2008, at 9:00 a.m., at the applicant's request. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:00 A.M. VIENNA HERITAGE CENTER, SP 2007-DR-085 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 10602 Leesburg Pi. on approx. 2.23 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 49. (Deferred from 10/30/07 and 1/29/08 at appl. req.)

Chairman Ribble noted that SP 2007-DR-085 had been administratively moved to May 20, 2008, at 9:00 a.m., for notices.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:00 A.M. PETER CHOI, SP 2008-SU-004 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 16.0 ft. from side lot line. Located at 15108 Bernadette Ct. on approx. 12,399 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 393.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Peter and Sunny Choi, 15108 Bernadette Court, Chantilly, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report.

Ms. Choi presented the special permit request as outlined in the statement of justification submitted with the application. The requested addition was for a small deck to be added onto the second-story of the home, and there would be no outside stairs. Ms. Choi said the deck would barely be visible from the neighborhood, and there was no opposition from the neighbors.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2008-SU-004 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER CHOI, SP 2008-SU-004 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 16.0 ft. from side lot line. Located at 15108 Bernadette Ct. on approx. 12,399 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 393. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ April 1, 2008, PETER CHOI, SP 2008-SU-004, continued from Page 665

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property 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 12,399 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 a deck as shown on the plat prepared by Paciulli, Simmons & Associates, Ltd., dated September 5, 1986, revised through May 5, 1986, and revised and signed by Edward L. Johnson Land Surveyor, dated January 7, 2008, as submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction, and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:00 A.M. MARK R. ASHBY, SP 2008-PR-002 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 16.9 ft. from front lot line. Located at 9011 Linda Maria Ct. on approx. 11,922 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 48-4 ((20)) 10.

~ ~ ~ April 1, 2008, MARK R. ASHBY, SP 2008-PR-002, continued from Page 666

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mark R. Ashby, 9011 Linda Maria Court, Fairfax, Virginia, and Shawn C. Glerum, Glerum Design Group, 407 Thomas Street, Alexandria, Virginia, the applicant's architect, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-PR-002, subject to the proposed development conditions.

Mr. Glerum presented the special permit request as outlined in the statement of justification submitted with the application. He gave a brief history of the property, noting it was an original farmhouse, and a development had been built around it. The newer homes each had porches facing the cul-de-sac, and the applicant was seeking to build a front porch onto his older home to also face the cul-de-sac, which would be more compatible and harmonious with the surroundings.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2008-PR-002 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK R. ASHBY, SP 2008-PR-002 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 16.9 ft. from front lot line. Located at 9011 Linda Maria Ct. on approx. 11,922 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 48-4 ((20)) 10. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 1, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. There would be no significant negative impact on anybody.
5. It appears to be a very attractive modification to this house.
6. It has the support of the neighbors.
7. It helps integrate an older house with the newer homes on this court that were built when the property was subdivided.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and size (approximately 148 square feet) of the

~ ~ ~ April 1, 2008, MARK R. ASHBY, SP 2008-PR-002, continued from Page 667

proposed one story roofed deck (porch with stairs) as shown on the plat prepared by Alexandria Surveys International, LLC, dated October 11, 2008, and signed December 11, 2008, as submitted with this application and is not transferable to other land.

2. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
3. 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.
4. A Building Permit shall be obtained prior to construction and approval of final inspections shall be obtained.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:00 A.M. JERUSALEM BAPTIST CHURCH, SPA 73-S-113 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 73-S-113 previously approved for a church to permit the addition of a child care center, building additions, increase in seats and site modifications. Located at 5424 Ox Rd. on approx. 13.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 52, 54 and 55A. (Admin. moved from 12/18/07 and 2/26/08 at appl. req.)

Chairman Ribble noted that SPA 73-S-113 had been administratively moved to May 20, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:30 A.M. ADAM LOVE DBA GROUND ONE LANDSCAPE CO., A 2007-PR-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a use and is allowing outdoor storage, which does not meet the minimum yard requirements for the I-5 District, without an approved site plan in violation of Zoning Ordinance provisions. Located at 8522 Lee Hwy. on approx. 1.48 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3 ((1)) 65. (Deferred from 6/26/07) (Deferred from 10/16/07 and 12/11/07 at appl. req.)

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in her memorandum dated March 20, 2008. The appeal was of a determination that the appellant established a use without an approved site plan and was allowing outdoor storage that did not meet the minimum yard requirements for the I-5 District. In September of 2006, the appellant was issued a non-residential use

~ ~ ~ April 1, 2008, ADAM LOVE DBA GROUND ONE LANDSCAPE CO., A 2007-PR-005, continued from Page 668

permit to utilize 14,000 square feet of the property for a warehouse and 3,000 square feet for retail sales. A response to a complaint brought Zoning Enforcement staff out to the subject property where it was discovered the appellant built walls forming outdoor concrete bins to store and compartmentalize large amounts of dirt, gravel, mulch, and other landscaping materials without an approved site plan or building permits. Ms. Collins noted that the public hearing had been deferred a number of times to allow the appellant to obtain an approved minor site plan, which had been approved in January of 2008. Implementation of the site plan would resolve the zoning violations, but recent photographs evidenced that the appellant had not implemented it.

Charles Cohenour, Senior Zoning Inspector, responded to questions from Mr. Hart and Mr. Beard concerning an estimated time for the appellant to correct the violations and address the matter of signage on the site.

Adam Love, 8522 Lee Highway, Merrifield, Virginia, presented the arguments forming the basis for the appeal. He agreed that he was in violation, but he was proceeding to come into compliance. He said soliciting bids was time-consuming, and contracting the companies to correct the fence, paving, and other violations was expensive. Mr. Love said he was apprising staff of his progress, the site plan had been approved, but scheduling the work must take place during the winter, the slow business time of the year.

Responding to Ms. Gibb's question concerning progress, Mr. Cohenour said he had not believed the appellant had demonstrated a good faith effort until he submitted the photographs at the hearing that evidenced his recent efforts to clear the violations. Mr. Love said he planned to contract some of the work and do as much as he was capable of himself. Discussion ensued regarding the appellant's efforts towards compliance, clarification of what would resolve the violations, difficulty of the process, timeframes, and consequences if unable to comply. Mr. Byers pointed out that upholding the Zoning Administrator would not shut the business down, but would be motivation for the appellant to come into compliance at the soonest date.

Chairman Ribble closed the public hearing.

Ms. Gibb said she sympathized with the appellant that the process was difficult; however, the case had been deferred three times, and staff had stated they would work with the appellant. Ms. Gibb moved to uphold the determination of the Zoning Administrator. Mr. Beard seconded the motion.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, explained the different timeframes between the notice of violation and the site plan. With regard to a site plan approval, she said 60 months was allowed to commence construction activity, but that was separate from a notice of violation and the subsequent enforcement action.

Mr. Hart said there was a violation with sand, gravel, and mulch, but he suggested dirt should be excluded from the motion. Ms. Gibb accepted Mr. Hart's amendment to exclude the dirt.

Mr. Hart said the appellant would more diligently pursue curing the violations if the Zoning Administrator was upheld and enforcement activity commenced. He suggested the appellant retain a contractor and engineer and not wait until winter. Mr. Beard concurred with Mr. Hart's comments, but acknowledged that the process could be lengthy and difficult.

In response to questions from Mr. Beard and Mr. Hammack, Mr. Love said he believed he had pursued compliance to the best of his ability. He said he was not familiar with the process, but he intended to comply. He explained the stages required to cure the violations.

Mr. Cohenour said the appellant's sign applications were received June of 2007 and denied. He said staff verbally advised him in July of the denial, but there was no written denial letter. Discussion ensued regarding the signage issues, what actions would be taken if the Board did not uphold the Zoning Administrator, and the exclusion of dirt from the motion.

Mr. Smith said he was sympathetic with the appellant, but the Board must consistently enforce the Zoning Ordinance. He noted that 18 months had passed since approval of the site plan, and he did not believe that the expiration date of the site plan allowed the appellant to violate the Zoning Ordinance for five years. Mr.

~ ~ ~ April 1, 2008, ADAM LOVE DBA GROUND ONE LANDSCAPE CO., A 2007-PR-005, continued from Page 669

Smith said he would support the motion to uphold the Zoning Administrator.

At Chairman Ribble's request, Ms. Gibb restated her motion, which was seconded by Mr. Hart.

Mr. Beard said he would support the motion, but suggested the Department of Public Works and Environmental Services and Site Review clarify the language in the violation letter and asked staff to afford the appellant help and adequate time necessary to comply.

At Mr. Hammack's suggestion, the motion was restated and clarified to uphold the determination of the Zoning Administrator in staff's letter dated January 24, 2007, with the exception of the storage of dirt.

The motion carried by a vote of 7-0.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:30 A.M. ERIK DORN & JENNIFER DORN, A 2007-MV-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are occupying the property without the required Residential Use Permit in violation of Zoning Ordinance provisions. Located at 1200 Chadwick Av. On approx. 7,500 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-4 ((20)) (C) 5. (Admin. moved from 2/5/08 at appl. req.)

Chairman Ribble noted that A 2007-MV-042 had been administratively withdrawn.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:30 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, and 2/12/08 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to June 10, 2008, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ April 1, 2008, Scheduled case of:

9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11. (Deferred from 10/30/07 and 1/29/08 at appl. req.)

Chairman Ribble noted that the Board had received a deferral request on A 2007-MV-030 to June 3, 2008.

Jane Collins, Staff Coordinator, Zoning Administration Division, said the second dwelling unit issue had been resolved, and the appellant recently filed a special permit for the fence.

Mr. Byers moved to defer A 2007-MV-030 to June 3, 2008, at 9:30 a.m., at the appellant's request. Ms. Gibb

~ ~ ~ April 1, 2008, SHERRY BROWN, A 2007-MV-030, continued from Page 670

seconded the motion, which carried by a vote of 7-0.

//

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 ARPA Enterprises, Inc., vs. Eileen McLane in Fairfax Circuit Court, CL 2008-0002106; Board of Supervisors vs. Board of Zoning Appeals in Fairfax Circuit Court, CL 2008-0002729; 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 7-0.

The meeting recessed at 10:34 a.m. and reconvened at 10:59 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. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 1, 2008, After Agenda Item:

Approval of June 22, 2004; and July 6, 2004 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 5-0-1. Mr. Smith abstained from the vote. Mr. Byers was not present for the vote.

//

~ ~ ~ April 1, 2008, After Agenda Item:

Request for Additional Time
Ekklesia USA, SPA 00-Y-050

John W. Farrell, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, the applicant's agent, said a request for a waiver regarding a road extension, a pending interpretation, and the recent submission of site plans held up the construction. In response to questions from Mr. Hart, Mr. Farrell explained the reason for the waiver request, and said 30 months of additional time was requested because there were numerous construction and processing stages to commence, several of which were seasonal and affected the timeline for completion.

Mr. Hammack moved to approve 30 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 7-0. The new expiration date was April 13, 2010.

//

~ ~ ~ April 1, 2008, After Agenda Item:

Request for Reconsideration of Motion for Approval of Additional Time
The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, Virginia, and
His Successors in Office (St. Clare Church), SPA 88-S-091

Carrie Lee, Staff Coordinator, explained that at the March 18, 2008 meeting, a miscalculation of an expiration date of 2010 was approved by the Board. She asked for a reconsideration of the matter and approval of 18 months of additional time to the correct expiration date of August 17, 2009.

Mr. Smith moved to reconsider and approve 18 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was August 17, 2009.

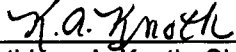
//

~ ~ ~ April 1, 2008, continued from Page 671

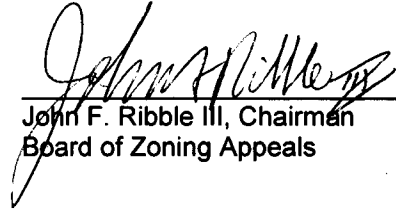
As there was no other business to come before the Board, the meeting was adjourned at 10:58 a.m.

Minutes by: Paula A. McFarland

Approved on: November 5, 2014



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 8, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ April 8, 2008, Scheduled case of:

9:00 A.M. MAYSA K. MOULHEM, SP 2007-SP-147 Appl. under Sect(s). 3-503, 8-914 and 8-923 of the Zoning Ordinance to permit a home child care facility, reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6126 Glen Oaks Ct. on approx. 7,493 sq. ft. of land zoned R-5. Springfield District. Tax Map 79-3 ((23)) 22A. (Decision deferred from 2/12/08)

Chairman Ribble called the applicant to the podium.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

William M. Baskin, the applicant's agent, 301 Park Avenue, Falls Church, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a home child care facility, reduction of the minimum yard requirements based on an error in building location to allow a deck to remain 1.3 feet from the side lot line, and a fence greater than 4.0 feet in height to remain in the front yard of a corner lot. Ms. Langdon noted that at the original hearing, staff had recommended denial of SP 2007-SP-147 for the home child care facility due to the following: 1) a short driveway without adequate parking for parents and the applicant's staff, and 2) approximation of the applicant's property to the corner of Center Road and Glen Oaks Road, a bad intersection, with hardly any frontage on the road.

Ms. Langdon stated that the application had been deferred so that the applicant could obtain information from Social Services and to see if there was any resolution to the parking and/or transportation issues. She said that following the February 12th hearing, the applicant had obtained its operating license from Social Services.

Ms. Langdon also noted that staff had just been given a revised plat showing an additional parking space, so that the property would now have three parking spaces in front, with additional parking in the garage. She stated that the plat needed to be reviewed by the Department of Transportation and the land use staff. After a cursory review by Ms. Langdon, she noted that the new plat showed a large amount of pavement in the front yard and parking closer to the intersection with Center Road.

In response to a question from Mr. Hart, Ms. Langdon said that VDOT would need to approve an entrance permit for an additional apron cut. She had asked the applicant's agent about the apron cut prior to the meeting, and he indicated that it was part of the contract with the company that would build the additional parking space. Ms. Langdon stated that staff could review and make recommendations on the new plat by the April 29th meeting.

Mr. Hart and Mr. Baskin discussed the revised plat, including the proposed pavement in the front yard, the third parking space, landscaping of the yard, and angling of the pavement to maintain the existing curb cut if the additional curb cut was not approved.

In response to a question from Ms. Gibb, Mr. Baskin noted that the applicant had operated in this location for 14 years with a maximum of 12 children, which was allowed by the Commonwealth. The special permit would allow a maximum of 10 children at any one time, which was the County limit. Mr. Baskin also noted that one of the applicant's employees no longer drove, thus freeing up a parking space.

Ms. Gibb stated her support of the application, noting the need for child care facilities in the County.

~ ~ ~ April 8, 2008, MAYSA K. MOULHEM, SP 2007-SP-147, continued from Page 673

Mr. Byers said the application should be decided on a land use basis, noting the narrowness of the street, relatively little parking, and the high traffic volume on Center Road. He further stated his concern that the proposed additional concrete would change the nature of the residential area.

Mr. Baskin stated that unless the use created a hazard or an untenable situation for the neighborhood, it should be approved.

In response to a question from Mr. Beard, Ms. Langdon stated that the applicant can have seven children on site by right at any one time.

Mr. Hammack stated that he would abstain from the vote since he was absent when the case was heard on February 12, 2008.

Ms. Gibb moved to approve SP 2007-SP-147 for the reasons stated in the Resolution.

Mr. Smith seconded the motion.

Mr. Hart stated the Board needed to be consistent with applying land use standards across the board.

Mr. Smith said it boiled down to a concern that there would be too many people dropping off or picking up their children at the same time. He asked if Development Condition 4 could be amended to stagger those hours. Ms. Langdon stated that it had been done previously, but reminded the Board that the applicant was requesting up to ten children at any one time, which could technically be ten children in the morning, a different ten in the middle of the day, and a different ten in the afternoon.

Chairman Ribble stated that he would like staff to have an opportunity to review the revised plat.

In response to a question from Mr. Beard, Ms. Langdon stated that the staff, including DOT and VDOT, would be reviewing the proposed increase in impervious surface and related issues such as the appearance of the house in the subdivision.

Mr. Hart made a substitute motion to defer decision until April 29, 2008, at 9:00 a.m.

Mr. Byers seconded the motion which carried by a vote of 5-1-1. Ms. Gibb voted against the motion. Mr. Hammack abstained from the vote.

Ms. Gibb asked Mr. Baskin to investigate an alternative to concrete, such as Grasscrete.

//

~ ~ ~ April 8, 2008, Scheduled case of:

9:00 A.M. WILLIAM A. DOUGHERTY III, SP 2008-SU-007 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.1 ft. from side lot line such that side yards total 19.0 ft. Located at 5709 Ottawa Rd. on approx. 12,495 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2)) (7) 24.

Chairman Ribble called the applicant to the podium.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

William Dougherty, III, 5709 Ottawa Road, Centreville, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction of certain yard requirements to permit construction of an addition 5.1 feet from a side lot line such that the side yards total 19.0 feet. A minimum side yard of 8 feet with total side yards of 24.0 feet is required; therefore, modifications of 2.9 feet or 33% and 5.0 feet or 21%

~ ~ ~ April 8, 2008, WILLIAM A. DOUGHERTY III, SP 2008-SU-007, continued from Page 674

were being requested. Staff recommended approval of SP 2008-SU-007 subject to the revised proposed development conditions.

Mr. Dougherty presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed garage would provide covered, secure storage for his motorcycle, tools, and other miscellaneous items, while the proposed carport would remove his vehicles from the weather and allow them to be parked side-by-side. Mr. Dougherty stated that several other homes in his neighborhood had a similar garage/carport addition. He further stated that he had spoken with all his neighbors and had not received any negative feedback or objections.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2008-SU-007 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM A. DOUGHERTY III, SP 2008-SU-007 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.1 ft. from side lot line such that side yards total 19.0 ft. Located at 5709 Ottawa Rd. on approx. 12,495 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2)) (7) 24. 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 8, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The application meets all the submission requirements set forth in Sect. 8-922 of the Ordinance.
3. Staff recommends approval.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (725 total square feet) of an addition, as shown on the plat prepared by Dominion Surveyors Inc. dated December 10, 2007, as revised through April 4, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,565 square feet) regardless of whether such

~ ~ ~ April 8, 2008, WILLIAM A. DOUGHERTY III, SP 2008-SU-007, continued from Page 675

addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 8, 2008, Scheduled case of:

9:00 A.M. SYED ALI HUVJERI ISLAMIC CENTER, SP 2007-LE-142 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 3435 Franconia Rd. on approx. 39,480 sq. ft. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 48. (Admin. moved from 2/12/08 at appl. req.)

Chairman Ribble noted that SP 2007-LE-142 had been administratively moved to May 13, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 8, 2008, Scheduled case of:

9:00 A.M. TRACI AND MARK SARGENT, SP 2008-SU-006 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.0 ft. from side lot line and 15.0 ft. from rear lot line. Located at 3437 Valewood Dr. on approx. 20,675 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) (4B) 7.

Chairman Ribble called the applicants to the podium.

At the direction of the Board, the participants in the hearing swore or affirmed that their testimony would be the truth.

Traci Sargent, 3437 Valewood Drive, Oakton, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction of certain yard requirements to permit construction of an addition 14.0 feet from a side lot line and 15.0 feet from the rear lot line. A minimum side yard of 15 feet and a minimum rear yard of 25 feet are required; therefore, a proposed side yard reduction of 1 foot (6.7%) and a rear yard reduction of 10 feet (40%) were being requested. Staff recommended approval of SP 2008-SU-006 subject to the proposed development conditions.

Ms. Sargent presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the proposed kitchen extension and screen porch necessitated a reduction of yard requirements due to the irregular shape of the lot.

~ ~ ~ April 8, 2008, TRACI AND MARK SARGENT, SP 2008-SU-006, continued from Page 676

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2008-SU-006 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRACI AND MARK SARGENT, SP 2008-SU-006 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.0 ft. from side lot line and 15.0 ft. from rear lot line. Located at 3437 Valewood Dr. on approx. 20,675 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) (4B) 7. 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 8, 2008; 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 this type of special permit.
3. The Board has a favorable staff recommendation.
4. The rationale in the staff report is adopted as corrected with the memorandum this morning.
5. The lot is unusually shaped in that it is very wide and shallow with the house placed off to one side, almost in the corner of the lot.
6. The lot is further constrained because about half of the lot is used up with the septic field or the reserve drainfield. The only logical place to put an addition like this for a screen porch and an eating area would be on the back of the house where two corners of it will intrude into the minimum yards.
7. Based on the record before the Board, the addition will not have any negative impact on anybody and is in harmony with the neighborhood.
8. The Board determined that all of the standards in the Sect. 8-922 resolution have been met.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for the provisions for reduction of certain yard requirements as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the 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 512 square feet) of the proposed one story addition as shown on the plat prepared by Rice Associates, PC, dated May 17, 1995, and revised and signed November 25, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that

~ ~ ~ April 8, 2008, TRACI AND MARK SARGENT, SP 2008-SU-006, continued from Page 677

existed at the time of the first expansion (3,088 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
5. 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. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 8, 2008, Scheduled case of:

9:30 A.M. G. RAY WORLEY, SR. AND ESTELLA C. (H.) WORLEY, A 2006-PR-056 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining two dwelling units on a single lot located in the R-3 District in violation of Zoning Ordinance provisions. Located at 2537 Gallows Rd. on approx. 15,375 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 4B. (Admin. moved from 12/12/06 at appl. req.) (Admin. moved from 1/30/07) (Decision deferred from 3/6/07, 6/5/07, 9/25/07, and 12/11/07)

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted that the appellants had applied for a special permit, which had been recently accepted and would be scheduled for public hearing. She stated that an approved special permit would allow the use to be legally established.

Ms. Gibb moved to defer decision on A 2006-PR-056 to July 15, 2008, at 9:30 a.m.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

//

~ ~ ~ April 8, 2008, Scheduled case of:

9:30 A.M. DAVID L. BROWN, A 2006-DR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, child's play equipment, a patio, and outdoor storage, all located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1840 Patton Terrace on approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)). (Indefinitely deferred from acceptance) (Reactivated from indefinitely deferred). (Admin. moved from 4/10/07, 5/15/07, 9/18/07, and 1/8/08 at appl. req.)

Chairman Ribble noted that A 2006-DR-012 had been administratively moved to September 16, 2008, at 9:30 a.m., at the appellant's request.

~ ~ ~ April 8, 2008, DAVID L. BROWN, A 2006-DR-012, continued from Page 678

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted that the appellant's application for a special permit had recently been accepted. She stated that this zoning violation could be resolved through special permit approval.

//

~ ~ ~ April 8, 2008, Scheduled case of:

9:30 P.M. ROSE MARY KING, A 2007-MA-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has installed a flower bed along the side of property which is obstructing storm water flow from adjacent property in violation of Zoning Ordinance provisions. Located at 7055 Lanier St. on approx. 8,906 sq. ft. of land zoned R-4 and H-C. Mason District. Tax Map 71-1 ((19)) (6) 3.

Chairman Ribble called the appellant to the podium.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant's agent was not able to come to the hearing. She noted that he traveled for a living and that his back-up representative had a family emergency. Ms. Stanfield said the appellant was requesting a deferral of the public hearing for a period of 45 days. Staff suggested June 3, 2008.

Ms. Gibb moved to defer A 2007-MA-047 to June 3, 2008, at 9:30 a.m., at the appellant's request.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

Mr. Hammack noted that the appellant's deferral request had asked for a hearing date of May 27, 2008. Ms. Langdon stated that the Board was not meeting on May 27, 2008, since it was the day after Memorial Day.

In response to a question from Mr. Byers, Ms. Langdon stated that this public hearing had been advertised on March 18, 2008, and March 25, 2008. Mr. Byers and Ms. Stanfield discussed the tardiness of the appellant's deferral request.

//

~ ~ ~ April 8, 2008, After Agenda Item:

Approval of September 14, 2004; September 28, 2004; and November 30, 2004 Minutes

Mr. Hammack moved to approve the minutes of the September 14, 2004; September 28, 2004; and November 30, 2004 meetings. Mr. Beard seconded the motion, which carried by a vote of 6-1. Mr. Smith abstained from the vote.

Mr. Hart noted that one of the cases contained in the September 28, 2004 minutes concerned whether or not a building permit had been approved for a certain property. He stated that the builder, Craig Oliver, had come before the BZA to testify in that case. Mr. Hart noted that the same Mr. Oliver was currently wanted by the FBI and was also featured on the "America's Most Wanted" television program twice within the last year. He stated that Mr. Oliver had been found guilty of taking \$2.5 million from area homeowners, purportedly doing home improvements. Mr. Hart asked that staff retrieve this video recording of Mr. Oliver and forward it onto the FBI and America's Most Wanted television program, since their websites only contained mug shots of Mr. Oliver.

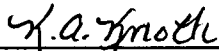
//

~ ~ ~ April 8, 2008, continued from Page 679

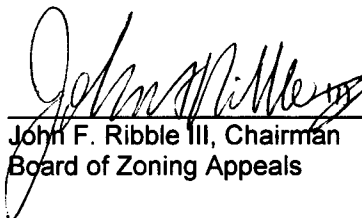
As there was no other business to come before the Board, the meeting was adjourned at 9:50 a.m.

Minutes by: Suzanne L. Frazier

Approved on: April 14, 2009



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 25, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Tom Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m.

Mr. Byers offered his congratulations to Nancy E. Gibb on her reappointment to the Board.

Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals and called for the first scheduled case.

~ ~ ~ April 15, 2008, Scheduled case of:

9:00 A.M. HUGH A. & ANN E. HOLLAR, SP 2008-DR-010 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.1 ft. from rear lot line. Located at 1311 Yellow Tavern Ct. on approx. 8,922 sq. ft. of land zoned R-3 . Dranesville District. Tax Map 11-1 ((5)) 39.

Chairman Ribble noted that SP 2008-DR-010 had been administratively moved to August 5, 2008, at the applicants' request.

//

~ ~ ~ April 15, 2008, Scheduled case of:

9:00 A.M. DAVID A. SEAGER, SP 2008-PR-008 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 2819 Hunter Mill Rd. on approx. 37,283 sq. ft. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 12D.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

David A. Seager, 2819 Hunter Mill Road, Oakton, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-PR-008, subject to the revised proposed development conditions.

Mr. Seager presented the special permit request as outlined in the statement of justification submitted with the application. He said the garage addition would protect his vehicles, was compatible with the neighborhood where many houses had three-car garages, and he had the support of his neighbors.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack made a disclosure and indicated that he would abstain from the vote.

Mr. Byers moved to approve SP 2008-PR-008 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID A. SEAGER, SP 2008-PR-008 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 2819 Hunter Mill Rd. on approx. 37,283 sq. ft. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 12D. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ April 15, 2008, DAVID A. SEAGER, SP 2008-PR-008, continued from Page 681

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has determined the application meets all of the submission requirements as set forth in Sect. 8-922.
3. The staff recommends approval.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is APPROVED with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (194 square feet) of an addition, as shown on the plat prepared by Laura Lee Scott Surveys, Inc., dated October 1, 2007, as revised through March 11, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,540 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

//

~ ~ ~ April 15, 2008, Scheduled case of:

9:00 A.M. ENGLISH, PATRICIA, SP 2008-LE-009 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.8 ft. from rear lot line. Located at 7121 Vantage Dr. on approx. 9,821 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-3 ((2)) 6096.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

William A. Reames, Reamco, Inc., dba Patio Enclosures, Inc., 10595 Furnace Road, Suite 100, Lorton, Virginia, the applicant's agent, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-LE-009, subject to the proposed development conditions.

Mr. Reames presented the special permit request as outlined in the statement of justification submitted with the application. He described the design and floor plan, stating that the proposed addition was compatible with the neighborhood.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-LE-009 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ENGLISH, PATRICIA, SP 2008-LE-009 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.8 ft. from rear lot line. Located at 7121 Vantage Dr. on approx. 9,821 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-3 ((2)) 6096. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the six required criteria set forth in that Code section, which is incorporated in this motion.
3. There is a favorable staff report.
4. The recommendations of the staff report are adopted.
5. There is testimony that the encroachment will be no greater than the existing house.
6. The proposed addition will be in harmony and character with the existing neighborhood.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

~ ~ ~ April 15, 2008, ENGLISH, PATRICIA, SP 2008-LE-009, continued from Page 683

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 300 square feet) of the proposed one story sunroom addition as shown on the plat prepared by Larry Scartz, Certified Land Surveyor, dated November 5, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,138 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage.
Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
5. A row of evergreen trees, a minimum of six (6) to eight (8) feet in height at time of planting, spaced a maximum of twelve (12) feet apart, shall be planted along the length of the eastern rear property line adjacent to Lot 6097.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 15, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD, SPA 85-C-003-04 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 previously approved for church and private school of general education to permit increase in enrollment. Located at 2351 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. (Admin. moved from 2/26/08 at appl. req.)

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sarah E. Hall, Blankingship Keith, 4020 University Drive, Suite 300, Fairfax, Virginia, the applicant's agent, reaffirmed the affidavit.

~ ~ ~ April 15, 2008, TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD, SPA 85-C-003-04, continued from Page 684

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested to amend SPA 85-C-003-04 to permit an increase in enrollment from 80 to 96 students. He said Standard 4 for all special permits required pedestrian and vehicular traffic in the neighborhood associated with the use not be a hazard or conflict with the existing traffic in the neighborhood. He listed Virginia Department of Transportation's (VDOT's) concerns regarding unnecessary delays, hazards, and exacerbated traffic flow on Hunter Mill Road and Hunter's Valley Road and the road improvement to which the applicant must commit to resolve the issues. Staff recommended denial of SPA 85-C-003-04.

Mr. Hart referenced the Zoroastrian Center application which he said was very difficult. He questioned staff on Church of the Good Shepherd's obligation for road improvements in the development conditions.

Susan C. Langdon, Chief, Special Permit and Variance Branch, explained the Zoroastrian Center inter-parcel access to its site, noting that requirements were imposed. She said the Zoroastrian Center was currently in the site review process and moving forward with the application. Ms. Langdon responded to Mr. Hart's questions regarding the inter-parcel entrances of the two churches.

Lou Ann Hudgins, Department of Transportation (DOT), explained DOT's traffic study on the entrance of both churches. She said staff's position was that with the increase in traffic on Hunter Mill Road and the requested increase in children, the entrance should be realigned.

Ms. Langdon addressed Mr. Hart's questions concerning Development Condition 13 and a required left-turn lane. She said staff was not asking the Church of the Good Shepherd to construct the left-turn lane, but to provide the inter-parcel access, and if the Zoroastrian Center did not build the proposed entrance, to also build the entrance. Ms. Langdon said that when the Zoroastrian Center commenced construction, they were required to put in a left-turn lane.

In response to Mr. Beard's questions, Ms. Langdon clarified that the Zoroastrian Center was verbally notified of staff's requirements during the application process and apparently had not concurred as they were again before the Board and had not provided the connection.

Mr. Chase concurred with Mr. Smith's statement that staff's recommendation of denial was due to the transportation concerns and clarified several proposed changes in the development conditions.

Ms. Hall presented the special permit amendment request as outlined in the statement of justification submitted with the application. She noted that the Zoroastrian Center received its special permit in 2001, and Lorien Wood School's special permit amendment was approved in 2004. She said that by the time Lorien Wood School came before the Board, the Zoroastrian Center, its development conditions, and obligation to build the joint entrance existed. She said the original proposed student enrollment of 120 was reduced to 96 in response to staff's concerns about traffic, and 96 was the bare minimum for the school to remain viable. Ms. Hall stated that no expansion of the facilities or construction was being requested, only an increase in enrollment. She said the school entrance issue required an alignment to Hunter Valley Road and involved moving the entrance, constructing it on the Zoroastrian property, moving a light pole utility, closing the Hunter Mill Road entrance, constructing inner-parcel access, reconfiguring parking, replacing landscaping, and obtaining all necessary site plan and permit approvals. Ms. Hall said the improvements would be approximately \$200,000 to \$300,000 and could not be possible by September when the school needed the increased enrollment. She explained the expected vehicle trip generation, stating that it was unreasonable to relocate the entrance for the small number of additional children. Ms. Hall requested that the special permit amendment application be approved with the deletion of Condition 13. She said the church had granted the easement required by Condition 12, and the Zoroastrian Center's application was moving forward with a 2010 construction commencement date.

Discussion ensued regarding the school's operations and hours, the number of students, Conditions 12 and 13, the improvements required of the Zoroastrian Center, the proposed easement, staff's 2004 recommendation of approval, and traffic studies. Ms. Hall stated that the applicant could not agree to a condition that required construction of an entrance.

As there were no speakers, Chairman Ribble closed the public hearing.

~ ~ ~ April 15, 2008, TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD, SPA 85-C-003-04, continued from Page 685

Mr. Hart moved to approve SPA 85-C-003-04 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Byers and Mr. Beard indicated they would support the motion. Mr. Byers said he would have liked to have seen more evidence with respect to trip generation resulting from 16 additional students and clarification of the safety issues. Mr. Beard said that although he thought the County's requests were reasonable, the neighboring citizens association seemed to take a neutral but leaning toward a supportive position, having spoken favorably about the church being a good neighbor.

Mr. Hammack said he would not support the motion due to the safety issue regarding the trips generated, most of which occurred during the morning and evening rush hours.

Chairman Ribble called for a vote. The motion carried by a vote of 6-1. Mr. Hammack voted against the motion.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD, SPA 85-C-003-04 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 previously approved for church and private school of general education to permit increase in enrollment. Located at 2351 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. (Admin. moved from 2/26/08 at appl. req.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 15, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a special permit.
3. In evaluating the application, the magnitude of this application compared to the previous one several years ago is not great.
4. On the record before the Board, the Board cannot attribute the need for the consolidated entrance to the change that the applicant is requesting.
5. If the interlocking left turn, standing alone, was the reason to require this applicant to bear the cost of consolidated entrance, it would have done four years ago.
6. The situation will work itself out because the property to the north will redevelop at some point and if the applicant comes back again for an increase in enrollment over the 96, maybe the Board will reevaluate that, if there has been some further delay with the Zoroastrians.
7. The package of development conditions that was constructed the last time contemplated that these people could continue to operate with the entrance that they had, with the Hunter Mill Road situation the way it is even before the Zoroastrians had built their entrance, and with some tweaking of the conditions, we can get to that point.
8. Otherwise, staff felt that the criteria had been satisfied, and the Board thinks this is an appropriate use in this location.

AND WHEREAS, the Board 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 15, 2008, TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD, SPA 85-C-003-04, continued from Page 686

Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, the Church of the Good Shepherd (United Methodist)/Lorien Wood School, and is not transferable without further action of this Board, and is for the location indicated on the application, 2351 Hunter Mill Road, and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Land Design Consultants, dated February, 1994, as revised through December 14, 1994, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of church seats in the main area of worship shall be limited to 400. The maximum number of seats in the outdoor worship area shall be 30.
6. There shall be no amplification used in the outdoor seating area.
7. Parking shall be provided as depicted on the special permit plat. All parking shall be on site, notwithstanding however, that approximately five (5) spaces may be removed in conjunction with the construction of an interparcel connection to the north, via Lot 26.
8. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but supplemental plantings shall be maintained along the southern and western lot lines, as depicted on the plat. The barrier requirement shall be waived.
9. The limits of clearing and grading shall be maintained as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Division. There shall be no structures except the existing outdoor seating, and no removal of vegetation except for dead or dying trees or shrubs in the area outside the existing limits of clearing and grading.
10. Any new proposed or replacement lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Any new outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property.
11. The width of the existing entrance shall be provided as determined by the Virginia Department of Transportation (VDOT).
12. At such time as the entrance on Tax Map 37-2 ((1)) 26 to the north is constructed, the applicant shall utilize the existing easement to the north for a combined entrance to Hunter Mill Road that aligns with Hunter Valley Road. If provision of the consolidated entrance necessitates the removal of parking spaces, existing asphalt on the site may be re-stripped to make up for the lost spaces without existing site entrance onto Hunter Mill Road must then be closed and landscape plantings shall be provided in that area similar to that provided between the existing parking lot and the lot line abutting

~ ~ ~ April 15, 2008, TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD, SPA 85-C-003-04, continued from Page 684

Hunter Mill Road.

13. Upon issuance of a Non-Residential Use Permit, the hours of operation for the private school of education shall be limited to 8:45 a.m. to 3:30 p.m., Monday through Friday. The private school of general education will operate during the school year and will not operate during the summer.
14. Upon issuance of a new Non-Residential Use Permit, the number of students enrolled in the private school of general education shall be limited to a total maximum daily enrollment of ninety-six (96) children. Upon issuance of a new Non-Residential Use Permit, the number of employees associated with the private school of general education shall be limited to a maximum of ten (10) at any one time.
15. The outdoor play equipment shall be located in the existing cleared area north of the church building. The play equipment shall not be located on a septic field.
16. The applicant shall obtain a sign permit for the proposed sign for the private school of general education in accordance with the provisions of Article 12 of the Zoning Ordinance.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted or the use has been established as noted above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Hammack voted against the motion.

//

~ ~ ~ April 15, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Dranesville District. Tax Map 18-3 ((1)) 6. (Admin. moved from 3/18/08 at appl. req.)

Chairman Ribble noted that SPA 82-D-047-02 had been administratively moved to May 13, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 15, 2008, Scheduled case of:

9:00 A.M. HAMLET SWIM CLUB, INC., SPA 74-D-037-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-D-037 previously approved for a swim club to permit a building addition and site modifications. Located at 8209 Dunsinane Ct. on approx. 4.33 ac. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) A1 and B1. (Admin. moved from 9/11/07 and 3/11/08 for ads) (Deferred from 10/23/07 and 12/11/07 at appl. req.)

Chairman Ribble called the applicant to the podium.

~ ~ ~ April 15, 2008, HAMLET SWIM CLUB, INC., SPA 74-D-037-03, continued from Page 688

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Keith C. Martin, Sack Harris & Martin, P.C., 8270 Greensboro Drive, Suite 810, McLean, Virginia, the applicant's agent, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 74-D-037-03, subject to the revised proposed development conditions.

Ms. Langdon responded to questions from Mr. Hart concerning Condition 16.

Mr. Martin presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the club was a successful operation, with high usage for swimming and tennis and a growing membership, and the special permit amendment would allow the enlargement of the multi-purpose room.

Mr. Martin, Mr. Smith, Mr. Hammack, Mr. Beard, and Ms. Langdon discussed proposed Conditions 7, 12, and 16, the noise expected from annual club events, and correspondence from citizens. Ms. Langdon said staff had no problem with Conditions 7 and 12 regarding the number of employees and hours of swim practice, but had concerns about the occupancy capacity for events, and based upon the available parking, staff wanted to limit the occupancy to 50.

Chairman Ribble called for speakers.

The following speakers came forward to speak: Todd Mayman, 8118 Birnam Wood Drive, McLean, Virginia; James Richard Powell, Jr., 8123 Dunsinane Court, McLean, Virginia; Linda Wadler, 8207 Dunsinane Court, McLean, Virginia; Frank Arcari, 8204 Dunsinane Court, Mclean, Virginia. They voiced concerns regarding the negative impact on nearby residential properties, parking issues, trespassers on private property, pedestrian safety, and the ineffectiveness of the parking lot gate.

Mr. Mayman responded to questions concerning the club's by-laws, the membership vote that resulted in 241 in support and 27 opposed, and the results from numerous meetings with concerned neighbors. He explained the club's position on the 50-person cap.

Ms. Wadler requested that if the permit amendment was approved, the use of the multi-purpose room be restricted to summer months, club board meetings, and emergency shelter.

In response to a question from Mr. Byers, Mr. Arcari said the 570 neighborhood residents should be aware of and have the opportunity to vote on the club's activities, but were not informed. He said he requested to be included in the club's e-mail distribution on behalf of the McLean Homeowners Association, but was denied.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Patrick Via, Reese Broome, PC, 8133 Leesburg Pike, Ninth Floor, Vienna, Virginia, came forward to speak, and the oath was administered. He said, after listening to the testimony and reading the statement of justification, he thought the approach to the entire process seemed more of a right as opposed to a privilege, and he had not heard why the approval justified the burden placed on the neighbors. Addressing Mr. Martin's comment that the pool was highly used, Mr. Via said expansion of the clubhouse could further increase the use, which could cause additional problems.

In his rebuttal, Mr. Martin said there was no problem with staff stipulating it as a seasonal facility and a general condition concerning noise for the multi-purpose room. He said the design had no windows on the neighborhood side. Mr. Martin said the applicant tried to mitigate all concerns, and he thought it was reasonable to have a multi-purpose room that was limited in its usage.

In response to a comment from Ms. Gibb concerning the development conditions being confusing, Mr. Martin said they would be clarified if a deferral was allowed.

~ ~ ~ April 15, 2008, HAMLET SWIM CLUB, INC., SPA 74-D-037-03, continued from Page 689

Chairman Ribble closed the public hearing.

Ms. Gibb moved to defer decision on SPA 74-D-037-03 to June 3, 2008, at 9:00 a.m. Mr. Hammack and Mr. Beard seconded the motion, which carried by a vote of 6-1. Mr. Byers voted against the motion.

//

~ ~ ~ April 15, 2008, Scheduled case of:

9:30 A.M. NATIONAL ASSOCIATION OF SCHOOLS OF MUSIC (NASM) AND MICHAEL T. HALL, A 2008-SU-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that if a proffered condition amendment should be required for future development, the Architectural Review Board (ARB) must reconsider the reduction of the required 200 foot setback requirement on property located in the Sully Historic Overlay District. Located on approx. 7.72 ac. of land zoned I-5, WS and HD. Sully District. Tax Map 34-2 ((1)) 23D.

Chairman Ribble called the applicant to the podium.

Mark Jenkins, 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, the appellants' agent, came forward.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jayne Collins, Staff Coordinator, presented staff's position as set forth in the staff report dated April 8, 2008. It was staff's position that if the development of the subject property required a proffered condition amendment, a special exception, or any other zoning approval, in accordance with Sect. 7-204 of the Zoning Ordinance, the amendment application would be routinely reviewed by all applicable County agencies and the Architectural Review Board (ARB) since the property was within an historic district.

Linda Blank, Historic Preservation Planner, Planning Division, responded to the Board's questions concerning the purview of the ARB.

Discussion ensued regarding Ordinance language pertaining to the ARB, processing proffered condition amendments, and what relationships rezonings may have.

Mark Jenkins presented the arguments forming the basis for the appeal. He stated that his clients' agreement with the County was if the property were developed by right, the 50-foot setback applied, and it was the BZA who decided what conditions to impose. The appellants were requesting the BZA reverse a portion of an interpretation set forth in a December 14, 2007 letter from the Zoning Administrator. In response to the August 29, 2007 letter from National Association of Schools of Music (NASM), the County confirmed that the Architectural Review Board made a determination in 1983 that a 200-foot setback or buffer for purposes of the Sully Historic Overlay District regulations was modified to 50 feet on the NASM property. The County letter referenced a condition that if the landowner sought a proffer condition amendment to existing proffers affecting the NASM property, the ARB must reconsider the appropriateness of a modification of the 200-foot setback in the context of the new proposal. Mr. Jenkins said the appellants believed that nothing in the ARB approval or in County records indicated the ARB expressed such a condition, and the ARB approval and all the facts and circumstances indicated the opposite of what the Zoning Administrator was asserting. He said pertinent provisions of the Zoning Ordinance were clear that the ARB's authority to determine the setback/buffer was not dependent on Board of Supervisor action or the filing of another land use application.

Discussion ensued regarding interpretation and applicability of Ordinance language, the appellants' position, other zoning designations in the area, proffers, and language modification.

Chairman Ribble called for speakers.

Chris Malkerson (phonetic), no address given, came forward to speak, and the oath was administered to her. She said she had been in the area for many years, was aware of the property and zoning, pulled the land

~ ~ ~ April 15, 2008, NATIONAL ASSOCIATION OF SCHOOLS OF MUSIC (NASM) AND MICHAEL T. HALL, A 2008-SU-001, continued from Page 690

records, read through the file, and reviewed a 1983 letter from Elizabeth David, Historic Preservation Planner, ARB, that determined the 50 feet was binding and was still in effect. Ms. Malkerson referenced staff's sentence that stipulated only the consideration of a proffer condition amendment would require the matter to be brought back before the ARB, stating she believed it was an unnecessary restriction and the sentence should not be in the letter.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, responded to the Board's questions concerning the 50-foot setback and further explained staff's position on similar situations.

Lorrie E. Kirst, Deputy Zoning Administrator, Zoning Administration Division, explained the Ordinance language concerning setbacks.

Mr. Jenkins requested the last two sentences in staff's letter be deleted.

Chairman Ribble closed the public hearing.

Mr. Smith moved to uphold-in-part the determination of the Zoning Administrator. He said he agreed with the first and second sentences and disagreed with the appellant in that regard. The sentence that caused him concern contained the wording "must be reconsidered," where perhaps a little more emphasis than was needed was used. He quoted from Sect. 7-204, Paragraph 1, stating that he accepted PCAs were included, "... shall be referred to the ARB for review and recommendations." He said he thought the ARB could receive it and may or may not elect to reconsider it. Mr. Smith proposed replacing the last sentence of paragraph 3 of Ms. Kirst's December 14, 2007 letter with the appellants' proposed language, "However, this letter does not relieve the landowner from compliance with the provisions of any other applicable ordinance regulations or adopted standards." He said he thought that was as much detail as was needed in a decision like this, and in the event of a PCA, the appellant would be required to comply with Sect. 7-204 and any other provisions of the Ordinance. Mr. Smith said he thought that was as much specificity as was needed, and the existing language was stronger than needed. Mr. Beard seconded the motion.

Mr. Hart said he thought the troublesome sentence in the letter might have been phrased a little more gently, but he thought the conclusion in the letter was generally correct. He said what was before the Board was a very narrow procedural question about something that may or may not happen, and although a determination had been made, he would conclude that a proffer condition amendment was a type of rezoning, and under Sect. 7-204, Subsection 1, all applications for rezoning shall be referred to the ARB. Mr. Hart said he thought that if a proffer condition amendment was filed, the paragraph required referral back to the ARB, and whether they make a recommendation to deny the rezoning because the buffer was too thin was really up to them. He said he read the paragraph as requiring a case-by-case determination in the context of an application. Mr. Hart said he thought it was pretty clear from the exchange of correspondence between Mr. Jenkins and the Zoning Administrator that Mr. Jenkins substantially prevailed on the issue, and he thought Mr. Jenkins had persuaded the Board. Mr. Hart said he thought the case had a very spotty paper trail as to what happened, and it was not at all clear from the Board's approval that the 50-foot buffer was included. He said that from staff's research of the minutes and letters, the ARB had approved the 50-foot buffer. Based on that approval, staff conceded that if the applicants wanted to go forward with what was approved back then, it was 50 feet that was locked in and would not be changed or revoked. Mr. Hart said whether it was fair or put the applicant at some risk, he thought anytime someone needed to go beyond the current approvals, the Ordinance required the applications come back to the ARB. He thought it all boiled down to the question of if they filed a PCA for the property, did it have to go back to the ARB or not, and Paragraph 1 of Sect. 7-204 said it did. Concerning the words "must reconsider," Mr. Hart said he would not have said it as strongly as that, but it was fair to read "must reconsider" to mean it was going to be on their agenda to make a recommendation. He said he did not think it meant they were going to revoke the current approval. Mr. Hart said that regardless whether the Board agreed with the exact words used, the Zoning Administrator's determination was correct, and he would be comfortable upholding it.

Mr. Hammack said he had reservations about changing language written by staff and would agree the appellants had to comply with all applicable Ordinance requirements for development. He said he would not have written the last sentence as staff wrote it, but it was a fair summary of the requirements. Mr. Hammack said he knew Mr. Jenkins did not want to be locked in and be precluded from raising or making arguments he

~ ~ ~ April 15, 2008, NATIONAL ASSOCIATION OF SCHOOLS OF MUSIC (NASM) AND MICHAEL T. HALL, A 2008-SU-001, continued from Page 691

felt were appropriate in the future.

Mr. Smith said he agreed with everything Mr. Hart said, but his only concern was the emphasis issue with the language in the County's letter that the ARB must reconsider and would be more comfortable with citing the exact language of Sect. 7-204, that it shall be referred to the ARB for review and recommendation.

Mr. Byers said he did not think the Board should go down the road of parsing language and should either support or overturn the determination:

Mr. Hart suggested an amendment to the motion. He said the Board would affirm the Zoning Administrator's determination in-part, that everything in the letter be affirmed except to the extent that the implication of the sentence about the ARB must reconsider required them to change their determination, as that was plainly wrong, and it should be that the ARB must act in accordance with the Ordinance provision. Mr. Smith and Mr. Beard accepted the amendment to the motion.

The motion carried by a vote of 6-1. Mr. Byers voted against the motion.

//

~ ~ ~ April 15, 2008, After Agenda Item:

Approval of January 25, 2005; February 15, 2005; and April 12, 2005 Minutes

Mr. Hart moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 6-0-1. Mr. Smith abstained from the vote.

//

~ ~ ~ April 15, 2008, After Agenda Item:

Request for Additional Time
Trustees of the Antioch Baptist Church, SPA 90-S-057-3

Mr. Hammack moved to approve 20 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was September 11, 2010.

//

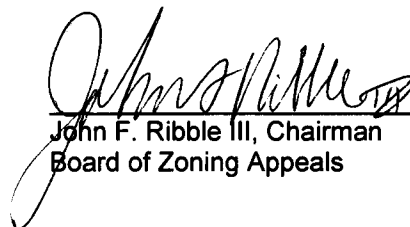
As there was no other business to come before the Board, the meeting was adjourned at 1:10 p.m.

Minutes by: Paula A. McFarland

Approved on: February 4, 2015



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 29, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; James R. Hart; and Paul W. Hammack, Jr. Nancy E. Gibb, Norman P. Byers, and Thomas Smith were absent from the meeting.

Chairman Ribble called the meeting to order at 9:03 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ April 29, 2008, Scheduled case of:

9:00 A.M. MAYSA K. MOULHEM, SP 2007-SP-147 Appl. under Sect(s). 3-503, 8-914 and 8-923 of the Zoning Ordinance to permit a home child care facility, reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6126 Glen Oaks Ct. on approx. 7,493 sq. ft. of land zoned R-5. Springfield District. Tax Map 79-3 ((23)) 22A. (Decision deferred from 2/12/08 and 4/8/08)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

William M. Baskin, the applicant's agent, 301 Park Avenue, Falls Church, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. She noted that staff had provided a memo to the Board the prior week based on a drawing that the applicant submitted for extending the driveway. Mr. Baskin had just received a revised drawing and provided it to staff. Ms. Langdon said the new drawing still provided an additional parking space, but brought the curb cut back in. She stated that staff's position remained unchanged, specifically recommending denial of the application for the reasons outlined in the staff report.

Mr. Baskin stated that in anticipation of VDOT's denial regarding widening of the driveway entrance, the applicant had hired a contractor to estimate keeping the entrance width, but widening the driveway. He also stated that the new drawing provided significant landscaping be installed. In closing, Mr. Baskin addressed Development Condition 5, noting that the applicant previously had 12 children and three employees on site at one time, resulting in a ratio of 4-to-1 children per staff member. He noted that the proposed development condition would result in a 5-to-1 ratio, and asked that the Board not worsen the ratio of children to childcare providers.

In response to a question from Mr. Hart, Ms. Langdon stated that Development Condition 5 addressed the intensity of the use and the amount of available parking on-site.

Mr. Baskin and Mr. Hart discussed the issue of the applicant publicizing to each customer that all parking and exchanging of children must take place in the driveway, with Mr. Baskin stating his agreement to such a development condition. Mr. Baskin also noted that the applicant would like to have three employees in addition to herself.

Mr. Beard and Mr. Baskin discussed posting the driveway parking requirement. Mr. Baskin agreed and stated that the applicant would also deliver a copy of the requirement to each of her customers.

Mr. Hammack and Mr. Baskin discussed whether or not VDOT approval would be necessary since the driveway entrance would not be widened. Mr. Baskin noted that an angle would now be produced where the third parking space on the left would be created.

In response, Ms. Langdon said she could not address whether VDOT approval would be necessary. She noted that the Department of Transportation would need to review the new drawing. Ms. Langdon stated that part of the proposed third parking space appeared to be in the right-of-way.

In response to Mr. Hammack's question, Mr. Baskin said he would like an opportunity to have the applicant's engineer work with VDOT regarding possible additional parking on the property. Mr. Hammack moved to defer decision on SP 2007-SP-147 to May 20, 2008, at 9:00 a.m. Mr. Hart

~ ~ ~ April 29, 2008, MAYSA K. MOULHEM, SP 2007-SP-147, continued from Page 693

seconded the motion, which carried by a vote of 4-0. Nancy E. Gibb, Norman P. Byers, and Thomas Smith were absent from the meeting.

//

~ ~ ~ April 29, 2008, Scheduled case of:

9:00 A.M. THUAN C. PHAM & NGA THI HONG PHAM, SP 2008-DR-011 Appl. under Sect(s). 8-905 of the Zoning Ordinance to permit a beauty salon. Located at 1632 Great Falls St. on approx. 22,738 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 15.

Chairman Ribble noted that SP 2008-DR-011 had been administratively withdrawn.

//

~ ~ ~ April 29, 2008, Scheduled case of:

9:00 A.M. CAROL Y. KIM & CHONG HYUP KIM, SP 2008-BR-012 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.5 ft. from side lot line. Located at 9304 Nester Rd. on approx. 21,161 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-4 ((22)) 3.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Carol Y. Kim and Chong Hyup Kim, 9304 Nestor Road, Fairfax, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow reduction of certain yard requirements to permit construction of an addition 8.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet; therefore, a modification of 6.5 feet or 43% was requested. The staff recommended approval of the application, subject to the proposed development conditions.

Mrs. Kim presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the carport had originally been built to alleviate the water runoff problems, but it had only diminished the water impact; water still remained on the carport floor. Ms. Kim said the carport became unsafe during the winter months, making it more difficult to transport her elderly in-laws in and out of the house. She said enclosing the carport would make their transportation much safer.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2008-BR-012 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CAROL Y. KIM & CHONG HYUP KIM, SP 2008-BR-012 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.5 ft. from side lot line. Located at 9304 Nester Rd. on approx. 21,161 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-4 ((22)) 3. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

~ ~ ~ April 29, 2008, CAROL Y. KIM & CHONG HYUP KIM, SP 2008-BR-012, continued from Page 694

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. The proposal is relatively modest, the enclosure of an existing carport.
5. The roof and footprint will be the same as the existing.
6. There will not be any significant negative impact on anyone.
7. It appears to be in keeping with the style of the homes in the neighborhood.
8. The lot pinches off at the front, and only one corner of the carport extends into the minimum yard.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (515 square feet) of an addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated September 6, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,040 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 4-0. Mr. Byers, Ms. Gibb, and Mr. Smith were absent from the meeting.

//

~ ~ ~ April 29, 2008, Scheduled case of:

9:00 A.M. JUNIOR EQUITATION SCHOOL, INC. ("JES") AND NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC. ("NVTRP"), SPA 00-S-044 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-S-044 previously approved for riding and boarding stable to permit change in development conditions and change in permittee. Located at 6429 Clifton Rd. on approx. 17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-3 ((1)) 36 and 66-4 ((1)) 15. (Admin. moved from 5/20/08 at appl. req.) (Admin. moved from 5/13/08)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Linda Broyhill, the applicant's agent, Reed Smith LLP, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to amend a previously approved riding and boarding stable to allow the addition of a riding school and a change in permittee, namely to add the Northern Virginia Therapeutic Riding Program. Ms. Hedrick stated that staff recommended approval of SP 00-S-044 subject to the revised development conditions, which included language in Condition 19 to address entrance requirements to the site.

Ms. Broyhill presented the special permit request as outlined in the statement of justification submitted with the application. She introduced Breana Bornhorst, Executive Director of the Therapeutic Riding Program, and Matt Tauscher, certified landscape architect. Ms. Broyhill thanked the staff, specifically Debbie Hedrick, Susan Langdon, Kevin Guinaw, and Regina Coyle, for their assistance in facilitating the review process. She referenced the many letters of support from the adjacent neighbors, noting the critical importance that the NVTRP program plays in the lives of the riders and the service it provides to the community.

In response to a question from Mr. Hammack, Ms. Broyhill stated her agreement with the revised development conditions.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Chairman Ribble called for speakers.

Rhonda VanLowe, 2455 Arctic Fox Way, Reston, Virginia, appeared as Chairperson of the Northern Virginia Therapeutic Riding School. She spoke in favor of the application, calling the program a slice of goodness in Fairfax County which should be nurtured and preserved.

Art Bair, 9577 Pine Meadows Lane, Burke, Virginia, stated his support of the application, noting that his grandson was enrolled in the program.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SPA 00-S-44 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JUNIOR EQUITATION SCHOOL, INC. ("JES") AND NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC. ("NVTRP"), SPA 00-S-044 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-S-044 previously approved for riding and boarding stable to permit change in development conditions and change in permittee. Located at 6429 Clifton Rd. on approx. 17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-3 ((1)) 36 and 66-4 ((1)) 15. (Admin. moved from 5/20/08 at appl. req.) (Admin. moved from 5/13/08). Mr. Beard moved that the Board of Zoning Appeals adopt the following

~ ~ ~ April 29, 2008, JUNIOR EQUITATION SCHOOL, INC. ("JES") AND NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC. ("NVTRP"), SPA 00-S-044, continued from Page 696

resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the lessee and sublessee of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 17 acres.
4. There has been strong support by those attending the hearing and by the many letters received.
5. Staff recommends approval.
6. Various structures are to be relocated to adhere to the 100-foot setback.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicants, Junior Equitation School, Inc. (JES) and/or the Northern Virginia Therapeutic Riding Program (NVTRP), and is for the location indicated on the application, 6429 Clifton Road (17 acres), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Bowman Consulting Group, Ltd., dated January 22, 2008, as revised through April 7, 2008, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of a new Non-RUP, there shall be a maximum number of 111 students per week with a maximum of fourteen (14) students per day Monday through Friday; twenty-one (21) students per day on Saturday and twenty (20) students per day on Sunday.
6. The maximum hours of operation for the riding school shall be limited to Monday through Friday from 8:00 a.m. to 7:30 p.m., and Saturday and Sunday from 8:00 a.m. to 6:15 p.m. from September through May, and 8:00 a.m. to 8:15 p.m., June through August.
7. The maximum number of parking spaces on site shall be twenty-six (26). All parking shall be on site as shown on the special permit plat. A field may be used for overflow parking for horse shows and/or special events. Signage and staff/volunteers shall be provided to direct drivers for use of the field parking.

~ ~ ~ April 29, 2008, JUNIOR EQUITATION SCHOOL, INC. ("JES") AND NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC. ("NVTRP"), SPA 00-S-044, continued from Page 697

8. The maximum number of horses on site at any one time shall be twenty (20).
9. Summer camp activities may be permitted from June through August, between 9:00 a.m. and 1:00 p.m., Monday through Friday.
10. Vaulting workshops, with a maximum of three (3) hour sessions and four (4) to eight (8) participants, shall be permitted during hours in which regular riding instruction is not given, which is within the maximum proposed hours of operation.
11. Horse shows and/or special events shall be limited to no more than two (2) per year. All horses in the events/shows shall be limited to those horses boarded on site.
12. The use of loud speakers or amplified music on site shall only be permitted during the two (2) horse shows and/or special events planned each year in accordance with the provisions of Chapter 108 of the Code of Fairfax County (the "Noise Ordinance"), which currently sets a maximum sound pressure level of 55 dBA. If the limits in the Noise Ordinance are lowered, the sound level shall conform to the new requirements; however, in no instance shall the sound pressure level exceed 55 dBA.
13. Portable restrooms may be provided on site during the two (2) horse shows and/or special events as well as on a temporary basis while the restrooms in the residence are converted to be compatible with the Americans with Disabilities Act (ADA). The use of the portable restrooms shall be approved by the Health Department.
14. The existing house on the site shall be used as a residence for the owner or caretaker of the subject property and/or as office space for the staff of NVTRP.
15. The dwelling on the property shall maintain the appearance of a residence.
16. A conservation plan outlining Best Management Practices (BMPs) for the operation shall be developed and implemented, prior to approval of a new Non-Residential Use Permit, in coordination with the Northern Virginia Soil and Water Conservation District. The conservation plan shall include management techniques for the operation, including pasture management, animal waste management, composting and nutrient management. No animal waste shall be permitted to decay in place or to be washed into the natural drainage from the site.
17. The existing light poles shall be in conformance with the glare standards specified in Article 14 of the Zoning Ordinance. If it is determined that these standards have been violated, the lights shall be removed or altered through the use of shields (to be made fully shielded) or other methods to prevent glare from projecting onto adjacent properties or the roads. All ring lights shall be turned off within ½ hour following the end of riding lessons.
18. The Transitional Screening requirements shall be waived along all lot lines. The existing fencing shall be deemed to satisfy the barrier requirements.
19. The site entrance shall meet entrance requirements as approved by the Virginia Department of Transportation (VDOT), as depicted on Attachment 1.
20. As depicted on the special permit plat, the applicants propose to locate a future bath house on the property for a date to be determined, Phase II of development, without approval of an amendment to this 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 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. Commencement of Phase

~ ~ ~ April 29, 2008, JUNIOR EQUITATION SCHOOL, INC. ("JES") AND NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC. ("NVTRP"), SPA 00-S-044, continued from Page 698

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. Hammack seconded the motion, which carried by a vote of 4-0. Mr. Byers, Ms. Gibb, and Mr. Smith were absent from the meeting.

//

~ ~ ~ April 29, 2008, Scheduled case of:

9:00 A.M. STEPHEN C. PETERSON, SP 2008-DR-014 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.3 ft. from side lot line and 3.3 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line. Located at 2019 Dexter Dr. on approx. 8,625 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((20)) 10.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Stephen Peterson, 2019 Dexter Drive, Falls Church, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a permit to allow a reduction in the minimum yard requirements based on error in building location to permit an accessory storage structure to remain 4.3 feet from a side lot line and 3.3 feet from the rear lot line, and to permit a reduction of certain yard requirements to allow construction of an addition 5.0 feet from a side lot line. For the accessory structure, a minimum side yard of 10.0 feet and minimum rear yard of 9.1 feet are required; therefore, a proposed side yard reduction of 5.7 feet (57%) and rear yard reduction of 5.8 feet (63.7%) were requested. With regard to the one-story garage addition, a minimum yard requirement of 10 feet is required, resulting in a 50% yard reduction being requested. Staff recommended approval of SP 2008-DR-014 subject to the proposed development conditions.

Mr. Peterson presented the special permit request as outlined in the statement of justification submitted with the application. He noted that he had built the shed about 6 or 7 inches too high, adding that it was an honest mistake. Regarding the proposed garage addition, Mr. Peterson said it was needed due to the increasing size of his family and the lack of adequate storage.

In response to a question from Mr. Hart, Mr. Peterson said that there was no plumbing or electricity in the shed. Further, he said the shed was built in its current location due to the topography of his lot.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-DR-014 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN C. PETERSON, SP 2008-DR-014 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.3 ft. from side lot line and 3.3 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line. Located at 2019 Dexter

~ ~ ~ April 29, 2008, STEPHEN C. PETERSON, SP 2008-DR-014, continued from Page 699

Dr. on approx. 8,625 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((20)) 10. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. With respect to the reduction in minimum yard requirements, the applicant has met the six required standards to grant this permit, in particular Number 4, that the proposed development is harmonious with the surrounding off-site uses and structures and will not be detrimental to their use and enjoyment.
3. With respect to the reduction in minimum yard requirements, staff recommends approval, and their recommendation is adopted.
4. With respect to the error in building location, the applicant has presented sufficient testimony to grant that use.
5. The slight additional height will not impact detrimentally on any adjoining property owners.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, and Sect. 8-922, Provisions for Reduction of Certain Yard Requirements, of the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

~ ~ ~ April 29, 2008, STEPHEN C. PETERSON, SP 2008-DR-014, continued from Page 700

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the garage addition (a total of 439 square feet), and shed as shown on the plat prepared by Alexandria Surveys International, LLC dated August 13, 2007 and signed August 31, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,977 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The existing stockade fence located between the subject dwelling and the property line shared with Lot 11 shall be removed, relocated or reduced in height to meet Zoning Ordinance requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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 4-0. Mr. Byers, Ms. Gibb, and Mr. Smith were absent from the meeting.

//

~ ~ ~ April 29, 2008, Scheduled case of:

9:00 A.M. PATRICK N. LITTLE, SP 2008-MA-013 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard. Located at 5611 Chase Ct. on approx. 10,715 sq. ft. of land zoned R-4. Mason District. Tax Map 81-1((4)) (L)11.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Patrick Little, 5611 Chase Street, Alexandria, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a fence greater than 4.0 feet in height in the front yard, a 2.0 foot modification.

Mr. Little presented the special permit request as outlined in the statement of justification submitted with the application. He said his backyard was relatively unusable because of topographic changes, and a taller fence provided better security. Mr. Little also said he was unaware that there were actually two front yards

~ ~ ~ April 29, 2008, PATRICK N. LITTLE, SP 2008-MA-013, continued from Page 701

on his corner lot, noting that his confusion came from the 6 foot height being allowed in the backyard.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2008-MA-013 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK N. LITTLE, SP 2008-MA-013 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard. Located at 5611 Chase Ct. on approx. 10,715 sq. ft. of land zoned R-4. Mason District. Tax Map 81-1 ((4)) (L) 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 April 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the required standards for a special permit.
3. This is an unusual situation in that the topography of the lot is such that, from the photographs, this is the functional backyard for the house the way the house is situated on the lot.
4. The house has a walk-out basement with a patio at the basement level.
5. Even with the six-foot fence, the top of the fence is below the bottom of the patio.
6. A six-foot does not give much privacy except close to the fence, but a four-foot fence does not do anything.
7. Because of the configuration of the lot and the topography, the request is appropriate.
8. The fence would not have any significant negative impact on anyone.
9. There is a development condition about correcting the location of the fence where it is a little bit off the line between the street and the lot, and it would otherwise be in accordance with the Ordinance.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by Dominion Surveyors Inc., dated October 5, 2007, as submitted with this application and is not transferable to other land.
2. Notwithstanding what is depicted on the plat, all portions of the existing fence which are currently located on public right-of-way shall be relocated onto the application 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. Hammack seconded the motion, which carried by a vote of 4-0. Mr. Byers, Ms. Gibb, and Mr. Smith

~ ~ ~ April 29, 2008, PATRICK N. LITTLE, SP 2008-MA-013, continued from Page 702

were absent from the meeting.

//

~ ~ ~ April 29, 2008, 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. 8,213 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602. (Admin. moved from 8/9/05, 12/13/05, 7/24/07, and 10/23/07 at appl. req.) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred) (Deferred from 1/15/08)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant had requested a deferral to May 20, 2008, so that the BZA could consider the special permit application which would resolve the violation.

Mr. Beard moved to defer A 2005-MV-018 to June 10, 2008, at 9:30 a.m., at the appellant's request. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Mr. Byers, Ms. Gibb, and Mr. Smith were absent from the meeting.

//

~ ~ ~ April 29, 2008, 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) (Indefinitely deferred from 8/1/06) (Reactivated from indefinitely deferred) (Admin. moved from 7/24/07, 10/23/07, 1/8/08, and 3/4/08 at appl. req.)

Chairman Ribble noted that A 2005-SP-045 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that all of the zoning violations had been resolved.

//

~ ~ ~ April 29, 2008, After Agenda Item:

Approval of BZA May 4, 2004; July 13, 2004; and April 26, 2005 Minutes

Mr. Hammack moved to approve the minutes of the May 4, 2004; July 13, 2004; and April 26, 2005 meetings. Mr. Beard seconded the motion, which carried by a vote of 4-0. Mr. Byers, Ms. Gibb, and Mr. Smith were absent from the meeting.

//

Chairman Ribble, Mr. Hammack, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the proposed BZA meeting dates of May 6, 2008, and June 24, 2008. Ms. Langdon stated that no cases were currently scheduled for those dates and would only be used if the Board chose to defer or move a hearing to that date.

Mr. Hammack moved that the Board not schedule any cases for June 24, 2008.

~ ~ ~ April 29, 2008, continued from Page 703

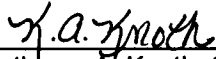
Mr. Beard seconded the motion, which carried by a vote of 4-0. Mr. Byers, Ms. Gibb, and Mr. Smith were absent from the meeting.

//

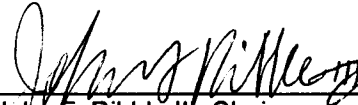
As there was no other business to come before the Board, the meeting was adjourned at 9:59 a.m.

Minutes by: Suzanne L. Frazier

Approved on: April 14, 2009



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 13, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:01 a.m.

During Board matters, Chairman Ribble commented on the passing of Judge David Stitt over the weekend, noting what a remarkable person he was. Chairman Ribble stated that Judge Stitt had previously served as the County Attorney for approximately 10 years and had always been very helpful to the BZA. On behalf of the Board, he wished Judge Stitt's family well.

Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. Chairman Ribble called for the first scheduled case.

~ ~ ~ May 13, 2008, Scheduled case of:

9:00 A.M. SABRI ERIKSEN, SP 2008-HM-015 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit roofed deck to remain 10.1 feet from a side lot line and addition to remain 8.8 feet from the other side lot line and to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line and 20.0 ft. from front lot line. Located at 8816 Skokie La. on approx. 10,859 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((13)) 39.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sabri Eriksen, 8816 Skokie Lane, Vienna, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Discussion ensued between Ms. Hedrick and Mr. Hart regarding the existing deck, noting the numerous approval stamps on the building plan. Mr. Hart noted that the usual words "nothing below the floor and nothing above the railing" were missing from the building permit. He felt that the lattice problem stemmed from that notation missing from the plat submitted with the permit. Mr. Hart stated that it was difficult to tell homeowners after the fact that they had a violation because the structure had been deemed an addition instead of a deck because it had lattice around it.

In response to a question from Mr. Hart, Ms. Hedrick stated that the applicant had approximately 9.1 feet available before reaching the 30-foot front yard setback.

Mr. Eriksen presented the special permit as outlined in the statement of justification submitted with the application. He stated that he had added the lattice around the bottom of the deck for aesthetic reasons, and he was unaware that it changed the classification from a deck to an addition. Mr. Eriksen said the porch encroachment error was made in good faith, noting that it was hard to tell where the lot line was, and he thought he built the porch in accordance with what had been approved by the County. He said his final request was for a new garage, necessary because the current garage was being torn down in order to expand the kitchen.

Mr. Hart stated his concern about the proposed garage addition being 17 feet wide, pointing out that it was larger than a one-car garage and smaller than a two-car garage. He said that if the garage was narrower, there would not be a 40-foot long intrusion into the side yard. Mr. Hart said there were alternate locations on the lot that would not require such a major intrusion.

Mr. Eriksen and Mr. Hart discussed deferring the decision on the application, with Mr. Eriksen explaining his reasoning for the proposed garage placement and asking that he be given the opportunity to submit a revised design for the garage.

Chairman Ribble called for speakers.

~ ~ ~ May 13, 2008, SABRI ERIKSEN, SP 2008-HM-015, continued from Page 705

Warren Repole, 1705 Palm Springs Drive, Vienna, Virginia, came forward to speak. He said he shared the rear property line with the applicant. His main points dealt with the resultant narrow side yard inhibiting access to the rear yard and the need for additional trees on the western boundary line.

Chairman Ribble closed the public hearing.

Mr. Hammack and Mr. Eriksen discussed the amount of time necessary to redesign the garage addition.

Mr. Hammack moved to defer decision on SP 2008-HM-015 to June 17, 2008, at 9:00 a.m., and asked that the hearing remain open for possible additional testimony. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ May 13, 2008, Scheduled case of:

9:00 A.M. CHRISTOPHER W. COX, SP 2008-MV-016

Chairman Ribble noted that SP 2008-MV-016 had been withdrawn.

//

~ ~ ~ May 13, 2008, Scheduled case of:

9:00 A.M. JUNIOR EQUITATION SCHOOL, INC. ("JES") AND NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC. ("NVTRP"), SPA 00-S-044 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-S-044 previously approved for riding and boarding stable to permit change in development conditions and change in permittee. Located at 6429 Clifton Rd. on approx. 17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-3 ((1)) 36 and 66-4 ((1)) 15.

Chairman Ribble noted that SPA 00-S-044 had been heard and approved at the April 29, 2008 meeting. Susan C. Langdon, Chief, Special Permit and Variance Branch, stated that the application had been given an out-of-turn hearing.

//

~ ~ ~ May 13, 2008, Scheduled case of:

9:00 A.M. ROGER C. EASTON, JR., SP 2008-PR-018 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 3511 Prince William Dr. on approx. 21,054 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((12)) 1.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Roger C. Easton, Jr., and Jacqueline K. Easton, 3511 Prince William Drive, Fairfax, Virginia, came forward, and Mr. Easton reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-PR-018, subject to the proposed development conditions.

Vice Chairman Hammack assumed the Chair.

Mr. Easton presented the special permit request as outlined in the statement of justification submitted with

~ ~ ~ May 13, 2008, ROGER C. EASTON, JR., SP 2008-PR-018, continued from Page 706

the application. He said the proposed sunroom would be compatible with the current architecture of the neighborhood and would replace an existing screened porch. He noted his neighbors' support of the addition.

As there were no speakers, Vice Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2008-PR-018 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROGER C. EASTON, JR., SP 2008-PR-018 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 10.0 ft. from side lot line. Located at 3511 Prince William Dr. on approx. 21,054 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((12)) 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 May 13, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. The Board determined the application meets all the submission requirements set forth in 8-922.
3. The staff recommends approval.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 195 square feet) of the proposed additions as shown on the plat prepared by B. W. Smith and Associates, dated August 3, 2007 and revised to December 11, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling (4,100 square feet) that existed at the time of the first expansion regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The additions shall be consistent with the architectural renderings included Attachment 1 to these

~ ~ ~ May 13, 2008, ROGER C. EASTON, JR., SP 2008-PR-018, continued from Page 707

conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman Ribble was not present for the vote.

//

Chairman Ribble resumed the Chair.

//

~ ~ ~ May 13, 2008, Scheduled case of:

9:00 A.M. SYED ALI HUVVERI ISLAMIC CENTER, SP 2007-LE-142 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 3435 Franconia Rd. on approx. 39,480 sq. ft. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 48. (Admin. moved from 2/12/08 and 4/8/08 at appl. req.)

Chairman Ribble noted that SP 2007-LE-142 had been administratively moved to August 5, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ May 13, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Dranesville District. Tax Map 18-3 ((1)) 6. (Admin. moved from 3/18/08 and 4/15/08 at appl. req.)

Chairman Ribble noted that SPA 82-D-047-02 had been administratively moved to July 15, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ May 13, 2008, Scheduled case of:

9:00 A.M. ANTHONY NGUYEN, A 2008-MA-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 3811 Whispering Lane on approx. 14,543 sq. ft. of land zoned R-2 and H-C. Mason District. Tax Map 61-3 ((13)) 241.

Chairman Ribble called the appellant to the podium.

Anthony Nguyen, 3811 Whispering Lane, Falls Church, Virginia, came forward.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or

~ ~ ~ May 13, 2008, ANTHONY NGUYEN, A 2008-MA-004, continued from Page 708

affirmed that their testimony would be the truth, and the public hearing was opened.

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated May 6, 2008. She stated that the appellant's residence contained two separate dwelling units, one on the main level and one on the lower level, each containing their own kitchen, complete with a stove, refrigerator, sink, and cabinets. Ms. Collins stated that tenants had been observed arriving and departing from the basement apartment. She noted that the Board and Circuit Court had consistently upheld the Zoning Administrator with regard to what constituted a second dwelling unit and had required appellants to remove not only all kitchen appliances, but also the kitchen cabinets. Ms. Collins noted that the appellant may be eligible for a special permit for an accessory dwelling unit since he had indicated that his mother-in-law was now residing in the home. Staff recommended that the BZA uphold the Zoning Administrator's determination.

In response to a question from Mr. Beard, Ms. Collins stated that the occupancy of the dwelling was not at issue. She said the violation was due to the presence of two dwelling units in the house. Ms. Collins noted that a special permit could be obtained for an accessory dwelling unit if the occupant was over 55 years of age and/or handicapped.

Mr. Hammack, Ms. Collins, and Roy Biedler, Senior Zoning Inspector, discussed the differences between having storage cabinets in a basement and a full functioning kitchen.

Mr. Hart noted that the kitchen appeared old and was probably there when the appellant purchased the property.

In response to a question by Mr. Hart, Mavis Stanfield, Deputy Zoning Administrator for Appeals, stated that Ms. Collins had spoken with the appellant regarding the necessary steps to apply for a special permit and had forwarded him an application. Ms. Stanfield stated that she received a phone call a few days before the hearing from a family friend asking for more instruction on how to fill out the special permit application. After speaking at length with her, the family friend said she would get back with her, but had not.

Mr. Hart, Ms. Gibb, Mr. Beard, Ms. Collins, and Ms. Stanfield discussed the lack of previous inspections/building permits for the property, what qualified as a second kitchen, and the need to apply for a special permit before a violation was written.

Mr. Nguyen presented the arguments forming the basis for the appeal. He stated that the second kitchen was in place when he purchased the property, and he wanted to keep it for his in-laws' use.

Mr. Hammack, Mr. Hart, Ms. Collins, and Ms. Stanfield discussed guiding the applicant through the permit process, the approximate amount of time needed, and whether a new plat would be necessary for the application.

Mr. Smith and Ms. Collins discussed the Spratly and Knight cases cited in the staff report, noting that the County required the removal of everything in the second kitchen, including the kitchen cabinets.

Chairman Ribble called for speakers.

Bob Seelinger, 3812 Whispering Lane, Falls Church, Virginia, came forward to speak. He said his concerns were that the basement was used as a multi-family boardinghouse, and he had not seen any older people at the property.

Mr. Nguyen stated that his in-laws came to the United States a few weeks before the hearing. He said several people visit the house, but do not live there.

Chairman Ribble closed the public hearing.

Mr. Hart made a motion to defer decision on A 2008-MA-004 until July 29, 2008. Mr. Hammack seconded the motion.

Mr. Hammack, Mr. Hart, and Mr. Ribble discussed an earlier hearing date.

~ ~ ~ May 13, 2008, ANTHONY NGUYEN, A 2008-MA-004, continued from Page 709

Mr. Hammack and Mr. Biedler discussed the difficulty of establishing relationships with persons living in the same home.

In response to a question from Mr. Byers, Mr. Biedler stated that if the Zoning Administrator's ruling was upheld, Mr. Nguyen would be given 30 days to remedy the violation. Failing that, the County would prepare to sue him.

Ms. Gibb, Mr. Smith, Mr. Beard, and Mr. Byers discussed shortening the length of time of the deferral versus proceeding with a vote.

Mr. Hammack offered a substitute motion to defer decision on A 2008-MA-004 until June 10, 2008, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Beard voted against the motion.

//

~ ~ ~ May 13, 2008, Scheduled case of:

9:30 A.M. SPRINGFIELD MASONIC LODGE 217 A.F. & A.M., A 2007-LE-017, Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory storage structure without a valid building permit and is allowing the use of the property that is not in conformance with the limitations of Special Permit S-189-77 in violation of Zoning Ordinance provisions. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. (Admin. moved from 8/7/07 and 11/6/07 at appl. req.) (Decision deferred from 2/26/08)

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in her memorandum dated May 6, 2008. She said the hearing had been rescheduled several times to allow the appellant to submit special permit and special exception applications, which had been done. However, there were unresolved deficiencies with the plat and the application. Ms. Collins said staff recommended the Board uphold the Zoning Administrator's determination to allow staff to obtain compliance in another manner.

Larry Johnson, the appellant's agent, 5415-A Backlick Road, Springfield, Virginia, presented the arguments forming the basis for the appeal. He explained the chronology of the violations, noting that the entire process, including plat submission, had been time consuming because he and another member of the lodge had been donating their spare time. Mr. Johnson noted the improvements already made to the site and stated that the remaining issues were in the process of being addressed.

Ms. Gibb, Mr. Hart, and Ms. Stanfield discussed the deficiencies on the property. Mr. Johnson stated that the plat still had to be reconfigured along I-95 due to VDOT taking land there.

Ms. Gibb made a motion to defer decision on A 2007-LE-017 to June 17, 2008, at 9:30 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

//

~ ~ ~ May 13, 2008, After Agenda Item:

Approval of August 3, 2004; March 1, 2005; and May 17, 2005 Minutes

Mr. Beard moved to approve the Minutes. Ms. Gibb seconded the motion. Mr. Hart noted a spelling correction in the March 1, 2005 minutes.

Regarding the March 1, 2005 minutes, the motion carried by a vote of 5-0-2. Mr. Hammack and Mr. Smith abstained from the vote. Regarding the August 3, 2004, and May 17, 2005 minutes the motion carried by a vote of 6-0-1. Mr. Smith abstained from the vote.

//

~ ~ ~ May 13, 2008, continued from Page 710

As there was no other business to come before the Board, the meeting was adjourned at 10:47 a.m.

Minutes by: Suzanne L. Frazier

Approved on: July 9, 2014

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 20, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Tom Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ May 20, 2008, Scheduled case of:

9:00 A.M. MARY DELPOPOLO, SP 2008-BR-020 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 9.6 ft. from side lot line. Located at 4401 Willow Woods Dr. on approx. 16,387 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((8)) 70.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mary DelPopolo, 4401 Willow Woods Drive, Annandale, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-BR-020, subject to the proposed development conditions.

Ms. DelPopolo presented the special permit request as outlined in the statement of justification submitted with the application. She said she retained a professional contractor to design and build the addition. The design was in accordance with the R-2 Cluster setback of 8.0 feet, which County staff had informed them was their zoning district. At the start of construction, the contractor was informed by the County that an error had been made, and the property was actually located in the R-2 District with a setback of 15 feet. Ms. DelPopolo said construction with the 15-foot setback would allow only a single car garage rather than a two-car garage and would reduce the upstairs office area, which would not accommodate their needs.

Joseph M. Mills, 4401 Willow Woods Drive, Annandale, Virginia, the applicant's husband, requested a 30-month extension to complete the construction in two stages.

In response to a question from Mr. Hart, Ms. DelPopolo said she was in agreement with the proposed development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2008-BR-020 for the reasons stated in the Resolution.

Following the motion, discussion ensued regarding the procedure to obtain an extension to complete construction. The applicant was informed that if additional time was needed, a letter requesting additional time must be submitted before the 30 months stipulated in the resolution ended, and the request would come to the Board as an after agenda item.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY DELPOPOLO, SP 2008-BR-020 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 9.6 ft. from side lot line. Located at 4401 Willow Woods Dr. on approx. 16,387 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((8)) 70. 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

~ ~ ~ May 20, 2008, MARY DELPOPOLO, SP 2008-BR-020, continued from Page 713

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 20, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has determined that the application has met all of the submission requirements set forth in Sect. 8-922.
3. The staff recommends approval.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 850 square feet) of the proposed addition as shown on the plat prepared by Larry N. Scartz, dated November 21, 2007, with revisions through April 18, 2008, for the proposed addition, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,334 square feet existing + 2,001 (150%) = 3,335 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall consist of 850 square feet, with 472 square feet dedicated to the garage floor area and 378 square feet dedicated to the proposed studio/office area, at a height of 18.9 feet, and be consistent with the architectural renderings included as Attachment 1 to these conditions.
5. A minimum of five (5) shrubs, a minimum of 18 inches in height at time of planting, shall be planted along the western foundation of the garage addition.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:00 A.M. JOHN N. GERACIMOS AND MEI LEE STROM, SP 2008-MV-001 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.0 ft. from side lot line and to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 2104 Windsor Rd. on approx. 8,213 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602. (Decision deferred from 3/18/08)

Chairman Ribble noted that SP 2008-MV-001 had been deferred for decision only from March 18, 2008.

Mr. Beard made a disclosure and indicated that he would recuse himself from the hearing.

Mr. Hart noted that the applicants' agent had submitted information and had additional information to present. Chairman Ribble reopened the hearing.

William M. Baskin, Jr., 301 Park Avenue, Falls Church, Virginia, the applicants' agent, said he was now listed on the affidavit; however, the affidavit had not been approved by the County Attorney.

Mr. Hammack moved to defer decision on SP 2008-MV-001 to June 3, 2008, at 9:00 a.m., to allow time for the affidavit to be properly filed and the Board to review the new information. Mr. Byers seconded the motion.

Chairman Ribble called for speakers to address the issue of the deferral request.

Eugene Olmi, 2100 Windsor Road, Alexandria, Virginia, identified himself as the developer of the Belle Haven Subdivision and said he had no objection to a deferral of two weeks.

Chairman Ribble called for the vote. The motion carried by a vote of 6-0. Mr. Beard recused himself from the hearing.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:00 A.M. JOHN D. VRANKOVICH, SP 2008-DR-019 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 16.9 ft. with eave 14.9 ft. from side lot line, accessory storage structure to remain 1.4 ft. from side lot line and accessory structure to remain 6.2 ft. from side lot line and 5.4 ft. from rear lot line, and to permit reduction of certain yard requirements to permit construction of addition 10.9 ft. from side lot line and 34.7 ft. from front lot line. Located at 7903 Old Falls Rd. on approx. 21,786 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((2)) 5.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John Vrankovich, 7903 Old Falls Road, McLean, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-DR-019 for the addition, subject to the proposed development conditions.

Discussion ensued regarding photographs of the accessory structures.

Mr. Vrankovich presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would consist of a garage, additional storage space, a mudroom, and a bedroom. The steep incline of the driveway would be decreased for safety purposes and to ease snow removal. The proposed addition would be placed in the existing footprint of the carport, and the design and materials would be harmonious and compatible with the home and neighborhood. Mr. Vrankovich said

~ ~ ~ May 20, 2008, JOHN D. VRANKOVICH, SP 2008-DR-019, continued from Page 715

that during the special permit process, it was discovered that the shed, which existed when he purchased the property, and the playground equipment were within the required setbacks. He said he placed the play equipment in the same location used by the previous owner because it was the only flat area in the backyard, and he was unaware of the setback requirements at the time.

Mr. Vrankovich responded to questions from Mr. Hart concerning the shed and its relocation.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2008-DR-019 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN D. VRANKOVICH, SP 2008-DR-019 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 16.9 ft. with eave 14.9 ft. from side lot line, accessory storage structure to remain 1.4 ft. from side lot line and accessory structure to remain 6.2 ft. from side lot line and 5.4 ft. from rear lot line, and to permit reduction of certain yard requirements to permit construction of addition 10.9 ft. from side lot line and 34.7 ft. from front lot line. Located at 7903 Old Falls Rd. on approx. 21,786 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((2)) 5. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 20, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. With respect to the mistake issues, the applicant has presented testimony showing compliance with the required standards.
3. The applicants bought the house in that way.
4. There was a confusing approval in the file for the house in a similar location to where it is and, where it was built was slightly off of that. It was not clear how that came about, but it was not the fault of the applicants.
5. There will not be any negative impact to leave the house where it is.
6. It would be a hardship to make the applicants move it.
7. With respect to the reduction in minimum yards, the location of the garage addition is in a logical place.
8. The impacts on anyone looking at it would be minimal.
9. It is compatible with what else is surrounding it in the neighborhood from the photographs.
10. With the development condition about the architectural, it will be a nice addition to the home and compatible with what is around it.
11. Based on the photographs, the play set will not have any impact on anybody; there was testimony that it was in the same location as was the previous play set.
12. Although it is possible to move the shed, based on the plat, the testimony, and the photograph of the site, it will not have any negative impact on anybody to leave it where it is; it seems to have been there for several years without any complaint.
13. We have a favorable staff recommendation with respect to the proposed addition.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based

~ ~ ~ May 20, 2008, JOHN D. VRANKOVICH, SP 2008-DR-019, continued from Page 716

on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (1,394 square feet) of an addition, as shown on the plat prepared by Dominion Surveyors, Inc., dated December 21, 2007 as revised through February 19, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,147 square feet existing + 4,720.5 square feet (150%) = 7867.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been

~ ~ ~ May 20, 2008, JOHN D. VRANKOVICH, SP 2008-DR-019, continued from Page 717

diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:00 A.M. MAYSA K. MOULHEM, SP 2007-SP-147 Appl. under Sect(s). 3-503, 8-914 and 8-923 of the Zoning Ordinance to permit a home child care facility, reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6126 Glen Oaks Ct. on approx. 7,493 sq. ft. of land zoned R-5. Springfield District. Tax Map 79-3 ((23)) 22A. (Decision deferred from 2/12/08, 4/8/08, and 4/29/08)

Chairman Ribble noted that a request had been received to defer the decision on SP 2007-SP-147 to June 10, 2008.

William M. Baskin, Jr., 301 Park Avenue, Falls Church, Virginia, the applicant's agent, said he thought the special permit was approvable under the existing conditions because the applicant had cared for 12 children for 14 years without issues, and the enrollment was being reduced to 10, but a meeting with the County Department of Transportation (DOT) and the Virginia Department of Transportation (VDOT) was scheduled to attempt to resolve the Board's parking concerns and staff's negative recommendation with a two-space driveway on Center Street.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff believed that the subject property was not the right location for a home child care with 10 children because there was not adequate parking on-site with the applicant and three employees. She said staff would review the applicant's proposal to add a parking area off of Center Street, but a single-family home on an extremely small lot may not appear residential with more pavement and parking along both sides of the house. Ms. Langdon said DOT and VDOT may approve an entrance off Center Road; however, she was unsure whether Planning and Zoning staff would support it if it did not look like a residential property.

Ms. Gibb moved to defer SP 2007-SP-147 to June 10, 2008, at 9:00 a.m. Mr. Smith seconded the motion.

Discussion ensued concerning reducing the number of employees and the safety issue of an entrance and parking on Center Road.

The motion carried by a vote of 7-0.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:00 A.M. BOSS, TERRY D. & BOSS, SUSAN D., SP 2007-SU-139 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with VC 2007-SU-005). (Admin. moved from 2/5/08 at appl. req.) (Decision deferred from 2/12/08 and 3/18/08)

9:00 A.M. BOSS, TERRY D. & SUSAN D., VC 2007-SU-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with SP 2007-SU-139). (Admin. moved from 2/5/08 at appl. req.) (Decision deferred from 2/12/08 and 3/18/08)

~ ~ ~ May 20, 2008, BOSS, TERRY D. & BOSS, SUSAN D., SP 2007-SU-139 and VC 2007-SU-005, continued from Page 718

Chairman Ribble noted that SP 2007-SU-139 and VC 2007-SU-005 had been deferred for decision only from March 18, 2008.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applications were deferred for decision to allow the applicants time to explore the possibility of reducing the paving. She said the agent had indicated the applicants were considering withdrawing the applications, but she indicated to him that the coverage issue would remain. Ms. Langdon said staff was informed that there would not be anyone present on behalf of the applicants at the meeting.

Discussion ensued regarding the status of the applications, communications with the applicants' agent, the proposed development conditions, the approval of the addition increasing the coverage, and potential enforcement concerning the coverage.

Mr. Hammack moved to defer decision on SP 2007-SU-139 and VC 2007-SU-005 to June 3, 2008, at 9:00 a.m., to allow staff to obtain written confirmation regarding whether the applicants intended to withdraw the applications or go forward. The motion failed for lack of a second.

Mr. Smith moved to deny SP 2007-SU-139 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BOSS, TERRY D. & BOSS, SUSAN D., SP 2007-SU-139 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with VC 2007-SU-005). (Admin. moved from 2/5/08 at appl. req.) (Decision deferred from 2/12/08 and 3/18/08) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 20, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. There does not appear to be any set of circumstances that the Board can go forward with the special permit, and it appears the applicant has no intention to go forward with it.
3. The applicant has not shown that the required standards of special permit have been met because they have not really depicted what the final product would be.
4. Without the variance, it is sort of the "chicken or egg" situation as it is all a big question mark and, they have not shown that the requirements were 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. 8-922 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 7-0.

//

~ ~ ~ May 20, 2008, BOSS, TERRY D. & BOSS, SUSAN D., SP 2007-SU-139 and VC 2007-SU-005, continued from Page 719

Mr. Smith moved to deny VC 2007-SU-005 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BOSS, TERRY D. & SUSAN D., VC 2007-SU-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 15065 Stillfield Pl. on approx. 13,242 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 32. (Concurrent with SP 2007-SU-139). (Admin. moved from 2/5/08 at appl. req.) (Decision deferred from 2/12/08 and 3/18/08) Mr. Smith Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 20, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. There are no circumstances whereby the Board can grant a variance.
3. There are also no set of circumstance whereby the Board can go forward with the special permit, and it does not appear the applicant intends to go forward with it as well.
4. The applicant does not meet the standards with respect to the variance after the Cochran case.
5. The applicant has not shown that the Ordinance interferes with all reasonable beneficial uses of the property taken as a whole.
6. The applicant verbally indicated that they wanted to withdraw.

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

~ ~ ~ May 20, 2008, BOSS, TERRY D. & BOSS, SUSAN D., SP 2007-SU-139 and VC 2007-SU-005, continued from Page 720

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 7-0.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:00 A.M. JUNIOR EQUITATION SCHOOL, INC. ("JES") AND NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC. ("NVTRP"), SPA 00-S-044 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-S-044 previously approved for riding and boarding stable to permit change in development conditions and change in permittee. Located at 6429 Clifton Rd. on approx. 17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-3 ((1)) 36 and 66-4 ((1)) 15.

Chairman Ribble noted that SPA 00-S-044 had been approved by the Board on April 29, 2008.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF FRANCONIA UNITED METHODIST CHURCH, SPA 94-L-063 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 94-L-093 previously approved for a church and child care center to permit an increase in enrollment and a modification of development conditions. Located at 6037 Franconia Rd. on approx. 2.58 ac. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4- ((2)) 1, 3A and 4.

Chairman Ribble called the applicant to the podium

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Myleen F. Lankford, Trustees of Franconia United Methodist Church, 6037 Franconia Road, Alexandria, Virginia, the applicant's agent and director of All God's Children (AGC) weekday program, reaffirmed the affidavit.

St. Clair Williams, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 94-L-063, subject to the proposed development conditions.

Ms. Lankford presented the special permit request as outlined in the statement of justification submitted with the application. She said there was a need for quality pre-school programs, their waiting list was long, and they sought to continue to serve the needs of the Franconia Kingstown area. She stated that there was ample parking because families who had multiple children attended the school.

Chairman Ribble called for speakers.

Reverend Vernell Carter (phonetic), Pastor of Franconia United Methodist Church, 6037 Franconia Road, Alexandria, Virginia, came forward to speak in support of the application.

Chairman Ribble closed the public hearing.

~ ~ ~ May 20, 2008, TRUSTEES OF FRANCONIA UNITED METHODIST CHURCH, SPA 94-L-063,
continued from Page 721

Mr. Beard moved to approve SPA 94-L-063 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF FRANCONIA UNITED METHODIST CHURCH, SPA 94-L-063 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 94-L-093 previously approved for a church and child care center to permit an increase in enrollment and a modification of development conditions. Located at 6037 Franconia Rd. on approx. 2.58 ac. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4- ((2)) 1, 3A and 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 May 20, 2008; 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. There seems to be no parking issues.
4. There seems to be adequate classroom space to provide for the increase in enrollment.
5. The increase in enrollment is the only change in the church's operation.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with 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 3-203 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 Trustees of Franconia United Methodist Church and is not transferable without further action of this Board, and is for 6037 Franconia Road 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 Thomas V. Bee, dated October 17, 1994 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, unless waived by the Director, Department of Public Works and Environmental Services (DPWES). 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 364.
6. The maximum daily enrollment of the child care center shall not exceed 67 children.

~ ~ ~ May 20, 2008, TRUSTEES OF FRANCONIA UNITED METHODIST CHURCH, SPA 94-L-063,
continued from Page 722

7. One hundred and fourteen (114) parking spaces shall be provided as shown on the special permit plat. All parking for the use shall be on-site.
8. There shall be no more than 25 children on the playground at any one time.
9. The existing vegetation along all lot lines shall be deemed to satisfy the transitional screening and barrier requirements. Dead, dying and hazardous plant material shall be replaced as needed to maintain screening.
10. The maximum hours of operation for the child care center shall be Monday through Friday, 9:00 a.m. to 4:00 p.m.

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 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.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:00 A.M. JERUSALEM BAPTIST CHURCH, SPA 73-S-113 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 73-S-113 previously approved for a church to permit the addition of a child care center, building additions, increase in seats and site modifications. Located at 5424 Ox Rd. on approx. 13.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 52, 54 and 55A. (Admin. moved from 12/18/07, 2/26/08, and 4/1/08 at appl. req.)

Chairman Ribble noted that SPA 73-S-113 had been administratively moved to July 29, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:00 A.M. VIENNA HERITAGE CENTER, SP 2007-DR-085 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 10602 Leesburg Pi. on approx. 2.23 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 49. (Deferred from 10/30/07 and 1/29/08 at appl. req.) (Admin. moved from 4/1/08 for notices)

Chairman Ribble noted that SP 2007-DR-085 had been administratively moved to July 29, 2008, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:30 A.M. ACCURATE TOWING AND STORAGE, INC., A 2007-PR-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Motor Vehicle Storage and Impoundment Yard on property in the I-4 and I-5 Districts without a valid Non-Residential Use Permit and without an approved site plan, in violation of Zoning

~ ~ ~ May 20, 2008, ACCURATE TOWING AND STORAGE, INC., A 2007-PR-032, continued from Page 723

Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Concurrent with A 2007-PR-033) (Admin. moved from 11/6/08 and 2/26/08 at appl. req.)

Chairman Ribble noted that there was an administrative withdrawal pending on A 2007-PR-032.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that the inspector was not initially allowed to perform a thorough inspection of the property, but was then allowed at a later date. Further investigation revealed there were additional zoning violations not previously observed. Ms. Stanfield said the inspector was in the process of preparing the paperwork to rescind the initial violation and reissue the violations. She said she understood the appellant was seeking another property to relocate and legally establish the use. Ms. Stanfield said there was no motion required of the Board.

Mr. Hart recused himself from the public hearing.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:30 A.M. MARY R. GREENE, TRUSTEE, A 2007-PR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a Motor Vehicle Storage and Impoundment Yard and a Storage Yard on property in the I-4 and I-5 Districts without a valid Non-Residential Use Permit and without an approved site plan, in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Concurrent with A 2007-PR-032) (Admin. moved from 11/6/07 and 2/26/08 at appl. req.)

Chairman Ribble called the case noting that there was a request for dismissal.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff requested the dismissal. She said A 2007-PR-033 involved the property occupied by Accurate Towing and Storage, Inc., A 2007-PR-032, and there had been a modification to the ownership of the property. She explained that Mary Greene was now the president, but it was owned by Fleet Enterprises LLC and could not go forward under the current advertisement for public hearing. Ms. Stanfield said Ms. Greene had asked that the Board dismiss the case.

In response to a question from Mr. Hammack regarding whether staff objected to the dismissal, Ms. Stanfield confirmed that there was no objection.

Mr. Hammack moved to dismiss A 2007-PR-033. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the public hearing.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:30 A.M. ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-005 (Concurrent with A 2008-SU-006)

Chairman Ribble noted that A 2008-SU-005 had been administratively withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the notice had been rescinded and reissued, and another appeal for the property would be scheduled at a later date.

//

~ ~ ~ May 20, 2008, Scheduled case of:

9:30 A.M. JAMES G. MILLER, TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-006 (Concurrent with A 2008-SU-005)

Chairman Ribble noted that A 2008-SU-006 had been administratively withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said A 2008-SU-005 and A 2008-SU-006 were concurrent applications regarding the same property with one being the property owner and the other the tenant.

//

~ ~ ~ May 20, 2008, After Agenda Item:

Approval of March 22, 2005; May 3, 2005; and June 21, 2005 Minutes

Mr. Hammack moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 5-0-2. Mr. Byers and Mr. Beard abstained from the vote.

//

John McBride, Vanderpool, Frostick & Nishanian, P.C., 9200 Church Street, Suite 400, Manassas, Virginia, requested to address the Board on the matter of the special permit standard language regarding changes in permittee. He noted that the approval did not run with the land, but only to the permittee, which was different than special exceptions and special use permits in other jurisdictions. He gave an example of a child care center in a church and said that it had been the practice for years that when the child care entity changed, the new child care entity was required to submit a letter to staff to be handled as an after agenda item by the Board. Mr. McBride said staff recently indicated the procedure had been changed and now required a special permit amendment application, including a full application, new plat, new staff report, and new public hearing. He said the procedure took time and money and was confusing to neighboring property owners. Mr. McBride said a better procedure should be devised that would be quicker and cheaper for the entities and the public. He suggested options of having the special permit run with the land or only requiring the permittees obtain non-residential use permits and issue special permits administratively. Mr. McBride said he was seeking guidance because he had an application currently being reviewed.

Chairman Ribble suggested Mr. McBride put the matter in the form of a letter, and the Board would discuss it in closed session.

Discussion ensued regarding whether the issue was being presented as a threshold requirement before obtaining a change in permittee, the acceptance requirements for a special permit for a change in permittee and their relevance to the issue, staff's rationale, and Mr. McBride's particular situation.

//

As there was no other business to come before the Board, the meeting was adjourned at 10:20 a.m.

Minutes by: Paula A. McFarland / Kathleen A. Knoth

Approved on: January 28, 2015

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 3, 2008. The following Board Members were present: Chairman John F. Ribble III; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

Chairman Ribble called the meeting to order at 9:01 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ June 3, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF THE UNITED CHRISTIAN PARISH OF RESTON, VIRGINIA, SPA 87-C-018-02 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 87-C-018 previously approved for church and nursery school to permit an increase in enrollment and hours of operation. Located at 11506 North Shore Dr. on approx. 4.26 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 6 and 13. (Admin. moved from 3/4/08 at appl. req.) (Deferred from 4/1/08 at appl. req.)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Frederick R. Taylor, the applicant's agent, 2000 Wilson Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Kelli Goddard-Sobers, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 87-C-018-02, subject to the proposed development conditions.

Mr. Taylor presented the special permit request as outlined in the statement of justification submitted with the application. He noted that the church had sold one of their two churches and wanted to consolidate the nursery schools to the remaining site.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SPA 87-C-018-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE UNITED CHRISTIAN PARISH OF RESTON, VIRGINIA, SPA 87-C-018-02 Appl. under Sect. 6-303 of the Zoning Ordinance to amend SP 87-C-018 previously approved for church and nursery school to permit an increase in enrollment and hours of operation. Located at 11506 North Shore Dr. on approx. 4.26 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 6 and 13. (Admin. moved from 3/4/08 at appl. req.) (Deferred from 4/1/08 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 3, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning

Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 11506 and 11508 North Shore Drive (4.26 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 Burgess & Niple dated May, 2007, revised February, 2008, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 192 seats in the main place of worship.
6. The total maximum daily enrollment in the nursery school programs combined shall be 135, with no more than 105 children on site at any one time.
7. The maximum number of children using the tot area at any one time shall be 48.
8. The hours of operation of the nursery school programs shall be a maximum of 8:45 am – 4:00 pm, Monday through Friday.
9. All parking shall be on site as shown on the Special Permit Plat.
10. The structure labeled "Old Parsonage" on the Special Permit Plat on Tax Map 17-2 ((1)) 13 shall be used only as administrative, classroom or meeting space.
11. Transitional screening shall be modified as shown on the Special Permit Plat.
12. The barrier requirement shall be waived as shown on the Special Permit Plat.
13. The wood chip trail depicted on the Special Permit Plat shall be paved and lighted with bollard style lighting and shall be in accordance with the performance standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
14. A device such as a gate or a chain shall be provided to block access to the driveway on parcel 17-1 ((1)) 13. The device shall be used to bar entrance to the driveway during times when more than 10 people will be using the building. Signs compliant with the standard End of Road signs described in the Manual of Uniform Traffic Control Devices (OM4-3) shall be affixed to and maintained on this device.

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

~ ~ ~ June 3, 2008, TRUSTEES OF THE UNITED CHRISTIAN PARISH OF RESTON, VIRGINIA,
SPA 87-C-018-02, continued from Page 728

notice, thirty (30) months after the date of approval unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:00 A.M. HAMLET SWIM CLUB, INC., SPA 74-D-037-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-D-037 previously approved for a swim club to permit a building addition and site modifications. Located at 8209 Dunsinane Ct. on approx. 4.33 ac. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) A1 and B1. (Admin. moved from 9/11/07 and 3/11/08 for ads) (Deferred from 10/23/07 and 12/11/07 at appl. req.) (Decision deferred from 4/15/08)

Mr. Byers moved to approve SPA 74-D-037-03 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HAMLET SWIM CLUB, INC., SPA 74-D-037-03 Appl. under Sect. 3-203 of the Zoning Ordinance to amend SP 74-D-037 previously approved for a swim club to permit a building addition and site modifications. Located at 8209 Dunsinane Ct. on approx. 4.33 ac. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) A1 and B1. (Admin. moved from 9/11/07 and 3/11/08 for ads) (Deferred from 10/23/07 and 12/11/07 at appl. req.) (Decision deferred from 4/15/08) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 3, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. The present zoning is R-2 cluster.
3. The lot is 4.33 acres.
4. Staff recommends approval of the special permit amendment.
5. The Hamlet Club Swim Club membership and its board have made more than reasonable efforts to resolve the issues and objections by individuals in the neighborhood.
6. This is an improvement over a club that has been in existence for almost 40 years.
7. The development conditions are extremely tight and very specific.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following

limitations:

1. This approval is granted to the applicant only, Hamlet Swim Club, Inc. and is not transferable without further action of this Board, and is for the location indicated on the application, 8209 Dunsinane Court, and is not transferable to other land.
2. This special permit is granted only for the purpose(s) structure(s) and/or use(s) indicated on the special permit plat prepared by Dennis D. Dixon, and dated May, 2007 as revised through October 2, 2007, and approved with this application, as qualified by these development conditions. It is noted that the cul-de-sac shown on the plat is a dedicated street.
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 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. There shall be 66 parking spaces provided as shown on the special permit plat if approved as per Development Condition 6. Handicapped parking spaces shall be provided as shown on the submitted plat. The applicant shall stripe the paved parking lot and all parking shall be on site.
6. Prior to approval of a building permit for improvements to the bath house, the applicant shall apply for and be granted a determination by DPWES that adequate parking is provided on site, including for the use of the multi-purpose room, or the Director may otherwise determine that a lesser number of parking spaces are required based on reasonable walking distance for members. If the parking reduction is not approved, this special permit amendment shall be null and void.
7. There shall be no more than ten (10) employee vehicles on-site at any one time.
8. Transitional Screening 1 (25') shall be maintained along the western lot line. A modification of Transitional Screening 1 is permitted in order to allow the tennis courts within the transitional screening yard along the eastern and southern property lines. Existing vegetation may be used to satisfy this requirement where possible provided it is supplemented where necessary to be equivalent to Transitional Screening 1, as has been determined by the County Urban Forester.

Additionally, a minimum of six (6) medium evergreen trees, such as American holly, Japanese cryptomeria or Eastern red cedar shall be planted, on the south side of the wood fence adjacent to Lot 221 and ten (10) small, shade-tolerant evergreens, such as Foster's holly shall be planted, along the eastern property boundary adjacent to Lot 222, and/or as directed by Urban Forest Management.

9. The barrier requirement shall be waived.
10. During discharge of swimming pool waters, the following operational procedures shall be implemented:

Sufficient amount of lime or soda ash shall be added to the acid cleaning solution In order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found In Fairfax County range from pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters and shad require a minimum concentration of 4.0 milligrams per liter.

If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

11. The maximum hours of operation for the swimming pool and tennis courts shall be limited to:

~ ~ ~ June 3, 2008, HAMLET SWIM CLUB, INC., SPA 74-D-037-03, continued from Page 730

- Tennis Courts 8 am to 9 pm, daily (shall not be lighted)
- Swimming Pool 8 am to 9 pm, Memorial Day weekend through the weekend after Labor Day weekend
- Swim Team/lessons 8 am to 6 pm, Memorial Day weekend through the weekend after Labor Day weekend

12. Following construction and approval of a new Non-Residential Use Permit (Non-RUP), the maximum hours of operation for the multi-purpose room (MRP) and restrictions to the use shall be limited to:

- 8 am to 9 pm, Memorial Day weekend through the weekend after Labor Day weekend ("the season"), except for after-hour parties as per Condition 13.
- 8 am to 9 pm, a maximum of four (4) times in the off-season. The Club Board shall provide each home on Dunsinane Court a minimum of two weeks advance written notice of each proposed use and obtain advance written approval from a minimum of two-thirds of the homes on the Court. A non-response from a Dunsinane Court home shall be considered a "no" vote. If approved, each home on Dunsinane Court shall be provided with written notice of such approval at least one week in advance of the use. The Club shall maintain records documenting the required notice and responses for a period of one year after each use and shall make those records available to Fairfax County staff and Club members upon request.
- 8 am to 9 pm, Off-season during May, September and October, for the Club Board, its committees and swim/dive/tennis team meetings, limited to four (4) times per month, with a maximum of twenty-five (25) people.
- Private parties (hosted by Club members rather than the Club itself) during the season shall be limited to:
 - 8:30 am to 6 pm, Mon. thru Thurs. - no limit
 - 6:00 pm to 9 pm, Mon. thru Thurs. - max. 2 times/week
 - 8:30 am to 9 pm, Fri. thru Sun. - no limit
- Use of the MPR shall be limited to Club members and their guests.
- Permitted uses of the MPR shall be shelter, meetings of Club groups, parties for Club members and their guests and Club Board and committee meetings.
- Use of the MPR shall comply with all Fairfax County noise and occupancy regulations.
- No alcohol shall be consumed in the MPR except by adults during activities authorized by the Club Board or an officer of the Club.
- No separate events shall be held in the MPR during, or 30 minutes before or after swim meets.

13. After-hour parties for the swimming pool shall be governed by the following.

- Limited to six (6) per year during the season.
- Limited to Friday, Saturday and pre-holiday evenings. Three (3) weeknight parties may be permitted per year, provided written proof is submitted which shows that all contiguous property owners concur.
 - i. Shall not extend beyond 12:00 midnight.
 - ii. The member shall provide a written request at least ten (10) days in advance and receive prior written permission from the Club Board for each individual party or activity.
 - iii. Requests 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-hour party.

~ ~ ~ June 3, 2008, HAMLET SWIM CLUB, INC., SPA 74-D-037-03, continued from Page 731

14. The Club shall use good faith efforts to keep the parking lot gates closed and locked after sunset during the off-season and after 9 pm (or 12 pm midnight following after-hour parties) during the season.
15. Signs shall be in conformance with Article 12, Signs.
16. The maximum number of family memberships shall be 415.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8 015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently pursued. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:00 A.M. JOHN N. GERACIMOS AND MEI LEE STROM, SP 2008-MV-001 Appl. under Sect(s) 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.0 ft. from side lot line and to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 2104 Windsor Rd. on approx. 8,213 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602. (Decision deferred from 3/18/08 and 5/20/08)

Although this case had been deferred for decision only, Mr. Hart asked that William Baskin, agent for the applicants, be given the opportunity to address the Board.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth.

Mr. Baskin addressed some of the questions raised at the public hearing, specifically the location of the front fence. He said a portion of the front fence was not located on the property. Mr. Baskin said his client was only asking to exceed the height limitation on the fence perpendicular to the street, which shielded the view of the adjacent property where numerous cars were parked.

Mr. Hart moved to approve SP 2008-MV-001 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN N. GERACIMOS AND MEI LEE STROM, SP 2008-MV-001 Appl. under Sects. 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.0 ft. from side lot line and to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 2104 Windsor Rd. on approx. 8,213 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602. (Decision deferred from 3/18/08 and 5/20/08). Mr. Hart moved that the Board

~ ~ ~ June 3, 2008, JOHN N. GERACIMOS AND MEI LEE STROM, SP 2008-MV-001, continued from Page 732

of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. With respect to the error in building location, the deck in question does not appear that it would have any significant negative impact on anyone.
3. This is another one of those situations where there is a lattice issue changing the character of the structure; it is relatively minor.
4. The distance issue is relatively minor.
5. The applicant has met the applicable standards under the mistake section.
6. With respect to the fence, the request is consistent with other requests brought before the BZA and approved.
7. A six-foot fence between the two properties does not necessarily create any significant negative impact on anyone or create a safety hazard, based on the photographs and layout of the two properties.
8. If there is a covenant issue in the background, nothing the BZA does will affect the validity or enforceability of any covenant.
9. The required standards have been met with respect to the side fence.
10. With respect to the front fence, based on staff's explanation and prior case history, the approval is appropriate.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other

~ ~ ~ June 3, 2008, JOHN N. GERACIMOS AND MEI LEE STROM, SP 2008-MV-001, continued from Page 733

properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and height of the addition (deck with lattice) and fences (ranging in height from 4.8 feet to a maximum of 6.0 feet) as shown on the plat prepared by B.W. Smith and Associates, Inc. dated September 13, 2007, as submitted with this application and is not transferable to other land.
2. Notwithstanding what is depicted on the plat, all portions of the existing fence which are currently located on public right-of-way shall be relocated onto the application property.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:00 A.M. KERRY C. AND ALICE B. KACHEJIAN, SP 2008-MV-023 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.0 ft. from rear lot line. Located at 8119 Ridge Creek Way on approx. 8,896 sq. ft. of land zoned PDH-2. Mt. Vernon District. Tax Map 98-2 ((19)) 75A.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Patrick Tomlinson, the applicant's agent, 5795-B Burke Center Parkway, Burke, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-MV-023, subject to the proposed development conditions.

Mr. Tomlinson presented the special permit request as outlined in the statement of justification submitted with the application. He said the homeowners association had already approved the project.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2008-MV-023 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KERRY C. AND ALICE B. KACHEJIAN, SP 2008-MV-023 Appl. under Sect. 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.0 ft. from rear lot line. Located at 8119 Ridge Creek Way on approx. 8,896 sq. ft. of land zoned PDH-2. Mt. Vernon District. Tax Map 98-2 ((19)) 75A. 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

~ ~ ~ June 3, 2008, KERRY C. AND ALICE B. KACHEJIAN, SP 2008-MV-023, continued from Page 734

applicable State and County Codes and with the by-laws of 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 3, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The staff recommends approval.
3. The Board has determined that the applicant has met the standards 1 through 6.
4. Based on the agent's testimony, there will not be any significant impact on the neighboring property.
5. The addition will be built with the same materials as the property, so it will be compatible with the house and the surrounding properties.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (203 square feet) of an addition, as shown on the plat prepared by B.W. Smith and Associates, dated January 28, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,576 square feet existing + 5,364 square feet (150%) = 8,940 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:00 A.M. A. BRIAN BARTLETT, SP 2008-PR-024 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of second story addition 23.4 ft. from the front lot line and 7.2 ft. from side lot line and roofed deck 18.5 ft. from front lot line. Located at 2927 Cherry St. on approx. 5,241 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((9)) 13.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Anthony Brian Bartlett, 2927 Cherry Street, Falls Church, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-PR-024, subject to the proposed development conditions.

Shawn Glerum, the applicant's agent, 407 Thomas Street, Alexandria, Virginia, presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed second story addition would be within the footprint of the existing house, in keeping with the Cape Cod style of the house, and compatible with the neighborhood.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2008-PR-024 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

A. BRIAN BARTLETT, SP 2008-PR-024 Appl. under Sect. 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of second story addition 23.4 ft. from the front lot line and 7.2 ft. from side lot line and roofed deck 18.5 ft. from front lot line. Located at 2927 Cherry St. on approx. 5,241 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((9)) 13. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 3, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. The property is zoned R-4 and HC.
3. The staff recommends approval.
4. There are many other examples of special permits and variances that have been approved for similar types of development in the area.
5. This is a somewhat modest addition compatible with the neighborhood.
6. The addition fits within the existing footprint of the house, with the addition also of a front porch.
7. The house was built in 1947 and there was a conversion to R-4 in 1978.
8. This is an appropriate special permit in this case and meets the submission requirements in 8-922 and the other requirements for development in character with the on-site development in terms of location, height, bulk, and scale of the existing structures on the lot.
9. It is harmonious with the surrounding off-site uses.
10. It does not adversely impact the use and enjoyment of other adjacent properties.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ June 3, 2008, A. BRIAN BARTLETT, SP 2008-PR-024, continued from Page 736

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a second story addition (2,441 square feet) and front porch, as shown on the plat prepared by R.C. Fields, Jr. & Associates, dated October 22, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,073 square feet existing + 3,109.5 square feet (150%) = 5,182.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:00 A.M. DENIS I. POYERD, SP 2008-SU-021 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.5 ft. from rear lot line. Located at 13267 Stone Heather Dr. on approx. 12,101 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 218A.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Denis I. Poyerd, 13267 Stone Heather Drive, Oak Hill, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-SU-021, subject to the proposed development conditions.

~ ~ ~ June 3, 2008, DENIS I. POYERD, SP 2008-SU-021, continued from Page 737

Mr. Poyerd presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would replace an existing deck; there were several acres of woods to the rear of the property; and, the architectural control committee from the homeowners association had approved the project.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-SU-021 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DENIS I. POYERD, SP 2008-SU-021 Appl. under Sect. 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.5 ft. from rear lot line. Located at 13267 Stone Heather Dr. on approx. 12,101 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 218A. 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 3, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the six required standards set forth under Section 8-922 of the Ordinance.
3. The Board has a favorable staff report and adopts the rationale of the staff.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 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 Dominion Surveyors, dated January 15, 2008, revised through March 14, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,648 square feet existing + 3,972 square feet (150%) = 6,620 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

~ ~ ~ June 3, 2008, DENIS I. POYERD, SP 2008-SU-021, continued from Page 738

4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:00 a.m. KENNETH B. PACK, SP 2008-MV-022 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit deck to remain 38.5 feet from the front lot line of a corner lot and to permit reduction of certain yard requirements to permit addition 38.5 feet from front lot line. Located at 6036 River Dr. on approx. 40,008 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-1 ((2)) 13A.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Kenneth B. Pack, 6036 River Drive, Lorton, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-MV-022, subject to the proposed development conditions.

Mr. Pack presented the special permit request as outlined in the statement of justification submitted with the application. He said the special permit would allow him to rebuild a sunroom which had been destroyed the previous year by a fallen tree, and it would be built within the same footprint. He stated that when the house was purchased, he was unaware the structure was in violation of the Zoning Ordinance.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2008-MV-022 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH B. PACK, SP 2008-MV-022 Appl. under Sects. 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements base on error in building location to permit deck to remain 38.5 feet from the front lot line of a corner lot and to permit reduction of certain yard requirements to permit addition 38.5 feet from front lot line. Located at 6036 River Dr. on approx. 40,008 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-1 ((2)) 13A. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

~ ~ ~ June 3, 2008, KENNETH B. PACK, SP 2008-MV-022, continued from Page 739

applicable State and County Codes and with the by-laws of 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 3, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has determined the application meets all of the submission requirements according to Section 8-922.
3. The staff recommends approval and the Board adopts their rationale from the standpoint of the development conditions.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sects. 8-914 and 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the sunroom addition (a total of 238 square feet) and at-grade patio, as shown on the plat prepared by Land Surveying Services dated January 2, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,177 square feet existing + 4,756 square feet (150%) = 7,927 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:30 A.M. NEIL A. BINGAMAN AND MARLENE E. BINGAMAN, A 2008-SP-007

Chairman Ribble noted that A 2008-SP-007 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the violation had been cleared.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A.

Chairman Ribble noted that A 2008-DR-009 had been administratively moved to August 5, 2008 at 9:30 a.m. at the appellants' request.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11. (Deferred from 10/30/07, 1/29/08, and 4/1/08 at appl. req.)

Jayne Collins, Staff Coordinator, Zoning Administration Division, stated that a deferral had been requested to allow time for the acceptance of the applicant's special permit application and a public hearing on the fence.

Mr. Hart moved to defer A 2007-MV-030 to September 9, 2008, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 3, 2008, Scheduled case of:

9:30 P.M. ROSE MARY KING, A 2007-MA-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has installed a flower bed along the side of property which is obstructing storm water flow from adjacent property in violation of Zoning Ordinance provisions. Located at 7055 Lanier St. on approx. 8,906 sq. ft. of land zoned R- 4 and H-C. Mason District. Tax Map 71-1 ((19)) (6) 3. (Deferred from 4/8/08)

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Jayne Collins, Staff Coordinator, presented staff's position as set forth in a memorandum dated May 27, 2008, from Mavis E. Stanfield to John F. Ribble, and the staff report dated April 1, 2008. The appellant installed a flowerbed along the side lot line of the subject property, Lot 3, which obstructed stormwater flow from the adjacent property, Lot 4. Ms. Collins said grade readings conducted by the Department of Public Works and Environmental Services (DPWES) confirmed that the topography of the rear yards of Lots 3 and 4 naturally sloped downhill from Lot 4 onto and across Lot 3 and then out to Lanier Street. In response to a complaint, DPWES staff conducted an inspection of both lots and determined that a two-foot section of the

~ ~ ~ June 3, 2008, ROSE MARY KING, A 2007-MA-047, continued from Page 741

flowerbed and hedge would have to be removed in order to restore the natural flow of stormwater runoff. She stated that Gary Much and Bill Schell from the Maintenance and Stormwater Management Division of DPWES and Tammy Brown, Zoning Inspector, were present to answer questions from the Board.

Paul King, the appellant's agent, no address given, presented the arguments forming the basis for the appeal. He said his father built the flowerbed as a dam to slow the flow of water on the property because the basement was flooding after heavy rains. He added that the owner of Lot 5 had erected a fence with siding on his lot to impede the water flow since he also was having a problem with basement flooding. Mr. King stated that if he opened up the flowerbed, it would open the floodgates and create serious problems.

Ms. Gibb and Mr. Schell discussed the cost of constructing a stormwater inlet to alleviate the water back-up, estimating the cost in excess of \$10,000. Mr. Schell stated that even with an inlet, it would still require overland relief on the subject property.

Mr. Hart, Ms. Stanfield, Mr. King, and Mr. Schell discussed the grades for positive drainage on the original subdivision plans. Mr. King pointed out that Lots 3 and 4 were in different subdivisions.

In response to a question from Mr. Hammack, Ms. Brown stated that even without the flowerbed, water would not traverse the subject property because a brick wall, approximately two feet high, had been placed at the base of the hedge row.

Chairman Ribble called for speakers.

George Muchmore, owner of Lot 4, 4501 Exeter Street, Annandale, Virginia, came forward to speak. He said that when he moved into the house in 1986, there was no pooling of water in his backyard; however, following the installation of the appellant's brick patio and the built up area under the hedge row, he experienced flooding and sinkholes in his backyard. Mr. Muchmore said the sinkholes had to be repaired three times by Fairfax County due to the continued pooling of stormwater. He presented pictures of his yard while flooded, noting that the pooling lasted from 24 to 72 hours depending on the length of the storm and remained wet up to a week or more after the storm.

In response to a question from Mr. Hammack, Mr. Muchmore stated that the sinkholes were located approximately three feet from the fence and measured two to three feet deep and two to three feet wide.

In his rebuttal, Mr. King said he would like to work together with the County and Mr. Muchmore to resolve the stormwater problem.

Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator. He adopted the rationale in the staff report, but stated he was very troubled by the case. Mr. Hart said that although he suspected the Board might feel they ought to help resolve the obvious drainage problem, they were limited to the appeal before them, and the only question was whether the Zoning Administrator's determination was correct.

Mr. Hart also stated his frustration that the paper trail was not as complete as he might like to determine the approved grades, if there were any, when the homes were built and how that varied from what now existed. He agreed that things can settle or change over time, but pointed out that case law dictated that when files were incomplete, the Zoning Administrator prevailed.

Mr. Hart stated he was very sympathetic to the appellant and related his own experience with stormwater problems on his property. He noted his appreciation of the comments from Mr. Muchmore and Mr. King and hoped that the parties, including the County, would continue to work together on the problem.

Mr. Hart stated that the Board had sufficient evidence to conclude that the appellant's husband installed the flowerbed 30 years ago, and based on the record before the Board, it could not be determined that the Zoning Administrator was plainly wrong. The installation of the flowerbed did obstruct the stormwater flow from the Muchmore property to the King property, and, therefore, the determination should be upheld.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 3, 2008, After Agenda Item:

Request for Additional Time
New Life Christian Church, SPA 01-Y-069

Mr. Hart moved to approve 30 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 August 16, 2008.

//

~ ~ ~ June 3, 2008, After Agenda Item:

Request for Additional Time
Trustees of Church Friends Meeting of Langley Hill, SP 2003-DR-013

Mr. Byers moved to approve 12 months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote. Mr. Beard was absent from the meeting. The new expiration date was March 16, 2009.

//

~ ~ ~ June 3, 2008, After Agenda Item:

Request for Additional Time
Salameh Brothers Construction Company, VC 01-V-187

Ms. Gibb moved to approve 12 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote. Mr. Beard was absent from the meeting. The new expiration date was January 31, 2009.

//

~ ~ ~ May 13, 2008, After Agenda Item:

Approval of February 24, 2004; May 24, 2005; and July 12, 2005 Minutes

Mr. Hart moved to approve the minutes. Mr. Hammack seconded the motion.

The motion regarding the February 24, 2004; and May 24, 2005 minutes carried by a vote of 4-0-1. Mr. Byers abstained from the vote. Mr. Smith was not present for the vote. Mr. Beard was absent from the meeting.

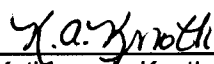
The motion regarding the July 12, 2005 minutes carried by a vote of 5-0. Mr. Smith was not present for the vote. Mr. Beard was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:15 a.m.

Minutes by: Suzanne L. Frazier

Approved on: February 4, 2015



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 10, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Tom Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ June 10, 2008, Scheduled case of:

9:00 A.M. MAYSA K. MOULHEM, SP 2007-SP-147 Appl. under Sect(s). 3-503, 8-914 and 8-923 of the Zoning Ordinance to permit a home child care facility, reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6126 Glen Oaks Ct. on approx. 7,493 sq. ft. of land zoned R-5. Springfield District. Tax Map 79-3 ((23)) 22A. (Decision deferred from 2/12/08, 4/8/08, 4/29/08, and 5/20/08)

Chairman Ribble noted that the application was deferred for decision four times, and he recalled that the agent was to get information from Virginia Department of Transportation (VDOT) regarding a curb cut.

William M. Baskin, Jr., 301 Park Avenue, Falls Church, Virginia, the applicant's agent, said it appeared the second driveway was not feasible; however, he proposed several development conditions that addressed traffic and parking concerns. He said all pickups and drop-offs would occur in the driveway, a reminder notice would be posted, and employee shifts would be staggered to assure no more than two employee vehicles would be on site at the same time. He said there was the potential of adding a space to the existing front driveway within the Public Facilities Manual (PFM) requirements, and there was sufficient space between the garage and the property line. Mr. Baskin said if an additional parking space was required, he thought the employee shifts significantly mitigated the Board's concerns.

Susan Langdon, Chief, Special Permit and Variance Branch, said staff stood by its original recommendation of denial for the home child care center.

Discussion ensued regarding the lot's layout, existing and proposed parking spaces, the development conditions, clarifying Condition 5, and the necessity of an additional parking space.

Ms. Langdon suggested that if the BZA intended to approve the application and require the third parking space, that specific language be added to the first condition stating that if the third space were not approved and provided, the special permit was null and void.

Mr. Hammack said this was a tough case because the facility had been operating, and now staff wanted a third parking space. He said in view of staff's reservations, the number of deferrals, the Board's information that the plan would not meet PFM standards and vehicles would overhang and block the public sidewalk, until the parking issue was resolved, he could not support the application. Mr. Hammack moved to approve-in-part SP 2007-SP-147, denying the home child care facility, approving the reduction to minimum yard requirements, and permitting the fence to remain. Mr. Byers seconded the motion.

Ms. Gibb said she would like to support the approval of the home child care facility with or without the third parking space because it had operated with 12 children already. She said having three part-time employees was positive as it should be encouraged to have helpers for home child care facilities. Ms. Gibb stated that she could not support that motion.

Mr. Hart made a substitute motion to separate the deck and fence portion from the home child care facility. Ms. Gibb seconded the substitute motion, which carried by a vote of 7-0.

Discussion ensued regarding the development conditions and code requirements.

Mr. Hammack moved to approve SP 2007-SP-147 for the deck and the fence and allow each to remain. Mr. Smith seconded the motion, which carried by a vote of 7-0.

Mr. Hammack moved to deny the home child care facility portion of SP 2007-SP-147. Mr. Byers seconded the motion.

~ ~ ~ June 10, 2008, MAYSA K. MOULHEM, SP 2007-SP-147, continued from Page 745

Mr. Hart said the principal problem was the parking, and he thought it possible to approve something concerning the home child care facility as there was a history of the use. He said that because the Board looked at the situations on a case-by-case basis, he thought the previous operation use appropriate to consider in the context of everything else. Mr. Hart said he would not support the denial.

Mr. Byers said he would support the motion to deny the home child care facility. He said staff consistently recommended denial throughout the process, and there were also serious concerns from VDOT. Mr. Byers said the house was on a very small corner lot on a very narrow street, Glen Oaks Court, where there were cars parked on both sides, and the property was next to a very busy road, Center Road. He said the applicant did not have adequate off-street parking to accommodate the use, and there was legitimate concern that the drop-off and pickup times would overlap. The driveway was too short and did not have space for a second car to park behind cars already parked in the driveway. Patrons backing out of the driveway may cause backups into Center Road, and if forced to park in front of neighboring properties, it would cause further congestion. He said it was not relevant that at the present time siblings were being dropped off because the clientele would change over time. Mr. Byers said the additional concrete changed the residential character of the neighborhood, and there had been complaints by neighbors. He said he did not believe that the fact that someone operated without a special permit for a number of years justified an approval.

Ms. Gibb said she would not support a denial motion, and she thought it was relevant that it existed under a state license for many years for 12 children and had been successfully run. She said it was relevant that it was child care and not some other business because child care was needed, and it was the normal course in child care to have siblings being transported. Ms. Gibb said many people who have a state license permitting a certain number of children are unaware that the state approved number was greater than the County allowed.

Chairman Ribble called for the vote. The motion failed by a vote of 2-5. Chairman Ribble, Mr. Beard, Mr. Hart, Mr. Smith, and Ms. Gibb voted against the motion.

Mr. Hart moved to approve SP 2007-SP-147 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MAYSA K. MOULHEM, SP 2007-SP-147 Appl. under Sect(s). 3-503, 8-914 and 8-923 of the Zoning Ordinance to permit a home child care facility, reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6126 Glen Oaks Ct. on approx. 7,493 sq. ft. of land zoned R-5. Springfield District. Tax Map 79-3 ((23)) 22A. (Decision deferred from 2/12/08, 4/8/08, 4/29/08, and 5/20/08) 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 10, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has discussed how difficult this case is.
3. The prior operation, the history of the facility has got to be a factor in the analysis.
4. Taking into account the case's history, the approval of the child care with some modifications to the development conditions adequately addresses any question of negative impacts.
5. This is a very close call and the applicant is taking some risk with the condition that is dependent on approval of something else, but that is essential to addressing the parking situation.

~ ~ ~ June 10, 2008, MAYSA K. MOULHEM, SP 2007-SP-147, continued from Page 746

6. Going against staff's recommendation is not taken lightly, but the Board has given this application a thorough vetting, and it is not known what else further could be done.
7. The Board does not like the idea of even more pavement or other driveways, but at the same time the Board must identify how to deal with the parking rather than just having people park on the street.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-914 of the Zoning Ordinance, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This approval is granted to the applicant, Maysa K. Moulhem, only and is not transferable without further action of this Board, and is for the location indicated on the application, 6126 Glen Oaks Court, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Lawrence H. Spilman III, dated October 4, 2007 as revised through November 21, 2007, and approved with this application, as qualified by these development conditions. Notwithstanding the foregoing, the third parking space to the east of the driveway is approved as depicted on the sketch dated April 23, 2008, included as Attachment 1 to the 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 6:00 p.m., Monday through Friday.

~ ~ ~ June 10, 2008, MAYSA K. MOULHEM, SP 2007-SP-147, continued from Page 747

5. The maximum number of employees shall be limited to three (3) 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 spaces for the dwelling, and three (3) spaces in the driveway for the child care facility. All parking shall be on-site.
8. A maximum of ten (10) children shall be on site at any one time.
9. There shall be no signage associated with the home child care facility.
10. All contracts will specify that clients are to use the additional space for temporary parking solely for drop-off and pickup. If the third parking space in the driveway is not approved by the appropriate review authorities, the special permit approval for the child care facility is null and void.
11. A notice will be posted in the facility reminding clients of the contractual obligation to park in accordance with these development conditions, and the applicant will enforce that provision.
12. Employee shifts shall be staggered such that no more than two employee vehicles will be at the site at any one time.

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 5-2. Mr. Byers and Mr. Hammack voted against the motion.

//

~ ~ ~ June 10, 2008, Scheduled case of:

9:00 A.M. MARK H. RUGE, SP 2008-DR-026 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.2 ft. from rear lot line. Located at 1543 Evers Dr. on approx. 14,054 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 50A.

Chairman Ribble noted that SP 2008-DR-026 had been withdrawn.

//

~ ~ ~ June 10, 2008, Scheduled case of:

9:00 A.M. PAUL AND MICHELE MAMO, SP 2008-SU-028 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 17.7 ft. from front lot line. Located at 13118 Laneview Ct. on approx. 11,632 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (15) 134.

Chairman Ribble called the applicants to the podium.

~ ~ ~ June 10, 2008, PAUL AND MICHELE MAMO, SP 2008-SU-028, continued from Page 748

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Michele Mamo, 13118 Laneview Court, Herndon, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-SU-028, subject to the proposed development conditions.

Ms. Mamo presented the special permit request as outlined in the statement of justification submitted with the application. She said many of the houses on the street had porches, and when the porch needed to be renovated and they planned to build a side porch, they were informed that a special permit was necessary for the side porch. Ms. Mamo said the porch addition would enhance the neighborhood and be a useful addition to the house.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2008-SU-028 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL AND MICHELE MAMO, SP 2008-SU-028 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 17.7 ft. from front lot line. Located at 13118 Laneview Ct. on approx. 11,632 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (15) 134. 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 10, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The Board has determined that the application meets all of the submission requirements as set in Sect. 8-922.
3. Staff has recommended approval.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 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 344 square feet) of the proposed roofed deck, as shown on the plat prepared by Kendall Consulting, Inc., dated December 14, 2007, signed January 16, 2008, as submitted with this application and is not transferable to other land.
2. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

~ ~ ~ June 10, 2008, PAUL AND MICHELE MAMO, SP 2008-SU-028, continued from Page 749

3. A building permit shall be obtained prior to construction and approval of final inspections shall be obtained.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 10, 2008, Scheduled case of:

9:00 A.M. DAVID MCADAM, SP 2008-MV-033 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.5 ft. from side lot line. Located at 8337 Bound Brook La. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 142.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

David McAdam, 8337 Bound Brook Lane, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-MV-033, subject to the proposed development conditions.

Mr. McAdam presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to enclose and expand the carport to a two-car garage roughly two cars deep and with an 18-foot width, which required a 5.5-foot encroachment into the side yard setback. He said the proposed location was the most logical; the additional space would provide necessary additional storage; and, the garage would protect a classic car he was restoring, allow privacy when working on it, and keep the area out of the neighbors' view. He said staff's recommendation of approval was contingent upon landscaping of the area that was currently an asphalt and gravel driveway, which would reduce the paved area. He said the proposal had the support of his neighbors as evidenced by their letters contained in the record. Mr. McAdam said the application met the Ordinance's applicable standards, was compatible and harmonious with the neighborhood, improved the home's appearance, added value to his and the neighborhood properties, and had the approval of the homeowners association, Riverside Estates Civic Association.

Mr. McAdam responded to questions from Mr. Hammack and Mr. Hart concerning two sheds, the necessity for additional storage, justification for the requested garage width, the exact location of the proposal, and a particular neighbor's support of the project.

Ms. Hedrick and Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Ms. Gibb's question concerning staff's evaluation process when determining a minimum yard requirement and the applicant's proposal.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2008-MV-033. Mr. Smith seconded the motion, which failed by a vote of 3-4. Chairman Ribble, Mr. Hart, Mr. Byers, and Mr. Hammack voted against the motion.

~ ~ ~ June 10, 2008, DAVID MCADAM, SP 2008-MV-033, continued from Page 750

Mr. Hammack made a motion to waive the 12-month waiting period for refileing an application. Mr. Byers seconded the motion, which carried by a vote of 7-0.

At Mr. Hart's suggestion to modify the application in lieu of a denial, Mr. Hammack moved to reconsider the Board's vote for purposes of discussion. Mr. Byers seconded the motion.

In response to Mr. Beard's comment regarding the appropriateness of redesigning the project when the matter was at the Board level, Mr. Hart said he wanted to allow the applicant the opportunity to reconfigure the proposal to meet Standard 9 instead of it being denied.

Chairman Ribble called for a vote on the motion to reconsider, which carried by a vote of 7-0.

Discussion ensued regarding rewording language in the resolution, a question of a by-right use, the existing encroachment, the possibility for an interpretation to clarify various measurement modifications, and the applicant's choice to go forward for an approval with a redesign.

Mr. McAdam listed the reasons for the existing design and the importance of an area for sufficient storage.

Chairman Ribble said the Board would not design a proposal for an applicant and asked for a motion.

Mr. Hart moved to accept Ms. Gibb's motion with a change to the reduction of certain yard requirements from 6.5 feet to 8.5 feet and adding the wording "notwithstanding what is on the plat." Mr. Byers seconded the motion.

Mr. Beard stated that he would support the motion, but thought it arbitrary for the Board to say it would give this as opposed to that. He said the applicant had obviously put a great deal of thought, consideration, and time into the proposal and gave a magnificent presentation.

Ms. Gibb said initially she also wondered about the minimum standard, but staff spoke to it, and there was a letter from the homeowners association that urged the Board to approve the application.

Mr. Hammack commented on previous cases involving sheds, storage issues, and the applicant's design. He said that determining the minimum required was somewhat subjective, and although it may seem arbitrary, the Board was to use its judgment as to the minimum.

Chairman Ribble called for the vote. The motion carried by a vote of 7-0.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID MCADAM, SP 2008-MV-033 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.5 ft. from side lot line. **(THE BZA APPROVED 8.5 FEET FROM SIDE LOT LINE)**. Located at 8337 Bound Brook La. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 142. 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 10, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has determined that the applicant meets all of the requirements set forth in Sect. 8-922,

~ ~ ~ June 10, 2008, DAVID MCADAM, SP 2008-MV-033, continued from Page 751

- Requirements 1 through 6.
3. The Board has a favorable staff report.
 4. The Board has written communication, e-mail, from neighbors saying they support the applicant, specifically from the neighbor who is adjacent to the proposed garage and who would be most affected.
 5. The Board has had testimony from the applicant and discussion from staff as to the reason that the existing garage/carport is undersized at 12 feet wide.
 6. The applicant has testified as to why he needs the larger garage and why it is reasonable.
 7. The applicant has testified that the garage will not have an adverse impact on his neighbors.
 8. The Board has a staff report that shows it is compatible with the neighborhood.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (456 square feet) of an addition, as shown on the plat (**THE BZA APPROVED THE GARAGE 8.5 FEET FROM SIDE LOT LINE**) prepared by Stephen L. Moore Land Surveying, Inc., dated January 25, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,370 square feet existing + 3,555 square feet (150%) = 5,925 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to final building inspection for the addition, the existing paved area adjacent to the proposed addition (south) shall be removed and the area scarified and replanted with grass and/or ornamental vegetation.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 10, 2008, Scheduled case of:

9:00 A.M. RICHARD C. MARTIN AND JULIA S. MARTIN, VC 2008-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 6411 Eleventh St. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 3.

Chairman Ribble noted that the Board had received a request to defer VC 2008-MV-001 to June 17, 2008.

Mr. Byers moved to defer VC 2008-MV-001 to June 17, 2008, at 9:00 a.m., at the applicants' request. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

~ ~ ~ June 10, 2008, Scheduled case of:

9:00 A.M. SANDEE RILEY, SP 2008-MV-025 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structures to remain 2.1 ft. from rear lot line and 2.7 ft. from side lot line and roofed deck 12.7 ft. from side lot line and to permit reduction of certain yard requirements to permit roofed deck 19.4 ft. from front lot line and 9.2 ft. from side lot line and addition 9.2 ft. from side lot line. Located at 8002 West Boulevard Dr. on approx. 11,250 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 3.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sandee Riley, 8002 West Boulevard Drive, Alexandria, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval SP 2008-MV-025, subject to the proposed development conditions.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Hammack's question concerning the definition of a roofed deck/porch. She noted that the applicant's plat called it an open porch.

Ms. Riley presented the special permit request as outlined in the statement of justification submitted with the application. She explained the layout of the house, which had been built in 1959, and the proposed addition to be built over an existing open porch to accommodate a growing family and care for elderly parents. She said that during the permit process for the requested addition, the County discovered the error in building location of the shed. She said the green shed blended well, was well screened, had been in its location for 10 years, and the neighbors never had any problem with it.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2008-MV-025 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANDEE RILEY, SP 2008-MV-025 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structures to remain 2.1 ft. from rear lot line and 2.7 ft. from side lot line and roofed deck 12.7 ft. from side lot line and to permit reduction of certain yard requirements to permit roofed deck 19.4 ft. from front lot line and 9.2 ft. from side lot line and addition 9.2 ft. from side lot line. Located at 8002 West Boulevard Dr. on approx. 11,250 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 3. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ June 10, 2008, SANDEE RILEY, SP 2008-MV-025, continued from Page 753

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The shed that was constructed in 1999 is well landscaped, fully wooded, and shielded from the neighbors.
3. The shed really has no impact on the neighbors.
4. The shed really has no impact from a land use perspective.
5. The covering on the south side of the house is somewhat innocuous, it just covers the entrance to the house, and meets the requirements of Sect. 8-914.
6. Staff recommends approval.
7. With respect to Sect. 8-922 of the Zoning Ordinance, the proposed addition meets those requirements, and the Board agrees with staff's analysis recommending approval.
8. The roofed deck and open porch would be an aesthetic improvement to the neighborhood.
9. The two-story addition, which matches the height of the existing house, is also consistent.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be

~ ~ ~ June 10, 2008, SANDEE RILEY, SP 2008-MV-025, continued from Page 754

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 2-story addition (a total of 823 square feet), roofed decks (open porches) and accessory storage structure as shown on the plat prepared by Dominion Surveyors, Inc. dated October 29, 2007, as submitted with this application and is not transferable to other land.
- 3 Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,424 square feet existing + 3,636 square feet (150%) = 6,060 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The proposed addition and roofed deck shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 10, 2008, Scheduled case of:

9:00 A.M. JILL/ADAM FELDMAN, SP 2008-HM-029 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.84 ft. from rear lot line. Located at 2614 Meadow Hall Dr. on approx. 8,909 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((12)) 91.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Adam Feldman, 2614 Meadow Hall Drive, Arlington, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-HM-029, subject to the proposed development conditions.

Mr. Chase responded to a question from Mr. Hart concerning a drainage issue. Mr. Chase said staff's recommendation remained the same and was not affected by the information. At Mr. Hart's request, Mr. Arnsperger's June 9, 2008 letter referencing the issues with water runoff was forwarded to Department of Public Works and Environmental Services (DPWES).

Mr. Feldman presented the special permit request as outlined in the statement of justification submitted with the application. He said the variance would allow the screening of a portion of an existing deck which would occupy an area of the existing footprint. Mr. Feldman said the architecture would be harmonious and

~ ~ ~ June 10, 2008, JILL/ADAM FELDMAN, SP 2008-HM-029, continued from Page 755

compatible, and the proposal had the support of the neighbors and homeowners association.

Chairman Ribble called for speakers.

Tom Arnsperger, 2612 Meadow Hall Drive, Herndon, Virginia, came forward to speak. He said supported the proposal because he believed every homeowner had the right to improve their quality of life, and he thought the addition would improve the backyard's appearance. He said the water runoff issue that concerned him was topographical and not the applicants' fault, but he would like a development condition to be considered. He said that when he spoke to DPWES, they informed him that they had not made a site visit, but made their determination from a site map. Mr. Arnsperger explained the current situation and its potential exacerbation due to increased impervious surface.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2008-HM-029 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JILL/ADAM FELDMAN, SP 2008-HM-029 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.84 ft. from rear lot line. Located at 2614 Meadow Hall Dr. on approx. 8,909 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((12)) 91. 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 June 10, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Primarily, this is being constructed in the location of an existing deck.
3. The addition is consistent architecturally.
4. Staff has favorably recommended this.
5. A neighbor came before the Board to state his concerns and all-in-all spoke favorably of it, notwithstanding concerns about water run-off.
6. The application especially meets Zoning Ordinance Standards 3 and 5.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 326 square feet) of the proposed one story screened porch addition as shown on the plat prepared by Leavitt Group PLC, Surveyors and Arborists, dated February 22, 2008 and revised to March 13, 2008 as submitted with

~ ~ ~ June 10, 2008, JILL/ADAM FELDMAN, SP 2008-HM-029, continued from Page 756

this application and is not transferable to other land.

3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,392 square feet existing + 5,088 square feet (150%) = 8,480 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

//

The meeting recessed at 11:05 a.m. and reconvened at 11:10 a.m.

//

~ ~ ~ June 10, 2008, Scheduled case of:

9:00 A.M. VIRGINIA W. VOELLER, SP 2008-MV-032 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 10.0 ft. from side lot line and 7.0 ft. from rear lot line. Located at 3121 Battersea La. on approx. 13,209 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 307.

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Christine A. Leonard, AIA, 2109 Popkins Lane, Alexandria, Virginia, the applicant's agent, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Initially the application included a request for a reduction of certain yard requirements to permit construction of an addition 10 feet from a side lot line; however, the applicant revised that portion of the plat, and that area then met Zoning Ordinance setback requirements, making that request no longer necessary. Staff recommended approval of SP 2008-MV-032, subject to the proposed development conditions.

Ms. Leonard presented the special permit request as outlined in the statement of justification submitted with the application. She explained the design of the family room and day room, stating it was compatible and

~ ~ ~ June 10, 2008, VIRGINIA W. VOELLER, SP 2008-MV-032, continued from Page 757

harmonious with the house and neighborhood. Ms. Leonard said the proposed location was the only feasible area due to the lot's shape.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-MV-032 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VIRGINIA W. VOELLER, SP 2008-MV-032 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 10.0 ft. from side lot line and 7.0 ft. from rear lot line. Located at 3121 Battersea La. on approx. 13,209 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 307. 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 10, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has determined that the applicant has met the six required standards set forth in the Ordinance.
3. When making this motion for an approval, it is noted that the encroachment is minimal.
4. In this particular situation, the house is set almost back beyond the center line on the property.
5. The proposed sunroom addition will not have any impact on the neighboring adjoining property, on 306 where the main structure is quite some distance from the property line, nor be detrimental in any other way.
6. The Board has a favorable staff report.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 526 square feet) of the proposed addition as shown on the plat prepared by Alexandria Surveys, LLC, dated January 21, 1999, revised through May 28, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,776 square feet existing + 3,636 square feet (150%) = 6,412 permitted) regardless of whether such addition complies with the minimum yard requirement or

~ ~ ~ June 10, 2008, VIRGINIA W. VOELLER, SP 2008-MV-032, continued from Page 758

is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this 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. Mr. Hart recused himself.

//

~ ~ ~ June 10, 2008, Scheduled case of:

9:30 A.M. ANTHONY NGUYEN, A 2008-MA-004, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 3811 Whispering Ln. on approx. 14,543 sq. ft. of land zoned R-2 and H-C. Mason District. Tax Map 61-3 ((13)) 241. (Decision deferred from 5/13/08)

Chairman Ribble noted that A 2008-MA-004 had been deferred for decision.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, said the appellant had filed for a special permit application, and to allow time to complete the process, staff suggested a deferral to December 9, 2008.

Chairman Ribble called for speakers to address the deferral request; there was no response.

Mr. Byers moved to defer A 2008-MA-004 to December 9, 2008, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 10, 2008, 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. (Admin. moved from 10/24/06 at appl. req.) (Continued from 2/27/07)

Chairman Ribble called the appellant to the podium.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, said she believed the appellant was not present, but had requested a further deferral.

~ ~ ~ June 10, 2008, ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-039, continued from Page 759

Charles Cohenour, Senior Zoning Inspector, Zoning Enforcement Branch said staff preferred the case not be further deferred. He said that in October of 2006, the appellants informed staff that the Gallows Road business would cease, and operations would be moved to the Lee Highway location, but neither was done. The appellants also informed staff that the property would be sold, and the settlement was scheduled for completion in July of 2008. Mr. Cohenour said several complaints were received that the property was not being kept up. He said if the property sold, staff would take no further action; however, if the sale fell through, the case would proceed to court to bring the property into compliance.

At Chairman Ribble's request, Ms. Collins distributed a copy of Mr. Armstrong's June 4, 2008 letter requesting a further deferral.

In response to Mr. Hart's question of why the appellant was not present, Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that during her conversation with Mr. Armstrong, he told her he thought it unnecessary to be present because he expected a settlement. Ms. Stanfield said the contract purchaser's agent, Elizabeth Baker, said her client was under the impression that the violations would be cleared before settlement.

Chairman Ribble called for speakers to address the deferral request; there was no response.

Discussion ensued regarding the possibility of complicating the settlement if a violation on the property was upheld.

Mr. Hart moved to deny the deferral request. Mr. Smith seconded the motion, which carried by a vote of 7-0.

Mr. Hart moved to uphold the determination of the Zoning Administrator, adopting the rationale in the staff report. He said it had been some time since the public hearing had been held, and there were obvious impacts on the people in the apartment building next door. Mr. Hart said the appellant had proposed to clean up the property and redevelop it, but that had not happened as quickly as planned. Mr. Hart said the issue was whether the Zoning Administrator was correct in the determination of the violations, and the record before the Board had not been shown the determination to be incorrect. Ms. Gibb seconded the motion.

Mr. Hammack said he would support the motion and noted that the original notice of violation was dated June 21, 2006. He said he recalled the appellant stating the property would be cleaned up if deferral time was permitted. Mr. Hammack said he thought there had been adequate time, and it seemed the appellant was not making much of an effort.

The motion carried by a vote of 7-0.

//

~ ~ ~ June 10, 2008, Scheduled case of:

9:30 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, and 4/1/08 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to November 4, 2008, at 9:30 a.m., at the appellants' request.

Jayne M. Collins, Staff Coordinator, Zoning Administration Division, said the appellants had filed a special exception application for the use which was scheduled before the Planning Commission on October 20, 2008.

//

~ ~ ~ June 10, 2008, 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. 8,213 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 602. (Admin. moved from 8/9/05, 12/13/05, 7/24/07, and 10/23/07 at appl. req.) (Indefinitely deferred from 2/28/06) (Reactivated from indefinitely deferred) (Deferred from 1/15/08 and 4/29/08 at appl. req.)

Chairman Ribble called the appellants to the podium.

Mr. Beard recused himself from the public hearing.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

William M. Baskin, Jr., 301 Park Avenue, Falls Church, the appellants' agent, said it was his understanding that staff measured the fence and found that there was no violation, and if that was the case, his clients would withdraw the appeal.

Rebecca Goodyear, Senior Zoning Inspector, Zoning Enforcement Branch, said she inspected the property, and the fence along the front line was now four feet in height, so the violation had been cleared.

Mr. Hart and Ms. Goodyear discussed the special permit approved by the Board for the side fence and the actions that would be taken if the appellant did not comply with the conditions of the approval.

Chairman Ribble called for speakers.

Eugene Olmi, Jr., 2100 Windsor Road, Alexandria, Virginia, came forward to speak. He said he was on a cruise when construction of the appellants' fence began, but when he returned, he informed the foreman that the fence was too high. After discussing with Mr. Geracimos that the fence was in violation of code and covenant regulations, Mr. Geracimos said he would build it anyway. Mr. Olmi said the six-foot high fence remained along the property line in violation of the code, and a good neighbor would have sought to resolve the matter amicably. Mr. Olmi said it should not be allowed.

Mr. Baskin said it was a moot issue given the fact there was no violation, and they would withdraw the appeal.

Ms. Gibb moved to accept the withdrawal based on the testimony of Mr. Baskin and staff that the front yard fence was now determined to be no more than four feet in height. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 10, 2008, After Agenda Item:

Request for Reconsideration
John N. Geracimos and Mei Lee Strom, SP 2008-MV-001

Chairman Ribble noted that the Board had received a request for reconsideration of its decision regarding SP 2008-MV-001.

Mr. Hart said he read the appellants' and Mr. Olmi's letters and considered Mr. Baskin's position and the Board's experience on other cases when he made the motion on the special permit, and he thought the development conditions were appropriate. He said he understood the appellants' position, but he thought the Board considered all the factors, and he would not make a motion to reconsider.

Discussions ensued regarding the fence, the violations, right-of-way issues, notification to Virginia Department of Transportation and accommodating their comments when crafting development conditions, and examples of similar cases.

~ ~ ~ June 10, 2008, After Agenda Items, continued from Page 761

No motion was made; therefore, the request for reconsideration was denied.

//

~ ~ ~ June 10, 2008, After Agenda Item:

Approval of July 19, 2005; August 2, 2005; and August 9, 2005 Minutes

Mr. Hart moved to approve the Minutes, with the exception of the portion regarding Virginia Equity Solutions, A 2005-PR-015, which was currently in litigation. Mr. Hammack seconded the motion, which carried by a vote of 6-0-1. Mr. Smith abstained from the vote.

//

~ ~ ~ June 10, After Agenda Item:

Request for an Out-of-Turn Hearing
Hermilio Machicao, 5901 Amherst Avenue

Benjamin T. Danforth, Lawson, Tarter & Charvet, P.C., 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, the agent for Mr. Machicao, explained the circumstances of the appeal, the necessity for an expedited public hearing, the issuance of a stop work order based on a zoning determination that the property's street frontage had three sides which directly reversed the determination issued three months earlier when the building permit was issued for the property having frontage on two sides. He said the new determination affected the setback distances; a stop work order was issued; Mr. Machicao was forced to cease construction; and the project was extremely costly. Mr. Danforth said the stop work order was unfair, and he requested the matter be heard at the soonest date, with the Board waiving the notification requirements, if possible.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the hearing was scheduled three weeks in advance of the timeframe appeals were generally scheduled, and time was needed for staff to do the analysis and advertising. She said staff did not think this was an unusual case as there had been stop work orders in the past. Ms. Stanfield said staff recommended that the date of August 5th be maintained for the hearing on the appeal application.

Discussions ensued regarding advertising schedules, potential hearing dates, and expediting the case.

Mr. Hart moved to schedule the hearing on July 29, 2008, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

Minutes by: Paula A. McFarland

Approved on: February 4, 2015

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Chairman
Board of Zoning Appeals