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CLERK  
SUPREME COURT OF VIRGINIA

MAY 22 2001

In The  
**Supreme Court of Virginia**

RECORD NO. 002810

**THANH VAN TRAN,**

*Appellant,*

v.

**JANE W. GWINN,  
FAIRFAX COUNTY ZONING ADMINISTRATOR,**

*Appellee.*

**APPENDIX**

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JOHN T. FREY  
CLERK-CIRCUIT COURT

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR,

Complainant,

v.

THANH VAN TRAN,

SERVE AT:

7605 Bull Run Drive  
Centreville, Virginia 220121,

Respondent.

IN CHANCERY NO. 163246

BILL OF COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF

COMES NOW Complainant Jane W. Gwinn, Fairfax County Zoning Administrator, by  
counsel, and requests this Honorable Court to grant her Bill of Complaint for Declaratory  
Judgment and Injunctive Relief and as grounds therefor states as follows:

1. The Board of Supervisors of Fairfax County, Virginia ("the Board of  
Supervisors") is the duly elected governing body of Fairfax County, Virginia, with the power to  
adopt zoning ordinances to secure and promote the health, safety and general welfare of the  
County, and to enforce the same under Va. Code Ann. §§ 15.2-2286(A)(4) (Michie Supp. 1999)  
and 15.2-2208 (Michie 1997), and Fairfax County Code § 1-1-12(c).

2. The Board of Supervisors has designated Jane W. Gwinn as the Fairfax County  
Zoning Administrator ("the Zoning Administrator"). Under the provisions of Va. Code Ann.



§ 15.2-2286(A)(4), the Zoning Administrator has all necessary authority to administer and enforce the Fairfax County Zoning Ordinance ("the Zoning Ordinance"), including the ordering in writing of the remedying of any condition found to be in violation of the Zoning Ordinance, and the bringing of legal action in the form of injunctive relief to ensure compliance with the ordinance.

3. Respondent Thanh Van Tran ("Tran"), is the owner of property located at 7605 Bull Run Drive by virtue of a deed of gift recorded in the Fairfax County land records on May 7, 1999, and found in Deed Book 10909, at page 0584. The parcel is also shown on the Fairfax County Real Property Identification Map at Tax Map No. 73-1((2)) parcel 13 ("the subject property"). A true and accurate copy of the deed of gift is attached hereto and incorporated herein by reference as Exhibit A.

4. Tran, who resides on the subject property, is the pastor of the Vietnamese Buddhist Association ("VBA"), a religious, non-stock organization.

5. The subject property contains approximately 5.099 acres, is zoned to the R-C District (Residential Conservation District), and is developed with, *inter alia*, a single-family dwelling and a detached three-car garage structure. A true and accurate copy of a portion of Tax Map No. 73-1 showing the location and zoning of the subject property is attached hereto and incorporated herein by reference as Exhibit B.

6. Zoning Ordinance § 2-303(1) provides that

[n]o use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall be hereafter changed to another use that is designated as a special permit use in such district, unless a

special permit has been secured from the [Board of Zoning Appeals] in accordance with the provisions of Article 8.

A copy of Zoning Ordinance § 2-303(1) is attached hereto and incorporated herein by reference as Exhibit C.

7. Zoning Ordinance § 3-C03 lists the uses allowed only by special permit in the R-C District. Pursuant to Zoning Ordinance § 3-C03(1)(A), churches, chapels, temples, synagogues, and other places of worship in the R-C District are Group 3, Institutional Uses, that require special permit approval from the Fairfax County Board of Zoning Appeals ("the BZA").

A copy of Zoning Ordinance § 3-C03 in its entirety is attached hereto and incorporated herein by reference as Exhibit D.

8. On June 21, 1989, the VBA filed an application for a special permit (SP 89-S-032) with the BZA to allow the establishment of a church or place of worship on the subject property. A copy of Special Permit Application No. SP 89-S-032, without attachments, is attached hereto and incorporated herein by reference as Exhibit E.

9. By letter dated February 6, 1991, Special Permit Application No. SP 89-S-032 was withdrawn. A copy of the letter from William C. Thomas, Jr., counsel for the VBA, to the BZA is attached hereto and incorporated herein by reference as Exhibit F.

10. By certified letter dated January 22, 1992, Senior Zoning Inspector Sandra D. MacSorley issued a notice of violation to Tran, as pastor of the VBA, for using the subject property as a place of worship without approval of a Group 3 Special Permit in violation of Zoning Ordinance § 2-303(1). Tran was directed to clear the violation by discontinuing the use of the subject property as a place of worship within 5 days of receipt of the notice and restoring



the detached garage structure to a three-car garage, workshop and storage area. A true and accurate copy of the January 22, 1992, notice of violation is attached hereto and incorporated herein by reference as Exhibit G.

11. Tran received the January 22, 1992, notice of violation on January 27, 1992. A true and accurate copy of the signed domestic return receipt showing delivery to Tran on January 27, 1992, is attached hereto and incorporated by reference as Exhibit H.

12. By certified letter dated February 12, 1992, Senior Zoning Inspector MacSorley issued Tran, as pastor for the VBA, another notice of violation for the continued use of the subject property as a place of worship without approval of a Group 3 Special Permit in violation of Zoning Ordinance § 2-303(1). Tran was again directed to clear the violation by discontinuing the use of the subject property as a place of worship within 5 days of receipt of the notice and restoring the detached garage structure to a three-car garage, workshop and storage area within 30 days of receipt of the notice. A true and accurate copy of the February 12, 1992, notice of violation is attached hereto and incorporated herein by reference as Exhibit I.

13. Tran received the February 12, 1992, notice of violation on February 22, 1992. A true and accurate copy of the signed domestic return receipt showing delivery to Tran on February 22, 1992, is attached hereto and incorporated by reference as Exhibit J.

14. By letter dated March 20, 1992, from Jerry K. Emrich, counsel for the VBA, Senior Zoning Inspector MacSorley was notified that no further religious services would be performed on the subject property without first obtaining approval of a special permit. A true

and accurate copy of the March 20, 1992, letter is attached hereto and incorporated herein by reference as Exhibit K.

15. By certified letter dated February 8, 1993, Senior Zoning Inspector Sandra D. Singer issued Tran, as pastor for the VBA, yet another notice of violation for again using the subject property as a place of worship without approval of a Group 3 Special Permit in violation of Zoning Ordinance § 2-303(1). Tran was directed to clear the violation by discontinuing the use of the subject property as a place of worship within 5 days of receipt of the notice. A true and accurate copy of the February 8, 1993, notice of violation is attached hereto and incorporated herein by reference as Exhibit L.

16. Tran received the February 8, 1993, notice of violation on February 20, 1993. A true and accurate copy of the signed domestic return receipt showing delivery to Tran on February 20, 1993, is attached hereto and incorporated by reference as Exhibit M.

17. Subsequent to receipt of the February 8, 1993, notice of violation, the use of the subject property as a place of worship was apparently discontinued.

18. On November 4, 1994, the VBA filed an application for a special permit (SP 95-Y-021) with the BZA to allow the establishment of a place of worship on the subject property. A copy of Special Permit Application No. SP 95-Y-021, without attachments, is attached hereto and incorporated herein by reference as Exhibit N.

19. By letter dated August 29, 1995, Special Permit Application No. SP 95-Y-021 was withdrawn. A copy of the letter from Lynne J. Strobel, counsel for the VBA, to Donald F. Heine, Zoning Evaluation Division, is attached hereto and incorporated herein by reference as Exhibit O.

20. By certified letter dated March 9, 1999, Senior Zoning Inspector Leslie D. Setliff issued Tran, as the owner of the subject property, and Kim L. Phan ("Phan"), the former co-owner of the subject property, a fourth notice of violation for operating a place of worship on the subject property without approval of a Group 3 Special Permit in violation of Zoning Ordinance § 2-303(1). Tran and Phan were directed to clear the violation within 30 days of receipt of the notice by: (1) ceasing the use of the subject property as a place of worship; or (2) applying for, diligently pursuing, and ultimately obtaining approval of a Group 3 Special Permit from the BZA to allow the subject property to be used as a place of worship. A true and accurate copy of the March 9, 1999, notice of violation is attached hereto and incorporated herein by reference as Exhibit P.

21. Tran and Phan received the March 9, 1999, notice of violation on March 12, 1999. A true and accurate copy of the signed domestic return receipt showing delivery on March 12, 1999, is attached hereto and incorporated herein by reference as Exhibit Q.

22. Va. Code Ann. § 15.2-2311 (Michie 1997) and Fairfax County Zoning Ordinance §§ 18-301 and -303 provide, *inter alia*, that any person aggrieved by any decision of the Zoning Administrator or by any order, requirement, decision or determination of any other administrative officer made in the administration and enforcement of the Zoning Ordinance may appeal such decision, order, requirement or determination to the Fairfax County Board of Zoning Appeals ("BZA") within 30 days of the decision, order, requirement or determination. Copies of the above-referenced sections are attached hereto and incorporated herein by reference as Exhibits R-1 and R-2, respectively.

23. Tran never appealed the January 22, 1992, February 12, 1992, and March 8, 1993, notices of violation to the BZA.

24. On April 8, 1999, Tran and Phan filed an Application for Appeal (Application No. A-1999-SU-014) ("the Application") with the BZA challenging the decisions and orders contained in the March 9, 1999, notice of violation. A copy of the Application, without attachments, is attached hereto and incorporated herein by reference as Exhibit S.

25. On July 6, 1999, the BZA upheld the Zoning Administrator's determination regarding the Application. A copy of the July 14, 1999, letter from Deborah A. Hedrick, Deputy Clerk to the BZA, to Arthur T. K. Norris, agent for Tran and Kim L. Phan, is attached hereto and incorporated herein by reference as Exhibit T.

26. Va. Code Ann. § 15.2-2314 (Michie 1997) provides that

[a]ny person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may present to the circuit court for the county or city a petition specifying the grounds on which aggrieved within thirty days after the filing of the decision in the office of the [BZA].

27. Tran never appealed the July 6, 1999, decision of the BZA upholding the Zoning Administrator to the Fairfax County Circuit Court, and the time for filing such an appeal has expired.

28. As is more particularly set forth in the affidavit of Senior Zoning Inspector Leslie D. Setliff, which is attached hereto and incorporated herein by reference as Exhibit U, Tran continues to operate and/or allow the operation of a place of worship on the subject

property without approval of a Group 3 Special Permit in violation of Zoning Ordinance § 2-303(1).

29. The Court has jurisdiction to award declaratory judgment in this matter Pursuant to Va. Code Ann. § 8.01-184 (Michie 1992), and further has jurisdiction to award injunctive relief in this matter pursuant to Va. Code Ann. §§ 8.01-620 (Michie Supp. 1999), 15.2-2286(4)(d) (Michie Supp. 1999) and 15.2-2208 (Michie 1997).

WHEREFORE, the Zoning Administrator, by counsel, respectfully requests that this Honorable Court award her the following relief:

a. Declare the use of the subject property as a place of worship without approval of a Group 3 Special Permit to be in violation of Zoning Ordinance § 2-303(1); and

b. Enter a mandatory injunction requiring Tran to cease the operation of the place of worship on the subject property within 30 days of the entry of a Final Decree in favor of the Zoning Administrator in this lawsuit; and

c. Enter a prohibitory injunction enjoining Tran, his agents, employees and any successors in interest from using and/or allowing use of the subject property in violation of Zoning Ordinance § 2-303(1); and

d. Order the Clerk of the Fairfax County Circuit Court to record a copy of the Final Decree entered in this lawsuit among the land records of Fairfax County to give notice of the prohibitions and restrictions contained therein to any successors in interest of Tran and to index said Final Decree as follows:

GRANTOR: Thanh Van Tran

GRANTEES: Jane W. Gwinn;  
Fairfax County  
Zoning Administrator

e. Grant the Zoning Administrator such other relief as this Court may deem appropriate.

Respectfully submitted,

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR

By Pamela K. Pelto  
Counsel

DAVID P. BOBZIEN  
COUNTY ATTORNEY

By Pamela K. Pelto  
T. David Stoner (VSB No. 24366)  
Pamela K. Pelto ( VSB No. 34453)  
Assistant County Attorneys  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
(703) 324-2421  
Counsel for Jane W. Gwinn, Fairfax County  
Zoning Administrator



## DEED OF GIFT

THIS DEED OF GIFT WAS PREPARED WITHOUT THE BENEFIT OF A  
TITLE EXAMINATION

THIS DEED OF GIFT, made and entered this 30<sup>th</sup> day of March  
1999, by and between THANH VAN TRAN, unmarried, KIM LIEU PHAN,  
unmarried GRANTORS; and THANH VAN TRAN, unmarried, GRANTEE.

## WITNESSETH

That for and in consideration of the natural love and  
affection Grantors bear the Grantee, the Grantors do hereby  
give, grant and convey in fee simple with General Warranty and  
English Covenants of Title, unto Grantee, in fee simple, the  
following described real property, to-wit:

All that certain lot or parcel of land situate, lying and  
being in Fairfax County, Virginia, and more particularly  
described as follows.

Lots 13 and 14 of the Subdivision of BULL RUN ESTATES, as  
the same appears duly dedicated, platted and recorded in Deed  
Book 1182, at page 261, among the land records of Fairfax County,  
Virginia.

AND BEING, the same property conveyed by virtue of a Deed  
dated October 10, 1997, recorded in Deed Book 10142, at page  
0264, among the aforesaid land records.

This conveyance is made subject to the covenants, conditions,  
restrictions, easements and rights-of-way of record.

TAX EXEMPT PURSUANT TO VIRGINIA CODE SECTION 58.1-811(D)

  
THANH VAN TRAN

  
KIM LIEU PHAN

Total Consideration: \$0 00

Grantee's Address: 7605 Bull Run Drive  
Centreville, Virginia 20121

Tax Map #: 073-1-02-0013

Deed of Gift  
Page 2

EXHIBIT

A

BK10909 0585

State of VIRGINIA

County of FAIRFAX

The foregoing instrument was acknowledged before me this  
31<sup>st</sup> day of March, 1999, by THANH VAN TRAN.

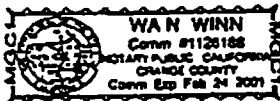
Lustina K DeBell  
Notary Public

My Commission Expires: 04-30-02

STATE OF CALIFORNIA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this  
28th day of APRIL 1999, by KIM LIEU PHAN



[Signature]  
Notary Public WAN N. WINN

My Commission Expires FEB. 24, 2001

A COPY TESTE:  
JOHN T. FREY, CLERK

BY: [Signature]  
Deputy Clerk

MAY -7 99  
RECORDED FAIRFAX CO VA  
TESTE: [Signature]  
CLERK

A COPY TESTE:

at 7605 Bull Run Dr (Parcel map ref: 73-1-22-13)

has been within the R-C Zoning district

from 12-12-98 to the present.

8-23-99

Date

Thomas J. Conry  
Thomas J. Conry, Manager  
Dept. of Information Technology  
GIS & Mapping Services  
Fairfax County, Virginia

Thomas J. Conry

Date: 8-23-99

Thomas J. Conry, Manager  
GIS & Mapping Services, Fairfax County, Virginia

NOTE:  
ZONING CURRENT TO  
8-23-99  
SUBSEQUENT  
CHANGES  
ARE NOT REFLECTED

ZONING SHEET 73-1

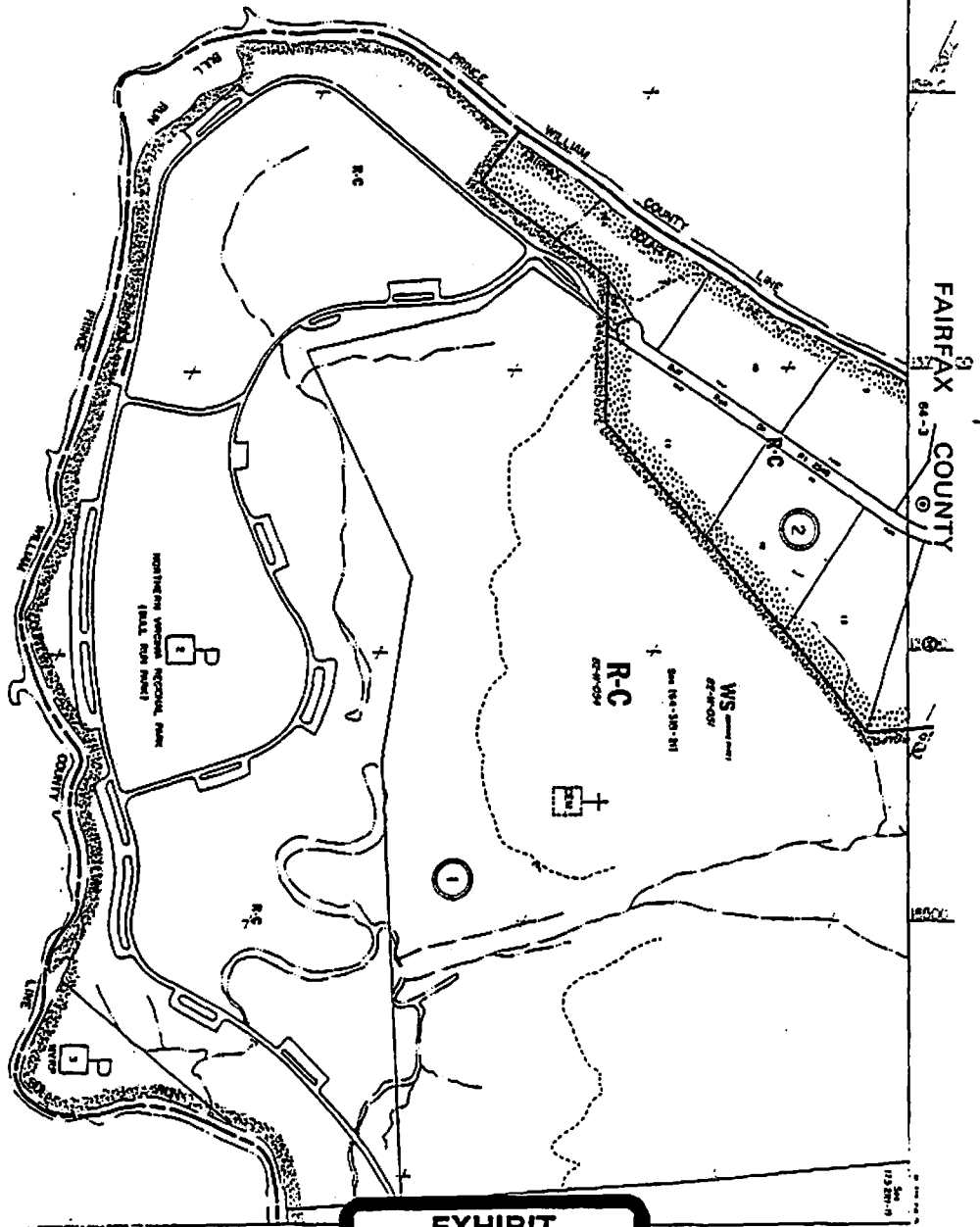
Map / Aerial-photo

1-1-99

Date

1" = 500'

Scale



EXHIBIT

B

-12-

## FAIRFAX COUNTY ZONING ORDINANCE

occupation complies with the provisions of Part 3 of Article 10.

9. No sign shall hereafter be erected, built or displayed and no existing sign shall be moved, remodeled, altered or enlarged unless such sign complies, or will thereafter comply, with the provisions of Article 12.
10. No structure shall hereafter be built or moved, and no structure or land shall hereafter be used or occupied unless the minimum off-street parking and loading spaces required by Article 11 are provided. The off-street parking and loading regulations for any expansion or enlargement of a structure or use already established on the effective date of this Ordinance shall be in accordance with the provisions of Article 11.

2-303

### Special Permit Uses

1. No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the BZA in accordance with the provisions of Article 8.
2. No use existing prior to the effective date of this Ordinance which is allowed within a particular zoning district only by special permit by the provisions of this Ordinance, shall be replaced or enlarged except in accordance with the provisions of Sect. 15-101.
3. No special permit shall be required for a use that is listed as a permitted use in a district, notwithstanding that such use may also be included in a use group available by special permit.

2-304

### Special Exception Uses

1. No use of a structure or land that is designated as a special exception use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special exception use in such district, unless a special exception has been secured from the Board in accordance with the provisions of Article 9.
2. No use existing prior to the effective date of this Ordinance which is allowed within a particular zoning district only by special exception by the provisions of this Ordinance, shall be replaced or enlarged except in accordance with the provisions of Sect. 15-101.
3. No special exception shall be required for a use that is listed as a permitted use in a district, notwithstanding that such use may also be included in a use category available by special exception.

2-305

### Use Limitations

1. No permitted, special permit or special exception use hereafter established, altered, modified or enlarged pursuant to this Ordinance shall be operated so as to conflict with the use limitations for the zoning district in which such use is located.

EXHIBIT

C

## RESIDENTIAL DISTRICT REGULATIONS

### PART C 3-C00 R-C RESIDENTIAL-CONSERVATION DISTRICT

#### 3-C01 Purpose and Intent

The R-C District is established to protect water courses, stream valleys, marshes, forest cover in watersheds, aquifer recharge areas, rare ecological areas, and areas of natural scenic vistas; to minimize impervious surface and to protect the quality of water in public water supply watersheds; to promote open, rural areas for the growing of crops, pasturage, horticulture, dairying, floriculture, the raising of poultry and livestock, and for low density residential uses; and otherwise to implement the stated purpose and intent of this Ordinance.

#### 3-C02 Permitted Uses

1. Accessory uses and home occupations as permitted by Article 10.
2. Agriculture, as defined in Article 20.
3. Dwellings, single family detached.
4. Privately-owned dwellings for seasonal occupancy, not designed or used for permanent occupancy, such as summer homes and cottages, hunting and fishing lodges and cabins.
5. Public uses.

#### 3-C03 Special Permit Uses

For specific Group uses, regulations and standards, refer to Article 8.

1. Group 3 - Institutional Uses, limited to:
  - A. Churches, chapels, temples, synagogues, and other such places of worship
  - B. Churches, chapels, temples, synagogues and other such places of worship with a nursery school or private school of general education which has an enrollment of 100 or more students daily
  - C. Home child care facilities and nursery schools which have an enrollment of less than 100 students daily
  - D. Private schools of general education which have an enrollment of less than 100 students daily
2. Group 4 - Community Uses.
3. Group 6 - Outdoor Recreation Uses, limited to:
  - A. Camp or recreation grounds

## FAIRFAX COUNTY ZONING ORDINANCE

- B. Golf courses, commercial
  - C. Golf driving ranges
  - D. Kennels, animal shelters
  - E. Riding and boarding stables
  - F. Skeet and trapshooting ranges
  - G. Veterinary hospitals, but only ancillary to kennels, riding or boarding stables
4. Group 7 - Older Structures, limited to:
- A. Restaurants
  - B. Summer theatres
5. Group 8 - Temporary Uses, limited to:
- A. Carnival, circus, festival, fair, horse show, dog show, steeplechase, music festival, turkey shoot, sale of Christmas trees or other seasonal commodities and other similar activities
  - B. Construction material yards accessory to a construction project
  - C. Contractors' offices and equipment sheds to include trailers accessory and adjacent to an active construction project
  - D. Subdivision and apartment sales and rental offices
  - E. Temporary dwellings or mobile homes
  - F. Temporary farmers' markets
  - G. Temporary mobile and land based telecommunication testing facility
6. Group 9 - Uses Requiring Special Regulation, limited to:
- A. Home professional offices
  - B. Veterinary hospitals
  - C. Modification to minimum yard requirements
  - D. Accessory dwelling units





Date Received \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

ATTACHMENT 4

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

APPLICATION FOR SPECIAL EXCEPTION, SPECIAL PERMIT, VARIANCE OR APPEAL  
AS PROVIDED IN THE FAIRFAX COUNTY ZONING ORDINANCE

Application No. SP 89-5-032 \_\_\_\_\_ / \_\_\_\_\_ / 19\_\_\_\_  
Assigned by Staff \_\_\_\_\_ Month Day Year

The undersigned hereby applies for the special exception, special permit, variance, or appeal as indicated below, for property owned and described as follows:

Name of Applicant: VIETNAMESE BUDDHIST ASSOCIATION  
Name of Property Owner: same as above  
Postal Address of Property: 7605 Bull Run Dr., Centreville, Va. 22020  
Name of Subdivision: Bull Run Estates  
County Property Identification Map Reference: 0731 (62) 0013  
Lot Area: 5.099 AC District: Springfield Zoning: R-C

The undersigned has the power to authorize and does hereby authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

3-2  
**NATURE OF THIS APPLICATION**

(Applicant is to complete only one of the following boxes. If a Variance is needed in conjunction with a Special Exception or a Special Permit, a separate application for Variance must be filed.)

<b>SPECIAL EXCEPTION*</b> Section _____ Proposed Use: _____	-Application to Board of Supervisors under provisions of _____ of the Zoning Ordinance.
<b>SPECIAL PERMIT*</b> Section <u>2-2-2</u> Proposed Use: <u>Church or place of worship</u>	-Application to Board of Zoning Appeals under provisions of _____ of the Zoning Ordinance.
<b>VARIANCE*</b> Section _____ Request: _____	-Application to Board of Zoning Appeals under provisions of _____ of the Zoning Ordinance.
<b>APPEAL</b> Section _____ Appeal: _____	-Application to Board of Zoning Appeals under provisions of _____ of the Zoning Ordinance.

\*See requirement for affidavit on back.

Le Chi Thao  
Signature of Applicant or Agent  
Le Chi Thao

Address 7605 Bull Run Dr., Centreville, Va 22020

241-2284 or 968-8460

Telephone Number

BELOW THIS LINE FOR STAFF USE

Application, complete with all required submissions, received 4/31/89

Filing Fee Paid: \$ 20.00 Receiving Staff Member: 4/24

EXHIBIT

E

LAW OFFICES  
**FAGELSON, COATES & DAVENPORT**

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS AND A PARTNERSHIP

401 WYTHE STREET

ALEXANDRIA, VIRGINIA 22314

(703) 848-8100

FAX (703) 848-0688

DAVID M. DAVENPORT  
THOMAS F. COATES III  
JAMES H. MALONEY  
JOHN C. MOORE  
FREDERICK F. REPETTI  
JOHN W. MOORE III  
J. THOMAS McGRATH  
ROBERT A. PAYNE  
RICHARD F. KENNEDY  
PATRICK M. P. TAYLOR  
G. RONALD GRUBBS, JR.  
ROBERT I. DEGENHARTEN  
JOHN I. FAGELSON  
WILLIAM H. SNEDEMAN  
MALCOLM P. McCONNELL III  
MARK T. DALY, JR.  
A. RICHARD THORNTON  
SAMUEL ILANOWITZ, JR.  
DEVINA K. WINTERFELD

GRACE SHAYER  
ROBERT M. NASH, JR.  
JOAN E. SPELBERGER  
STEPHEN M. WATSON  
WILLIAM C. THOMAS, JR.  
LAWRENCE H. SCHONBERGER  
JAMES M. MAREFIELD  
SENIOR COUNSEL  
BARRY S. COHEN  
BERNARD H. FAGELSON  
ERNEST SCHONBERGER

COUNSEL

C. LAWRENCE EVANS, JR.  
ROBERT J. DAVENPORT  
JOHN R. FARNWORTH

\*ALSO ADMITTED IN  
\*ALSO ADMITTED IN  
\*ADMITTED IN VIRGINIA ONLY

February 6, 1991

MCLEAN  
1380 OLD CHAIN BRIDGE ROAD  
THIRD FLOOR  
MCLEAN, VIRGINIA 22101  
(703) 893-9800  
FAX (703) 448-0800

RICHMOND  
5908 MARREL ROAD  
RICHMOND, VIRGINIA 23230  
(804) 285-7000  
FAX (804) 285-2850

RECEIVED  
OFFICE OF COMPREHENSIVE PLANNING

FEB 8 1991

BOARD OF ZONING APPEALS  
SUPPORT BRANCH

The Honorable Chairman and Members  
of the Board of Zoning Appeals  
County of Fairfax  
4050 Legato Road, 7th Floor  
Fairfax, Virginia 22033

Attention: Ms. Bernadette Battard, OCP/ZED

Re: Special Permit Application SP 89-S-032  
Vietnamese Buddhist Association

Dear Mr. Chairman and BZA Members:

On behalf of the Applicant in the captioned matter, we do  
hereby withdraw this Special Permit request.

Thank you for your kind consideration of this request.  
Please feel free to call with any questions or concerns.

Very truly yours,

FAGELSON, COATES AND DAVENPORT  
Attorneys for Applicant

*William C. Thomas, Jr.*  
William C. (Tom) Thomas, Jr.

WCT/lh

cc: Le Chi Thao, Esquire  
Peter Murphy, Planning Commissioner, Springfield District  
Ms. Elaine McConnell, Supervisor, Springfield District

EXHIBIT

F

MacSweeney



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

OFFICE OF COMPREHENSIVE PLANNING  
ZONING ADMINISTRATION DIVISION  
ZONING ENFORCEMENT BRANCH  
4050 Lagato Road, Suite 801  
Fairfax, Virginia 22033  
246-1300



January 22, 1992

Certified Mail  
Return Receipt Requested  
Receipt No. P 281 725 414

Tranh Van Tran, Pastor  
Vietnamese Buddhist Association  
7605 Bull Run Drive  
Centreville, Virginia 22020

Re: Vietnamese Buddhist Association  
7605 Bull Run Drive  
Bull Run Estates, Lot 13  
Tax Map Ref: 73-1 ((2)) 13  
Zoning District: R-C

Dear Pastor Tran:

A zoning inspection was conducted on Sunday, January 12, 1992 at 11:35 a.m. This inspection revealed the Vietnamese Buddhist Association is conducting, as a place of worship, services on the above-referenced property. A search of the Zoning Administration Division records reveals that no special permit for this use has been granted.

Based on the above information, you are in violation of Par. 1 of Sect. 2-303 of the Fairfax County Zoning Ordinance, which states:

No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the BZA in accordance with the provisions of Article 8.



Pastor Tran  
January 22, 1992  
Page Two

This letter will serve as official notice to clear the  
aforementioned violation. Compliance can be accomplished by:

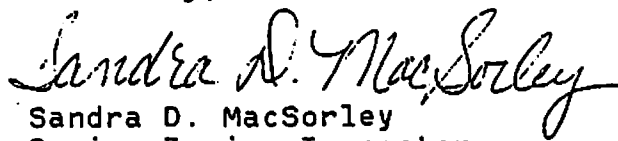
- o Discontinuing the use of the property as a place of  
worship within five (5) days of receipt of this  
notice; and,
- o Restoring the detached garage structure to a three (3)  
car garage, workshop and storage area as reflected on  
the approved plans of Building Permit #8927780830.

Further, no utilization of the property as a place of  
worship is to occur until a Group 3 Special Permit to permit a  
place of worship is obtained from the Board of Zoning Appeal  
(BZA) and all conditions of any such special permit have been  
satisfied.

Failure to comply with this notice may result in the  
initiation of appropriate legal action to gain compliance with  
the Zoning Ordinance.

Should you have any questions or the need for elaboration,  
please do not hesitate to contact me at 246-1388.

Sincerely,

  
Sandra D. MacSorley  
Senior Zoning Inspector

SDM/gds

cc: Lt. Ken Thompson, Inspections Section  
Fire Prevention Division, Fire & Rescue Department  
Steve Gibson, Branch Chief  
Code Enforcement Branch, DEM  
Melinda M. Artman, Deputy Zoning Administrator  
for Permit, Plan Review Branch  
Dennis A. Hill, Sanitarian Supervisor  
Department of Health

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.  
 Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:

Trank Van Tran, Pastor  
 Vietnamese Buddhist Assoc.  
 7605 Bull Run Drive  
 Centreville, VA 22020

4. Article Number

P 281725414

Type of Service:

☐ Registered ☐ Insured  
☒ Certified ☐ COD  
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature Addressee

*[Signature]*

Signature Agent

*[Signature]*

7. Date of Delivery

1-27-92

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989

U.S.G.P.O. 1989-230-815

DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE  
 OFFICIAL BUSINESS

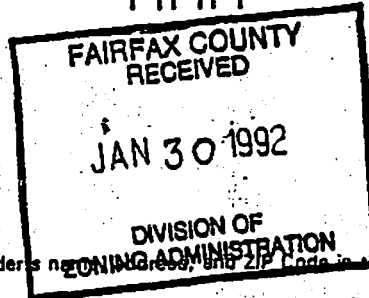
SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.  
 • Complete items 1, 2, 3, and 4 on the reverse.  
 • Attach to front of article if space permits, otherwise affix to back of article.  
 • Endorse article "Return Receipt Requested" adjacent to number.

RETURN TO



Print Sender's name, address, and ZIP Code in the space below.



PENALTY FOR PRIVATE USE, \$300

OFFICE OF COMPREHENSIVE PLANNING  
 ZONING ENFORCEMENT BRANCH  
 4050 Legato Road, Suite 801  
 Fairfax, Virginia 22033

EXHIBIT

H



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

OFFICE OF COMPREHENSIVE PLANNING  
ZONING ADMINISTRATION DIVISION  
ZONING ENFORCEMENT BRANCH  
4050 Legato Road, Suite 801  
Fairfax, Virginia 22033  
246-1300



February 12, 1992

Certified Mail  
Return Receipt Requested  
Receipt No. P 730 809 345

Tranh Van Tran, Pastor  
Vietnamese Buddhist Association  
7605 Bull Run Drive  
Centreville, Virginia 22020

Re: Vietnamese Buddhist Association  
7605 Bull Run Drive  
Bull Run Estates, Lot 13  
Tax Map Ref: 73-1 ((2)) 13  
Zoning District: R-C

Dear Pastor Tran:

As a follow-up to the notice of violation issued to you on January 22, 1992, a reinspection of the property was conducted on February 2, 1992, at 11:25 a.m. This inspection revealed the Vietnamese Buddhist Association continues the use of the property as a place of worship. A search of the Zoning Administration Division records reveal that no special permit for this use has been granted.

Based on the above information, you continue to be in violation of Par. 1 of Sect. 2-303 of the Fairfax County Zoning Ordinance, which states:

No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the BZA in accordance with the provisions of Article 8.

EXHIBIT

I



Pastor Tran  
February 12, 1992  
Page 2

This letter will serve as final notice to you to clear the  
aforementioned violation. Compliance can be accomplished by:

- o Discontinuing the use of the property as a place of  
worship within five (5) days of receipt of this  
notice; and,
- o Restoring the detached garage structure to a three (3)  
car garage, workshop and storage area as reflected on  
the approved plans of Building Permit #89277B0830,  
within thirty (30) days of receipt of this notice.

Further, no utilization of the property as a place of  
worship is to occur until a Group 3 Special Permit to permit a  
place of worship is obtained from the Board of Zoning Appeals  
(BZA) and all conditions of any such special permit have been  
satisfied.

Failure to comply with this notice may result in the  
initiation of appropriate legal action to gain compliance with  
the Zoning Ordinance.

Should you have any questions or the need for elaboration,  
please do not hesitate to contact me at 246-1388.

Sincerely,

  
Sandra D. MacSorley  
Senior Zoning Inspector

SDM/skh  
238

cc: Lt. Ken Thompson, Inspections Section  
Fire Prevention Division, Fire & Rescue Department  
Steve Gibson, Branch Chief  
Code Enforcement Branch, DEM  
Melinda M. Artman, Deputy Zoning Administrator  
for Permit, Plan Review Branch  
Pam Pruiet, Sanitarian  
Department of Health

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to: *Tranh Van Tran, Pastor  
Vietnamese Buddhist Assoc  
7605 Bull Run Drive  
Centre Hill, VA 22020*

4. Article Number: *P-230809345*

Type of Service:  
☐ Registered ☐ Insured  
☒ Certified ☐ COD  
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee: *X [Signature]*

6. Signature - Agent: *X*

7. Date of Delivery: *4/22/92*

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989

DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE  
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

- Print your name, address and ZIP Code in the space below.
- Complete items 1, 2, 3, and 4 on the reverse.
  - Attach to front of article if space permits, otherwise affix to back of article.
  - Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE USE, \$300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

**FAFAX COUNTY RECEIVED**

**FEB 24 1992**

**DIVISION OF ZONING ADMINISTRATION**

**OFFICE OF COMPREHENSIVE PLANNING  
ZONING ENFORCEMENT BRANCH**  
4050 Legato Road, Suite 801  
Fairfax, Virginia 22033

**EXHIBIT**

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

COURTHOUSE PLAZA

THIRTEENTH FLOOR

2200 CLARENDON BOULEVARD

ARLINGTON, VIRGINIA 22201

(703) 528-4700

FACSIMILE (703) 525-3197

MARTIN D. WALSH  
THOMAS J. COLUCCI  
PETER K. STACKHOUSE  
JERRY K. EMRICH  
MICHAEL D. LUBELEY  
CHARLES L. SHUMATE  
KEITH C. MARTIN  
NAN E. TERPAK  
WILLIAM A. FOGARTY  
DAVID J. BOMGARDNER  
LYNNE J. STROBEL  
LINDA F. SMIRCINA  
VIRGINIA M. SULLIVAN

OF COUNSEL  
NICHOLAS MALINCHAK  
JULIA T. CANNON

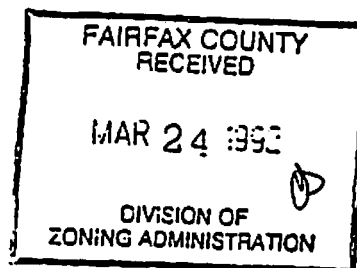
PRINCE WILLIAM OFFICE  
VILLAGE SQUARE  
13663 OFFICE PLACE, SUITE 201  
WOODBRIIDGE, VIRGINIA 22192  
(703) 530-4664  
METRO 590-4647  
FACSIMILE (703) 590-2412

LOUDOUN OFFICE  
WAVERLY PARK  
604 SOUTH KING STREET, SUITE 200  
LEESBURG, VIRGINIA 22075  
(703) 777-5977  
METRO 478-1340  
FACSIMILE (703) 478-1348

March 20, 1992

Sandra B. MacSorley  
Zoning Administration Division  
Zoning Enforcement Branch  
4050 Legato Road, Suite 801  
Fairfax, Virginia 22033

Re: Vietnamese Buddhists Association  
7605 Bull Run Drive  
Bull Run Estates, Lot 13  
Tax Map Reference: 73-1-((2))-13  
Zoning District: R-C



Dear Ms. MacSorley:

As we discussed, I have been retained by the Vietnamese Buddhists Association to further pursue the possibility of a special permit application for the above-referenced property. I have received a copy of your letter dated February 12, 1992, and have discussed it with my client.

I have been informed that there are no longer any formal Sunday services at the above-referenced property. The property is not open to the public and a schedule of services is no longer published. The property continues to be the residence of a Buddhist priest. The Buddhist culture requires that Buddhists pay their respects to the priest in a private visit of only one or two individuals. The visit is not a religious service but a sign of respect that may include consultation with the priest and a prayer session that typically lasts about 20 minutes. As these visits to the priest are a personal, private meeting occurring at random, I do not believe that such a visit constitutes a religious service. All visits are to the priest's home and no services are being offered in the detached garage structure. I have informed my client that the improvements to the detached garage must be in compliance with Building Permit #89277B0830. Mr. Thao is presently investigating this issue.

I am presently working with Mr. Le Chi Thao and Pastor Tranh Van Tran to determine whether it is feasible to pursue a special permit application for the above-referenced

EXHIBIT

K

Sandra B. MacSorley

March 20, 1992

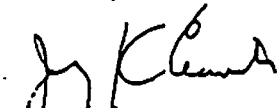
Page 2

property. My client understands that no further religious services may be performed at the property without first obtaining the approval of a special use permit.

Should you have any questions regarding the above or require additional information, please do not hesitate to give me a call.

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C.

Sincerely,



Jerry K. Emrich

JKE:ms

cc: Le Chi Thao  
Martin D. Walsh

ljs-12\ltr\macsorley.1



# FAIRFAX COUNTY

OFFICE OF COMPREHENSIVE PLANNING  
ZONING ADMINISTRATION DIVISION  
Zoning Enforcement Branch  
12055 Government Center Parkway, Suite 800  
Fairfax, Virginia 22035-5508

V I R G I N I A

(703) 324-1300

Fax (703) 324-3924

February 8, 1993

Tranh Van Tran, Pastor  
Vietnamese Buddhist Association  
7605 Bull Run Drive  
Centreville, Va. 22020

Certified Mail  
Return Receipt Requested  
Receipt # P 817 618 657

Re: Vietnamese Buddhist Association  
7605 Bull Run Drive  
Bull Run Estates, Lot 13  
Tax Map Ref: 73-1 ((2)) 13  
Zoning District: R-C

Dear Pastor Tran:

On February 12, 1992, a final notice of violation was issued to you for continuing the use of the above-referenced property as a place of worship in violation of Par. 1 of Sect. 2-305 of the Fairfax County Zoning Ordinance. Further, at that time you were notified to discontinue the use of the property as a place of worship. Subsequent reinspections had revealed that you had complied with that notice.

However, zoning inspections conducted on January 24, 1993, at 10:55 a.m., 11:30 a.m., and 12:10 p.m., revealed that the Vietnamese Buddhist Association has recommenced the use of the property as a place of worship absent an approved special permit.

Based on the above information, you are once again in violation of Par. 1 of Sect. 2-303 of the Fairfax County Zoning Ordinance, which states:

No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the BZA in accordance with the provisions of Article 8.

EXHIBIT

Pastor Tran  
February 8, 1993  
Page 2

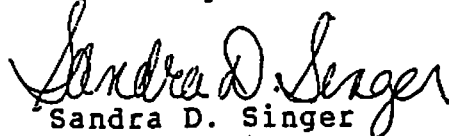
This letter will serve as final notice to you to clear the aforementioned violation. Compliance can be accomplished by discontinuing the use of the property as a place of worship within five (5) days of receipt of this notice.

Further no utilization of the property as a place of worship is to occur until a Group 3 Special Permit to permit a place of worship is obtained from the Board of Zoning Appeals (BZA) and all conditions of any such special permit have been satisfied.

Reinspections of the property will be conducted to ascertain compliance with this notice. If compliance is not obtained and maintained, this office will initiate appropriate legal action to gain compliance with the Zoning Ordinance.

Should you have any questions or the need for elaboration, please do not hesitate to call me at 324-1388.

Sincerely,

  
Sandra D. Singer  
Senior Zoning Inspector

SDS/gds *CFK*  
93-0096/347



**S. Singer**

**SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

<p>3. Article Addressed to:</p> <p><b>Tranh Van Tran, Pastor</b>  <b>Vietnamese Buddhist Association</b>  <b>7605 Bull Run Drive</b>  <b>Centreville, VA 22020</b></p>	<p>4. Article Number</p> <p><b>P 817 618 657</b></p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered</p> <p><input checked="" type="checkbox"/> Certified</p> <p><input type="checkbox"/> Express Mail</p> <p>Always obtain signature of addressee or agent and <b>DATE DELIVERED</b></p>
<p>5. Signature - Addressee</p> <p>X <i>Tranh Van Tran</i></p>	<p>8. Addressee's Address (Only if requested and fee paid)</p>
<p>6. Signature - Agent</p> <p>X</p>	
<p>7. Date of Delivery</p> <p><b>2-20-93</b></p>	

PS Form 3811, Apr. 1989

U.S.G.P.O. 1989-238-815

DOMESTIC RETURN RECEIPT

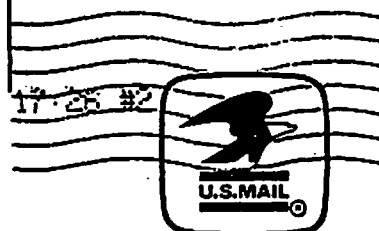
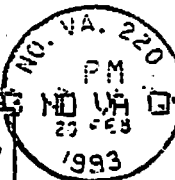
UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

**SENDER INSTRUCTIONS**

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE USE, \$300

RECEIVED  
FAIRFAX COUNTY

Print Sender's name, address, and ZIP Code in the space below.

FEB 23 1993

DIVISION OF  
ZONING ADMINISTRATION

Office of Comprehensive Planning  
 Zoning Enforcement Branch  
 12055 Government Center Parkway  
 Fairfax, Virginia 22035-5508

EXHIBIT



ATTACHMENT 10

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR SPECIAL PERMITRECEIVED  
OFFICE OF COMPREHENSIVE PLANNING  
NOV 4 1994  
ZONING EVALUATION DIVISION  
Group 3  
USE 2

APPLICATION NO.

5P95-4-021

Assigned by Staff

ZONING ORDINANCE SECTION UNDER WHICH APPLICATION IS FILED 3-C03 and 8-301 et. seq.

PROPOSED USE: Place of worship.

NAME OF APPLICANT(s): Vietnamese Buddhist Association

POSTAL ADDRESS OF PROPERTY: 7605 Bull Run Drive

Centreville, VA 22020

MAP DESCRIPTION:

73-1 (2))

13

Map No.

Double Circle No.

Single Circle No.

Parcel(s)/Lot(s) No.

SUBDIVISION NAME: Bull Run Estates

TOTAL AREA (AC. OR SQ.FT.): Approximately 5.0992 acres

PRESENT ZONING: R-C

W S

SUPERVISOR DISTRICT: Sully

The name(s) and addresses of owner(s) of record to shall provided on the affidavit form attached and made part of this application.

The undersigned has the power to authorize and does hereby authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

Lynne J. Strobel, Agent - Walsh, Colucci, Stackhouse, Emrich &amp; Lubeley, P.C.

Type of Print Name of Applicant or Agent

Signature of Applicant or Agent

2200 Clarendon Blvd., 13th Fl., Arlington, VA 22201

Address

Telephone No.

Home

528-4700

Work

Please provide name and telephone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Date application received:

Application Fee Paid: \$

4135.00

Date application accepted:

4-3-95 V. Ruffner

Form SP (10/89)

EXHIBIT

N

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

COURTHOUSE PLAZA

THIRTEENTH FLOOR

2200 CLARENDON BOULEVARD

ARLINGTON, VIRGINIA 22201-3359

(703) 528-4700

FACSIMILE (703) 525-3197

August 29, 1995

MARTIN D. WALSH  
THOMAS J. COLUCCI  
PETER X. STACKHOUSE  
JERRY K. EMRICH  
MICHAEL D. LUBELEY  
KEITH C. MARTIN  
NAN E. TERPAK  
WILLIAM A. FOGARTY  
DAVID J. BOMGARDNER  
LYNNE J. STROBEL  
JOHN E. RINALDI  
SEAN P. McMULLEN  
H. MARK GOETZMAN

OF COUNSEL  
NICHOLAS MALINCHAK

PRINCE WILLIAM OFFICE

VILLAGE SQUARE

13663 OFFICE PLACE, SUITE 201

WCCOBRIDGE, VIRGINIA 22192-4216

(703) 880-4684

METRO (703) 890-4647

FACSIMILE (703) 890-2412

LOUDOUN OFFICE

COUNTRYSIDE PROFESSIONAL CENTER

2 PIGEON HILL DRIVE, SUITE 340

STERLING, VIRGINIA 20165

(703) 444-6919

FACSIMILE (703) 444-0985

BY FACSIMILE and U.S. MAIL

Mr. Donald F. Heine  
Zoning Evaluation Division  
Office of Comprehensive Planning  
12055 Government Center Pkwy.  
Suite 800  
Fairfax, Virginia 22035-5509

Re: SP 95-Y-021  
Applicant: Vietnamese Buddhist Association

Dear Mr. Heine:

As you are aware, the above-referenced application is presently scheduled for a public hearing before the Board of Zoning Appeals on Tuesday, September 19, 1995. Due to a number of outstanding issues regarding the application, the applicant has chosen to withdraw the application at this time. If solutions can be found to the issues raised in the Fairfax County staff reports, the applicant will consider filing a new application. I would, therefore, request that the above-referenced application be withdrawn without prejudice and removed from the agenda of the Board of Zoning Appeals.

Should you have any questions regarding my request or require additional information, please do not hesitate to give me a call. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C.

*Lynne J. Strobel*  
Lynne J. Strobel

LJS:kd

cc: Le Chi Thao  
Jerry K. Emrich  
Martin D. Walsh

ljs.ltr/heine.2

RECEIVED  
OFFICE OF COMPREHENSIVE  
PLANNING

SEP 01 1995

SPECIAL PERMIT &  
VARIANCE BRANCH



# FAIRFAX COUNTY

*Setliff*  
DEPARTMENT OF PLANNING AND ZONING  
Zoning Administration Division  
Zoning Enforcement Branch  
12055 Government Center Parkway, Suite 825  
Fairfax, Virginia 22035-5508

V I R G I N I A

(703) 324-1300

Fax (703) 324-3924

March 9, 1999

Tranh V. Tran  
Kim L. Phan  
7605 Bull Run Drive  
Centreville, Virginia 20121

Certified Mail  
Return Receipt Requested  
Receipt #: Z 114 477 543

Re: 7605 Bull Run Drive  
Vietnamese Buddhist Association  
Tax Map Ref: 73-1 ((2)) 13  
Zoning District: R-C

Dear Mr. Tran and Ms. Phan:

On June 21, 1989, an application for a special permit (SP 89-S-032) was submitted to the Fairfax County Board of Zoning Appeals (BZA) to allow a place of worship to be operated at the above-referenced property. By letter dated February 6, 1991, this special permit application was subsequently withdrawn. On April 3, 1995, an application for a special permit (SP 95-Y-021) was again submitted to the Fairfax County Board of Zoning Appeals (BZA) to allow a place of worship at the subject property. The written statement and justification submitted with Special Permit 95-Y-021 which outlined the proposed activities for this place of worship are summarized as follows:

- The type of operation will be a place of worship.
- Bible study sessions will be conducted at the residence.
- The estimated number of patrons is approximately 40.
- One priest and two assistant priests will live at the premises.
- All trips to this site will be by private vehicle.
- Additional traffic will occur on weekends for bible study sessions.
- Several times a year, a large number of people will come to the site to celebrate major holy days and Buddha's Birthday.
- The existing buildings on the site will be retained and the residence will be used for service. There will be no pews or chairs placed in the interior space since Buddhist worshippers sit on mats during their periods of meditation.

Prior to the BZA public hearing on this matter, a letter dated August 29, 1995, was submitted requesting withdrawal of Special Permit 95-Y-021.

Zoning inspections conducted on November 2, 1998, at 10:30 a.m., December 13, 1998, at 11:40 a.m., and February 14, 1999, at 10:00 a.m., have revealed that you are actively conducting religious services at the above-referenced property, substantially in the same manner as described in the above-referenced special permit applications.

EXHIBIT

Tranh V. Tran  
Kim L. Phan  
March 9, 1999  
Page 2

As you are aware, the operation of a place of worship in the R-C district is a Group 3 Special Permit use requiring the approval of the Fairfax County Board of Zoning Appeals. Research of our files have revealed there is no approved special permit for a place of worship use on the above-referenced property. Therefore, you are in violation of Par. 1 of Sect. 2-303 of the Fairfax County Zoning Ordinance which states:

No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the BZA in accordance with the provisions of Article 8.

You are hereby directed to clear this violation within thirty (30) days of receipt of this notice. Compliance can be accomplished by:

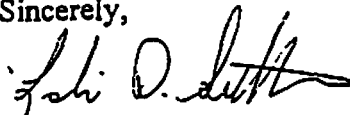
- Ceasing the use of the above-referenced property as a place of worship; or
- Applying for, diligently pursuing, and ultimately obtaining approval of a Group 3 Special Permit from the BZA to allow this property to be used as a temple or place of worship.

You may have the right to appeal this notice of zoning violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, written statement setting forth the decision being appealed, date of the decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information you may wish to submit and a \$210.00 filing fee. Once an appeal application is accepted, it is scheduled for public hearing and decision before the BZA.

Failure to comply with this notice may result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

Should you have any questions regarding this notice or need additional information, please do not hesitate to contact me at (703) 324-1343 or (703) 324-1300.

Sincerely,



Leslie D. Setliff  
Senior Zoning Inspector

LDS/cas

Is your RETURN ADDRESS completed on the reverse side?

<b>SENDER:</b> ■ Complete items 1 and/or 2 for additional services. ■ Complete items 3, 4a, and 4b. ■ Print your name and address on the reverse of this form so that we can return this card to you. ■ Attach this form to the front of the mailpiece, or on the back if space does not permit. ■ Write "Return Receipt Requested" on the mailpiece below the article number. ■ The Return Receipt will show to whom the article was delivered and the date delivered.		SATLIF 48-1782		I also wish to receive the following services (for an extra fee): 1. <input checked="" type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
3. Article Addressed to: TRAN H V. TRAN Kim L. PHAN 7605 BULL RUN DRIVE CENTREVILLE, VA 20121		4a. Article Number Z 114 477 543		4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input checked="" type="checkbox"/> COD	
5. Received By: (Print Name)		7. Date of Delivery 3-12-99		8. Addressee's Address (only if requested and fee is paid)	
6. Signature: (Addressee or Agent) X Thunquy					

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

102595-98-8-0229

Domestic Return Receipt

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

COUNTY OF FAIRFAX  
DEPARTMENT OF PLANNING AND ZONING  
ZONING ADMINISTRATION DIVISION  
ZONING ENFORCEMENT BRANCH  
12055 Government Center Pkwy. Suite 829  
Fairfax, Virginia 22035-5508

EXHIBIT

shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board. No special exceptions or variances shall be authorized except after notice and hearing as required by § 15.2-2204. The zoning administrator shall also transmit a copy of the application to the local planning commission which may send a recommendation to the board or appear as a party at the hearing. Any locality may provide by ordinance that substantially the same application will not be considered by the board within a specified period, not exceeding one year. (Code 1950, §§ 15-828 through 15-830, 15-832, 15-833, 15-850, 15-968.10; 1950, p. 176; 1962, c. 407, § 15.1-496; 1966, c. 256; 1975, cc. 521, 641; 1989, c. 407; 1997, c. 587.)

**Law Review.** — For survey of Virginia law on municipal corporations for the year 1975-1976, see 62 Va. L. Rev. 1455 (1976). For survey on property law in Virginia for 1989, see 23 U. Rich. L. Rev. 773 (1989).

**Failure to apply for special exception.** — Where, when property owner filed an application to rezone his property from A-2 to B-2, he told the commission and the county board of supervisors that he planned to operate an automobile graveyard, and the board rezoned his

property, the board may have intended thereby to grant him a special exception; however, as an automobile graveyard was not then and is not now a permitted use in a B-2 zone, and the owner did not apply for a special exception, the board had no power to grant an exception by implication, and the county government was not bound by the zoning administrator's opinion to the contrary. *Board of Supvs. v. Booher*, 232 Va. 478, 352 S.E.2d 319 (1987) (decided under prior law).

§ 15.2-2311. Appeals to board. — A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article or any ordinance adopted pursuant thereto. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty days in accordance with this section, and that the decision shall be final and unappealable if not appealed within thirty days. The appeal period shall not commence until the statement is given. The appeal shall be taken within thirty days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after sixty days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that

such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The sixty-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors. (1975, c. 521, § 15.1-496.1; 1983, c. 12; 1993, c. 780; 1995, c. 424; 1997, c. 587.)

**Editor's note.** — Acts 1995, c. 424, d. 2, provides: "That the provisions of this act shall only have prospective application."

**Law Review.** — For 1995 survey of property law, see 29 U. Rich. L. Rev. 1131 (1995).

**Reliance on zoning classification creates no vested right.** — Contrary to plaintiff's assertion, the grant of a variance is not a significant official governmental act within the meaning of established precedent. The mere reliance on a particular zoning classification, whether created by ordinance or variance, creates no vested right in a property owner. A variance is simply an authorized deviation from zoning requirements because of special characteristics of a particular property. The grant of a variance cannot confer upon a landowner greater rights than could be afforded by the enactment of a zoning ordinance. *Snow v. Amherst County Bd. of Zoning Appeals*, 248 Va. 404, 448 S.E.2d 606 (1994) (decided under prior law).

A landowner may not acquire a vested property right in a particular land use merely by showing a significant official government act and reliance thereon. Rather, a landowner who seeks to establish a vested property right in a land use classification must identify a significant official government act that is manifested by the issuance of a permit or other approval authorizing the landowner to conduct a use on his property that otherwise would not have been allowed. Additionally, and equally important, the test requires that the landowner establish that he has diligently pursued the use authorized by the government permit or approval and incurred substantial expense in good faith prior to the change in zoning. A landowner who seeks to assert a vested property right must establish all these elements. *Snow v. Amherst County Bd. of Zoning Appeals*, 248 Va. 404, 448 S.E.2d 606 (1994) (decided under prior law).

**The meaning of "aggrieved" is settled.** When used in a statute, the term contemplates a denial of some personal or property right, legal or equitable. *Vulcan Materials Co. v. Board of Supvrs.*, 248 Va. 18, 445 S.E.2d 97 (1994) (decided under prior law).

**Party not aggrieved.** — Until an application was pending asking for specific relief, there could be no denial of any personal or property right resulting from any administrative decision or determination. Without a pending application, the oral comments merely were advisory. Hence, company was not aggrieved within the meaning of the statute, and did not have to appeal to the Board of Zoning Appeals. This means that company did not fail to exhaust administrative remedies and that the trial court erred in eliminating from the litigation the question of the Board's authority to review the new plan. *Vulcan Materials Co. v. Board of Supvrs.*, 248 Va. 18, 445 S.E.2d 97 (1994) (decided under prior law).

**Appeal provision not applicable to zoning administrator.** — The General Assembly did not intend that the zoning administrator, who made a decision to issue a nonresidential use permit to a landowner, would be required to appeal that decision to the Board of Zoning Appeals within 30 days. *Gwinn v. Collier*, 247 Va. 479, 443 S.E.2d 161 (1994) (decided under prior law).

**Burden of proving illegal use of land is on challenger of land's use.** — In a civil action in which a use is challenged as illegal, the challenging party has the initial burden of producing evidence to show the uses permitted in the zoning district in which the land is located and that the use of the land is not a permitted use. Upon this showing, the burden shifts to the landowner to show that his use is a lawful nonconforming use. *Masterson v. Board of Zoning Appeals*, 233 Va. 37, 363 S.E.2d 727 (1987) (decided under prior law).

**§ 15.2-2312. Procedure on appeal.** — The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and make its decision within ninety days of the filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under



## ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES

### PART 3 18-300 APPEALS

#### 18-301 Initiation

Any person aggrieved or any officer, department, board, commission or authority of the County affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance may appeal such decision to the BZA, except an appeal which relates to a proffered condition shall be taken to the Board as provided for in Par. 10 of Sect. 204 above.

#### 18-302 Authorization

The Zoning Administrator shall administer and interpret the Zoning Ordinance. The BZA shall hear and decide all cases of appeal by persons as set forth in Sect. 301 above. The BZA shall also hear and decide applications for interpretation of any district boundary if uncertainty remains after application by the Zoning Administrator of the rules specified in Sect. 2-204.

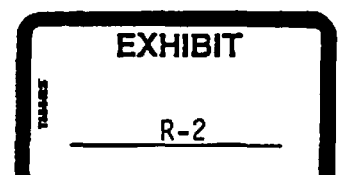
#### 18-303 Time Limit on Filing

Appeals shall be filed within thirty (30) days from the date of the decision appealed by filing a notice of appeal with the Zoning Administrator and the BZA. Such notice shall specify the grounds for such appeal, and shall be filed in accordance with the provisions of Sect. 304 below.

#### 18-304 Submission Requirements

Every application to appeal shall contain all of the following information:

1. Four (4) copies of an application on forms provided by the County, completed and signed by the appellant. Such application shall not require the execution of an affidavit.
2. Four (4) copies of a statement signed by the appellant setting forth the following information:
  - A. The order, requirement, decision or determination which is the subject of the appeal.
  - B. The date upon which the decision was made.
  - C. The appellant's grounds for the appeal and the reasons therefor. If the appellant is a County officer, department, board or bureau, the statement shall specify how the appellant is affected; otherwise, the statement shall specify how the appellant is an aggrieved person.
3. Such other supportive data as the appellant may desire in the record, including plats, plans, drawings, charts or related material.
4. An application fee as provided for in Sect. 106 above.





ATTACHMENT 1

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR APPEALFAIRFAX COUNTY  
RECEIVED

APR 8 1999

DIVISION OF  
ZONING ADMINISTRATIONAPPLICATION NO. 1999-31-014  
(Assigned by Staff)NAME OF APPELLANT: Tranh V. Tran; Kim L. PhanNATURE OF THE APPEAL: This is an appeal to the Board of Zoning Appeals from the  
Department of Planning and Zoning's notice of zoning violation given by letter dated March 9,  
1999, addressed to the appellants at the property address below. See statement and copy of letter  
attached. The appeal seeks to have the notice of violation reversed and withdrawn on the  
grounds set forth in the attached statement.DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS  
SUBJECT TO THE APPEAL March 9, 1999HOW IS THE APPELLANT AN AGGRIEVED PERSON? Mr. Tran is a co-owner of the  
property and the sole resident. Mr. Phan is the co-owner of the property. The decision  
unlawfully restricts the use of property.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 7605 Bull Run Drive, Centreville, VA 20121TAX MAP DESCRIPTION: Tax Map Ref. 73.1 ((7)) 13

The undersigned has or has not (circle one) the authority to allow and does or does not (circle one) authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.  
Arthur T. K. Norris, Le Chi Thao & Associates

Type or Print Name of Appellant or Agent

Arthur T. K. NorrisSignature of Appellant or Agent 2111 Wilson Boulevard, Suite 700, Arlington, VA 22201Address (703) 528-6221; (703) 516-6688Telephone No. Home Work

Please provide name and phone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Subdivision Name: Bull Run Estates, Lot 13Total Area (Acres/Square Feet): 5.04000000Present Zoning: R-CSupervisor District: 5114Date application received: 4/12/99Application Fee Paid: \$ 210.00Date application accepted: 4/12/99



# FAIRFAX COUNTY

## DEPARTMENT OF PLANNING AND ZONING

Zoning Evaluation Division  
Special Permit and Variance Branch  
12055 Government Center Parkway, Suite 801  
Fairfax, Virginia 22035-5510

V I R G I N I A

(703) 324-1280

Fax (703) 324-3924

July 14, 1999

Arthur T. K. Norris,  
Le Chi Thao & Associates  
2111 Wilson Blvd., Ste. 700  
Arlington, Virginia 22201

RE: Appeal Application A 1999-SU-014  
Tranh V. Tran; Kim L. Phan

Dear Mr. Norris:

At its July 6, 1999 meeting, the Board of Zoning Appeals took action to UPHOLD the Zoning Administrator's determination regarding the above-referenced appeal application.

If you should have any further questions, please contact the Zoning Administration Division at 324-1314.

Sincerely,

Deborah A. Hedrick, Deputy Clerk  
Board of Zoning Appeals

cc: Michael R. Frey, Supervisor  
Sully District

William Shoup, Deputy Zoning Administrator  
Department of Planning and Zoning

EXHIBIT

T

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE W. GWINN, FAIRFAX COUNTY :  
ZONING ADMINISTRATOR, :

Complainant, :

v. :

IN CHANCERY NO. \_\_\_\_\_

THANH VAN TRAN, :

Respondent. :

AFFIDAVIT

STATE OF VIRGINIA :  
: to-wit  
COUNTY OF FAIRFAX :

THIS DAY, I, Leslie D. Setliff, personally appeared before the undersigned notary public in the state and county aforesaid and being duly sworn according to law, made oath that:

1. Since July 1990, I have been employed with the Department of Planning and Zoning, and I am currently a Senior Zoning Inspector. My responsibilities include the investigation and enforcement of Fairfax County Zoning Ordinance ("Zoning Ordinance") violations within Fairfax County.

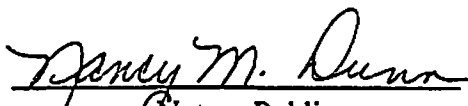
2. During my inspections of property located at 7605 Bull Run Drive, Centreville, Virginia (Tax Map No. 73-1((2)) parcel 13) ("subject property"), on May 5, 1999, June 20, 1999, July 18, 1999, August 15, 1999, and October 3, 1999, I observed that the Respondent continues to operate and/or allow the operation of a place of worship on the

subject property without approval of a Group 3 special permit in violation of Zoning Ordinance § 2-303(1).

3. During the above-referenced inspections, I took photographs of the subject property which are attached hereto as Attachment 1.

  
\_\_\_\_\_  
Leslie D. Setliff

Subscribed and sworn to before me, a Notary Public in the County and State aforesaid, this 4<sup>th</sup> day of October 1999.

  
\_\_\_\_\_  
Notary Public

My commission expires: August 31 2000

PHOTOGRAPHS TAKEN BY LESLIE SETLIFF OF 7605 BULL RUN DR. ON 5/2/99, 6/20/99, 7/18/99, 8/15/99,  
AND 10/3/99



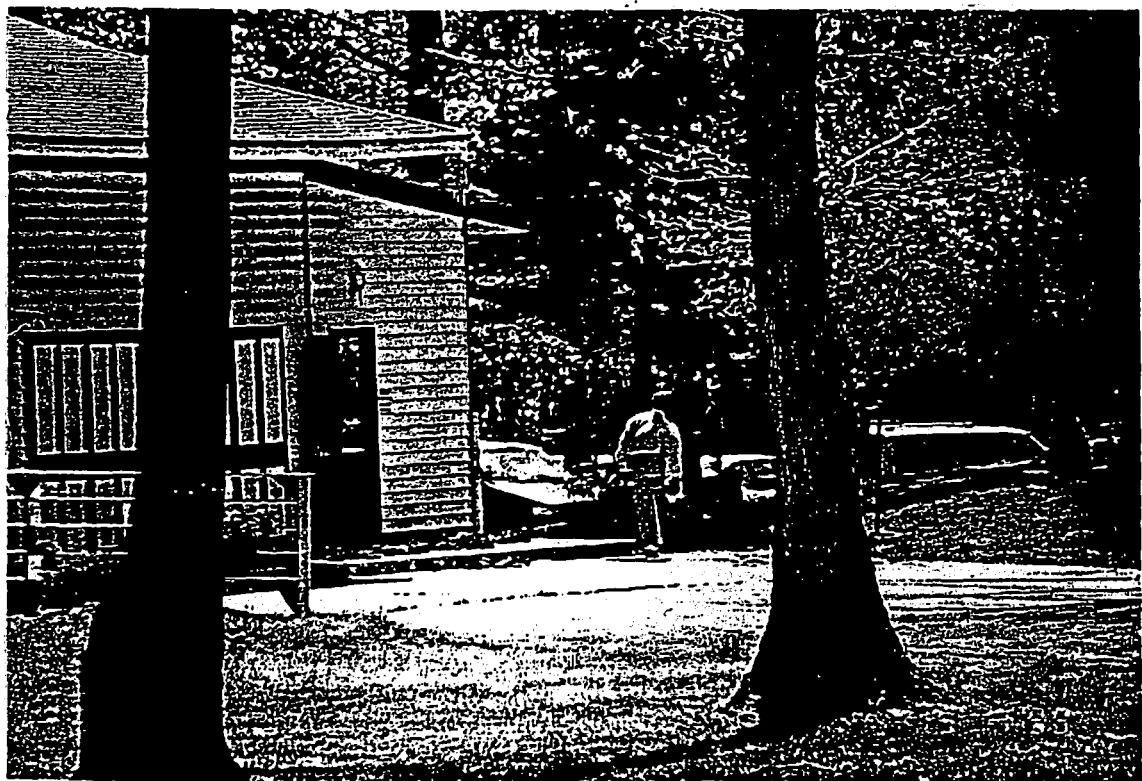
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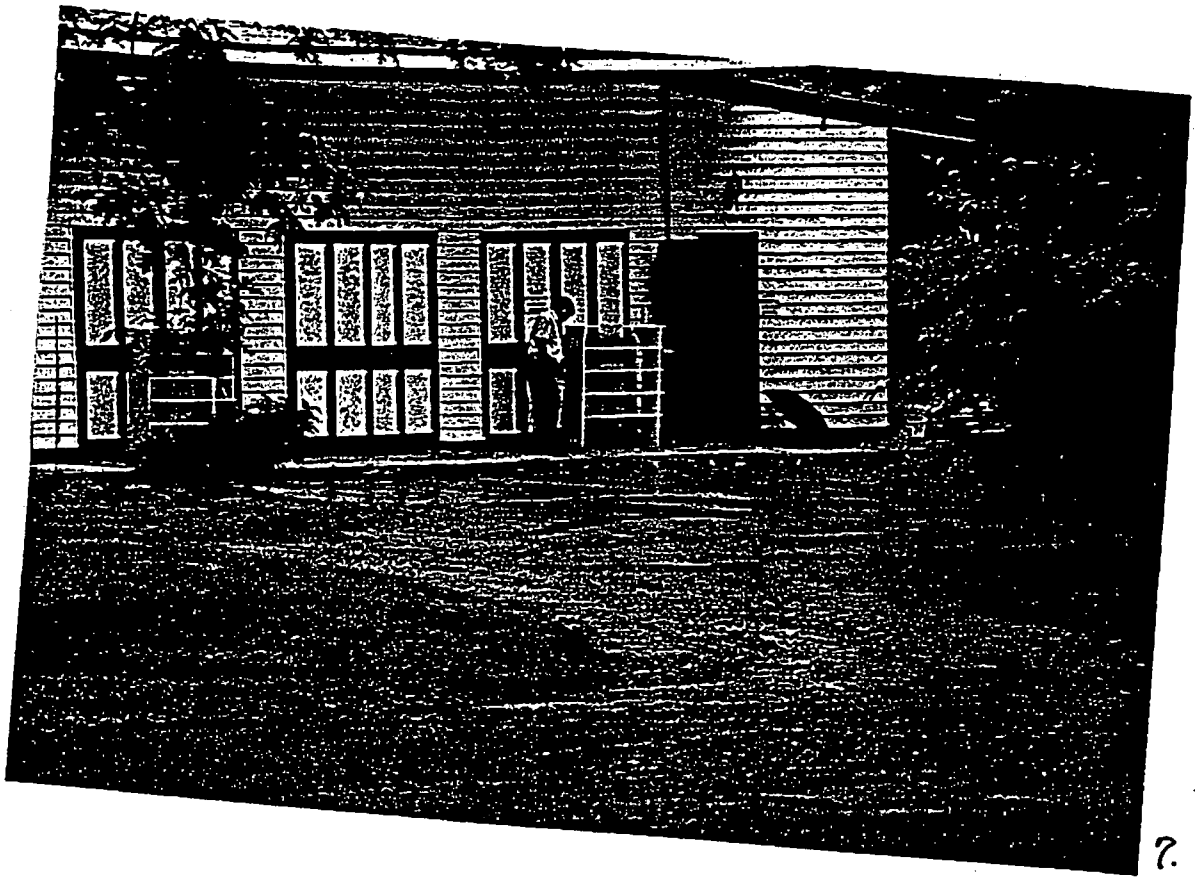


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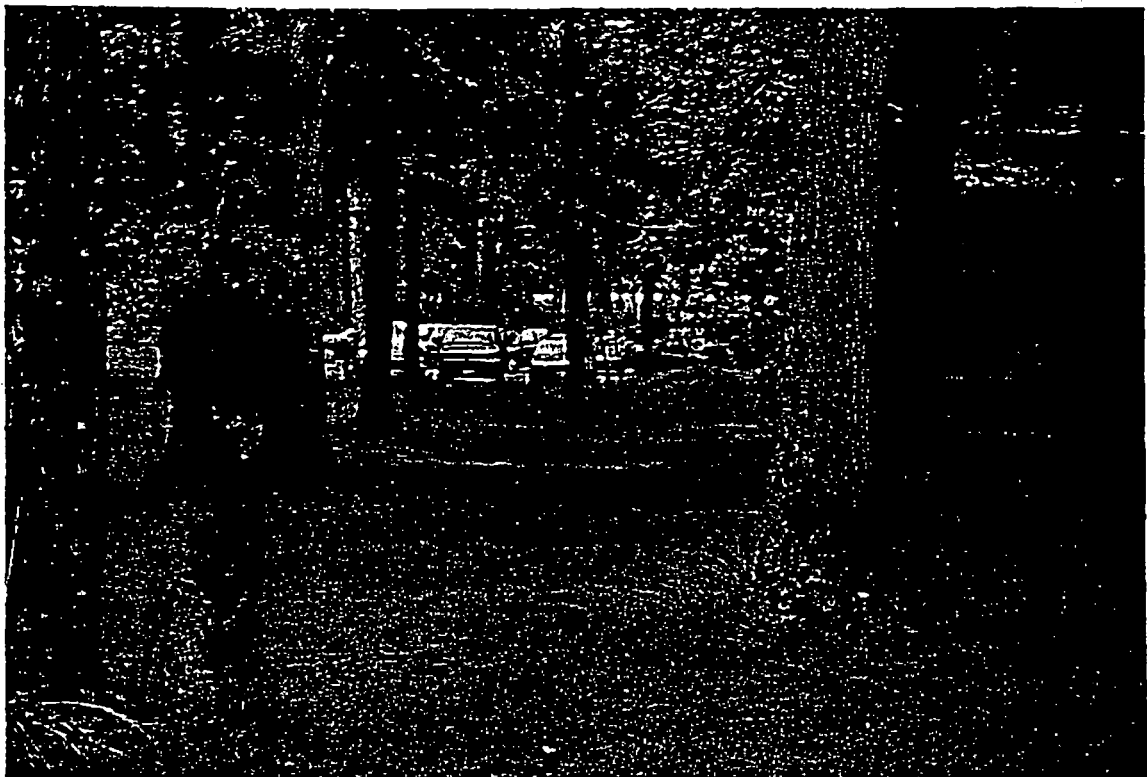
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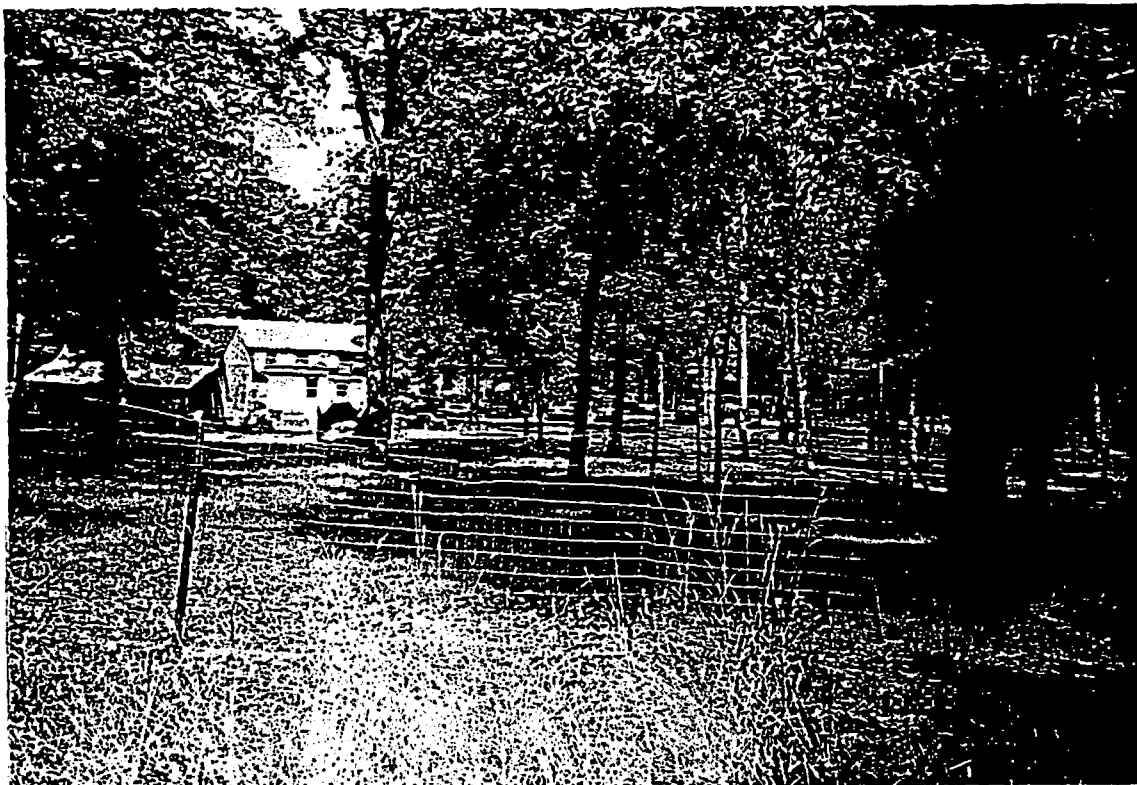
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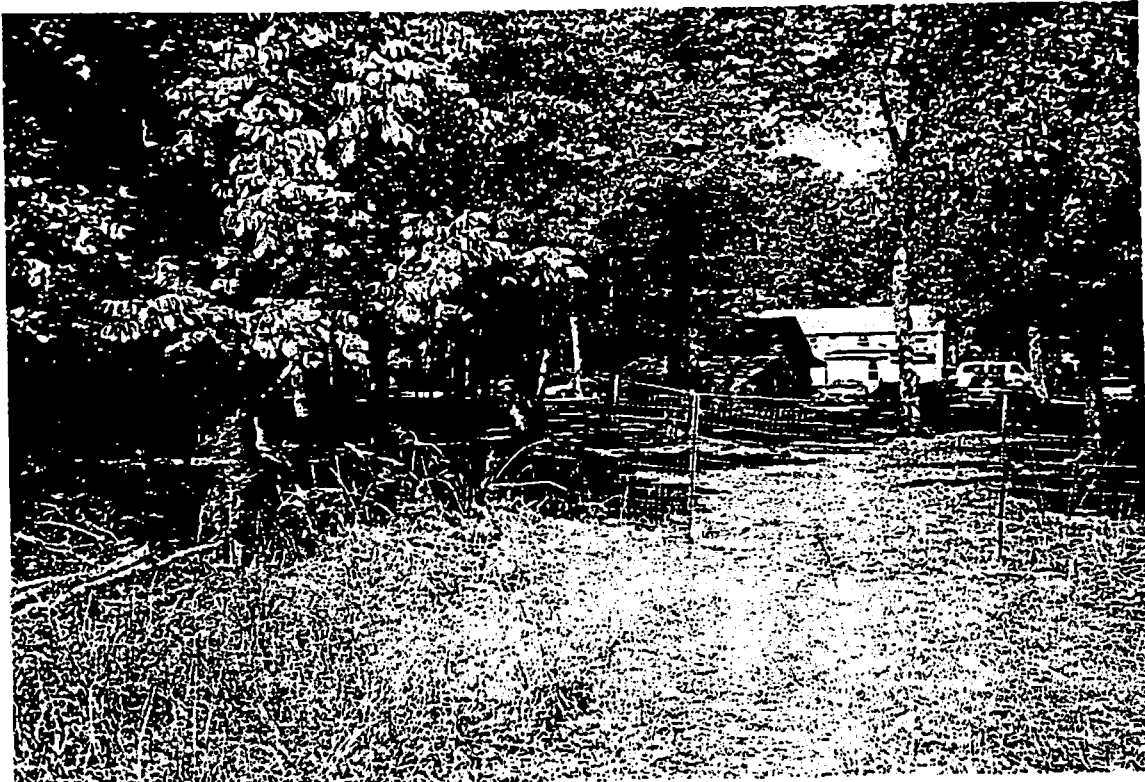
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20.



21.



22.



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
SERVICES

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR,

Complainant,

v.

THANH VAN TRAN,

Respondent.

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)  
)  
)  
)  
)  
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)

99 NOV 15 PM 3:40

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Chancery No.: 163246

ANSWER

COMES NOW the Respondent, Thanh Van Tran, by counsel,  
and for his Answer to the Bill of Complaint for Declaratory and  
Injunctive Relief states as follows:

1. Paragraphs 1 and 2 of the Bill of Complaint contain  
conclusions of law not requiring a response.
2. The Respondent admits the allegations of Paragraph 3  
of the Bill of Complaint.
3. As to Paragraph 4, the Respondent denies that he is a  
"pastor" in the sense of one who actively directs worship  
activity for a Christian-style congregation. He is the sole  
resident of the subject property, which is his private home.  
Any persons who visit the property are his private social  
guests, who may share an interest in religious matters. The  
Respondent admits that he is a member of the Vietnamese Buddhist  
Association.
4. The Respondent admits the allegations of Paragraph 5  
of the Bill of Complaint.

5. Paragraphs 6 and 7 of the Bill of Complaint contain conclusions of law not requiring a response.

6. As to Paragraphs 8 through 21, Respondent admits that the documents attached as Exhibits E through P appear to be authentic and submits that such documents speak for themselves. Respondent denies any factual allegations or characterizations or legal conclusions contained in such Paragraphs or such documents other than the existence and receipt or filing of such documents as alleged.

7. Paragraph 22 contains conclusions of law not requiring a response.

8. The Respondent admits the allegations of Paragraph 23, 24 and 25 of the Bill of Complaint.

9. Paragraph 26 contains conclusions of law not requiring a response.

10. Respondent admits the allegation of Paragraph 27.

11. As to the allegations of Paragraph 28, Respondent denies that the subject property is used as anything other than his private residence, asserts that the photographs depict cars parked for non-regularly-scheduled social gatherings, admits that he personally has engaged in worship-related thought and speech at the property, lacks sufficient knowledge as to the state of mind of his guests, and need not respond to the legal

conclusion that such conduct violates the zoning ordinance as it is drafted.

12. Respondent asserts the defense of laches as to all matters raised in the alleged notices of violation relating to 1992 and 1993. By the Complainant's own admission, the alleged violation ceased after February 8, 1993.

13. The portion of the Fairfax County Zoning Ordinance, Section 2-303(1), sought to be enforced in this proceeding is unconstitutionally vague and excessively broad, and prohibits all worship-related thought, speech and association in all places (including, as in this case, private single-family dwellings regardless of occupancy) without a permit.

14. The ordinance violates the free exercise guarantees of Article 1, Section 16 of the Virginia Constitution and the First and Fourteenth Amendments of the United States Constitution. The ordinance is unconstitutional on its face because it is not religiously neutral, it substantially burdens the Respondent's and all citizens' free exercise of religion, and it is not necessary to advance a compelling governmental interest and does not do so in the least restrictive manner. The ordinance singles out religious worship for restriction and does not proscribe any particular conduct in terms that are neutral with respect to religious content; it expressly requires a permit for

religious-worship oriented speech, thought and association, while allowing non-worship related speech, thought, association, and social gatherings at which worship does not occur, to proceed without a permit.

15. The ordinance violates the establishment clauses of the Virginia and Federal Constitutions; the primary effect of the ordinance is directly to prohibit all religious worship per se in any affected area without a special permit; the ordinance impermissibly establishes non-worship as governmentally preferred over worship.

16. The ordinance is a content-based restriction on speech relating to or constituting worship, requiring a permit prior to engaging in such speech in an affected area, even in private single-family dwellings, and therefore violates the freedoms of speech guaranteed by the Virginia and federal constitutions. The ordinance infringes Respondent's privacy interests in his home.

17. The ordinance denies the Respondent the equal protection of the laws by allowing unrestricted social gatherings by persons with no interest in religion, but restricting such gatherings by persons of known religious interest such as the Respondent. The ordinance denies the Respondent the same freedom of association as that enjoyed by

persons with no interest in religion. The ordinance and its enforcement violate the due process protections of Article 1, Section 11 of the Virginia constitution and deprive the Respondent of the "right to be free from any governmental discrimination upon the basis of religious conviction."

18. The County lacked the authority to enact an ordinance curtailing fundamental constitutionally protected rights under the guise of zoning.

19. There is no practicable injunctive remedy that can be imposed in this case. The ordinance does not generally prohibit social gatherings, and the Court may not broadly enjoin all such gatherings solely at Mr. Tran's house. The ordinance does not impose any general restriction on the number of persons who may gather at a private house or on the number of cars that may park for a social gathering, and the Court may not impose such restrictions solely on Mr. Tran. The Court may not constitutionally enjoin religion-oriented speech, thought and association at a private residence. The Court may not constitutionally enjoin worship per se. The injunction requested would be impermissibly vague, excessively broad, and unconstitutional on its face and as applied to Mr. Tran.

20. Enforcement of the injunction requested would require governmental entanglement in the issue of what constitutes

Buddhist "worship," as opposed to ordinary private non-worship speech and association. It is evident that the County would continue photographic surveillance of the property and harassment and violation of Mr. Tran's privacy. The County would seek to haul Mr. Tran into court whenever a number of persons was photographed at the property exceeding some secret limit known only to the County. Using threats to enforce the injunction, the County would isolate Mr. Tran from all society at his residence, forcing him either to prove in court that each person photographed at his house was not engaged in worship, or to turn away all guests, friends, and family members. The main evidence of "worship" in every instance would be the racial, ethnic and religious identity of the persons photographed at the property.

21. The Religious Liberty Protection Act of 1999, H.R. 1691, was passed by the U.S. House of Representatives on July 15, 1999, and the Respondent will assert all defenses and claims available under such act if and when it becomes law.

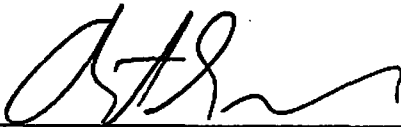
22. Respondent maintains that he is entitled to assert his fundamental constitutional rights in this proceeding regardless of any claim that he has forfeited such rights or has been permanently stripped of them by some governmental process, and that any such forfeiture procedure is inherently inapplicable to

fundamental rights, whether or not it is valid to curtail non-fundamental rights.

23. Respondent further denies that the Complainant is entitled to any of the other relief sought.

WHEREFORE, Respondent requests that the Bill of Complaint be dismissed.

Respectfully Submitted  
THANH VAN TRAN  
By Counsel,



Arthur T. K. Norris (VSB No. 32536)  
Le Chi Thao (VSB No. 21564)  
Le Chi Thao and Associates  
2111 Wilson Boulevard  
Suite 700  
Arlington, VA 22201  
(703) 516-6688  
Counsel for Respondent

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Answer was this 15<sup>th</sup> day of NOVEMBER, 1999, sent by first class mail, postage prepaid, to:  
Counsel for the Complainant, David P. Bobzien, T. David Stoner, Pamela K. Pelto, 1200 Government Center Parkway, Suite 549, Fairfax, Virginia 22035-0064.

  
Arthur T. K. Norris

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE W. GWINN, FAIRFAX COUNTY :  
ZONING ADMINISTRATOR, :  
 :  
Complainant, :  
 :  
v. : In Chancery No. 163246  
 :  
THANH VAN TRAN, :  
 :  
Respondent. :

COMPLAINANT'S PRETRIAL BRIEF

Complainant, Jane W. Gwinn, Fairfax County Zoning Administrator ("the Zoning Administrator"), by counsel, files this pretrial brief in support of her Bill of Complaint for Declaratory Judgment and Injunctive Relief.

BACKGROUND<sup>1</sup>

The Zoning Administrator brought this action to enforce the Zoning Ordinance against Respondent, Than Van Tran ("Tran" or "Reverend Tran"), for conducting a place of worship in the R-C District<sup>2</sup> without a special permit. Reverend Tran, a Buddhist monk, owns a 5.099-acre lot zoned R-C and located at 7605 Bull Run Drive in Centreville ("the Property"). (Bill Compl. ¶¶ 3, 5; Answer ¶ 2, 4.) He purchased the Property in 1993 from the Vietnamese Buddhist

<sup>1</sup> Most or all of the facts stated in this brief appear to be undisputed, and few are essential to the Zoning Administrator's case. Where a particular fact is the subject of an admission—typically by way of exhibits to the Bill of Complaint—the brief will include an appropriate citation. Exhibit designations used in these citations correlate to the exhibits to the Bill of Complaint. All exhibits cited are the subject of admissions by Tran as to authenticity and as to receipt or filing.

<sup>2</sup> This zoning district permits single-family detached housing at a maximum density of one dwelling unit per five acres. Zoning Ordinance § 3-C01.



Association (VBA), which acquired it in 1988. Reverend Tran is the principal officer in the VBA, a tax-exempt religious organization created to form a Buddhist temple in the Vietnamese tradition. Although Tran is the record owner of the Property, the VBA makes the mortgage payments.

The Property contains a single-family dwelling, where Tran lives, and a detached three-car "garage." (Bill Compl. ¶¶ 4, 5; Answer ¶¶ 3, 4.) The "garage" has not been used to keep vehicles since 1989, at the latest. Instead, it contains a statue of the Buddha, an altar, a collection box, and a loudspeaker system. Dozens of people gather in the "garage" on Sundays to participate with Tran in meditation and reading of sacred texts, during which Tran sometimes uses the loudspeaker system.<sup>3</sup> In addition to the regular Sunday services, Tran holds special ceremonies on and around three holidays each year: Tet (the Vietnamese New Year), a secular holiday celebrated over the course of several weeks; the Buddha's birthday; and All Soul's Day. On those occasions, the ceremonies draw as many as four hundred people, some arriving by chartered bus.

The VBA has twice applied for special permits to operate a place of worship on the Property, the second time with Tran's consent as owner. The first application, filed in 1989 and withdrawn in 1991 (Ex. E, F), described the proposed use as including Bible-study sessions attended by about 40 people on the weekends and ceremonies for two major holy days attended by unspecified numbers of people. At that time, the VBA planned to use the dwelling as the meeting place. The second special permit application, filed in 1994 (Ex. N), described the use in virtually

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<sup>3</sup> The number of Sunday patrons is perhaps the only factual issue in dispute, although it is not a dispute this Court needs to resolve before ruling in favor of the Zoning Administrator. Reverend Tran contends that on an ordinary Sunday morning, 20 to 30 people come to the Property. Zoning inspectors, on the other hand, have never found fewer than 19 vehicles and 35 people on the Property on a Sunday morning. In fact, the number of vehicles typically exceeds 30, with as many as 100 people attending on non-holiday Sundays.

identical terms as in 1989. The VBA withdrew the application in 1995 "[d]ue to a number of outstanding issues regarding the application." (Ex. O.)

In January and February 1992, a Fairfax County zoning inspector issued to Tran, on behalf of the VBA, two notices of violation for using the Property as a place of worship without an approved special permit, in violation of Zoning Ordinance § 2-303(1).<sup>4</sup> (Ex. G-J.) The notices directed Tran to discontinue the use and restore the garage structure to a three-car garage, workshop and storage area, consistent with its approved building permit and plans. Tran did not exercise his right to appeal these notices of violation to the BZA. (Bill Compl. ¶ 23; Answer ¶ 8.) See Va. Code Ann. § 15.1-496.1 (Michie 1989) (amended and recodified as Va. Code Ann. § 15.2-2311 (Michie 1997)). Instead, the VBA's attorney notified the zoning inspector in March 1992 that no further religious services would be performed on the Property without a special permit. (Ex. K.)

By January 1993, however, the Property was again being used as a place of worship. A third notice of violation, issued in February 1993, cited the same concerns raised in the 1992

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<sup>4</sup>Section 2-303(1) provides that

[n]o use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall be hereafter changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the [Board of Zoning Appeals] in accordance with the provisions of Article 8.

The Zoning Ordinance categorizes a place of worship as a Group 3 special permit use in the R-C District. Zoning Ordinance § 3-C02. Places of worship require special permits in the R-P, R-C, R-E, R-1, R-2, R-3, R-4, R-5, and R-8 residential districts. In the R-12, R-16, R-20, R-30, and R-MHP residential districts, they are a permitted (by-right) use, as they are in all of the commercial and industrial districts in the County.

notices. (Ex. L, M.) Again, Tran did not appeal the notice of violation. (Bill Compl. ¶ 23; Answer ¶ 8.) The second special permit application followed this February 1993 notice. (Ex. N.)

In March 1999, Tran received a fourth notice of violation for using the Property as a place of worship. (Ex. P, Q.) He appealed this notice to the BZA (Ex. S), which ultimately upheld the Zoning Administrator's determination that his use of the Property violated § 2-303(1). (Ex. T.) Tran did not appeal the BZA decision to this Court (Bill Compl. ¶ 27; Answer ¶ 10), as he could have under Va. Code Ann. § 15.2-2314 (Michie 1997).

The Zoning Administrator brought this action because Tran continues to operate a place of worship on the Property without a special permit. The case is set for trial on August 10, 2000.<sup>4</sup>

### ARGUMENT

#### **I. THE NOTICES OF VIOLATION ARE THINGS DECIDED AND NOT SUBJECT TO ATTACK SINCE TRAN FAILED TO APPEAL THEM.**

Under Va. Code Ann. § 15.1-496.1 (Michie 1989) (amended and recodified as Va. Code Ann. § 15.2-2311 (Michie 1997)) and Zoning Ordinance §§ 18-301 and -303, Tran had a right to appeal the original January 1992 notice of violation to the BZA within 30 days of the notice. Since he failed to appeal that notice, the decisions contained in it—particularly that the Property was being used as a place of worship without a special permit and that the use violated Zoning Ordinance § 2-303(1)—are things decided and not subject to attack in this proceeding. See *Gwinn v. Collier*, 247 Va. 479, 484, 443 S.E.2d 161, 164 (1994); *Gwinn v. Alward*, 235 Va. 616, 621, 369 S.E.2d 410, 412

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<sup>4</sup> The case was originally set for trial, and the parties appeared, on June 28, 2000. Tran moved for a continuance, however, in part because his translator was not present—he speaks Vietnamese. The Honorable Kathleen H. MacKay granted the motion on that basis but directed that Tran schedule two translators for the August 10 trial date, to prevent a similar situation.

(1988).<sup>6</sup> His failure to appeal the other 1992 or 1993 notices of violation renders any new decisions contained in them similarly invulnerable to attack. Thus, Tran cannot contest the Zoning Administrator's determination that the zoning violation was continuing on the Property. Similarly, Tran's failure to appeal the BZA's decision in 1999 precludes him from challenging the substance of the March 1999 notice of violation. The Zoning Administrator is thus entitled to a declaration that the use of the Property as a place of worship without approval of a special permit is a violation of Zoning Ordinance § 2-303(1).

**II. IT IS UNDISPUTED THAT THE SAME ACTIVITIES CONSTITUTING THE VIOLATION CONTINUE TO OCCUR ON THE PROPERTY.**

With *Alward* settling any question as to whether Tran has been using the Property unlawfully as a place of worship without a special permit, the only remaining question is whether that use has continued.<sup>7</sup> Although there might be some dispute about the actual numbers of Sunday visitors to the Property, any such differences are inconsequential to the object of this suit. Even in Reverend Tran's estimation, 20 to 30 people attend the rituals performed on ordinary Sundays, and there has been no significant change in those numbers since before the first notice

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<sup>6</sup> Tran's failure to appeal the initial notice of violation precludes any challenge to the decision that use of the Property as a place of worship without a special permit is a violation of § 2-303(1). To the extent that Tran's BZA appeal attempted to challenge the 1999 notice of violation in this respect, it was futile. Even if Tran had perfected an appeal to this Court, that issue was beyond attack under the rule established in *Alward*.

<sup>7</sup> Even if Tran had suspended his unlawful use of the Property, the Zoning Administrator could still obtain injunctive relief, since the voluntary cessation of wrongful activity does not moot an action unless there is no reasonable expectation that the wrong will be repeated. See *United States v. W.T. Grant Co.*, 345 U.S. 629, 632-33 (1953); *Mainstream Loudoun v. Board of Trustees of Library*, 24 F. Supp. 2d 552, 559 (E.D. Va. 1998).

of violation. In light of these facts, the Zoning Administrator is clearly entitled to the injunctive relief she seeks to end the unlawful use of the Property.

**III. THE SPECIAL PERMIT REQUIREMENT DOES NOT VIOLATE TRAN'S CONSTITUTIONAL RIGHTS.**

Lacking any factual basis for resisting this action, Tran apparently questions the constitutionality of the Zoning Ordinance special permit requirement for places of worship in the R-C District. There is no legal basis for such a challenge. Tran's primary position, which he will presumably explain in his responsive brief, appears to be that the First Amendment mandates that his use of the Property be permitted by right, without the requirement of a special permit. (Answer ¶ 14.) While government may not regulate religious belief, it may regulate religious conduct. *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961). The Supreme Court has held that a generally applicable law that is neutral as to religion does not violate the Free Exercise Clause even if it incidentally burdens a particular religious practice. *Employment Div. v. Smith*, 494 U.S. 872, 878-79 (1990). See also *Goodall v. Stafford County School Bd.*, 60 F.3d 168, 170 (4<sup>th</sup> Cir. 1995). The provision at issue here is Zoning Ordinance § 3-C02, which lists the permitted (i.e., by-right) uses in the R-C District:

1. Accessory uses and home occupations as permitted by Article 10.
2. Agriculture, as defined in Article 20.
3. Dwellings, single family detached.
4. Privately-owned dwellings for seasonal occupancy, not designed or used for permanent occupancy, such as summer homes and cottages, hunting and fishing lodges and cabins.
5. Public uses.

Because places of worship are not identified here, they are not allowed by right in the R-C District. The regulations governing the R-C District are neutral and generally applicable. They

apply to all properties bearing that zoning classification, and they do not single out religious practices for prohibition or regulation. Any use not listed as a permitted use cannot be conducted in that district, if at all, without a special permit or a special exception.<sup>3</sup> This restriction applies to any non-listed use, regardless of any religious aspect.

It is not significant, as Tran might argue, that the Zoning Ordinance lists places of worship as a special permit use in the R-C District. Zoning Ordinance § 3-C03. It is not this list, but the absence of the use from the list of permitted uses, that Tran challenges. Moreover, places of worship are but one of more than two dozen uses requiring a special permit, Zoning Ordinance § 3-C-03, in addition to more than a dozen requiring a special exception. Zoning Ordinance § 3-C-04. In short, the Zoning Ordinance provisions do not infringe on Tran's free exercise right.

This conclusion is consistent with the seminal cases in numerous federal circuits, including the Fourth Circuit. See, e.g., *Christian Gospel Church, Inc. v. City & County of San Francisco*, 896 F.2d 1221 (9<sup>th</sup> Cir. 1990) (holding that a conditional use permit requirement for a church in a residential area did not violate the free exercise clause or the equal protection clause); *Messiah Baptist Church v. County of Jefferson*, 859 F.2d 820 (10<sup>th</sup> Cir. 1988) (upholding a zoning prohibition on churches in agricultural districts); *Islamic Center of Mississippi, Inc. v. City of Starkville*, 840 F.2d 293 (5<sup>th</sup> Cir. 1988) (applying a stricter standard than *Employment Div.*

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<sup>3</sup> The Zoning Ordinance requires either a special permit (issued by the BZA) or a special exception (issued by the Board of Supervisors) for numerous uses, depending on the particular zoning district at issue. The Board requires a special permit or special exception for uses that it considers to have a potentially greater impact upon neighboring properties or the public than those uses permitted in the district as a matter of right. Zoning Ordinance §§ 8-001 and 9-001. See also *Board of Supervisors v. Southland Corp.*, 224 Va. 514, 522-23, 297 S.E.2d 718, 721-22 (1982) (special exceptions).

v. *Smith* but holding that government may subject religious organizations to zoning regulations, including the requirement of a permit); *First Assembly of God v. City of Alexandria*, 739 F.2d 942 (4<sup>th</sup> Cir. 1984) (rejecting a challenge to special use permit conditions imposed on a church-sponsored school); *Grosz v. City of Miami Beach*, 721 F.2d 729 (11<sup>th</sup> Cir. 1983) (upholding the prosecution of a rabbi who conducted worship services in his garage in violation of zoning laws)<sup>9</sup>; *Lakewood, Ohio Congregation of Jehovah's Witnesses v. City of Lakewood*, 699 F.2d 303 (6<sup>th</sup> Cir. 1983) (upholding a zoning prohibition on churches in residential districts, comprising 90 percent of the city's land). This case law roundly supports the sort of neutral, generally applicable regulation such as that being applied to the Property owned by Reverend Tran.<sup>10</sup>

### CONCLUSION

For these reasons, the Zoning Administrator asks this Court to grant her the relief sought in her Bill of Complaint.

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR

By: 

Counsel

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<sup>9</sup> The facts in *Grosz* are remarkably similar to the case at bar, except that the zoning ordinance at issue there flatly prohibited places of worship in single-family residential zones and that violations of the ordinance were prosecuted as misdemeanors.

<sup>10</sup> The Zoning Administrator will address this constitutional issue in further detail, if necessary, in her rebuttal brief.

DAVID P. BOBZIEN  
COUNTY ATTORNEY


By: 

T. David Stoner (VSB No. 24366)  
Assistant County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
(703) 324-2421  
Counsel for Complainant

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2000 a true copy of the foregoing document was transmitted by facsimile and mailed, first-class postage prepaid, to:

Arthur T.K. Norris, Esquire  
Le Chi Thao, Esquire  
Le Chi Thao and Associates  
2111 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201

  
T. David Stoner

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE W. GWINN, FAIRFAX COUNTY	)	
ZONING ADMINISTRATOR,	)	
	)	
Complainant,	)	
	)	
v.	)	Chancery No.: 163246
	)	
THANH VAN TRAN,	)	
	)	
Respondent.	)	

RESPONDENT'S PRETRIAL BRIEF

COMES NOW the Respondent, Thanh Van Tran, by counsel, and in opposition to the relief sought by the Bill of Complaint states as follows:

FACTS

The Respondent's property is his personal residence. No other person resides at or is employed at the property. Respondent is a Buddhist monk who prays privately three times per day regardless of the presence of guests. Respondent does not hold regularly scheduled public worship services. He has no fixed congregation of worshipers who regularly visit his property. He does receive visitors, primarily on Sundays, but at no scheduled time. A few times a year, he hosts larger gatherings for his friends and acquaintances in the Vietnamese community. The existence of the Vietnamese Buddhist Association on paper, and any other formal references to a temple, are not dispositive; the Association could just as easily be dissolved.

## ARGUMENT

### I. Free Exercise

On the eve of trial, Complainant's pretrial brief effectively tries to amend the Bill of Complaint, as well as all of the prior notices of violation, to allege that the Respondent is in violation of Sec. 3-C02 of the Fairfax County Zoning Ordinance, which allows "[d]wellings, single family, detached" as a permitted use, see Complainant's Brief at 6, rather than to say that the Respondent is violating the restriction on worship under Section 2-303(1), which was the basis of every prior notice of violation, see Bill of Complaint Exhibits G, I, L, and P, and which was the sole basis of the Complainant's prayer for relief in the Bill of Complaint.

Sections 2-303(1) and 3-C03(1)(A), which, taken together, prohibit worship without a permit, are unconstitutionally vague and discriminate against religious gatherings as opposed to non-religious gatherings; the Complainant's brief does not defend their constitutionality. Section 3-C02, on the other hand, has never before been the basis of any claim or proceeding against Mr. Tran, and is not the basis of this proceeding. By allowing single family detached dwellings, Section 3-C02 does not prohibit gatherings of any particular size or frequency and does not prohibit worship per se.

In all prior proceedings, the County has attempted to use Mr. Tran's religious observance as an element of the alleged violation of Sec. 2-303(1). This was in order to bring Mr. Tran's essentially social gatherings into an apparently prohibited category. Contrary to the Complainant's brief at page 7, it is not the absence of churches from the list of permitted uses that Mr. Tran challenges, but rather the presence of religious worship on the list of specially prohibited activities under Sec. 2-303(1). Under the same legislative scheme, all manner of non-worship parties and social gatherings and visitors are permitted to Mr. Tran's neighbors, limited by common-law nuisance principles.

Under post-1990 free exercise principles, a law that is neutral towards religion and of general applicability need not be justified by a compelling governmental interest, even if the law incidentally burdens a particular religious practice. Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990). A law burdening religious practice that fails to satisfy the requirements of neutrality and general applicability must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest. Church of Lukumi Babalu Aye v. Hialeah, 508 U.S. 520, 531 (1993).

A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context. Id. at 533. Sections 2-303(1) and 3-C03(1)(A) of the Zoning Ordinance refer to "worship" as the activity prohibited without a special permit. The County's notices of violation and Bill of Complaint seek to prohibit Respondent's visitors and gatherings not because they are gatherings, but because they involve worship.

[T]he "exercise of religion" often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain mode of transportation. It would be true, we think (though no case of ours has involved the point), that a State would be "prohibiting the free exercise [of religion]" if it sought to ban such acts or abstentions only when they are engaged in for religious reasons, or only because of the religious beliefs which they display.

Employment Division v. Smith, 494 U.S. at 877.

The neutrality of an ordinance is suspect if First Amendment freedoms are curtailed to prevent isolated collateral harms not themselves prohibited by direct regulation. Church of Lukumi Babalu Aye, 508 U.S. at 539. Section 3-C01 of the Zoning Ordinance states that the purpose of the Residential Conservation District is to promote water quality and open rural areas for agricultural and low density residential use. Any distinction between worship-related gatherings and non-worship

related gatherings is irrelevant to the stated purposes of the ordinance. The harms caused by excessive numbers of people or excessive numbers of cars gathering in a Residential Conservation District could be prevented by directly limiting the numbers of people or cars that may gather for any purpose. Instead, the County has targeted worship-related gatherings. The Zoning Ordinance is unconstitutional on its face and as applied the Respondent under Article 1, Section 16 of the Virginia Constitution and the First and Fourteenth Amendments of the United States Constitution.

## II. Vagueness

The Zoning Ordinance is unconstitutionally vague in its restriction of worship in general and in its application to Mr. Tran. See State v. Cameron, 498 A.2d 1217 (N.J. 1985) (ban on "churches and similar places of worship" unconstitutionally vague as applied to minister prosecuted for zoning violation of holding weekly religious services in his home). "[A] statute affecting economic regulation is subject to a less strict vagueness test . . . ." *Id.* at 1220. "Perhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights. . . . In particular, the

scrutiny to be accorded legislation that trenches upon first amendment liberties must be especially scrupulous." Id. After considering the likely intent of the ordinance in question to cover special-use buildings only, the court concluded: "Its indefinite meanings focusing on religious activity alone fail to furnish adequate warning or sufficiently specific guidelines to assure its fair and consistent enforcement. Further, its specific core meaning, which imports the concept of a special purpose building, does not cover an ordinary residential home." Id. at 1223. "It thus appears that the zoning ordinance's exclusion of "churches or similar places of worship" from the particular residential zone is not sufficiently directed against the tangible detrimental effects of particular conduct." Id. at 1225. Respondent's garage may not have cars in it, but is not a special use building, and its construction was fully permitted at the time. The inherent vagueness of the Fairfax County Zoning Ordinance makes it impossible to identify the specific elements of conduct that are alleged to be enjoinable under the ordinance.

### III. Exhaustion of Administrative Remedies and "Thing Decided"

The Complainant's Pretrial Brief argues that the vague allegations of "place of worship" contained in the prior notices

of violation are "things decided," based on the cases of Gwinn v. Alward, 235 Va. 616 (1988) (parking of trash truck) and Gwinn v. Collier, 247 Va. 479 (1994) (parking junk vehicles and operation of automotive repair business). None of the exhaustion of administrative remedies cases that can be cited involves notices purporting to revoke First Amendment rights or other constitutionally protected fundamental rights. The County is not apparently arguing that Any of Mr. Tran's constitutional defenses in the present case are precluded by past failures to appeal notices of violation. It would impermissibly burden fundamental constitutional rights (as opposed to mere economic rights) to require fruitless administrative appeals as a condition of preserving such rights. Neither the BZA nor the Circuit Court on certiorari from a decision of the BZA could consider the question of the constitutionality of the legislation underlying the BZA's decision. See Board of Zoning Appeals v. University Square Associates, 246 Va. 290, 294 (1993). The prior notices of violation are tautologies: worship violates an ordinance that prohibits worship. They fail to identify any prohibitable conduct in a religiously neutral manner.

#### IV. Complainant's Authorities

The authorities cited by the County in pages 7 and 8 of its brief all predate Employment Div. v. Smith. Christian Gospel Church, 896 F.2d 1221 (9th Cir. 1990) involved a challenge to denial of a permit application for a public church, not an injunction against worship; the court did not apply a neutrality test in considering the free-exercise argument, see *id.* at 1223-25, and the legislative scheme required a permit for all similar "assembly-type activities." Messiah, 859 F.2d 820 (10th Cir. 1988) involved the denial of a building permit for a 12,000 square-foot structure. See *id.* at 822. The Grosz case, 721 F.2d 729 (11th Cir. 1983) used a balancing test and never answered the question whether the ordinance was religiously neutral in its restriction on gatherings. In general, they fail to apply the threshold test of religious neutrality when engaging in free exercise analysis to laws restricting religious conduct. The courts were instead concerned with balancing burdens under Sherbert v. Verner, 374 U.S. 398 (1963), which Employment Division v. Smith essentially supersedes.


#### V. WHAT IS THE ENJOINABLE CONDUCT?

Although respondent denies that an anti-worship injunction is constitutionally permissible under the existing ordinance,




there is also no practicable injunctive relief that can be granted under the vague prohibition of Sections 2-303(1) and 3-C03(1)(A) of the Zoning Ordinance without either violating the constitution or exceeding the terms of the ordinance and making up new legal restrictions. This is not a case of parking a trash truck. It is impossible to know which of the elements of the alleged conduct set forth in the Bill of Complaint and Complainant's Pretrial Brief are deemed to be enjoined under the place of worship prohibition.

Respectfully Submitted  
THANH VAN TRAN  
By Counsel,

  
\_\_\_\_\_  
Arthur T. K. Norris (VSB No. 32536)  
Le Chi Thao (VSB No. 21564)  
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Arlington, VA 22201  
(703) 516-6688  
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the forgoing brief was this 25<sup>th</sup> day of JULY, 2000, mailed first class, postage prepaid, and by fax (703) 324-2665 to:  
Counsel for the Complainant, T. David Stoner, 1200 Government Center Parkway, Suite 549, Fairfax, Virginia 22035-0064.

  
\_\_\_\_\_  
Arthur T. K. Norris

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

**JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR,**

**Complainant,**

Y.

**In Chancery No. 163246**

**THANH VAN TRAN.**

**Respondent.**

## COMPLAINANT'S PRETRIAL REPLY BRIEF

Complainant, Jane W. Gwinn, Fairfax County Zoning Administrator ("the Zoning Administrator"), by counsel, files this pretrial reply brief in response to Pretrial Brief filed by Respondent, Than Van Tran ("Tran").

**I. THE ZONING ORDINANCE IS A NEUTRAL LAW OF GENERAL APPLICABILITY THAT DOES NOT BURDEN TRAN'S FREE EXERCISE.**

Tran conveniently mischaracterizes § 2-303(1) as prohibiting worship (Resp't's Br. at 2-3, 7) and containing a "list of specially prohibited activities." (Resp't's Br. at 3.) In fact, the provision does neither. It merely prohibits the establishment of a special permit use without a special permit. Tran would apparently have this Court ignore the availability of the special permit process, but he protests too much. Distilled to its essence, then, Tran's main argument is that a zoning ordinance may not constitutionally require a special permit for a church, chapel, temple, synagogue, or other such place of worship, but must allow any such use by right. This is

<sup>1</sup> Tran also complains that the Zoning Administrator is raising for the first time a new issue—violation of Zoning Ordinance § 3-C02. In fact, however, the Zoning Administrator does not claim a violation of that section; rather, she cited it merely as background and in anticipation of Tran’s constitutional attack. *See infra* Part I.B.

an extreme position for which Tran is unable to cite any authority. Assuming the test set out in *Employment Div. v. Smith*, 494 U.S. 872, 878-79 (1990), is applicable,<sup>2</sup> the threshold inquiry in that instance is whether the challenged regulations burden free exercise. See *Christ College, Inc. v. Board of Supervisors*, No. 90-2406, 1991 U.S. App. LEXIS 21680, at \*11 (4<sup>th</sup> Cir. Sept. 13, 1991), *cert. denied*, 502 U.S. 1094 (1992). Even if there is some burden, a religiously neutral law of general applicability need not be justified by a compelling governmental interest. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993); *Smith*, 494 U.S. at 878-79, 885-86.

**A. The Zoning Ordinance Does Not Burden Religious Practice.**

The mere requirement of a special permit to use a particular parcel of land for a place of worship is not a constitutionally significant burden on free exercise. Indeed, it was for this reason that the Fourth Circuit recently held the Fairfax County Zoning Ordinance not to violate the Free Exercise Clause with respect to a proposed Christian school. See *Christ College*, 1991 U.S. App. LEXIS 21680 (4<sup>th</sup> Cir. Sept. 13, 1991). In *Christ College*, the plaintiffs claimed denial of their right to free exercise, among others, as a result of their being denied permission to operate or build Fairfax Christian School at various locations in Fairfax County and the Town of Vienna.<sup>3</sup> Appealing from a directed verdict granted at the close of their case-in-chief, the plaintiffs argued, among other things, that the Zoning Ordinance burdened the free exercise of their religion and was subject to strict scrutiny. Relying on *Smith*, however, the Fourth Circuit

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<sup>2</sup> Some courts have questioned whether *Smith* applies to free exercise challenges involving non-criminal regulations. See e.g., *Christ College, Inc. v. Board of Supervisors*, No. 90-2406, 1991 U.S. App. LEXIS 21680, at \*10-11 (4<sup>th</sup> Cir. Sept. 13, 1991), *cert. denied*, 502 U.S. 1094 (1992).

<sup>3</sup> Ultimately, the Board of Supervisors granted a special exception for the school at one of the Fairfax County locations, after which the plaintiffs brought suit.

concluded that the plaintiffs had not suffered any such burden. The Court reasoned that the challenged provisions did not flatly prohibit the religious school; rather, they permitted it by right in commercial and industrial districts and by special exception in residential districts.<sup>4</sup> Nor did the ordinance prevent the use of property with particular religious significance. *Id.* at 12. In light of these circumstances, the Fourth Circuit held that

appellants have not shown that conformance to Fairfax's zoning regulations would . . . impair any aspect of anyone's free exercise of religion. They have not shown how their rights may only be exercised in a facility located in a residential zone, nor that conforming to the special exception requirements laid down by Fairfax would in any constitutionally significant way burden those rights.

Unquestionably, Fairfax's zoning laws made it more difficult for FCS to be located on property of the Thoburns' choice. The fact that local regulations limit the geographical options of a religious school, however, does not prove that any party's right to free exercise is thereby burdened. There must at least be some nexus between the government regulation—here, a zoning law—and impairment of ability to carry out a religious mission. It is not enough that an entity conducting a religious program or mission would prefer to locate on residential property. That preference must be linked to religious imperatives.

*Id.* In the case at bar, there is no claim that the Property has particular religious significance. Nor does the mere requirement that Tran follow the special permit process impair his ability to carry out a religious mission. In short, Tran cannot show any reason why the Zoning Ordinance imposes an unconstitutional burden on his free exercise of religion.

**B.     The Zoning Ordinance Is A Religiously Neutral, Generally Applicable Regulation .**

Tran argues that the Zoning Ordinance is not religiously neutral simply because it categorizes certain uses as "places of worship." (Resp't's Br. at 4.) Conspicuously absent from Tran's brief is a citation to any case to support this proposition. He cites no decision finding a

---

<sup>4</sup> These provisions for religious schools parallel those for places of worship, except that the latter require a special permit, instead of a special exception.

zoning ordinance violative of the Free Exercise Clause because it requires a special permit or special exception for a place of worship or other religious use.

Tran relies solely on *Church of the Lukumi* to argue that the Zoning Ordinance is not neutral. But the Zoning Ordinance does not attempt to regulate a particular religious practice, as did the ordinance at issue in *Church of the Lukumi*. In that case, a church of the Santeria religion challenged city ordinances criminalizing animal sacrifice. The Supreme Court found that the ordinances were not neutral, in that they had as their object the suppression of a particular practice of the Santeria religion. *Church of the Lukumi*, 508 U.S. at 542. The Court also found that the ordinances were not of general applicability, in part because they were directed only against conduct motivated by religious belief. *Id.* at 543-45.

The Zoning Ordinance, on the other hand, does not impose criminal penalties for violation of § 2-303 and does not bar any particular religious practice. It does not interfere in any way with the free exercise of religion by singling out a particular religion or imposing any disabilities on the basis of religion. Tran asks this Court to read the categorization of “churches, chapels, temples, synagogues, and other such places of worship” as the singling out for prohibition of a particular religious practice. (Resp’t’s Br. at 4.) On the contrary, the Zoning Ordinance does not prohibit the activity of “worship.” Rather, it labels and categorizes a wide variety of land uses, including places of worship, as any such ordinance must.<sup>5</sup> The Ordinance identifies a limited number of uses that are permitted by right in the R-C District. “Churches, chapels, temples, synagogues and other such places of worship” are simply not included in that narrow list; rather, they are listed among more than two dozen special permit uses. Zoning

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<sup>5</sup> This brief addresses below Tran’s claim that this term is unconstitutionally vague. See *infra* Part II.

Ordinance §§ 3-C02 and -C03. Whether viewed in terms of omitting the use from the list of by-right uses or including it in the list of special permit uses, however, the Zoning Ordinance in no way targets any religious practice.

Contrary to Tran's assertion, it is not the religious nature of his use that subjects it to the zoning restrictions. In the R-C District, the Zoning Ordinance requires a special exception or special permit for—or does not permit at all—similar uses that have no religious component: for example, community clubs, community centers, meeting halls, and private clubs. Knowing that the use was religious merely enabled the Zoning Administrator to label it a place of worship, which requires a special permit. But the essential problem is that the use, whatever its label, is not permitted by right in the R-C District.

**C. The Courts Have Consistently Recognized That Requiring Special Approval For A Place Of Worship Does Not Infringe On Free Exercise Of Religion.**

In addition to the Fourth Circuit in *Christ College* and various other federal circuit courts cited in Complainant's Pretrial Brief, numerous other federal and state courts have favorably reviewed zoning ordinances requiring some special approval for religious uses. See e.g., *Alpine Christian Fellowship v. County Comm'rs*, 870 F. Supp. 991, 994 (D. Colo. 1994) (overturning denial of a special permit for a religious school in a church building, but noting that the church did not have "a right to be free from zoning or to build a church where it pleases"); *First Baptist Church of Perrine v. Miami-Dade County*, 2000 Fla. App. LEXIS 8041, at \*8 (Fla. Ct. App. June 28, 2000) (upholding the denial of special exceptions for a church-related school and finding that the zoning ordinance was neutral and generally applicable); *Open Door Baptist Church v. Clark County*, 140 Wash. 2d 143, \_\_\_, 995 P.2d 33, 44-48 (2000) (affirming a conditional use permit requirement for churches); *Village Lutheran Church v. City of Ladue*, 997

S.W.2d 506, 508-09 (Mo. App. 1999) (holding that the mere requirement that a church apply for a special use permit did not infringe on the free exercise of religion); *Area Plan Comm'n v. Wilson*, 701 N.E.2d 856 (Ind. App. 1998), *cert. denied*, 528 U.S. \_\_\_\_ (1999)<sup>6</sup> (upholding a zoning ordinance requiring a special use permit for churches in any zoning district); *Grace Community Church v. Town of Bethel*, 30 Conn. App. 765, 772-74, 622 A.2d 591, 595-96 (1993), *cert. denied*, 510 U.S. 944 (1993) (holding that a zoning ordinance special permit requirement for churches, along with other uses, was reasonable and neutral); 2 KENNETH H. YOUNG, ANDERSON'S AM. LAW OF ZONING § 12.23 at 581-83 (4<sup>th</sup> ed. 1996) (observing that "the right of a municipality to require a special permit [for religious uses] seems to be firmly established"). *See also Bronx Household of Faith v. Community School District No. 10*, 127 F.3d 207, 216 (2d Cir. 1997), *cert. denied*, 523 U.S. 1074 (1998) (finding the exclusion of religious worship from the uses designated for public schools not to violate the principle of religious neutrality under *Smith* and *Church of the Lukumi*); *Cornerstone Bible Church*, 948 F.2d 464, 472 (8<sup>th</sup> Cir. 1991) (holding that a zoning ordinance excluding churches and other nonprofit entities from commercial and industrial zones was a neutral law of general applicability under *Smith*).<sup>7</sup>

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<sup>6</sup> The landowner in *Wilson* challenged the requirement of a special use permit to operate a church in a commercially zoned area. The ordinance listed churches as one of 33 "special uses" requiring a permit in any residential, commercial, or industrial district. 701 N.E.2d at 859-60. Rejecting the landowner's argument that the ordinance was not religiously neutral or generally applicable under *Smith*, the court held that "[t]he inclusion of churches and church-operated facilities as special uses in the ordinance does not evince an intent to regulate religious belief. Instead, such inclusion recognizes churches as one of many uses which do not fit easily into traditional zoning districts." *Id.* at 860.

<sup>7</sup> All of these authorities post-date *Smith* and, in some instances, *Church of the Lukumi*. Moreover, there is no reason to believe that the courts deciding the pre-*Smith* cases cited in Complainant's Pretrial Brief (Compl't's Br. at 7-8) would now reach different conclusions.

Against the weight of this abundant case law addressing free exercise in the context of zoning and land use, Tran offers nothing but generalities and mischaracterization.

**D. Even If The Zoning Ordinance Were Not Religiously Neutral, There Is A Compelling Governmental Interest In Regulating The Land Uses Within Residential Zoning Districts .**

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As Tran acknowledges, the R-C District is designed for agricultural and low-density residential use. (Resp't's Br. at 4.) A church, chapel, temple, synagogue, or other such place of worship is clearly neither. Yet Tran argues that "[a]ny distinction between worship-related gatherings and non-worship related gatherings is irrelevant to the stated purposes of the ordinance." (Resp't's Br. at 4-5.) The courts have long recognized a legitimate, even compelling, governmental interest in protecting residential areas, particularly districts for single-family dwellings, from the by-products of more intense uses, such as traffic congestion, parking problems, and noise. *See, e.g., Christian Gospel Church, Inc. v. City & County of San Francisco*, 896 F.2d 1221, 1224 (9<sup>th</sup> Cir. 1990), *cert. denied*, 498 U.S. 999 (1990); *Islamic Center of Mississippi, Inc. v. City of Starkville*, 840 F.2d 293, 302 (5<sup>th</sup> Cir. 1988); *Grosz v. City of Miami Beach*, 721 F.2d 729, 738-39 (11<sup>th</sup> Cir. 1983), *cert. denied*, 469 U.S. 827 (1984); *Lakewood, Ohio Congregation of Jehovah's Witnesses v. City of Lakewood*, 699 F.2d 303, 308 (6<sup>th</sup> Cir. 1983), *cert. denied*, 464 U.S. 815 (1983) (upholding a zoning prohibition on churches in residential districts, comprising 90 percent of the city's land); 2 KENNETH H. YOUNG, ANDERSON'S AM. LAW OF ZONING § 12.23 at 582-84 (4<sup>th</sup> ed. 1996). *See also* Zoning Ordinance § 8-001 (stating the purpose and intent of requiring a special permit for certain uses "which, by their nature, can have an undue impact upon or be incompatible with other uses of land"). There is thus a compelling governmental interest in reviewing any proposal to establish a church, chapel, temple, synagogue, or other such place of worship in the R-C District.



## II. THE ZONING ORDINANCE IS NOT UNCONSTITUTIONALLY VAGUE.

Tran relies exclusively on a decision by the Supreme Court of New Jersey, *State v. Cameron*, 100 N.J. 586, 498 A.2d 1217 (N.J. 1985), as his authority for the proposition that the Zoning Ordinance is unconstitutionally vague, both facially and as applied to him. (Resp't's Br. at 5.) Apart from the obvious want of more persuasive authority, Tran's reliance on *Cameron* is misplaced for a variety of reasons. The ordinance at issue in *Cameron* absolutely banned "churches and similar places of worship" in the defendant's zoning district and imposed a quasi-criminal penalty on violations of that ban. 100 N.J. 586, at \_\_\_, 498 A. 2d at 1221. After his congregation was forced to move, the defendant minister held weekly services for about 25 people in his home, while the congregation sought a permanent location. 100 N.J. 586, at \_\_\_, 498 A. 2d at 1218. Based on these narrow facts, the court found the ordinance to be unconstitutionally vague as applied to the minister. 100 N.J. 586, at \_\_\_, 498 A. 2d at 1225. The court identified a number of factors that, considered together, determined whether the ordinance was unconstitutionally vague:

[A] law that is challenged for facial vagueness is one that is assertedly impermissibly vague in all its applications. A statute that is challenged as applied, however, need not be proven vague in all conceivable contexts, but must be shown to be unclear in the context of the particular case. In either a facial or as-applied vagueness attack, the level of judicial scrutiny and degree of required clarity will depend on the purpose of the statute, the context in which the law is challenged, the conduct that is subject to its strictures, the nature of the punishment that is authorized, and, finally, the potential impact of the statute upon activities and interest that are constitutionally protected.

100 N.J. 586, at \_\_\_, 498 A. 2d at 1221.

*Cameron* is distinguishable from the present case in several respects. First, *Cameron* was using his home only incidentally and temporarily for religious worship. Tran's weekly gatherings, by contrast, have been occurring for years in the detached "garage," which has not

been used to store vehicles for more than 10 years. The *Cameron* court was careful to limit its decision to the particular facts of that case. 100 N.J. 586, at \_\_\_, 498 A. 2d at 1225. Second, unlike the ordinance at issue in *Cameron*, the Zoning Ordinance here is not quasi-criminal, and it establishes the Zoning Administrator as an administrative authority to whom citizens can turn for interpretation of the Ordinance. See Zoning Ordinance § 18-103. The *Cameron* court recognized that "greater imprecision can be tolerated in enactments with civil rather than criminal penalties" and in regulations that provide an administrative process for clarifying their meaning. 100 N.J. 586, at \_\_\_, 498 A. 2d at 1220. Third, *Cameron* raised only an as-applied challenge on vagueness grounds, and the court acknowledged that the ordinance was not impermissibly vague on its face. 100 N.J. 586, at \_\_\_, 498 A. 2d at 1222. Tran, on the other hand, charges that the Zoning Ordinance is vague both as applied and on its face. Fourth, while *Cameron* had no access to an administrative process to clarify the ordinance, Tran failed to appeal the original notice of violation to the Board of Zoning Appeals. There he could have argued that the Zoning Ordinance did not require a special permit for his use.<sup>8</sup> As discussed in Complainant's Pretrial Brief and below, this failure removed that issue from dispute.

**III. TRAN'S FAILURE TO EXHAUST HIS ADMINISTRATIVE REMEDIES BARS ANY CLAIM THAT HIS USE OF THE PROPERTY AS A PLACE OF WORSHIP IS PERMITTED BY RIGHT.**

Tran suggests that *Gwinn v. Alward*, 235 Va. 616, 369 S.E.2d 410 (1988), and its progeny do not apply here because they do not involve notices of violation implicating constitutionally protected rights. (Resp't's Br. at 7.) The fallacy of this argument is that the issues decided by

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<sup>8</sup> Since the earlier notices of violation, as well as the BZA decision, are not subject to attack, *see infra* Part III, Tran cannot now claim that the use is not a church, chapel, temple, synagogue, or other such place of worship.

Tran's failure to exhaust his administrative remedies are not constitutional.<sup>9</sup> In a timely appeal to the BZA, Tran could have argued that his use of the Property did not violate the Zoning Ordinance.<sup>10</sup> Indeed, he claims here that his use is within the ambit of the single-family residential use permitted by right under Zoning Ordinance § 3-C02. (Resp't's Br. at 2.) If he had prevailed on that point, it would not matter that the use is also listed as a special permit use. See Zoning Ordinance § 2-303(3) (stating in pertinent part: "No special permit shall be required for a use that is listed as a permitted use in a district, notwithstanding that such use may also be included in a use group available by special permit."). This fact leads to at least two significant conclusions. First, Tran's his failure to exhaust his administrative remedies has consequences. Conclusively decided are the issues of whether the Property was being used as a place of worship and whether that use is permitted by right in the R-C District. Second, what restricts the use is not its inclusion in the list of special permit uses, but its omission from the list in § 3-C02 of by-right uses in the R-C District. Tran's only attack, however, is on the language identifying such uses as requiring a special permit. (Resp't's Br. at 3.) There can be no question that § 3-C02 meets the *Smith* test of religious neutrality and general applicability.

### CONCLUSION

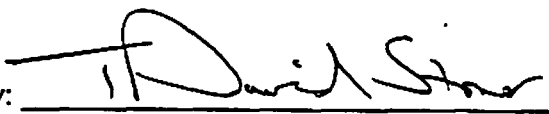
For these reasons, as well as those stated in Complainant's Pretrial Brief, the Zoning Administrator asks this Court to grant her the relief sought in her Bill of Complaint.

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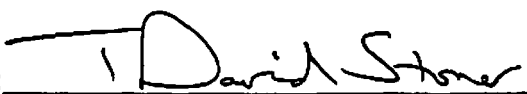
<sup>9</sup> Tran is correct that he was not required to raise his *constitutional* arguments before the BZA.

<sup>10</sup> In fact, Tran did file an appeal of the fourth notice of violation. (Ex. S.) Although this appeal came too late, the BZA considered and rejected it on the merits. (Ex. T.) Tran did not appeal that decision to this Court. (Bill Compl. ¶ 27; Answer ¶ 10.)

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR

By:   
Counsel

DAVID P. BOBZIEN  
COUNTY ATTORNEY

By:   
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August 2000 a true copy of the foregoing document was transmitted by facsimile and mailed, first-class postage prepaid, to:

Arthur T.K. Norris, Esquire  
Le Chi Thao, Esquire  
Le Chi Thao and Associates  
2111 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201

  
T. David Stoner

N:\STONER\TRAN\Trial\Pretrial reply brief 3.doc

COPY

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V I R G I N I A

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

----- X  
JANE W. GWINN, FAIRFAX COUNTY :  
ZONING ADMINISTRATOR, :  
Complainant, :  
versus : CHANCERY NO. 163246  
THANH VAN TRAN, :  
Respondent. :  
----- X

Fairfax, Virginia

Thursday, August 10, 2000

The above-entitled action came on to be heard  
before the HONORABLE KATHLEEN H. MACKAY, a Judge in and  
for the Circuit Court of Fairfax County, in Courtroom  
5-F of the Fairfax County Judicial Center, 4110 Chain  
Bridge Road, Fairfax, Virginia 22030, beginning at  
approximately 10:05 a.m., when there were present on  
behalf of the respective parties:

DN00-163.E

1 APPEARANCES:

2 On behalf of the complainant:

3 T. DAVID STONER, ESQUIRE  
 4 Assistant County Attorney, Fairfax  
 5 12000 Government Center Parkway  
 6 Suite 549  
 Fairfax, Virginia 22035  
 (703) 324-2421 Fax: 324-3938

7 On behalf of the respondent:

8 THOMAS NORRIS, ESQUIRE  
 9 LE CHI THAO, ESQUIRE  
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 Suite 700  
 10 Arlington, Virginia 22201  
 11 (703) 516-6688

12 Interpreters:

13 DUYEN MY LUU and  
 14 MINH T. NGUYEN

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21 Thanh Van Tran	101	113	116

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23

P R O C E E D I N G S

(The court reporter was duly sworn by the Court.)

(The interpreter was duly sworn by the Court.)

THE COURT: Can you please give the court reporter your full name, please?

INTERPRETER LUU: My name is Duyen My Luu. I spell for you. It's spelled D-U-Y-E-N, my middle name M-Y, my last name Luu, L-U-U.

COURT REPORTER: Thank you.

INTERPRETER LUU: You're welcome.

THE COURT: Ma'am, are you prepared to simultaneously translate these proceedings?

INTERPRETER LUU: Yes.

THE COURT: Okay. Then I expect that everything we say today will be translated as we say it to just this gentleman. Okay?

INTERPRETER LUU: Yes, Your Honor.

MR. THAO: Your Honor, there will be another -- the principal interpreter will be coming around 10:30.

THE COURT: Another what?

MR. THAO: The principal interpreter.

THE COURT: All right.



1 MR. THAO: He's caught in the Juvenile  
2 Court right now. He is coming to replace the lady.

3 THE COURT: Whatever, as long as someone  
4 competent is here it's fine with me.

5 This is the case of Jane W. Gwinn, Fairfax  
6 County Zoning Administrator, versus Thanh Van Tran.  
7 We're here on the complainant's motion for declaratory  
8 judgment and injunctive relief, I believe.

9 MR. STONER: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. STONER: I'm David Stoner, here on  
12 behalf of Jane Gwinn, the Zoning Administrator of Fairfax  
13 County. Let me note, Your Honor, that I've placed on the  
14 bench two binders, one of our authorities and one of our  
15 exhibits for today.

16 THE COURT: Okay.

17 MR. STONER: We also, as the Court may  
18 know, have filed briefs. We've filed two briefs, and  
19 Reverend Tran has filed one brief --

20 THE COURT: Yes --

21 MR. STONER: -- pretrial. Has the Court  
22 had an opportunity to review those briefs?

23 THE COURT: Good heavens, I should hope so

1 by the time I walked in here, or I'd be in bad shape  
2 today. I've read the briefs.

3 MR. STONER: All right, thank you.

4 As you know then, virtually none of the  
5 facts are in dispute here. We intend to put on one  
6 witness, the Zoning Inspector, who will testify to the  
7 continuing nature of the violation.

8 THE COURT: Did they actually file an  
9 answer? I can't say that I recall that. I don't  
10 remember anybody -- the defendant ever actually saying  
11 the facts weren't in dispute.

12 MR. STONER: I don't believe they've  
13 really disputed that. Essentially, they do contend, as I  
14 understand it, that Reverend Tran simply lives on the  
15 property and people come to visit him and they tend to  
16 come on Sunday mornings.

17 THE COURT: Okay.

18 MR. STONER: Our testimony will go  
19 primarily to the volume of people who show up  
20 consistently on Sunday mornings.

21 THE COURT: Okay.

22 MR. STONER: I think that's probably the  
23 only real factor that's in dispute.

1 THE COURT: All right.

2 MR. STONER: As you know, this is a suit  
3 for injunctive relief -- declaratory and injunctive  
4 relief, but principally injunctive relief to enforce the  
5 zoning ordinance against this long-standing violation.  
6 The use at issue here is a temple or other such place of  
7 worship.

8 We will show that the zoning ordinance,  
9 while it doesn't prohibit that use in this particular  
10 zoning district which is the RC zoning district, the  
11 residential district, it does require that there be a  
12 special permit approved for that use. And, in this case,  
13 there is no special permit.

14 The RC regulations provide that the  
15 permitted uses in that district are essentially  
16 agricultural and residential. It's designed for single-  
17 family detached dwellings on five-acre lots or greater.

18 This particular lot is roughly five acres  
19 -- just over five acres. The original owner or the owner  
20 back in 1988 was the Vietnamese Buddhist Association, a  
21 religious tax-exempt organization that was created for  
22 the purpose of forming and operating a Vietnamese  
23 Buddhist Temple.

1                   The evidence will show that the Vietnamese  
2 Buddhist Association essentially paid for the property  
3 which Mr. Tran now owns. As I understand it, they  
4 continue to pay the mortgage on that property. This is  
5 according to Reverend Tran's deposition testimony.

6                   On the property, the principal structures  
7 are a house where Reverend Tran lives, and a -- what I  
8 will call a garage, for lack of a better term. It's  
9 designed as a three-car garage, but, in fact, it hasn't  
10 been used as a garage for vehicles since 1989 at the  
11 latest.

12                   THE COURT: Is it a separate building --

13                   MR. STONER: It is a separate building,  
14 yes.

15                   The testimony will show and the facts not  
16 in dispute, the exhibits we will produce, will show that  
17 that garage has, in fact, been used as a Buddhist Temple  
18 since, at latest, 1992. That was when the first Notice  
19 of Zoning Violation was issued, the first of four such  
20 notices.

21                   In fact, that garage is used every Sunday,  
22 where every Sunday morning a minimum of 20 to 30 people  
23 congregate for religious services. And you will hear

1 testimony from the Zoning Administrator that as recently  
2 as this past Sunday, more than 100 people were there at  
3 one time on Sunday morning; more than 100 people and more  
4 than 50 cars or vehicles of some sort.

5 And on isolated occasions during the year  
6 at holiday times, as many as 300 or 400 people are at the  
7 temple, whether in the garage -- because it won't handle  
8 300 or 400 people -- or on the property around it.

9 The evidence will show that not only do  
10 people gather in and around this garage structure, but  
11 that it is indeed equipped specifically for the purpose  
12 of accommodating these religious services.

13 It has a loudspeaker, it has an alter, it  
14 has a statue of the Buddha, it has a collection box.  
15 There are several shoe racks that are available for  
16 people to remove their shoes before they enter the  
17 temple.

18 You will see evidence that this temple is  
19 advertised; it's ceremonies are advertised.

20 THE COURT: It's advertised as a temple?

21 MR. STONER: Yes.

22 THE COURT: Now, the present owner is  
23 Reverend Tran, but as I pointed out before, the

1 Vietnamese Buddhist Association carries the costs of the  
2 property.

3 Reverend Tran -- and there is undisputed  
4 evidence to this effect -- has known since, at latest,  
5 1989, that this property required a special permit for a  
6 temple, church, chapel, synagogue or other such place of  
7 worship. We know he knew that because he was involved in  
8 the filing of an application for a special permit.

9 That was in 1989. The special permit  
10 application proposed a place of worship where there would  
11 be bible study sessions on weekends -- this application  
12 and the related exhibits are our Exhibits 6 through 8,  
13 and they've been admitted as to their authenticity --  
14 there would be bible study sessions on weekends, there  
15 would be approximately 40 patrons according to the  
16 application; essentially, the minimum of what's happening  
17 now.

18 In fact, there are more than 40 patrons  
19 many weekends we will show. But as early as 1989,  
20 Reverend Tran knew and acknowledged that a special permit  
21 was required for this use. Now, that application was  
22 withdrawn in 1991 without explanation. That withdrawal  
23 is our Exhibit 9.

1           In 1992, the first of four notices of  
2 violation was issued for this use. It cited the use of  
3 the property as a place of worship, and the need for a  
4 special permit if that use was to continue.

5           That notice of violation is our Exhibit  
6 10. Our Exhibits 12 and 14 are two further notices of  
7 violation, again in 1992 -- I'm sorry, Exhibit 12 is a  
8 notice of violation in 1992.

9           Exhibit 14 is a letter from the attorney  
10 for the Vietnamese Buddhist Association, which at that  
11 time owned the property -- Reverend Tran lived there  
12 though and he's lived there since 1989 -- stating that no  
13 longer were any formal Sunday services being held on the  
14 property, and no services are being offered in the  
15 detached garage structure. Different from certainly the  
16 situation now, and there's no dispute that there are  
17 services of some sort occurring in the garage structure.

18           In 1993, our Exhibit 15, there was a third  
19 notice of violation showing that even if these services  
20 had been discontinued at some point in 1992, they had  
21 been resumed. None of these notices of violations were  
22 appealed through the Board of Zoning Appeals. The zoning  
23 ordinance and, indeed, the state code clearly lay out the

1 option of an appeal to the Board of Zoning Appeals of a  
2 notice of violation.

3 Now, I will not get into the legal  
4 argument with respect to the implications of that in my  
5 opening statement, but let me just say that there are  
6 implications from their failure to appeal.

7 After the 1993 notice of violation which  
8 was unappealed, there followed a second special permit  
9 application. The documents related to that are our  
10 Exhibits 17 through 19. That application was also  
11 withdrawn in 1995 because of, quote, "a number of issues  
12 raised in County staff reports," and the withdrawal  
13 letter is our Exhibit 22.

14 But that application was virtually  
15 identical to the 1989 application. It identified the  
16 proposed use as a place of worship where there would be  
17 bible study sessions on weekends, where there would be  
18 approximately 40 patrons. It sounds exactly like the  
19 first one.

20 And at this point, Reverend Tran owned the  
21 property. He acquired the property in 1993. He simply  
22 consented to the Vietnamese Buddhist Association being  
23 the applicant for that special permit, but Reverend Tran



1 owned the property and acknowledged that if the special  
2 permit were granted he would allow the use of the  
3 property for the special permit use.

4 As you will see from Reverend Tran's  
5 deposition testimony, there was no essential change in  
6 the nature of the use on the property from the early '90s  
7 up to today. And, in fact, there was a fourth notice of  
8 violation. The evidence will show that the Zoning  
9 Administrator has been extremely patient, one could argue  
10 too patient, with Reverend Tran in this instance.

11 But in 1999, she issued a fourth notice of  
12 violation for the same use, the same violation. That  
13 notice of violation was appealed to the BZA, the BZA  
14 upheld the Zoning Administrator, and there was no further  
15 appeal of that decision by the BZA.

16 Your Honor, given the prior notices of  
17 violation, the failure to appeal, and then the  
18 abandonment of the last appeal, the only issue remaining,  
19 I submit, is whether the use has continued. And I think  
20 as I've already suggested and certainly as the evidence  
21 will show, the use has continued, as I mentioned, as  
22 recently as this past Sunday.

23 And it's not an isolated event because as

1 recently as this past Sunday there were scores of  
2 vehicles, over 100 people on the property all at one  
3 time, Sunday morning from 10:00 to 11:00. That was the  
4 period of the inspection.

5 The evidence will show that the property  
6 continues to be used for these even larger religious  
7 ceremonies for holiday events where 300 to 400 people  
8 congregate, and that Reverend Tran continues to  
9 accommodate and encourage this sort of use by the way the  
10 garage structure itself is equipped. There's been no  
11 change in the provisions there for these large groups.

12 THE COURT: If he would have appealed the  
13 1999 BZA decision, he could have done that to the Circuit  
14 Court --

15 MR. STONER: He could have done that --

16 THE COURT: -- and the Circuit Court at  
17 that time could have made a decision that yes or no the  
18 use was the way the County thought it was. Right?

19 MR. STONER: Well, Your Honor, I submit  
20 that the only issue that was properly before the BZA and  
21 could have been before the Circuit Court on appeal was  
22 whether the use was continuing --

23 THE COURT: Because the original notices

1 -- you made an initial threshold determination that there  
2 was a use being made.

3 MR. STONER: Right.

4 THE COURT: So every time something  
5 happened after that, it was only a question of whether  
6 the use was continuing --

7 MR. STONER: It was merely a factual  
8 determination. Otherwise, the failure to appeal --

9 THE COURT: Would have no --

10 MR. STONER: -- the first one would have  
11 no meaning --

12 THE COURT: -- no meaning whatsoever.

13 MR. STONER: That's right. So it was  
14 really the failure to appeal the first notice of  
15 violation that was fatal to Reverend Tran's being able to  
16 say this use is not a temple or other such place of  
17 worship, it doesn't require a special permit. He lost  
18 the right to argue that.

19 But even if that weren't so, even if he  
20 had the continuing right to appeal, obviously his failure  
21 to appeal the BZA's upholding of the Zoning Administrator  
22 in 1999 would also be fatal. So any way you cut it, he  
23 can't argue now that the nature of the use is such that

1 the zoning ordinance doesn't require a special permit.

2 And, again, I don't believe there is any  
3 real dispute as to whether the use is continuing. We  
4 will simply put on evidence -- we'll be prepared to put  
5 on evidence that the scope of the use is perhaps larger  
6 than Reverend Tran has suggested, although even at the  
7 minimum of 20 to 30 people every Sunday, I submit that  
8 alone is enough to make it violative of the zoning  
9 ordinance because there is no special permit. And he  
10 admits that the use hasn't changed over the --

11 THE COURT: So ordinarily, all I'd have to  
12 do is make a factual determination that the use is  
13 continuing and that would be the end of the case, except  
14 that they've raised constitutional issues.

15 MR. STONER: That's right.

16 THE COURT: That's the issue that they  
17 think makes this case compelling. Right?

18 MR. STONER: I believe so. And obviously,  
19 I'm not prepared to address that as legal argument in  
20 opening statement. I'll be able to address it whenever  
21 the Court wishes.

22 THE COURT: All right. Thank you very  
23 much.

1 I'm sorry, but I can't remember  
2 everybody's name.

3 MR. THAO: I'm Mr. Thao.

4 THE COURT: Thank you. And are you Mr.  
5 Norris?

6 MR. NORRIS: Yes, Your Honor.

7 THE COURT: All right.

8 MR. NORRIS: Your Honor, there is some  
9 factual dispute here as to the regularity of the services  
10 and regularly scheduled worship services. There's no  
11 question that people come to visit Mr. Tran at his  
12 property.

13 He's a prominent figure in his community  
14 and has lots of friends and acquaintances. We're not  
15 denying the fact that he has people at the house and they  
16 engage in worship, they relate in speech related to  
17 Buddhism and they associate with one another.

18 Without arguing the constitutional status  
19 of those actions, those are certain kinds of actions.  
20 And this is not a case where he is applying for a permit  
21 to build a structure. The County has not claimed that  
22 the house is unlawfully on the property or that the  
23 garage is unlawfully on the property.

1           The County is objecting here to conduct  
2   that Mr. Tran engages in. The conduct consists of speech  
3   and association and worship. And the intensity of that  
4   use is significant, but he's not doing anything that  
5   other people aren't allowed to do in a non-religious  
6   context.

7           Basically, our objections are  
8   constitutional, and that's something we should address  
9   later on, I think. I also, as a matter of fact, want to  
10   argue that the prior zoning applications aren't as  
11   factually relevant as Mr. Stoner would make them out to  
12   be.

13           Mr. Tran has been under the advice of  
14   several lawyers over the years and they have used  
15   different strategies in what they thought would advance  
16   his interests.

17           The question of whether a permit is  
18   required is a legal question, and the fact that he  
19   applied for an application doesn't decide whether or not  
20   a permit is required in the current case, and it doesn't  
21   answer the question of what use is permitted on a private  
22   resident without a permit. Clearly, some use is, but  
23   that's a legal question too.

1 THE COURT: You don't think that his  
2 failure to properly appeal any of the determinations by  
3 the County has any legal significance?

4 MR. NORRIS: The legal significance of  
5 that is a legal question --

6 THE COURT: I mean, you can argue that at  
7 closing -- sure, it is.

8 MR. NORRIS: I mean, what facts are  
9 established by those notices of violation if they are  
10 deemed legally to establish facts? They establish that  
11 there's a place where worship is occurring. The notices  
12 don't set forth what elements of conduct are alleged to  
13 be the violation of the place of worship ordinance.

14 That's another factual thing too. There's  
15 a host of facts that the County has referred to in their  
16 pretrial brief, and I'm sure they'll present evidence of  
17 the facts. There is the existence of the VBA Corporation  
18 structure which pays rent to somebody or something,  
19 there's the letterhead, there's the website that Mr. Tran  
20 will deny he has any control over, there's no reference  
21 to the property as a temple.

22 These things -- it's not clear which, if  
23 any, of these things constitute a violation of the place

1 of worship ordinance. There's no -- there's a  
2 complicated set of facts and the notices of violation  
3 don't refer to any particular facts that are the things  
4 that he has to stop doing in order to come into  
5 compliance with the ordinance.

6 THE COURT: I understand. So your theory  
7 is that those prior determinations don't have any effect  
8 and that I should make a determination today. Right?

9 MR. NORRIS: Don't have an --

10 THE COURT: Well, let's assume you're  
11 correct that all the past is not relevant because I have  
12 to make a factual determination today. I'm going to be  
13 able to do that today.

14 MR. NORRIS: Yes, you can make a factual  
15 determination based on the evidence before you here  
16 today.

17 THE COURT: Exactly.

18 MR. NORRIS: The evidence isn't going to  
19 contradict the notion that there has been worship going  
20 on. We intend to argue as a matter of law that the prior  
21 notices of violation don't strip him of the right to  
22 assert his constitutional arguments in defense of his  
23 right to engage in fundamental rights and fundamentally



1     protected activities. But that's a legal question.

2                   THE COURT: I'm going to make a factual  
3     determination today. You have a different interpretation  
4     of the facts than Mr. Stoner does. Right?

5                   MR. NORRIS: It's a slightly different  
6     interpretation, I guess. I mean, there may be some  
7     dispute as to the numbers. There is probably some  
8     dispute as to the publicity or regularity of the  
9     gatherings, if that's an issue.

10                   The ordinance doesn't specify what facts  
11     have to attach to a gathering to make it a worship  
12     gathering as opposed to just a social gathering.

13                   THE COURT: Well, that's a determination  
14     that the BZA makes and the County makes and ultimately I  
15     make, so I'll make that determination today. I don't  
16     have any problem doing that.

17                   MR. THAO: May I add something to Mr.  
18     Norris --

19                   THE COURT: Yes, sir.

20                   MR. THAO: I was involved with the whole  
21     process from the beginning, although there were two other  
22     attorneys who specialize in zoning law who took care of  
23     the applications.

1 THE COURT: Sir, you can certainly testify  
2 as a witness in the case if you'd like to.

3 MR. THAO: Just part of the opening  
4 remark, Your Honor.

5 THE COURT: Well, you're testifying  
6 personally from your experience, which is not typical for  
7 opening statement. You can certainly testify as a  
8 witness if Mr. Norris thinks it's appropriate.

9 Is there anything else you want to tell me  
10 in opening statement?

11 MR. NORRIS: That's sufficient for the  
12 opening statement, Your Honor.

13 THE COURT: Do you want a Rule on  
14 Witnesses, Mr. Stoner. There are several people in the  
15 courtroom. Do you need a Rule?

16 MR. STONER: I think so, Your Honor. I  
17 don't know what witnesses they're intending to call. We  
18 have only one.

19 THE COURT: And that is who?

20 MR. STONER: Sandra Hicks, the Zoning  
21 Inspector. She'll be here --

22 THE COURT: Okay. Is there anybody, Mr.  
23 Norris, that you intend to call as a witness in the

1 courtroom today?

2 MR. NORRIS: No one except Mr. Tran.

3 THE COURT: Okay. Well, then I'll assume  
4 that everybody is here properly and we don't need to  
5 exclude anybody.

6 Okay, Mr. Stoner.

7 MR. STONER: Thank you, Your Honor. I  
8 will call Sandra Hicks to the stand.

9 INTERPRETER NGUYEN: Excuse me, Your  
10 Honor. I am supposed to be the interpreter for this  
11 hearing.

12 THE COURT: Sir, I recognize you. I  
13 wondered and now I realize. Do you want to switch  
14 interpreters?

15 MR. THAO: Yes, Your Honor, if we may.

16 THE COURT: Sure. Sir, will you identify  
17 yourself for the record, please?

18 INTERPRETER NGUYEN: My name, Your Honor,  
19 is Minh Nguyen, M-I-N-H N-G-U-Y-E-N, and I'm a court  
20 interpreter.

21 THE COURT: And the language is  
22 Vietnamese?

23 INTERPRETER NGUYEN: Vietnamese and

1 English.

2 THE COURT: Okay. Do you want to  
3 substitute at this point?

4 INTERPRETER NGUYEN: Yes, Your Honor.

5 THE COURT: All right. Let me swear you  
6 in.

7 (The interpreter was duly sworn by the Court.)

8 MR. STONER: Your Honor, before Ms. Hicks  
9 begins, I would offer into evidence our Exhibits 1  
10 through 29 and 32 through 35. I don't believe there is  
11 any objection to any of those.

12 THE COURT: Exhibits 1 through 29 and  
13 which others?

14 MR. STONER: Exhibits 32 through 35.

15 MR. NORRIS: Your Honor, we've admitted  
16 the authenticity of the exhibits, but several of them are  
17 letters from prior attorneys, there are out-of-court  
18 statements.

19 THE COURT: Okay. We'll go through them.  
20 I want you to move it along --

21 MR. NORRIS: All right --

22 THE COURT: -- and you can object as the  
23 County moves them in.

1 MR. NORRIS: All right, Your Honor.

2 Whereupon,

3 SANDRA HICKS,

4 a witness, was called for examination by counsel on  
5 behalf of the complainant, and, having been first duly  
6 sworn by the Court, was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. STONER:

10 Q. Could you state your name for the record,  
11 please?

12 A. Sandra L. Hicks.

13 Q. Where are you employed, Ms. Hicks?

14 A. With the Fairfax County Department of  
15 Planning and Zoning in the Zoning Enforcement Branch.

16 Q. How long have you been employed by that  
17 department?

18 A. I've been with the Zoning Office since  
19 April of 1978, so it's a little over 22 years.

20 Q. What was your first job in that office?

21 A. My first job in that office was as a clerk  
22 to the Board of Zoning Appeals.

23 Q. What were your duties in that respect?

1           A.       My duties in that respect were to act as  
2       secretary at the Board of Zoning Appeals hearings, to  
3       transcribe the minutes, to assist citizens and attorneys  
4       in the filing of special permit applications, variances,  
5       or appeals of the Zoning Administrator's decisions, and  
6       to help process those applications towards the public  
7       hearings processes.

8           Q.       What was your next job in the Zoning  
9       Office?

10          A.       In May of 1985, I became a Zoning  
11       Inspector with the Zoning Enforcement Branch.

12          Q.       What were your responsibilities in that  
13       job?

14          A.       To investigate land use complaints of  
15       zoning violations -- alleged zoning violations.

16          Q.       How long did you hold that job?

17          A.       I was a Zoning Inspector from May of 1985  
18       through May of 1990, at which time I was promoted to be a  
19       Supervising Field Inspector. I still work in the Zoning  
20       Enforcement Branch, but now I oversee other Zoning  
21       Inspectors who investigate these land use complaints, and  
22       on occasion still work with them on their cases or handle  
23       some of the more complex cases on my own.

1           Q.       Over the course of your years as a Zoning  
2 Inspector or Supervising Field Inspector, approximately  
3 how many zoning inspections would you estimate you've  
4 performed?

5           A.       I would say it would be in the thousands.

6           Q.       Can you tell us what a notice of violation  
7 is?

8           A.       A notice of violation is a written  
9 document that sets forth what the activities are deemed  
10 to be and that will set forth the provisions of the  
11 zoning ordinance that it violates, as well as setting  
12 forth what options or criteria there are in which to  
13 resolve the violation.

14          Q.       And to whom is such a notice sent?

15          A.       Notices of violation are issued to the  
16 property owners and to the parties that are involved in  
17 the violation.

18          Q.       How many notices of violation would you  
19 estimate you've prepared or overseen the preparation of?

20          A.       Upper hundreds to the low thousands  
21 probably.

22          Q.       Do you have any professional  
23 certifications?

1           A.       Yes. I am a member of the Virginia  
2 Association of Zoning Officials and am certified as a  
3 Certified Zoning Administrator.

4           Q.       Was there any sort of examination involved  
5 in that process?

6           A.       There is a test that is done. It's  
7 conducted by Doctor Mike Chandler of Blacksburg, VPI, as  
8 the one who prepared and administered this test through  
9 the Virginia Association of Zoning Officials.

10          Q.       Ms. Hicks, are you familiar with the  
11 property located at 7605 Bull Run Drive here in Fairfax  
12 County?

13          A.       Yes, I am.

14          Q.       How are you familiar with that property?

15          A.       My first occasion was overseeing Zoning  
16 Inspector Leslie Setleff who was handling the  
17 investigation on this case. I worked with Les on a few  
18 inspections, and when Mr. Setleff left our office to go  
19 to another department in the Fairfax County Government, I  
20 took over this case and continued the investigation.

21          Q.       When was that? When did you first become  
22 involved with the property?

23          A.       The first time that I was at the property



1 was in December of 1998.

2 Q. Could you give us a general description of  
3 the property?

4 A. I went to the property, it was a Sunday  
5 morning, and on December 18th --

6 THE COURT: What date are we talking about  
7 here?

8 THE WITNESS: December 18th of 1998. I'm  
9 sorry, the 13th. I apologize. December 13th of 1998.

10 I arrived at the property probably about  
11 ten o'clock in the morning. I had another individual  
12 with me by the name of Helene Cassell who was a new  
13 Supervising Field Inspector that was there just for -- to  
14 see how we conduct inspections.

15 When we arrived at the property, there  
16 were already about 40 vehicles parked on the site, and  
17 people were entering the garage temple area. I had  
18 observed that there were racks that were set out outside  
19 the garage where people were removing their shoes and  
20 placing them there.

21 We went up to the door of the dwelling and  
22 knocked. A young man answered. I asked to speak to Mr.  
23 Tran and was told that he was not available, that he was

1 conducting worship services. We were asked to wait, so  
2 we returned to the car to wait, and within a minute or  
3 two the young man came back out and asked that we come  
4 inside the dwelling and wait inside there.

5 We were probably inside for a good 45  
6 minutes --

7 THE COURT: The garage or the house?

8 THE WITNESS: The house, the dwelling. A  
9 separate little room inside the dwelling.

10 While we were waiting in this room, you  
11 could hear a loudspeaker that was being piped from the  
12 garage, and you could hear something -- it wasn't in  
13 English, but you could hear a male voice reciting  
14 something.

15 At the end when all of that ended, Mr.  
16 Tran did come into the room. I asked to speak with him  
17 regarding the worship services and to view the garage.  
18 He refused us access to the garage and insisted that we  
19 contact his attorney. I tried to persuade him to show me  
20 the garage area and to further discuss this, and he  
21 refused to do so so we then left the property at  
22 approximately eleven-forty.

23 BY MR. STONER:

1           Q.       Did you perform any other inspections of  
2 the property?

3           A.       Yes. I've been back to the property  
4 several -- probably about six more times since then. I  
5 was at the property again on February 14th of 1999.

6           Q.       What time was that inspection?

7           A.       That was from about ten o'clock in the  
8 morning.

9           Q.       And I'm sorry, but what time did you say  
10 your inspection in December of 1998 was?

11          A.       I think we arrived at ten o'clock and were  
12 there until about eleven-forty.

13          Q.       All right. Go ahead about your February  
14 1999 inspection?

15          A.       On February 14th of 1999, I accompanied  
16 Mr. Leslie Settleff to the property to see what was  
17 occurring. At that time, Leslie and I drove onto the  
18 property into the parking area where there was a  
19 gentleman directing traffic.

20                   We stopped to speak with him, and he  
21 indicated that the property was being used as a temple.  
22 When questioned, he indicated that other services take  
23 place at the property, that they did conduct weddings and

1 memorial services at that location.

2 As we drove through, we counted  
3 approximately 40 automobiles parked in the rear yard, and  
4 were observing the people entering into the temple area.  
5 All we did that day was just kind of observe and then we  
6 left.

7 Q. I'm sorry if you already said this, but  
8 did you say how many vehicles you saw?

9 A. About 40.

10 Q. Would you turn the binder in front of you  
11 to Exhibit 23?

12 A. Exhibit 23?

13 Q. Right?

14 A. Yes, I have it here.

15 Q. Do you recognize that document?

16 A. Yes. This is a notice of violation letter  
17 that was issued by Leslie Setleff to Mr. Tran and Mr.  
18 Thanh.

19 Q. Did I understand you to testify earlier  
20 that you are Mr. Setleff's supervisor --

21 A. Yes I am --

22 Q. -- at this time?

23 A. Yes, I was.

1           Q.       Were you aware of the issuance of this  
2 notice of violation?

3           A.       Yes.

4           Q.       Did you approve its issuance?

5           A.       Yes, I did.

6           Q.       Let me direct your attention to the last  
7 paragraph on the first page of Exhibit 23. Do you see  
8 that?

9           A.       Yes, I do.

10          Q.       I see a reference to various zoning  
11 inspections. Are some of these the ones that you were  
12 just testifying about?

13          A.       Yes, I did two -- participated in two of  
14 those inspections.

15          Q.       The last two?

16          A.       Yes.

17                 THE COURT: Where are you referring to on  
18 that letter?

19                 MR. STONER: I'm sorry?

20                 THE COURT: Where are you referring to on  
21 that letter?

22                 MR. STONER: It was the last paragraph of  
23 the first page.

1 THE COURT: Okay.

2 BY MR. STONER:

3 Q. Now, Ms. Hicks, let me ask you about your  
4 next visit to the property. When was that?

5 A. The next visit was in --

6 THE COURT: Are you going to move these  
7 all in at once, or what do you want to do?

8 MR. STONER: I think that's probably  
9 easier.

10 THE COURT: Okay. Well, unless there's  
11 objections to each one, it might be easier to tackle them  
12 one-at-a-time.

13 MR. STONER: Okay. I would move into  
14 evidence Exhibit 23.

15 THE COURT: Mr. Norris, do you have any  
16 problem with this?

17 MR. NORRIS: No, Your Honor, no objection  
18 to 23.

19 THE COURT: Okay, that's admitted.

20 (The document referenced was marked Complainant's  
21 Exhibit Number #23 for identification and was received  
22 into evidence.)

23 BY MR. STONER:

1           Q.       All right, Ms. Hicks. Would you tell us  
2 about your next inspection of the property?

3           A.       The next time I was at the property was on  
4 June 20th of 1999. At that time I arrived at the  
5 property probably at about ten o'clock in the morning,  
6 and parked my vehicle in the ditch of the right-of-way in  
7 front of 7605 Bull Run Drive.

8                   When I first arrived there appeared to be  
9 about 15 cars parked behind the dwelling, and I did  
10 notice a gentleman in the parking area directing the  
11 traffic where to park. While there, I did observe 19  
12 more vehicles enter the property, which gave a total of,  
13 let's see, about 30 -- about 40 vehicles, I believe;  
14 somewhere in that area, 34 to 35 vehicles.

15                   There appeared to be about 37 people in  
16 those vehicles that were -- had entered on the property  
17 later. While at the site, I did observe the people go  
18 into the garage area. Some of the people were carrying  
19 trays. I did take photographs of the garage area and the  
20 people entering the garage.

21           Q.       Would you turn to Exhibit 31, please, Ms.  
22 Hicks?

23           A.       Yes.

1           Q.       Do you recognize the first page of this  
2 exhibit?

3           A.       Yes, I do.

4           Q.       What is it?

5           A.       That is a picture of the garage that's  
6 used as the temple. It shows the single red door that  
7 most of the people enter through on the times that I've  
8 been there, and it shows the shoe rack outside with a  
9 gentleman standing next to the shoe rack.

10          Q.       Now, there's a block with various notes  
11 below the photograph in this exhibit. Can you tell me  
12 what that block is?

13          A.       That block is the documentation for the  
14 photograph that shows the address of the property, the  
15 tax map reference number, what the property is zoned and  
16 what the picture depicts, and it's signed by the  
17 photographer which is myself.

18          Q.       Does this photograph fairly and accurately  
19 depict what you observed on the property on June 20,  
20 1999?

21          A.       Yes, it does.

22          Q.       All right. Now, there are a number of  
23 other photographs that are a part of Exhibit 31, and, Ms.



1 Hicks, I would invite you to refer to them in the course  
2 of your testimony if they are relevant?

3 A. Okay.

4 Q. When was your next inspection of the  
5 property?

6 A. The next time I was at the property was on  
7 June 4th of 2000.

8 Q. When were you there on that day?

9 A. That time I arrived at about nine o'clock  
10 in the morning.

11 Q. How long did you stay?

12 A. I think I was there probably until about  
13 eleven or so.

14 Q. Tell me what you saw?

15 A. When I arrived at the site, there was  
16 about three cars parked at the rear of the property, the  
17 temple doors were closed. I was there from nine until  
18 about eleven-fifteen, and while there I observed a total  
19 of 56 vehicles on the property with about 98 people.  
20 Some of the people carried trays or flowers into the  
21 temple.

22 At about ten o'clock in the morning, some  
23 of the people that were there started gathering in front

1 of that single red door to the temple, and at about five  
2 minutes after ten, I observed a man in gray robes go into  
3 the temple, followed by two women in black with white  
4 headbands. They seemed to be escorting him into the  
5 temple. The other people followed in behind.

6 I could hear soft amplification of a  
7 chanting with a drum sound that lasted probably about ten  
8 minutes or so, and this occurred several times between  
9 ten in the morning until I departed at about eleven-  
10 fifteen in the morning. During this time there was also  
11 a man in the lower-level parking area that was directing  
12 traffic where to park.

13 Q. All right. Have you done any further  
14 inspections of the property?

15 A. Yes. I was at the property again on June  
16 18th of 2000?

17 Q. This was two weeks after the inspection  
18 you were just referring to?

19 A. Yes.

20 Q. All right?

21 A. And on that date I think I was there from  
22 nine-fifteen in the morning until about eleven. At that  
23 time when I first arrived to the property, there were

1     about three vehicles that were parked at the rear.  
2     During the observation period, I saw approximately 16  
3     more vehicles enter the property that had about 35 people  
4     inside the vehicles.

5                 These cars were staggered, arriving every  
6     few minutes throughout the time period. I was parked at  
7     a neighbor's driveway down a ways from the temple, so I  
8     could not view people entering into the temple. The  
9     majority of what I could do was to try and watch the cars  
10    turning into the driveway and trying to take note of  
11    those and the number of people.

12                I did -- let's see, the totals for that  
13    time period, it appeared that there was about a total of  
14    19 vehicles at the site, and I did not take any  
15    photographs that particular day.

16                Q.       Okay. I take it you inspected the  
17    property again after that?

18                A.       Yes. I was back at the property again on  
19    June 25th of 2000, from about nine-fifteen in the morning  
20    until eleven. I again observed the property from a  
21    neighbor's driveway down -- kind of adjacent to this  
22    property.

23                When I first arrived, there were about two

1 vehicles on the property. During the time period that I  
2 was there, I counted about 18 more vehicles that had  
3 approximately 35 people inside of them.

4 I did walk the area and took photographs  
5 of the property, and while doing that I was able to hear  
6 some amplification of the chanting, you know, coming from  
7 the temple.

8 Q. Are any of those photographs in  
9 Complainant's Exhibit 31?

10 A. Yes. There is a photograph of the  
11 property taken on June 25, 2000, that shows the portion  
12 of the garage temple and the parking lot area.

13 Q. And you're looking at --

14 THE COURT: It's looks like there are five  
15 photographs from June 25th. Are those all photographs  
16 you've taken? I can look at the photographs and I can  
17 see what they --

18 THE WITNESS: There was only one  
19 photograph in this --

20 THE COURT: I've got five of them dated  
21 June 25th.

22 THE WITNESS: I only have one in here of  
23 June 25th.

1 MR. STONER: I'm sorry. Let me give you  
2 what the Court has. I apologize for that, Your Honor.

3 THE COURT: That's all right. She can  
4 look at this one. This is what I've got.

5 THE WITNESS: Thank you.

6 (Brief pause.)

7 THE WITNESS: Yes. These are pictures  
8 that I took that day of the property that show the  
9 grounds. It shows the dwelling and the temple, it shows  
10 the temple and the parking area where people park, it  
11 shows an area of the temple with the red door open with  
12 people standing around outside and with the shoe racks  
13 next to the door, and then another photograph of the  
14 parking area where people park.

15 There is a photograph again of the temple  
16 with the red door open with a gentleman kneeling at the  
17 shoe rack.

18 BY MR. STONER:

19 Q. Ms. Hicks, looking further in Exhibit  
20 31 --

21 MR. STONER: And I apologize, Your Honor.  
22 It appears that some of these might have gotten out of  
23 order.

1 BY MR. STONER:

2 Q. Do you see any other photographs other  
3 than the one you testified to earlier from your June 20,  
4 1999 inspection?

5 A. These are out of order. I see a  
6 photograph for June 20th of a gentleman standing outside  
7 the temple door at the shoe rack. These are out of  
8 order, so hold on.

9 (Brief pause.)

10 THE COURT: We can move along here. I've  
11 got six photographs from 6/25, and I've got three  
12 photographs from 6/20, and I presume that you took those?

13 THE WITNESS: Yes.

14 MR. STONER: And, I believe, four from  
15 August 6th?

16 THE COURT: And four from August 6th.

17 THE WITNESS: And I do see the other two  
18 photographs on June 20th that were out of order in the  
19 book, and, yes, I did take those pictures.

20 The pictures here on August 6th, yes, are  
21 pictures that I also took on the day that I was out there  
22 on the 6th.

23 THE COURT: You didn't testify about

1 August 6th yet, so --

2 MR. STONER: We'll get to that, Your  
3 Honor.

4 THE COURT: -- Mr. Stoner will be asking  
5 about those.

6 THE WITNESS: All right.

7 BY MR. STONER:

8 Q. Ms. Hicks, I think you just finished  
9 telling us about your June 18th inspection, and you were  
10 starting to tell us about your June 25th inspection of  
11 this year; is that right?

12 A. I thought I did June 25th also --

13 THE COURT: She did the --

14 MR. STONER: Oh, I'm sorry, you did.

15 BY MR. STONER:

16 Q. I don't want to throw you off. Was there  
17 anything else you needed to note about the June 25th  
18 inspection?

19 A. No.

20 Q. When was your next inspection of the  
21 property?

22 A. My next inspection was on August 6, 2000.

23 Q. That was this past Sunday?

1           A.           This past Sunday. I was there from about  
2           ten o'clock in the morning until about eleven o'clock in  
3           the morning. Again I had parked in the driveway of an  
4           adjacent neighbor and walked the property lines to  
5           observe what was occurring.

6                       When I first arrived to the site, there  
7           were a lot of cars that were parked in the rear and I was  
8           not able to count them because there were a lot of them  
9           down there and you couldn't see all of them behind the  
10          dwelling. I did observe though that all of the doors to  
11          the temple were open, which in times past there's only  
12          been that one single red door open.

13                      All of the doors were open. There was a  
14          table that was set up outside the temple doors. The  
15          table had a yellow cloth and one or two people were  
16          sitting there.

17                      While I was observing, the people arriving  
18          to the site were stopping at the table and then going on  
19          to enter into the temple area. From the doors that were  
20          open, I could observe people inside kneeling down. There  
21          appeared to be an alter with lights set up at one end of  
22          the temple area.

23                      I could hear chanting and arrhythmic sound



1 coming from the temple. However, I was not able to see  
2 the source of where the sound was coming from.

3 I did take photos of the property, and  
4 while doing this I wasn't able to get an accurate count  
5 of the cars coming to the property or the number of  
6 people, but the cars were coming from when I observed --  
7 from about ten until ten-thirty with the cars driving  
8 onto the property, there was probably at least one to two  
9 cars arriving each minute.

10 Many of the cars had a minimum of two  
11 people and sometimes as many as four. It was between  
12 ten-thirty and about ten-fifty that I was walking the  
13 site and taking the photos. But of all the times that  
14 I've been to the property, and I think was about the  
15 seventh time that I'd been there, this particular day  
16 appeared to have the most vehicles and the most people  
17 that I've ever observed on the site.

18 Q. So what would be the minimum number of  
19 vehicles you'd estimate you saw on the property that day?

20 A. It had to be over 50. I would say  
21 minimum, maybe 75 cars on the property and well over 100  
22 people.

23 Q. Now, Ms. Hicks, do I understand that all

1 of your inspections were on Sunday mornings?

2 A. Yes.

3 Q. Now, have you done any other investigation  
4 into the use of the property as a temple or other such  
5 place of worship?

6 THE COURT: Do you want to move this stuff  
7 in?

8 MR. STONER: I'm sorry?

9 THE COURT: Do you want to move these  
10 pictures in?

11 MR. STONER: I'll go ahead and move those  
12 in. So I'll move into evidence Complainant's Exhibit 31.

13 MR. NORRIS: No objection.

14 (The document referenced was marked Complainant's  
15 Exhibit Number #31 for identification and was received  
16 into evidence.)

17 THE WITNESS: Would you repeat your  
18 question?

19 MR. STONER: Sure.

20 BY MR. STONER:

21 Q. Have you done any further investigation  
22 into the use of the property as a temple or other such  
23 place of worship? Have you done anything else to

1 determine the nature of the use?

2 A. The only other thing that I have done is  
3 to search the Internet to look for temples in the area,  
4 and I did note that this particular location is listed on  
5 the Internet as a temple place of worship with Mr. Tran  
6 as the monk.

7 Q. Would you turn to Complainant's Exhibit  
8 30?

9 A. Yes.

10 Q. Do you recognize that document?

11 A. Yes. That is what I found on the website.

12 Q. Did you actually retrieve this yourself?

13 A. Yes.

14 Q. Would you turn to Complainant's Exhibit  
15 29, please?

16 A. Yes.

17 Q. Do you recognize that?

18 A. Yes. That is also some of the  
19 documentation that I found on the website.

20 Q. And, again, did you personally retrieve  
21 this web page?

22 A. Yes, I did.

23 Q. Ms. Hicks, based on your inspections of

1 the property, have you perceived any change in the nature  
2 of the use since your first inspection in December of  
3 1998?

4 A. There appears to be no change.

5 Q. And have you investigated whether there is  
6 a special permit for this use?

7 A. Yes. I did research to find out whether  
8 or not there have been any special permits approved for  
9 this location. The only thing I was able to find were  
10 the two special permit applications that had been  
11 submitted and withdrawn.

12 Q. Now, did the religious aspect of the use  
13 you observed play any part in your determination that it  
14 violated the zoning ordinance?

15 A. No. The religious part of it itself, no.  
16 The fact that there is some type of activity that is  
17 occurring there on a regular basis with large numbers of  
18 people going there, we probably would have continued to  
19 investigate to determine what use was occurring if it  
20 wasn't religious in nature; whether it would have been  
21 community uses, private clubs, social clubs or some other  
22 type of activity that might also have been in violation  
23 of the zoning ordinance.

1           Q.       Are any of those other uses you've  
2 described permitted by right in the RC Zoning District?

3           A.       No. Those other uses also, if permitted,  
4 would have required either a special permit or special  
5 exception approval.

6           Q.       Are there any of those uses that wouldn't  
7 be allowed in any instance by special permit or special  
8 exception in the RC District?

9           A.       There could be some things that would be  
10 specifically prohibited in the RC District under the  
11 ordinance, and they would be outlined.

12          Q.       Why then, Ms. Hicks, did the notices of  
13 violation identify the use on the property or the  
14 violation as being a place of worship?

15          A.       We identified or deemed it to be a place  
16 of worship based on the activities that we had observed,  
17 based on the documentation, the letter of justification  
18 that was presented by the Vietnamese Buddhist Association  
19 and Mr. Tran, and both of the special permit applications  
20 that they had submitted where they documented what they  
21 proposed to do on the property.

22                   Everything that was in their statement of  
23 justification appeared to be occurring on the Sundays

1 that we were there. It was also based on other factors  
2 that we had observed all of the Sunday inspections where  
3 people were there on a regular or consistent basis, the  
4 fact that they had people in the parking lot to direct  
5 traffic.

6 It was based on the few conversations that  
7 we had with people at the site, whether it was the young  
8 man that answered the door that indicated that yes, this  
9 was a temple, or the gentleman in the parking lot that  
10 indicated yes, this is a temple and that they conducted  
11 other types of religious ceremonies there such as the  
12 weddings and memorials.

13 So it was just all of that documentation  
14 or evidence that was used to determine that this is a  
15 place of worship, which gave us reason to issue this  
16 written notice of violation.

17 Q. Ms. Hicks, as a Zoning Inspector for  
18 Fairfax County, does the zoning ordinance prohibit  
19 worship --

20 A. No --

21 Q. -- in the RC zoning district or in any  
22 other zoning district?

23 A. No, it's not prohibited. It requires a

1 special permit approval, but it is not prohibited.

2 Q. Is that for worship, or for a place of  
3 worship?

4 A. It's for a place of worship.

5 Q. Is the act of worship prohibited anywhere?

6 A. No.

7 MR. STONER: Your Honor, before I release  
8 Ms. Hicks, I would like to offer into evidence a number  
9 of our exhibits.

10 THE COURT: Okay. Hold on just a second.

11 (Brief pause.)

12 THE COURT: Okay.

13 MR. STONER: And I don't know how the  
14 Court wishes to deal with this. I'm basically going to  
15 offer them en banc -- en masse, I should say, and we  
16 might need to talk about individual --

17 THE COURT: Well, Mr. Norris is going to  
18 just tell me, I guess, which ones he objects to.

19 Which ones are you moving in, please?

20 MR. STONER: I would move for admission  
21 Exhibits 1 through 22, and 24 through 30, and 32 through  
22 35.

23 THE COURT: Okay. Let me take that first

1 bunch.

2 Mr. Norris, Exhibits 1 through 22. Do you  
3 have any objection?

4 MR. NORRIS: I would object to Numbers 6,  
5 7, 8 and 9 --

6 THE COURT: All right. Let me just read  
7 that for a second; Exhibits 6, 7, 8 and 9.

8 MR. NORRIS: -- as hearsay.

9 (The documents referenced were marked  
10 Complainant's Exhibits Number #1 through #5, Exhibits #10  
11 through #13, and Exhibits #15 and Number #16 for  
12 identification and were received into evidence.)

13 THE COURT: And those are all the official  
14 applications made by the VBA. Right? Is that what those  
15 are --

16 MR. NORRIS: Well, Number 6 is a  
17 statement --

18 THE COURT: Okay. Let's look at them one  
19 after another then.

20 Number 6 says this statement serves to  
21 explain an application. I would -- that would lead one  
22 to think that it was submitted with the application. Is  
23 that your understanding?



1 MR. NORRIS: Yes, I believe it was a  
2 submitted an application. It says it's submitted by the  
3 Vietnamese Buddhist Association. They're not a party to  
4 the case and they haven't testified here.

5 THE COURT: Okay. What's your response to  
6 that, Mr. Stoner?

7 MR. STONER: Well, Your Honor, Reverend  
8 Thao is the principal officer in the Vietnamese Buddhist  
9 Association, as his deposition testimony which I've also  
10 offered makes clear. I don't think there is any dispute  
11 about that.

12 It certainly goes to his knowledge of what  
13 was required on the property. This is background to the  
14 uses permitted on the property.

15 THE COURT: Isn't it a public record --

16 MR. STONER: Obviously, Mr. Thao, who is  
17 present here today, is the signer of the document; the  
18 author of the document. And it was submitted in  
19 conjunction with the first -- as is indicated, with the  
20 first special permit application.

21 THE COURT: Isn't it a County document?

22 MR. STONER: It certainly is a County  
23 document.

1 THE COURT: It is a public record. Right?

2 MR. STONER: It is a public record. We  
3 have a double certified copy, but we didn't need the  
4 double certification because they didn't --

5 THE COURT: Okay. What is the rule --

6 MR. STONER: -- to the authenticity.

7 THE COURT: What is the rule on public  
8 documents? I'm trying to look it up again. I'm trying  
9 to find it.

10 MR. STONER: Well, the statute --

11 THE COURT: Judicial records -- as  
12 evidence -- hold on a second. This is all County  
13 information.

14 MR. STONER: Right.

15 (Brief pause.)

16 THE COURT: "Copies of records of the  
17 Commonwealth," blah-blah, "shall be received as prima  
18 facie evidence provided that such copies are  
19 authenticated to be true copies either by the custodian  
20 thereof or the person to whom the custodian reports."

21 Do you have any response to that? I can't  
22 imagine why I couldn't -- I mean, seriously, these are  
23 County documents --

1 MR. NORRIS: They incorporate --

2 THE COURT: -- not to mention the fact  
3 that they shed light on her testimony and her  
4 determination. They were used by her to make her  
5 decisions. I don't see any basis for them not coming in.

6 MR. NORRIS: Well --

7 THE COURT: Would you admit that they're  
8 County documents? I'm reading from 8.01-390, Nonjudicial  
9 Records as Evidence.

10 MR. NORRIS: -- they're authenticated as  
11 County records, but if there is hearsay in them or  
12 irrelevant statements about intended uses that may or may  
13 not have occurred. We've have independent testimony of  
14 what actually happened on the property.

15 These things are not proof of the truth of  
16 the matters contained in them, absent some independent  
17 testimony that the facts are true. They're just --

18 THE COURT: Well, this 8.01-390 says they  
19 shall be received as prima facie evidence.

20 MR. NORRIS: The question would be  
21 evidence of what? It seems to me the wouldn't --

22 THE COURT: Well, you can argue that on  
23 weight. You certainly can argue that on weight. But I

1 don't think there's any question that they're admissible.

2 Authenticity is not a question because  
3 you've all agreed to that. Those are admitted.

4 (The document referenced was marked Complainant's  
5 Exhibit Number #6 for identification and was received  
6 into evidence.)

7 THE COURT: Number 7 is what? Is that a  
8 map of some sort?

9 MR. STONER: That's a special permit --

10 THE COURT: The same thing. That's  
11 admitted.

12 (The document referenced was marked Complainant's  
13 Exhibit Number #7 for identification and was received  
14 into evidence.)

15 THE COURT: Exhibit 8 is admitted.

16 (The document referenced was marked Complainant's  
17 Exhibit Number #8 for identification and was received  
18 into evidence.)

19 THE COURT: Exhibit 9 is admitted.

20 (The document referenced was marked Complainant's  
21 Exhibit Number #9 for identification and was received  
22 into evidence.)

23 THE COURT: What was the next one -- he

1 asked for Exhibits 1 through 22. What were the rest of  
2 your objections?

3 MR. NORRIS: Number 14 --

4 THE COURT: What ones did you object to.  
5 You objected to -- what other one did you object to? You  
6 objected to Number 6, 7, 8 and 9, which I'm going to  
7 admit.

8 What's your next objection? I'm just  
9 working on Number 1 through 22 at this point.

10 MR. NORRIS: Number 14 --

11 THE COURT: Which one did you just object  
12 to? You objected to to 7 -- what other one did you  
13 object to? You objected to Exhibits 6, 7, 8 and 9, which  
14 I am going to admit.

15 Okay, what's your next objection? I'm  
16 just working on the 1 through 22 at this point.

17 MR. NORRIS: Exhibit 14 is a letter from  
18 an attorney to the Zoning Administration Division --

19 THE COURT: That's part of the County's  
20 file again, is it not?

21 MR. NORRIS: It's been made a part of the  
22 County's file, that's correct, Your Honor.

23 THE COURT: It's public record, it's a

1 County document. It was submitted to the County as part  
2 of the application.

3 MR. NORRIS: Well --

4 THE COURT: I'm admitting it.

5 (The document referenced was marked Complainant's  
6 Exhibit Number #14 for identification and was received  
7 into evidence.)

8 THE COURT: What's the next one --  
9 basically, all of the documents that have been submitted  
10 by the Vietnamese Buddhist Association in connection with  
11 this property and the zoning requirements on this  
12 property, I am finding that those are County documents  
13 and there is no reason why they're not admissible that I  
14 can ascertain.

15 There might be a reason -- if the County  
16 was submitting part of the document or part of a record  
17 and not the whole record, I could see where you would  
18 have an objection and you'd supplement it, but I don't  
19 hear that as your objection.

20 MR. NORRIS: My objection is only that the  
21 Court shouldn't rely on the statements in these documents  
22 as evidence of the truth of the assertions in them. The  
23 fact that applications were filed, if that's relevant to

1 this case which I don't it is directly relevant, is  
2 something that can be drawn from one of these documents.

3 The existence of the documents if that  
4 were relevant, but these witnesses aren't here to testify  
5 to exactly what was going on or what --

6 THE COURT: This isn't a situation where  
7 someone wrote a letter to somebody, and I would never  
8 admit just a miscellaneous letter from somebody to  
9 somebody if they weren't here to cross-examine. These  
10 are formal submissions to the County with regard to this  
11 property, and as such they are admissible.

12 Anything else? On 1 through 22, is  
13 there anything else on that that falls outside that  
14 particular --

15 MR. NORRIS: I would raise the same  
16 objection for 17 through 22.

17 THE COURT: Are those also County  
18 documents, Mr. Stoner?

19 MR. STONER: Yes, they are, Your Honor.

20 MR. NORRIS: I believe they would be  
21 County documents.

22 THE COURT: Okay, so Exhibits 1 through 22  
23 are admitted.

1           (The documents referenced were marked  
2 Complainant's Exhibit Number #17 through Number #22 for  
3 identification and were received into evidence.)

4           THE COURT: We're now on 24 through 30.  
5 What kind of documents are those? Are those also the  
6 same types of documents -- your appeal documents? Is  
7 that true? It looks like --

8           Well, actually 24 through 27 are the  
9 appeal documents. Right?

10          MR. NORRIS: No, Your Honor. Well, some  
11 of those would be appeal -- the appeal documents I don't  
12 object to.

13          THE COURT: Okay. So that's 24, 25 --

14          MR. NORRIS: The only one would be the  
15 Internet web page --

16          THE COURT: -- 26 --

17          MR. NORRIS: Exhibit 29 would be the  
18 Internet web page, and the other Internet web page is  
19 Exhibit 30.

20          THE COURT: I'm admitting 24, 25, 26.

21           (The documents referenced were marked  
22 Complainant's Exhibit Number #24 through Number #26 for  
23 identification and was received into evidence.)



1 THE COURT: Now, Exhibit 27 appears to  
2 be --

3 MR. NORRIS: Mr. Tran admits that 27 and  
4 28 were announcements that were sent out.

5 THE COURT: Oh, he does. So those are  
6 admissible also?

7 MR. NORRIS: Those were admitted in our  
8 Request for Admissions.

9 THE COURT: Okay.

10 MR. NORRIS: Those are his own --

11 THE COURT: It doesn't make any difference  
12 really to me -- without someone translating them they  
13 have no meaning to me, obviously.

14 MR. STONER: We have sufficient  
15 translation in Mr. Tran's deposition testimony.

16 THE COURT: Okay.

17 THE COURT: Exhibit 29 you're objecting  
18 to, Mr. Norris?

19 MR. NORRIS: Exhibits 29 and 30 are  
20 somebody -- we don't even know who made these statements.  
21 They're out-of-court statements that this is a temple,  
22 and they're hearsay.

23 THE COURT: Exhibits 29 and 30 are not

1 admissible.

2 MR. NORRIS: And they're not part of --

3 THE COURT: I already said they're not  
4 admissible. I'm not admitting them.

5 MR. NORRIS: Okay.

6 THE COURT: I don't have any authority or  
7 authorship on them.

8 Exhibits 32 to 35?

9 MR. NORRIS: Exhibit 32, the deposition --  
10 that's the deposition. We reserve the right to introduce  
11 parts of it --

12 THE COURT: Do you have the whole  
13 deposition?

14 MR. STONER: It's not the whole  
15 deposition. This is excerpts -- substantial portions,  
16 but it's not the whole thing.

17 THE COURT: Okay. Obviously, you have the  
18 right to introduce the portions that you want.

19 So you don't have any objection to Exhibit  
20 32. Right?

21 MR. NORRIS: No objection.

22 (The document referenced was marked Complainant's  
23 Exhibit Number #32 for identification and was received

1 into evidence.)

2 THE COURT: Okay. Exhibit 33?

3 MR. NORRIS: No objection to 33, no  
4 objection to 34, no objection to 35.

5 THE COURT: Okay.

6 (The documents referenced were marked  
7 Complainant's Exhibit Number #33 through Number #35 for  
8 identification and was received into evidence.)

9 MR. STONER: I have no more questions.

10 THE COURT: We're on cross-examination  
11 now, Mr. Norris.

12 CROSS-EXAMINATION

13 BY MR. NORRIS:

14 Q. Ms. Hicks, you testified that worship  
15 played no role in the finding of the violation in this  
16 case. Could you explain that to me?

17 A. What I was saying was that it wasn't the  
18 only thing that we were looking at, that we were looking  
19 at all of the activities and things that were taking  
20 place there.

21 Q. So what -- how big a factor was worship  
22 then if it was not the only thing? Was it --

23 A. Well, what we considered -- I'm sorry, go

1 ahead.

2 Q. You're saying that it was one thing you  
3 were looking at?

4 A. What we considered was the overall picture  
5 of the activity that was occurring, the frequency -- the  
6 fact that things were occurring on a regular basis on  
7 every Sunday morning, the magnitude or the multitude of  
8 the people that were coming, the number of vehicles, the  
9 types of activities that were occurring, the fact that  
10 there appeared to be worship services taking place on a  
11 regular basis at those times.

12 Q. Now, you testified that the ordinance does  
13 not prohibit worship. You stand by that?

14 A. Yes.

15 Q. But it was a factor in deciding that this  
16 was a violation of the ordinance?

17 A. No. The factor that was determined was  
18 whether or not this was a place of worship versus just a  
19 religious nature. The fact, as I said -- the fact that  
20 this building was used apparently exclusively as a temple  
21 every Sunday morning on a regular basis, with numbers of  
22 people coming there on a frequent basis for what appears  
23 to be an organized type of service, people kneeling down

1 inside of the temple, hearing the chanting and so forth  
2 coming from the temple.

3 It appeared to be an organized type of  
4 event that took place on a regular basis, which we deemed  
5 then to make this a place of worship.

6 Q. Does the ordinance --

7 THE COURT: When you ask her does the  
8 ordinance, will you specify exactly what ordinance you're  
9 talking about, please?

10 MR. NORRIS: The Fairfax County Zoning  
11 Ordinance -- basically, the whole ordinance is at issue  
12 here.

13 BY MR. NORRIS:

14 Q. Is there a maximum number of people who  
15 would be permitted to come to this property under the  
16 Fairfax County Zoning Ordinance for purposes other than  
17 -- if they didn't engage in worship?

18 A. It's not specified in the ordinance.

19 Q. Is there any maximum frequency with which  
20 people can visit a residential property under the zoning  
21 ordinance as long as they're not engaging in worship?

22 A. It's not specified in the zoning  
23 ordinance.

1           Q.       Did you, in fact, determine that there was  
2 any other allegedly illegal use at this property that  
3 would be a special permit use such as community center,  
4 private club, social club?

5           A.       No, we did not determine those to be  
6 taking place.

7           Q.       And you didn't include that in any notice  
8 of violation to Mr. Tran?

9           A.       No.

10          Q.       Did you ever specify in any notice of  
11 violation or any other finding what things Mr. Tran would  
12 have to stop doing to come into compliance with the  
13 ordinance?

14          A.       The notice of violation that was issued  
15 did state what had to be done in order to resolve the  
16 zoning violations, and that was either to cease the  
17 activities of using that property as a place of worship,  
18 or to apply to the Fairfax County Board of Zoning Appeals  
19 for a Group 3 special permit and obtain such approval.

20          Q.       How many -- if you went out to inspect the  
21 property and you saw people there and you heard noises  
22 from the garage just as you testified, is there some  
23 limit that the ordinance would permit to be present --

1 MR. STONER: Your Honor, I'm going to  
2 object to this line of questioning. It goes to whether  
3 the nature of the use is a violation of the zoning  
4 ordinance. In fact, that's a thing decided, as we know  
5 from the Alward case, the Kelly case --

6 THE COURT: I understand, but I'm going to  
7 let him ask the question.

8 You can answer the question, Ms. Hicks.

9 BY MR. NORRIS:

10 Q. Does the zoning ordinance permit any  
11 degree of use of property -- of residential property for  
12 the purpose of worship?

13 A. The zoning ordinance does not specify --  
14 it's not set out in the ordinance. It does not prohibit  
15 it, but it doesn't address it.

16 Q. So there is no maximum number of people or  
17 cars that the zoning ordinance requires to be present in  
18 order to meet the threshold of a place of worship?

19 A. It's not addressed in the zoning  
20 ordinance, yes.

21 THE COURT: Ms. Hicks, so if you had three  
22 people come every Sunday to accompany Mr. Tran in his  
23 prayers and they pulled into his driveway, got out of his

1 car, went into his house and they prayed together, you  
2 would never have any reason to even know that that was  
3 happening. Right?

4 THE WITNESS: Probably not.

5 THE COURT: There would be no reason to  
6 even know that that was happening.

7 THE WITNESS: Exactly.

8 THE COURT: Although, technically, I  
9 suppose it could be classified as a church even then.  
10 But it's the numbers that draw your attention. Right?

11 THE WITNESS: Each case is considered on a  
12 case-by-case basis, so the zoning enforcement and the  
13 Zoning Administrator would consider all of the activities  
14 as a whole of what was occurring there. Not just one  
15 individual instance, but the overall nature and the  
16 frequency and the totality of everything would be taken  
17 into consideration in making that determination.

18 BY MR. NORRIS:

19 Q. So there's no guidance that you could give  
20 the Court or Mr. Tran as to the maximum number of people  
21 he's allowed to have under the ordinance visit the  
22 property?

23 A. No.



1           Q.       And you've said the ordinance doesn't  
2 prohibit worship, per se.

3           THE COURT: Will you explain to the Court  
4 and to the defendant -- and perhaps that would be more  
5 understandable -- as to what the nature of these zoning  
6 ordinances are?

7                   What is it that the zoning ordinance  
8 protects in the neighborhood? Why have zoning ordinances  
9 at all? Why have special use permits? Why single out  
10 churches, chapels, temples and synagogues? What is the  
11 point of it? Maybe everybody will understand it then.

12           THE WITNESS: Okay. According to the  
13 constitution of the ordinance, the purpose and intent of  
14 our Fairfax County Zoning Ordinance is to promote the  
15 health, safety, and general welfare of the public, and  
16 it's to implement the adopted comprehensive plan for the  
17 orderly and controlled development of the County.

18                   The zoning ordinance sets forth the  
19 various residential districts as to those uses that are  
20 permitted by right, and then those uses of a special  
21 impact as determined might be allowed under a special  
22 permit or a special exception process.

23                   And it lists specific groups of activities

1 under special permits that it will allow in the specific  
2 residential districts, and those under specific special  
3 exceptions. Special permits are heard by the Board of  
4 Zoning Appeals, who hold or conduct public hearings to  
5 determine whether or not that use is going to be  
6 compatible with that particular zoning district, and it's  
7 approved whether they can place conditions and so forth  
8 on there so as to make it compatible so it will not  
9 adversely impact the neighborhood.

10 THE COURT: That's the issue I want you to  
11 expound on. Adversely impact the neighborhood. That's  
12 the public policy behind zoning ordinances. Right?

13 THE WITNESS: Yes.

14 THE COURT: That there is some order  
15 within neighborhoods. Right?

16 THE WITNESS: Right. And the purpose of  
17 conducting -- if this is deemed and we have deemed it to  
18 be a place of worship, the purpose of the Board of Zoning  
19 Appeals is to conduct a public hearing to hear such  
20 applications to determine whether or not at this location  
21 a place of worship would have an adverse impact on the  
22 general public.

23 And there has been no such public hearing

1 or special permits approved for this location.

2 BY MR. NORRIS:

3 Q. How many notices of violation have you  
4 issued in your career?

5 A. Probably up in the hundreds.

6 Q. And how many of those were related to  
7 gatherings at a private residence?

8 A. Quite a few.

9 Q. What sorts of gatherings are violations of  
10 the ordinance in your experience?

11 A. We've had people that are operating  
12 private clubs from residential districts. We've had  
13 places of worship being conducted from here. We've had  
14 people operating childcares, community centers; different  
15 types of things that could be taking place in the  
16 residential districts.

17 Q. When you say private club, what are the  
18 elements of a private club?

19 A. It's defined in the zoning ordinance.

20 Q. Have you ever issued notices of violation  
21 for non-commercial private gatherings at a residence,  
22 aside from places of worship?

23 A. Yes.

1 Q. What would that be?

2 A. As I said, the community uses -- the non-  
3 profit type of organizations that may gather, that may  
4 have been considered a community use or a private club.

5 Q. So would the existence of a non-profit  
6 organization be a determining factor in those violations?

7 A. No.

8 Q. You said a non-profit organization --

9 A. Well, you said commercial uses, and  
10 usually some of the non-profit things are not what I  
11 consider to be a, quote, "commercial" type of activity.

12 MR. NORRIS: Non-profit -- non-commercial  
13 -- I think that's all the questions I have.

14 THE COURT: Redirect.

15 REDIRECT EXAMINATION

16 BY MR. STONER:

17 Q. Ms. Hicks, does the fact that the zoning  
18 ordinance doesn't specify a maximum permitted number of  
19 people on residential property for non-worship activities  
20 mean that any number of people would be allowed by right?

21 A. Probably on a one-time basis. I can't  
22 really say. I mean, it's not addressed under the zoning  
23 ordinance. It doesn't set forth any minimum or any

1 maximum.

2 Q. Does that mean that there is no limitation  
3 though?

4 A. I would say within reason. We would have  
5 to consider -- if it was occurring on a frequent enough  
6 basis, we would probably be concerned. A one-time basis,  
7 by the time we found out about it and it was over and  
8 done with, I don't think we would take action on it.

9 So if someone was going to hold --  
10 suddenly out in the middle of a field want to hold some  
11 kind of a private party of some sort and charge people to  
12 come there on that one occasion and we find out about it  
13 after the fact, we might go out and discuss that activity  
14 with them and indicate that that would not be something  
15 that would be permitted in the future.

16 Q. Does the fact that the zoning ordinance  
17 doesn't specify a maximum frequency of events on a  
18 residential property for it to be prohibited or require a  
19 special permit or special exception, mean that there is  
20 no limit on the frequency?

21 A. No, no. I think that there's limits to  
22 most things, but as I said, we do consider these on a  
23 case-by-case basis. So as things are occurring and

1 things are happening, we would try to document and gather  
2 as much evidence and documentation that we can, and then  
3 review it with the Zoning Administrator to try and come  
4 up with a determination, because not everything is  
5 addressed in the zoning ordinance.

6 Q. Why is that; do you know?

7 A. No, I do not know.

8 Q. Why did you not determine -- why did you  
9 not make a determination as to whether the use occurring  
10 on the property at issue here was a community center or  
11 some other non-religious use that required a special  
12 permit or special exception, or at least was not  
13 permitted by right in the RC District?

14 A. Because all of the evidence that we were  
15 gathering was indicating that it was being used as a  
16 place of worship. As I indicated earlier, the few  
17 conversations I had with people attending services at  
18 this property, all indicated that they were there for  
19 worship purposes, from the young gentleman that I had  
20 first met on December 13, 1998, to the gentleman in the  
21 parking lot that had indicated that yes, they do conduct  
22 the memorial services and wedding services at this  
23 location.

1 I know the Internet information was  
2 excluded, but even from the information that we found on  
3 the Internet that indicated --

4 MR. STONER: Well, let's not talk about  
5 that.

6 THE COURT: Let's not talk about that.

7 THE WITNESS: Okay.

8 BY MR. STONER:

9 Q. Ms. Hicks, if someone wants to know  
10 whether a particular use is allowed on his property, is  
11 there a process for him to follow short of starting the  
12 use and then receiving a notice of violation if it does  
13 violate the zoning ordinance?

14 A. They can check in the zoning ordinance  
15 itself to see whether it's specifically addressed for  
16 that particular zoning district. And if for some reason  
17 it's not listed there, they can write or talk to the  
18 Zoning Administrator as to what type of activities  
19 they're proposing to do and where they're proposing to do  
20 it, so that a determination can be made as to what they  
21 would deem the use to be and whether it was allowed in  
22 that particular zoning district as a by right use, or  
23 whether it would be a use that would be allowed through a

1 special permit or a special exception process, or whether  
2 it would be totally prohibited in that particular zoning  
3 district. But there are avenues that they can go  
4 through to determine that.

5 Q. Are you the Zoning Administrator?

6 A. No.

7 Q. You, in fact, work for the Zoning  
8 Administrator; is that right?

9 A. Yes.

10 Q. Judge MacKay asked you earlier about the  
11 reasons for having special permits and special  
12 exceptions, setting aside some categories of uses as not  
13 being permitted by right.

14 Could you explain a little bit further  
15 what some of the possible special impacts could be from  
16 any given special permit use? What are the sorts of  
17 things that the zoning ordinance is concerned about or  
18 the Board of Supervisors is concerned about?

19 A. The Board of Zoning Appeals, Board of  
20 Supervisors --

21 Q. Right --

22 A. -- of a particular use. They would  
23 probably be concerned about the amount of traffic coming



1 to the site. They would probably be concerned about any  
2 of the health and safety aspects, probably how it impacts  
3 water, sewage, the noise that might emanate from that.  
4 Just the overall activities as to what was occurring and  
5 what was happening there.

6 Q. Do you know whether this property is on  
7 sewer or on septic?

8 A. I believe it is on septic.

9 MR. STONER: No more questions, Your  
10 Honor.

11 THE COURT: Thank you. Is this witness  
12 excused?

13 MR. STONER: Yes, Your Honor.

14 MR. NORRIS: We intend to call her as our  
15 own witness, Your Honor.

16 THE COURT: You do intend to call her?

17 MR. NORRIS: Yes. Can we cross-examine  
18 her now --

19 THE COURT: You already cross-examined  
20 her. You can call her as your witness.

21 MR. NORRIS: We'll call her in our own  
22 case.

23 THE COURT: Ms. Hicks, you need to wait

1 outside of the courtroom. Please don't discuss the case  
2 with anyone.

3 (Witness excused, subject to recall.)

4 THE COURT: Do you have another witness,  
5 Mr. Stoner?

6 MR. STONER: No, Your Honor.

7 THE COURT: You do not?

8 MR. STONER: No.

9 THE COURT: Okay. That's the County's  
10 case?

11 MR. STONER: That is the close of our  
12 case, yes.

13 THE COURT: It's always kind of nerve  
14 racking to say that, isn't it?

15 MR. STONER: Yes.

16 THE COURT: This is it, I ain't got no  
17 more.

18 What we're going to do now before we go on  
19 to Mr. Norris' case, is we're going to take a break.  
20 This is our customary break time, so why don't we take a  
21 ten-minute break.

22 How many witnesses do you have, Mr.  
23 Norris?

1 MR. NORRIS: Not more than two, Your  
2 Honor. Mr. Tran and possibly the zoning official.

3 THE COURT: All right, ten minutes.

4 (Break at approximately 11:35 a.m., with the  
5 hearing resuming at approximately 11:45 a.m.)

6 THE COURT: You can put your witness on  
7 now.

8 MR. NORRIS: Your Honor, can I make a  
9 motion to strike at this point, at the close of the  
10 County's --

11 THE COURT: You certainly can if you'd  
12 like.

13 MR. NORRIS: Thank you, Your Honor.

14 We filed an answer in this case that cited  
15 a number of constitutional provisions, and the pretrial  
16 brief relied mainly on the free exercise of principles  
17 and the vagueness issue.

18 This is a case where -- there is nothing  
19 in the First Amendment that prohibits or that give any  
20 right to build structures on land and put things on land.  
21 And the County cited a number of cases that uphold the  
22 zoning regulation of religious land use, but almost all  
23 of those relate to approval of permits for some

1 particular kind of use that involves altering the  
2 structure of the land.

3 In this case, there is no allegation that  
4 the house is there illegally and has to be torn down, or  
5 that the garage is there illegally and has to be torn  
6 down. It relates to conduct. And the conduct issue here  
7 is not just commercial conduct like running a daycare  
8 center or parking a trash truck or running some kind of a  
9 business out of the house. It's non-commercial.

10 And if the County wants to argue that the  
11 existence of a non-profit corporation somehow makes it an  
12 organized thing, then that might be one subject for the  
13 injunction. But the -- that's sort of a separate issue  
14 from the conduct itself which is association, speech, and  
15 worship, and then the worship is kind of a subset of  
16 speech.

17 And these are things that are protected  
18 under the First and Fourteenth Amendment to the U.S.  
19 Constitution, and under the Virginia Constitution as  
20 well. They're fundamental rights. And when fundamental  
21 rights are involved, it changes the degree of scrutiny to  
22 be given to an ordinance.

23 THE COURT: So you're saying it doesn't

1 make any difference what evidence -- at this point in the  
2 proceeding your motion to strike is based on the fact  
3 that the County's ordinances are constitutionally infirm.  
4 Is that what your argument is?

5 MR. NORRIS: It's a constitutional  
6 infirmity --

7 THE COURT: Because I think you would  
8 agree that there's no question that the County  
9 conscientiously attempted to enforce its existing  
10 ordinances with regard to the defendant.

11 MR. NORRIS: Absolutely, Your Honor --

12 THE COURT: Okay. Did you want to respond  
13 to that -- or did you have anything else that you wanted  
14 to say?

15 MR. NORRIS: I do, Your Honor.

16 The County attempted to take an ordinance  
17 that allows building churches in an RC District with a  
18 special permit, and tried to turn it around into  
19 prohibiting worship at a residence in an RC District.

20 The ordinance permits residential use, and  
21 the Administrator testified that there is no numerical  
22 limits on visitors to a residence, the ordinance doesn't  
23 prohibit worship, and it doesn't restrict the frequency

1 with which gatherings can be held. It's an unbridled  
2 sort of discretionary thing, a case-by-case basis; you  
3 know, a big party now and then might not offend the  
4 ordinance.

5 She testified that the worship was a  
6 factor here. And it's easy to see why, and it's a much  
7 easier case to make out. There's no question that  
8 worship is occurring. The ordinance talks about worship;  
9 therefore, call it a violation because of the worship.

10 As Mr. Stoner's brief says, knowing that  
11 the use was religious merely enabled the Zoning  
12 Administrator to label it a place of worship which  
13 requires a special permit.

14 If they hadn't known it was religious,  
15 they would have a harder time. There's a reason why not  
16 everything is addressed under the zoning ordinance, and  
17 that is that the zoning ordinance is a modern statutory  
18 scheme that's laid over the common law principles of  
19 nuisance which existed prior to the ordinance.

20 And those remedies are still available to  
21 the County or to the neighbors for any actual nuisance  
22 that harms the community.

23 THE COURT: Are you saying that the County

1 doesn't have any right to regulate the use that people  
2 put to their houses in this particular area?

3 MR. NORRIS: I wouldn't --

4 THE COURT: Because it's not just  
5 churches. It's also home daycare facilities, private  
6 schools, outdoor recreation uses. There's all kinds of  
7 stuff that this ordinance attempts to regulate.

8 So you're saying that the whole thing --  
9 that the County has no business doing that, that if they  
10 want to regulate the use someone has put on their  
11 property they have to file a common law nuisance action?

12 MR. NORRIS: I'm saying that they can't  
13 regulate uses based on distinguishing religious activity  
14 from other activities. They have to have an ordinance  
15 that neutrally prohibits land use without reference to  
16 religious content of the speech that's occurring, or of  
17 the symbolism or the presence of religious trappings of  
18 worship.

19 Most of the things that are referred to in  
20 the zoning ordinance are commercial-type endeavors.

21 THE COURT: No, they're not; they're not.  
22 That's precisely it. They're not commercial-type  
23 endeavors. They're everything else but commercial,

1 because this property is not zoned for commercial in any  
2 way, shape or form. So they're not commercial at all.

3 It's a listing of every describable use  
4 that you could think of that's not commercial. Home  
5 daycare, private schools, community uses, recreation  
6 uses, golf courses. I mean, there are some commercial  
7 elements to those things --

8 MR. NORRIS: That's what I'm referring  
9 to --

10 THE COURT: -- but there's no question  
11 they couldn't open a 7-Eleven there. That's not even  
12 within the realm of a possibility. That's already  
13 ordered out. There's no question about that.

14 MR. NORRIS: Daycares and schools may or  
15 may not be non-profit, but they're businesses  
16 nonetheless. They require licensing. There's no First  
17 Amendment right to have a daycare or a school.

18 THE COURT: No.

19 MR. NORRIS: But there is a First  
20 Amendment right to engage in private speech, thought,  
21 association and even worship. Worship is in that  
22 category of things. That's the gist of the argument.

23 THE COURT: Okay.



1                   MR. NORRIS: A New Jersey Court found that  
2 the ordinance of this type was unconstitutionally vague.  
3 There's no guidance that the Administrator could give us  
4 as to what exactly is prohibited and what the maximum  
5 number is going to be, what this ordinance would prevent  
6 Mr. Tran from doing.

7                   Admittedly, he has large numbers of people  
8 there on Sundays on some occasion, and he'll explain why  
9 those were and he'll explain that in his own testimony,  
10 but --

11                  THE COURT: Mr. Norris, let me save you  
12 some time here because I feel that it's a difficult issue  
13 for you to reach at this point.

14                  At this question, I'm going to deny the  
15 motion to strike. I don't agree with your position at  
16 all at this point in the hearing. I see no reason to  
17 adjudicate or to judge that the County's zoning ordinance  
18 is constitutionally infirmed, and I think the County at  
19 this point has put on overwhelming evidence that that  
20 property is being used for church activities.

21                  I can't even -- it's overwhelming, the  
22 evidence is. Overwhelming. So in that respect, at this  
23 part of the proceeding, having only heard the County's

1 case and not the defendant's case, I see no difference  
2 between what Mr. Tran is doing as a Buddhist celebrant,  
3 than the minister down the street who is conducting  
4 services at a Methodist Church. I see absolutely no  
5 difference at this point.

6 Is there anything else? Do you want to  
7 put on your case, please?

8 MR. NORRIS: Yes, Your Honor. I'm going  
9 to call Ms. Hicks.

10 THE COURT: Recall Ms. Hicks, please.

11 MR. THAO: My name is Le Chi Thao and I'm  
12 co-counsel for the defendant.

13 THE COURT: Sir, can you spell your name  
14 for me, please?

15 MR. THAO: L-E, middle name C-H-I, last  
16 name T-H-A-O.

17 THE COURT: Thank you. I just have a very  
18 few questions.

19 Whereupon,

20 SANDRA HICKS,  
21 a witness, was called for examination by counsel on  
22 behalf of the defendant, and, having been previously  
23 sworn by the Court, was examined and testified further as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. NORRIS:

4 Q. Ms. Hicks, do you recall that each time  
5 that you issued a notice of violation to the defendant,  
6 his attorney contacted you and discussed the matter with  
7 you each time?

8 A. I remember discussing with Mr. Emrich only  
9 on one occasion.

10 THE COURT: Mr. who?

11 THE COURT: Mr. Emrich.

12 MR. THAO: E-M-R-I-C-H.

13 BY MR. THAO:

14 Q. How about Mr. Ferguson in Alexandria? He  
15 called you one time too at the first notice of violation?

16 A. He may have talked to someone in the  
17 Zoning Office. It was not me.

18 Q. You said that you've issued a lot of  
19 notices of violation. What would normally prompt you to  
20 issue those notices? Do you drive around and see  
21 something that you suspect is a violation of the County  
22 Code, and then you go back to the office to issue the  
23 notice?

1           A.       No.

2           Q.       What prompts you to issue the notice of  
3 violation?

4           A.       We work on a complaint basis, so  
5 complaints are received in our office from various  
6 sources, whether it be from the citizens in the  
7 neighborhood or from the various Board offices or other  
8 County agencies alleging a zoning violation activity  
9 taking place at a particular property.

10                   We then investigate those complaints, and  
11 if it's deemed or found to be in violation, we will issue  
12 a notice of violation letter addressing what needs to be  
13 done to correct those violations.

14           Q.       In this specific case, where did the  
15 complaint come from?

16           A.       We did have a complaint. I believe it  
17 came from the Supervisor's Office as well as several of  
18 the neighbors in the area had complained.

19           Q.       When was that? What year was that?

20           A.       We've had complaints as far back as the  
21 early '90s.

22           Q.       Did I hear you right that there was  
23 complaint from the Board of Supervisors?

1           A.       I don't have the complaint form in front  
2 of me at the moment to know, but I know I have been in  
3 discussions with the Board of Supervisors offices as well  
4 as the neighbors in regard to this complaint.

5           Q.       You said that you were at the premises one  
6 time and you were invited inside of the house and waited  
7 for the Revered to come out; is that correct?

8           A.       That's correct.

9           Q.       And when you were in the premises outside  
10 in the yard, did you hear any noise or did you hear the  
11 prayers?

12          A.       I don't remember whether I could hear it  
13 from outside in the parking lot or not.

14          Q.       So when you were inside sitting there in  
15 the small room, you can hear the prayer through the  
16 microphone system; is that correct?

17          A.       Yes.

18          Q.       That was inside of the house?

19          A.       Yes.

20                 THE COURT: I'm not sure you understood  
21 his question. Was the microphone system inside the  
22 house, or were you inside the house, or were both inside  
23 the house?

1                   THE WITNESS: The morning that he's  
2 talking about, the only time that I was inside the  
3 dwelling, I was inside a small room inside the house  
4 where I could hear a microphone from inside the house --  
5 you know, the sound I think was being piped in from the  
6 garage into the house for those people present in the  
7 house to be able to hear what was taking place.

8                   BY MR. THAO:

9                   Q.        You testified you know there was no  
10 speakers put outside in the yard. There was a -- has a  
11 microphone system from the garage to the inside of the  
12 house?

13                  A.        I have never observed any loudspeakers  
14 outside on the premises, yes, sir.

15                  Q.        The premises are located in this area near  
16 a national park; is that correct?

17                  A.        They're near the Bull Run Park, yes.

18                  Q.        How often is that national park used?

19                  A.        I have no idea. I don't regulate the  
20 activities there.

21                  Q.        Can I show you -- this is a letter from  
22 the National Virginia Regional Park Authority, that lists  
23 all the activities in the National Bull Run Park. Can

1       you just have a look at it?

2               (Brief pause.)

3               THE COURT: Mr. Thao, before you show the  
4       witness, you really do need to show it to Mr. Stoner.

5               MR. THAO: Sure.

6               BY MR. THAO:

7               Q.       I'd like to ask you to read this document  
8       before I will use it?

9               A.       All right. This is a document --

10              THE COURT: You can read it to yourself.

11              THE WITNESS: Okay.

12              (Brief pause.)

13              THE WITNESS: Okay.

14              MR. THAO: I'm sorry, Your Honor, but we  
15       just received this document. That's why it's kind of a  
16       little bit --

17              MR. THAO: May I ask the witness to read  
18       the content of this letter, Your Honor?

19              THE COURT: Mr. Stoner?

20              MR. STONER: Your Honor, I'm going to  
21       object to any testimony about this letter. I've not seen  
22       this letter before. I don't know -- I can't vouch for  
23       its authenticity. I certainly don't see the relevance of

1 it.

2 MR. THAO: Can I just ask the witness to  
3 read the information to the Court and then --

4 THE COURT: I want to pronounce your name  
5 correctly.

6 MR. THAO: It's Thao.

7 THE COURT: It's a nice soft sound.

8 Mr. Thao, I can't allow that evidence to  
9 come in in any way, shape, or form, because it is simply  
10 hearsay. I'm not exactly sure who wrote the letter, but  
11 it surely wasn't this woman.

12 So for her to ready anything aloud is  
13 introducing into the proceeding an out-of-court statement  
14 made by another party who is not subject to cross-  
15 examination. It's the absolute definition of hearsay.

16 Now, you all remember what I said when we  
17 were talking about letters that were part of the County  
18 file. I hope you understand the distinction there.

19 MR. THAO: Yes, Your Honor.

20 THE COURT: Those are completely hearsay  
21 documents. She doesn't have any idea what the basis of  
22 the information is.

23 Further, in order to authenticate the



1 document, you would have to have the custodian of the  
2 record or the author of the document to authenticate it.  
3 So there are multiple reasons why it cannot be read aloud  
4 or introduced in any way, shape, or form.

5 MR. THAO: I understand and I withdraw the  
6 question.

7 BY MR. THAO:

8 Q. Let me ask you, Ms. Hicks. The National  
9 Bull Run Park, was it used for public entertainment like  
10 bluegrass concerts, jazz concerts?

11 A. I have no idea what they use the  
12 facilities for.

13 MR. STONER: Your Honor, I'm going to  
14 object to the relevance of the question. I don't  
15 understand what its relevance could possibly be.

16 MR. THAO: Well, yes, Your Honor. The  
17 witness testified before that the County ordinance was to  
18 avoid nuisance to the neighborhood. So what I'm trying  
19 to bring out here is whether there was any traffic impact  
20 upon the neighborhood caused by the existence of these  
21 activities.

22 If you have a bluegrass concert in there  
23 that would draw in about 10,000 people with thousands of

1 cars coming in, how can you claim that there was an  
2 impact -- an impact of cars coming into these premises?

3 MR. STONER: If Mr. Thao were challenging  
4 the whole idea of special permits and special exceptions,  
5 that --

6 THE COURT: Exactly --

7 MR. STONER: -- would be one thing. But  
8 he is not. Mr. Thao and Mr. Tran are challenging  
9 specifically whether a special permit can be required for  
10 a place of worship.

11 There are host of other activities --  
12 other uses, as the Court well knows, that require special  
13 permits or special exceptions, or that aren't permitted  
14 in any circumstance in the RC District. So I just don't  
15 see any relevance whatsoever to testimony about  
16 specifically public use which is among the permitted uses  
17 by right in the RC District.

18 THE COURT: It seems to me, sir, that  
19 you're trying to question the underlying basis of the  
20 zoning ordinance entirely. The County is not required to  
21 -- how can I say this?

22 The County is required to enforce the  
23 ordinance, and it doesn't have to reinvent the ordinance

1 every time it enforces the ordinance. Therefore, it  
2 doesn't make some kind of global assessment of the County  
3 every time that it enforces the ordinance. All they did  
4 in this case was enforce the ordinance.

5 Furthermore, the Park Authority is not the  
6 County. It's a separate authority. This particular  
7 witness has absolutely no expertise, nor is she required  
8 to have any expertise with reference to how the Bull Run  
9 Park is run. It's entirely anecdotal with regard to her,  
10 it doesn't have any -- it certainly has nothing to do  
11 with this case.

12 It's hard for me to even respond to the  
13 question because it has so many objections to it which  
14 Mr. Stoner was making, so I'm going to sustain the  
15 objection.

16 MR. THAO: I just want to explain to the  
17 Court that exactly I would like to qualify what  
18 requirement we have to meet concerning the special use  
19 permit application, whether it's a technical issue or  
20 were there any factual negative impact on the  
21 neighborhood, because right now --

22 THE COURT: Well, you --

23 MR. THAO: -- we are kind of confused

1 because the requirement is so vague and so general and  
2 doesn't explain why we apply for the permit twice and  
3 withdrew it twice at the recommendation of counsel.

4 THE COURT: Well, I don't know what to  
5 tell you as to what you just said. I've sustain the  
6 objection.

7 MR. THAO: I just want to ask a last  
8 question.

9 BY MR. THAO:

10 Q. Did you ever receive any complaint from  
11 the neighbors --

12 A. Yes, I --

13 Q. -- concerning nuisances, negative impact  
14 because of the septic tank, or because of the noise or  
15 because of a traffic jam coming in and out of these  
16 premises?

17 MR. STONER: Object to the relevance of  
18 that question. Whether there was a complaint for a  
19 particular reason from any neighbor isn't relevant to  
20 whether the use was occurring. It doesn't go to that  
21 issue. I don't think there's any debate about whether  
22 the use is occurring.

23 THE COURT: That's what I was trying to

1 say the last go-round, but I'm going to allow her to  
2 answer the question because I want the defendant to  
3 understand a little bit about what's going on here in  
4 terms of the neighborhood.

5 Have you ever had any complaints? You can  
6 answer that question.

7 THE WITNESS: We've had complaints from  
8 the neighbors about the activities that were occurring  
9 there. And in a few telephone conversations and in a few  
10 letters that were submitted, I think that the neighbors  
11 did express concern over the use of the facilities  
12 because of the septic fields and the well systems and the  
13 adverse impact this activity might have on the  
14 surrounding neighbors with regard to the septic and the  
15 water.

16 BY MR. THAO:

17 Q. In other words, the main complaint of the  
18 neighbors would be the activities that would constitute a  
19 violation of the County ordinance; is that correct?

20 A. The neighbors were concerned about the  
21 activities of a place of worship taking place on this  
22 property.

23 MR. THAO: Thank you very much, no more

1 questions.

2 THE COURT: Cross, please.

3 MR. STONER: Just one question, Your  
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. STONER:

7 Q. Ms. Hicks, I'd just like to have you  
8 clarify your testimony with regard to the possible  
9 complaint from the Board of Supervisors or a member of  
10 the Board of Supervisors. Do you know who actually made  
11 the complaints?

12 A. I don't have a copy of the complaint form  
13 in front of me. I know we have discussed with various  
14 neighbors and the board offices and various other County  
15 agencies regarding this property --

16 Q. Are you talking about the entire Board of  
17 Supervisors as a body?

18 A. No. I'm talking about probably the  
19 individual office through Mr. Fry's office where there's  
20 been some conversations with members of his staff  
21 regarding activities occurring here, and possibly it  
22 might have been in regard to complaints or concerns that  
23 they've had from the neighbors in the area.

1 I don't have a copy of the original  
2 complaint form here to see who was listed as the  
3 complaining party.

4 Q. But by Mr. Fry, you mean Michael Fry, the  
5 Supervisor from the Sully District?

6 A. Yes, sir.

7 MR. STONER: Thank you.

8 MR. THAO: Just one additional question to  
9 verify this matter, Your Honor.

10 MR. STONER: I have no objection if it  
11 goes to that particular question that I --

12 THE COURT: Sure, sir, you can ask a  
13 question. I really have some question about the  
14 relevancy of the whole thing anyway, but by all means ask  
15 it. But whether Michael Fry had anything to do with this  
16 or not, I don't know what that has to do with anything.  
17 But if you want to ask him that, you can.

18 REDIRECT EXAMINATION

19 BY MR. THAO:

20 Q. You said that you received complaints from  
21 the Supervisor, Michael Fry. Was it a transmittal letter  
22 conveying a complaint from a neighbor to you to your  
23 office, or was it a complaint written by the office of

1 the Supervisor, Michael Fry?

2 A. I don't have the original complaint form  
3 that came in here with me to know. I know we've had -- I  
4 believe that the complaint was filed on behalf of one of  
5 the neighbors in the neighborhood, but there have been  
6 over the years telephone inquiries through Michael Fry's  
7 office to our office regarding this activity or this use.

8 Q. In other words, the office of Michael Fry  
9 just forwarded the complaint to your office --

10 A. As they do many complaints, yes.

11 MR. THAO: That's all.

12 THE COURT: Michael Fry is the Supervisor  
13 who represents this particular neighborhood. Right?

14 THE WITNESS: Yes.

15 MR. THAO: No more questions.

16 THE COURT: You can step down. Is this  
17 witness free to go or stay in the courtroom or whatever?  
18 She's not subject to another recall, is she?

19 MR. STONER: No, Your Honor.

20 THE COURT: Ms. Hicks, you can do whatever  
21 you like. You can stay here or go home or go to the  
22 office or whatever.

23 (Witness excused.)



1 THE COURT: Your next witness, Mr. Norris  
2 or Mr. Thao.

3 MR. NORRIS: Mr. Tran.

4 Whereupon,

5 THANE VAN TRAN,  
6 the defendant, was called for examination by counsel on  
7 his own behalf, and, having been first duly sworn by the  
8 Court, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. THAO:

11 Q. Reverend Tran, when did you first move to  
12 this location on Bull Run?

13 A. In 1989.

14 Q. How large is the lot of land that you are  
15 now residing on?

16 A. Ten acres.

17 Q. When you just moved to this location, did  
18 you make the effort to get in contact with the neighbors?

19 A. Yes, sir.

20 Q. How did you do that?

21 A. The first time they organize a picnic at  
22 one of the neighbor's house in front of me -- across of  
23 me.

1           Q.       And did you come in person or did you talk  
2 to anybody in that picnic?

3           A.       Yes, I spoke to a neighbor next to us.

4           MR. STONER: Your Honor --

5           THE WITNESS: The property where they  
6 raise horses.

7           MR. STONER: Your Honor, I have no  
8 objection to general background, but I just don't see the  
9 relevance of this particular line of questioning. What  
10 contact Mr. Tran might have had with his neighbors when  
11 he first moved to the property doesn't have any bearing  
12 on whether this use violates the zoning ordinance.

13          MR. THAO: Well, exactly, Your Honor, the  
14 main point that we have to prove here is whether the  
15 premises is being used as a private residence, or is it a  
16 church for public use. So we have to go through all  
17 these factual items in order to be able to settle this  
18 very delicate matter.

19          THE COURT: The fact that he talked to  
20 neighbors has nothing to with that argument or issue. It  
21 is irrelevant.

22          Now, I'm going to allow him to answer the  
23 question because I don't want this man to feel like he's

1 not getting his day in court or that I'm cutting him off.  
2 I'm going to allow him to answer the question, but I'm  
3 assuming what's going to come next is that some neighbor  
4 said, you know, whatever you do here is fine.

5 It has nothing to do with the result. It  
6 has no impact on the result. I'm sure you understand  
7 that. But I'm going to allow him to answer the question.

8 MR. STONER: Your Honor, let me just add  
9 that we don't dispute that Mr. Tran's residence is also  
10 on the property, if that's part of what Mr. Thao was just  
11 -- we'll concede that. He does live on the property.

12 THE COURT: I'm sure no one -- I can't  
13 imagine that that's an issue.

14 MR. STONER: I don't believe it is.

15 THE COURT: Okay. Go ahead, Mr. Thao.

16 BY MR. THAO:

17 Q. Have you received directly any complaint  
18 from the neighbors concerning the nuisance your  
19 activities has caused them?

20 A. No, sir.

21 MR. STONER: Your Honor, let me just note  
22 a continuing objection to the line of questioning. I  
23 understand your ruling.

1                   THE COURT: Okay, I agree. I understand  
2 what your objection is.

3                   BY MR. THAO:

4                   Q.       Let me ask you -- address another matter  
5 here. Who are the people who come to see you at the  
6 premises?

7                   A.       They are acquaintances, friends that I  
8 know.

9                   Q.       How often do they come to see you?

10                  A.       I cannot count.

11                  Q.       What do they come to see you for?

12                  A.       They come to me because I'm a reverend,  
13 and those people among them -- some of them are friends,  
14 but some of them are also Buddhists.

15                  Q.       Do you organize any services regularly at  
16 the premises now to serve these people who come to see  
17 you?

18                  A.       Regularly, I don't organize. During the  
19 whole year, we have a few celebrations like the  
20 Vietnamese New Year, and another celebration to express  
21 your gratitude for your parents, and and also the  
22 birthday of Buddha.

23                  Q.       When in the year do these events fall to?

1           A.       The Vietnamese New Year falls between  
2       January and February of the western calendar because that  
3       day is not determined, the birthday of Buddha, it's in  
4       May, and the celebration to express your gratitudes  
5       toward your parents takes place in August.

6           Q.       On those specific occasions, do you  
7       organize any service; do you initiate any service to  
8       invite the public in?

9           A.       No, sir. For those celebrations, we do  
10      not have the right to invite and we don't organize. And  
11      because we know that these celebrations are very  
12      important to the people, and it was their own belief,  
13      their own will that they do come there by themselves. So  
14      not to cause any nuisance, we do ask a few volunteers to  
15      help, just to help out a few -- to organize a few tasks  
16      so things will run smoothly.

17          Q.       Do people come to see you during the  
18      weekdays?

19          A.       As a Reverend, I have three time of  
20      prayers of ritual, morning, in the afternoon and evening.  
21      And for the people who likes to come, they come. But  
22      it's not on a regular basis. It's very rare because it's  
23      during the weekdays.

1           Q.       How about on weekends, on Saturdays and  
2 Sundays, do you organize any service for the public?

3           A.       No, sir. We just conduct our regular  
4 activities. But because it's during the weekends, there  
5 are more people coming.

6           MR. STONER: Your Honor, I'd like to  
7 object to this line of questioning. Again, it has no  
8 relevance to the question of whether this use violates  
9 the zoning ordinance because that is a thing decided.

10               As long as the use hasn't changed -- and  
11 there's no testimony that the use has changed since the  
12 notice of violation was issued -- they didn't appeal from  
13 the notice of violation, there really can be no contest  
14 as to whether this use is a violation of the ordinance  
15 because it lacks a special permit.

16           THE COURT: I understand your argument,  
17 Mr. Stoner, but I'm going to allow the evidence to come  
18 in at this point. I'm going to overrule the objection.

19           MR. THAO: I was about to reply to Mr.  
20 Stoner, but I'll reserve that --

21           BY MR. THAO:

22           Q.       On weekends, people who come on their own  
23 to see you, how many of them come?

1           A.       Weekend counts, we don't know exactly how  
2 many.

3           Q.       The County said that on June 4, Year 2000,  
4 there was a service there with about 49 cars and 98  
5 people, a man walking into the garage with two women  
6 following him with white bandage on the head. What kind  
7 of service do you have on that day?

8           A.       On that day, that was the day of the  
9 remembrance -- of the yearly remembrance of the passing  
10 of my father. And also on that day I have a dear friend,  
11 a close friend whose mother passed away, and that person  
12 has asked if we could do the -- if they can participate  
13 to the service.

14          Q.       Do you mean combine the two service  
15 together?

16          A.       Yes, together.

17          Q.       Memorial for your father's death and your  
18 friend's mother's death?

19          A.       Yes, sir.

20          Q.       On June 18, Year 2000, the County said  
21 that they witnessed 60 cars coming into the premises.  
22 What day was that?

23                   INTERPRETER NGUYEN: I'm sorry, what was

1 the date again?

2 MR. THAO: June 18.

3 THE WITNESS: Well, on that day, there was  
4 a friend -- and I had been a friend for 15 years, and I  
5 heard the news that that person passed away, so I did the  
6 service for him.

7 MR. THAO: Interpreter, you missed one  
8 part of the answer. Can you --

9 INTERPRETER NGUYEN: May I ask the  
10 defendant to repeat it again, Your Honor?

11 THE COURT: Sure.

12 THE WITNESS: That was for the memorial  
13 for our master, and also there was also another Reverend  
14 with us for 15 years who passed away.

15 BY MR. THAO:

16 Q. So you combined two services into one?

17 A. Yes, sir.

18 Q. They also have claimed that on June 25,  
19 Year 2000, there was 18 cars coming in and 35 people  
20 present on the premises. What was that day?

21 A. On that occasion, I don't remember clearly  
22 what it was and I don't remember the reason why the  
23 people came either.



1           Q.       Well, the most recent one was at August 6,  
2 Year 2000. The County says that they witnessed a lot of  
3 cars coming into the premises?

4           A.       On that day, because this is during the  
5 period of the celebration to express gratitude for your  
6 parents, there were a number of people that came there to  
7 help to clear out dead trees and branches of the trees,  
8 so that in preparation for this Sunday which is the  
9 celebration of the expression.

10           THE COURT: Okay.

11           BY MR. THAO:

12           Q.       Reverend Tran, why did you apply for a  
13 special use permit and then withdraw it twice?

14           A.       When I came to U.S., I just learned that  
15 whatever you had to do you have to ask for permission.  
16 There was a organization that was created, and that  
17 organization wanted to submit the application to find a  
18 center for prayers.

19                   But the attorney said that it is not  
20 necessary because we did not have to build anything  
21 extra, and also that was the place of residence for us to  
22 stay there and pray.

23           Q.       Exactly the same things happened twice?

1           A.       Yes, sir.

2           THE COURT: Did you consult two different  
3 attorneys or the same attorney twice?

4           THE WITNESS: Two different attorneys,  
5 ma'am.

6           BY MR. THAO:

7           Q.       Do you remember the name of the first  
8 attorney?

9           INTERPRETER NGUYEN: I'm sorry, Your  
10 Honor, but I have to ask the Reverend to repeat the name  
11 again one more time.

12           THE WITNESS: The first one was an older  
13 gentleman and he practiced in Alexandria, and his name  
14 Ferguson or something like that. Ferguson. And the  
15 second one, Emrich.

16           BY MR. THAO:

17           Q.       And both times the two attorneys advised  
18 you to withdraw the application for a special use permit?

19           A.       Yes, sir.

20           MR. STONER: Your Honor, I'll object only  
21 to the extent that this testimony might be offered for  
22 the accuracy or the truth of what attorneys might have  
23 said to Mr. Tran. If it's for -- state of mind, I don't

1 think it's relevant, but --

2 THE COURT: I'll sustain the objection.

3 MR. THAO: I was just asking for the facts  
4 of --

5 BY MR. THAO:

6 Q. Did the attorneys help you withdraw the  
7 application?

8 A. It has been a long time, I don't remember.

9 Q. Do you see any difference between the  
10 activities at the place where you live before the  
11 application for special use permit and after the  
12 application has been withdrawn?

13 A. Before that there was a organization, and  
14 it has the activities of the organization. And after  
15 that, the organization withdrew the application and gave  
16 the house to me to live.

17 Q. Let me be more specific then. When you  
18 applied for the special use permit, you applied -- you  
19 stated in the application that you would be conducting  
20 bible studies and prayer services at the premises. That  
21 was included in your application for special use permit.

22 Now --

23 MR. STONER: Your Honor, I'm going to

1 object to the leading nature of the question.

2 THE COURT: Sustained.

3 BY MR. THAO:

4 Q. What did you include in the application  
5 for the special use permit that now you are not doing?

6 MR. STONER: Objection, Your Honor,  
7 assumes facts that are not in evidence.

8 THE COURT: Sustained.

9 BY MR. THAO:

10 Q. The services that you have -- the time  
11 that people come to see you on weekends, Saturdays or  
12 Sundays, do you invite them in -- did you send out a  
13 notice for them to come?

14 A. No, sir.

15 Q. The last question, Reverend, is why do you  
16 call your place of residence a Van-Hanh Center?

17 A. Van-Hanh is the name of the University  
18 that I went to -- I attended and I graduated. And when  
19 we came here to U.S., there were four of us who attended  
20 to that university, and we wanted to give that name in  
21 remembrance.

22 MR. THAO: I have no further questions.

23 MR. STONER: Just a moment, Your Honor.

1 (Brief pause.)

2 CROSS-EXAMINATION

3 BY MR. STONER:

4 Q. Reverend Tran, would you turn to Exhibit  
5 Number 27 in the binder in front of you?

6 A. Yes.

7 INTERPRETER NGUYEN: I'm sorry, the page?

8 MR. STONER: Tab 27.

9 BY MR. STONER:

10 Q. Do you recognize that document, sir?

11 A. Yes, sir.

12 Q. What is it?

13 A. This document we announce the day of the  
14 New Year celebration.

15 Q. Would you please read, so that we can have  
16 translated, the first paragraph?

17 A. Welcoming the New Year for our homeland,  
18 and to welcome the new -- the new millennium. We wish to  
19 all of the Buddhists a happy new year full of happiness  
20 and peace, that everything is to your liking, and also to  
21 thank the Buddha for having helped us --

22 INTERPRETER NGUYEN: I'm sorry, Your  
23 Honor, that part the interpreter is not familiar with

1 what that means. Just to thank the Buddha --

2 THE WITNESS: -- to creating the New Year,  
3 the Center for Van-Hanh has a celebration for the  
4 birthday of Buddha, and also for the New Year's Eve, and  
5 also for the Full Moon Celebration.

6 BY MR. STONER:

7 Q. Do I understand correctly that this notice  
8 advertises four Sunday celebrations or ceremonies?

9 INTERPRETER NGUYEN: I'm sorry, one more  
10 time the question.

11 BY MR. STONER:

12 Q. Do I understand correctly that this notice  
13 advertises four Sunday celebrations or ceremonies?

14 A. Yes, four Sundays.

15 Q. And celebrations or ceremonies on each of  
16 those days?

17 A. Yes.

18 Q. And, in addition, ceremonies on Tet and  
19 the first, second and third days of Tet?

20 A. Yes, sir.

21 Q. Reverend Tran, would you also read for us  
22 the next-to-last paragraph of this notice?

23 INTERPRETER NGUYEN: I'm sorry, for the

1 record, are you talking about -- you want what starts  
2 with an "M" or "C"?

3 MR. STONER: This one right here. The  
4 next-to-last one.

5 THE WITNESS: And by the same occasion, we  
6 call on the faith or belief of the Buddhists, especially  
7 the one who had memorial service done for their loved one  
8 at the Center. Please pray for the woman Buddha --

9 INTERPRETER NGUYEN: I'm sorry, for the  
10 Buddha --

11 THE WITNESS: Please help the Center \$5 to  
12 \$10 every month so that the Center can exist, and the  
13 contribution from the Buddhists -- monthly contribution,  
14 that's important decision. That is important decision  
15 and a factor for the Center of Van-Hanh.

16 BY MR. STONER:

17 Q. Reverend Tran, would you turn to the next  
18 exhibit, Number 28, please?

19 A. Yes.

20 Q. Do you recognize that?

21 A. Yes.

22 Q. What is it?

23 A. This is the birthday of Buddha.

1 Q. Does this give notice of ceremonies being  
2 celebrated on Buddha's birthday?

3 A. Yes, sir.

4 MR. STONER: I have no more questions,  
5 Your Honor.

6 THE COURT: All right.

7 Redirect.

8 REDIRECT EXAMINATION

9 BY MR. THAO:

10 Q. Reverend Tran, let me go back to the  
11 Exhibit 27 and 28. On these two documents, the first one  
12 was a letter for the New Year, and the second one was a  
13 letter on the Buddha's birthday?

14 A. Yes.

15 Q. Did you include in those two documents any  
16 invitation about the public can come to your place?

17 A. No, sir.

18 Q. What was intention of these two letters?

19 A. For the people who want to celebrate the  
20 New Year and for the new -- the millennium.

21 THE COURT: I'm sorry. I just -- we're  
22 kind of beating a dead horse here.

23 MR. THAO: I thought that Mr. Stoner



1 wanted to show that this is invitation for the public to  
2 come to the services, but this is well-wish letter sent  
3 out by the Center. So there was no invitation for public  
4 to come, just the letter.

5 THE COURT: Well, you can ask him some  
6 other question if you want.

7 MR. THAO: No more questions.

8 THE COURT: You can step down, sir.

9 (Witness excused.)

10 THE COURT: Any more witnesses, Mr.  
11 Norris?

12 MR. NORRIS: Your Honor, no more  
13 witnesses.

14 THE COURT: Okay, closing argument.

15 MR. NORRIS: I would ask that the Court  
16 take judicial notice of the entire zoning ordinance. I  
17 don't have a copy of the whole book, but there have been  
18 various references to the ordinance --

19 THE COURT: Well, I've got the ordinance  
20 that the County has -- the copies of the ordinance that  
21 the County submitted as a part of its original Bill of  
22 Complaint which is Exhibit Number C, and then he's got  
23 the regulations -- the ordinance as "C", and the

1 regulations as "D." Is that what you're referring to?

2 MR. NORRIS: Well, I believe those are  
3 relevant portions of it for this proceeding, but there  
4 were references made by the Zoning Administrator's  
5 witness to the ordinance not having any limitations on  
6 numbers of people and that sort of thing. That applies  
7 to the whole ordinance. I would just ask that the Court  
8 take judicial notice of the existence of the whole  
9 ordinance and the contents of it.

10 THE COURT: Well, I took notice of the  
11 testimony. I don't have the whole ordinance here in  
12 front of me.

13 MR. NORRIS: Well, I don't have the whole  
14 book either, Your Honor.

15 THE COURT: I'm not going to go find it.  
16 I don't know to what extent you want me to take judicial  
17 notice. I understand what her testimony is, and I think  
18 -- whatever she said is probably the truth.

19 MR. NORRIS: Okay.

20 THE COURT: Closing argument. You all  
21 don't have to go on and on in your closing arguments.  
22 You've both briefed these issues and you've both given me  
23 all of the cases. The County has put on quite a few

1 exhibits.

2 I'd like you to just kind of -- Mr. Stoner  
3 has outlined really his closing -- what I would regard as  
4 a closing argument in his Complainant's Pretrial Reply  
5 Brief. Is there anything you want to add to that? I  
6 mean, this is a really comprehensive discussion --

7 MR. STONER: I really don't think there's  
8 a particular need. I'm certainly available to highlight  
9 aspects of it or to answer any questions the Court has.

10 THE COURT: You asked me in your last  
11 argument, you've got three main arguments and several  
12 sub-arguments. In your last argument you say that Tran's  
13 failure to exhaust his administrative remedies bar any  
14 claim of his use of the property as a use of worship --  
15 excuse me -- as permitted by right.

16 I would assume that you would append to  
17 that argument that you would be prepared to address  
18 actually -- the factual issues of what the place is being  
19 used for today. If you want to summarize that, you can.

20 MR. STONER: Absolutely. And what I can  
21 do is draw the Court's attention to particular exhibits  
22 that give evidence to that.

23 Obviously, there is no dispute that

1 property is being used for some sort of religious  
2 gatherings, particularly on Sunday mornings. Those have  
3 been the focus of the inspections, and certainly the  
4 focus of the congregations of people on the property.

5 Those gatherings of people tend to circle  
6 around or focus on the garage structure, which, as  
7 Reverend Tran admitted in his deposition, has not been  
8 used as a garage since 1989 -- that's at Page 13 of the  
9 deposition -- 1989 at the latest.

10 You've seen Exhibits 27 and 28 which are,  
11 in part, evidence of the uses, the celebration, the  
12 ceremonies that occur around particular holidays and it  
13 was quite extensive. In his deposition testimony at  
14 Pages 27 and 37, Reverend Tran notes that the attendees  
15 at those celebrations can reach 400, and that they  
16 sometimes come by bus. That's at Page 38 of the  
17 deposition.

18 We know from Reverend Tran's deposition  
19 testimony at Page 19, that a minimum of 20 to 30 people  
20 on average are there on Sunday -- non-holiday Sundays.  
21 We know from his testimony and from the testimony of Ms.  
22 Hicks that there have been considerably more on other  
23 Sundays.

1           Now, the fact that, according to Reverend  
2 Tran, on some of these Sundays there have been memorial  
3 services or aggregations of memorial services hardly cuts  
4 against the Zoning Administrator's case here. It  
5 reiterates the fact that this property is being used for  
6 worship services.

7           And, from all appearances, that's  
8 occurring on a regular basis. We didn't hear any  
9 testimony that there's been any Sunday when there hasn't  
10 been some considerable number of people on the property  
11 at a given time in the morning.

12           We know that the garage structure itself  
13 is equipped for services in deposition testimony at Page  
14 18, we know there's a loudspeaker and there was, of  
15 course, testimony to that effect as well.

16           We know that it contains an alter, Pages  
17 15 and 16. There's a statute of Buddha, Pages 15 and 34.  
18 There's a collection box, Pages 33 and 34, and we know  
19 what that collection box is used for. We've seen  
20 references -- we've seen appeals for contributions in  
21 Exhibit 27.

22           We know that they're prepared for large  
23 numbers of people because there are shoe racks. We've

1    seen photos of them and we've heard testimony. Large  
2    shoe racks. Again, not something you typically see in a  
3    garage, regardless of the owner, unless it's being used  
4    for something other than a garage.

5                   And despite Reverend Tran's suggestion  
6    that these fliers weren't invitations to the public, I'd  
7    suggest that it strains common sense to suggest that a  
8    notice, a flier, a letter or whatever you want to call  
9    it, that lists a schedule of celebrations or ceremonies  
10   that are going to occur at the Van-Hanh Center is not an  
11   invitation of sorts for people to come. And we know, in  
12   fact, that people did come in large numbers.

13                   I suggest that it strains credulity too to  
14   suggest that when you file one special permit application  
15   and you withdraw it, supposedly because you've been  
16   advised you don't need a special permit, that to do the  
17   same use a few years later you would file a special  
18   permit application. It makes no sense.

19                   THE COURT: Okay.

20                   MR. STONER: There are obviously other  
21   indicia of the fact that this property is being used for  
22   the purposes that we've asserted for so long. The fact  
23   that the association that created it for the purpose of

1 building and operating a Vietnamese Buddhist Temple is  
2 paying for the property is one further indication, and  
3 that is in Reverend Tran's deposition testimony at Pages  
4 11 and 12, and also an acknowledgement of the nature of  
5 the Vietnamese Buddhist Association is in Interrogatory  
6 Number 9.

7 Also, Interrogatory Number 3, I believe it  
8 is -- 2 or 3, lays out the three significant holiday  
9 seasons that are represented -- that are celebrated at  
10 the property; the ones that have already been referred  
11 to, Buddha's birthday, New Year and what's referred to in  
12 the interrogatory responses as All Soul's Day. You've  
13 heard it described as the time for showing gratitude to  
14 one's parents. I believe that's the All Soul's Day.

15 I think that essentially highlights the  
16 nature of use. You've heard the testimony from Ms. Hicks  
17 that's really unrebutted as to the scope, the magnitude  
18 of the use from Sunday to Sunday, and it certainly  
19 varies.

20 And you'd find the same thing, I'd  
21 suggest, if you went to any place of worship. You're not  
22 going to have the same number of people, the same number  
23 of cars, the same intensity of use every week. And we

1 see that variation here.

2 And if it's because on some Sundays they  
3 combine services, I don't think that at all goes against  
4 the case that the Zoning Administrator has made here. In  
5 fact, it drives home the nature of the use that's  
6 occurring.

7 THE COURT: All right.

8 MR. STONER: If the Court wants me to  
9 address the constitutional issues, I'm happy to, but I  
10 would simply be highlighting what is in the briefs.

11 THE COURT: The only issue that popped to  
12 mind was that issue of whether or not religion was  
13 assessed by classification. And the case that you all  
14 used -- that you both used on that issue was the  
15 Employment Division versus Smith --

16 MR. STONER: Right --

17 THE COURT: -- which was interesting in  
18 terms of how it impacts on that determination.

19 MR. STONER: I think if you asked me to  
20 sum up in a sentence or two what my argument would be  
21 with regard to the constitutional issues, especially the  
22 free exercise challenge, it would be that Reverend Tran  
23 is here asking this Court to take a step that no other



1 Court that I've seen or that Mr. Tran has cited has ever  
2 taken.

3 I have not seen a decision, either in my  
4 own research or in the citations from Mr. Tran, to a  
5 decision by a Court, State Court, Federal Court or any  
6 Court whatsoever that has struck down the requirement of  
7 a special permit or a special exception, some sort of  
8 approval process for a place of worship or, in some  
9 instances, you see cases referring to religious schools.

10 The case in the Fourth Circuit right now  
11 is unfortunately an unpublished one, but having looked at  
12 the rules on unpublished opinions, I'd settle for myself  
13 that I could cite it to this Court and I'm glad I could,  
14 the Christ College case involving the Fairfax County  
15 Zoning Ordinance, albeit applied to a christian school as  
16 opposed to a place of worship. But the principle is the  
17 same.

18 The Fourth Circuit found there is no  
19 burden -- no constitutionally significant burden on the  
20 free exercise of religion, and no Court in this land  
21 has found a special permit requirement to be a  
22 constitutionally-significant burden on that free  
23 exercise.

1                   This ordinance is obviously not the same  
2 as the ordinance at issue or the facts at issue in the  
3 Cameron case, a New Jersey case, the only case cited with  
4 respect to the vagueness challenge.

5                   I'd be happy to address that in greater  
6 detail, but even the New Jersey Court conceded that that  
7 case was facially not vague. It was only on the narrow  
8 facts of that case that there was any issue as applied  
9 vagueness, and that's just not the case here.

10                  Otherwise, I would rely on our briefs.

11                  THE COURT: Thank you very much.

12                  MR. STONER: Thank you.

13                  THE COURT: Mr. Norris, you can rely on  
14 your briefs, or you can make other arguments. I think  
15 the factual recitation that Mr. Stoner has gone through  
16 is somewhat overwhelming. I don't know if you have  
17 anything you want to address on that.

18                  MR. NORRIS: I don't really want to  
19 address the facts, Your Honor. There is worship going on  
20 at this property.

21                  There is one case that I found and I  
22 didn't put it in my brief because I wasn't aware of it at  
23 that time, but it's from the same -- it's from New

1 Jersey, a Superior Court case, in which I believe the  
2 Trial Court held that the state constitutional guarantee  
3 of freedom of worship foreclosed any use by the municipal  
4 authority of its zoning power to prohibit free exercise  
5 of religious activity in the privacy of one's home.

6 And it sort of took that Cameron case the  
7 next step and ruled that private gatherings in a home for  
8 the purpose of worship are constitutionally exempt from  
9 any special permit requirements or zoning restriction --

10 MR. STONER: I haven't seen this case,  
11 Your Honor.

12 MR. NORRIS: And I don't have a copy  
13 either. It's --

14 THE COURT: So in order to make that case  
15 even halfway appropriate for this jurisdiction, you would  
16 have to argue that all of the services that Mr. Tran --  
17 he simply practices religion in his home.

18 That's what I mean about do you want to  
19 address the factual issues, because I think Mr. Stoner's  
20 recitation of the facts in this case are very  
21 overwhelming in terms of countering that argument.

22 MR. NORRIS: I want to address at some  
23 point, if the Court were to grant an injunction, what the

1 scope of the injunction would be. Would it extend only  
2 to the garage, or would it extend to the privacy of Mr.  
3 Tran's home --

4 THE COURT: If I were to issue an  
5 injunction in this case, it would be complete. It would  
6 be entire. There would be no way that he can conduct  
7 services on that property.

8 I don't think that the evidence is that he  
9 understands -- I don't mean this in a pejorative sense,  
10 but there's been a real failure to understand in this  
11 case what the County was trying to do over the past ten-  
12 plus years in regulating the use of that property.

13 And I'm afraid that if what Mr. Tran is  
14 saying, that he got some bad legal advice or whatever, I  
15 don't know. I wouldn't have any ability to -- I'd have  
16 to enjoin everything. I'd have to enjoin services being  
17 conducted.

18 Now, obviously as I said to Ms. Hicks when  
19 she testified, two people who come together in their  
20 living room and say prayers together, who on earth can  
21 object to that? No one even knows -- I mean, it's absurd  
22 to say that two people cannot pray together in their  
23 home.

1                   MR. NORRIS: We would object to any  
2 injunction that tracks the language of the statute on the  
3 grounds that it's unconstitutionally vague and that it  
4 would be potentially applicable to the two people  
5 gathering in the living room with Mr. Tran, that it would  
6 affect the kind of speech they could engage in. If they  
7 were caught talking about Buddhism, then that might be  
8 grounds for seeking sanctions against Mr. Tran under such  
9 an injunction --

10                  THE COURT: Since you want to address this  
11 point, let me ask Mr. Stoner to be clear about what the  
12 nature of an injunction -- maybe you could tell the Court  
13 -- I don't know if you've given me an order. I don't  
14 recall --

15                  MR. STONER: I have, Your Honor. And,  
16 frankly, my preference would be -- obviously we want  
17 more, but I'd be happy to try to work with Mr. Norris and  
18 the Zoning Administrator, and if we can't come to some  
19 agreement set down in advance on a Friday, perhaps a week  
20 from now or two weeks at the most, entry of an order if  
21 we can't come to some agreement. But I think perhaps we  
22 can.

23                  THE COURT: I'm going to put that aside

1 for the moment.

2 MR. NORRIS: For purposes of appeal, I  
3 think we're required to state all of our objections to  
4 the proceeding, and --

5 THE COURT: Well, I'm saying if you're  
6 worried about what the actual order is going to say, I'm  
7 going to docket this -- if, in fact, we get that far, I  
8 would docket it for a Friday and not enter an order until  
9 then, at which time you would have ample time to appeal,  
10 as well as state your objections on the record.

11 But when I render a decision in this case,  
12 I'll give you some guidance on all of those issues.

13 MR. NORRIS: I want to address the  
14 exhaustion of remedies point, and I'm not sure there's an  
15 actual dispute about whether we're allowed to raise the  
16 constitutionality of the ordinance. I think --

17 MR. STONER: No, Your Honor, we don't  
18 dispute that they can raise a constitutional challenge to  
19 the ordinance, notwithstanding their failure to exhaust  
20 their administrative --

21 THE COURT: Well, that's good.

22 THE STONER: The caselaw is clear on that.

23 THE COURT: That's good.

1           MR. NORRIS: It's a fundamental rights  
2 type case. I think that's not in dispute.

3           THE COURT: No.

4           MR. NORRIS: These are fundamental rights.  
5 He can't be required to jump through a lot of hoops in  
6 order to preserve his fundamental rights. He has the  
7 right to assert them in this proceeding and he has the  
8 right to argue that as applied to him in his case, and  
9 possibly on its face the statute is unconstitutional.

10          And I want to --

11          THE COURT: I would agree with you on  
12 that.

13          MR. NORRIS: And I would allude to the  
14 various things that were mentioned at the end of my  
15 answer that was filed in response to the initial Bill of  
16 Complaint, and that there were a lot of different  
17 constitutional theories that I tried to come up with, but  
18 equal protection, free exercise.

19                 The free exercise analysis under Smith  
20 boils down to neutrality as the first step. If the  
21 ordinance is not neutral, then it has to meet a strict  
22 scrutiny test.

23                 And this ordinance, although it does

1 restrict various kinds of gatherings, as the  
2 Administrator testified, it places a special focus on  
3 religion by singling that out and by allowing the  
4 Administrator to use, with somewhat arbitrary and broad  
5 discretion, religion as a factor in determining a  
6 violation.

7           And there's no -- it's not clear that she  
8 would have done the same thing if these had been non-  
9 religious gatherings. It would have been a much  
10 different situation.

11           THE COURT: It's not so much -- I would  
12 suggest to you that it's not so much -- from her  
13 testimony, it's not she's using religion as the linchpin  
14 to make a decision. It's the gathering of people in  
15 numbers which is the issue here. The gathering of people  
16 in numbers. It's not what they're doing, but the fact  
17 that they're gathering.

18           So if you had that -- I think that's what  
19 is at issue here. And that's where you come into the  
20 issue of traffic, sewage and all the other stuff that  
21 happens when large numbers of people -- that is not -- it  
22 has nothing to do with religion, per se, and that's why  
23 you've got all those other things listed.



1 MR. NORRIS: Absolutely. And --

2 THE COURT: Would you agree with that?

3 MR. NORRIS: Yes, Your Honor. And if the  
4 County's interest here and their reasons for pursuing the  
5 case is to stop large gatherings, they have used the  
6 place of worship ordinance toward that end, but I would  
7 submit that because there is no general restriction on  
8 gatherings themselves, that to focus on the gathering  
9 effects of religious gatherings only, and not to  
10 generally prohibit all the neighbors from having large  
11 parties or frequent parties or things of that nature,  
12 shows that there's no compelling interest in stopping  
13 gatherings and there is no neutral interest -- there's no  
14 neutral ordinance that stops gatherings.

15 Whenever they see a gathering, they have  
16 to fit it into one of these categories. It has to be a  
17 club or some other prohibited thing that the ordinance --  
18 place of worship. It's true it's a place of worship. I  
19 mean, it's true that there is worship going on there.  
20 I'm not conceding anything beyond that.

21 But pursuit of gatherings by focusing on  
22 worship is not constitutional. And this ordinance is  
23 defective, we argue, because it singles out worship

1 gatherings in a way that it doesn't comprehensively cover  
2 all gatherings when gatherings is the true issue here.

3 THE COURT: Well, I'm the one who said  
4 that. I'm not sure Mr. Stoner would agree with me, but I  
5 think that's the point of it.

6 MR. NORRIS: Beyond that, the fact that  
7 fundamental rights are involved here heightens the  
8 scrutiny on all of these questions. The vagueness issue  
9 -- I mean, what would be an acceptably clear statute  
10 prohibiting running a dry-cleaning business, restaurant  
11 or whatever may not be -- in this case, is it not  
12 acceptably clear when it's applied to private,  
13 fundamental --

14 THE COURT: Why doesn't he just apply for  
15 a special use permit?

16 MR. NORRIS: Well --

17 THE COURT: You see, that's the problem  
18 with your case. He could just simply apply for a special  
19 use permit.

20 MR. NORRIS: He's allowed, we submit as a  
21 matter of constitutional right, to associate and speak  
22 with other people in his home, and to do so about  
23 religious topics without being discriminated against on

1 the basis of religion.

2 And he's not required to get any kind of  
3 permit for that, because other people aren't required to  
4 get permits when they associate with persons watching  
5 football or having a party or whatever they want --  
6 playing cards, Cub Scouts or you name it.

7 And we believe the Court cannot  
8 comprehensively enjoin worship services, that it would  
9 have to give him at least the same amount of right to  
10 associate with people in his residence as other people  
11 enjoy for non-worship purposes.

12 So although -- that's sort of a different  
13 -- that's assuming the ordinance is not flatly  
14 unconstitutional. I would say that it's unconstitutional  
15 as applied to him and that the County has to go back and  
16 draft a neutral ordinance that prohibits gatherings.

17 If large gatherings are a problem, large  
18 gatherings should be prohibited as such and it shouldn't  
19 be piece-by-piece, chopped up into different kinds of  
20 gatherings, one of which is religion. But if the County  
21 gets over that hurdle and the issue is what's the  
22 enjoined conduct under this ordinance if it's  
23 constitutional, he still has a core sphere of privacy and

1 freedom to engage in First Amendment activities in his  
2 home with friends that everybody enjoys and they're not  
3 covered by the ordinance.

4           Worship is not prohibited by the  
5 ordinance. Gatherings are not prohibited. And this  
6 proceeding is not a punitive proceeding. It's not a  
7 quasi criminal ordinance, although there are some  
8 sanctions that can be charged, I believe, against  
9 violators.

10           But, you know, unless this is a punitive  
11 thing to punish him for his past conduct, it's solely to  
12 prohibit that which can be constitutionally prohibited,  
13 but the Court has to look at what rights he retains under  
14 the ordinance, what rights he retains under the  
15 Constitution.

16           I guess we could put this off to a later  
17 date if that's -- if the Court wants to hold a hearing on  
18 the drafting of the injunction --

19           THE COURT: I'll see what you want to do.

20           MR. NORRIS: I'm saying that there is no  
21 practicable remedy the County can use in this case  
22 because it hasn't proceeded on a theory of general  
23 violation of a neutral gathering ordinance. It has

1 proceeded on a worship based theory, that always comes  
2 back to worship at some point.

3 And that's going to be in the injunction  
4 if it's under this ordinance. That's going to  
5 unconstitutionally violate his First Amendment Rights,  
6 and the injunction has to follow the Constitution just as  
7 much as the ordinance does, I would think.

8 THE COURT: Okay.

9 MR. NORRIS: I think I've raised enough  
10 points in the Answer, and I want to preserve all of those  
11 although I haven't mentioned them all right here, and in  
12 the brief.

13 THE COURT: All right. It's one-fifteen.  
14 We usually break for lunch at one. What we're going to  
15 do is break, and I want some opportunity to write out the  
16 decision.

17 MR. NORRIS: Can I hand this case up?

18 THE COURT: Of course you can.

19 MR. NORRIS: Is there any objection to  
20 just one additional case here?

21 MR. STONER: Let me just make a note of  
22 it, Your Honor.

23 MR. STONER: If I may -- I haven't even

1 had a chance to read the case, but I can tell from Mr.  
2 Norris' description that it's really not on point  
3 whatsoever. It pertains to a state constitutional  
4 guarantee in New Jersey. It pertains -- the specific  
5 circumstances of this case apparently pertain to  
6 activities occurring in the privacy of the plaintiff's  
7 home.

8 Mr. Norris was getting into some  
9 discussion of that. We don't even get to that. The  
10 clear facts of this case are that so much of this  
11 activity is occurring in the garage and on the property  
12 around the garage, not strictly within the residence. So  
13 that doesn't provide any legitimate guidance for the  
14 Court, but you can certainly have it.

15 I wouldn't deprive the Court of the  
16 opportunity to read it.

17 THE COURT: Along with the 300 of pages  
18 worth of other cases that you all gave me to read. What  
19 I'd like you all to do is I'm going to ask you to come  
20 back a little later so I have time to think clearly about  
21 my decision and announce it to you in some kind of  
22 coherent fashion.

23 If you could come back at two-forty-five.

1 Okay.

2 MR. STONER: Thank you, Your Honor.

3 (Lunch recess at approximately 1:17 p.m., with the  
4 hearing resuming at approximately 2:55 p.m.)

5 THE COURT: Mr. Stoner, I'm going to give  
6 you back your authorities book. I don't think we need to  
7 keep that.

8 MR. STONER: That's fine, Your Honor.

9 JUDGE'S RULING

10 THE COURT: As a factual matter, I am  
11 rejecting the argument made by the defendant, that the  
12 worship activities conducted on-site are restricted to  
13 his house, or that they should be viewed as if they were  
14 restricted to his house.

15 In making this factual finding, I am  
16 relying on the testimony here and in deposition as  
17 outlined by Mr. Stoner. I would note in passing, that  
18 the separate building is used for services, that that  
19 building is clearly outfitted to operate like a temple or  
20 church, that it accommodates a fairly large number of  
21 people, that it is regularly used to conduct religious  
22 services, its use is not restricted to certain special  
23 holidays.

1           I was impressed with Reverend Tran's  
2 testimony as to the nature of the congregation. The  
3 congregation is not composed of just personal friends of  
4 his. He described the congregation as also being  
5 composed of people who generally describe themselves as  
6 practicing Buddhists.

7           This conforms to what Reverend Tran  
8 intends, which was clear by his use of flyers that are  
9 Exhibits 27 and 28, in his efforts to attract new members  
10 of the congregation. In addition, he solicits donations.

11           I am hard-pressed to define in any way the  
12 difference between the center as it operates from more  
13 orthodox churches. He even has a parking lot with an  
14 attendant.

15           I cannot think -- I cannot tell you how  
16 overwhelming the evidence was that Reverend Tran is  
17 operating this facility as a church. You know, one can  
18 go on and on with the place for the shoes and the altar  
19 and the Buddhist temple and the fact that the garage is  
20 not used as a garage, and it has clearly, as I said, been  
21 outfitted for use as a church.

22           The current practice in the center  
23 by Reverend Tran is completely contrary to the



1 representations made by the VBA in a letter to the County  
2 of March 20, 1992 -- completely contrary in almost every  
3 respect -- which compels one to conclude that the VBA  
4 understands the significance of the factors that I just  
5 outlined.

6                   What happens at the temple today does  
7 conform generally to the November 14, 1994 application  
8 for a special use permit that was made by the center, and  
9 that's Exhibit 19. The letter that I referred to before  
10 was Exhibit 14.

11                   The County argues that this whole question  
12 of use as a church is a thing decided under the case of  
13 Gwinn versus Alward. I agree that it is. I note that  
14 the defendant, for whatever reason, never pursued his  
15 appeal, which was a big mistake on his part. However, I  
16 want to make it clear that even if it were not a thing  
17 decided, which I believe it is, I would decide it again  
18 today in favor of the County for the reasons that I set  
19 out above.

20                   With regard to the constitutional  
21 questions, which I agree could be raised by the defendant  
22 at this time -- and it's very difficult to review all the  
23 cases that were cited in the brief -- but, again, I will

1 just say that I agree with the arguments made by the  
2 County in their brief.

3 Namely, one, that the zoning ordinance is,  
4 in fact, a neutral law of general applicability that does  
5 not burden the defendant's free exercise of his religion.  
6 There is no need for me, having made that finding, to  
7 reach the question as to whether or not there is a  
8 compelling governmental interest in regulating land use  
9 within residential zoning districts.

10 I also am finding that the zoning  
11 ordinance itself is not unconstitutionally vague, it is  
12 not vague facially, and it is not vague as applied to  
13 Reverend Tran.

14 In making those decisions on the  
15 constitutional law, I am adopting the arguments of the  
16 County in the brief that they've filed. I agree with  
17 their interpretations of the cases cited.

18 I will note that Mr. Norris gave me at the  
19 last minute an interesting case, Isaac Farre, which is a  
20 New Jersey case, 204 New Jersey Super 575. It has  
21 obvious problems, when used in Virginia, which were  
22 raised by Mr. Stoner. But even in that case, as I read  
23 it, the religious activities that were conducted by the

1 defendant in that case were conducted entirely within the  
2 confines of his home, which is clearly not the case here.

3 So that's my decision. I can put this on  
4 the docket. I would think that in terms of an injunction  
5 -- I am granting the injunction and reaching a  
6 declaratory judgment in favor of the County.

7 Now, I would tell you all that it appears  
8 to me that any kind of injunction would have to require  
9 the dismantling of the structure on the property that is  
10 being used as a church, and that is what's factually  
11 happening here. That means no loudspeakers. A garage  
12 has to be a garage.

13 I don't know if that's very helpful. I  
14 think the safest thing for the VBA to do would be to find  
15 a site that they can appropriately use as a temple, and  
16 just get on with it. Either that, or apply for a special  
17 use permit. I don't know why anyone would want to spend  
18 any more time with this. If you want your congregation  
19 to prosper, I would just go ahead and find an appropriate  
20 site for it.

21 Is there anything else? I can set it on  
22 the docket for the 25th of August.

23 MR. STONER: I think that would be

1 helpful, Your Honor, just in case we can't reach some  
2 agreement as to the -- of the order.

3 THE COURT: That's it. I wish you luck in  
4 resolving this problem. There clearly appears to be a  
5 need for a Buddhist temple in Fairfax County, and people  
6 should have one. And they should have one where they  
7 don't have to worry about all of these other issues that  
8 only, it seems to me, make it difficult.

9 MR. STONER: Thank you, Your Honor.

10 (Whereupon, at approximately 3:03 p.m., the  
11 hearing in this matter was concluded.)  
12

13 CERTIFICATE OF COURT REPORTER

14 I, DEBORAH L. NATOLI, a Verbatim Court Reporter,  
15 do hereby certify that I took the notes of the foregoing  
16 proceeding by Stenomask and reduced the same to  
17 typewriting; that the foregoing is a true record of said  
18 proceeding to the best of my knowledge and ability; that  
19 I am neither related to nor employed by any attorney or  
20 counsel employed by the parties thereto; nor financially  
21 or otherwise interested in the action.

22 Deborah L. Natoli  
23 DEBORAH L. NATOLI  
Court Reporter

BK 7099 1923

TOWN & COUNTRY ESCROW AND TITLE CO., INC.  
8318 ARLINGTON HWY. 11-AND  
FAIRFAX, VIRGINIA 22031

88 110759

DEED

JUL 29 1988

THIS DEED made this 28th day of July, 1988, by and between  
Laurence D. ROWLEY and Edith H. ROWLEY, husband and wife, GRANTORS; and  
VIETNAMESE BUDDHIST ASSOCIATION, a non-profit organization, GRANTEE;

WITNESSETH

THAT, for and in consideration of the sum of TEN DOLLARS (\$10.00)  
and other good and valuable consideration, receipt of which is hereby  
acknowledged, the GRANTORS do hereby grant, bargain, sell and convey, in  
fee simple and with General Warranty of Title, unto the GRANTEE, the  
following described property, situate, lying and being in FAIRFAX COUNTY,  
Virginia, to wit:

ALL OF LOTS 13 AND 14 OF THE SUBDIVISION OF BULL RUN ESTATES, AS THE  
SAME APPEARS FULLY DEDICATED, PLATTED AND RECORDED AMONG THE LAND  
RECORDS OF FAIRFAX COUNTY, VIRGINIA IN DEED BOOK 1182, PAGE 261.

AND BEING THAT SAME PROPERTY CONVEYED TO THE GRANTORS HEREIN BY DEED  
DATED JULY 5, 1968 AND RECORDED DECEMBER 2, 1968 IN DEED BOOK 3114 AT  
PAGE 147 AMONG THE AFORESAID COUNTY LAND RECORDS.

This conveyance is made subject to the covenants, conditions,  
restrictions, easements and rights of way of record.

The GRANTORS covenant that said GRANTORS have the right to convey  
the aforesaid property; that the GRANTORS have done no act to encumber  
said property; that the GRANTEE shall have quiet possession of said  
property; and that the GRANTORS will execute such further assurances as  
may be requisite.

Witness the following signatures and seals:

Laurence D. Rowley (seal)  
Laurence D. ROWLEY

Edith H. Rowley (seal)  
Edith H. ROWLEY

State of Virginia  
FAIRFAX COUNTY

I, the undersigned, a Notary Public for the jurisdiction aforesaid,  
do certify that Laurence D. ROWLEY and Edith H. ROWLEY whose names are  
signed to the foregoing document acknowledged the same before me in my  
jurisdiction aforesaid, this 28<sup>th</sup> day of July, 1988.

My commission expires on the 17<sup>th</sup> day of August, 1991.

SA KENNETH  
NOTARY PUBLIC  
VIRGINIA AT LARGE  
MY COMMISSION EXPIRES AUG. 12, 1991

Kenneth  
Notary Public

A COPY TESTE:  
JOHN T. FREY, CLERK

BY: John T. Frey  
CLERK

Tax Map No.: 073-1-02-0013  
Grantee's Address: 7605 BULL RUN DRIVE  
CENTREVILLE, VA 22020  
Consideration: \$270,000.00

88-01-4758

RECORDED W/CERTIFICATE ANNEXED

JUL 29 1988

FAIRFAX COUNTY, VA.

TESTE: John T. Frey  
CLERK

93-086618

93 APR 28 1:31

D E E D

THIS DEED made this 23<sup>rd</sup> day of April, 1993, by and between VIETNAMESE BUDDHIST ASSOCIATION, a non-profit corporation qualified in the District of Columbia by certificate of incorporation issued on August 28, 1980, GRANTOR; and Thanh Van, TRAN, unmarried, GRANTEE;

W I T N E S S E T H

THAT, for and in consideration for the sum of one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the GRANTORS do hereby grant, bargain, sell and convey, in fee simple and with General Warranty of Title, unto the GRANTEE, the following described property, situate, lying and being in Fairfax County, Virginia, to-wit:

Lots 13 and 14 of the Subdivision of BULL RUN ESTATES, as the same appears duly dedicated, platted, and recorded in Deed Book 1182 at Page 261 among the land records of Fairfax County, Virginia.

And being the same property conveyed to the Grantor herein by Deed dated July 28, 1988, recorded July 29, 1988 in Deed Book 7099 at Page 1923 among the aforesaid county land records.

SUBJECT, HOWEVER, to restrictions and rights of way of record.

The said Grantors covenants that they have the right to convey the said land to the said Grantees; that he has done no act to encumber the same; that the said Grantees shall have quiet possession of the said land, free from all encumbrances; and that the said Grantor will execute such further assurances of the said land as may be requisite.

WITNESS the following signatures and seals:

VIETNAMESE BUDDHIST ASSOCIATION

By: Nguyen Thi Nha, director and attorney in fact by minutes approved April 20, 1993.

State of Virginia  
County of Fairfax, to-wit:

I, the undersigned, a Notary Public for the jurisdiction aforesaid, do certify that Nguyen Thi Nha whose name(s) are/is signed to the foregoing document acknowledged the same before me in my jurisdiction aforesaid, this 23<sup>rd</sup> day of April, 1993.

Anthe Schradt  
Notary Public

My commission expires: 2-29-96

BN 8533 0691

COPY TESTE:  
J. T. FREY, CLERK

Pamela J. McVay

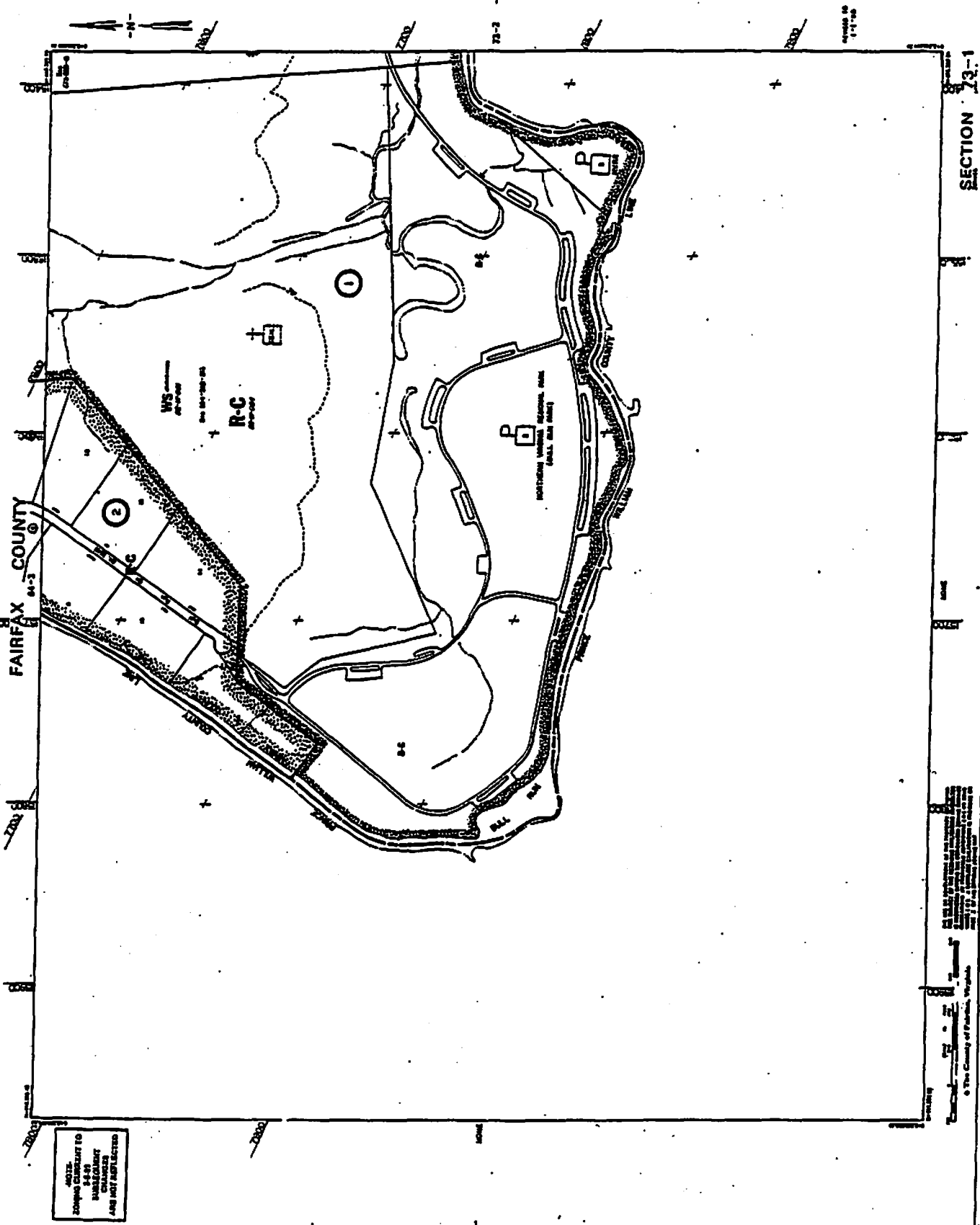
Tax Map No.: 073-1-02-0013  
Grantee's Address: 7605 Bull Run Drive  
Centreville, VA 22020  
Consideration: \$270,000  
\$193,750

APR 28 93

RECORDED FAIRFAX CO VA  
TESTED J. Frey  
CLERK

-233-

COMPLAINANT'S  
EXHIBIT #2



**A COPY TESTE:**

27 June 2000 ..... Vanessa R. Sykes, Jr.  
Date ..... Thomas J. Conry, Manager  
Dept. of Information Technology  
GIS & Mapping Services  
Fairfax County, Virginia

..... ZONING ..... Sheet 73-1  
Map / Aerial photo

1-1-99 ..... 1" = 500'  
Date ..... Scale

I, Nancy Vehrs, hereby certify that this is a true  
copy of a Fairfax County record, of which Thomas J.  
Conry is the custodian and that he reports to me.

Nancy Vehrs ..... 6/27/00  
Nancy Vehrs ..... Date  
Clerk to the Board of Supervisors



**LE CHI THAO & ASSOCIATES**

**ATTORNEYS AND COUNSELLORS AT LAW**

**6045 WILSON BOULEVARD, SUITE 300**

**ARLINGTON, VIRGINIA 22205**

**(703) 237-2800/237-6200**

**STATEMENT**

**Re: Application of Vietnamese Buddhist Association for Special Use Permit.**

This statement serves to explain an application submitted by the Vietnamese Buddhist Association for a Special Use Permit on the land lot addressed as 7605 Bull Run Drive, Centreville, Virginia. The above described real property is a 5-acre wooded lot owned by the applicant Association and presently zoned R-C.

The Association applies for permission to use said real property as a church or place of worship. The church will be a small structure using the present dwelling with minor renovation on the inside. A Buddha statue will dominate the main meeting quarters which presently serve as living room. There will be no pews or chairs placed in the interior space since Buddhist followers sit on mats during their periods of meditation.

The church serves overwhelmingly the residents of the Fairfax County; although some of church goers might come from neighboring areas such as Arlington, Alexandria and Prince William. The normal hours of operation will be from 10:00 A.M. to 3:00 P.M., seven days a week.

It will have one priest and one or two assistant priests as a full time staff. The priests in residence at the church offer personal guidance to the followers and maintain and safeguard the facility and the grounds. There are seldom more than a few followers in the church at any one time. Per individual requests, the church conducts memorial services but not funerals. There are no religious services such as baptisms or confirmations, confessions, etc... Bible studying sessions will be conducted at the church on week-ends. The attendance at these weekly sessions is estimated at about 40 people for each time. Since peace and serenity is fundamental in the practice of Buddhism, the purpose of the church is to offer a quiet place for individual meditation. There will be no activities to be organized in the evening hours.

Each year there are two major holy days to be observed at the church, namely the Buddha's birthday and the equivalent of All Soul Day. At these ceremonies the attendance cannot be anticipated. However the people would come and go at different times. Besides on the traditional Vietnamese New Year day - which falls approximately in February of each year and which is not a religious day -, Vietnamese people usually come to pay homages to the Buddha. They will come and go at different hours, spend a very short time at the church, and do not congregate all within a fixed scheduled time; the New Year is to be celebrated with the family at home and not at public places such as churches.

The church is essentially a quiet sanctuary in a natural setting which emphasizes upon avoiding all disturbances including noises, music, etc., thereby enhancing a Buddhist's search for enlightenment. There will be no loud music or singing, no public reading of holy writings. There will be no animals of any kind kept or raised within the premises of the church. The church will blend into its surroundings and, by its very nature, cause the least possible intrusion in the area. The Association does not anticipate that the church would have any adverse impact upon the surroundings.

The property on the left side of the Association's land is also owned by the Association itself, and the lot on its right is a horse breeding farm. The vast area behind its property belongs to the National Park Authority and is being used as a public park. All the land lots in this vicinity are sizable and wooded. Activities at the church cannot in any way disturb the neighbors.

There does not seem to be any environmental constraints that would adversely affect this application. The peripheral landscaping appears to be adequate. Since there are no new construction works involved, all requirements for storm water detention and conduit are deemed to have been satisfied as they have been under the present conditions. The church will provide ample parking facilities within the premises of the real property to accommodate vehicles of church goers during all regular services.

Transportation does not seem to be an issue in this application. Vehicular access to the facility is easy and manageable. With regard to the traffic on the roads leading from Lee Highway (R-29) to the church location, there will be no noticeable changes. The road leading from Lee Highway (R-29) and passing in front of the church is the Bull Run Drive, continuing from the Bull Run Post Office Road. There is no through traffic. Furthermore these roads have the capacity to carry heavy traffic of the public who go to the Bull Run Battlefield Park located a few hundred yards beyond the church land. The traffic to be generated by the church not only will be far much lighter than the one going to the Park, it will not interfere with the present traffic on these roads considering the schedule of the church's activities. Most of the traffic going to and from the church is on *non-rush hour* and does not coincide with the occasions when the roads are heavily used under the present circumstances.

Definitely this will not be disruptive to any traffic flow or pose any potentially hazardous threat to the traffic. The only requirement the church must meet is the provision of adequate parking space which the church shall promptly comply with as soon as the Special Use Permit is granted.

May 23, 1989



Le Chi Thao  
Attorney for the Vietnamese  
Buddhist Association

# COPY

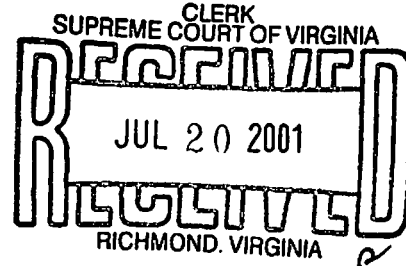
## ARNOLD & PORTER

Scott D. Helsel  
Scott\_Helsel@aporter.com  
202.942.5329  
202.942.5999 Fax  
555 Twelfth Street, NW  
Washington, DC 20004-1206

July 18, 2001

BY CERTIFIED MAIL FOR FILING

David B. Beach, Clerk  
Supreme Court of Virginia  
100 North Ninth Street  
5<sup>th</sup> Floor  
Richmond, VA 23219



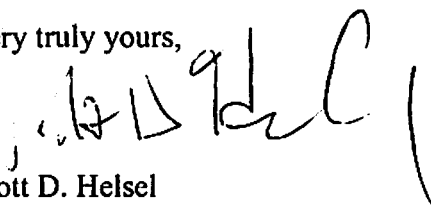
Re: Thanh Van Tran v. Jane W. Gwinn, Fairfax County County Zoning  
Administrator, Record No. 002810

Dear Mr. Beach:

On July 2, 2001, the parties completed briefing in the above-captioned appeal. On July 5, 2001, a federal court issued an opinion that, to the best of our knowledge, is the first to apply the Religious Land Use and Institutionalized Persons Act of 2000 to a zoning dispute involving religious activities occurring at a private home. We would like to bring this opinion, *Murphy v. Zoning Commission of the Town of New Milford*, \_\_\_ F. Supp. 2d \_\_\_, No. CIV. 300CV2297HBF, 2001 WL 789084 (D. Conn. July 5, 2001), to the Court's attention, and will be prepared to address its importance to this appeal at oral argument. If the Court would like, we would be pleased to provide supplemental briefing addressing this opinion in advance of oral argument.

We are enclosing 20 copies of this letter and the *Murphy* opinion, and would ask that you inform the Court of this recent development.

Very truly yours,

  
Scott D. Helsel

*Counsel for Appellant Thanh Van Tran*

Enclosure

cc: T. David Stoner, Esq. (by first class mail)

Only the Westlaw citation is currently available.

United States District Court,  
D. Connecticut.

Robert MURPHY and Mary Murphy  
Plaintiffs,

v.

ZONING COMMISSION OF THE TOWN  
OF NEW MILFORD, et al. Defendants.

No. CIV. 300CV2297HBF.

July 5, 2001.

RULING ON PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION

FITZSIMMONS, Magistrate J.

\*1 In this action, plaintiffs allege violations of their constitutional rights, including the rights to free exercise of religion, free association, peaceable assembly, privacy, and speech, as well as due process, equal protection, takings, and establishment clause violations. [Doc. # 12, 35.] Plaintiffs also allege that defendants engaged in illegal reverse-spot zoning, an *ultra vires* act in violation of the town laws; and violated the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000(c)(c), *et seq.*, in addition to various state constitutional rights and state statutory provisions. [See *id.*]

On December 21, 2000, Judge Eginton granted plaintiffs' *Motion for a Temporary Restraining Order*. [Doc. # 17.] This court heard evidence on plaintiffs' *Motion for Preliminary Injunction* [Doc. # 3] on January 18, 2001. [FN1] At the close of the preliminary injunction hearing, the court ordered further briefing on several issues. [Doc. # 29.] The parties submitted responses to the court's inquiries on March 12, 2001. [Doc. # 33, 34.] The Court delayed a ruling to give the parties time to discuss a settlement.

For the reasons discussed below, plaintiffs' *Motion for Preliminary Injunction* [Doc. # 3] is

GRANTED. Defendants are enjoined from enforcing the cease and desist order issued to plaintiffs by the Zoning Enforcement Officer on December 19, 2000. This ruling is without prejudice to plaintiffs seeking further interim relief if faced with actions by the defendants which threaten the plaintiffs' rights while the case is pending, or permanent injunctive relief if plaintiffs prevail on the merits. *See Sierra Club v. United States Army Corps. of Eng'rs*, 732 F.2d 253, 256 (2d Cir.1984) (preliminary injunction issues to maintain the status quo pending a resolution of the case on the merits).

FINDINGS OF FACT

1. Plaintiffs Robert Murphy and Mary Murphy are the owners of, and have resided at, 25 Jefferson Street, New Milford, Connecticut for approximately 28 years. [Preliminary Injunction Hearing Transcript, Jan. 18, 2001, "T.," at 52]

2. Plaintiffs' home is in a single family residential neighborhood, at the end of a cul-de-sac [T. 15], on which seven houses are located [T. 117]

3. Plaintiffs started hosting prayer group meetings in their home on Sunday afternoons in 1994, after Mr. Murphy became ill. [T. 12]

4. Mr. Murphy testified that he and his wife and six children had always hosted various social gatherings in their home and would often have 50 to 60 guests, depending on the event. [T. at 12-14]

5. Mr. Murphy also testified that during these events, people would park their cars "anywhere they could" ... "[o]ut in the circle down the street, in the backyard, in the driveways, in their yard, [or] in the front lawn." [T. 14]

6. The prayer meetings generally last from 4:30 to 6:30 p.m. on Sunday afternoons. [T. 17]

7. Some people who attend the prayer meetings come earlier than 4:30 p.m. for other matters, such as fund-raising or clothing or

food donation drives, and many people stay after 6:30 p.m. for dinner. [T. at 16-17]

\*2 8. Plaintiffs do not limit the number of people they invite to the prayer group meetings. [T. 18]

9. Plaintiffs' meetings are not open to the general public. [T. at 19-20]

10. The number of people attending the prayer group varies, but is never less than ten to twelve people. [T. 44]

11. The prayer group meetings generally take place on an enclosed porch at the back of the house. [T. 18]

12. The number of people attending the weekly prayer group meeting has declined, in part because of the enforcement action and the town's position since "they're afraid [they will be] arrested." [T. 45]

13. Mr. Murphy testified that the weekly prayer group meetings are an important part of his faith because of the way he was raised and, for him, did not take the place of church. [T. at 20-22] He testified that the prayer meetings brought "him closer to God" and changed his life after he became ill. [T. 22]

14. Mr. Murphy testified that his religious beliefs required him to hold the prayer group meetings on Sunday and that enforcement of the cease and desist order would impede his ability to practice his beliefs. [T. at 46, 48-49]

15. Plaintiffs built an addition to their home in August 2000, creating a new garage with an upstairs living area. [T. 71] At that time, the existing driveway stopped at the addition. Plaintiffs then built a roughed-in driveway to a handicapped-parking area at the back of the addition. [T. at 24-25]

16. Plaintiffs obtained a permit to pave the rough portion of the driveway and the handicapped parking area in November 2000. [Pl. Exh. 1A, 1B] Plaintiffs did not pave the driveway during the fall because it was too late in the year, but indicated that they

planned to do so in the future. [T. 28]

17. The Zoning Commission and the Zoning Enforcement Officer ("ZEO") have no authority to issue or revoke driveway permits. Rather, this authority is vested in the Mayor's office and in the public works department. [T. 68]

18. Around August 2000, the zoning office began receiving complaints about plaintiffs' meetings because of traffic concerns, parking on the street, and parking in the rear yard. [T. at 83, 116]

19. After complaining to the zoning office, the neighbors then began expressing their concerns at the public participation sessions of the New Milford Zoning Commission ("Commission") meetings. [T. 83]

20. Once the Commission began receiving these complaints from plaintiffs' neighbors, it instructed the ZEO to investigate the situation and to speak with the plaintiffs. [T. at 84, 118]

21. Plaintiffs' neighbors submitted letters to the commissioners detailing their concerns. Specifically, the neighbors' concerns stemmed from the increased flow of traffic on the street and fear that, in the event of an accident, emergency personnel would be unable to maneuver around the vehicles. The neighbors also expressed concerns about the safety of children playing in the cul-de-sac. [Def. Exh. 512-514]

\*3 22. The police have been called to plaintiffs' home on several occasions due to complaints about the number of parked cars, but plaintiffs have not been cited for any violation. [T. at 35-36]

23. After her investigation of the neighbors' complaints, the ZEO requested that the Commission issue an opinion on whether plaintiffs' use of their property conformed with the town's zoning regulations. [T. 165]

24. On November 28, 2000, the Commission issued an opinion regarding whether the Sunday meetings were a permitted use under

the zoning regulations. [Def. Exh. 516]

25. The Commission found that regularly scheduled meetings are not a customary accessory use in a single-family residential area. [Def. Exh. 516, at 3.] In determining whether a particular use is a "customary accessory use," the town uses a case-by-case analysis and relies upon no zoning guidelines.

26. The Commission stated that:

[s]uch regularly scheduled meetings together with the construction and use of the parking lot associated therewith, in the opinion of the commission, do not constitute a permitted principal use of a single-family home in an R-40 zone because they are not listed as such in the zoning regulations, nor do they constitute a permitted accessory use because, to the knowledge of the commission, such a use has not been commonly, habitually and by long practice been established as reasonably associated with a single-family home in an R-40 zone.

[Def. Exh. 516, at 4.]

27. Plaintiffs received a letter from the ZEO on November 29, 2000, stating that the meetings plaintiffs held on Sunday afternoons were prohibited and that plaintiffs were not permitted to use their rear yard as a parking lot for the attendees of these meetings. [Pl. Exh. 2]

28. The ZEO testified that the zoning regulations do not permit a large assembly of people in a single-family residential neighborhood. [T. 107] When asked what was too large, the ZEO responded that there was not a set number. [See *id.*] The decision turned on when the number of people assembled became so large that it had a negative impact on the neighborhood. [See *id.*]

29. The ZEO did not know if the Commission investigated whether other people had prayer group meetings in their homes, or other regular group meetings, such as Cub Scout meetings.

30. Prior to issuing their opinion, commissioners were given photographs taken

by plaintiffs' neighbors of cars parked in plaintiffs' backyard and on the cul-de-sac. [T. 74; Def. Exh. 505-511]

31. The ZEO testified that she visited plaintiffs' property on three Sundays and found that the number of cars in plaintiffs' driveway or rear yard and in the cul-de-sac ranged from 13 to 20 cars. She did not find that any of the parked cars blocked access to any of the neighbors' properties. [T. at 75-76]

32. On December 19, 2000, the ZEO issued a cease and desist order, charging plaintiffs with violations of the single-family district regulations

\*4 which [do] not permit use of said premises as a meeting place by a diverse group of people (25 to 40), who are not "family" as that term is defined in these regulations, on a regularly scheduled basis, in this instance each Sunday, throughout the year; nor do the regulations permit the use of a parking lot in the rear yard of said premises which is being used to meet the parking needs of those persons attending the meetings on property located in the Residential Zone in the Town of New Milford.

[Pl. Exh. 4]

33. The cease and desist order was based on the Commission's opinion, but the ZEO was not required by the opinion to issue the order. [T. 112-13]

34. Cease and desist orders are normally appealed to the Zoning Board of Appeals. No appeal has been taken in this case. [T. 113]

35. On January 9, 2001, the ZEO sent plaintiffs another letter, which stated that the temporary restraining order issued by Judge Eginton did not address plaintiffs' use of their rear yard as a parking lot and, as a result, the "parking lot prohibition could be enforced." [Pl. Exh. 3]

36. Brooks Temple, a New Milford zoning commissioner, testified that plaintiffs' neighbors raised their safety concerns during the public participation session of each Commission meeting. [T. 119]

37. Temple stated that the complaints were raised over a four month period and the neighbors' concern seemed to be that the activities surrounding plaintiffs' meetings were escalating. [T. 117]

38. The Commission found that there were, on average, 40 people attending the meetings, with 25 to 40 cars on average. [T. at 118-19] These numbers appeared to be based on statements from the neighbors, as well as individual commissioners' observations.

39. Temple testified that the Commission tried to balance everyone's rights, including plaintiffs' right to have meetings in their homes. [T. 120] Temple testified that regularly scheduled meetings would be a usual activity in a single family residential area but that, in this case, the volume of cars raised a safety issue the Commission needed to address. [T. 123]

40. Temple stated that all prayer meetings would not be prohibited, and that it was an expected accessory use that people would pray in their homes. [T. at 131-32] The Commission did not intend to prohibit all prayer groups or all meetings in residential areas. [See *id.*]

41. The zoning regulations in effect at the time of the Commission's opinion were permissive, providing that a use is prohibited unless it is specifically permitted. [T. at 122-23; Def. Exh. 515]

42. The regulations do not specify the expected accessory uses for particular areas, and Temple agreed that the determination was subjective. [T. 133]

43. The Commission's investigation of the complaints did not substantiate the safety concerns, but found an increased volume of cars that would increase traffic and could create a potential for safety concerns. [T. 123]

44. Temple testified that the key to the Commission's decision was the presence of larger activity than what could be expected in a single family home. [T. 137] In this situation, the Commission found that "too

large" was 25 or more people. [T. 137] Temple admitted that the number was completely subjective. [T. 138]

\*5 45. Temple also testified that the Commission had no objective criteria to determine whether to issue a special use permit for the prayer group meetings. [T. 145-47]

46. The zoning regulations list twenty-five uses allowed by special permit in residential areas. There are no criteria listed in the regulations under which the commissioners are to evaluate special permit applications for a use not listed in the regulations. [Def. Exh. 515]

47. Once the Commission finds that a use is not permitted, the applicant's options are to apply for a special use permit or, if the Commission issued a decision, to appeal the decision to the Zoning Board of Appeals. [T. 124]

48. The Commission's decision was based on an evaluation of the complaints, concern about safety implications, and "common sense." [T. at 132, 139]

49. There is no evidence of religious animus on the part of plaintiffs' neighbors, the Commission, or the ZEO.

#### STANDARD

The question presented by plaintiffs' motion for preliminary injunction is whether the defendants' efforts to stop plaintiffs from having regularly scheduled meetings, which sometimes include 40 or more guests, in their home on Sunday afternoons violate any of plaintiffs' constitutional or statutory rights.

It is axiomatic that a plaintiff seeking a preliminary injunction must demonstrate: "(a) irreparable harm and (b) either (1) a likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief."

*Jackson Dairy, Inc. v. H.P. Hood & Sons*, 596 F.2d 70, 72 (2d Cir.1979) (citations omitted). See also *Paulson v. County of Nassau*, 925 F.2d 65, 68 (2d Cir.1991). "However, in a case in which the moving party seeks to stay governmental action taken in the public interest pursuant to a statutory or regulatory scheme, the injunction should be granted only if the moving party meets the more rigorous likelihood-of-success standard." *Charette v. Town of Oyster Bay*, 159 F.3d 749, 754 (2d Cir.1998), quoting *Bery v. City of New York*, 97 F.3d 689, 694 (2d Cir.1996) (internal citations omitted). See also *Beal v. Stern*, 184 F.3d 117, 122 (2d Cir.1999); *South Lyme Prop. Owners Ass'n, Inc. v. Town of Old Lyme*, 121 F.Supp.2d 195, 203 (D.Conn.2000).

Here, the Commission and the ZEO acted pursuant to the Town of New Milford zoning regulations. No evidence has been provided to indicate that the zoning regulations were not enacted in the public interest. Thus, the Court finds that plaintiffs must meet the likelihood of success on the merits standard in order to have their motion for preliminary injunction granted.

The moving party must make a showing of clear or substantial likelihood of success on the merits if the injunction sought "will alter, rather than maintain the status quo" or "will provide the movant with ... relief [that] cannot be undone even if the defendant prevails at a trial on the merits." *Tom Doherty Assocs., Inc. v. Saban Entertainment, Inc.*, 60 F.3d 27, 33-34 (2d Cir.1995). The Court will not hold plaintiffs to the higher standard of clear likelihood of success, as the relief sought would only require the ZEO to refrain from enforcing the cease and desist order--relief that is prohibitory in nature. [FN2]

#### A. IRREPARABLE HARM

\*6 Irreparable harm means that type of injury for which a monetary award would fail to be adequate compensation. See *Jackson Dairy*, 596 F.2d at 72; *Stewart B. McKinney Found., Inc. v. Town Planning and Zoning Comm. Town of Fairfield*, 790 F.Supp. 1197, 1208 (D.Conn.1992). "In the context of a motion for

preliminary injunction, '[v]iolations of First Amendment rights are commonly considered irreparable injuries.'" *Charette*, 159 F.3d at 755, quoting *Bery*, 97 F.3d at 693. See *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") The Second Circuit has held that a "presumption of irreparable injury ... flows from a violation of constitutional rights." *South Lyme Prop. Owners Ass'n, Inc.*, 121 F.Supp.2d at 204, quoting *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir.1996) (affirming grant of preliminary injunction to inmate's claim that his rights under the Religious Freedom Restoration Act and the Eighth Amendment were violated). But see *Amandola v. Town of Babylon*, 2001 WL 568100 (2d Cir. May 25, 2001) (acknowledging that Second Circuit has not always presumed irreparable injury in cases alleging First Amendment violations, and has on occasion required a showing of irreparable harm, but without deciding issue).

In addition, the federal statute under which plaintiffs bring their claims was passed by Congress to "protect the free exercise of religion from unnecessary government interference" in the context of land use regulation. 146 CONG. REC. E1563-01 (daily ed. Sept. 21, 2000) (statement of Rep. Canady), 2000 WL 1369378. Since the statute was enacted for the express purpose of protecting the First Amendment rights of individuals, the allegation that defendants have violated this statute also triggers the same concerns that led the courts to hold that these violations result in a presumption of irreparable harm. See *Jolly*, 76 F.3d at 482 ("[A]lthough plaintiff's free exercise claim [under RFRA] is statutory rather than constitutional, the denial of the plaintiff's right to the free exercise of his religious beliefs is a harm that can not be adequately compensated monetarily.") (internal citations omitted). See also *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir.2001).

Even if plaintiffs were required to show irreparable harm by establishing an actual chilling effect, plaintiffs have met this burden.



As discussed further below, plaintiffs presented testimony that some participants in the prayer group meetings stopped attending the sessions out of fear that they would be arrested by town officials. This testimony was not refuted by defendants and is sufficient to provide evidence of a chilling effect on plaintiffs' right to associate, as well as their constitutional right to freedom of religion.

Thus, for purposes of deciding this motion, the Court finds that plaintiffs have satisfied the irreparable harm requirement of the preliminary injunction test by alleging violations of their constitutional rights and rights protected under the Religious Land Use and Institutionalized Persons Act.

#### B. PRELIMINARY JURISDICTIONAL QUESTIONS

\*7 Before reaching the merits of plaintiffs' substantive claims, defendants raise two jurisdictional challenges to plaintiffs' case: 1) plaintiffs failed to exhaust the administrative remedies available to them; and 2) the claims are not yet ripe for judicial review. The court will address these in turn.

##### 1. Exhaustion of Administrative Remedies

As a threshold matter, defendants argue that plaintiffs have failed to exhaust their administrative remedies and therefore cannot pursue their claims in court. Plaintiffs respond that they are not required to exhaust state administrative remedies since they are bringing § 1983 claims against the zoning commission.

The Court agrees with plaintiffs that they are not required to exhaust the state administrative remedies before pursuing their § 1983 claim. The Supreme Court, in *Patsy v. Board of Regents of the State of Florida*, held that exhaustion of state administrative remedies was not a prerequisite to filing a § 1983 claim. 457 U.S. 496, 516 (1982). See also *Goldstar Auto Sales, LLC v. Town of Halfmoon*, 69 F.Supp.2d 361, 365 (N.D.N.Y.1999) (collecting cases); *Port Clinton Ass'n v. Board of Selectman of the Town of Clinton*, 217 Conn. 588, 587 A.2d 126

(Conn.1991).

Defendants' argument that the § 1983 exception to the exhaustion requirement is limited to cases seeking damages is not persuasive. In *Patsy*, the Supreme Court discussed the evolution of 42 U.S.C. § 1983 and its legislative history to determine whether Congress intended the exhaustion requirement to apply to these claims. Nothing in the legislative history or in the Supreme Court's opinion indicates that Congress intended to exempt § 1983 claims from the exhaustion requirement only if the claimant sought damages.

The cases cited by defendants are inapposite. Although each case deals with a claim for damages, there is no language in any of the cited cases that indicates a § 1983 claimant seeking injunctive relief is required to exhaust state administrative remedies. For example, defendants cite *Pet v. Department of Health Serv.*, for the proposition that "notwithstanding *Patsy* ..., the fundamental requirement of inadequacy of an available legal remedy in order to obtain injunctive relief remains in full force." 207 Conn. 346, 369, 542 A.2d 672 (1988); Doc. # 34, at 8. Defendants also cite *Laurel Park, Inc. v. Pac.* for this same assertion. 194 Conn. 677, 485 A.2d 1272 (1984). While these statements are legally accurate, they do not support defendants' contention that plaintiffs are required to exhaust their administrative remedies. In fact, the *Laurel Park* decision expressly refutes defendants' contention. In *Laurel Park*, a case seeking injunctive relief from a cease and desist order, the Connecticut Supreme Court held that exhaustion of state administrative remedies was not required as the case alleged violations of § 1983, but that the trial court should not have granted the temporary injunction because plaintiff had not shown that a legal remedy would have been inadequate. 194 Conn. at 689-691.

\*8 Defendants appear to have conflated these two distinct requirements. As clearly discussed in *Laurel Park*, the question of whether a claimant is required to exhaust state administrative remedies is conceptually

distinct from the question of whether a party is entitled to injunctive relief after a showing that any legal remedy would be inadequate. [FN3] The *Patsy* opinion addressed only the exhaustion question and did not attempt to overturn the fundamental requirement of showing that a legal remedy is inadequate before receiving injunctive relief. [FN4] Defendants have not provided any other authority to support their assertion or any evidence that Congress did not intend to exempt all § 1983 claims from the exhaustion requirement regardless of the requested relief.

As plaintiffs have brought § 1983 claims in this suit, they were not required to exhaust state administrative remedies prior to initiating this action in federal court.

## 2. Ripeness of Plaintiffs' Claims

A separate jurisdictional inquiry is whether plaintiffs' claims are ripe for judicial intervention. Defendants argue that plaintiffs' claims are not ripe for review as there was no enforcement action taken as of the date the Amended Complaint was filed, so no final action has been taken, and plaintiffs will therefore not suffer any hardship if judicial review is withheld. Plaintiffs respond that, because their claims are brought pursuant to 42 U.S.C. § 1983, they are not required to exhaust their administrative remedies.

As discussed above, plaintiffs are correct in their statement that they are not required to exhaust their administrative remedies prior to filing a § 1983 action. However, plaintiffs fail to recognize that the doctrines of ripeness and exhaustion are independent. The Supreme Court has explained this distinction by stating that

[t]he question whether administrative remedies must be exhausted is conceptually distinct, however, from the question whether an administrative action must be final before it is judicially reviewable. While the policies underlying the two concepts often overlap, the finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury; the

exhaustion requirement generally refers to administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise inappropriate.

*Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 192-93, 105 S.Ct.3108, 3119-20 (1985) (internal citations omitted). The ripeness inquiry reflects the need to protect agency actions "from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49, 87 S.Ct. 1507, 1515 (1967). In *Abbott Labs.*, the Supreme Court held that, in determining whether the prudential component of the ripeness doctrine had been met, a court needed to balance two considerations: "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." 387 U.S. at 149, 87 S.Ct. at 1515.

\*9 The court acknowledges that there is merit to defendants' argument that, because the town as of the date the Amended Complaint was filed had taken no enforcement action, plaintiffs' claims are not ripe for review. However, in the context of this particular case, the court believes that, at a minimum, plaintiffs' claim that the Zoning Commission's actions violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA") is ripe for judicial review. [FN5] Because the Court finds that the plaintiffs' RLUIPA claim is ripe under the unique circumstances of this case, the Court orders plaintiffs to file a Second Amended Complaint incorporating the issuance of the cease and desist order by the ZEO.

Here, plaintiffs claim that the New Milford zoning regulations, as interpreted by the Commission and enforced by the ZEO, violate their rights under RLUIPA. The court finds unpersuasive defendants' argument that plaintiffs are required to appeal the cease and desist orders to the ZBA before the decision is final. RLUIPA contains no requirement that the town be given an additional opportunity to

comply with the Act by forcing a plaintiff to pursue an appeals process prior to bringing suit under its provisions. *See Stuart Circle Parish v. Board of Zoning Appeals of the City of Richmond, Virginia*, 946 F.Supp. 1225, 1234 (E.D.Va.1996) (Court held that plaintiffs were not required to apply for a conditional use permit in order for action filed under the Religious Freedom and Restoration Act to be ripe.) [FN6] Rather, plaintiffs must show that defendants imposed or implemented a land use regulation that placed a substantial burden on their religious practices. *See* 42 U.S.C. § 2000cc. In making this showing for ripeness purposes, plaintiffs must demonstrate that the governmental decision that allegedly violates RLUIPA is a decision that burdens their religious beliefs or practices. On its face, RLUIPA requires only that the "final decision" made by the governmental agency be to implement or impose a land use regulation against an individual or entity.

At the preliminary injunction hearing, Mr. Temple testified that the opinion issued by the Commission that plaintiffs were in violation of the zoning regulations was not enforceable because there was not a pending case before it. However, once the ZEO issued the cease and desist order based on the Commission's interpretation, the opinion had the force of local law. [FN7] *See Bryant Woods Inn, Inc. v. Howard County, Maryland*, 911 F.Supp. 918, 927 (D.Md.1996), *aff'd* 124 F.3d 597 (4th Cir.1997) (In a claim brought pursuant to the Fair Housing Act, the court found that even though plaintiff failed to appeal a Planning Board's decision to the Board of Appeals, "the County's highest agency decision-maker," the claim was ripe because the "unappealed decision ... is final in the sense that it now constitutes the local law of Howard County ....") This Court finds that, by giving legal effect to the Commission's opinion, the cease and desist order constituted a final decision for purposes of analyzing whether plaintiffs' RLUIPA claim is ripe.

\*10 The cease and desist order would be a final decision even if plaintiffs had appealed the order to the Zoning Board of Appeals ("ZBA"). Although the ZBA has the power to

reverse, modify, affirm or grant a variance to the appealed order, [FN8] the harm that the RLUIPA is designed to protect has already occurred. Once the cease and desist order gave legal effect to the Commission's opinion, the requirements of RLUIPA were triggered. The court is cognizant of language in the Act's legislative history that the statute "does not provide religious institutions with immunity from land use regulation, nor does it relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions in land use regulations, where available without discrimination or unfair delay." 146 CONG. REC. S7774-01, S7776 (daily ed. July 27, 2000) (Exhibit 1). However, the court does not find that this language requires all individuals bringing a claim under the RLUIPA to appeal all decisions or orders to the ZBA or to apply for special use permits regardless of the circumstances of the case. [FN9]

First, the legislative history uses the term "institutions," whereas the statute itself covers institutions, assemblies, and even more broadly, "the religious exercise of a person." 42 U.S.C. § 2000cc(a)(1). Also, this explanation appears in a section entitled "Additional Discussion on Intended Scope of Land Use Provision" and is immediately followed by an explanation of the interplay between the use of real property by a religious institution and the definition of religious exercise. [FN10] 146 CONG. REC. S7774-01. The context of this discussion leads the court to believe that the Senate sponsors of the bill inserted these explanations to help land use regulators in situations where an *institution* such as a church, temple, or synagogue, was subject to a land use regulation. For example, these explanations would provide guidance to regulators in the context of the construction of a new building, renovations of existing buildings, or even the operation by a religious organization of a commercial enterprise in the same building where the land use regulations placed a burden on the commercial entity.

The court has been unable to find, and neither party has presented, any evidence to

indicate that Congress intended to *require* an *individual*, whose right to the free exercise of her religious beliefs has been substantially burdened by a town's land use regulations, to then appeal the town's decision or apply for a special use permit. In fact, a finding that an individual is required to appeal an order or apply for a special permit seems to run contrary to Congress' purpose of protecting the religious freedom of individuals. To require an individual whose free exercise rights have allegedly already been impermissibly burdened by a town's actions to appeal those actions could place an additional and distinct burden on the individual rights RLUIPA was intended to protect. [FN11] As discussed above, since the alleged violation of RLUIPA occurred when the cease and desist order issued, the Court finds that requiring plaintiffs to appeal the order would subject them to additional burdens on the exercise of their religious beliefs in violation of the Act. Plaintiffs are not required to "acquiesce in the violation of [their] rights in order to avoid a claim that the injury is self-inflicted." *A.W. Chesterton Co., Inc. v. Chesterton*, 907 F.Supp. 19, 24 (D.Mass.1995) (ruling on preliminary injunction involving a shareholder suit in closely held corporation).

\*11 Finally, the plain language of the statute states that "standing to assert a claim or defense under this section shall be governed by the general rules of standing under Article III of the Constitution." 42 U.S.C. § 2000cc-2(a). Thus, the court turns its attention back to the general ripeness tests articulated by the Supreme Court and our Court of Appeals.

The Second Circuit in *Able v. United States* discussed a variety of factors it has considered in determining whether a claim was ripe for judicial determination. 88 F.3d 1280 (2d Cir.1996). These factors include

(1) whether the issue to be reviewed is more legal or factual in nature, (2) whether the agency action is likely to have an immediate and substantial impact upon the complaining party, (3) whether judicial review would delay or impede effective enforcement of the relevant administrative scheme, (4) whether the agency's actions are final, and (5)

whether an adequate factual record has been established.

*Id.* at 1289-90, citing *Occidental Chem. Corp. v. FERC*, 869 F.2d 127, 129 (2d Cir.1989); *Seafarers Int'l Union of North America, AFL-CIO v. United States Coast Guard*, 736 F.2d 19, 25-27 (2d Cir.1984); *Aquavella v. Richardson*, 437 F.2d 397, 403-04 (2d Cir.1971). These factors deal primarily with the fitness of the issues for judicial review and are addressed in turn.

First, the issues before the court on the pending preliminary injunction motion are primarily legal rather than factual, and the parties have made a sufficient factual showing to enable the court to decide the remaining legal questions posed at this stage.

The next factor also supports a finding that plaintiffs' claim is ripe. The testimony at the preliminary injunction hearing provides evidence that action taken by defendants has already had an "immediate and substantial impact," in that Mr. Murphy testified that some people had stopped coming to the prayer group meetings because they were afraid of being arrested. *Able*, 88 F.3d at 1289.

The third factor considered by the Second Circuit, "whether judicial review would delay or impede effective enforcement of the relevant administrative scheme," is not determinative in this instance. Here, plaintiffs challenge the Commission's interpretation of a zoning regulation, which prevents them from having prayer group meetings above a given size in their home. Judicial review of this interpretation will not affect the town's implementation and enforcement of its general zoning regulations, as the review is limited to this particular interpretation, which has only been applied to this particular situation.

The last *Able* factor deals with the adequacy of the factual record before the court. For purposes of the preliminary injunction ruling, the Court finds that the record, as developed by the parties for this hearing, is sufficient given the parties' positions at this time and the court's narrow ruling on plaintiffs' RLUIPA claim.

\*12 Next, the court concludes with little difficulty that plaintiffs would "suffer greater hardship if judicial review is withheld than would the [defendants] if it is not." *Able*, 88 F.3d at 1290. As discussed above, plaintiffs allege that the town is placing a substantial burden on their religious practices in violation of RLUIPA and other constitutional guarantees, which constitutes an irreparable injury. The Court finds that, because plaintiffs potentially face the choice between complying with a cease and desist order that violates federally protected rights and facing civil and criminal penalties for violating the order, the hardship to which they are subject tips the balance in favor of finding this matter ripe for review. [FN12] See *D.H.L. Assoc., Inc. v. O'Gorman*, 199 F.3d 50, 53-54 (1st Cir.1999), cert. denied 529 U.S. 1110, 120 S.Ct. 1965 (2000) ("it is clear that D.H.L. is subject to a real and immediate threat of enforcement of ... [the] zoning ordinance and therefore its claims are ripe for review"). Here, plaintiffs' harm is real, immediate, and threatens to continue.

As the Commission's opinion now constitutes the local law of New Milford, and plaintiffs will suffer immediate hardship if, in obedience to the cease and desist order, they must terminate the prayer group meetings they have been holding over the past seven years, the Court finds that their RLUIPA claim is ripe for review.

#### C. LIKELIHOOD OF SUCCESS ON THE MERITS: R.L.U.I.P.A.

Plaintiffs argue that the town's attempt to stop them from holding weekly prayer meetings in their home violates the Religious Land Use and Institutionalized Persons Act, enacted in 2000. [FN13] Section 2000cc states that:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates the imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1). Once plaintiffs demonstrate the existence of a substantial burden on the exercise of their religious beliefs, the burden then shifts to the local government to show that the challenged action furthers a compelling state interest by the least restrictive means.

Defendants make two arguments that the court construes as defenses to the RLUIPA claim. Defendants initially claim that they have not placed a substantial burden on plaintiffs' religious practices. In support of this argument, defendants note that plaintiffs have acknowledged that, in order to have a prayer group, all that is needed is two or more people and that the town is not restricting a smaller number of people from gathering for the meetings. Defendants also argue that they have not violated the Act because the town acted in furtherance of a compelling state interest, namely, the enforcement of local zoning laws to protect the health and safety of the community.

##### 1. Substantial Burden

\*13 On the current record, based on the testimony at the hearing, the court cannot agree that defendants' actions have not placed a substantial burden on plaintiffs' religious practices and those of others who attended those meetings before the town acted but have been deterred from further attendance by their fear of prosecution.

The showing required for a "substantial burden" has not been fully articulated by the courts and has been defined in several ways. See *Hicks v. Garner*, 69 F.3d 22, 26 n. 22 (5th Cir.1995) (collecting cases interpreting "substantial burden" under the RFRA). Congress gave some guidance to the courts when it enacted the RLUIPA by indicating that it did not intend to change traditional Supreme Court jurisprudence on the definition of substantial burden. See 146 CONG. REC. S7774-01, S7776. Although Congress expressed its intent not to change this definition, it expressly defined "religious

exercise" to include "any exercise of religion, whether or not compelled by, or central to a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). *See also Kikumura v. Hurley*, 242 F.3d 950, 960-61 (10th Cir.2001) (discussing RLUIPA definition of "exercise of religion" in the context of the substantial burden requirement and remanding for evidentiary hearing on whether plaintiff met this element). Thus, by not limiting the scope of the Act's protections to the exercise of religious beliefs compelled by or central to a particular faith, Congress now requires that some of the language used by the Supreme Court in discussing "substantial burden[s]" be applied in a broader context.

"Substantial burden" has been defined or explained in various ways by the courts. *See Thomas v. Review Bd. of the Indiana Employment Sec. Div.*, 450 U.S. 707, 718, 101 S.Ct. 1425, 1432 (1981) (exists where state "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs"); *Sherbert v. Verner*, 374 U.S. 398, 404, 83 S.Ct. 1790, 1794 (1963) (occurs when a person is required to "choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning the precepts of her religion ... on the other"); *Bryant v. Gomez*, 46 F.3d 948, 949 (9th Cir.1995) (state action "prevent[s] him or her from engaging in conduct or having a religious experience that is central to the religious doctrine"); *Reese v. Coughlin*, 1996 WL 374166, \*6 (S.D.N.Y. July 3, 1996), *quoting Davidson v. Davis*, 1995 WL 60732, \*5 (S.D. N.Y. Feb. 14, 1995) (same). This burden must be more than an inconvenience to the plaintiffs, but the court's "scrutiny extends only to whether a claimant sincerely holds a particular belief and whether the belief is religious in nature." *Jolly v. Coughlin*, 76 F.3d 468, 476 (2d Cir.1996).

The Court finds, based on the evidence presented at the preliminary injunction hearing, that plaintiffs have demonstrated that defendants' actions have placed a substantial burden on their religious exercise. Although defendants are not precluded from doing so at trial, at no time during the preliminary injunction hearing did they

question the sincerity of plaintiffs' beliefs, or characterize those beliefs as anything other than religious in nature. Thus, the court has focused on whether plaintiffs' religious exercise is substantially burdened by the defendants' actions.

\*14 The court rejects defendants' contention that the burden is not substantial because the purpose of plaintiffs' prayer group sessions is fulfilled as long as there are "two or more people present." Defendants' argument misses the point. First, Mr. Murphy testified that people who previously attended the prayer group meetings were no longer participating because the Town's actions made them afraid they would be arrested. [T. 45] Although defendants stated in court that people would not be arrested over a zoning issue [*see id.*], plaintiff's testimony about the chilling effect of the cease and desist order on third parties was not refuted. The Court finds that the allegation that people are afraid to attend a prayer group meeting because they fear being arrested is a substantial burden that the defendants have imposed on the prayer group participants. Foregoing or modifying the practice of one's religion because of governmental interference or fear of punishment by the government is precisely the type of "substantial burden" Congress intended to trigger the RLUIPA's protections; indeed, it is the concern which impelled adoption of the First Amendment. [FN14]

Moreover, the defendants' actions have imposed a substantial burden directly on plaintiffs. Mr. Murphy testified that the prayer group sessions were an important part of his life because he believed that God and prayer saved his life, and the prayer group meetings helped the participants and others who were having difficulties in their lives. [T. at 23, 43-49.] Patrick Murphy, plaintiffs' son and one of the organizers of the meetings, testified that he did not want the prayer group meetings to be limited to twenty-five people or fewer because part of the purpose of the meetings was to help people in need and, if a twenty-sixth person needed the help of the prayer group, he did not want to turn that person away. [T. at 159-60.] Patrick Murphy

stated that this limitation would affect the members of the group because it would defeat "the whole intent of our prayer group ...." [T. at 160.]

The evidence established that plaintiffs exercise their faith in part by praying with others, with the express purpose of helping those in need through prayer. The court recognizes that, at the time of the hearing, it had been several months since plaintiffs had had more than twenty-five people at a prayer group meeting. [T. at 160.] However, the mere fact that the defendants' limit on the number of people attending the group has not recently been violated does not mean that the burden imposed is insubstantial. Based on the testimony at the injunction hearing, the Court finds that requiring plaintiffs to ensure that the number of attendees of a meeting never exceeded twenty-five would place a substantial burden on the exercise of plaintiffs' religion. This limitation could have a significant impact on the purpose of the prayer sessions if plaintiffs were forced to turn someone away who wanted to participate because twenty-five other people were already present. Plaintiffs' faith is also premised on the belief that prayer can heal those who are ill or in need, a belief expressed through the group meetings. To require plaintiffs to turn people away whom plaintiffs believe can and should be helped by the group's prayer forces them to modify their religious practices and to choose between their expression of these beliefs on the one hand, and violating the cease and desist order on the other. Thus, the Court finds plaintiffs have produced evidence that the defendants' actions have imposed and threaten to impose a substantial burden on the exercise of their religious beliefs.

## *2. Compelling State Interest/ Least Restrictive Means Test*

\*15 The court must determine whether defendants have shown that there is a compelling state interest for the imposition of the burden and that the burden imposed is the least restrictive means of securing that interest. Defendants argue that they have a compelling state interest in enforcing the

town's zoning regulations and ensuring the safety of residential neighborhoods. The Court agrees that defendants have shown a compelling state interest. There appears to be no dispute that local governments have a compelling interest in protecting the health and safety of their communities through the enforcement of the local zoning regulations. However, "[e]ven where the government has declared a policy of promoting aesthetics and traffic safety ... restrictions intended to accomplish those interests have failed to pass strict scrutiny and have been struck down." *Knoeffler v. Town of Mamakating*, 87 F.Supp.2d 322, 330 (S.D.N.Y.2000), citing *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S.Ct. 2038 (1994).

Although the Court finds that defendants have articulated a compelling state interest, the inquiry does not end there. Defendants must next demonstrate that the governmental action taken in "furtherance of [the] compelling interest" is by the "least restrictive means." 42 U.S.C. § 2000cc(a)(1). That is, defendants must show that there are "no other alternative forms of regulation" which would fulfill the state interest. *Sherbert v. Verner*, 374 U.S. 398, 407, 83 S.Ct. 1790, 1796 (1963). Defendants have failed to make this showing.

The Court finds no evidence on the record that the issuance of the cease and desist order based on the Commission's opinion was the "least restrictive means" of protecting the health and safety of their community. Defendants' primary concern with plaintiffs' activities was the increased level of traffic on the street, and the safety issues that are inherent in an increased volume of traffic. However, defendants' actions did not address the amount of traffic generated by the participants of the prayer group meetings. Rather, the Commission's opinion speaks entirely in terms of the *number of people* allowed to be present in plaintiffs' home on Sunday afternoons. For example, if twenty-five non-family members were in attendance at a particular prayer group meeting and each person drove a separate vehicle, in theory there could be twenty-five cars parked in the cul-de-sac and in plaintiffs' driveway, the same number identified by the Commission as

a problem, and in excess of the number of cars observed by the ZEO on three inspections of the activity. On the other hand, fifty participants could conceivably arrive at the prayer meetings in ten or fewer vehicles. To the extent cul-de-sac parking was deemed a problem, the ZEO's decision to bar off-street parking in the Murphy's driveway and rear yard seems inconsistent with the expressed concerns of the neighbors. No justification was voiced at the hearing to support any limitations on off-street parking.

**\*16** Instead of taking action which would directly regulate the increased volume of traffic on Sunday afternoons, defendants issued an opinion which attempts to control the number of people present in plaintiffs' home. As noted in one land use treatise,

[p]ublic interference with a man's hobbies, or with his preference to work at home, raises sensitive issues on the nature of freedom, in a quite different way from the familiar situation where a businessman or developer complains that zoning restrictions have abridged his freedom to make more money from land.

TERRY J. TONDRO, CONNECTICUT LAND USE REGULATION 83 (2d ed.1992), *quoting* WILLIAMS, AMERICAN LAND PLANNING LAW § 397.7 (1985 & Supp.1990). Here, defendants are directly intruding into activities within plaintiffs' home when the *reason* given for the interference is activities that take place outside of plaintiffs' home, that is, the increased traffic levels on the street.

In passing RLUIPA, Congress required local governments to be sensitive to the values of religious freedom and expression. It directed that substantial burdens be placed on the exercise of religion only to the extent necessary to accomplish compelling governmental interests. Even absent a federal statute, one would expect that, before banning an ongoing private religious gathering, public officials in a free and tolerant society would enter into a dialogue with the participants to determine if the legitimate safety concerns of the neighbors could be voluntarily allayed. Particularly where the participants are

enjoined by religious teachings to "do unto others" as they would have done unto them, [FN15] it is not unreasonable to expect the parties to be able to agree on means of reducing the impact of weekly prayer meetings on this small cul-de-sac without undermining the benefit that participants seek to derive from the practice of their faith.

Defendants did not argue that no less restrictive alternatives existed for accomplishing their interest in protecting the safety of the neighborhood. Because of the incongruity between the defendants' actions and the expressed governmental interest, the court cannot find that the issuance of the cease and desist order based on the Commission's opinion interpreting the zoning regulations is the least restrictive means of fulfilling the governmental interest. As defendants have failed to make this showing, for purposes of the preliminary injunction the court can not find that they have a valid defense to the claim they have violated the Act, and, absent some valid argument to the contrary, the plaintiffs are therefore likely to prevail on the merits of this claim.

### CONCLUSION

For the reasons set forth in this ruling, plaintiffs' Motion for Preliminary Injunction [Doc. # 3], is GRANTED. Defendants are enjoined from enforcing the outstanding cease and desist order until the resolution of this case or further order of the court.

FN1. On January 10, 2001, the parties consented to the magistrate judge's exercise of this court's jurisdiction. [Doc. # 20.]

FN2. This court concurs in the Second Circuit's observation that the differences between mandatory and prohibitory injunctions are "often more semantical than substantive." *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 43 (2d Cir.1997) (internal quotations omitted). *Time Warner Cable of New York City v. Bloomberg L.P.*, 118 F.3d 917, 923- 24 (2d Cir.1997) (noting that "[t]his Circuit has offered differing views on the appropriate standard for issuance of a preliminary injunction against government action").



FN3. In this case there is no suggestion that plaintiffs have failed to show the inadequacy of a legal remedy, as their complaint requests primarily equitable relief. [Doc. # 12.] *See also Defendants' Legal Memorandum in Support of its Objection to Plaintiffs' Request for a Preliminary Injunction*, [Doc. # 34, at 8] ("This action does not concern damages.")

FN4. Defendants also cite *Costello v. Town of Fairfield*, 811 F.2d 782 (2d Cir.1987), and *Solomon v. Emanuelson*, 586 F.Supp. 280 (D.Conn.1984), in support of their assertion that the § 1983 exemption to the exhaustion requirement only applies to claims for damages. The Court does not find either of these cases persuasive. Although it is true that in each case the claimant sought at least nominal damages, neither of these courts addressed the question of whether exhaustion was required when a § 1983 claimant sought injunctive relief.

FN5. For the purposes of ruling on the pending preliminary injunction, the Court declines to address whether the remainder of plaintiffs' claims are currently ripe. Defendants are welcome to address this question in a motion to dismiss.

FN6. The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb, *et. seq.*, was the predecessor to RLUIPA. Congress enacted RLUIPA after the Supreme Court found RFRA unconstitutional as applied to the states in *City of Boerne v. P.F. Flores*, 521 U.S. 507, 117 S.Ct. 2157 (1997). Both RFRA and RLUIPA sought to rescind *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 110 S.Ct. 1595 (1990), and to restore the pre-*Smith* "compelling interest/least restrictive means" standard when a plaintiff challenged the application of neutral, generally applicable laws to religious practices. *See City of Boerne*, 521 U.S. at 513-15, 117 S.Ct. at 2160-62; *C.L.U.B. v. City of Chicago*, 2001 WL 321056, \*11 (N.D.Ill. Mar. 30, 2001).

FN7. Violations of the cease and desist order would subject the plaintiffs to civil and/or criminal penalties in accordance with Connecticut General Statutes § 8-12.

FN8. *See* CONN. GEN. STAT. § 8-6 (West 2001).

FN9. This court expresses no opinion on whether or

not RLUIPA claims brought in the future must first be appealed to the ZBA. The court's ruling on the pending preliminary injunction motion is limited to the particular facts and circumstances of this case.

FN10. As an example, a land use regulation burden on a "commercial building, which is connected to religious exercise primarily by the fact that the proceeds from the building's operation would be used to support religious exercise, is not a substantial burden on 'religious exercise'." 146 CONG. REC. S7774-01, at S7776.

FN11. Because RLUIPA has recently been enacted, courts have not had the opportunity to address this question. However, in the context of the Fair Housing Act, at least one court has held that it is impermissible and a distinct violation to require plaintiffs to appeal zoning decisions to the ZBA because this act in and of itself is burdensome. *See e.g., Stewart B. McKinney Found., Inc. v. Town Plan and Zoning Commission of Town of Fairfield*, 790 F.Supp. 1197, 1209 (D.Conn.1992).

FN12. Again, the court notes that it is ruling on the narrow issue of plaintiffs' RLUIPA claim. The court agrees with defendants that there are serious questions as to whether plaintiffs' constitutional claims, particularly their takings claim, are ripe under the *Williamson County Reg'l Planning Comm'n v. Hamilton Bank* test. *See* 473 U.S. 172, 105 S.Ct. 3108 (1985). However, plaintiffs have not addressed this argument in their papers and the court declines to rule on these defenses at this time. As a prudential matter, trial courts avoid constitutional claims when there is a narrower ground upon which to rule. *See Spector Motor Serv., Inc. v. McLaughlin*, 323 U.S. 101, 105, 65 S.Ct. 152, 154 (1944); *Jean v. Nelson*, 472 U.S. 846, 854, 105 S.Ct. 2992, 2997 (1985). The court expresses no opinion on the continued viability of plaintiffs' constitutional claims, which will be better addressed in the context of a motion to dismiss.

FN13. Defendants have represented to the court that they plan to challenge the constitutionality of the RLUIPA. However, as neither side has briefed this issue, the court presumes the constitutionality of the Act, *see Bowen v. Kendrick*, 487, U.S. 589, 617, 108 S.Ct. 2562, 2578 (1988); *Walters v. National Ass'n of Radiation Survivors*, 468 U.S. 1323, 1324, 105 S.Ct. 11, 12 (1984); *Fairbank v. United States*,

181 U.S. 283, 285, 21 S.Ct. 648, 649 (1901), and leaves defendants to raise this challenge when they deem it appropriate.

FN14. *See, e.g.*, 146 CONG. REC. S7774-01, \*S7776 (Exhibit 1, letter from Coalition for the Free Exercise of Religion) ("Testimony from across the nation has also demonstrated that nonreligious assemblies are often treated far better by zoning authorities than religious assemblies. For example, recreation centers, health clubs, backyard barbeques and banquet halls are frequently the subjects of more favorable treatment than a home Bible study, a church's homeless feeding program or a small gathering of individuals for prayer.")

FN15. "In everything do to others as you would have them do to you; for this is the law and the prophets." *Matthew* 7:12; *see also Luke* 6:31.

END OF DOCUMENT



NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

14

13  
9.091 ACRES

12

APPROX LOC  
DEVELOPED

PROPOSED  
ADDITION

2-2 STORY  
- BRICK & FRAME  
- 7000

PROPOSED  
PARKING  
SPACES  
(TYPICAL)

TREES  
(TYPICAL)

BULL RUN DRIVE  
ROUTE 2948

- GENERAL NOTES
1. THE PROPERTY DELINEATED HEREON IS LOCATED 73-1-002-13 AND IS ZONED RC.
  2. NO TITLE REPORT FURNISHED, WHICH MAY REF AND/OR RIGHTS-OF-WAY NOT SHOWN HEREON.
  3. PLAT SUBJECT TO RESTRICTIONS OF RECORD.
  4. OWNER: VIETNAMESE BUDDHIST ASSOCIATION  
7685 BULL RUN DRIVE  
CENTREVILLE, VIRGINIA 22026
  5. THIS PROPERTY IS SERVED BY PRIVATE WELL
  6. ALL IMPROVEMENTS SHOWN HEREON ARE EXIST: AS PROPOSED.
  7. BUILDING HEIGHTS:  
A. BLOCK & FRAME GARAGE  
B. 1 STORY DWELLING  
C. PROPOSED ADDITION
  8. MINIMUM YARD REQUIREMENTS:  
A. SINGLE FAMILY DWELLINGS:  
(1) FRONT YARD: 40 FEET  
(2) SIDE YARD: 20 FEET  
(3) REAR YARD: 25 FEET  
B. ALL OTHER STRUCTURES:  
(1) FRONT YARD: CONTROLLED BY 30° ANGLE OF BULK PLANE, BUT NOT LESS THAN 40 FEET.  
(2) SIDE YARD: CONTROLLED BY 45° ANGLE OF BULK PLANE, BUT NOT LESS THAN 30 FEET.  
(3) REAR YARD: CONTROLLED BY 45° ANGLE OF BULK PLANE, BUT NOT LESS THAN 25 FEET.  
C. TRANSITION YARD: 25 FEET
  9. PROPOSED USE: CHURCH
  10. PROPOSED NUMBER OF SEATS = 40
  11. PARKING REQUIRED = 1 SPACE / 4 SEATS = 10 SPACES.
  12. PARKING PROVIDED = 15 SPACES (INCL. 2 RC FACUP).

OF THE MAP

7 BASEMENTS

SEPTIC FIELD.

UNLESS NOTED

FEET

FEET

FEET

APPLICATION  
WITH  
DRAWN

SPECIAL USE PERMIT PLAT

LOT 13

BULL RUN ESTATES  
FAIRFAX CO. VIRGINIA  
JANU. 1991

THIS  
PLAT  
WAS  
FILED  
FOR  
RECORD  
ON  
JANUARY  
10, 1991  
AT  
FAIRFAX  
COUNTY  
CLERK'S  
OFFICE

IF LOCATED VIA  
JOB NUMBER  
OR SECTION  
FURNISHED  
BY  
THE  
PLAT  
OWNER

COMMONWEALTH OF VA  
KAREN W. BIRN  
LICENSE NO  
1277 & 231  
LAND SURVEYOR

LAND SURVEYOR, INC.  
550 SOUTH RAMP ROADWAY  
ALPHEA, VIRGINIA 22026

1991



Date Received \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

ATTACHMENT 4

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

APPLICATION FOR SPECIAL EXCEPTION, SPECIAL PERMIT, VARIANCE OR APPEAL  
AS PROVIDED IN THE FAIRFAX COUNTY ZONING ORDINANCE

Application No. 5099AC-62 \_\_\_\_\_ 19\_\_\_\_  
Assigned by Staff \_\_\_\_\_ Month \_\_\_\_\_ Day \_\_\_\_\_ Year

The undersigned hereby applies for the special exception, special permit, variance, or appeal as indicated below, for property owned and described as follows:

Name of Applicant: VIETNAMESE BUDDHIST ASSOCIATION  
Name of Property Owner: same as above  
Postal Address of Property: 7605 Bull Run Dr., Centreville, Va. 22020  
Name of Subdivision: Bull Run Estates  
County Property Identification Map Reference: 0731 (62) 0013  
Lot Area: 5099AC District: Springfield Zoning: R-C

The undersigned has the power to authorize and does hereby authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

5.2  
**NATURE OF THIS APPLICATION**

(Applicant is to complete only one of the following boxes. If a Variance is needed in conjunction with a Special Exception or a Special Permit, a separate application for Variance must be filed.)

<b>SPECIAL EXCEPTION*</b> Section _____	-Application to Board of Supervisors under provisions of _____ of the Zoning Ordinance.
Proposed Use: _____	
<b>SPECIAL PERMIT*</b> Section <u>2000</u>	-Application to Board of Zoning Appeals under provisions of _____ of the Zoning Ordinance.
Proposed Use: <u>Church or place of worship</u>	
<b>VARIANCE*</b> Section _____	-Application to Board of Zoning Appeals under provisions of _____ of the Zoning Ordinance.
Request: _____	
<b>APPEAL</b> Section _____	-Application to Board of Zoning Appeals under provisions of _____ of the Zoning Ordinance.
Appeal: _____	

\*See requirement for affidavit on back.

Le Chi Thao  
Signature of Applicant or Agent  
Le Chi Thao  
Address 7605 Bull Run Dr., Centreville, Va 22020  
241-2284 or 968-8460  
Telephone Number

**BELOW THIS LINE FOR STAFF USE**

Application, complete with all required submissions, received \_\_\_\_\_  
Filing Fee Paid: \$ 20 Receiving Staff Number: 24

LAW OFFICES  
**FAGELSON, COATES & DAVENPORT**

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS AND A PARTNERSHIP

401 WYTHE STREET

ALEXANDRIA, VIRGINIA 22314

(703) 548-8100

FAX (703) 548-0868

DAVID M. DAVENPORT  
THOMAS F. COATES III  
JAMES H. MALONEY  
JOHN G. MOORE  
FREDERICK F. REPETTI  
JOHN W. MOORE III  
J. THOMAS McGRATH  
ROBERT A. PAYNE  
RICHARD F. KENNEDY  
PATRICK M. P. TAYLOR  
G. RONALD CRUSCHER JR.  
ROBERT L. DUCHENNESTEIN  
JOHN L. FAGELSON  
WILLIAM H. SHRYVER  
MALCOLM P. MCCONNELL III  
MARK T. DALY, JR.  
A. RICHARD TROSBY  
SANTIEL HADOTIAN, JR.  
DEVINA K. WINTERFIELD

GRACE SHAYEN  
ROBERT M. MARK, JR.  
JOAN E. SPILBERGER  
STEPHEN M. WATSON  
WILLIAM C. THOMAS, JR.  
LAWRENCE M. SCHWENBERGER  
JAMES M. HANFIELD

SERVICES COUNCIL  
BARRY S. COOPER  
BERNARD M. FAGELSON  
ETORIS SCHWENBERGER

COUNSEL  
G. LAWRENCE EVANS, JR.  
ROBERT J. DAVENPORT  
JOHN B. VANDERBEEK  
\*ADMITTED TO  
\*ADMITTED TO  
\*ADMITTED TO VIRGINIA ONLY

February 6, 1991

MCLEAN  
1080 OLD CHAIN BRIDGE ROAD  
THIRD FLOOR  
MCLEAN, VIRGINIA 22101  
(703) 800-0800  
FAX (703) 448-0800

RICHMOND  
5808 MARCEL ROAD  
RICHMOND, VIRGINIA 23221  
(804) 288-7000  
FAX (804) 288-0800

RECEIVED  
OFFICE OF COMPREHENSIVE PLANNING

FEB 8 1991

BOARD OF ZONING APPEALS  
SUPPORT BRANCH

The Honorable Chairman and Members  
of the Board of Zoning Appeals  
County of Fairfax  
4050 Legato Road, 7th Floor  
Fairfax, Virginia 22033

Attention: Ms. Bernadette Battard, OCP/ZED

Re: Special Permit Application SP 89-S-032  
Vietnamese Buddhist Association

Dear Mr. Chairman and BZA Members:

On behalf of the Applicant in the captioned matter, we do  
hereby withdraw this Special Permit request.

Thank you for your kind consideration of this request.  
Please feel free to call with any questions or concerns.

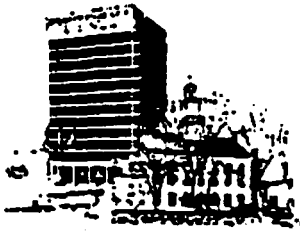
Very truly yours,

FAGELSON, COATES AND DAVENPORT  
Attorneys for Applicant

*William C. (Tom) Thomas, Jr.*  
William C. (Tom) Thomas, Jr.

WCT/lh

cc: Le Chi Thao, Esquire  
Peter Murphy, Planning Commissioner, Springfield District  
Ms. Elaine McConnell, Supervisor, Springfield District



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

OFFICE OF COMPREHENSIVE PLANNING  
ZONING ADMINISTRATION DIVISION  
ZONING ENFORCEMENT BRANCH  
4050 Legato Road, Suite 801  
Fairfax, Virginia 22033  
246-1300



January 22, 1992

Certified Mail  
Return Receipt Requested  
Receipt No. P 281 725 414

Tranh Van Tran, Pastor  
Vietnamese Buddhist Association  
7605 Bull Run Drive  
Centreville, Virginia 22020

Re: Vietnamese Buddhist Association  
7605 Bull Run Drive  
Bull Run Estates, Lot 13  
Tax Map Ref: 73-1 ((2)) 13  
Zoning District: R-C

Dear Pastor Tran:

A zoning inspection was conducted on Sunday, January 12, 1992 at 11:35 a.m. This inspection revealed the Vietnamese Buddhist Association is conducting, as a place of worship, services on the above-referenced property. A search of the Zoning Administration Division records reveals that no special permit for this use has been granted.

Based on the above information, you are in violation of Par. 1 of Sect. 2-303 of the Fairfax County Zoning Ordinance, which states:

No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the BZA in accordance with the provisions of Article 8.

Pastor Tran  
January 22, 1992  
Page Two

This letter will serve as official notice to clear the  
aforementioned violation. Compliance can be accomplished by:


- o Discontinuing the use of the property as a place of  
worship within five (5) days of receipt of this  
notice; and,
- o Restoring the detached garage structure to a three (3)  
car garage, workshop and storage area as reflected on  
the approved plans of Building Permit #8927780830.

Further, no utilization of the property as a place of  
worship is to occur until a Group 3 Special Permit to permit a  
place of worship is obtained from the Board of Zoning Appeal  
(BZA) and all conditions of any such special permit have been  
satisfied.

Failure to comply with this notice may result in the  
initiation of appropriate legal action to gain compliance with  
the Zoning Ordinance.

Should you have any questions or the need for elaboration,  
please do not hesitate to contact me at 246-1388.

Sincerely,

  
Sandra D. MacSorley  
Senior Zoning Inspector

SDM/gds

cc: Lt. Ken Thompson, Inspections Section  
Fire Prevention Division, Fire & Rescue Department  
Steve Gibson, Branch Chief  
Code Enforcement Branch, DEM  
Melinda M. Artman, Deputy Zoning Administrator  
For Permit, Plan Review Branch  
Dennis A. Hill, Sanitarian Supervisor  
Department of Health



<p>● <b>SENDER:</b> Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.</p> <p>Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.</p> <p>1. <input checked="" type="checkbox"/> Know to whom delivered, date, and addressee's address. (Extra charge)      2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
<p>3. Article Addressed to:</p> <p>Tranh Van Tran, Pastor Vietnamese Buddhist Assoc. 7605 Bull Run Drive Centreville, VA 22020</p>	<p>4. Article Number</p> <p>P 281725414</p>
<p>Type of Service:</p> <p><input type="checkbox"/> Registered      <input type="checkbox"/> Insured  <input checked="" type="checkbox"/> Certified      <input type="checkbox"/> COD  <input type="checkbox"/> Express Mail      <input type="checkbox"/> Return Receipt for Merchandise</p>	
<p>Always obtain signature of addressee or agent and <b>DATE DELIVERED</b>.</p>	
<p>5. Signature - Addressee</p> <p><i>[Signature]</i></p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
<p>6. Signature - Agent</p> <p><i>[Signature]</i></p>	
<p>7. Date of Delivery</p> <p>1/27/99</p>	

PS Form 3811, Apr. 1989

U.S.G.P.O. 1989-238-415

DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE  
OFFICIAL BUSINESS

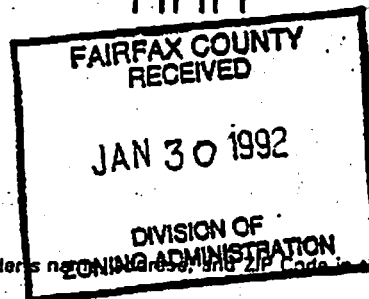
SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN  
TO 

Print Sender's name, address, and ZIP Code in the space below.



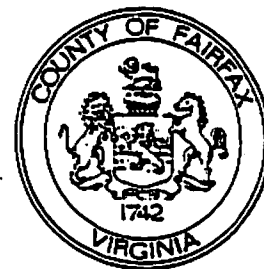
PENALTY FOR PRIVATE  
USE, \$300

OFFICE OF COMPREHENSIVE PLANNING  
ZONING ENFORCEMENT BRANCH  
4050 Legato Road, Suite 801  
Fairfax, Virginia 22033



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

OFFICE OF COMPREHENSIVE PLANNING  
ZONING ADMINISTRATION DIVISION  
ZONING ENFORCEMENT BRANCH  
4050 Legato Road, Suite 801  
Fairfax, Virginia 22033  
246-1300



February 12, 1992

Certified Mail  
Return Receipt Requested  
Receipt No. P 730 809 345

Tranh Van Tran, Pastor  
Vietnamese Buddhist Association  
7605 Bull Run Drive  
Centreville, Virginia 22020

Re: Vietnamese Buddhist Association  
7605 Bull Run Drive  
Bull Run Estates, Lot 13  
Tax Map Ref: 73-1 ((2)) 13  
Zoning District: R-C

Dear Pastor Tran:

As a follow-up to the notice of violation issued to you on January 22, 1992, a reinspection of the property was conducted on February 2, 1992, at 11:25 a.m. This inspection revealed the Vietnamese Buddhist Association continues the use of the property as a place of worship. A search of the Zoning Administration Division records reveal that no special permit for this use has been granted.

Based on the above information, you continue to be in violation of Par. 1 of Sect. 2-303 of the Fairfax County Zoning Ordinance, which states:

No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the BZA in accordance with the provisions of Article 8.

Pastor Tran  
February 12, 1992  
Page 2

This letter will serve as final notice to you to clear the  
aforementioned violation. Compliance can be accomplished by:

- o Discontinuing the use of the property as a place of  
worship within five (5) days of receipt of this  
notice; and,
- o Restoring the detached garage structure to a three (3)  
car garage, workshop and storage area as reflected on  
the approved plans of Building Permit #89277B0830,  
within thirty (30) days of receipt of this notice.

Further, no utilization of the property as a place of  
worship is to occur until a Group 3 Special Permit to permit a  
place of worship is obtained from the Board of Zoning Appeals  
(BZA) and all conditions of any such special permit have been  
satisfied.

Failure to comply with this notice may result in the  
initiation of appropriate legal action to gain compliance with  
the Zoning Ordinance.

Should you have any questions or the need for elaboration,  
please do not hesitate to contact me at 246-1388.

Sincerely,



Sandra D. MacSorley  
Senior Zoning Inspector

SDM/skh  
238

cc: Lt. Ken Thompson, Inspections Section  
Fire Prevention Division, Fire & Rescue Department  
Steve Gibson, Branch Chief  
Code Enforcement Branch, DEM  
Melinda M. Artman, Deputy Zoning Administrator  
for Permit, Plan Review Branch  
Pam Pruiet, Sanitarian  
Department of Health

<p>● <b>SENDER:</b> Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.</p> <p>Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.</p> <p>1. <input checked="" type="checkbox"/> Show to whom delivered, date, and addressee's address. (Extra charge)      2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>							
<p>3. Article Addressed to:</p> <p><i>Frank Van Tran, Pastor</i>  <i>Vietnamese Buddhist Assoc</i>  <i>7605 Bull Run Drive</i>  <i>Centersville, VA 22020</i></p>	<p>4. Article Number</p> <p><i>P730809345</i></p> <p>Type of Service:</p> <table border="0"> <tr> <td><input type="checkbox"/> Registered</td> <td><input type="checkbox"/> Insured</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified</td> <td><input type="checkbox"/> COD</td> </tr> <tr> <td><input type="checkbox"/> Express Mail</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> </table> <p>Always obtain signature of addressee or agent and <b>DATE DELIVERED.</b></p>	<input type="checkbox"/> Registered	<input type="checkbox"/> Insured	<input checked="" type="checkbox"/> Certified	<input type="checkbox"/> COD	<input type="checkbox"/> Express Mail	<input type="checkbox"/> Return Receipt for Merchandise
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<input checked="" type="checkbox"/> Certified	<input type="checkbox"/> COD						
<input type="checkbox"/> Express Mail	<input type="checkbox"/> Return Receipt for Merchandise						
<p>5. Signature - Addressee</p> <p><i>X [Signature]</i></p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>						
<p>6. Signature - Agent</p> <p><i>X</i></p>							
<p>7. Date of Delivery</p> <p><i>4/22/94</i></p>							

PS Form 3811, Apr. 1989

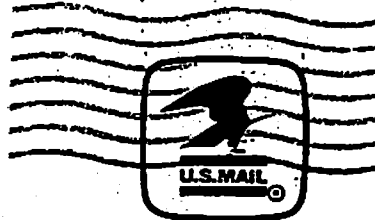
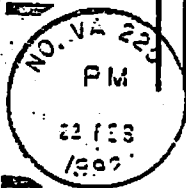
DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE  
OFFICIAL BUSINESS

**SENDER INSTRUCTIONS**

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE  
USE, \$300

RETURN TO:

Print Sender's name, address, and ZIP Code in the space below.

FAIRFAX COUNTY  
RECEIVED  
FEB 24 1992  
DIVISION OF  
ZONING ADMINISTRATION

OFFICE OF COMPREHENSIVE PLANNING  
ZONING ENFORCEMENT BRANCH  
4050 Legato Road, Suite 801  
Fairfax, Virginia 22033

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

COURTHOUSE PLAZA  
THIRTEENTH FLOOR

2200 CLARENDON BOULEVARD  
ARLINGTON, VIRGINIA 22201

(703) 528-4700

FACSIMILE (703) 525-3197

MARTIN D. WALSH  
THOMAS J. COLUCCI  
PETER K. STACKHOUSE  
JERRY K. EMRICH  
MICHAEL D. LUBELEY  
CHARLES L. SHUMATE  
KEITH C. MARTIN  
NAN E. TERPAK  
WILLIAM A. FOGARTY  
DAVID J. BOMGARDNER  
LYNNE J. STROBEL  
LINDA F. SMIRCINA  
VIRGINIA M. SULLIVAN

OF COUNSEL  
NICHOLAS MALINCHAK  
JULIA T. CANNON

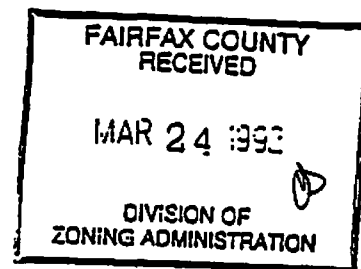
PRINCE WILLIAM OFFICE  
VILLAGE SQUARE  
13683 OFFICE PLACE, SUITE 201  
WOODBRIDGE, VIRGINIA 22192  
(703) 580-4864  
METRO 590-4847  
FACSIMILE (703) 590-2412

LOUDOUN OFFICE  
WAVERLY PARK  
804 SOUTH KING STREET, SUITE 200  
LEESBURG, VIRGINIA 22075  
(703) 777-6977  
METRO 478-1340  
FACSIMILE (703) 478-1348

March 20, 1992

Sandra B. MacSorley  
Zoning Administration Division  
Zoning Enforcement Branch  
4050 Legato Road, Suite 801  
Fairfax, Virginia 22033

Re: Vietnamese Buddhists Association  
7605 Bull Run Drive  
Bull Run Estates, Lot 13  
Tax Map Reference: 73-1-((2))-13  
Zoning District: R-C



Dear Ms. MacSorley:

As we discussed, I have been retained by the Vietnamese Buddhists Association to further pursue the possibility of a special permit application for the above-referenced property. I have received a copy of your letter dated February 12, 1992, and have discussed it with my client.

I have been informed that there are no longer any formal Sunday services at the above-referenced property. The property is not open to the public and a schedule of services is no longer published. The property continues to be the residence of a Buddhist priest. The Buddhist culture requires that Buddhists pay their respects to the priest in a private visit of only one or two individuals. The visit is not a religious service but a sign of respect that may include consultation with the priest and a prayer session that typically lasts about 20 minutes. As these visits to the priest are a personal, private meeting occurring at random, I do not believe that such a visit constitutes a religious service. All visits are to the priest's home and no services are being offered in the detached garage structure. I have informed my client that the improvements to the detached garage must be in compliance with Building Permit #89277B0830. Mr. Thao is presently investigating this issue.

I am presently working with Mr. Le Chi Thao and Pastor Tranh Van Tran to determine whether it is feasible to pursue a special permit application for the above-referenced

Sandra B. MacSorley  
March 20, 1992  
Page 2

property. My client understands that no further religious services may be performed at the property without first obtaining the approval of a special use permit.

Should you have any questions regarding the above or require additional information, please do not hesitate to give me a call.

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C.

Sincerely,



Jerry K. Emrich

JKE:ms

cc: Le Chi Thao  
Martin D. Walsh

ljs-12\lir\macsorley.1





# FAIRFAX COUNTY

*A. Long*  
OFFICE OF COMPREHENSIVE PLANNING  
ZONING ADMINISTRATION DIVISION  
Zoning Enforcement Branch  
12055 Government Center Parkway, Suite 800  
Fairfax, Virginia 22035-5508

V I R G I N I A

(703) 324-1300

Fax (703) 324-3924

February 8, 1993

Tranh Van Tran, Pastor  
Vietnamese Buddhist Association  
7605 Bull Run Drive  
Centreville, Va. 22020

Certified Mail  
Return Receipt Requested  
Receipt # P 817 618 657

Re: Vietnamese Buddhist Association  
7605 Bull Run Drive  
Bull Run Estates, Lot 13  
Tax Map Ref: 73-1 ((2)) 13  
Zoning District: R-C

Dear Pastor Tran:

On February 12, 1992, a final notice of violation was issued to you for continuing the use of the above-referenced property as a place of worship in violation of Par. 1 of Sect. 2-305 of the Fairfax County Zoning Ordinance. Further, at that time you were notified to discontinue the use of the property as a place of worship. Subsequent reinspections had revealed that you had complied with that notice.

However, zoning inspections conducted on January 24, 1993, at 10:55 a.m., 11:30 a.m., and 12:10 p.m., revealed that the Vietnamese Buddhist Association has recommenced the use of the property as a place of worship absent an approved special permit.

Based on the above information, you are once again in violation of Par. 1 of Sect. 2-303 of the Fairfax County Zoning Ordinance, which states:

No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the BZA in accordance with the provisions of Article 8.

Pastor Tran  
February 8, 1993  
Page 2

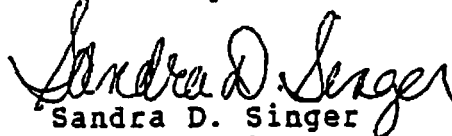
This letter will serve as final notice to you to clear the aforementioned violation. Compliance can be accomplished by discontinuing the use of the property as a place of worship within five (5) days of receipt of this notice.

Further no utilization of the property as a place of worship is to occur until a Group 3 Special Permit to permit a place of worship is obtained from the Board of Zoning Appeals (BZA) and all conditions of any such special permit have been satisfied.

Reinspections of the property will be conducted to ascertain compliance with this notice. If compliance is not obtained and maintained, this office will initiate appropriate legal action to gain compliance with the Zoning Ordinance.

Should you have any questions or the need for elaboration, please do not hesitate to call me at 324-1388.

Sincerely,



Sandra D. Singer  
Senior Zoning Inspector

SDS/gds *ELH*  
93-0096/347

S. Singer

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

<p>3. Article Addressed to:</p> <p>Tranh Van Tran, Pastor Vietnamese Buddhist Association 7605 Bull Run Drive Centreville, VA 22020</p>	<p>4. Article Number</p> <p>P 817 618 657</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered</p> <p><input checked="" type="checkbox"/> Certified</p> <p><input type="checkbox"/> Express Mail</p> <p>Always obtain signature of addressee or agent and <b>DATE DELIVERED</b></p>
<p>5. Signature — Addressee</p> <p>X <i>[Signature]</i></p>	<p>8. Addressee's Address (if requested and fee paid)</p>
<p>6. Signature — Agent</p> <p>X</p>	
<p>7. Date of Delivery</p> <p>2-20-93</p>	

PS Form 3811, Apr. 1989

U.S.G.P.O. 1989-238-815

DOMESTIC RETURN RECEIPT

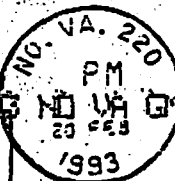
UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE  
USE, \$300

RETURN TO SENDER  
FAX COUNTY

Print Sender's name, address, and ZIP Code in the space below.

FEB 23 1993

DIVISION OF  
ZONING ADMINISTRATION

Office of Comprehensive Planning  
Zoning Enforcement Branch  
12055 Government Center Parkway  
Fairfax, Virginia 22035-5508

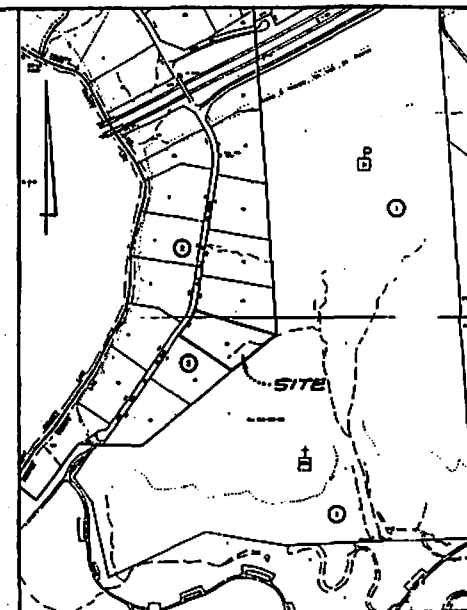
# NOTES

1. THE PROPERTY DELINEATED HEREON IS LOCATED ON TAX MAP 73-1-002-13 AND IS ZONED RC.
2. NO TITLE REPORT WAS FURNISHED, WHICH MAY REFLECT EASEMENTS AND/OR RIGHTS-OF-WAY NOT SHOWN HEREON.
3. PLAN IS SUBJECT TO RESTRICTIONS OF RECORD.
4. OWNER: VIETNAMESE BUDDHIST ASSOCIATION  
7805 BULL RUN DRIVE  
CENTREVILLE, VA 22020
5. LOT AREA = 322,121 SQUARE FEET OR 5.0922 ACRES.
6. HEIGHTS:
 

BRICK & FRAME DWELLING	= 15.7 FEET
FRAME ADDITION	= 09.5 FEET
VINYL BUILDING	= 15.9 FEET
OPEN PORCH	= 12.4 FEET
FRAME SHED	= 15.5 FEET
ALUMINUM SHED	= 07.2 FEET
CHAIN LINK FENCE	= 04.0 FEET

7. AS PER REAL ESTATE ASSESSMENT RECORDS, THE DWELLING ON THIS PROPERTY WAS CONSTRUCTED IN 1960 AND IS TO REMAIN. CONSTRUCTION DATES OF THE OTHER STRUCTURES ARE UNKNOWN.
8. MINIMUM YARD REQUIREMENTS:
 

FRONT:	40 FEET
SIDE:	20 FEET
REAR:	25 FEET
9. PROPOSED USE: CHURCH WITH FORTY TWO SEATS
10. PARKING REQUIRED: ONE SPACE PER FOUR SEATS = 10 SPACES
11. PARKING PROVIDED: 12 SPACES
12. THIS PROPERTY IS SERVED BY PRIVATE WELL AND SEPTIC FIELD.
13. THERE ARE NO STORMWATER MANAGEMENT FACILITIES PROPOSED FOR THIS PROPERTY.
14. EXISTING GROSS FLOOR AREA: 2,878 SQUARE FEET
15. MAXIMUM FLOOR AREA RATIO: 0.10
16. FLOOR AREA RATIO PROVIDED: 0.01
17. EXISTING TOPOGRAPHY WAS TAKEN FROM AVAILABLE RECORDS AND IS BASED ON AN AIR SURVEY.
18. THERE ARE NO FLOODPLAINS, ENVIRONMENTAL QUALITY CORRIDORS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.
19. THERE ARE NO TREES REQUIRED BY THE ADOPTED COMPREHENSIVE PLAN FOR THIS PROPERTY.
20. THERE ARE NO GRAVITIES OR BURIAL GROUNDS VISIBLE ON THIS SITE.
21. THE FOLLOWING WAIVERS ARE REQUESTED AS A PART OF THIS PLAN:
  - A. TRANSITIONAL SCREENING AND BARRIERS
  - B. OUTLETS SURFACE REQUIREMENT



VICINITY MAP  
SCALE 1"=500'



CERTIFIED CORRECT

*Kenneth W. White*  
KENNETH W. WHITE.....L.E.

SPECIAL PERMIT PLAN  
LOT 13  
**BULL RUN ESTATES**  
BULLY DISTRICT  
FAIRFAX COUNTY, VIRGINIA  
SCALE: 1"=50' JUNE 7, 1996

ALEXANDRIA SURVEYS, INC.  
8845 SOUTH RIDGE HIGHWAY  
ALEXANDRIA, VIRGINIA 22308



ATTACHMENT 10

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR SPECIAL PERMITOFFICE OF COMPREHENSIVE PLANNING  
NOV 4 1994  
ZONING EVALUATION DIVISION  
Group 3  
USE 2

APPLICATION NO.

SP95-4-021

Assessed by Staff

ZONING ORDINANCE SECTION UNDER WHICH APPLICATION IS FILED 3-C03 And 8-301 et. seq.

PROPOSED USE: Place of worship.

NAME OF APPLICANT(s): Vietnamese Buddhist Association

POSTAL ADDRESS OF PROPERTY: 7605 Bull Run Drive

Centreville, VA 22020

MAP DESCRIPTION:

73-1 ((2))

13

Map No.

Double Circle No.

Single Circle No.

Parcel(s)/Lot(s) No.

SUBDIVISION NAME: Bull Run Estates

TOTAL AREA (AC. OR SQ. FT.): Approximately 5.0992 acres

PRESENT ZONING: R-C

W S

SUPERVISOR DISTRICT: Sully

The name(s) and addresses of owner(s) of record to shall provided on the affidavit form attached and made part of this application.

The undersigned has the power to authorize and does hereby authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

Lynne J. Strobel, Agent - Walsh, Colucci, Stackhouse, Emrich &amp; Lubeley, P.C.

Type of Print Name of Applicant or Agent

Signature of Applicant or Agent

2200 Clarendon Blvd., 13th Fl., Arlington, VA 22201

Address

Telephone No.

Home

528-4700

Work

Please provide name and telephone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Date application received:

Application Fee Paid: \$

4135.00

Date application accepted:

4-3-95 V. Ruffner

Form SP (10/89)

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

COURTHOUSE PLAZA

THIRTEENTH FLOOR

2200 CLARENDON BOULEVARD

ARLINGTON, VIRGINIA 22201-3359

(703) 525-4700

FACSIMILE (703) 525-3197

MARTIN D. WALSH  
THOMAS J. COLUCCI  
PETER K. STACKHOUSE  
JERRY K. EMRICH  
MICHAEL D. LUBELEY  
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DAVID J. BONGARDNER  
LYNNE J. STROBEL  
JOHN E. RINALDI  
SEAN R. McMULLEN  
H. MARK GOETZMAN  
OF COUNSEL  
NICHOLAS MALINCHAK

PRINCE WILLIAM OFFICE  
VILLAGE SQUARE  
13663 OFFICE PLACE, SUITE 201  
WOODBRIDGE, VIRGINIA 22192-4216  
(703) 680-4664  
METRO (703) 680-4647  
FACSIMILE (703) 680-2412

LOUDOUN OFFICE  
COUNTRYSIDE PROFESSIONAL CENTER  
2 RIDGEON HILL DRIVE, SUITE 340  
STERLING, VIRGINIA 20165  
(703) 444-9819  
FACSIMILE (703) 444-0965

November 14, 1994

RECEIVED  
OFFICE OF COMPREHENSIVE PLANNING  
NOV 14 1994  
ZONING EVALUATION DIVISION

Ms. Virginia Ruffner  
Zoning Evaluation Division  
Office of Comprehensive Planning  
12055 Government Center Pkwy.  
8th Floor  
Fairfax, Virginia 22035

Re: Special Permit Application  
Applicant: Vietnamese Buddhist Association

Dear Ms. Ruffner:

Please accept the following information as a request for a special permit application.

The applicant owns approximately five acres located in the Sully District. The property is identified among the Fairfax County tax map records as 73-1-((2))-13 (the "Subject Property"). The Subject Property is presently improved with two buildings and the applicant proposes the operation of a place of worship which will occur in the residence on the Subject Property.

In accordance with requirements of the Fairfax County Zoning Ordinance, please accept the following information for consideration:

- The type of operation will be a place of worship by the applicant.
- The hours of operation will be 24 hours a day. The reason for continuous operation is that the priest and one or two assistant priests will live at the premises. The priests will offer personal guidance to the followers and maintain and safeguard the facility and grounds. Bible study sessions will be conducted at the residence on weekends.

- The estimated number of patrons is approximately 40 at any one time during services. There are seldom more than a few followers in the residence at other times. Bible study sessions that are conducted on the weekends will be attended by approximately 40 persons at each session. Approximately, two days a year are designated as major holy days which are observed by the Vietnamese Buddhists. These are Buddha's birthday and the equivalent of All Souls Day. On these occasions, the attendance cannot be anticipated; however, a larger number of persons will be coming to the site than typical. There is not a specific hour of religious service, but portioners will come and go at different hours, spend a short time at the residence, and then return to their homes.
- One priest and one or two assistant priests will live at the premises.
- All trips to the site will be by private vehicle. The estimated traffic impact is minimal except on the days when there are major holy days. Approximately one or two vehicles will be coming to the site throughout the day and perhaps additional vehicles on weekends for the bible study sessions.
- The general area or vicinity to be served by this use is Western Fairfax County.
- The existing buildings on the site will be retained and the residence will be used for service. The applicant will propose minor modifications to the interior of the residence. There will be no pews or chairs placed in the interior space since Buddhist worshippers sit on mats during their periods of meditation. The existing buildings are residential in appearance consisting of siding and shingles.
- The applicant is unaware of any hazardous or toxic substances on the site at this time.
- The proposed application will conform to all applicable ordinances, regulations and adopted standards except as may be noted on the special permit plat.

The proposed use is essentially a quiet sanctuary in a natural setting. The existing buildings will be retained and the proposed use will not be intrusive in the area. Most of the traffic will be at non-peak traffic hours and will not have an impact on the surrounding roadways.

I would appreciate the acceptance of this application at your earliest convenience and the scheduling of a public hearing before the Fairfax County Board of Zoning Appeals. Should



Ms. Virginia Ruffner  
November 14, 1994  
Page 3

you have any questions regarding the enclosed or require additional information, please do not hesitate to give me a call. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C.

*Lynne J. Strobel, ky*  
Lynne J. Strobel

LJS:kd

cc: Le Chi Thao  
Martin D. Walsh  
Jerry K. Emrich

ljs.ltr\ruffner.37

**WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY**

**A PROFESSIONAL CORPORATION**

**ATTORNEYS AT LAW**

**COURTHOUSE PLAZA**

**THIRTEENTH FLOOR**

**2200 CLARENDON BOULEVARD**

**ARLINGTON, VIRGINIA 22201-3359**

**(703) 528-4700**

**FACSIMILE (703) 525-3197**

**February 20, 1995**

MARTIN D. WALSH  
THOMAS J. COLUCCI  
PETER K. STACKHOUSE  
JERRY K. EMRICH  
MICHAEL D. LUBELEY  
KEITH C. MARTIN  
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DAVID J. SOMGARDNER  
LYNNE J. STROBEL  
JOHN E. RINALDI  
SEAN P. McMULLEN  
H. MARK GOETZMAN

OF COUNSEL  
NICHOLAS MALINCHAK

**PRINCE WILLIAM OFFICE**

**VILLAGE SQUARE**

**13883 OFFICE PLACE, SUITE 201  
WOODBRIIDGE, VIRGINIA 22182-4216**

**(703) 680-4664**

**METRO (703) 690-4647**

**FACSIMILE (703) 690-2412**

**LOUDOUN OFFICE**

**COUNTRYSIDE PROFESSIONAL CENTER**

**2 PIGEON HILL DRIVE, SUITE 340**

**STERLING, VIRGINIA 20165**

**(703) 444-6919**

**FACSIMILE (703) 444-0983**

**BY HAND**

**RECEIVED  
OFFICE OF COMPREHENSIVE PLANNING**

**FEB 21 1995**

**ZONING EVALUATION DIVISION**

**Ms. Virginia Ruffner  
Zoning Evaluation Division  
Office of Comprehensive Planning  
12055 Government Center Pkwy., Suite 801  
Fairfax, Virginia 22035**

**Re: Special Permit Application  
Applicant: Vietnamese Buddhist Association**

**Dear Ms. Ruffner:**

On November 9, 1994, a special permit application was filed with the Office of Comprehensive Planning proposing a place of worship at the premises identified as 7605 Bull Run Drive, Centreville, Virginia. Upon your review, it was noted that the Vietnamese Buddhist Association was not the property owner as disclosed in the affidavit attached to the application. I have reviewed this matter with the applicant and have verified that the property is owned by Tran Van Thanh. Mr. Thanh is associated with the Vietnamese Buddhist Association and will lease the premises to the applicant upon approval of the special permit. I have enclosed for your file, in accordance with the ordinance submission requirements, a notarized letter from the property owner consenting to the filing of the special permit application.

I believe that the enclosed letter and revised affidavit will allow the acceptance of the submitted application and the scheduling of a public hearing before the Board of Zoning Appeals at your earliest convenience. Should you have any questions regarding the enclosed or require additional information, please do not hesitate to give me a call.

**Very truly yours,**

**WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C.**

*Lynne J. Strobel*  
**Lynne J. Strobel**

**LJS:kd**

**Enclosures**

**cc: Le Chi Thao  
Jerry K. Emrich  
Martin D. Walsh**

**lls:lr/ruffner.6**

**COMPLAINANT'S  
EXHIBIT #20**



VIETNAMESE BUDDHIST ASSOCIATION  
**TRUNG TÂM VAN-HANH**

7605 Bull Run Drive (Bull Run Post Office Rd.), Centreville, VA 22020 USA  
Telephone: 703-968-8460

February 14, 1995

RECEIVED  
OFFICE OF COMPREHENSIVE PLANNING

FEB 21 1995

ZONING EVALUATION DIVISION

Ms. Virginia Ruffner  
Zoning Evaluation Division  
Office of Comprehensive Planning  
12055 Government Center Pkwy.  
Suite 801  
Fairfax, Virginia 22035

RE: Special Permit Application  
Applicant: Vietnamese Buddhist Association

Dear Ms. Ruffner:

I am the owner of property identified among the Fairfax County tax map records as 73-1-((2))-13. The property contains approximately 5 acres and is the subject of a special permit application filed by the Vietnamese Buddhist Association. If the special permit application is approved, I will execute a long term lease with the applicant so that the premises may be used for the purposes as described in the submission. I hereby consent to the filing of the special permit application and have no objection to its review by the Fairfax County planning staff and consideration by the Board of Zoning Appeals.

Should you have any questions regarding the above or require additional information, please do not hesitate to give me a call.

Very truly yours,

Tran Van Thanh

State of Virginia  
County of Fairfax

Acknowledged before me, Don L. Kipps, a Notary Public,  
this 14th day of February, 1995.

(County-assigned application number(s), to be entered by County Staff)

Page Three

(enter date affidavit is notarized)

279-946

- ### PARTNERSHIP INFORMATION

**PARTNERSHIP NAME & ADDRESS:** (enter complete name & number, street, city, state & zip code)  
 N/A

**NAMES AND TITLES OF THE PARTNERS** (enter first name, middle initial, last name & title, e.g. General Partner, Limited Partner, or General and Limited Partner)

\*\* All listings which include partnerships or corporations must be broken down successively until (a) only individual persons are listed, or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of the stock. Use footnote numbers to designate partnerships or corporations which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

## SPECIAL PERMIT/VARIANCE AFFIDAVIT

Page Four

DATE: 3/29/95

(enter date affidavit is notarized)

279-942

2. That no member of the Fairfax County Board of Zoning Appeals or Planning Commission or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)  
NONE.

(check if applicable) ☐ There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

3. That within the twelve-month period prior to the filing of this application, no member of the Fairfax County Board of Zoning Appeals or Planning Commission or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of \$200 or more, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)  
NONE.

(check if applicable) ☐ There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

(check one) ☐ Applicant ☒ Applicant's Authorized Agent

Lynne J. Strobel, Agent

(type or print first name, middle initial, last name & title of signer)

Subscribed and sworn to before me this 29th day of March, 19 95, in the state of Virginia.

My commission expires: 3/31/99

Notary Public

Form SP/VC-1 (7/27/89)

Application No(s):

(County-assigned application number(s), to be entered by County Staff)

Special Permit/Variance Attachment to Par. 1(b) Page 5 of 5

DATE: 3/29/95

(enter date affidavit is notarized)

279-946

NAME & ADDRESS OF CORPORATION: (enter complete name & number, street, city, state & zip code)

Alexandria Surveys, Inc.

6343 S. Kings Hwy.

Alexandria, VA 22306

DESCRIPTION OF CORPORATION: (check one statement)

- ☒ There are 10 or less shareholders, and all of the shareholders are listed below.  
☐ There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.  
☐ There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF THE SHAREHOLDERS: (enter first name, middle initial & last name)

Kenneth W. White

Helen J. White

NAME & ADDRESS OF CORPORATION: (enter complete name & number, street, city, state & zip code)

Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C.

2200 Clarendon Blvd., 13th Fl.

Arlington, VA 22201

DESCRIPTION OF CORPORATION: (check one statement)

- ☒ There are 10 or less shareholders, and all of the shareholders are listed below.  
☐ There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.  
☐ There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF THE SHAREHOLDERS: (enter first name, middle initial & last name)

Martin D. Walsh

Keith C. Martin

Thomas J. Colucci

Nan E. Terpak

Jerry K. Emrich

William A. Forgarty

Perer K. Stackhouse

David J. Bomgardner

Michael D. Lubeley

Lynne J. Srobel

(check if applicable) ☐ There is more corporation information and Par. 1(b) is continued further on a "Special Permit/Variance Attachment to Par. 1(b)" form.

Application No(s):

SP 95-1-021

(County-assigned application number(s), to be entered by County Staff)

## SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 3/29/95

(enter date affidavit is notarized)

I, Lynne J. Strobel, Attorney, do hereby state that I am an  
(enter name of applicant or authorized agent)

(check one) ☐ applicant  
☒ applicant's authorized agent listed in Par. 1(a) below

279-946

and that to the best of my knowledge and belief, the following information is true:

1. (a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS and LESSEES** of the land described in the application, and if any of the foregoing is a **TRUSTEE**, each **BENEFICIARY** of such trust, and all **ATTORNEYS and REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print are to be disclosed. Multiple relationships may be listed together, e.g., Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner.)

NAME (enter first name, middle initial & last name)	ADDRESS (enter number, street, city, state & zip code)	RELATIONSHIP(S) (enter applicable relation- ships listed in BOLD above)
Vietnamese Buddhist Association	7605 Bull Run Dr. Centreville, VA 22020	<b>Applicant /Contract Lessee</b>
-Le Chi Thao		<b>Agent</b>
Alexandria Surveyors, Inc.	6343 S. Kings Highway Alexandria, VA 22306	<b>Engineers/Agent</b>
-Kenneth W. White		<b>Agent</b>
Walsh, Colucci, Stackhouse, Emrich & Lubelev, P.C.	2200 Clarendon Blvd. 13th Floor Arlington, VA 22201	<b>Attorneys/Agent</b>
-Lynne J. Strobel, Martin D. Walsh, Keith C. Martin, Jerry K. Emrich		<b>Agents</b>
Tran Van Thanh	7605 Bull Run Dr. Centreville, VA 22020	<b>Owner</b>

(check if applicable) ☐ There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

\* List as follows: (name of trustee), Trustee for (name of trust, if applicable), for the benefit of: (list name of each beneficiary).

SP/VC-1 (7/77/89)

## SPECIAL PERMIT/VARIANCE AFFIDAVIT

Page Two

DATE: 3/29/95

(enter date affidavit is notarized)

279-946

1. (b). The following constitutes a listing\*\* of the SHAREHOLDERS of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include sole proprietorships herein.)

## CORPORATION INFORMATION

NAME &amp; ADDRESS OF CORPORATION: (enter complete name &amp; number, street, city, state &amp; zip code)

Vietnamese Buddhist Association

7605 Bull Run Dr.

Centreville, VA 22020

DESCRIPTION OF CORPORATION: (check one statement)

- ☐ There are 10 or less shareholders, and all of the shareholders are listed below.
- ☐ There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- ☐ There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAME OF THE SHAREHOLDERS: (enter first name, middle initial &amp; last name)

The Vietnamese Buddhist Association is a religious, non-stock, tax exempt organization with no shareholders.

(check if applicable) ☒ There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment to Par. 1(b)" form.

\*\* All listings which include partnerships or corporations must be broken down successively until (a) only individual persons are listed, or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of the stock. Use footnote numbers to designate partnerships or corporations which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.



WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

COURTHOUSE PLAZA

THIRTEENTH FLOOR

2200 CLARENDON BOULEVARD

ARLINGTON, VIRGINIA 22201-3388

(703) 528-4700

FACSIMILE (703) 525-3187

August 29, 1995

MARTIN D. WALSH  
THOMAS J. COLUCCI  
PETER K. STACKHOUSE  
JERRY K. EMRICH  
MICHAEL D. LUBELEY  
KEITH C. MARTIN  
NAN E. TERPAK  
WILLIAM A. FOGARTY  
DAVID J. BONGARDNER  
LYNNE J. STROBEL  
JOHN E. RONALDI  
SEAN P. McMULLEN  
H. MARK GOETZMAN

OF COUNSEL  
NICHOLAS MALINCHAK

PRINCE WILLIAM OFFICE  
VILLAGE SQUARE  
13883 OFFICE PLACE, SUITE 201  
WOODBRIDGE, VIRGINIA 22182-4216  
(703) 680-4664  
METRO (703) 680-4647  
FACSIMILE (703) 680-3412

LOUDOUN OFFICE  
COUNTRYSIDE PROFESSIONAL CENTER  
2 DOVE HILL DRIVE, SUITE 340  
STERLING, VIRGINIA 20155  
(703) 444-8819  
FACSIMILE (703) 444-0865

BY FACSIMILE and U.S. MAIL

Mr. Donald F. Heine  
Zoning Evaluation Division  
Office of Comprehensive Planning  
12055 Government Center Pkwy.  
Suite 800  
Fairfax, Virginia 22035-5509

Re: SP 95-Y-021  
Applicant: Vietnamese Buddhist Association

Dear Mr. Heine:

As you are aware, the above-referenced application is presently scheduled for a public hearing before the Board of Zoning Appeals on Tuesday, September 19, 1995. Due to a number of outstanding issues regarding the application, the applicant has chosen to withdraw the application at this time. If solutions can be found to the issues raised in the Fairfax County staff reports, the applicant will consider filing a new application. I would, therefore, request that the above-referenced application be withdrawn without prejudice and removed from the agenda of the Board of Zoning Appeals.

Should you have any questions regarding my request or require additional information, please do not hesitate to give me a call. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C.

*Lynne J. Strobel*  
Lynne J. Strobel

LJS:kd

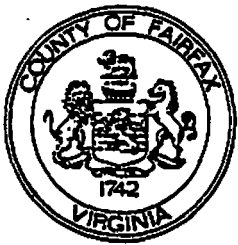
cc: Le Chi Thao  
Jerry K. Emrich  
Martin D. Walsh

ljs:ltr\heine.2

RECEIVED  
OFFICE OF COMPREHENSIVE  
PLANNING

SEP 01 1995

SPECIAL PERMIT &  
VARIANCE BRANCH



# FAIRFAX COUNTY

## DEPARTMENT OF PLANNING AND ZONING

Zoning Administration Division

Zoning Enforcement Branch

12055 Government Center Parkway, Suite 825  
Fairfax, Virginia 22035-5508

V I R G I N I A

(703) 324-1300

Fax (703) 324-3924

March 9, 1999

Tranh V. Tran  
Kim L. Phan  
7605 Bull Run Drive  
Centreville, Virginia 20121

Certified Mail  
Return Receipt Requested  
Receipt #: Z 114 477 543

Re: 7605 Bull Run Drive  
Vietnamese Buddhist Association  
Tax Map Ref: 73-1 ((2)) 13  
Zoning District: R-C

Dear Mr. Tran and Ms. Phan:

On June 21, 1989, an application for a special permit (SP 89-S-032) was submitted to the Fairfax County Board of Zoning Appeals (BZA) to allow a place of worship to be operated at the above-referenced property. By letter dated February 6, 1991, this special permit application was subsequently withdrawn. On April 3, 1995, an application for a special permit (SP 95-Y-021) was again submitted to the Fairfax County Board of Zoning Appeals (BZA) to allow a place of worship at the subject property. The written statement and justification submitted with Special Permit 95-Y-021 which outlined the proposed activities for this place of worship are summarized as follows:

- The type of operation will be a place of worship.
- Bible study sessions will be conducted at the residence.
- The estimated number of patrons is approximately 40.
- One priest and two assistant priests will live at the premises.
- All trips to this site will be by private vehicle.
- Additional traffic will occur on weekends for bible study sessions.
- Several times a year, a large number of people will come to the site to celebrate major holy days and Buddha's Birthday.
- The existing buildings on the site will be retained and the residence will be used for service. There will be no pews or chairs placed in the interior space since Buddhist worshippers sit on mats during their periods of meditation.

Prior to the BZA public hearing on this matter, a letter dated August 29, 1995, was submitted requesting withdrawal of Special Permit 95-Y-021.

Zoning inspections conducted on November 2, 1998, at 10:30 a.m., December 13, 1998, at 11:40 a.m., and February 14, 1999, at 10:00 a.m., have revealed that you are actively conducting religious services at the above-referenced property, substantially in the same manner as described in the above-referenced special permit applications.

Tranh V. Tran  
Kim L. Phan  
March 9, 1999  
Page 2

As you are aware, the operation of a place of worship in the R-C district is a Group 3 Special Permit use requiring the approval of the Fairfax County Board of Zoning Appeals. Research of our files have revealed there is no approved special permit for a place of worship use on the above-referenced property. Therefore, you are in violation of Par. 1 of Sect. 2-303 of the Fairfax County Zoning Ordinance which states:

No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been secured from the BZA in accordance with the provisions of Article 8.

You are hereby directed to clear this violation within thirty (30) days of receipt of this notice. Compliance can be accomplished by:

- Ceasing the use of the above-referenced property as a place of worship; or
- Applying for, diligently pursuing, and ultimately obtaining approval of a Group 3 Special Permit from the BZA to allow this property to be used as a temple or place of worship.

You may have the right to appeal this notice of zoning violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, written statement setting forth the decision being appealed, date of the decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information you may wish to submit and a \$210.00 filing fee. Once an appeal application is accepted, it is scheduled for public hearing and decision before the BZA.

Failure to comply with this notice may result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

Should you have any questions regarding this notice or need additional information, please do not hesitate to contact me at (703) 324-1343 or (703) 324-1300.

Sincerely,



Leslie D. Setliff  
Senior Zoning Inspector

LDS/cas



ATTACHMENT 1

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR APPEALFAIRFAX COUNTY  
RECEIVED

APR 8 1999

DIVISION OF  
ZONING ADMINISTRATIONAPPLICATION NO. 1999-014  
(Assigned by Staff)NAME OF APPELLANT: Tranh V. Tran; Kim L. PhanNATURE OF THE APPEAL: This is an appeal to the Board of Zoning Appeals from the  
Department of Planning and Zoning's notice of zoning violation given by letter dated March 9,  
1999, addressed to the appellants at the property address below. See statement and copy of letter  
attached. The appeal seeks to have the notice of violation reversed and withdrawn on the  
grounds set forth in the attached statement.DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS  
SUBJECT TO THE APPEAL March 9, 1999HOW IS THE APPELLANT AN AGGRIEVED PERSON? Mr. Tran is a co-owner of the  
property and the sole resident. Mr. Phan is the co-owner of the property. The decision  
unlawfully restricts the use of property.

## IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 7605 Bull Run Drive, Centreville, VA 20121TAX MAP DESCRIPTION: Tax Map Ref: 73-1 ((2)) 13The undersigned has or has not (circle one) the authority to allow and does or does not (circle one) authorize Fairfax  
County staff representatives on official business to enter on the subject property as necessary to process the application.

Arthur T. K. Norris, Le Chi Thao &amp; Associates

Type or Print Name of Appellant or Agent

Signature of Appellant or Agent

2111 Wilson Boulevard, Suite 700, Arlington, VA 22201

Address

(703) 528-6221; (703) 516-6688

Telephone No.

Home

Work

Please provide name and phone number of contact person if different from above.

## DO NOT WRITE IN THIS SPACE

Subdivision Name: Bull Run Estates, Lot 13Total Area (Acres/Square Feet): 5.0220 acresPresent Zoning: R-CSupervisor District: 5114Date application received: 4/14/99Application Fee Paid: \$ 210.00Date application accepted: 4/12/99

**VERBATIM TRANSCRIPT  
BOARD OF ZONING APPEALS PUBLIC HEARING  
TRANH V. TRAN AND KIM L. PHAN - A 1999-SU-014  
JULY 6, 1999**

The following Board Members were present: Chairman DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel and John Ribble.

**CHAIRMAN DIGIULIAN:** Tranh V. Tran and Kim L. Phan, Appeal A 1999-SU-014.  
Mr. Shoup.

**MR. SHOUP:** Ms. Johnson-Quinn will be making the presentation on this case.

**MS. JOHNSON-QUINN:** Thank you Mr. Chairman. First I'd like to locate the property. It's a 5-acre lot in the Bull Run Estate Subdivision. It is located on the east side of Bull Run Drive, approximately 1,100 feet north of the entrance to Bull Run Regional Park and approximately ¾ of a mile south of the intersection of Bull Run Drive and Compton Road. The property is zoned R-C and it is also located within the Water Supply Protection Overlay District.

The issue on appeal is the Zoning Administrator's Determination that a place of worship, specifically a Buddhist Temple, is being operated on the property by Mr. Tran, the appellant, without a special permit, in violation of Paragraph 1 of Sect. 2-303 of the Zoning Ordinance. This paragraph provides that any use designated as a special permit use shall not be established without first obtaining BZA approval of a special permit. Also, the district regulations for the R-C District designate churches, chapels, temples, synagogues, and other places of worship as uses allowed by special permit. Thus,

ZA approval is required to establish a temple on this property. The appellants have challenged the Zoning Administrator's decision, claiming that there is insufficient evidence to substantiate the determination. They further assert that since the Zoning Ordinance does not contain a definition of the term "places of worship", there is no basis for concluding that the gatherings, which are occurring on the property, are anything other than social in nature. Staff does not concur with these claims and it is our position that the evidence supports the conclusion that we have come to. This evidence has been laid out in detail in our staff report. We've laid out the circumstances and factors, which we consider when determining whether a particular use is a place of worship. Some of these factors include the frequency of the gatherings, whether the services are presided over by a professional practitioner of the faith or an ordained person, the number of attendees and the corresponding impact those numbers have on the surrounding neighborhood. Whether the worship services or religious rituals are involved in the gatherings, whether the space, which is being used for the place of worship, is designed or arranged for services. For example; whether there is the presence of pews or other seating arrangements; alters, prayer books, or if there is a large assembly area. Also, consider the manner in which the gatherings are made known to potential attendees and whether it is represented or advertised as a place of worship. Whether the gatherings were open to a select group by invitation or open to all followers of the faith or anyone interested in the faith. It is clear that the Zoning Ordinance specifies that a special permit is required for a temple in the R-C District and the evidence that we've provided shows that the appellants have advertised the property as a Buddhist Temple and attendees refer to the property as their temple. As to whether the use of the property constitutes a place of worship, our evidence shows that services occur regularly on Sunday mornings; approximately 40 to 50 cars arrive during a short period of time with approximately 100 people. Attendees have identified the garage structure and the use of the property as a Buddhist Temple in which Sunday services, weddings, and memorial services are conducted by Mr. Tran. The garage structure is at least 31 X 31 feet and has a wide open space because it is constructed as a 3-car garage and this could readily accommodate a large number of worshipers. Also, three notices of

violation for operating a place of worship have been issued on several occasions to Mr. Tran, who has been identified as the pastor of the Vietnamese Buddhist Association. None of these Notices of Violation were ever appealed and the property is advertised on the Internet as a Buddhist Temple, providing the address, phone number and directions to the site. It is also significant that Mr. Tran is the pastor of the Vietnamese Buddhist Association, was involved in the filing of two special permit applications, in which he considered the proposed use of the property to be a place of worship within the meaning of the Zoning Ordinance. Also, the appellants have challenged the constitutional validity of the Zoning Ordinance as it applies to the requirement for special permit approval for places of worship in residential districts. As discussed in the staff report, there is no authority in the Zoning Ordinance, which allows the BZA to rule on the constitutionality of a particular Zoning Ordinance provision. This provision is consistent with the Virginia Supreme Court case Board of Zoning Appeals of James City County vs. University Square Associates. Based on this court case, it is the recommendation of staff that the BZA should not consider the appellants' free exercise of religion claim as a valid basis for appeal. Based on the evidence outlined in the staff report I would recommend that the BZA also uphold the Zoning Administrator's determination. If there is any questions, I would be happy to answer them.

**CHAIRMAN DIGIULIAN:** Questions? Could we hear from the representative of the appellant?

**MR. DIVELY:** Before he begins his presentation I was wondering if I could ask a preliminary question?

**CHAIRMAN DIGIULIAN:** Mr. Dively.

**MR. DIVELY:** Why don't we have a special permit filed here? It would seem like the most appropriate way to proceed.

**UNIDENTIFIED SPEAKER:** I'm not 100% sure. Mr. Thao.

**MR. THAO:** Good morning Mr. Chairman my name is Le Chi Thao. I am a member of the Association and to answer your question, we have applied for a special permit twice, but then we were advised by counsel that whatever we've been doing was within our rights as a tenant of a private residence. So we didn't do anything that goes beyond our rights in our private home. So there was no special permit necessary. That is why we withdrew our applications; however, if the Board thinks that we should apply for a special permit, we would be willing to ask for extra time to go back and submit our application this time and come back before the Board for a more technical presentation.

**MR. DIVELY:** I can only represent my own opinion on this matter, but I think that is the appropriate way to go and speaking for myself, I would be very open-minded to a special permit application. It seems like the appropriate avenue to pursue. I don't know what the other Board Members think.

**MR. THAO:** May I have a follow up answer?

**CHAIRMAN DIGIULIAN:** Yes

**MR. THAO:** The reason we appear before you today is exactly the reason why we didn't file the application for a special use permit. We didn't know what we had done that would violate the laws and regulations of the County. We didn't know the limit of our rights and when we went beyond that and violated the regulations. That is why we didn't know when to apply for the special permit and when we could just use our private home for our own entertainment. We can deal with that issue later on if the Board thinks that we should apply for the special use permit.

**MR. DIVELY:** That may not be an option if you have the appeal and you lose.

**CHAIRMAN DIGIULIAN:** They could still file the application, but...

**MR. KELLEY:** Mr. Chairman?

**CHAIRMAN DIGIULIAN:** Mr. Kelley.

**MR. KELLEY:** I associate myself with Mr. Dively's remarks.

**CHAIRMAN DIGIULIAN:** Do you hold worship services on the property?

**MR. THAO:** We don't have worship at the place. It is a one-man residence. One person lives there and he is a Buddhist Monk and he is required to pray and study the Bible at least three times a day. There were no regularly scheduled services for the public. There is no worship going on there.

**CHAIRMAN DIGIULIAN:** Some of the pictures I saw showed 30 or 40 cars there. Are they all his?

**MR. THAO:** I beg your pardon?

**CHAIRMAN DIGIULIAN:** There were some pictures passed around to show 30 or 40 cars on the property.

**MR. THAO:** Yes.

**CHAIRMAN DIGIULIAN:** Where do they come from.

**MR. THAO:** The monk who lives there never invite these people to come in. It is not designed to serve the public but according to the religion wherever the monk lives has to be open to everybody who comes in for counseling, praying and meditation. He is not allowed to close the door to anybody. So those sporadic kinds of visits are not regularly scheduled. It is a 10-acre piece of land not 5, it is 2 lots of land and 40 cars coming into that place within the last 15 years. I do not think that is very much.

**CHAIRMAN DIGIULIAN:** It sounds to me like you're running a place of worship.

**MR. DIVELY:** Well, I don't want to apply western standards necessarily here, but let me ask one question. What form of Buddhism is practiced here? Is it Mahiyana?

**MR. THAO:** Yes

**MR. DIVELY:** So it is open to the general public.

**MR. THAO:** Yes that is exactly it.

**MR. DIVELY:** I still think a special permit is appropriate.

**MR. HAMMACK:** You know we shouldn't be advising the applicant what he wants to do or not do. He's chosen to appeal and I think we ought to go ahead and hear it. If he wants to make a motion to do something else that's his business, but the appellant's history is that he has filed and application

and withdrew it. He has been cited several times for Zoning Violations and never appealed them. There certainly is a pattern of conduct here.

**R. DIVELY:** There is a pattern but it has not reached our level.

**MR. HAMMACK:** I'm not so sure. The representative here says that the appellant didn't know he needed to do anything and that sort of flies in the face of official notices that he has been given.

**MS. GIBB:** And representation he has had.

**MR. KELLEY:** Mr. Chairman.

**CHAIRMAN DIGIULIAN:** Mr. Kelley.

**MR. KELLEY:** This isn't any different than the application that we just heard about the daycare center. Ms. Pace was in on an appeal, was obviously in violation, had been cited and we decided to give her time to file a special permit and to defer the appeal.

**CHAIRMAN DIGIULIAN:** I think that is appropriate if the appellant requests a deferral.

**MR. DIVELY:** How about we give the appellant a week or two to mull over these options that have been laid out and then decide how he wishes to proceed.

**MR. HAMMACK:** It seems like the appellant has chosen and he wants to exercise certain rights so he might not want to delay it.

**MR. THAO:** If I may address the Board. We are confused at what rights we have and what rights that we do not have in this case. That is why we are asking for extra time to go back and seek more counsel and try to comply with the regulations of the County, which does not give a very clear definition of the term "place of worship". I don't know under what conditions I would characterize as a place of worship. How many people would be allowed in the place before it is called a place of worship and what do you have to have decorated inside of the premises before you are called a place of worship. Can you hang up a poster of Elvis Presley or Michael Jordan and it is okay but when we hang up a poster of Buddha and you call it a place of worship?

**MR. HAMMACK:** One of the letters said that you have a two-ton statue of Buddha in the garage. Is that true? Maybe it's not two tons but do you have a statue of Buddha in the garage?

**CHAIRMAN DIGIULIAN:** That's okay.

**MR. THAO:** Yes we have a statue of Buddha inside but it's inside of the house and it doesn't hurt anybody around it. It's mostly in an area where it's mostly land 4 or 5 acres large.

**MR. HAMMACK:** Let me ask, just for clarification. You're Mr. Thao.

**MR. THAO:** Yes, that's correct.

**MR. HAMMACK:** You're an attorney?

**MR. THAO:** Yes, I am an attorney.



**MR. HAMMACK:** There is another attorney on the application.

**MR. THAO:** Yes that is Mr. Norris.

**MR. HAMMACK:** How much time do you think you'll need to consult counsel to determine the definition of a place of worship.

**MR. THAO:** We've had some problem before when we retained two law firms that specialized in zoning law that gave us conflicting advice for the last 15 years and I think that we need a month or two. We'd appreciate that.

**MR. DIVELY:** Let me ask you a question Mr. Shoup. Have you discussed their options with them of pursuing a special permit instead of this appeal.

**MR. SHOUP:** Not since this appeal has been filed, but in the past, we have had those discussions with them.

**MR. DIVELY:** You need good counsel, but I think you'd be better off speaking with Mr. Shoup.

**MR. THAO:** Yes, we've talked to the office. But I think that most of the time the problems come from the neighbors, not from the Zoning Office, or from the Board, or not even from the Association and that is why we tried to develop some sort of communication and dialogue with the neighbors more than with the office. We get very good cooperation from the office.

**MS. GIBB:** Mr. Chairman.

**MR. THAO:** We would be very much willing to sit down with the office for any length of time to discuss the matter. We have no where to go. That is the only place that we have to be.

**CHAIRMAN DIGIULIAN:** Ms. Gibb.

**MS. GIBB:** This has gone on for a number of years and at one time when the law firm of Walsh, Colucci represented you, you filed a special permit application and in it you said you were going to have a place of worship. That is the words that they used. Type of operation will be a place of worship. Have you changed from that and are you saying that you have never had it?

**MR. THAO:** Yes we have changed because when we applied for that special use permit we planned to advertise and invite the public to come in and share the services with us. But then we stopped and we did not do that.

**MS. GIBB:** What is the web-site that says that you have a Buddhist temple at that address?

**MR. THAO:** Well, I have to clarify the term temple or church in the Asian Buddhism. In this country when you talk about temple or church, you mean building. In Buddhism, where ever a monk lives, whether in an apartment, a palace, or whether he sits out in a tree. We call it a temple. It is a very abstract concept. It is not a building so wherever he sits, he doesn't claim to have a temple there but we call that a temple, but it doesn't mean that it is a church in the sense that is understood in this country. It is not a church, per se, it is where the monk lives. He can live in a one-bedroom apartment, in a high-rise, we'd still call it a church.

**MS. GIBB:** But he doesn't live in the garage. He lives in the house.

**MR. THAO:** That is correct but the garage is connected to the house.

**MR. HAMMACK:** But he advertises.

**MR. DIVELY:** Well, let me tell you what. I'm going to make a motion and it can go or fall and it will move from there. I move that we continue this matter for two weeks so that the applicant can decide how he wishes to proceed. Whether it be with this appeal as it stands now or with the filing of a special permit and that would be my motion that this matter be continued for two weeks.

**MR. KELLEY:** I'll second Mr. Chairman.

**MR. THAO:** Did you say two weeks or two months.

**MR. DIVELY:** Two weeks. It's time to make some decisions.

**MS. GIBB:** Mr. Chairman?

**CHAIRMAN DIGIULIAN:** Ms. Gibb.

**MS. GIBB:** I've got a problem with a deferral. I think it should be resolved with a special permit too, but having filed 2 over the last few years and then they are withdrawn, probably due to issues they can't resolve with the staff or the neighbors. I don't think it should be open-ended.

**MR. DIVELY:** I don't think it is. I think we've got control of this process now as it is before us.

**CHAIRMAN DIGIULIAN:** I think we should hear the appeal today.

**MR. PAMMEL:** Mr. Chairman?

**CHAIRMAN DIGIULIAN:** Mr. Pammel.

**MR. PAMMEL:** Just in response there are people here from the community that, since this is a public hearing, I think they are entitled to present their views.

**CHAIRMAN DIGIULIAN:** I think they are too if we aren't going to defer it. What is the pleasure of the Board? I think we ought to hear the appeal today, it's gone on for 4 years.

**MR. DIVELY:** I made a motion let's vote it up or down.

**CHAIRMAN DIGIULIAN:** Was it seconded?

**MR. DIVELY:** Yes, Mr. Kelley seconded.

**CHAIRMAN DIGIULIAN:** Further discussion on the motion to defer the appeal for two weeks? All in favor?

**MR. DIVELY AND MR. KELLEY:** Aye.

**CHAIRMAN DIGIULIAN:** Opposed?

**CHAIRMAN DIGIULIAN, MS. GIBB, MR. HAMMACK, MR. PAMMEL AND MR. RIBBLE:** Nay.

**CHAIRMAN DIGIULIAN:** The motion fails. We will proceed with the hearing.

**MR. NORRIS:** My name is Arthur Norris. I am one of the attorneys on the application. In this case the Board was called upon to construe the place of worship statute and apply it to the case of Mr. Tran. It seems to me that it would be appropriate to clarify how these five factors would apply to Mr. Tran's case. The Notice of Violation doesn't expressly prohibit any one particular thing. It says it shall not be used as a place of worship. It seems clear to me that the statute would permit some worship related activities in a residence, certainly saying grace at dinner or having friends come over and discuss religious matters. The question is what is Mr. Tran permitted to do up to the limits of the residential use without creating a place of worship. I would ask the Board to clarify that question in ruling on this issue, otherwise it is just going to keep going back and forth the way it has done for several years. Where at one point it is a place of worship and then later on there aren't enough people found there so it is no longer a place of worship and it is not in violation.

**MR. HAMMACK:** Mr. Norris, if I may interrupt. We are here to decide one issue. We're not here to clarify. If you want to clarify the Zoning Ordinance you should talk to the Zoning Administrator and I rather think that they have tried to clarify it possibly because of the way this appeal was postured because you disagree with their interpretation. That's obvious. We have one issue here. We are either going to support the Zoning Administrator or we're not but we aren't here to give you a line item on what may or may not be permissible.

**MR. NORRIS:** Okay, sir. I don't know where Mr. Thao's views on this are but I would like to defer the matter for a couple of weeks if that is possible. The Board has already ruled on Mr. Dively's motion. It don't know if the Board is willing to consider the appellant's motion to that.

**MR. HAMMACK:** Are you saying that you aren't prepared.

**MR. NORRIS:** Well, as a matter of fact, yes, I think we're not entirely prepared to discuss the case today.

**MR. KELLEY:** Mr. Chairman.

**CHAIRMAN DIGIULIAN:** Mr. Kelley.

**MR. KELLEY:** I seconded the deferral motion and lost and just to follow up on what Mr. Hammack said. The only thing I think we're here for is to determine whether or not the Zoning Administrator made an appropriate decision and finding in this case. As far as I'm concerned, you're going to have to convince me that it is not a place of worship according to the Ordinances in Fairfax County.

**MR. NORRIS:** Yes sir, well, that is not something that I can probably convince you that it is not if there were 40 to 50 cars there. It seems to me that there were going to be a couple of occasions during the year when there are going to be a large number of people on a holiday. Other times there aren't going to be as many cars. If the assumption is that there are 40 or 50 cars there every Sunday. I don't know how to respond to that.

**MR. RIBBLE:** What about the Internet?

**MR. NORRIS:** What he calls it wouldn't be (inaudible)

**MR. KELLEY:** I get the feeling that the appellants are treating this somewhat like a game.

**MR. HAMMACK:** They have counsel.

**MR. RIBBLE:** They've had counsel in the past.

**MR. THAO:** Mr. Kelley, this matter is very, very, important to us, because it is not only a place for the monk to live but, it also serves as a place for our spiritual leadership and we treat it with the utmost importance. I would like to clarify the matter whether the place where the monk lives is a place of worship or not. As I mentioned before the monk is a religious person who studies the bible three times a day and since the place is open to anyone, anybody can come in and pray with him at those sessions. There was no regularly scheduled sessions or mass on Sunday morning or anything of that sort. Anybody can come in and pray with him. It is very seldom that as many as 40 cars come in and out. Most of the time there could be about 10 to 15 people coming in and just sitting behind the monk to meditate quietly.

**MR. HAMMACK:** How do these people find out about this location? How do they know that a monk lives in this residence.

**MR. THAO:** Everyone knows because it is a very small community and by word of mouth we all know from day one that the monk lives there and wherever the monk lives, the only thing he does is pray and study the bible.

**MR. HAMMACK:** Would you please address the issue of the web-site.

**MR. THAO:** Well, I have to confess, I was not aware that there was such a web-site on that place, but as I mentioned before, the term temple was given by somebody else, by the layman, not by the monk himself. He does not call that a temple or a church. If you asked anybody in the community where the monk lives, they would say it was a temple. But as I mentioned, that there was no regularly scheduled services at the place, the monk does not invite the public to come in to share the services and he was not asking for any conversation or any contribution from the public at all. Anyone can come in and out.

**MR. PAMMEL:** Mr. Chairman.

**CHAIRMAN DIGIULIAN:** Mr. Pammel.

**MR. PAMMEL:** Where does the monk pray, in the garage or in the house?

**MR. THAO:** In both places, wherever they have the statue of the Buddha. He could pray in his own backroom but most of the time there is an altar in the living room in the house and also in the garage.

**MS. GIBB:** Mr. Chairman.

**CHAIRMAN DIGIULIAN:** Ms. Gibb.

**MS. GIBB:** When you made your two earlier applications for special permits what have you done differently. Before you wanted to have the garage be a place of worship and now you don't, but you don't use it for cars right? You use it for people. Do you use it for people going in?

**MR. THAO:** We use it as a place to study the bible for the monk. When we applied for the special use permit, we intended to invite the public in and planned to advertise that the place would be open to the public to come in to share the service with us. But, know that we are not applying for the special

use permit, we just use it for our private study of the bible and a private place of praying for ourselves. We are not inviting anybody in but we are under the obligation that wherever the monk lives, anyone can come in and you cannot close the door to those people. So there is a fine line of distinction here.

**MS. GIBB:** Do you know what the purpose of this requirement that you have a special permit is?

**MR. THAO:** That is the foundation of this appeal. We are not fighting the office but we are asking when can we act within our right in the residential home and when are we going beyond that and require a special use permit. What do the regulations characterize as a place of worship open to the public. So we aren't fighting any letters or any order from the County. We're just asking to clarify the definition of the Ordinance.

**MR. RIBBLE:** Somebody said, to the attorneys in 1992, that you understood that you'd need a special use permit in order to perform any services. Part of your problem here is that everything is too loose. It's 24 hour a day drop in. Build it and they shall come kind of thing.

**MR. THAO:** It is not 24 hours a day. If we had people dropping in like that we'd be very rich.

**MR. RIBBLE:** Part of the statement of your original application for special permit seems to say that you have more than 40 people on weekends and even more than that on certain religious holidays.

**MR. THAO:** The figure of 40 cars was the maximum that we anticipated when we applied for the special use permit. Regularly we don't have that many people coming onto the premises except during the New Year. We do not have 40 people every weekend at all. We do not have a regularly scheduled mass during the weekends. The point I am trying to explain is that we asked for 40 cars at the time of the special use permit application because when we applied for the special permit we planned to open to the public and now we are not open to the public. We treat it as a private residence. We are not advertising for people to come in and we are not asking for people to contribute.

**MR. RIBBLE:** Who lives on the property?

**MR. THAO:** Just the one person, the monk.

**MR. RIBBLE:** There is no other priest?

**MR. THAO:** No other priest, no staff, no one working there. Just one person.

**MR. DVELY:** Who is excluded from attending it's not open to the public?

**MR. THAO:** Nobody is excluded from attending.

**MR. DVELY:** So it's not closed to the public. What additional actions would have to occur for this to constitute a temple or a place of worship in your understanding of the terms?

**MR. THAO:** We think that if we advertise and ask people to come in at regularly scheduled masses.

**MR. DVELY:** No. Advertising is something else. What I am interested in is what other actions would you have to do in the garage or in the residence in order for it to become a place of worship. What else would you have to do to make it a temple or a place of worship?

**MR. THAO:** Regularly scheduled mass on weekends.

**MR. HAMMACK:** You said you don't do that.

**MR. THAO:** We don't do that know that's why we aren't calling it a place of worship.

**MR. DIVELY:** Wait, Wait... is that it? Anything else that you would have to add onto in order to make this a place of worship... a temple?

**MR. THAO:** Yes, we would need to have a membership and our members had to contribute to the maintenance and upkeep of the temple. Right now we don't have that.

**MR. DIVELY:** What is the Association that I heard about earlier.

**MR. THAO:** The Vietnamese Buddhist Association.

**MR. DIVELY:** Are there members of that?

**MR. THAO:** We have no members it's just a three person Association.

**MR. HAMMACK:** So that 40 or 50 people that show up don't exist?

**MR. THAO:** They show up but they aren't members of the Association and they aren't the same people regularly showing up.

**CHAIRMAN DIGIULIAN:** Do they make any monetary contributions when they come.

**MR. THAO:** They can make offerings to the spirit of the Buddha but not to the monk and not to the so called church or whatever.

**MR. KELLEY:** Do you have an IRS Tax Exemption?

**MR. THAO:** It's a Non-Profit Tax Exemption.

**MR. HAMMACK:** Do you have a certificate that demonstrates that.

**MR. THAO:** Yes we do but we do not have it here right now. We can mail it.

**MS. GIBB:** Do you conduct weddings there?

**MR. THAO:** No we don't have weddings or funerals. We have memorials and we have prayer.

**MS. GIBB:** What is a memorial.

**MR. THAO:** Well, some people died in Vietnam and the family wants to pray for his salvation and they can come in, 5 or 10 members of the family will come in to pray for his soul back in Vietnam.

**MR. HAMMACK:** But that doesn't make it a place of worship? They are praying right.

**MR. THAO:** Well, you can kneel next to your bed in the evening and pray. Does that make it a place of worship? At my home I sometimes have a memorial for my ancestors and I invite by cousins and friends in to pray with me. It doesn't make my home a place of worship.

**MR. HAMMACK:** Is your home listed on the Internet as a Buddhist Temple?

**MR. THAO:** No it is not but you have to find who did it first.

**MR. HAMMACK:** I would like you to address the issue of the listing on the Internet of Buddhist Temple and explain how it got listed as a Buddhist Temple.

**MR. THAO:** I think I addressed that issue before but I think the issue here should be addressed by the Zoning Office to tell us when a place is called a temple or a place of worship.

**MR. DVELY and MS. GIBB:** They have.

**MR. HAMMACK:** Staff has attached to this appeal, your Internet listing and it clearly states that it is a temple. It's interesting because there's a platinum visa card on it too. 7605 Bull Run Drive.

**MR. DVELY:** That just might be an ad part of the Yahoo page.

**MR. HAMMACK:** Could be

**MS. GIBB:** In one of your letters it says you are a church, "the church is essentially a quiet sanctuary".

**MR. THAO:** The name of the place is not a temple or church. It is called a Center.

**MS. GIBB:** But you called it a church.

**MR. THAO:** We don't.

**MS. GIBB:** In your statement you called it a church a number of times. "Church overwhelmingly serves the residents of Fairfax County" "Each day there are two major holy days to be observed at the church".

**MR. THAO:** That was when we applied for the special permit and now we don't. We call it a Center.

**MS. GIBB:** But you don't have an observed Buddhist Birthday an equivalent of all souls day?

**MR. THAO:** Yes we do but we don't organize it. People just come on those occasions just like during the New Year.

**MS. GIBB:** But do you know the purpose of requiring a special permit is because of the impact on the neighbors in a residential area of a church. Whether you call it a church or not, it is the effect of people coming and going in an intense way that is not natural to the residential neighborhood. Even if you don't call it a church or a temple, if the impact is the same and it looks like a temple or a church, that is what we are looking at and that is what the Zoning Administrator is looking at. He has to look at the effects, not what, in theory, is going on in it and if everything is the same as in a church or a temple, then we're dealing with those effects. That is why you have the special permit procedure so

that we encourage churches and we want to have those neighborhoods, but we want to be able to protect the neighbors.

MR. THAO: Talking about the impact as far as the traffic is concerned. We are on a road that leads to the National Park.

MR. DIVEY: But that is just what the special permit issue would address.

MS. GIBB: You make your case when you file your special permit, which you did not pursue two times for some reason.

MR. THAO: That is part of our confusion. We didn't think that we needed the special permit because whatever we have, we didn't think that the activities within our premises had any impact on the neighborhood at all.

MS. GIBB: I'm sure they didn't tell you that.

MR. RIBBLE: You had a good lawyer but you just didn't listen to him.

MR. HAMMACK: Did this monk approve of the listing of this on the Internet.

MR. THAO: He doesn't speak English.

MR. HAMMACK: Do you speak Vietnamese?

MR. THAO: Yes, I do.

MR. HAMMACK: Can you ask him if he approved this listing on the Internet?

MR. THAO: Okay, I'll do that. The answer is that he had nothing to do with it. The people who come to the place had nothing to do with it. It was another group out in Chantilly who did it and listed it on the Internet but he had nothing to do with it. He doesn't speak English. He doesn't work on the computer and he doesn't have anything to do with the Internet.

MR. HAMMACK: But if 40 or 50 people show up he will pray with them, is that correct. These people just spontaneously show up for the Vietnamese New Year or for a memorial service or whatever and he does not ask anyone to leave. They can come in and they can stay there and they will pray with him and he will pray with them.

MR. THAO: Whether those people come in or not. He will pray on his own or just the same.

MR. HAMMACK: I'm asking do they just come and hang around?

MR. THAO: Yes. They can come in any number they want to, at any time, and just sit behind the monk and pray. If nobody comes, the monk would pray on his own.

MR. HAMMACK: We don't have a problem with the monk praying in his own home. It's all of those other people that show up that create the problem.

MR. THAO: But it's not always 40 people. The figure of 40 people was the number that we put in the application for the special permit as the maximum number of people coming in.



**MR. HAMMACK:** We have here, in this report, the zoning office has counted up to 75 cars on the property at times and 40 to 50 on numerous occasions and cars don't come there by themselves so they have to have an occupant. It is fair, I think, to assume that 40 or more people will show up on a regular basis. Now, do they take their shoes off and put them on the little stands before they go into the garage.

**MR. THAO:** Yes, they always do that to show respect to the Buddha.

**MR. HAMMACK:** And, does the monk conduct bible study with these people when they ask him to conduct bible study?

**MR. THAO:** The monk just goes ahead and prays. Nobody asks him to do it. It is a requirement of his religion.

**MR. HAMMACK:** Well you mentioned bible study earlier. You said there was bible study, which is a little confusing because I am not familiar with what your bible is.

**MR. THAO:** He has to read from the Buddhist Bible three times a day whether anyone is there or not.

**MR. HAMMACK:** Okay, but if they are there and they want to talk about the bible. He will talk about the Buddhist Bible.

**MR. THAO:** Yes.

**MR. THAO:** And, if they want to talk to him about ancestors and have a memorial service for an ancestor then he would have a memorial service for that ancestor. Yes, but on those occasions there are not 40 people there, it's just a family.

**MR. HAMMACK:** Why do 40 people show up at the same time?

**MR. THAO:** Our location, like to Buddha's birthday and All Souls Day, things like that. Or maybe on the Lunar Calendar New Year there may be more than 75 people, but there is no regular scheduled sessions that would attract more than 15 or 20 people. There are not 40 people present except on those special occasions.

**MR. PAMMEL:** Mr. Chairman.

**CHAIRMAN DIGIULIAN:** Mr. Pammel.

**MR. PAMMEL:** I just want to follow up on Ms. Gibb's line of questioning earlier. There are occasions where food is prepared or brought in and served to the individuals that are there. Is that correct?

**MR. THAO:** Sometimes when the family has a memorial they bring the food and eat there because most of the time all of the activities are performed around lunch time during the day on weekends. They don't have it in the evening or early in the morning so most of the time around 11:00 so they bring food on their own to serve among themselves.

**MR. PAMMEL:** Okay, one of the issues raised by the community was the fact, at least to their knowledge, there is a limit on the septic field that was put there when the house was built. Has your group ever tested that to see what the rated capacity is of that field?

**MR. THAO:** I think the septic issue has been resolved a long time ago. We've cleaned it up and we have enough drainage from the septic tank to accommodate the attendants. That is no longer an issue in this instance.

**MR. PAMMEL:** Do you have some certification to that effect?

**CHAIRMAN DIGIULIAN:** I don't think that's very pertinent to this.

**MR. PAMMEL:** I know it, but it all leads to the problem.

**MR. DIVELY:** I think we should move on to other speakers. I think that the definition of temple that the applicant is using is frankly a rather poetic one and it has its beauty but, there is nothing less poetic than the Zoning Ordinance so I think we better move on to the speakers.

**CHAIRMAN DIGIULIAN:** Okay. Is there anyone in the audience that would like to speak to the appeal?

**MS. HARGIS:** I am Laura Hargis and I live at 7600 Bull Run Drive, across the street from the temple and when the VBA bought the property we invited them to a neighborhood picnic which was held at my house. They were made to feel very welcome. We welcomed them to the community. They told us that a couple would live in the house as caretakers and a priest or priests would go to the property on weekends as a retreat. No problem. Suddenly, they applied for a permit for a house of worship and they claimed for no more than 40 people ever. This was a problem to us. We live right outside of Bull Run Regional Park and you know what the traffic is out there during the summer weekends. They raised the existing 3-car garage and built a temple. Which, if you will look on your maps, appears to be larger than the original dwelling. When County Inspectors have come out, as far as I know, they have never been able to enter the temple. Then we have the web page "Vietnamese Temples in Northern Virginia" and the very first one listed is the Van Han Center. For over 10 years the VBA has openly and notoriously with flagrant disregard for zoning regulations and subdivision covenants held large religious services normally from 11:00 a.m. to 12:00 noon on Sunday often with several hundred people. On Tet we have seen over 300 cars parked on their property and they have people out directing traffic so that the cars are packed in very tightly so they can all get in the 5 acres. That takes place at midnight and the cars come out and they shine on a mirror in my bedroom and it lights up the whole bedroom for two hours. They have demonstrated a consistent pattern. When the County sends a Notice of Violation they lie low and then they resume their full activities when they believe the coast is clear. Ethnicity and religious beliefs are not at issue. The 1983 down zoning to R-C/WS to protect the Chesapeake Bay, limits the number of residences and our community has, including the Buddhists, thirteen. We are a small community and it has greatly impacted us. We are allowed only 1 house per 5 acres. I did not see the watershed point raised in the staff report. We are concerned with our fragile water table. All homes depend on wells and we get very anxious when we see so many people gathering weekly across the street. When I mentioned this to a lady one Sunday she replied. "No one goes to the bathroom here". We are now firmly convinced that from the time they bought the land the VBA had every intention of building a temple for worship services, just as they have actually done. Enough is enough. The VBA has been cited many times over the last 10 years and nothing changes. The web page is a clear indication that religious services are being held despite claims that all meetings are solely "of a social nature". The Bull Run Civic Association recommends denial of the VBA appeal. Thank You.

**CHAIRMAN DIGIULIAN:** Questions? Thank you.

**MR. HEISINGER:** Mr. Chairman and Board my name is Duane Heisinger and I live at 7401 Bull Run Drive, the start of the Bull Run Estates. My wife and I bought into this lovely 5-acre subdivision 7 years ago. Now 7 plus years later and after years of non-compliance with your zoning restrictions the 3A violations continue today. This is a place of worship, a church in normal practice in this country. Time of re-issuing of violations is past, tolerance for these violations is past and you have been very tolerant over the years. Fairfax County should move past issuing violations and insist that zoning restrictions be held. With respect to both your good intelligence, your understanding and with respect to my Buddhist colleagues. I fought in your country for 3 years and I understand some of your practices but this is not confusion, this is not ignorance, this is a deceptive practice that has continued over a number of years. With respect Mr. Chairman.

**MRS. HEISINGER:** Good morning Mr. Chairman and members of the Board. My name is Judith Heisinger and I am president of the Bull Run Civic Association. We moved into our house on Bull Run Drive in February of 1992. This was a very auspicious time because this was also the time that the final Notice of Violation to the VBA was given and that was 7½ years ago. We, the neighbors, have observed the cars at the property on Sundays. Last Sunday, July 4<sup>th</sup>, there were only 35 cars. I guess that was because it was a Holiday. Usually there are about 50. We have had people stop and ask us where the Buddhist Temple is. We have followed with great interest the Zoning Enforcement Branch of Fairfax County investigating and concluding over the last 10 years that there have been numerous ongoing and longstanding violations of the Zoning Ordinance. Copies of Paragraph 1 Sect. 2-303 have been repeatedly sent and these were in place when the property was purchased. The neighbors have repeatedly sent copies of their covenants underlining the part that says this property is for residential use only and these were signed at settlement by the purchasers. They have known this. These Ordinances and covenants have been ignored and held in contempt repeatedly. We therefore, encourage you to find this appeal in violation. When they have previously been found in violation. Twice they have applied for a special use permit and twice they have withdrawn it, sometimes after two years, and continued business as usual. There has been no successful perk test ever done on this property and that is of some concern to all of us who are on wells. We therefore, encourage you to deny this appeal today and to act with all promptness and legalities please, to enforce the Fairfax County Zoning Ordinances and to use all appropriate legal actions to gain compliance. These Ordinances, we believe, are good for all citizens and should be obeyed by all citizens equally. Thank you.

**CHAIRMAN DIGIULIAN:** Is there anyone else to speak to the appeal. Sir you have a brief two minute rebuttal.

**MR. THAO:** I have nothing much to rebut except that I want to answer Ms. Gibb's question from before regarding what we have done differently now than before we applied for the special use permit. Mr. Emrich, our counsel for the last application, advised us to discontinue all masses and services on Sunday. When we applied for the special permit we mentioned in our application that we would hold services on Sunday morning and we don't have that anymore right after we withdrew the application. We do not have regularly scheduled services on Sunday or any other day of the week. Concerning the neighbors, originally when we purchased the land, which is a 10-acre piece of land, we planned to have a monk and a young couple living there to help the monk. The young couple went to the first Homeowners Association meeting and they were so scared that they left the Association, the premises, the whole area all together. The word that they brought back to the monk was that the Association would help us move out of the place. They would recommend a good real estate agent to help us sell the place and buy another place somewhere else. The attitude of the members of the Association were such that the young couple disappeared from our Association. Concerning the services at the premises. We have never seen a residence in the area that had been subjected to such scrutiny from the neighbors. We have neighbors standing in front of the place

videotaping and we have Inspectors from the zoning office on our land all of the time. We have neighbors driving County cars into our place and walking around inspecting every corner of the land and when we ask for an entity the people jump into their cars and drive away without giving us a time. Everything we do, even repairing the flowerbed would provoke a Zoning Inspector to come to our land and tell us that we were in violation of some regulation. The point that we have been asking is... We asked out two attorneys and we asked also, the Inspectors that came out to our premises is what is the number of guests that we can have in our premises at one time before we have to apply for a special use permit. The attorneys could not answer the question, the Inspectors could not answer the question, except that it is a private home and you can have as many as you want and we did specifically ask our attorneys and inspectors and we never got an answer. I am repeating that today. We are not hiding anything at all, we are just asking you to clarify what the regulations of the County would require from us before we violate it. We want to comply with the regulations but we don't know what they are before we violate it. Just tell us how many guests we can have in our place at one time before we violate it. If we go beyond that then we would apply for a permit and we will go before the Board and the Zoning Office to discuss the matter but right now we don't know. Sometimes we have 10 people and sometimes we have 15. On New Years Eve we have hundreds. This is out of control and we don't know when we violate and what. That is the issue that we want to appeal before the Board today is to help us clarify what the regulations are specifically that we are in compliance with or in violation with. Thank you.

**CHAIRMAN DIGIULIAN:** Thank you. Does staff have any additional comments?

**MR. SHOUP:** Just real briefly Mr. Chairman. I'd like to comment on the representations that they haven't changed since the special permit applications. I would note that we think that they have actually increased in the intensity of the activities on the site. They said in those special permit applications that up to 40 people would be on the site. We've seen on 6 occasions at least 40 cars on the site and upwards of 100 people on the site and we do believe that there are regularly scheduled services taking place. We were out there three times prior to the issuance of the Notice of Violation, three times after the appeal was filed and on all six of those occasions we've seen that number of cars and people on the site. So we believe that the evidence and finally with respect to the point that we need to tell them what a place of worship is, I think we've done that very clearly in the staff report. The criteria that we've set forth and the evidence that we've found, meets that criteria very clearly. I'd be glad to answer any other questions that you may have.

**CHAIRMAN DIGIULIAN:** Questions or comments? The public hearing is closed.

**MR. DIVELY:** Mr. Chairman.

**CHAIRMAN DIGIULIAN:** Mr. Dively.

**MR. DIVELY:** In appeal application A 1999-SU-014. Appellant Than V. Tran and Kim L. Phan at 7605 Bull Run Drive. This is an appeal and our sole job is to make a decision on whether or not to uphold or to overturn the Zoning Administrator. The evidence, I think, is overwhelming that the Zoning Administrator made the correct assessment given the Ordinance. There have been a lot of questions and answers, but a lot of the questions and a lot of the facts have more to do with if this was a special permit. This is not a special permit and I don't know what the result of a special permit would be. It might be very different, but as far as appealing, I think it is clear that the Zoning Administrator was correct both in the definitions in the terms of the Ordinance and the assessment of the evidence. I therefore move that the Zoning Administrator's decision be upheld.

**MR. PAMMEL:** Second the motion.

CHAIRMAN DIGIULIAN: Motion seconded by Mr. Pammel. Discussion? All in favor of the motion?

CHAIRMAN DIGIULIAN: Aye .

MR. DVELY: Aye

MS. GIBB: Aye

MR. HAMMACK: Aye

MR. PAMMEL: Aye

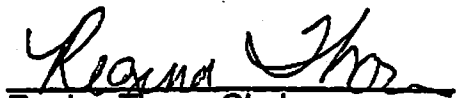
MR. RIBBLE: Aye.

CHAIRMAN DIGIULIAN: Opposed? The motion carries unanimously and the decision of the Zoning Administrator is upheld.

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#### CERTIFICATION

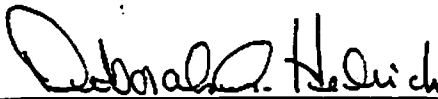
I certify, as the Clerk to the Board of Zoning Appeals, that this is an official verbatim transcript of the Board of Zoning Appeals Public Hearing for Tranh V. Tran and Kim L. Phan A 1999-SU-014 held on July 6, 1999



Regina Thom, Clerk  
Board of Zoning Appeals

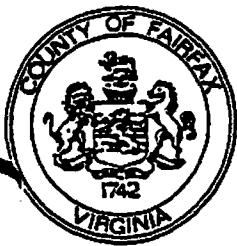
Commonwealth of Virginia  
County of Fairfax

Subscribed before me this 6<sup>th</sup> day of April, 2000.



Notary Public

My commission expires on: November 30, 2001



# FAIRFAX COUNTY

## DEPARTMENT OF PLANNING AND ZONING

Zoning Evaluation Division  
Special Permit and Variance Branch  
12055 Government Center Parkway, Suite 801  
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July 14, 1999

Arthur T. K. Norris,  
Le Chi Thao & Associates  
2111 Wilson Blvd., Ste. 700  
Arlington, Virginia 22201

RE: Appeal Application A 1999-SU-014  
Tranh V. Tran; Kim L. Phan

Dear Mr. Norris:

At its July 6, 1999 meeting, the Board of Zoning Appeals took action to **UPHOLD** the Zoning Administrator's determination regarding the above-referenced appeal application.

If you should have any further questions, please contact the Zoning Administration Division at 324-1314.

Sincerely,

Deborah A. Hedrick, Deputy Clerk  
Board of Zoning Appeals

cc: Michael R. Frey, Supervisor  
Sully District

William Shoup, Deputy Zoning Administrator  
Department of Planning and Zoning

**COMPLAINANT'S  
EXHIBIT #26**



VIETNAMESE BUDDHIST ASSOCIATION  
TRUNG TÂM VẠN-HẠNH  
7605 Bull Run Drive, Centreville, VA 20121 USA  
Telephone: 703-968-8460

## Chúc Mừng Năm Mới *Nam Mô Hoan Hỷ Di Lặc Tôn Phật*

Kính thưa quý Phật Tử,

Mừng Xuân An Lạc, Đón Tết Quê Hương, Đặc Biệt đón mừng Thiên niên kỷ mới, chúng tôi thành tâm kính chúc quý Phật Tử và gia quyến một mùa Xuân mới nhiều hạnh phúc an vui, kiết tường như ý, và chân thành cảm niệm công đức của quý Phật Tử đã nhiệt tâm giúp đỡ tinh thần và tài vật cho sự tồn tại của Trung Tâm Vạn Hạnh. Đón mừng Xuân mới, Trung Tâm Vạn Hạnh sẽ thiết LỄ MỪNG ĐỨC PHẬT DI LẶC ĐẢN SANH, LỄ ĐÓN GIAO THỪA, và LỄ CÚNG RẪM THÁNG GIÊNG, theo chương trình:

**\* Chủ Nhật, ngày 16-1-2000 - ĐẠI LỄ ĐỨC PHẬT THÍCH CA THÀNH ĐẠO**

10:30 trưa - Cử hành Đại Lễ Đức Phật Thích Ca Mâu Ni Thành Đạo

**\* Chủ Nhật, ngày 23-1-2000 - ĐẠI LỄ TẤT NIÊN**

10:30 trưa - Cử hành Đại lễ Tất Niên, tiến cúng Tổ Tiên Ông Bà và chư Hương Linh

**\* Thứ Sáu, ngày 4-2-2000 - ĐÓN TẾT MỪNG XUÂN**

11:00 tối - Lễ Đón Giao Thừa Mừng Tết đến. Ý Xuân Hoan Hỷ

- Thọ hưởng Lộc Phật Đầu Xuân

**\* Mừng Một - Mừng Hai - Mừng Ba Tết. Trong ba ngày đều có lễ cầu nguyện phước lành năm mới.**

11:00 trưa - Lễ Tụng Kinh Cúng Phật Cầu Phước Lành Năm Mới

**\* Chủ Nhật, ngày 13-2-2000 - ĐẠI LỄ KHAI ĐÀN DƯỢC SỰ CẦU AN ĐẦU NĂM**

10:30 trưa - Đại Lễ Khai Đàn Dược Sự Cầu Phước Lành Năm Mới

\* Từ ngày 14-2-2000 đến ngày 19-2-2000, mỗi tối lúc 7:30, tụng kinh Dược Sự, dâng sớ cầu Phước Bình An, giải sao trừ hạn cho quý Phật Tử.

**\* Chủ Nhật, ngày 20-2-2000 - ĐẠI LỄ CÚNG RẪM THÁNG GIÊNG**

10:30 trưa - Cử Hành Đại Lễ Cúng Rằm Tháng Giêng Cầu Phước Lành An Lạc

Chúng tôi trân trọng kính thông báo đến quý Phật Tử chương trình Mừng Xuân Đón Tết của Trung Tâm Vạn Hạnh, để chúng ta cùng dâng lời cầu nguyện một năm mới đầy phúc lợi an khang.

Nhân đây, chúng tôi thiết tha kêu gọi từ tâm của quý Phật Tử và nhất là những Phật Tử đã thờ phụng hương linh thân nhân tại chùa, xin quý vị hoan hỷ phát Tâm Bồ Đề giúp đỡ cho chùa mỗi tháng \$5 hoặc \$10 để nuôi dưỡng ngôi chùa được sống còn lâu dài. Sự phát tâm đóng góp hàng tháng của quý Phật Tử là một quyết định quan trọng cho sự phát triển và tồn tại của Trung Tâm Vạn Hạnh.

Kính chúc quý Phật Tử một mùa Xuân Mới Phúc Lợi An Vui. Kiết Tường Như Ý. Thân Tâm Tự Tại.

Nam Mô Thường Hoan Hỷ Bồ Tát

Sakya Tri-Tue  
-289-

COMPLAINANT'S  
EXHIBIT #27



VIETNAMESE BUDDHIST ASSOCIATION  
TRUNG TÂM VẠN-HẠNH  
7605 Bull Run Drive, Centreville, VA 20121 USA  
Telephone: 703-968-8460

## Kính Mừng Phật Đản *Nam Mô Bốn Sư Thích Ca Mâu Ni Phật*

Kính thưa quý Phật Tử,

Rằm tháng Tư, ngày huy hoàng của nhân loại, ngày ánh sáng Tuệ Giác soi đường cho chúng sanh vượt thoát Sông Mê quay về Bồ Giác, ngày chư thiên các tầng trời tung rải hoa thơm muôn sắc cúng dường Đấng Đại Giác Thích Ca Mâu Ni Phật Đản Sanh. Tưởng nhớ ngày trọng đại của Đức Phật, Trung Tâm Vạn-Hạnh sẽ long trọng cử hành - ĐẠI LỄ MỪNG PHẬT ĐẢN lần thứ 2624, Phật lịch 2544, theo chương trình:

**\* Chủ Nhật, ngày 14-5-2000**

- 10:30 Trưa - CỬ HÀNH ĐẠI LỄ MỪNG PHẬT ĐẢN  
- Ý Nghĩa Ngày Khánh Đản  
- Đại Lễ Tán Hoa Tắm Phật  
- Tiệc Vui Khánh Đản

Chúng tôi trân trọng kính thông báo đến quý Phật Tử chương trình ĐẠI LỄ PHẬT ĐẢN. Sự tưởng nhớ của toàn thể Phật Tử trong ngày vui Khánh Đản sẽ thể hiện được sự kính ngưỡng và lòng biết ơn Đấng TỪ PHỤ THÍCH CA MÂU NI PHẬT, trong tinh thần Từ Bi Hoan Hỷ Hòa Hợp của những người con Phật thuần thành.

Kính Thưa Quý Phật Tử, Nhân ngày Huy Hoàng Đản Sanh của Đức Phật chúng tôi xin kính gửi đến Quý Phật Tử Lá thư kêu gọi đóng góp tài chánh xây cất Chánh Điện Vạn Hạnh, kính mong Quý Phật Tử nhiệt tâm hoan hỷ cúng dường hoặc phất tâm cho mượn tiền trong dịp Đại Lễ Khánh Đản này, Quý vị sẽ tạo được nhiều Phước Đức, nhiều An Lạc Hạnh Phúc. Và đây chính là điểm khởi đầu của Quý Phật Tử được ghi danh đời đời vào Danh Sách Sáng Lập Chánh Điện Vạn Hạnh.

Kính lay Đấng Đại Giác Thế Tôn Từ Bi gia hộ quý Phật Tử và Quý Quyển một mùa Phật Đản Tinh Tấn, Giác Ngộ, và An Lành Hạnh phúc.

Nam Mô Thường Hoan Hỷ Bồ Tát Ma Ila Tát  
Trân Trọng.





Date: 6/20/99

Time: 10:00 am

Address: 7605 Bull Run Drive  
Centreville, VA 20121

Tax Map: 73-1 ((2)) 13      Zoning: R-C

Subject: *Garage used for  
worship service.*

Photographer: *Sandra L. Hicks*  
Sandra L. Hicks





**Date:** June 25, 2000    **Time:** 9:00 – 11:15 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13      **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** Sandra L. Hicks  
Sandra L. Hicks



**Date:** June 25, 2000    **Time:** 9:00 – 11:15 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13      **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** Sandra L. Hicks  
Sandra L. Hicks





**Date:** June 25, 2000    **Time:** 9:00 – 11:15 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13    **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** Sandra L. Hicks  
Sandra L. Hicks



**Date:** June 25, 2000    **Time:** 9:00 – 11:15 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13    **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** Sandra L. Hicks  
Sandra L. Hicks





**Date:** June 25, 2000    **Time:** 9:00 – 11:15 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13      **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** *Sandra L. Hicks*  
Sandra L. Hicks





**Date:** 6/20/99

**Time:** 10:00 am

**Address:** 7605 Bull Run Drive  
Centreville, VA 20121

**Tax Map:** 73-1 ((2)) 13      **Zoning:** R-C

**Subject:** Vehicles parked on  
property during worship  
service.

**Photographer:** Sandra L. Hicks  
Sandra L. Hicks





**Date:** 6/20/99

**Time:** 10:00 am

**Address:** 7605 Bull Run Drive  
Centreville, VA 20121

**Tax Map:** 73-1 ((2)) 13      **Zoning:** R-C

**Subject:** Vehicles parked at  
site for worship service.

**Photographer:**

*Sandra L. Hicks*  
Sandra L. Hicks





**Date:** June 25, 2000    **Time:** 9:00 – 11:15 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13    **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** Sandra L. Hicks  
Sandra L. Hicks



**Date:** August 6, 2000    **Time:** 10:00 – 11:00 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13      **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** Sandra L. Hicks  
Sandra L. Hicks





**Date:** August 6, 2000    **Time:** 1000 – 11:00 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13      **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** Sandra L. Hicks  
Sandra L. Hicks



**Date:** August 6, 2000    **Time:** 10:00 – 11:00 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13    **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** Sandra L. Hicks  
Sandra L. Hicks





**Date:** August 6, 2000   **Time:** 10:00 – 11:00 AM

**Address:** 7605 Bull Run Drive

**Tax Map:** 73-1 ((2)) 13      **Zoning:** R-C

**Subject:** Vietnamese Buddhist Temple

**Photographer:** *Sandra L. Hicks*  
Sandra L. Hicks

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V I R G I N I A

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

----- X	:	
JANE W. GWINN, FAIRFAX COUNTY	:	
ZONING ADMINISTRATOR,	:	
	:	
Complainant,	:	
	:	
versus	:	CHANCERY NO. 163246
	:	
THANH VAN TRAN,	:	
	:	
Respondent.	:	
----- X	:	

Fairfax, Virginia

Tuesday, June 13, 2000

Deposition of

THANH VAN TRAN,

the respondent, called for examination by counsel on behalf of the complainant, pursuant to notice and agreement, at the office of T. David Stoner, 12000 Government Center Parkway, Suite 549, Fairfax, Virginia 22035, beginning at approximately 2:07 p.m., before Deborah L. Natoli, a Verbatim Court Reporter and a Notary Public in and for the Commonwealth of Virginia at large, when there were present on behalf of the respective parties:

DN00-115

1      Appearances:

2            On behalf of the complainant:

3            T. DAVID STONER, ESQUIRE  
4            Assistant County Attorney, Fairfax  
5            12000 Government Center Parkway  
6            Suite 549  
7            Fairfax, Virginia 22035  
8            (703) 324-2421      Fax: 324-3938

9            On behalf of the respondent:

10           LE CHI THAO, ESQUIRE  
11           2111 Wilson Boulevard  
12           Suite 700  
13           Arlington, Virginia 22201  
14           (703) 516-6688

15           Interpreter:

16           NGUYEN VAN TRI  
17           (703) 998-0579      PAGE: (202) 947-6666  
18  
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CONTENTSDeponent

Thanh Van Tran

Page 4

EXHIBITSPage

Tran Deposition Exhibit Number #1

25

Tran Deposition Exhibit Number #2

35

Tran Deposition Exhibit Number #3

40



P R O C E E D I N G S

(Whereupon, the interpreter was duly sworn by the notary public.)

MR. STONER: Before we begin the deposition, Mr. Tri, could you explain for us on the record some of your qualifications as an interpreter?

INTERPRETER: Yes. I have been working as English/Vietnamese and Vietnamese/English interpreter for some 43 years. I start back in Vietnam in 1957. I used to work for the U.S. Government in Vietnam for the military and also for the embassy.

And then when I was drafted into the South Vietnamese Army, I was assigned to the Armed Force Language School as an English instructor. Then I got -- in 1968 I was assigned to the prime minister's office as a translator, and I remained in that position until the fall of South Vietnam in 1975.

I came here in '75, but for first five years I got a full-time job with the U.S. Book Exchange in Washington, D.C., and something about 1984 I started working for the courts in the different jurisdictions in Fairfax County, in Montgomery County. But since 1986, I did full-time interpreter for the D.C. Superior Court,

1 for Fairfax Judicial Center.

2 MR. THAO: Just quick -- very quick  
3 question. How familiar are you with the Buddhism in  
4 Vietnam?

5 INTERPRETER: I'm not a practicing  
6 Buddhist, -- but I'm a Buddhist, but I don't know too  
7 much about Buddhism.

8 MR. THAO: I have no problem.

9 MR. STONER: All right. Just for the  
10 record, this is Cynthia Bailey, a colleague of mine.  
11 She's just here to observe.

12 Whereupon,

13 **THANH VAN TRAN,**  
14 the respondent, was called for examination by counsel on  
15 behalf of the complainant, and, having been first duly  
16 sworn by the notary public, was examined and testified as  
17 follows:

18 **EXAMINATION BY COUNSEL ON BEHALF OF THE COMPLAINANT**  
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Q. As I understand it, Reverend Tran, you are  
a Buddhist Monk; is that right?

10

A. Yes.

11

Q. Do you have any other occupation?

12

A. No, sir.

13

Q. How long have you been a Buddhist Monk?

14

A. Since 1957.

15

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Q. As I understand it, you reside at 7605  
Bull Run Drive in Centreville; is that right?

6

A. Yes.

7

8

Q. And are you the only resident of that  
dwelling?

9

A. Yes.

10

11

Q. What duties do you have as a Monk living  
at that location?

12

13

14

A. I just continue to pursue my devotion to  
Buddhism, because while I was in Vietnam I could not have  
religious freedom.

15

16

Q. I understand from your discovery responses  
that you pray regularly three times a day; is that right?

17

A. Yes, every day I pray three times.

18

19

Q. Is that a common practice among Buddhist  
Monks to pray precisely three times a day?

20

21

A. Yes, it's been tradition from the old days  
of Buddhism.

22

23

Q. And do you pray at the same times each  
day --

1           A.       -- Pray at the same time each day, but  
2 under special circumstance whenever there was a --  
3 because of health reasons or because of other cause, we  
4 may alter the time for praying.

5           Q.       Are you familiar with the Vietnamese  
6 Buddhist Association, Reverend Tran?

7           A.       I came here in 1979, and by 1980 there  
8 were some people who came to help me, and also they -- to  
9 form the Buddhist Association.

10          Q.       And are you presently the executive  
11 director or president of that organization?

12          A.       Yes, on paper, and their president and for  
13 -- so far as work is concerned I am by myself.

14          Q.       So you are the only director who actually  
15 performs duties on behalf of the association; is that  
16 correct?

17          A.       Yes. I just perform my duties as a Monk,  
18 but I do not pay attention to the positions and to the  
19 outside world.

20          Q.       What is the purpose of the Vietnamese  
21 Buddhist Association?

22          A.       Most of the Vietnamese residents here are  
23 Buddhist, but they don't have a place to worship.

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Q. Would it be correct to say that at least one purpose of the association was to form and operate a Buddhist Temple in the Vietnamese tradition?

A. That's our aspiration when we get the money.

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5 Q. Does the association pay any of the  
6 expenses for the property at 7605 Bull Run Drive?

7 A. Yes. The association did pay for the  
8 property at that address because I live there, so I work  
9 for the association.

10 Q. Do you have any other source of income  
11 personally?

12 A. No, I have no other occupation. But  
13 sometimes some Buddhist has some death in the family or  
14 they would ask me to come to perform the rights, so they  
15 give some money and I live with that money in the -- I  
16 give that money for the association.  
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6 Q. Are the association's records kept at 7605  
7 Bull Run Drive?

8 A. Yes.

9 Q. Do you know whether the association is a  
10 tax-exempt organization?

11 A. Yes.

12 Q. Is that because it was formed for a  
13 religious purpose?

14 A. Yes.

15 Q. Do you know what expenses the association  
16 has incurred for building construction?

17 MR. THAO: What year are you talking  
18 about?

19 MR. STONER: I'm speaking generally in any  
20 particular year.

21 THE WITNESS: Yes, I know.

22 BY MR. STONER:

23 Q. What were those expenses for?



1           A.       We rebuilt the garage. We can remodel --  
2 renovate the inside of the building.

3           Q.       This is the garage building on the  
4 property where you live?

5           A.       Yes.

6           Q.       Are vehicles kept in that building?

7           A.       There used to be some vehicles there, but  
8 not any more. We now use the place just for the worship.

9           Q.       When were vehicles last kept in the  
10 building?

11          A.       They were there until we knocked down the  
12 wall of the garage and repair the whole garage.

13          Q.       Was that in --

14                   MR. STONER: I'm sorry.

15                   MR. THAO: Well, they did not knock down  
16 the wall. The wall collapsed. The Monk said that the  
17 wall collapsed, and that's why he rebuilt the garage. He  
18 didn't knock down the wall.

19          BY MR. STONER:

20          Q.       Was that work on that building in 1989?

21                   MR. THAO: He said 1989.

22          BY MR. STONER:

23          Q.       Was the work done in 1989?

1           A.           I do not remember exactly the year, but it  
2 was about in 1989 or '90.  
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Q. Can you describe for me what the inside of the garage looks like?

A. In the garage I have the statue of Buddha.

Q. Is there anything else in the garage?

A. There was also alters as -- alters, according to the Buddhist tradition.

Q. Are the alters there for you, or for others who would come to the garage?

1           A.           It was mainly for my own use, but later  
2 other people came and prayed at the alters. It's like  
3 the tradition in Vietnam whenever some people see a  
4 Buddhist Monk, they will come to visit him and to pray  
5 with him.

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13           Q.           As I understand it, the day when most  
14 people come to your property is on Sunday; is that right?

15           A.           Yes, usually they come on Sundays.

16           Q.           Do you know why that tends to be the day  
17 when most people come?

18           A.           I think because on weekdays most people  
19 have to work, and on Sundays the people go to church or  
20 the temple.

21           Q.           Do you know why you don't have the same  
22 numbers of people coming on Saturdays?

23           A.           I don't know why, because whoever want to

1       come to my place may come, and I don't know why.

2               Q.       Do you know how people know that you are  
3       at this location?

4               A.       Because there are not many Vietnamese  
5       Buddhist Monks in the community, and I have been present  
6       at some ceremonies and gatherings in the community, and  
7       the word spread around and people know where I live.

8               Q.       When people come to your garage, how do  
9       they participate with you in what it is you do there?

10              A.       Because they know at the time I come there  
11       to pray, so they would come to sit or to meditate there.

12              Q.       So they will sit and meditate as you pray;  
13       is that right?

14              A.       Sometimes I pray. Sometimes I just  
15       meditate.

16              Q.       Do you sometimes -- let me strike that.

17                      I understand from your discovery responses  
18       that you sometimes read from sacred texts as well?

19              A.       Yes, I have many, many Buddhist books, and  
20       sometimes I have to read the Buddhist -- the teachings  
21       from Buddha from these books.

22              Q.       Do you read aloud?

23              A.       Yes, sometimes I have to read loud, so I'd

1 go to get some quiet in my mind.

2 MR. THAO: Let's go off the record for a  
3 moment.

4 (Discussion held off the record, not reported by  
5 the court reporter.)

6 BY MR. STONER:

7 Q. If I understand correctly, Reverend Tran,  
8 when you do what is sometimes called praying, you are  
9 reading from the Sutra, from the sacred text; is that  
10 right?

11 A. Yes.

12 Q. And do you read aloud?

13 A. Sometimes aloud, sometimes not.

14 Q. Am I correct that there is a sound system  
15 in the garage?

16 A. Yes, there is a sound system in the garage  
17 because sometimes we have large gatherings of hundreds of  
18 people, so we want everybody to be able to hear.

19 Q. So on those occasions, will you use a  
20 microphone so that people can hear you when you're  
21 praying or reading?

22 A. Yes, I use a microphone because I don't  
23 have a loud voice.

1 Q. Do you use the microphone on ordinary  
2 Sundays?

3 A. Sometimes I use a microphone when there  
4 are several dozen people, but if the crowd is less than  
5 15 or 20 people I wouldn't need the microphone.

6 Q. How many people come to the garage on a  
7 Sunday -- on an ordinary Sunday morning?

8 A. Between 20 to 30 people.  
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17 Q. There are no bathrooms in the garage?

18 A. No, there's no bathroom in the garage  
19 because I want to have the place to be by itself like in  
20 the church is separate from the house where the priest  
21 stays.

22 (Break at approximately 2:55 p.m., with deposition  
23 testimony resuming at approximately 3:27 p.m.)

1 BY MR. STONER:

2 Q. Reverend Tran, I'd like to briefly review  
3 the ownership of the property over the last several  
4 years, and when I say "the property," of course I mean  
5 the property where you live at 7605 Bull Run Drive.

6 When the Vietnamese Buddhist Association  
7 acquired the property, did you go to live there at that  
8 time?

9 A. At the time, I live on Lee Highway. There  
10 were one or two people living there.

11 Q. On Lee Highway?

12 A. There were one or two people at the  
13 property, but I was still living on Lee Highway and moved  
14 there about one year later.

15 Q. So you moved to Bull Run Drive in 1989?

16 A. Yes.

17 Q. Now, it appears that the Vietnamese  
18 Buddhist Association conveyed the property to you in  
19 1993; do you recall that?

20 A. Yes.

21 Q. Why did the association convey the  
22 property to you?

23 A. Well, because it was the association's



1 plan to build a temple, but they could not build at that  
2 location. So they just let me live at that property.

3 Q. The association had intended to build a  
4 temple on the Bull Run Drive property when it bought it?

5 A. Yes.

6 Q. When you speak of the temple that the  
7 association wished to build, what do you mean? What kind  
8 of structure?

9 A. They intended to build a temple -- a  
10 Buddhist Temple like ones in Vietnam with beautiful curve  
11 roofs, but they were not able to do it.

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Q. When did groups of people start visiting the property on Sundays?

MR. THAO: I think that the translation was not very clear. Mr. Stoner's question was when do they start to come -- what year did people start to come on Sunday..

1                   Let me clarify that. He thought that you  
2                   were asking him what time on Sunday the service is  
3                   beginning.

4                   MR. STONER: I understand.

5                   THE WITNESS: It was about 1990.

6                   BY MR. STONER:

7                   Q.       Have the numbers of people visiting the  
8                   property on Sundays changed significantly since 1990?

9                   A.       Well, there were no significant change in  
10                  the number of people visiting the property on Sunday,  
11                  except on special occasions like on the anniversary of  
12                  the death of my father or my master, there were more  
13                  people than usual.

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MR. STONER: Reverend Tran, I'm handing  
you Deposition Exhibit Number 1. Please look at the  
document, and when you've had a chance to review it let  
me know and I'll ask you some questions about it.

(Brief pause.)

BY MR. STONER:

Q. Do you recognize that document, Reverend  
Tran?

A. Yes.

Q. What is it?

A. It is for the new year.

Q. The new year is known as Tet; is that  
right?

1 A. Yes.

2 Q. What is the ceremony -- just very briefly,  
3 the ceremony described for January 16th?

4 A. They commemorate the --

5 MR. THAO: Enlightenment of Buddha.

6 BY MR. STONER:

7 Q. Does that celebration or ceremony always  
8 come two weeks before Tet?

9 A. Yes. It's part of the Tet -- the new year  
10 celebration.

11 Q. What is the ceremony listed for February  
12 13th?

13 A. This is for the prayer for the new year.

14 Q. What is generally involved in these  
15 ceremonies? What sorts of activities?

16 A. We just read the teachings of Buddha and  
17 pray.

18 Q. Is that true for each of the ceremonies  
19 listed in this Exhibit 1?

20 A. Yes, it's all similar.

21 Q. Do you recall generally how many people  
22 attended these ceremonies?

23 A. Several -- for the first ceremony it was

1       between 70 or 80 to 100 people.

2               Q.       That was for the ceremony on January 16th?

3               A.       Yes.

4               Q.       And how many for the one the following  
5 week on January 23rd?

6               A.       Between about 50 and 60 people.

7               Q.       And how many people came to the property  
8 for the Tet ceremony?

9               A.       It's hard to say, but I would estimate  
10 between 300 and 400 people. Sometimes attended sees much  
11 less if it snows.

12              Q.       How long do these ceremonies last?

13              A.       Just one hour.

14              Q.       Is that true for each of the ceremonies  
15 listed?

16              A.       Some ceremonies last 45 minutes. Some  
17 last only 30 minutes.

18                      MR. THAO: Let me clarify something, if I  
19 may. On the Tet's Liberation, you said that there were  
20 300 to 400 people who come on that day.

21                      Do they come at one time, or do they come  
22 spread out all day long?

23                      THE WITNESS: The people, they don't come

1 all at one time. They -- some come early and then went  
2 home, and then others came.

3 MR. THAO: That's for the new year day?

4 THE WITNESS: Yes. This is for the Tet.

5 BY MR. STONER:

6 Q. How many would you estimate came for the  
7 ceremony itself at 11:00 p.m.?

8 A. It was about 300 -- 300 plus. The crowd  
9 is depending on the weather.

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4 Q. Do you recall how many people attended  
5 during the Chanting of the Mantra and the new year  
6 praying on the first three days of Tet?

7 A. Three days?

8 MR. THAO: You mean for each day of the  
9 three days --

10 BY MR. STONER:

11 Q. Each day during the chanting and praying  
12 at 10:30?

13 A. On which day?

14 Q. Well, let's start with the first day,  
15 Monday, the first day of Tet. Do you recall how many  
16 people, generally?

17 A. If the day fell on the weekend, then maybe  
18 70 to 80 people would come a day, but they didn't come  
19 altogether

20 MR. STONER: I was mistaken actually. I  
21 was reading February 4th as Sunday, and obviously it was  
22 Friday. I apologize.

23 BY MR. STONER:



1 Q. Do you recall how many people attended the  
2 ceremony on February 13th?

3 A. Maybe 70, 80 to 100.

4 Q. Let me step back to the second day of Tet,  
5 which I understand would have been Sunday, February 6; is  
6 that right?

7 A. Yes.

8 Q. How many people attended the 10:30  
9 ceremony on that day?

10 A. The 10:30 ceremony -- all day Sunday?

11 Q. Yes?

12 MR. THAO: The second day of Tet is 11:00  
13 a.m. Mr. Stoner is asking you how many people attended  
14 the second day of Tet at the 11:00 a.m. ceremony.

15 MR. STONER: This says 10:30.

16 MR. THAO: It says 11:00.

17 MR. STONER: Oh, okay. I'm looking at a  
18 translation and my translation is wrong. I see, okay.

19 MR. THAO: On the second day of Tet, how  
20 many people attended the service.

21 THE WITNESS: About 70 to 80.

22 BY MR. STONER:

23 Q. And, finally, the February 20th ceremony.

1 How many people attended that?

2 A. Between 50 to 80, 90 people.

3 Q. Am I correct that the second line of the  
4 heading on this document refers to the property as the  
5 Van-Hanh Center?

6 A. Yes, and it's also on the logo for the  
7 center. Because for the first line in English is the  
8 Vietnamese Buddhist Association.

9 Q. What exactly is the Van-Hanh Center?

10 A. Van-Hanh is the name of late superior Monk  
11 in Vietnam, and it was also a name of the Buddhist city  
12 in Vietnam.

13 Q. What does that name designate? Is it the  
14 entire property, or is it a particular structure on the  
15 property? What exactly is the Van-Hanh Center?

16 A. Van-Hanh Center was used because there  
17 were all three of us, the Monks, living there. We used  
18 to attend the Van-Hanh School in the city, and we just  
19 use that name.

20 Q. Is it a designation for the property at  
21 7605 Bull Run Drive?

22 A. Yes, but actually we -- the main reason we  
23 used the word is because the two other Monks and myself,

1 we all attended the university by that name.

2 MR. THAO: I don't know whether you get  
3 the idea. He said that you can call that as the Van-Hanh  
4 Center, but exactly he uses this name with two other  
5 colleagues, just like a small alumni association of  
6 three, so they call the group the Van-Hanh, which is the  
7 name of the center they went to in Vietnam.

8 BY MR. STONER:

9 Q. Could you read for me the next-to-last  
10 paragraph on Exhibit 1, the entire paragraph?

11 MR. STONER: Have him do it, and he can do  
12 it by sentence-by-sentence; whatever works best for you.

13 THE WITNESS: "We'd like to take this  
14 opportunity to appeal to the generosity of all Buddhists  
15 and especially those who have the ashes of the family  
16 members in the temple. We'd like to ask you to give to  
17 the temple \$5 or \$10 each month to help the temple" --  
18 "your monthly contributions will be" -- "the development  
19 and the survival of the Van-Hanh Center."

20 MR. THAO: Now, where in here that you  
21 said there was the word "ash" in here?

22 INTERPRETER: That's the way I interpret  
23 it.

1 MR. THAO: There was no word in there that  
2 said "ash" in there. You just have service for the dead  
3 relatives. There's no "ash" -- anything involving --

4 INTERPRETER: I'm sorry.

5 MR. STONER: Either way. I appreciate  
6 that.

7 BY MR. STONER:

8 Q. How do people donate toward the survival  
9 or subsistence of the temple?

10 A. Well, they ask for the voluntary  
11 contribution of \$5 or \$10 a month, not necessarily every  
12 month.

13 Q. Do people give when they come to the  
14 temple?

15 A. Yes, and sometimes the people just -- they  
16 come and they make the contribution.

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1 BY MR. STONER:

2 Q. Is there a place where they leave their  
3 donation on the property, or how other than that do they  
4 give their money?

5 A. We have a box.

6 Q. A collection box?

7 A. Yes.

8 Q. And where is it?

9 A. It's near the statue of Buddha.

10 Q. In the temple building?

11 A. In the garage.

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MR. STONER: Okay. Let me ask you to look at Exhibit 2. After you've had a chance to read it, tell me whether you recognize it.

(Brief pause.)

BY MR. STONER:

Q. Do you recognize it?

A. Yes.

Q. What is it?

A. This is for the birth of Buddha.

Q. Am I correct that this is announcing the ceremony of Buddha's birthday on May 14th?

A. Yes.

Q. How many people attended this ceremony?

1 A. Just a few hundred people.

2 Q. Is that --

3 A. It -- 100, 200, 300. It cannot be  
4 estimated more closely.

5 Q. How long did the ceremony last?

6 A. Between 45 minutes to one hour.

7 Q. Who receives -- who received these two  
8 notices, Exhibits 1 and 2?

9 A. I gave that to some acquaintance for them  
10 to distribute these in the Vietnamese community.

11 Q. Did you prepare these documents?

12 A. I receive some help, but I just base on  
13 the old documents to prepare.

14 Q. Based on documents from prior years?

15 A. Yes, from prior years.

16 Q. Do you recall for how many years you've  
17 sent out announcements such as these?

18 A. About seven or eight years.

19 Q. And who is the person whose name is listed  
20 at the bottom of the documents?

21 A. It's mine.

22 (Discussion held off the record, not reported by  
23 the court reporter.)

1 BY MR. STONER:

2 Q. Will you send out similar announcements  
3 for the All Souls Day ceremony?

4 A. Yes.

5 Q. Will that ceremony be only on one day, or  
6 will there be a series of ceremonies including that but  
7 before -- let me try that again.

8 Will there be other ceremonies around that  
9 time other than just the one on All Souls Day?

10 MR. THAO: Let me rephrase it.

11 On the All Souls Day, is that an all-day  
12 celebration, or many days?

13 THE WITNESS: Two days.

14 MR. THAO: For the celebration?

15 BY MR. STONER:

16 Q. Is it a Saturday and a Sunday?

17 A. Sunday.

18 Q. Two Sundays?

19 A. Sometimes two Sundays. Sometimes one.

20 Q. And in the past, how many people have  
21 attended those ceremonies?

22 A. About 300 or 400.

23 Q. You mentioned that you gave these



1 announcements to an acquaintance. Was this an  
2 acquaintance through the Vietnamese Buddhist Association?

3 A. Well, they were acquaintances, but they  
4 were not members of the association.

5 Q. Are the ceremonies that we've been  
6 discussing held in the garage, or outside?

7 A. It depends on the weather. When it's too  
8 cold, then the ceremony will be held in the garage. In  
9 fair weather, the people expect to be outside.

10 Q. Am I correct that on occasion, groups of  
11 people will come on busses to the property?

12 A. Yes. On rare occasion, especially during  
13 the Tet holidays, there were the groups of people who  
14 came on the bus and spent about 15, 20 minutes. It's the  
15 Buddhist tradition that the Buddhists will pay a visit on  
16 New Year's Day to the Monk. This is like a day -- in the  
17 Vietnamese tradition, the students come to visit the  
18 teachers.

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VIETNAMESE BUDDHIST ASSOCIATION  
TRUNG TÂM VAN-HANH  
7605 Bull Run Drive, Centreville, VA 20121 USA  
Telephone: 703-968-8460

## Chúc Mừng Năm Mới *Nam Mô Hoan Hỷ Di Lạc Tôn Phật*

Kính thưa quý Phật Tử,

Mừng Xuân An Lạc, Đón Tết Quê Hương, Đặc Biệt đón mừng Thiên niên kỷ mới, chúng tôi thành tâm kính chúc quý Phật Tử và gia quyến một mùa Xuân mới nhiều hạnh phúc an vui, kiết tường như ý, và chân thành cảm niệm công đức của quý Phật Tử đã nhiệt tâm giúp đỡ tinh thần và tài vật cho sự tồn tại của Trung Tâm Vạn Hạnh. Đón mừng Xuân mới, Trung Tâm Vạn Hạnh sẽ thiết LỄ MỪNG ĐỨC PHẬT DI LẠC ĐÀN SANH, LỄ ĐÓN GIAO THỪA, và LỄ CÚNG RẪM THÁNG GIÊNG, theo chương trình:

**\* Chủ Nhật, ngày 16-1-2000 - ĐẠI LỄ ĐỨC PHẬT THÍCH CA THÀNH ĐẠO**

10:30 trưa - Cử hành Đại Lễ Đức Phật Thích Ca Mâu Ni Thành Đạo

**\* Chủ Nhật, ngày 23-1-2000 - ĐẠI LỄ TẤT NIÊN**

10:30 trưa - Cử hành Đại lễ Tất Niên, tiến cúng Tổ Tiên Ông Bà và chư Hương Linh

**\* Thứ Sáu, ngày 4-2-2000 - ĐÓN TẾT MỪNG XUÂN**

11:00 tối - Lễ Đón Giao Thừa Mừng Tết đến. Ý Xuân Hoan Hỷ

- Thọ hưởng Lộc Phật Đầu Xuân

**\* Mừng Một - Mừng Hai - Mừng Ba Tết. Trong ba ngày đều có lễ cầu nguyện phước lành năm mới.**

11:00 trưa - Lễ Tụng Kinh Cúng Phật Cầu Phước Lành Năm Mới

**\* Chủ Nhật, ngày 13-2-2000 - ĐẠI LỄ KHAI ĐÀN DƯỢC SỰ CẦU AN ĐẦU NĂM**

10:30 trưa - Đại Lễ Khai Đàn Dược Sư Cầu Phước Lành Năm Mới

\* Từ ngày 14-2-2000 đến ngày 19-2-2000, mỗi tối lúc 7:30, tụng kinh Dược Sư, dâng sớ cầu Phước Bình An, giải sao trừ hạn cho quý Phật Tử.

**\* Chủ Nhật, ngày 20-2-2000 - ĐẠI LỄ CÚNG RẪM THÁNG GIÊNG**

10:30 trưa - Cử Hành Đại Lễ Cúng Rằm Tháng Giêng Cầu Phước Lành An Lạc

Chúng tôi trân trọng kính thông báo đến quý Phật Tử chương trình Mừng Xuân Đón Tết của Trung Tâm Vạn Hạnh, để chúng ta cùng dâng lời cầu nguyện một năm mới đầy phúc lợi an khang.

Nhân đây, chúng tôi thiết tha kêu gọi từ tâm của quý Phật Tử và nhất là những Phật Tử đã thờ phụng hương linh thân nhân tại chùa, xin quý vị hoan hỷ phát Tâm Bồ Đề giúp đỡ cho chùa mỗi tháng \$5 hoặc \$10 để nuôi dưỡng ngôi chùa được sống còn lâu dài. Sự phát tâm đóng góp hàng tháng của quý Phật Tử là một quyết định quan trọng cho sự phát triển và tồn tại của Trung Tâm Vạn Hạnh.

Chúng chúc quý Phật Tử một mùa Xuân Mới Phúc Lợi An Vui, Kiết Tường Như Ý, Thân Tâm Tự Tại.

Nam Mô Thường Hoan Hỷ Bồ Tát

Sakya Trí-Tuệ

-340-





VIETNAMESE BUDDHIST ASSOCIATION

TRUNG TÂM VAN-HANH

7605 Bull Run Drive, Centreville, VA 20121 USA

Telephone: 703-968-8460

## Kính Mừng Phật Đản *Nam Mô Bốn Sư Thích Ca Mâu Ni Phật*

Kính thưa quý Phật Tử,

Rằm tháng Tư, ngày huy hoàng của nhân loại, ngày ánh sáng Tuệ Giác soi đường cho chúng sanh vượt thoát Sông Mê quày về Bồ Giác, ngày chư thiên các tầng trời tung rải hoa thơm muôn sắc cúng dường Đấng Đại Giác Thích Ca Mâu Ni Phật Đản Sanh. Tưởng nhớ ngày trọng đại của Đức Phật, Trung Tâm Vạn-Hạnh sẽ long trọng cử hành - ĐẠI LỄ MỪNG PHẬT ĐẢN lần thứ 2624, Phật lịch 2544, theo chương trình:

\* Chủ Nhật, ngày 14-5-2000

- 10:30 Trưa . . CỬ HÀNH ĐẠI LỄ MỪNG PHẬT ĐẢN
- Ý Nghĩa Ngày Khánh Đản
  - Đại Lễ Tán Hoa Tắm Phật
  - Tiệc Vui Khánh Đản

Chúng tôi trân trọng kính thông báo đến quý Phật Tử chương trình ĐẠI LỄ PHẬT ĐẢN. Sự tưởng nhớ của toàn thể Phật Tử trong ngày vui Khánh Đản sẽ thể hiện được sự kính ngưỡng và lòng biết ơn Đấng TỪ PHỤ THÍCH CA MÂU NI PHẬT, trong tinh thần Từ Bi Hoan Hỷ Hòa Hợp của những người con Phật thuần thành.

Kính Thưa Quý Phật Tử, Nhân ngày Huy Hoàng Đản Sanh của Đức Phật chúng tôi xin kính gửi đến Quý Phật Tử Lá thư kêu gọi đóng góp tài chánh xây cất Chánh Điện Vạn Hạnh, kính mong Quý Phật Tử nhiệt tâm hoan hỷ cúng dường hoặc phát tâm cho mượn tiền trong dịp Đại Lễ Khánh Đản này, Quý vị sẽ tạo được nhiều Phước Đức, nhiều An Lạc Hạnh Phúc. Và đây chính là điểm khởi đầu của Quý Phật Tử được ghi danh đời đời vào Danh Sách Sáng Lập Chánh Điện Vạn Hạnh.

Kính lay Đấng Đại Giác Thế Tôn Từ Bi gia hộ quý Phật Tử và Quý Quyển một mùa Phật Đản Tinh Tấn, Giác Ngộ, và An Lành Hạnh phúc.

Nam Mô Thường Hoan Hỷ Bồ Tát Ma Ha Tát  
Trân Trọng.



IN THE CIRCUIT COURT OF FAIRFAX COUNTY

**Chancery No. 163246**

**RESPONDENT'S CORRECTION OF THE TRANSCRIPT**  
**OF HIS DEPOSITION ON JUNE 13, 2000**

COMES NOW the Respondent and wishes to register the following corrections in the transcript taken from an oral deposition conducted on June 13, 2000 at the County Attorney's Office in Fairfax.

- Page 7 , Line 17: Mr. Stoner's question was translated as  
"How did you become a Buddhist monk?"

- Page 8, Line 10: Mr. Stoner's question was translated as "What do you do at that place?"

- Page 9, Line 7: The witness' answer was: In 1979 I just arrived in this country. By 1980 some people came to help me. This small group of people formed an association among themselves. I was

included in this association but did not understand and did not pay much attention to it.

- Page 9, Line 12: The witness' answer was: On paper I was many things, president, chairman, etc. Actually, in any way, I have been the only person acting all alone.

- Page 9, Line 17: I simply practice my faith my own way and pay very little attention to statuses, positions, associations, as well as other worldly matters.

- Page 10, Line 22: The witness' answer was: Some people suggested this but until today nothing of that sort has been done.

- Page 11, Lines 3 - 4: the witness' answer was: We did not fund raise to build any temple. We were able to collect monies barely enough to cover the daily basic expenses of the association.

- Page 11, Line 14: the correct word was "RITES" instead of rights.

- Page 11, Line 19: the witness' answer was: We keep telling ourselves that we would like to have a temple some time in the future. But, before we have available an amount of at least \$500,000 to \$1,000,000 we would not do anything, not even look for a location for the building of such temple.

- Page 13, Lines 11 and 12: The witness' answer was: There were cars in the garage until the walls collapsed. The walls collapsed when we tried to repair the roof. The walls that collapsed required us to repair and rebuild the entire garage.

- Page 14, Line 19: The witness' answer was: I am a Buddhist monk. I live in that house and meditate and pray. It is traditional to call where a monk lives a temple. But, exactly, I should not call my house a temple because in everybody's mind a real Temple is in much larger size. It should be built somewhere else.

- Page 15, Line 20: The correct word was "ALTAR" instead of "alters".

- Page 15, Line 22: The correct word was "ALTAR" instead of "alters".

- Page 17, Line 23: The witness' answer was: Sometimes I read the Bible aloud in order to keep my focus and help me concentrate, fighting against outside disturbances and attaining mental peace and quiet.

- Page 31, Line 16: The witness' answer was: The name Van Hanh Center was used only as a keepsake. Three of us monks who together attended a same Buddhist university in Vietnam happened to meet again in this country. That university in Saigon was known as the Van Hanh Center for Advanced Buddhist Studies. We three got the idea of calling my house in Centreville "Van Hanh Center" simply to commemorate our old school that we had attended together in Vietnam. We just borrowed the name as a souvenir.

---

For the Respondent  
Thanh Van Tran

Le Chi Thao, VA State Bar # 21564  
Counsel for the Respondent  
2111 Wilson Blvd., Suite 700  
Arlington, Virginia 22201  
Tel: (703) 516-6688

CERTIFICATE OF SERVICE

This is to certify that a copy hereof was served upon David Stoner, Assistant County Attorney, counsel for the Complainant, via facsimile at facsimile number (703) 324-2665 and in person in court this June 28, 2000.

Le Chi Thao

FAX COVER SHEET

Wednesday, 28 June, 2000 12:25:54 AM

To: David Stoner, Esq  
Attention: Assistant County Attorney  
Fax #: 703-324-2665

From: LE CHI THAO  
Fax #: (703) 351-9292  
Voice: (703) 516-6688

Fax: 4 pages and a cover page.



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR,

Complainant,

v.

THANH VAN TRAN,

Respondent.

In Chancery No. 163246

COMPLAINANT'S FIRST SET OF INTERROGATORIES

TO: Than Van Tran  
c/o Arthur T.K. Norris, Esquire  
Le Chi Thao, Esquire  
Le Chi Thao and Associates  
2111 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201

Complainant, Jane W. Gwinn, Fairfax County Zoning Administrator ("the Zoning Administrator"), by counsel, submits the following interrogatories to Respondent, Than Van Tran, pursuant to Rule 4:8 of the Rules of the Supreme Court of Virginia, to be answered under oath and in writing within 21 days after service thereof.

INSTRUCTIONS AND DEFINITIONS

A. After the answer to each Interrogatory identify separately, and provide the location of, all sources of information (whether documentary, human or otherwise) and all records maintained by you, or any other person or organization upon whom or which you rely in answering the Interrogatory or which pertain or relate to the information called for by the Interrogatory.

COMPLAINANT'S  
EXHIBIT #33

B. These Interrogatories are continuing in nature, pursuant to the Rules of the Supreme Court of Virginia, so as to require you to supplement your answers if you obtain further or different information before trial.

C. When knowledge or information in possession of a party is requested, such request includes the knowledge of the party's employees, officers, partners, servants, agents, representatives, business associates, investigators, the beneficial owners of the property, their agents, and unless privileged, such party's attorneys. If such information is unknown to the party or not in the possession of the party, then include the names and addresses of any person who might have such information.

D. The terms "you" and "your" refer to Thanh Van Tran and the persons mentioned above in subparagraph C.

E. "The Property" means the property located at 7605 Rull Run Drive, Centreville (Tax Map No. 73-1 ((2)) parcel 13) and described in paragraph 3 of the Bill of Complaint.

F. "The Board" means the Board of Supervisors of Fairfax County, Virginia.

G. "The BZA" means the Board of Zoning Appeals of Fairfax County, Virginia.

H. "The VBA" means the Vietnamese Buddhist Association.

I. "The Buddhist religion" refers to the spiritual beliefs and practices of Thanh Van Tran, Mahayama Buddhism, and/or any such system of spiritual beliefs that is being observed on the Property.

J. "The Bill of Complaint" means the Bill of Complaint for Declaratory Judgment and Injunctive Relief filed by the Zoning Administrator in this case.

K. "Inspector Setliff's Affidavit" means the affidavit attached to the Bill of Complaint as Exhibit U.

L. The term "identify," as used in these Interrogatories with regard to a person, means to give the full name, address and telephone number of such person. If you do not know the current address and telephone number of such person, provide any past addresses and phone numbers of which you may be aware.

M. The term "firm" means, without limitation, any firm, partnership, corporation, or other organization or entity.

N. If you interpose an objection of privilege to any of these Interrogatories, specify the grounds on which you base that claim.

#### INTERROGATORIES

1. Identify each person whom you expect to call as an expert witness at trial and, for each such person, state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

Response:

Interrogatory Number 1: Respondent has not determined what experts, if any, he will call at trial.

---

2. Please provide a schedule of any worship, meditation, prayer, and/or any other such religious or spiritual activities occurring on the Property during any standard seven-day week and set forth the approximate number of people who would participate in each such activity.

Response:

Interrogatory Number 2: There are no scheduled worship services during a standard week. Respondent prays three times a day, every day, but has extremely few visitors, except on Sunday. From mid-morning to mid-afternoon on Sundays, a total of approximately 30 to 40 people in the course the day may visit Respondent, speak with him, listen to or participate in the recitation of religious teachings, or pray.

---

3. Please list all dates throughout a calendar year that have special significance or that warrant special observance or celebration in the Buddhist religion.

Response:

Interrogatory Number 3: There are three observed holidays, the lunar new year, which is a secular holiday, observed on February 4, 2000; the Buddha's birthday, which was observed on May 14, 2000; and the "All Souls' Day", which is observed in late August.

---

4. Please describe in detail the activities that occur on the Property on Sundays and on each of the dates set forth in Interrogatory No. 3. Without limiting your response, include the number of people who would visit the Property on such dates.

Response:

Interrogatory Number 4: The activities on Sundays are as described in the response to Interrogatory 2. On the three major holidays mentioned in the response to Interrogatory 3, approximately 300 people throughout the course of the day may appear at the property for an essentially social gathering. In the year 2000, smaller gatherings of about 100 people in the course of the day were held on two of the Sundays prior to the new year, 1/16/2000 and 1/23/2000, and two Sundays afterwards, 2/13/2000 and 2/20/2000.

---

5. Please describe in detail the activities that occur in the garage structure on the Property. Without limiting your response, include a description of the activities conducted in the structure on Sundays and on each of the dates set forth in Interrogatory No. 3.

Response:

Interrogatory Number 5: In the garage structure, people may pray and listen to recitations of religious texts.

6. Describe the activities and uses conducted in the single-family dwelling on the Property. Without limiting your response, include a description of the activities conducted in the dwelling on Sundays and on each of the dates set forth in Interrogatory No. 3.

Response:

Interrogatory Number 6: In the single-family dwelling, people may visit the Respondent, speak with him and with each other, and pay their respects to the Respondent and to Buddha.

---



7. Please identify any organized groups that meet on the Property an average of at least once per month and/or on any of the dates set forth in Interrogatory No. 3.

Response:

Interrogatory Number 7: There are no organized groups that meet on the property. The Vietnamese Buddhist Association exists on paper, but has no membership, and nothing that occurs on the property is based on membership in any organization.

---

8. Identify each person who has knowledge of the activities occurring on the Property, including those occurring on Sundays and on each of the dates set forth in Interrogatory No. 3.

Response:

Interrogatory Number 8: The respondent has knowledge of the activities. Otherwise, see the objection to this interrogatory.

---

9. Describe the history, purpose, membership, and leadership of the VBA. Without limiting your response, identify the members and officers of the VBA and state when and for what purpose it was formed; when and where it meets; what, if any, real or personal property it owns; and on what basis, if any, the VBA or its property is exempt from taxation.

Response:

Interrogatory Number 9: The VBA is a District of Columbia non-profit corporation formed in 1980 for the purpose of operating a Buddhist temple and receiving donations; it does not have meetings; it does not own real or personal property except for cash; the property at issue belongs to the respondent. The VBA is tax-exempt under section 501(c)(3).

---

10. Identify each person who resides on the Property and, for each such person, state whether he or she is a Buddhist monk; how long he or she has lived on the Property; what language(s) he or she speaks; and in which language(s) he or she is fluent.

Response:

Interrogatory Number 10: Only the Respondent resides on the property. He is a Buddhist monk and has resided there since 1989. He is fluent in Vietnamese only.

---

11. Please identify all persons who visit the Property for religious, prayer, spiritual, and/or worship activities an average of at least once per month.

Response:

Interrogatory Number 11. See objection.

12. Identify each person you intend to call as a fact witness in the trial of this case, and state in detail the subject matter of each witness's testimony.

Response:

Interrogatory Number 12: Respondent has not identified fact witnesses to be called.

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR

By: David Stover

Counsel

DAVID P. BOBZIEN  
COUNTY ATTORNEY

By: T. David Stoner

T. David Stoner (VSB No. 24366)  
Assistant County Attorneys  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
(703) 324-2421  
Counsel for Complainant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of April 2000 a true copy of the foregoing document was mailed, first-class postage prepaid, to:

Arthur T.K. Norris, Esquire  
Le Chi Thao, Esquire  
Le Chi Thao and Associates  
2111 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201

T. David Stoner  
T. David Stoner

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**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR,

**Complainant,**

v.

**Chancery No. : 163246**

**THANH VAN TRAN,**

**Respondent.**

OATH TO ANSWERS TO INTERROGATORIES

**I, Than Van Tran, Respondent, hereby state under oath that:**

1. I am the same Than Van Tran who answered the Complainant's First Set of Interrogatories, the answers to which are attached hereto.

2. The answers to said interrogatories are true and correct to the best of my knowledge and belief.

Thanh Van Tran

STATE OF VIRGINIA,

COUNTY OF ARLINGTON, to wit:

Personally appeared before me this 30 day of MAY, 2000, Than Van Tran, who subscribed his name to the forgoing and made oath that the statements contained in said answers are true and correct to the best of his knowledge and belief.

Anna Lisa H. Hunt  
Notary Public

My Commission Expires: APRIL 30, 2001



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE W. GWINN, FAIRFAX COUNTY :  
ZONING ADMINISTRATOR,

Complainant,

v.

THANH VAN TRAN,

Respondent.

In Chancery No. 163246

COMPLAINANT'S FIRST REQUESTS FOR ADMISSION

TO: Than Van Tran  
c/o Arthur T.K. Norris, Esquire  
Le Chi Thao, Esquire  
Le Chi Thao and Associates  
2111 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201

Complainant, Jane W. Gwinn, Fairfax County Zoning Administrator ("the Zoning Administrator"), by counsel, pursuant to Rules 4:1 and 4:11 of the Rules of the Supreme Court of Virginia, requests that Respondent, Than van Tran ("Tran"), within 21 days after service of this request, admit or deny the truth of the following statements.

INSTRUCTIONS AND DEFINITIONS

A. These Requests are continuing in nature, pursuant to the Rules of the Supreme Court of Virginia, so as to require you to supplement your answers if you obtain further or different information before trial.

B. When knowledge or information in possession of a party is requested, such request includes the knowledge of the party's employees, officers, partners, servants, agents,

representatives, business associates, investigators, the beneficial owners of the property, their agents, and unless privileged, such party's attorneys.

C. The documents referred to in these Requests were hand-delivered to your counsel as Complainant's exhibits on June 28, 2000.

D. The terms "you" and "your" refer to Thanh van Tran and the persons mentioned above in paragraph B.

E. "The Property" refers to the property located at 7605 Rull Run Drive, Centreville (Tax Map No. 73-1 ((2)) parcel 13) and described in paragraph 3 of the Bill of Complaint.

F. "The VBA" means the Vietnamese Buddhist Association.

#### REQUESTS FOR ADMISSION

1. The document provided to you as Complainant's Exhibit 1 is an authentic and genuine copy of a deed dated July 28, 1988, conveying the Property from Laurence D. Rowley and Edith H. Rowley to the VBA.

2. The document provided to you as Complainant's Exhibit 2 is an authentic and genuine copy of a deed dated April 23, 1993, conveying the Property from the VBA to you.

3. The document provided to you as Complainant's Exhibit 3 is an authentic and genuine copy of a deed dated October 10, 1997, conveying a one-percent ownership interest in the Property to Kim Lieu Phan.

4. The document provided to you as Complainant's Exhibit 4 is an authentic and genuine copy of a deed dated March 30, 1999, conveying Kim Lieu Phan's one-percent ownership interest in the Property to you.

5. The document provided to you as Complainant's Exhibit 5 is an authentic and genuine copy of Fairfax County Zoning Map No. 73-1.

6. The document provided to you as Complainant's Exhibit 6 is an authentic and genuine copy of a statement submitted by Le Chi Thao, attorney for the VBA, in conjunction with the VBA's 1989 special permit application for the Property.

7. The document provided to you as Complainant's Exhibit 7 is an authentic and genuine copy of the "Special Use Permit Plat" submitted by or on behalf of the VBA in conjunction with the its 1989 special permit application for the Property.

8. The document provided to you as Complainant's Exhibit 17 is an authentic and genuine copy of the "Special Permit Plat" submitted by or on behalf of the VBA in conjunction with the its 1994 special permit application for the Property.

9. The document provided to you as Complainant's Exhibit 19 is an authentic and genuine copy of a letter dated November 14, 1994, from Lynne J. Strobel to Virginia Ruffner in conjunction with the the VBA's 1994 special permit application for the Property.

10. The document provided to you as Complainant's Exhibit 20 is an authentic and genuine copy of a letter dated February 20, 1995, from Lynne J. Strobel to Virginia Ruffner, with an enclosed letter dated February 14, 1995, from you to Virginia Ruffner.

11. The document provided to you as the second page of Complainant's Exhibit 20 is an authentic and genuine copy of a letter dated February 14, 1995, from you to Virginia Ruffner.

12. The document provided to you as Complainant's Exhibit 21 is an authentic and genuine copy of a special permit affidavit filed in conjunction with SP-95-Y-021.

13. The document provided to you as Complainant's Exhibit 27 is an authentic and genuine copy of a flyer prepared by you announcing, among other things, ceremonies being performed on the Property in conjunction with Tet in the year 2000.

14. The document provided to you as Complainant's Exhibit 28 is an authentic and genuine copy of a flyer prepared by you announcing, among other things, ceremonies being performed on the Property in conjunction with the Buddha's birthday in May 2000.

15. The document provided to you as Complainant's Exhibit 29 is an authentic and genuine copy of the contents of an Internet webpage located at the following Internet address:  
<http://sinthuc.org.tuhoc/vanhnh.htm>.

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR

By: T. David Stoner  
Counsel

DAVID P. BOBZIEN  
COUNTY ATTORNEY

By: T. David Stoner  
T. David Stoner (VSB No. 24366)  
Assistant County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
(703) 324-2421  
Counsel for Complainant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of July 2000 a true copy of the foregoing document was mailed, first-class postage prepaid, to:

Arthur T.K. Norris, Esquire  
Le Chi Thao, Esquire  
Le Chi Thao and Associates  
2111 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201

T. David Stoner  
T. David Stoner

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR,

Complainant,

v.

THANH VAN TRAN,

Respondent.

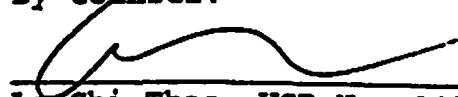
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Chancery No.: 163246

ANSWERS TO REQUESTS FOR ADMISSIONS

Requests for admission 1 through 15: Admitted. All other objections preserved.

Respectfully Submitted,  
Than Van Tran  
By Counsel:

  
\_\_\_\_\_  
Le Chi Thao, VSB No. 21564  
Arthur T. K. Norris, VSB No. 32536  
Le Chi Thao and Associates  
2111 Wilson Boulevard  
Suite 700  
Arlington, VA 22201  
(703) 528-6221  
Counsel for Defendant

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

**JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR,**

Complainant,

V.

Chancery No.: 163246

**THANH VAN TRAN,**

**Respondent .**

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the forgoing Answer to Requests for Admission was this 31<sup>st</sup> day of JULY, 2000, mailed first class, postage prepaid to:

Counsel for the Complainant, T. David Stoner, 1200 Government Center Parkway, Suite 549, Fairfax, Virginia 22035-0064.

**Arthur T. K. Norris, VSB No. 32536**  
**Le Chi Thao and Associates**  
**2111 Wilson Boulevard**  
**Suite 700**  
**Arlington, VA 22201**  
**(703) 528-6221**  
**Counsel for Respondent**

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR,

Complainant,

v.

THANH VAN TRAN,

Respondent.

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: In Chancery No. 163246  
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FINAL DECREE

THIS CAUSE came before the Court for trial on August 10, 2000, on the Bill of Complaint for Declaratory Judgment and Injunctive Relief filed by the Complainant, Jane W. Gwinn, Fairfax County Zoning Administrator ("the Zoning Administrator"), against the Respondent Thanh Van Tran ("the Respondent"); and

IT APPEARING TO THE COURT that the property that is the subject of this Final Decree is located at 7605 Bull Run Drive, Centreville, Virginia, is shown on the Fairfax County Real Property Identification Map as Tax Map No. 73-1((2)) parcel 13 ("the subject property"), and is owned by the Respondent; and

IT FURTHER APPEARING TO THE COURT that this is an action brought by the Zoning Administrator against the Respondent for violations of § 2-303(1) of the Fairfax County Zoning Ordinance ("the Zoning Ordinance") by his use of the subject property as a place of worship without an approved Group 3 Special Permit; and

IT FURTHER APPEARING TO THE COURT, after considering the pleadings, the evidence, the authorities, and the arguments of counsel, that the Zoning Administrator is entitled to the declaratory judgment and injunctive relief she seeks; now, therefore, it is hereby

ADJUDGED and DECREED, for the reasons stated from the bench on August 10, 2000, and reflected in the attached transcript, which is incorporated herein by reference, that:

1. The Respondent's use of the subject property as a place of worship without an approved Group 3 Special Permit is in violation of § 2-303(1) of the Zoning Ordinance.

2. The Respondent, his tenants, lessees, and/or assigns, and all others using the subject property shall, within 30 days from the entry of this Final Decree, cease the use of the subject property as a place of worship and permanently remove to a lawful site all items related solely to such use, including but not limited to the shoe racks, collection box, and speaker system. The Respondent shall not resume such use unless and until he has secured the approval of a valid Group 3 Special Permit allowing it. Specifically, the Respondent shall not do or allow to be done any of the following:

- A. Use the garage structure, the residence, or any other portion of the subject property as a place of worship, meeting hall, or other place of assembly without the proper approval(s) from all necessary authorities.
- B. Advertise the subject property, by any medium, as a place of worship, meeting hall, or other place of assembly.
- C. Use the subject property for memorial services, weddings, or other worship services.

*KRM* ~~Notwithstanding these prohibitions, the Respondent may have up to 15 visitors in his residence for Bible study or other similar activities no more than once a week.~~

3. This Final Decree does not authorize the use of the subject property for any uses not otherwise permitted by the Zoning Ordinance.



copy to land records 8-28-00

4. The Zoning Administrator and/or her agents are allowed, for two years from the date of this Final Decree, to enter the subject property to ensure that the Respondent has complied and continues to comply with the terms of this Final Decree.

5. The Respondent, his agents, employees, tenants, and any successors-in-interest are permanently enjoined from using or permitting the subject property to be used in violation of this Final Decree or Zoning Ordinance § 2-303(1).

6. The Clerk of the Fairfax County Circuit Court shall record a copy of this Final Decree among the land records of Fairfax County to give notice of the prohibitions and restrictions contained herein to any successors-in-interest of the Respondent and index this Final Decree as follows:

GRANTOR: Thanh Van Tran

GRANTEES: Jane W. Gwinn; Fairfax County Zoning Administrator

AND THIS CAUSE IS FINAL.

ENTERED this 25 day of August 2000.

By: Kathleen H. Mackay  
KATHLEEN H. MACKAY, JUDGE  
FAIRFAX COUNTY CIRCUIT COURT

WE ASK FOR THIS: EXCEPT THAT COMPLAINANT OBJECTS  
TO THE DELETION OF THE LAST SENTENCE OF PARA-  
GRAPH 2 AS IT WOULD FACILITATE THE COMPLIANCE  
DAVID P. BOHZIEN WITH AND ENFORCEMENT OF THE DECREE  
COUNTY ATTORNEY (JEAN ATAN)

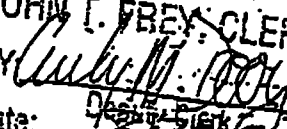
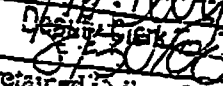
By: T. David Stoner  
T. David Stoner (VSB No. 24366)  
Assistant County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
(703) 324-2421  
Counsel for Complainant

SEEN AND *OBJECTE TO AS STATED IN PROCEEDING*  
*AND IN ATTACHED STATEMENT OF OBJECTION*

LE CHI THAO & ASSOCIATES

By: 

Arthur T.K. Norris, Esquire (VSB No. 32536)  
Le Chi Thao, Esquire (VSB No. 21564)  
2111 Wilson Boulevard, Suite 700  
Arlington, Virginia 22201  
(703) 528-6221  
Counsel for Respondent

A COPY TESTE:  
JOHN T. FREY, CLERK  
BY:   
Date:   
Original retained in the office of  
the Clerk of the Circuit Court of  
Fairfax County, Virginia

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE W. GWINN, FAIRFAX COUNTY  
ZONING ADMINISTRATOR,

Complainant,

v.

THANH VAN TRAN,

Respondent.

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Chancery No.: 163246

RESPONDENT'S OBJECTIONS TO FINAL DECREE

1. Respondent incorporates by reference all of his objections to the proceedings set forth in his Answer, his Pretrial Brief, his other pleadings, and stated by counsel at trial.

2. The requirement in paragraph 2 of the proposed decree to remove all items related solely to use as a place of worship, and listing certain items, improperly restrains and punishes lawful conduct, and does not relate to the existence of large gatherings. A sound system can be used for music, talk radio or other lawful uses, and its possession in a garage is not prohibited under any ordinance. A "collection box" and shoe rack are not contraband and are not prohibited by any ordinance. The provision may include all forms of religious symbolism, texts, statues and the like, the possession of which is lawful for any resident. The injunction provision is vague and overly broad, and would chill First Amendment freedoms.

3. Paragraph 2(A) improperly adds the language "meeting hall or other place of assembly" in attempt to prohibit all non-worship use of the property. This goes beyond the scope of any prior notice of violation, any finding of violation, and beyond the relief prayed for in the bill of complaint, and beyond the scope of the ordinances relied on by the County. Non-worship gatherings are permitted in private residences.

4. Paragraph 2(B) is an improper prior restraint on speech absent any finding of a compelling state interest in restricting pure speech. It is overly broad and vague and would chill with the threat of jail any discussion of the property as a monk's residence or as a place where any religious-minded person might visit the monk.

5. Paragraph 2(C) prohibits conduct that is clearly legal on an occasional basis even under the County's interpretation of the ordinance. There is no evidence that weddings or memorial services specifically have been conducted so as to support an injunction. It is a content-based restriction on First Amendment speech and associational activity related specifically to death and marriage.


6. The choice of the number 15 at the end of Paragraph 2 is arbitrary, capricious, not supported by factual findings about the permissible residential use of the property. The restriction to "Bible study or similar activities" discriminates against non-religious speech and association. Gatherings of many more than 15 people are generally permitted on an occasional basis even under the County's interpretation of the ordinance.

7. The inspection provision is unnecessary and unduly violates rights of privacy and security against unreasonable search. As the County demonstrated at trial, on-property inspection was not necessary to prove that people were gathering at the property. It would chill the use of religious symbolism for lawful purposes in his home by the monk.

8. Because the injunction is overly broad, vague and restricts fundamental rights, it would render the property unmarketable if it were to run with the land, as the successors-in-interest language provides in Paragraph 5 and elsewhere. The injunction should instead be re-considered upon any transfer of the property to determine if the new owner needs to be enjoined as well.

9. All other objections are preserved.

Respectfully Submitted,  
Than Van Tran  
By Counsel:



---

Le Chi Thao, VSB No. 21564  
Arthur T. K. Norris, VSB No. 32536  
Le Chi Thao and Associates  
2111 Wilson Boulevard  
Suite 700  
Arlington, VA 22201  
(703) 528-6221  
Counsel for Defendant

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

**Respondent .**

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) Chancery No.: 163246  
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## OBJECTIONS

Counsel for the Complainant, T. David Stoner, 1200 Government Center Parkway, Suite 549, Fairfax, Virginia 22035-0064.

AWAY TO

## **ASSIGNMENTS OF ERROR**

1. The Fairfax County Circuit Court's injunction prohibiting use of the appellant's residence as a "place of worship" and the zoning ordinance pursuant to which the injunction was entered improperly and selectively restrict religious gatherings, speech, and associational conduct on the basis of religious content, without restricting non-religious gatherings and conduct in a general and religiously neutral manner, and thereby violate the constitutional standard of legislative and judicial neutrality with respect to religion.

2. The circuit court's injunction and the ordinance on which it was based are unconstitutionally vague and overly broad as applied to worship-related conduct in a residence because they fail to inform the appellant with any specificity what size, frequency and nature of gatherings, or other conduct, will expose him to penalties; the restrictions chill and prohibit religious conduct that is constitutionally protected.