



BOARD OF ZONING APPEALS REGULAR MEETING AGENDA

Town Council Chambers
765 Lynn Street, Herndon, VA 20170

Thursday, September 26, 2024 | 7:00 PM

1. Call to Order

2. Approval of Minutes

- a. August 22, 2024, Board of Zoning Appeals Regular Meeting Minutes

3. Comments

- a. Comments from the Staff Members
- b. Comments from the Board Members
- c. Comments from Citizens

Members of the public may, for one 3-minute period, provide public comments, requests, consent or general item comments, and comments on matters not included on the agenda.

4. Public Hearing

- a. BZA #24-005, 1119 Burwick Drive, to seek a variance from Table 78-21(f), Features Allowed Within Required Setbacks and Yards, to allow an addition to the existing single-family residence.
- b. BZA #24-004, 641 Nash Street - Appeal of a Zoning Administrator's Decision. An appeal of the Zoning Administrator's decision issued on July 30, 2024, declaring the Town Plan SLDP #23-03 to be withdrawn, pursuant to Section 780-153.1(c)(2), submittal of revised application and time limit for resubmission.

5. New Business

- a. Resolution to establish the Board of Zoning Appeals meeting schedule for January 1, 2025, to December 31, 2025

6. Adjournment



**Board of Zoning Appeals
Regular Meeting
Agenda Item 2.a.**

Agenda Item: August 22, 2024, Board of Zoning Appeals Regular Meeting Minutes

Meeting Date: September 26, 2024

Category: Approval of Minutes

Prepared by: Aaron Zoellick, Clerk of Boards and Commissions

Description:

This is a request to approve the August 22, 2024, Board of Zoning Appeals regular meeting minutes.

Background:

N/A

Budget Impact:

N/A

Recommendation:

Recommend approval, as presented.

Attachments:

1. 08.22.2024 Board of Zoning Appeals Regular Meeting Minutes



**HERNDON BOARD OF ZONING APPEALS
Regular Meeting Minutes
Thursday, August 22, 2024**

1. Call to Order

Vice Chair Porter called the August 22, 2024, Board of Zoning Appeals regular meeting to order at 7:00 p.m. in the Town of Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Board Members Stephanie Frye, Stephen Mundt, Yung Kim, and Vice Chair Stevan Porter. Chair Cari Lyn Pierce was absent.

Staff present during the meeting: Lauri Sigler, Deputy Town Attorney; David Stromberg, Zoning Administrator; and Aaron Zoellick, Clerk of Boards and Commissions.

Vice Chair Porter determined there was a quorum of four members present.

2. Approval of Minutes

a. July 25, 2024, Board of Zoning Appeals Regular Meeting

Board Member Mundt motioned to approve the July 25, 2024, Board of Zoning Appeals regular meeting minutes.

Motion seconded by Board Member Frye.

The question was called on the motion, which was carried by a 3-0 roll call vote.

Board Member Kim abstained.

Chair Pierce was absent.

3. Comments

a. Comments from the Board Members

Vice Chair Porter stated that water will be shut off to the building for maintenance work immediately following the meeting.

b. Comments from the Staff Members

No comments were offered.

c. Comments from Citizens

No comments were offered.

4. Public Hearings

Certificates of Publication from the Editor of the Fairfax County Times Newspapers were filed, showing that notices of the following public hearing items were duly advertised in the August 2 and August 9, 2024, issues.

a. BOARD OF ZONING APPEALS, BZA #24-003, 811 Elden Street, to seek a variance from Section 78-30.2(g), R-10 Dimensional Standards, to allow a proposed covered front porch to encroach into the required 35-foot front yard setback.

Vice Chair Porter opened the public hearing and called on the Clerk to administer the oath for the Zoning Administrator. Mr. Zoellick administered the oath to Mr. Stromberg.

Mr. Stromberg presented the staff report and staff presentation dated August 22, 2024, which are on file with the Department of Community Development. Mr. Stromberg stated that this application is seeking a variance to allow a covered front porch to encroach into the 35-foot front yard setback. Staff is recommending approval of BZA #24-003 with conditions in accordance with the proposed resolution for approval.

The Board members and staff discussed this item, including clarification on whether the applicant wanted to put a screen on the porch.

Vice Chair Porter recognized the applicant to provide comments.

Mr. Zoellick administered the oath to the applicant, Steven D. Mitchell.

The applicant provided comments supporting staff's recommendation and explained why they wanted to add the front porch to the property.

The Board members, staff, and the applicant discussed this item, including (1) clarification on how wide the porch will be; and (2) clarification on where the porch will be constructed.

Vice Chair Porter recognized members of the public for comment.

Mr. Zoellick administered the oath to Arthur Vermillion, 811 Elden Street.

Mr. Vermillion provided comments supporting the application.

Vice Chair Porter stated that the board received one public comment via email.

Vice Chair Porter closed the public hearing and moved to the board level for discussion.

Board Member Mundt commented that the variance request is in keeping with the community.

Board Member Frye motioned to approve and grant the requested variance for BZA #24-003 with two conditions in accordance with the draft resolution attached to the staff report based on the findings therein and that granting the variance would alleviate an undue hardship due to a physical condition relating to the property or improvements thereon.

Motion seconded by Board Member Kim.

The question was called on the motion, which was carried by a 4-0 roll call vote.

Board members Frye, Kim, Mundt, and Vice Chair Porter voted "Aye."

Chair Pierce was absent.

5. Adjournment

There being no further business, and without objection, the August 22, 2024, Board of Zoning Appeals regular meeting was adjourned at 7:19 p.m.

Agenda Item: BZA #24-005, 1119 Burwick Drive, to seek a variance from Table 78-21(f), Features Allowed Within Required Setbacks and Yards, to allow an addition to the existing single-family residence.

Meeting Date: September 26, 2024

Category: Public Hearing

Prepared by: David Stromberg, Zoning Administrator

Description:

There is an existing uncovered porch on the back of the house that is 34 feet in width and extends 9 feet rearward from the rear façade. The applicant is requesting to enclose a 12-foot portion of the rear deck with a roof and with screens. The resulting screened porch would be 108 square feet.

Background:

Zoning Ordinance Text Amendment ZOTA #08-03 was approved by the Town Council on October 14, 2008, with the specific purpose of allowing small additions to encroach into the rear yard setback. Table 78-21(f) is the language established by that ZOTA and allows encroachments into the rear yard provided the addition does not exceed three parameters:

1. The lot has a rear yard of at least 25 feet.
2. The length of the rear addition shall not exceed 1/3 of the linear horizontal measurement across the entire rear façade of the principle dwelling unit, or 15 feet, whichever is more.
3. Such rear addition shall not exceed 14 feet in height measured from the floor of the main living level featuring kitchen, dining, and living room areas.

The proposal meets the second and third parameters. Lots in the Estates at Eagle Lie are all unable to meet the first parameter due to this development being a cluster development with smaller lots.

If the variance is approved, the applicant must still obtain all required Chesapeake Bay Preservation Act and building permit approvals.

Budget Impact:

N/A

Recommendation:

Approval of the variance with staff condition.

Attachments:

1. Staff Report
2. Resolution for Approval (Proposed)
3. Application
4. Resolution for Denial (Proposed)
5. Zoning Exhibit With Dimensions
6. Legal Ad

STAFF REPORT

Agenda Item: BZA #24-005 – 1119 Burwick Drive - Variance

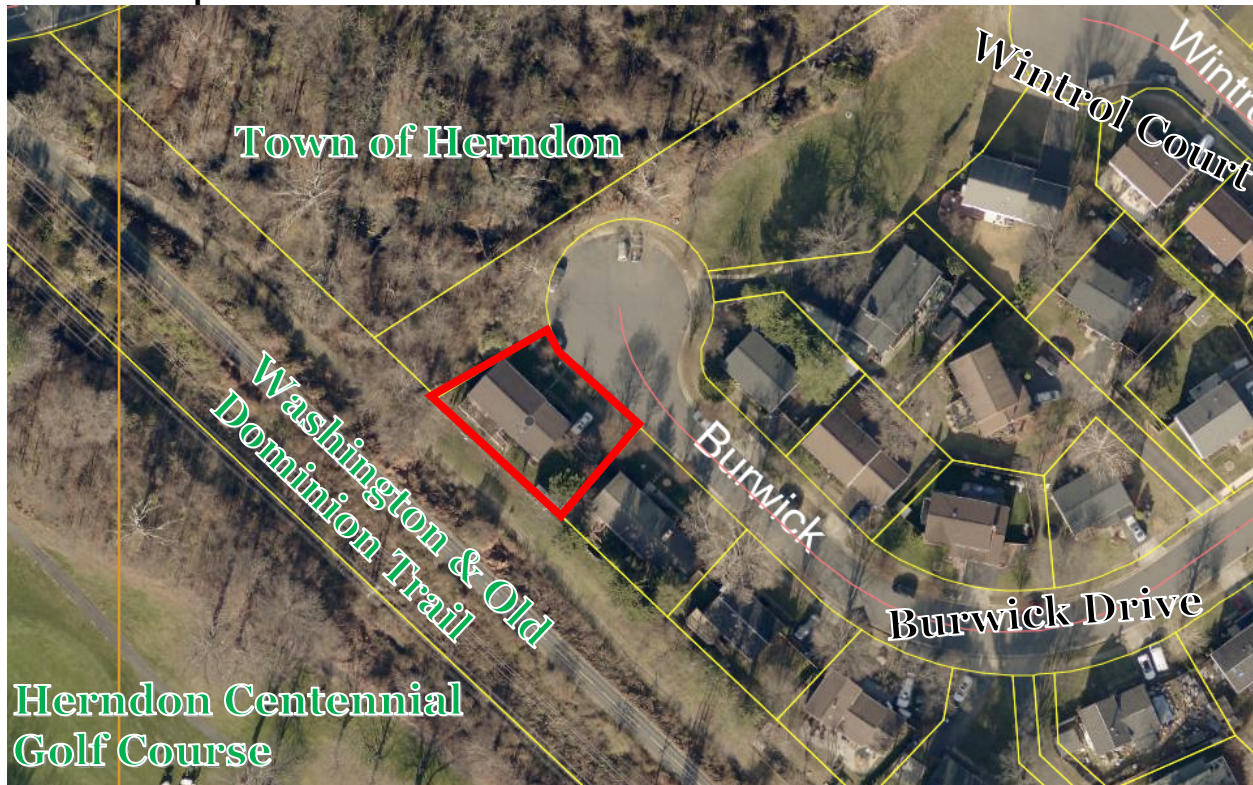
Meeting Date: September 26, 2024

Staff Contact: David Stromberg, AICP, Zoning Administrator

Summary Information:

Requested Variance(s)	To seek a variance from Section 78-21(f), Features Allowed Within Required Setbacks and Yards, to allow an addition to the existing single-family residence. The required rear yard setback is 18 feet and the existing residence is located approximately 18 feet from the rear property line. The existing deck is located approximately 9 feet from the property line. The applicant is requesting to cover 12 feet of the existing rear deck to create a covered, screened-in porch of 108 square feet.		
Address	1119 Burwick Drive		
Fairfax County Tax Map Number	0104 19 0023		
Owners & Applicants	M. Teresa Yacoub & Ehab S. Yacoub		
Zoning	PDR, Planned Development - Residential		
Lot Area	5,790 square feet		
Property Use	Residential single family		
Required Yards and Setbacks (Estates at Eagle Lie)	Front: 10 feet Rear: 18 feet Left side: 2 feet Right side: 2 feet		
Principle Structure Distance from Lot Lines	Front façade: 21 feet Rear facade: 18 feet Rear porch: ~9 feet Left side: 27.9 feet Right side: ~8 feet		
Adjacent Zoning	North: PDR East: PDR South: R-10 West: R-10		
Building Type(s)	Detached single family	Date of Construction:	1985

Location Map:



Background & Site Description:

Site Description

The property is located within the Estates at Eagle Lie planned residential subdivision. The rezoning for the development was approved by the Town Council in 1979 (Z-79-103) as a cluster development; a type of development that concentrates buildings in closer proximity than usual with the purpose of preserving open space for historic or environmentally sensitive features. In this development, land was preserved for the Folly Lick Creek floodplain.

The lot size in the Estates at Eagle Lie ranges from 4,548 square feet to 9,435 square feet, with an average lot size of 6,825 square feet. The minimum lot size in the R-10 district is 10,000 square feet and the minimum lot size in the R-15 district is 15,000 square feet.

The setback requirements in the Estates at Eagle Lie are 10 feet (front), 18 feet (rear), and 2 feet (side). The setback requirements in R-10 are 35 feet, 25 feet, and 10 feet. The setback requirements in R-15 are 45 feet, 25 feet, and 15 feet.

The applicant's lot is 5,790 square feet and meets the setback requirements for the Estates at Eagle Lie.

The Board of Zoning Appeals approved a variance on September 24, 2015, (BZA #15-01) to increase the lot coverage in order to allow a 364-foot addition on the side of the house.

Case Details & Proposal:

There is an existing uncovered porch on the back of the house that is 34 feet in width and extends 9 feet rearward from the rear façade. The applicant is requesting to enclose a 12-foot portion of the rear deck with a roof and with screens. The resulting screened porch would be 108 square feet.

Staff Analysis:

Zoning Ordinance Compliance

Zoning Ordinance Text Amendment ZOTA #08-03 was approved by the Town Council on October 14, 2008, with the specific purpose of allowing small additions to encroach into the rear yard setback. Table 78-21(f) is the language established by that ZOTA and allows encroachments into the rear yard provided the addition does not exceed three parameters:

1. The lot has a rear yard of at least 25 feet.
2. The length of the rear addition shall not exceed $\frac{1}{3}$ of the linear horizontal measurement across the entire rear façade of the principle dwelling unit, or 15 feet, whichever is more.
3. Such rear addition shall not exceed 14 feet in height measured from the floor of the main living level featuring kitchen, dining, and living room areas.

The proposal meets the second and third parameters. Lots in the Estates at Eagle Lie are all unable to meet the first parameter due to this development being a cluster development with smaller lots.

If the variance is approved, the applicant must still obtain all required Chesapeake Bay Preservation Act and building permit approvals.

Variance Request – to allow a covered porch to encroach into the rear setback, approximately 9 feet from the rear property line.

Criteria from Section 78-155.4(d)(1) – Variances	Meets or Does not Meet	Why the application meets or does not meet the criteria of Section 78-155.4(d)(1)
Strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon.	Meets	The provisions of Table 78-21(f) were drafted for residential lots in the R-10 and R-15 zoning district. The design of this cluster development and the original developer's decision to build the house at the 18-foot rear yard setback prevents the ability to construct a screened-in porch.
The property was acquired in good faith and any hardship was not created by the applicant for the variance.	Meets	The property was acquired in good faith and the applicant has not performed any unpermitted construction.
The granting of the variance will not be of substantial detriment to adjacent property and nearby properties.	Meets	The proposed screened-in porch is located on the southwest corner of the house. The porch would not be visible to any adjacent properties because property to the west is owned by the Town of Herndon as part of the Folly Lick fluvial plane and property to the south is the W&OD trail with the Herndon Centennial Golf Course on the other side of the trail.
The condition or situation of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.	Meets	The unique nature of this development does not warrant a general amendment to the zoning ordinance.

The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property	Meets	If granted, this variance would not alter the permitted uses or permitted intensity of the R-10 zoning district.
The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance	Meets	Modifications to PD, Planned Development, districts occur at the time of rezoning and development.

Board of Zoning Appeals Alternatives:

The following alternatives are available to the Board of Zoning Appeals for its decision on BZA #24-005.

1. Recommendation for approval.
2. Recommendation for approval with conditions.
3. Recommendation for denial.
4. Continuance of the application to October 24, 2024.

Staff Recommendation:

The variance should be approved based on the ability to meet all six criteria of Section 78-155.4(d)(1).

Staff further recommends the following conditions:

1. The maximum encroachment of the roof is 9 feet from the rear façade of the house.

**TOWN OF HERNDON, VIRGINIA
BOARD OF ZONING APPEALS**

RESOLUTION

SEPTEMBER 26, 2024

Resolution – to grant Variance Application BZA #24-005, 1119 Burwick Drive, to seek a variance from Section 78-21(f), Features Allowed Within Required Setbacks and Yards, to allow an addition to the existing single-family residence. The required rear yard setback is 18 feet and the existing residence is located approximately 18 feet from the rear property line. The existing deck is located approximately 9 feet from the property line. The applicant is requesting to cover 12 feet of the existing rear deck to create a covered, screened-in porch of 108 square feet.

RECITALS

The applicants and owners, M. Teresa Yacoub and Ehab S. Yacoub have submitted a variance application to Section 78-21(f) of the Zoning Ordinance, Herndon Town Code, to allow a proposed covered screened-in porch of 9 feet by 12 feet to be constructed over an existing rear deck, approximately 9 feet from the rear property line on a property located at 1119 Burwick Drive and identified as Fairfax County Tax Map Number 0104 19 0023.

The Board of Zoning Appeals has reviewed this application and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code on September 26, 2024, and reviewed the application against the criteria of Section 78-155.4(d)(1).

THEREFORE BE IT RESOLVED, by the Board of Zoning Appeals of the Town of Herndon, Virginia, that:

1. The Board **grants** the requested variance based on the findings set out below and identified in the staff report:

The strict application of the ordinance would unreasonably restrict the utilization of the property; and

OR

Granting the variance would alleviate an undue hardship due to a physical condition relating to the property or improvements thereon; and

- a. The Board further finds that all of the following apply:

- i. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; and
- ii. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; and
- iii. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; and
- iv. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
- v. The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application;

2. The board imposes the following conditions on the granting of the variance:

- a. The maximum encroachment of the roof is 9 feet from the rear façade of the house.

In favor: _____

Against: _____

Attest: _____

Recording Secretary

Date: _____



Department of Community Development
777 Lynn Street
Herndon, Virginia 20170-4602

BOARD OF ZONING APPEALS
APPLICATION FOR A VARIANCE

Submittal of this form with **original signatures is required**. **PLEASE PRINT OR TYPE** (Unless otherwise indicated.)

Request for a Variance from Town Code Section: Variance to required setbacks to enclose screen deck by 40%
To Permit: 140 square feet of enclosed screen deck
Address of the Subject Property (including apt/suite #): 1119 Burwick Drive, Herndon, VA 20170
Lot area: 5,790 square feet

Are any site alterations or any alterations to the building's exterior or interior planned or underway in connection with this use (or were any alterations done)? ☒ No ☐ Yes Please describe:

Name and role of principal contact for this application (property owner, agent authorized to act on behalf of property owner, or contract purchaser):

M. Teresa YACoub and Ehab S. YACoub, Property Owners

Mailing Address

1119 Burwick Drive, Herndon, VA 20170

2teresayacoub@gmail.com

703.966.2144

None

E-mail address

Telephone #

FAX #

The undersigned hereby applies for a Variance under the provisions of § 78-202.4 of the Herndon Town Code.

I hereby affirm and certify that:

- The information provided on this form is true and correct to the best of my knowledge.
- The requirements associated with this application have been read and are understood.
- The use and occupancy of buildings and/or the use of land noted above is in conformance with all provisions of the Town of Herndon, Virginia Zoning Ordinance regulations to the best of my knowledge.
- The applicant must attend the public hearing scheduled for this application with the Board of Zoning Appeals and the application may be postponed or denied if the applicant does not appear on the assigned date.

M. Teresa Yacoub
Ehab S. Yacoub

08-20-2024
08-20-2024

Signature of Applicant (Property Owner, Contract Purchaser, or Authorized Agent)

Date

TO BE SUBMITTED WITH THIS APPLICATION

- ✓ Name and title of all Co-Applicants (Property Owner(s), Contract Purchasers, and Agents Authorized to Act on Behalf of the Property Owner) with respective mailing addresses, telephone numbers, fax numbers, and e-mail addresses;
- ✓ A letter signed by the owner or owner's agent consenting to the application for the variance (if applicable);
- ✓ Six copies of a statement of support demonstrating (per § 78-202.4) that:
 - owing to special circumstances or conditions beyond the property owner's control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), the strict application of the terms of the Zoning Ordinance would result in unnecessary or unreasonable hardship;
 - such need would not be shared generally by other properties;
 - the deviation would not be contrary to the public interest or intent of the Zoning Ordinance;
 - the application does not involve a change in use from those permitted in Article IV of the Zoning Ordinance;
- ✓ Six copies of a Site Plan or Plat of the property, drawn to scale, showing all existing buildings including accessory buildings and any proposed structure or alteration. Requests for variances to height, setbacks or other architectural provisions must be accompanied with a dimensional drawing showing the features desired;
- ✓ Six copies of any other drawings, pictures, plans and information that might assist the Board in making its decision.

REQUIREMENTS FOR ALL APPLICATIONS (Zoning Ordinance § 78-201.3)

- NA A statement from the landowner(s) authorizing an agent to act on their behalf (if applicable);
- ✓ If a pre-application conference took place, a statement indicating the date and time a pre-application conference was held with the Town, as well as a list of participants in the conference;
- ✓ A receipt or other documentation indicating that taxes have been paid on lands subject to the application (may be obtained when application is filed);
- ✓ Application fee.

For Office Use Only:

Application Received by:	Date: 8/20/24	Case No.:
Tax Map Reference: 010419 0023	Zoning District: PD-R	
Fee paid: \$152.00	Status of Taxes: ☒ Paid ☐ Delinquent	

**Distribution
after
approval:**

Applicant

Community
Development

Fire
Department

Finance

TO BOARD OF ZONING APPEALS
TOWN OF HERNDON, VA

PROPERTY ADDRESS

1119 Burwick Drive
Herndon, VA 20170-3437

PROPERTY OWNERS/APPLICANTS

M. Teresa Yacoub
Ehab S. Yacoub

PROPERTY OWNERS CONTACT INFORMATION

2teresayacoub@gmail.com
703.966.2144

VARIANCE APPLICATION STATEMENT

Date: August 20, 2024

As Co-Owners of Property 1119 Burwick Drive, Herndon, VA 20170-3437, we are filing a Board of Zoning Appeals, Application for a Variance, in regards to Denial of BLS #24-014 for a proposed enclosed screen deck. Our 2024 calendar year Real Estate Taxes are Paid-in-Full for both the County of Fairfax and the Town of Herndon (Map #0104-19-0023).

Prior to filing this Variance Application, a pre-application Conference was held at 11:00 am on 08-02-2024, at the Herndon Municipal Center, 2nd Floor. Present at the Conference were:

- Property Owner, Mrs. M. Teresa Yacoub;
- Zoning Administrator, Mr. David Stromberg;
- Building Inspector, Mr. Jeffery Schwietz; and
- Community Planner, Mr. Fadrique I. Iglesias.

Mr. and Mrs. Yacoub are requesting that a variance be approved because the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of our property and that the approval of the variance would alleviate a hardship due to the physical condition relating to the property. Further, approval of the variance would surely alleviate a hardship on behalf of Mrs. Yacoub with continuing medical (aging disability) challenges.

We acquired our property in good faith the end of May 1998, and that any hardship was not created by us, the Applicants, in requesting this variance. Our property is recorded at the Fairfax County Department of Tax Administration at Deed Book 10415-1706, Map #0104-19-0023, Legal Description is Estates at Eagle Lie, Lot 23. Our property is one of 48 parcels, with the average lot size being 6,825 square feet, whereby the largest lot is 9,435 square feet, and the smallest lot size is 4,548 square

feet. Our lot size is 5,790 square feet, making our parcel on the smaller sized lots by placing it in an extraordinary situation or condition. Thus, approval of the variance would alleviate a hardship due to the physical condition relating to the property.

We are requesting approval of a variance to screen-in a portion of our deck (approximately 140 square feet), so that we can use the screen-in deck free from medically related insect and bug infections, bites/scratches/annoyances from critters, fresh air for breathing in order to calm down medical history of lung pulmonary difficulties, and to relieve joint pain. To restate, we are requesting approval of a variance as evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of our property, both physically and medically; and, as such, the variance would alleviate a hardship.

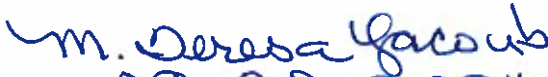
This hardship is not generally shared by other properties within this zoning district and the same vicinity. Approval of the variance would not be of substantial detriment to the adjacent property given that it is vacant and that the character of the district would not be changed by the granting of this variance. On the east side of our property, our neighbor of 14+ years, who owns Lot #24 (Map #0104-19-0024) and whose address is 1117 Burwick Drive, has given her support of our variance request and that she strongly requests approval of our variance application by writing a letter of approval for submission hereto with our variance application. Therefore, your granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of our geographical area.

I turned 68 years old on August 13. I am Aging in Place (AIP) in my home in the Town of Herndon. I have lived in the Town of Herndon for 26+ years. My husband is also AIP. I have a sister who lives in Herndon; she is also AIP. Like my sister, we share the same genes of our mother of having chronic joint disease. Like my maternal grandmother and mother, I also have pulmonary lung complications. I want to AIP in my home on a portion of a screened-in deck so that I can live a healthier AIP life style; **by Right, APPROVAL is warranted** and I respectfully request that you APPROVE our variance application.

We believe that through rationale we have explained and have shown that we meet *all* of the criteria for you to APPROVE our variance request. Because our evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to the physical condition relating to the property and that the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance, **by Right, APPROVAL is warranted.**

And, that the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; and that the condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; and that the granting of the variance does not result in a use that is not otherwise permitted; and the relief sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application; and that the character of the zoning district in which the property is located will not be changed by the granting of the variance, **by Right, APPROVAL is warranted.**

Thank you,


08-20-2024

M. Teresa Yacoub, Property Owner
1119 Burwick Drive
Herndon, VA 20170-3437

Email: 2teresayacoub@gmail.com
Phone: 703.966.2144

Thank you,


08-20-2024

Ehab S. Yacoub, Property Owner
1119 Burwick Drive
Herndon, VA 20170-3437

Barbara Nicolini
1117 Burwick Drive
Herndon, VA 20170
571.232.4026
erikanic@hotmail.com

BOARD OF ZONING APPEALS
c/o Mr. David Stromberg
Zoning Administrator, Community Development
Town of Herndon
777 Lynn Street, Herndon, VA 20170

August 20, 2024

Reference: **Letter of Support of Application for a Variance re BLS #24-014**
Applicants - Property Owners: M. Teresa Yacoub and Ehab S. Yacoub
Property Address: 1119 Burwick Drive; Herndon, VA 20170

Dear Board of Zoning Appeals:

I am pleased to be writing a letter in support of my neighbors', Ehab and Teresa Yacoub, request for approval of their Application for a Variance to alleviate hardships and to *NOT* restrict the utilization of their property. I purchased my home in 2010; we have been good neighbors for 14+ years. I enjoy living and being active in the Town of Herndon.

Teresa and Ehab have shared with me the need to alleviate a hardship because of the physical condition of their property and to alleviate a hardship because of medical needs. Alleviation of these hardships have my 100% support of their variance request of approval to screen-in a portion of their deck. Our decks are located on opposite ends of our homes. I cannot recall the last time when we have seen each other on our decks; we see each other mainly from the front of our homes. And, if we would see each other on our decks, we would need to use our phones to call each other because of the distance we are apart from each other. In other words, we do not cause any disturbance to each other. And, on the other side of Teresa and Ehab's home is a vacant lot. Therefore, Teresa and Ehab's request for a variance meets, among others, Variance Criteria: "The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area." As their neighbor, I support approval of their Application for a Variance. If you need any further information or have any questions or concerns, please contact me without delay.

I thank you for **APPROVING** my neighbor's Application for a Variance.

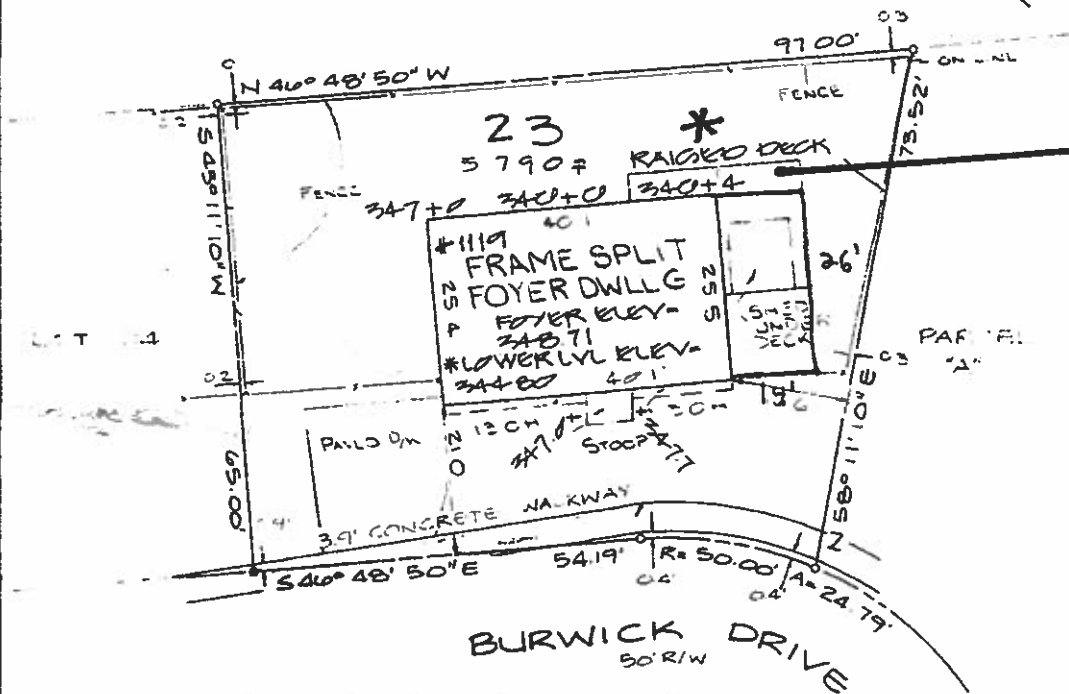
Sincerely,



Barbara Nicolini
Property Owner: 1117 Burwick Drive, Herndon, VA 20170

FOR YOUR INFORMATION

NORTHERN VIRGINIA REGIONAL
FAIRFAX AUTHORITY



* Approximate Elevation. Surveyor denied access.

The property shown hereon appears in a March 1990 FIRM Zone A2, an area of 100 year flood with base flood elevations and flood hazard factors determined. Base flood elevations specified for this property are between 344' and 346'.

347+0 Denotes spot elevations

HOUSE LOCATION SURVEY
LOT 23

ESTATES AT EAGLE LIE

TOWN OF HERNDON
FAIRFAX COUNTY, VIRGINIA

SCALE 1"=20' APRIL 18 1991

27 Sep 91-Spot elevations & floor elevations added.

Surveyor's Note: Lowest elevation at outside of dwelling is 4" above 100 year flood elevation, therefore dwelling is not in flood plain.

CHARLES R. JOHNSON

CONSULTING CIVIL ENGINEERS & LAND SURVEYORS

GOLF COURSE PLAZA - EAST

11480 SUNSET HILLS ROAD

SUITE 120 E

RESTON, VIRGINIA 22090

CERTIFIED CORRECT

Charles R. Johnson

L.S. NO. 1144

THE LOCATIONS OF ALL THE EXISTING IMPROVEMENTS ON THIS PROPERTY HAVE BEEN CAREFULLY ESTABLISHED BY A TRANSIT-TAPE SURVEY AND UNLESS OTHERWISE SHOWN, THERE ARE NO ENCROACHMENTS

NO TITLE REPORT FURNISHED

* RAISED DECK
Enclosed
SCREEN
DECK

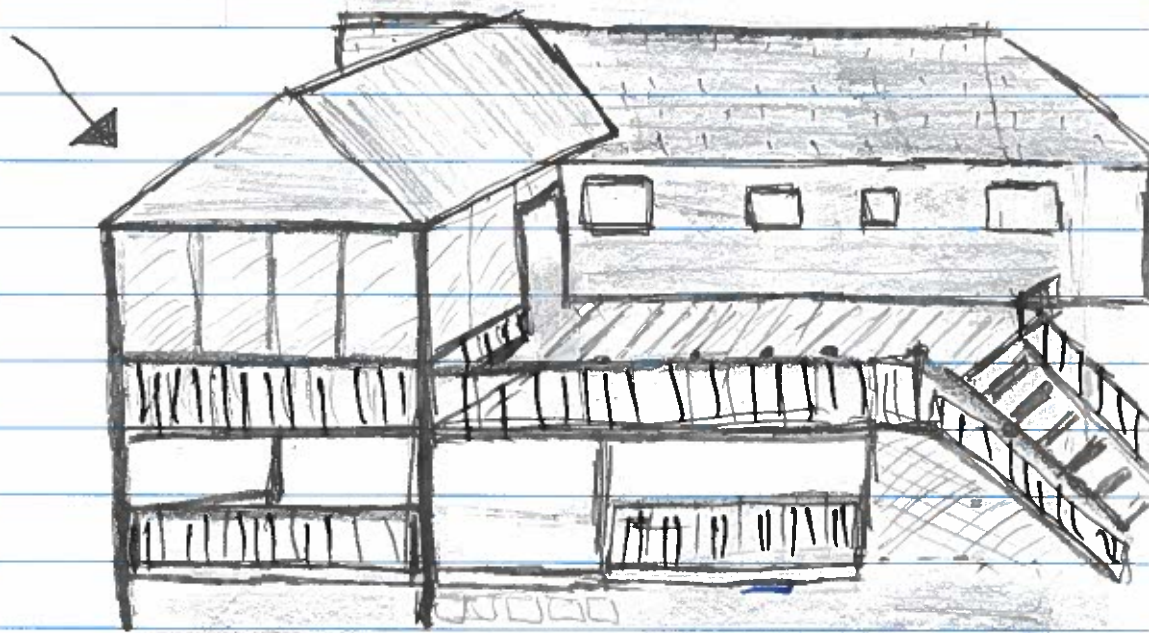
Property Owners: YACOUN, M. Teresa and Ehab S.

1119 Burwick Drive

Herndon, VA 20170

Variance Application

Proposed Enclosed Screen Deck



Ehab S. Yacoub
08-20-2024

RECEIPT

Town of Herndon
Department of Community Development
777 Lynn Street
Herndon, Virginia 20170-4602

3075

DATE 8/20/24

RECEIVED FROM

M. Teresa Yacoub
One Hundred Fifty Two

\$ 152.00

DOLLARS

FOR

Variance - 1119 Burwick St.

AMOUNT OF ACCOUNT

152.00

☐ CASH

THIS PAYMENT

152.00

☒ CHECK

☐ CREDIT CARD

BALANCE DUE

00

☐ MONEY ORDER

BY 

THANK YOU

M. TERESA YACOB
1119 BURWICK DR.
HERNDON, VA 20170-8487

168

68-7487/2560

08-20-2024

DATE

PAY TO THE
ORDER OF

Town of Herndon \$ 152.00

One Hundred Fifty Two + 00/100

DOLLARS

☒

Security
Features
Details on
Back

NAVY
FEDERAL

Credit Union

FOR

ADDN FOR Variance M. Teresa Yacoub

TRANSIT ROUTING NUMBER

CHECK NUMBER

ACCOUNT NUMBER

Printable page

MAP #: 0104 19 0023
YACOUB EHAB S

1119 BURWICK DR

Owner

Name	YACOUB EHAB S,
Mailing Address	1119 BURWICK DR HERNDON VA 20170 3437
Book	10415
Page	1706

Co-Owners

YACOUB M TERESA

Parcel

Property Location	1119 BURWICK DR HERNDON VA 20170 3437
Map #	0104 19 0023
Tax District	H0000
District Name	DRANESVILLE TOWN OF HERNDON
Land Use Code	Single-family, Detached
Land Area (acreage)	
Land Area (SQFT)	5,790
Zoning Description	PD-R(Planned Dev-Residential)
Utilities	WATER CONNECTED SEWER CONNECTED GAS NOT AVAILABLE
County Inventory of Historic Sites	NO
County Historic Overlay District	NO For further information about the Fairfax County Historic Overlay Districts, CLICK HERE For properties within the towns of Herndon, Vienna or Clifton please contact the town to determine if the property is within a town historic district.
Street/Road	PAVED
Site Description	BUILDABLE-AVERAGE LOT

Stub Number

410998365

Legal Description

Printable page

MAP #: 0104 19 0023

YACOUB EHAB S

1119 BURWICK DR

Stub Number

410998365

Summary of 2024 Taxes

Year	General Fund Net Taxes	Special Tax District	Service Charges	Interest	Penalty	Other Charges	Amount Paid	Balance Due
2024 1ST HALF DUE	\$3,396.72	\$886.17	\$0.00	\$0.00	\$0.00	\$0.00	-\$4,282.89	\$0.00
2024 2ND HALF DUE	\$3,396.71	\$886.16	\$0.00	\$0.00	\$0.00	\$0.00	-\$4,282.87	\$0.00
Total:	\$6,793.43	\$1,772.33	\$0.00	\$0.00	\$0.00	\$0.00	-\$8,565.76	\$0.00

Prepays and Refunds

Prepays	\$0.00
Pending Refunds	\$0.00
GRAND TOTAL	\$0.00

Special tax districts include levies for pest infestation control (i.e. gypsy moth, mosquitoes), Community Center taxes, and Transportation Districts. For more information see <http://www.fairfaxcounty.gov/taxes/real-estate/tax-rates>.

Source: Fairfax County Department
of Tax Administration, Real Estate Division.

**TOWN OF HERNDON, VIRGINIA
BOARD OF ZONING APPEALS**

RESOLUTION

SEPTEMBER 26, 2024

Resolution – to deny Variance Application BZA #24-005, 1119 Burwick Drive, to seek a variance from Section 78-21(f), Features Allowed Within Required Setbacks and Yards, to allow an addition to the existing single-family residence. The required rear yard setback is 18 feet and the existing residence is located approximately 18 feet from the rear property line. The existing deck is located approximately 9 feet from the property line. The applicant is requesting to cover 12 feet of the existing rear deck to create a covered, screened-in porch of 108 square feet.

RECITALS

The applicants and owners, M. Teresa Yacoub and Ehab S. Yacoub have submitted a variance application to Section 78-21(f) of the Zoning Ordinance, Herndon Town Code, to allow a proposed covered screened-in porch of 9 feet by 12 feet to be constructed over an existing rear deck, approximately 9 feet from the rear property line on a property located at 1119 Burwick Drive and identified as Fairfax County Tax Map Number 0104 19 0023.

The Board of Zoning Appeals has reviewed this application and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code on September 26, 2024, and reviewed the application against the criteria of Section 78-155.4(d)(1).

THEREFORE BE IT RESOLVED, by the Board of Zoning Appeals of the Town of Herndon, Virginia, that:

1. The Board ***denies*** the requested variance based on the findings set out below and identified in the staff report:

The strict application of the ordinance does not unreasonably restrict the utilization of the property; and

OR

Granting the variance does not alleviate an undue hardship due to a physical condition relating to the property or improvements thereon; and

- a. The Board further finds that all of the following do not apply:
- i. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; and
 - ii. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; and
 - iii. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; and
 - iv. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
 - v. The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application;

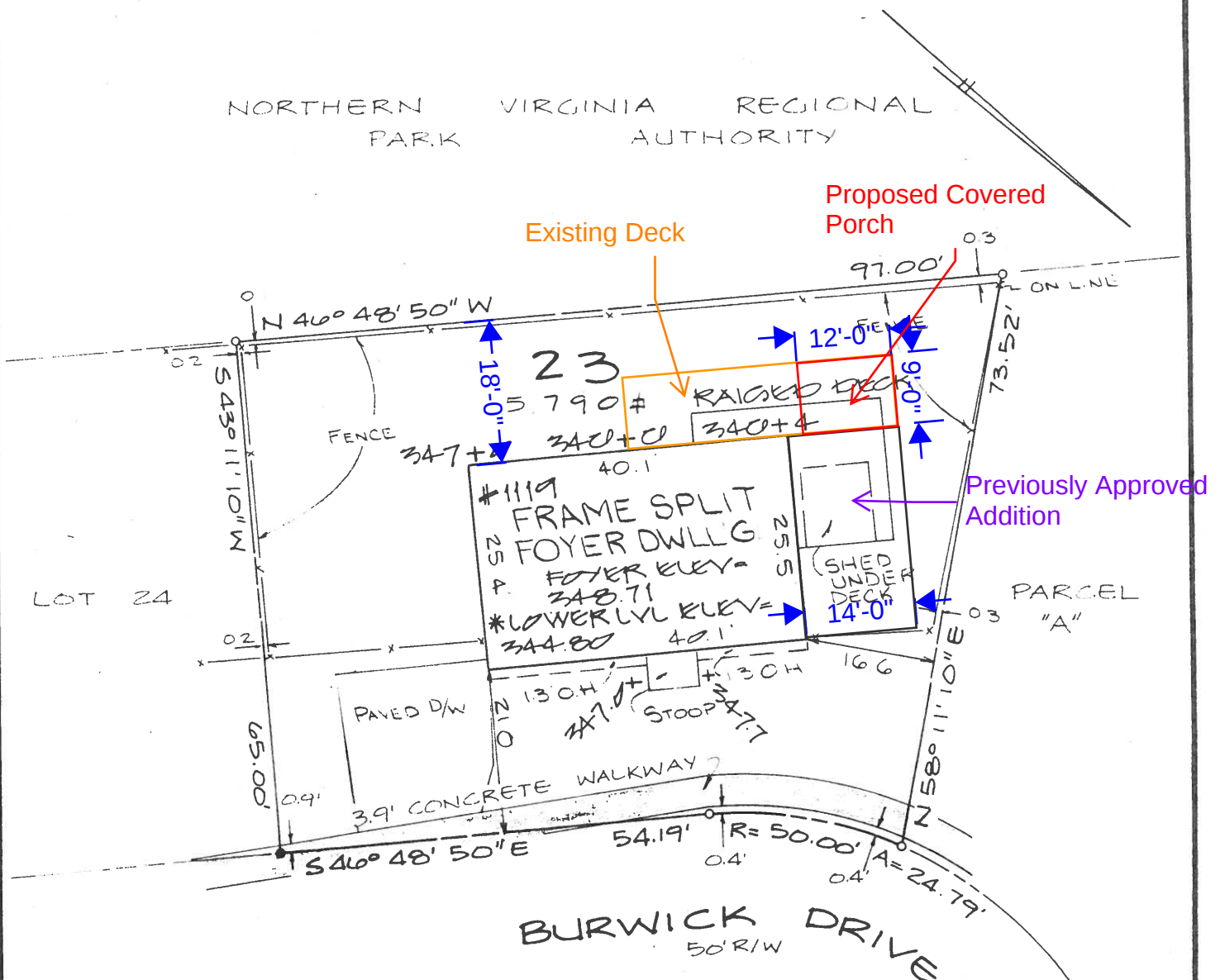
In favor: _____

Against: _____

Attest: _____

 Recording Secretary

Date: _____

NORTHERN VIRGINIA REGIONAL
PARK AUTHORITY

* Approximate Elevation. Surveyor denied access.

The property shown hereon appears in a March 1990 FIRM Zone A2, an area of 100 year flood with base flood elevations and flood hazard factors determined. Base flood elevations specified for this property are between 344' and 346'.

347.0 Denotes spot elevations

HOUSE LOCATION SURVEY LOT 23 ESTATES AT EAGLE LIE

TOWN OF HERNDON
FAIRFAX COUNTY, VIRGINIA

SCALE: 1" = 20' APRIL 18 1991
27 Sep 91-Spot elevations & floor elevations added.

Surveyors Note: Lowest elevation at outside of dwelling is 4" above 100 year flood elevation, therefore dwelling is not in flood plain.

CHARLES R. JOHNSON

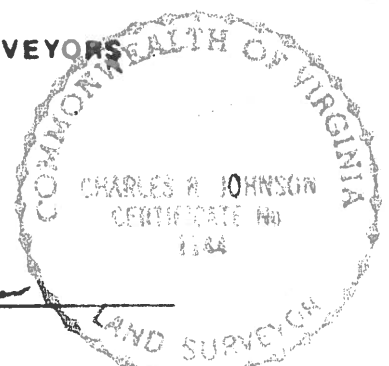
CONSULTING CIVIL ENGINEERS & LAND SURVEYORS

GOLF COURSE PLAZA - EAST
11480 SUNSET HILLS ROAD
SUITE 120E
RESTON, VIRGINIA 22090

CERTIFIED CORRECT

Charles R. Johnson

L.S. NO. 1144



THE LOCATIONS OF ALL THE EXISTING IMPROVEMENTS ON THIS PROPERTY HAVE BEEN CAREFULLY ESTABLISHED BY A TRANSIT-TAPE SURVEY AND UNLESS OTHERWISE SHOWN, THERE ARE NO ENCROACHMENTS.

NO TITLE REPORT FURNISHED

Town of Herndon, Virginia
Notice of Public Hearing

Notice is hereby given that the **Board of Zoning Appeals** (BZA) of the Town of Herndon, Virginia, will hold a public hearing on Thursday, September 26, 2024, at 7:00 p.m. in the Herndon Council Chambers Building, located at 765 Lynn Street, Herndon on the following items:

BOARD OF ZONING APPEALS, BZA #24-002, 641 Nash Street – Appeal of a Zoning Administrator’s Decision. An appeal of the Zoning Administrator’s decision issued on July 30, 2024, declaring Town Plan SLDP #23-03 to be withdrawn, pursuant to Section 78-153.1(c)(2), submittal of revised application and time limit for resubmission. The 10,194 square-foot lot is located at 641 Nash Street, on the southeast corner of Nash Street and Spring Street. The property is zoned R-10, Single Family Residential. Fairfax County Tax Map Number 0162 02 0139. Appellants and property owners: Francis Kenney Jr. and Caitlin Kenney.

BOARD OF ZONING APPEALS, BZA #24-005, 1119 Burwick Drive, to seek a variance from Table 78-21(f), Features Allowed Within Required Setbacks and Yards, to allow an addition to the existing single-family residence. The required rear yard setback is 18 feet and the existing residence is located approximately 18 feet from the rear property line. The existing deck is located approximately 9 feet from the rear property line. The applicant is requesting to cover 12 feet of the existing rear deck to create a covered, screened-in porch of 108 square feet. The 5,790 square-foot lot is located on the southeast side of the Burwick Drive cul-de-sac. The property is zoned PD-R, Planned Development – Residential. Fairfax County Tax Map Number 0104 19 0023. Applicant and property owners: Teresa M. Yacoub and Ehab S. Yacoub.

The public is encouraged to participate in the town’s public hearing process. Individuals having an interest in the above items are invited to attend the public hearing and state their opinions and may also submit comments to bza@herndon-va.gov. The proposed item is available for review by the public on the town’s website www.herndon-va.gov.

The Town of Herndon supports the Americans with Disabilities Act by making reasonable accommodations for persons with disabilities, so that they may participate in services, programs, or activities, offered by the town. Please call (703) 435-6804 to arrange for any accommodation that may be necessary to allow participation.

Amanda Morrow Kertz, Acting Town Clerk

Agenda Item: BZA #24-004, 641 Nash Street - Appeal of a Zoning Administrator's Decision. An appeal of the Zoning Administrator's decision issued on July 30, 2024, declaring the Town Plan SLDP #23-03 to be withdrawn, pursuant to Section 780-153.1(c)(2), submittal of revised application and time limit for resubmission.

Meeting Date: September 26, 2024

Category: Public Hearing

Prepared by: David Stromberg, Zoning Administrator

Description:

An appeal of the Zoning Administrator's decision issued on July 30, 2024, declaring Town Plan SLDP #23-03 to be withdrawn, pursuant to Section 78-153.1(c)(2), submittal of revised application and time limit for resubmission.

Background:

A decision was made on July 30, 2024, (Exhibit 1) regarding the status of Town Plan SLDP #23-03 – 641 Nash Street, pursuant to Section 78-153.1(c)(2), Submittal of Revised Application and Time Limit for Resubmission, of the Town of Herndon Zoning Ordinance. The decision rendered was that SLDP #23-03 is considered withdrawn and the letter provided the appellant with the right of appeal, pursuant to Section 15.2-2311 of the Code of Virginia.

The appellant failed to provide the required items on the initial date of July 17, 2024, and on the two following extension deadlines on July 22 and July 26, 2024, resulting in the decision of SLDP #23-03 being determined to be expired in the July 30, 2024, letter to appellant.

Budget Impact:

N/A

Recommendation:

Affirm the Zoning Administrator's decision issued July 30, 2024.

Attachments:

1. Staff Report
2. Resolution (Proposed)

3. Exhibit 1 - Plan Expiration Notice
4. Exhibit 2 - April 18, 2024 Email
5. Exhibit 3 - May 15, 2024 Email
6. Exhibit 4 - July 19, 2024 Email
7. Exhibit 5 - July 23, 2024 Email
8. Appellant's Appeal Request
9. Legal Ad

STAFF REPORT

Agenda Item: BZA #24-004 – 641 Nash Street - Appeal

Meeting Date: September 26, 2024

Staff Contact: David Stromberg, AICP, Zoning Administrator

Summary Information:

Decision Being Appealed	An appeal of the Zoning Administrator's decision issued on July 30, 2024, declaring Town Plan SLDP #23-03 to be withdrawn, pursuant to Section 78-153.1(c)(2), submittal of revised application and time limit for resubmission.		
Address	641 Nash Street		
Fairfax County Tax Map Number	0162 02 0139		
Owners & Appellants	Francis Kenney Jr. and Caitlin Kenney		
Zoning	R-10, Single Family Residential HDO, Historic District Overlay		
Lot Area	10,194 square feet		
Property Use	Residential single family		
Adjacent Zoning	North: R-10 East: R-10 South: R-10 West: R-10		
Building Type(s)	Detached single family (partially demolished)	Date of Construction:	Circa 1890

Location Map:



Background:

A decision was made on July 30, 2024, (**Exhibit 1**) regarding the status of Town Plan SLDP #23-03 – 641 Nash Street, pursuant to Section 78-153.1(c)(2), Submittal of Revised Application and Time Limit for Resubmission, of the Town of Herndon Zoning Ordinance. The decision rendered was that SLDP #23-03 is considered withdrawn and the letter provided the appellant with the right of appeal, pursuant to Section 15.2-2311 of the Code of Virginia. The events and dates leading up to the decision are included below.

- **July 26, 2023:** The Town accepted an application from the appellants for a single-lot development plan.
- **August 25, 2023:** The Town provided comments on the first submission of SLDP #23-03 to the appellants.
- **October 11, 2023:** The second submission of SLDP #23-03 was received by the Town.
- **November 20, 2023:** The Town provided comments on the second submission of SLDP #23-02 to the appellants.

- **January 30, 2024:** The third submission of SLDP #23-03 was received by the Town.
- **March 15, 2024 (Exhibit 2):** The Town provided comments on the third submission of SLDP #23-03 to the appellants
- **April 5, 2024:** An incomplete fourth submission of SLDP #23-03 was received by the Town.
- **April 18, 2024 (Exhibit 3):** The Town provided comments on the incomplete fourth submission of SLDP #23-03 to the appellants on April 18, 2024 (Exhibit 3).
- **June 17, 2024:** The 60-day time period from April 18, 2024, ended.
- **July 19, 2024 (Exhibit 4):** Town staff granted the first extension to the appellant ending on July 22, 2024
- **July 23, 2024 (Exhibit 5):** Town staff granted the second extension to the appellant ending on July 26, 2024.

The appellant failed to provide the required items by the final deadline on July 26, 2024, resulting in the decision of SLDP #23-03 being determined to be withdrawn in the July 30, 2024, letter to appellant.

Additional Background

The following information is specific to the appellants' property but is not directly related to the decision rendered on July 30, 2024.

- A Certificate of Appropriateness was approved by the Herndon Heritage Preservation Board (now called the Historic District Review Board) on April 17, 2019, permitting the construction of an addition and other modifications to the existing single-family dwelling to include a demolition of all but a portion of the northern and western exterior walls of the existing structure.
- A Variance was granted by the Board of Zoning Appeals on August 27, 2020, permitting the reduction of the side yard setback from 10 feet to 6.2 feet along the eastern property line.
- A building permit was issued by the Town on January 27, 2021, for construction in accordance with the Certificate of Appropriateness and Variance.
- A Stop Work Order was issued by the Town's Building Official on February 20, 2023, for activity that exceeded the scope of the approved building permit and other violations of the Virginia Uniform Statewide Building Code.
- A Stop Work Order was issued by the Town on February 20, 2023, for violations of the Erosion and Sediment Control and Stormwater Management sections of the Town Code.

- A Stop Work Order was issued by the Town on March 2, 2023, for violations of the Erosion and Sediment Control and Stormwater Management section of the Town Code.
- A Correction Notice was issued by the Town's Building Official on July 18, 2023, as follow-up to the February 2023 violation of the Virginia Statewide Building Code.
- A Follow-up to Stop Work Order was issued by the Town on July 30, 2024, requiring mitigation of the outstanding violations of the Erosion and Sediment Control and Stormwater Management sections of the Town Code.
- A Notice of Violation was issued by the Town's Building Official on August 7, 2024, withdrawing the building permit and requiring mitigation of the outstanding Building Code violations.

Staff Analysis:

Zoning Ordinance Compliance

The zoning administrator has the duty and power to make decisions on the status of site and subdivision plans and plan revisions pursuant to Section 78-150.6 (b)(1)(a) of the Town of Herndon Zoning Ordinance ("Zoning Ordinance").

The Zoning Ordinance specifies the process for the review of applications. Specifically, Section 78-153.1(c)(2) applies to the submittal of a revised application and the time limit for resubmission of the application, which states:

"The applicant shall have an opportunity to re-submit a revised application. The application shall be considered withdrawn if a revised application is not resubmitted within 60 days from the date the applicant is notified the application fails to comply with relevant review standards."

The appellants failed to provide all of the submission items identified in the staff correspondence issued on April 18, 2024, which was itself a Town response to an incomplete submission provided by the appellants, by the statutory deadline of June 17, 2024. The appellants again failed to provide all of the submission items identified in the staff correspondence issued on April 18, 2024, by the provided extension dates of July 22 and July 26, 2024.

Section 78-150.6(f)(1)(b) of the Zoning Ordinance sets out the required information to be included in a written notice of appeal: which states:

“The written notice of appeal shall include a statement of the error or improper decision or determination, the date of that decision, the grounds for the appeal, and related support materials.”

Furthermore, Virginia Code Section 15.2-2311 sets forth requirements for an appeal to a Board of Zoning Appeals and also requires an appellant to provide grounds for the appeal, specifying that, ... “The appeal shall be taken within 30 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 appellants’ filing (Exhibit 6) failed to satisfactorily identify the grounds for appeal, does not include the improper decision or include any related support materials. While this filing was made within the 30 days of the zoning administrator’s decision of July 30, 2024 as it was received by the Town on August 8, 2024 as required by Section 78-150.6(f)(1)(a) of the Zoning Ordinance and the Virginia Code Section 15.2-2311, the Board of Zoning Appeals should dismiss the appeal for failure to file the information that was required at the time the appeal was filed.

Review Standards for Appeal – Section 78-150.6(f)(2)

“A decision or determination by the zoning administrator shall not be reversed or modified unless there is evidence in the record that the decision or determination is not correct, based on the relevant procedures and review standards in this chapter. The board or council shall consider the purpose and intent of any applicable provisions of this chapter and other relevant ordinances, laws, and regulations in making its decision.”

Board of Zoning Appeals Alternatives:

The following alternatives are available to the Board of Zoning Appeals for its decision on BZA #24-004.

1. Affirm the Zoning Administrator’s decision issued on July 30, 2024, declaring Town Plan SLDP #23-03 to be withdrawn
2. Modify the Zoning Administrator’s decision issued on July 30, 2024, declaring Town Plan SLDP #23-03 to be withdrawn.
3. Reverse the Zoning Administrator’s decision issued on July 30, 2024, declaring Town Plan SLDP #23-03 to be withdrawn

Staff Recommendation:

Affirm the Zoning Administrator's decision in accordance with Alternative 1.

**TOWN OF HERNDON, VIRGINIA
BOARD OF ZONING APPEALS**

RESOLUTION

SEPTEMBER 26, 2024

Resolution – to consider Application BZA #24-004, an appeal of the Zoning Administrator’s decision issued on July 30, 2024, declaring Town Plan SLDP#23-03 to be withdrawn, pursuant to Section 78-153.1(c)(2), submittal of revised application and time limit for resubmission. Appellants and property owners: Francis Kenney Jr. and Caitlin Kenney.

RECITALS

Following a failure to submit the required submittals within the 60-day period specified by Section 78-153.1(c)(2) of the zoning ordinance, the Zoning Administrator made a decision on July 30, 2024, declaring that Town Plan SLDP #24-03 is withdrawn. The 10,194 square-foot lot is located at 641 Nash Street, on the southeast corner of Nash Street and Spring Street. The property is zoned R-10, Single Family Residential. Fairfax County Tax Map Number 0162 02 0139.

On August 8, 2024, the appellants submitted a request to appeal the Zoning Administrator’s decision to the Board of Zoning Appeals.

The Board of Zoning Appeals has reviewed the appeal according to the standards of Section 78-150.6(f)(2) and has held a public hearing in accordance with Section 78-150.6(f)(1).

THEREFORE BE IT RESOLVED, by the Board of Zoning Appeals of the Town of Herndon, Virginia, hereby:

1. **AFFIRMS** the decision of the Zoning Administrator to declare SLDP #24-03 to be withdrawn;
 - a. _____
 - b. _____
 - c. _____
- OR

REVERSES the decision of the Zoning Administrator, upon a finding of evidence in the record that the Zoning Administrator’s decision was

incorrect based on the relevant procedures and review standards in Chapter 78 (Zoning), and further upon a finding that :

- a. _____
- b. _____
- c. _____

OR

MODIFIES the decision of the Zoning Administrator, upon a finding of evidence in the record that the Zoning Administrator's decision was incorrect based on the relevant procedures and review standards in Chapter 78 (Zoning), and further upon a finding that:

- a. _____
- b. _____
- c. _____

Which said modification is based on the findings that:

- a. _____
- b. _____
- c. _____

In favor: _____

Against: _____

Attest: _____

Recording Secretary

Date: _____

July 30, 2024

Huska Consulting, LLC
Attn: Patrick Horgan, PE
1050 30th Street, NW
Washington, DC 20007

Re: Town Plan SLDP #23-03 – 641 Nash Street

Dear Mr. Horgan,

On April 5, 2024, the Town of Herndon received your re-submittal plans for the above referenced application. On April 18, 2024, the town provided comments by email (Exhibit 1) outlining the missing items that were required for the latest submittal to be considered complete and application SLDP #23-03 to be in approvable condition.

Pursuant to Section 78-153.1(c)(2), Submittal of Revised Application and Time Limit for Resubmission, of the Town of Herndon Zoning Ordinance, “The applicant shall have an opportunity to re-submit a revised application. The application shall be considered withdrawn if a revised application is not resubmitted within 60 days from the date the applicant is notified the application fails to comply with the relevant review standards.”

The 60-day time period from April 18, 2024 ended on June 17, 2024. Town staff reached out on May 15, 2024 (Exhibit 2) reiterating the missing items. Town staff then granted one extension to July 22, 2024 (Exhibit 3) and a final extension to July 26, 2024 (Exhibit 4). As of the date of this letter, you have failed to provide the Town with all of the required missing items, so your re-submittal remains incomplete.

This letter is to notify you that application SLDP #23-03 is considered withdrawn.

In accordance with Section 15.2-2311 of the Code of Virginia (1950), as amended, you have the right to appeal this decision to the Board of Zoning Appeals within thirty (30) days after receipt of this letter. The decision(s) set forth in this letter shall be final and not appealable if not appealed within the thirty-day period. If you wish to appeal this decision you must do so in the specified time by submitting a completed application and \$152.00 fee to the Community Development Department at 777 Lynn Street, Herndon, Virginia 20170.

Sincerely,



David Stromberg, AICP
Zoning Administrator

Exhibits:

1. Email from Pablo Novelo to Frank Kenney and Patrick Horgan, dated April 18, 2024
2. Email from Pablo Novelo to Frank Kenney and Patrick Horgan, dated May 15, 2024
3. Email from Pablo Novel to Frank Kenney and Patrick Horgan, dated July 19, 2024
4. Letter and email from Richard Smith to Frank Kenney and Patrick Horgan, dated July 23, 2024

c: Frank Kenney
641 Nash Street
Herndon, VA 20170

John Irish, Deputy Director of Public Works
Pablo Novelo, Plan Review Coordinator
Scott Robinson, Director of Public Works
Lauri Sigler, Deputy Town Attorney
Richard Smith, Senior Civil Engineer
Lesa Yeatts, Town Attorney

Stromberg, David

From: Novelo, Pablo
Sent: Thursday, April 18, 2024 3:32 PM
To: Patrick Horgan
Subject: 641 Nash St.
Attachments: App - Bonding for Individuals (Dec 2019).pdf

Mr. Horgan,

In an effort to help you expedite the approval process, here is a list of outstanding items. Please let me know when we can expect them.

- Outstanding Fees
 - Review & Inspections Fees
 - \$3,588.23
 - Construction General Permit (VSMP Fee)
 - \$290.00 (must be paid separately from the Review & Inspection Fees)
 - Payments have to be made directly with the department of finance. However, before you make the payment, I will have to provide you with a receipt, as they won't accept your payment otherwise. Please provide me with the following information, and I will provide you with the receipt.
 - If paying by check
 - Amount of check.
 - Exact name and address as shown on the check.
 - If paying by credit card.
 - Amount to be paid.
 - Exact name on the card (only name-no numbers).
 - Type of card.
- Sureties
 - To start the process the please fill out and return the attached application, along with the required documents as outline on the application.
 - I've attached the surety application form for individuals, if the developer is going to be an LLC or Corporation, I will need to provide a different type of surety application.
 - You surety amounts consist of the following:
 - Performance Bond Estimate
 - Total: \$97,315.94
 - You can post this with cash (check), a letter of credit, a surety bond or combination of the three.
 - If posting this with a surety bond, please note that that Department of Finance, will need to approve of the firm before you can post it.
 - This is done by providing me with the Name and Address of the firm you propose to use.
 - Cash Escrow Bond Estimate
 - Total \$12,630.00
 - You can post this with cash (check).
- Stormwater Detention and Maintenance Agreement

Pablo V. Novelo
Plan Review Coordinator
(D) 703-435-6800 x 2011
(O) 703-435-6853
www.herndon-va.gov



Stromberg, David

From: Novelo, Pablo
Sent: Wednesday, May 15, 2024 3:42 PM
To: Frank Kenney
Cc: Patrick Horgan
Subject: SLD23-03: 641 Nash St

Good afternoon Mr. Kenney,

Hope this e-mail finds you well. As a professional courtesy, I would like to inform you that per the Town Code the 60-day deadline for resubmitting the required items for your application is today, which would constitute an automatic withdrawal of your application. Having said that, we would like to work with you to avoid this from happening. The Town is currently waiting for you to submit the items listed below. It's important that we received these items as soon as possible. Please provide me with an expected date of submission of the missing items. Thank you.

- Outstanding Fees
 - Review & Inspections Fees
 - \$3,588.23
 - Construction General Permit (VSMP Fee)
 - \$290.00 (must be paid separately from the Review & Inspection Fees)
 - Payments have to be made directly with the department of finance. However, before you make the payment, I will have to provide you with a receipt, as they won't accept your payment otherwise. Please provide me with the following information, and I will provide you with the receipt.
 - If paying by check
 - Amount of check.
 - Exact name and address as shown on the check.
 - If paying by credit card.
 - Amount to be paid.
 - Exact name on the card (only name-no numbers).
 - Type of card.
- Sureties
 - To start the process the please fill out and return the attached application, along with the required documents as outline on the application.
 - I've attached the surety application form for individuals, if the developer is going to be an LLC or Corporation, I will need to provide a different type of surety application.
 - You surety amounts consist of the following:
 - Performance Bond Estimate
 - Total: \$97,315.94
 - You can post this with cash (check), a letter of credit, a surety bond or combination of the three.
 - If posting this with a surety bond, please note that that Department of Finance, will need to approve of the firm before you can post it.
 - This is done by providing me with the Name and Address of the firm you propose to use.
 - Cash Escrow Bond Estimate
 - Total \$12,630.00

- You can post this with cash (check).
- Stormwater Detention and Maintenance Agreement

Pablo V. Novelo
Plan Review Coordinator
(D) 703-435-6800 x 2011
(O) 703-435-6853
www.herndon-va.gov



Stromberg, David

From: Novelo, Pablo
Sent: Friday, July 19, 2024 12:42 PM
To: Frank Kenney
Cc: Smith, Richard; Hardy, Holland; Irish, John; Patrick Horgan
Subject: RE: SLD23-03: 641 Nash St - SWM

Good Afternoon Mr. Kenney,

It has been a month since last, we have heard from you regarding your application. As a reminder the storm water agreement has yet to be recorded. You must provide proof of recordation, or your application will not be approved. We have also not received the surety documents. I strongly encourage you to provide the required documents as this cannot continue to go on unaddressed. The Town of Herndon must take an action on your application, whether that be approval or rejection. Please provide us with a date of expected submittal no later than Monday, July 22, 2024. We look forward to hearing back from you.

Pablo V. Novelo
Plan Review Coordinator
(D) 703-435-6800 x 2011
(O) 703-435-6853
www.herndon-va.gov



From: Patrick Horgan <phorgan@huskaconsulting.com>
Sent: Wednesday, June 19, 2024 3:21 PM
To: Frank Kenney <frankkenney@kw.com>
Cc: Smith, Richard <richard.smith@herndon-va.gov>; Hardy, Holland <holland.hardy@herndon-va.gov>; Novelo, Pablo <pablo.novelo@herndon-va.gov>; Irish, John <john.irish@herndon-va.gov>
Subject: RE: SLD23-03: 641 Nash St - SWM

CAUTION: This email originated outside the Town of Herndon email system.
Do not click links or open attachments unless you recognize the sender and know the content is safe.
Ok thanks for the update Frank.

Best,

Patrick Horgan, PE
Associate



HUSKA CONSULTING, LLC
C:571-451-7970
1050 30th St, NW
Washington, DC 20007

From: Frank Kenney <frankkenney@kw.com>

Sent: Wednesday, June 19, 2024 9:39 AM

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Your Local Area Expert,

Frank Kenney

Owner of Toll Road Living

"The Listing Specialist"

Call or Text : [\(703\)731-9208](tel:(703)731-9208)

***"A referral is introducing someone you care about to someone you respect.
Thank you in advance for your referrals."***

Keller Williams Realty Reston/Herndon

11710 Plaza America Dr #710 Reston, VA 20190

[703.679.1700](tel:703.679.1700)

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Thanks,

Richard P. Smith, PE

Senior Civil Engineer

p: 703-435-6800 x2063



www.herndon-va.gov

www.facebook.com/herndongov

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Cc: Patrick Horgan <phorgan@huskaconsulting.com>; Smith, Richard <richard.smith@herndon-va.gov>
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Mr. Kenney,

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On a separate note – Please provide us with a date of when we can expect the signed surety documents.

Pablo V. Novelo

Plan Review Coordinator

(D) 703-435-6800 x 2011

(O) 703-435-6853

www.herndon-va.gov

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**Public Works
Administration**
T (703) 435-6853
publicworks@herndon-va.gov

July 23, 20234

VIA EMAIL AND FIRST-CLASS MAIL

Frank Kenney
641 Nash Street
Herndon, VA 20170

FOLLOW-UP TO STOP WORK ORDER

**RE: 641 Nash St - (Tax Map No. 0162 02 0139)
ENVIRONMENTAL CODE COMPLIANCE**

Dear Mr. Kenney:

The previous stop work order dated February 20, 2023, required you to obtain certain permit approvals through the submission of a revised building permit as well as a single lot development plan. The Town notified you in a letter dated March 15, 2024, that the final submission of the plan must be received by May 14, 2024. A follow-up email sent to you on May 15, 2024, allowed an extension of that date for you to submit the remaining outstanding items which included recordation of the stormwater management agreement, posting of outstanding fees, and submission of executed surety documents. As of the date of this letter seventy (70) additional days have passed without receiving the required documents outlined in previous correspondence.

Be advised that **all remaining outstanding items must be received by the Town no later than 4 pm on Friday, July 26, 2024** to avoid an automatic withdrawal of this application. Also, be advised that withdrawal of this application will constitute a violation of this stop-work order, which can result in enforcement actions that include fines of up to \$32,500 per day, filling in the excavated area, and removing the vertical walls. These actions may have additional implications pursuant to the zoning ordinance.

The directives herein are pursuant to town codes section 26-55, 26-334, Virginia Administrative Code Section 9VAC25-870-116, 9VAC25-840, Code of Virginia Sec. 62.1-44.15:37, 62.1-44.15:48, and 62.1-44.15:55. You have certain rights pursuant as outlined in town code sections 26-54, 26-55, 26-332 & 26-333. Please contact this department at 703-435-6856 if there are any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Smith", is written over a light blue circular stamp.

Richard P. Smith, P.E.
Senior Civil Engineer

cc: Lesa Yeatts, Town Attorney
Scott Robinson, Director of Public Works

Stromberg, David

From: Smith, Richard
Sent: Tuesday, July 23, 2024 12:16 PM
To: Frank Kenney
Cc: Patrick Horgan; Novelo, Pablo; Yeatts, Lesa; Sigler, Lauri; Robinson, Scott; Irish, John; Gilleran, Lisa; Stromberg, David; Irish, John
Subject: RE: SLD23-03: 641 Nash St - SWM
Attachments: 641 Nash_SWO - Followup 7.23.2024.pdf; 641 Nash Street Stop Work Order.pdf; 641 Nash_SWO Engineering.pdf

Importance: High

Frank,

The Town can not allow this application and associated site conditions to extend any further. Please find the attached letter titled "SWO – Followup 7.23.2024" which outlines this Friday as a final deadline to provide all documents required to approve the application. **If all documents are not received by 4 pm this Friday the site plan application will be automatically withdrawn**, which will result in the site being in violation of the stop work orders that are still in effect. I have attached the previous stop-work orders for reference. If the site plan cannot be approved the Town will require the site to immediately be stabilized (i.e. hole filled, and hazards removed). These directives may be enforced by the fines referenced in the attached letters. Please give this issue immediate attention to avoid the significant repercussions from missing the stated deadline.

Thanks,
Richard P. Smith, PE
Senior Civil Engineer
p: 703-435-6800 x2063



www.herndon-va.gov
www.facebook.com/herndongov

From: Frank Kenney <frankkenney@kw.com>
Sent: Monday, July 22, 2024 4:44 PM
To: Novelo, Pablo <pablo.novelo@herndon-va.gov>
Cc: Irish, John <john.irish@herndon-va.gov>; Patrick Horgan <phorgan@huskaconsulting.com>; Smith, Richard <richard.smith@herndon-va.gov>
Subject: Re: SLD23-03: 641 Nash St - SWM

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I have let the engineer know the documents are ready for pickup and recording. It should have that taken care of very shortly. The surety bond I had sent more required docs over and I'm waiting for them to hopefully get approval for that and we will submit the surety bond and other deposits as soon as we have them.

Frank Kenney
www.Kenney.Construction
The Kenney Real Estate Team
The Listing Specialist
Call or Text :(703)731-9208

"A referral is introducing someone you care about to someone you respect.

Thank you in advance for your referrals."

Kenney Construction
license# 2705172841
Address: 916 Barker Hill Rd.
Herndon, VA 20170

Kenney Real Estate Team
11700 Plaza America Dr Suite 150
Reston, VA 20190
703.679.1700

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On Mon, Jul 22, 2024, 11:32 AM Frank Kenney <frankkenney@kw.com> wrote:

Yes, I received your email. I'm meeting my wife try to finish getting these signed, notarized and have them back later this afternoon. I've been working on the surety bond but having issues getting it approved without the full construction loan. I'm still working on this process and have it soon as possible.

Frank Kenney
www.Kenney.Construction
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On Mon, Jul 22, 2024, 11:18 AM Novelo, Pablo <pablo.novelo@herndon-va.gov> wrote:

Good Morning Mr. Kenney,

I'm following up with my previous email. It's imperative that you confirm receipt of this e-mail and that you respond accordingly. Per Richard's e-mail below you were provided with a deadline to provide us with a plan for providing the required documents, with hard delivery dates. The deadline is today, and we have not received a response as of yet. As a reminder of the outstanding items require for approval, I'm including the e-mail I sent back on 05/15/24. We look forward to receiving a response from you today.

Pablo V. Novelo

Plan Review Coordinator

(D) 703-435-6800 x 2011

(O) 703-435-6853

www.herndon-va.gov

From: Smith, Richard <richard.smith@herndon-va.gov>
Sent: Friday, July 19, 2024 1:36 PM
To: Novelo, Pablo <pablo.novelo@herndon-va.gov>; Frank Kenney <frankkenney@kw.com>
Cc: Hardy, Holland <holland.hardy@herndon-va.gov>; Irish, John <john.irish@herndon-va.gov>; Patrick Horgan <phorgan@huskaconsulting.com>
Subject: Re: SLD23-03: 641 Nash St - SWM

Frank,

I want to reiterate the importance of addressing your site's current condition immediately. The site is still under the conditions the stop work order, one of which is to area the site plan immediately. If you do not provide the necessary documents promptly you could face significant fines associated with the stop work order. Please provide a plan to the Town by Monday (22nd) for providing the documents, with hard delivery dates that are in the coming days. Thank you in advance for your immediate cooperation on this matter.

Thanks,
Richard P. Smith, PE
Senior Civil Engineer
p: 703-435-6800 x2063

www.herndon-va.gov
www.facebook.com/herndongov

From: Novelo, Pablo <pablo.novelo@herndon-va.gov>
Sent: Friday, July 19, 2024 12:41:40 PM
To: Frank Kenney <frankkenney@kw.com>
Cc: Smith, Richard <richard.smith@herndon-va.gov>; Hardy, Holland <holland.hardy@herndon-va.gov>; Irish, John <john.irish@herndon-va.gov>; Patrick Horgan <phorgan@huskaconsulting.com>
Subject: RE: SLD23-03: 641 Nash St - SWM

Good Afternoon Mr. Kenney,

It has been a month since last, we have heard from you regarding your application. As a reminder the storm water agreement has yet to be recorded. You must provide proof of recordation, or your

application will not be approved. We have also not received the surety documents. I strongly encourage you to provide the required documents as this cannot continue to go on unaddressed. The Town of Herndon must take an action on your application, whether that be approval or rejection. Please provide us with a date of expected submittal no later than Monday, July 22, 2024. We look forward to hearing back from you.

Pablo V. Novelo

Plan Review Coordinator

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Associate

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----- Forwarded message -----

From: "Novelo, Pablo" <pablo.novelo@herndon-va.gov>

To: Frank Kenney <frankkenney@kw.com>

Cc: Patrick Horgan <phorgan@huskaconsulting.com>

Bcc:

Date: Wed, 15 May 2024 19:41:34 +0000

Subject: SLD23-03: 641 Nash St

Good afternoon Mr. Kenney,

Hope this e-mail finds you well. As a professional courtesy, I would like to inform you that per the Town Code the 60-day deadline for resubmitting the required items for your application is today, which would constitute an automatic withdrawal of your application. Having said that, we would like to work with you to avoid this from happening. The Town is currently waiting for you to submit the items listed below. It's important that we received these items as soon as possible. Please provide me with an expected date of submission of the missing items. Thank you.

- Outstanding Fees
 - Review & Inspections Fees
 - \$3,588.23
 - Construction General Permit (VSMP Fee)
 - \$290.00 (must be paid separately from the Review & Inspection Fees)
 - Payments have to be made directly with the department of finance. However, before you make the payment, I will have to provide you with a receipt, as they won't accept your payment otherwise. Please provide me with the following information, and I will provide you with the receipt.
 - If paying by check
 - Amount of check.
 - Exact name and address as shown on the check.
 - If paying by credit card.
 - Amount to be paid.
 - Exact name on the card (only name-no numbers).
 - Type of card.
- Sureties
 - To start the process the please fill out and return the attached application, along with the required documents as outline on the application.
 - I've attached the surety application form for individuals, if the developer is going to be an LLC or Corporation, I will need to provide a different type of surety application.
 - You surety amounts consist of the following:
 - Performance Bond Estimate
 - Total: \$97,315.94
 - You can post this with cash (check), a letter of credit, a surety bond or combination of the three.
 - If posting this with a surety bond, please note that that Department of Finance, will need to approve of the firm before you can post it.
 - This is done by providing me with the Name and Address of the firm you propose to use.
 - Cash Escrow Bond Estimate
 - Total \$12,630.00
 - You can post this with cash (check).
- Stormwater Detention and Maintenance Agreement

Pablo V. Novelo

Plan Review Coordinator

(D) 703-435-6800 x 2011

(O) 703-435-6853

www.herndon-va.gov

July 2017

BZA #24-004

RECEIVED ON

AUG 08 2024



Department of Community Development
777 Lynn Street
Herndon, Virginia 20170-4602

DEPARTMENT OF
COMMUNITY DEVELOPMENT

NOTICE OF APPEAL

to the BOARD OF ZONING APPEALS

Submittal of this form with **original signatures is required.** PLEASE PRINT OR TYPE (Unless otherwise indicated.)

Request for an Appeal of a Written
Determination by the Zoning Administrator
issued on (date):

July 30, 2024

Address of the Subject Property (including
apt/suite #):

641 Nash St. Herndon, VA 20170

Name of Applicant:

Francis Kenney

Mailing Address:

641 Nash St. Herndon, VA 20170

Frank Kenney @KW.com

E-mail address

703-731-9208

Telephone #

FAX #

Please check one:

I am ☒ the owner of the property that was the subject of the Zoning Administrator's determination.
☐ other. Please explain:

The undersigned hereby applies for an Appeal to the Board of Zoning Appeals under the provisions of § 78-202.12 of the Herndon Town Code.

I hereby affirm and certify that:

- The information provided on this form is true and correct to the best of my knowledge.
- The requirements associated with this application have been read and are understood.
- The use and occupancy of buildings and/or the use of land noted above is in conformance with all provisions of the Town of Herndon, Virginia Zoning Ordinance regulations to the best of my knowledge.
- The applicant must attend the public hearing scheduled for this application with the Board of Zoning Appeals and the application may be postponed or denied if the applicant does not appear on the assigned date.

Signature of Applicant (as listed above)

Date

NOTICE OF APPEAL to the BOARD OF ZONING APPEALS - continued

TO BE SUBMITTED WITH THIS APPLICATION

_____ A statement specifying the grounds for the appeal (§ 78-202.12);

_____ Filing fee.

For Office Use Only:

Application Received by: 	Date: 8/8/24
Tax Map Reference: 0162 02 0139	Zoning District: R-10
Fee paid: \$152.00 (CC)	Status of Taxes: ☒ Paid ☐ Delinquent

Distribution
after
approval:

Applicant

Community
Development

Fire
Department

Finance

To: Local Board of Building Code Appeals
Town of Herndon
777 Lynn Street
Herndon, VA 20170

APPLICATION FOR APPEAL

PLEASE TAKE NOTICE that Francis Kenney, Jr. and Caitlin Kenney (the “Owners”), having been aggrieved by a decision of the local building department, hereby requests an appeal to the Notice of Violation dated July 30, 2024, issued by David Stromberg, Zoning Administrator (the “Decision”) pursuant to Section 119 of the Virginia Construction Code, 13 VAC5-63-190. In connection with this Appeal, the Owners provide the following information:

1. The name and address of the owner of the building or structure subject to the Action is as follows:

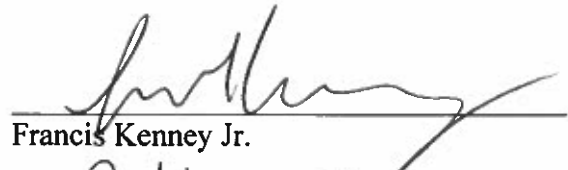
Francis Kenney, Jr.
Caitlin Kenney
12109 Courtney Court
Herndon, VA 20170

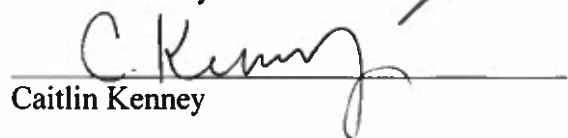
2. A copy of the Decision is attached hereto as *Exhibit A* and is hereby submitted along with this application for appeal.

3. The Owners’ reserve the right to retain counsel to represent them in the Appeal.

Date:

8/8/24


Francis Kenney Jr.


Caitlin Kenney

Virginia Administrative Code
 Title 15. Housing
 Agency 5. Department of Housing And Community Development
 Chapter 63. Virginia Uniform Statewide Building Code

13VAC5-63-190. Section 119 Appeals.

A. Section 119.1 Establishment of appeals board. In accordance with § 56-105 of the Code of Virginia, there shall be established within each local building department a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. In addition, as an authorization in this code, separate LBBCAs may be established to hear appeals of different enforcement areas such as electrical, plumbing or mechanical requirements. Each such LBBCA shall comply with the requirements of this section. The locality is responsible for maintaining a duly constituted LBBCA prepared to hear appeals within the time limits established in this section. The LBBCA shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the locality.

B. Section 119.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

C. Section 119.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

D. Section 119.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

E. Section 119.5 Right of appeal: filing of appeal application. Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 30 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.

Note: To the extent that a decision of a building official pertains to amusement devices there may be a right of appeal under the VADR.

F. Section 119.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application if requested or by

electronic means at least 14 calendar days prior to the date of the hearing unless a lesser time period is agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

G. Section 119.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the building official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording:

"Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."

H. Section 119.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with Section 36-114 of the Code of Virginia, the State Review Board shall have the power and duty to hear all appeals from decisions arising under the application of the USBC and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. In accordance with § 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the building official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the building official's decision. For appeals from a LBBCA, a copy of the building official's decision and the written decision of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the building official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia.

I. Section 119.9 Hearings and decision. All hearings before the State Review Board shall be open meetings and the chair shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The State Review Board shall have the power to uphold, reverse, or modify the decision of the LBBCA by a concurring vote of a majority of those present. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that an informal conference pursuant to § 2.2-4019 of the Code of Virginia shall not be required. Decisions of the State Review Board shall be final if no further appeal is made. The decision of the State Review Board shall be explained in writing, signed by the chair and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording: "As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with the Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period."

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 5, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 551 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 1-1, eff. July 1, 2021.

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

As a service to the public, the Virginia Administrative Code is provided online by the Virginia General Assembly. We are unable to answer legal questions or respond to requests for legal advice, including application of law to specific fact. To understand and protect your legal rights, you should consult an attorney.

July 30, 2024

Huska Consulting, LLC
Attn: Patrick Horgan, PE
1050 30th Street, NW
Washington, DC 20007

Re: Town Plan SLDP #23-03 – 641 Nash Street

Dear Mr. Horgan,

On April 5, 2024, the Town of Herndon received your re-submittal plans for the above referenced application. On April 18, 2024, the town provided comments by email (Exhibit 1) outlining the missing items that were required for the latest submittal to be considered complete and application SLDP #23-03 to be in approvable condition.

Pursuant to Section 78-153.1(c)(2), Submittal of Revised Application and Time Limit for Resubmission, of the Town of Herndon Zoning Ordinance, "The applicant shall have an opportunity to re-submit a revised application. The application shall be considered withdrawn if a revised application is not resubmitted within 60 days from the date the applicant is notified the application fails to comply with the relevant review standards."

The 60-day time period from April 18, 2024 ended on June 17, 2024. Town staff reached out on May 15, 2024 (Exhibit 2) reiterating the missing items. Town staff then granted one extension to July 22, 2024 (Exhibit 3) and a final extension to July 26, 2024 (Exhibit 4). As of the date of this letter, you have failed to provide the Town with all of the required missing items, so your re-submittal remains incomplete.

This letter is to notify you that application SLDP #23-03 is considered withdrawn.

In accordance with Section 15.2-2311 of the Code of Virginia (1950), as amended, you have the right to appeal this decision to the Board of Zoning Appeals within thirty (30) days after receipt of this letter. The decision(s) set forth in this letter shall be final and not appealable if not appealed within the thirty-day period. If you wish to appeal this decision you must do so in the specified time by submitting a completed application and \$152.00 fee to the Community Development Department at 777 Lynn Street, Herndon, Virginia 20170.

Sincerely,



David Stromberg, AICP
Zoning Administrator

Exhibits:

1. Email from Pablo Novelo to Frank Kenney and Patrick Horgan, dated April 18, 2024
2. Email from Pablo Novelo to Frank Kenney and Patrick Horgan, dated May 15, 2024
3. Email from Pablo Novel to Frank Kenney and Patrick Horgan, dated July 19, 2024
4. Letter and email from Richard Smith to Frank Kenney and Patrick Horgan, dated July 23, 2024

c: Frank Kenney
641 Nash Street
Herndon, VA 20170

John Irish, Deputy Director of Public Works
Pablo Novelo, Plan Review Coordinator
Scott Robinson, Director of Public Works
Lauri Sigler, Deputy Town Attorney
Richard Smith, Senior Civil Engineer
Lesa Yeatts, Town Attorney

Jackson, Tammy

From: Frank Kenney <frankkenney@kw.com>
Sent: Thursday, August 8, 2024 12:39 PM
To: Hardy, Holland
Cc: Community Development
Subject: Site Meeting on 8/6

CAUTION: This email originated outside the Town of Herndon email system.

Do not click links or open attachments unless you recognize the sender and know the content is safe.

It was great seeing you the other day at the other day, during our conversation we talked about the status of the site and you indicated there was no issue at that time on the site. And that the site hasn't changed over the last few months and we have been complying with the water has being pumped out as requested previously. With the rain today we will be working to make sure any water is pumped out asap.

Frank Kenney
www.Kenney.Construction
The Kenney Real Estate Team
The Listing Specialist
Call or Text :(703)731-9208

"A referral is introducing someone you care about to someone you respect.

Thank you in advance for your referrals."

Kenney Construction
license# 2705172841
Address: 916 Barker Hill Rd.
Herndon, VA 20170

Kenney Real Estate Team
11700 Plaza America Dr Suite 150
Reston, VA 20190
703.679.1700

CONFIDENTIALITY NOTICE:

This message transmission, any documents, files or previous messages attached to it, may contain confidential and/or legally privileged information. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, please delete this message and notify the sender. You are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this message is strictly prohibited. E-mails sent or received shall neither constitute acceptance of conducting transactions via electronic means nor create a binding contract until and unless a written contract is signed by the parties.

MAP #: 0162 02 0139
KENNEY FRANCIS JR

641 NASH ST

Owner

Name	KENNEY FRANCIS JR,
Mailing Address	641 NASH ST HERNDON VA 20170 5111
Book	25635
Page	1222

Co-Owners

KENNEY CAITLIN

Stub Number

411011596

Parcel

Property Location	641 NASH ST HERNDON VA 20170 5111
Map #	0162 02 0139
Tax District	H0000
District Name	DRANESVILLE TOWN OF HERNDON
Land Use Code	Single-family, Detached
Land Area (acreage)	
Land Area (SQFT)	10,194
Zoning Description	R-10(Res Single fam-10 Dist)
Utilities	WATER CONNECTED SEWER CONNECTED GAS CONNECTED
County Inventory of Historic Sites	YES
County Historic Overlay District	NO For further information about the Fairfax County Historic Overlay Districts, CLICK HERE For properties within the towns of Herndon, Vienna or Clifton please contact the town to determine if the property is within a town historic district.
Street/Road	PAVED
Site Description	BUILDABLE-AVERAGE LOT

Legal Description

Legal Description	GEORGE A WILLIAMS PT LT 2
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MAP #: 0162 02 0139
KENNEY FRANCIS JR

641 NASH ST

Stub Number

411011596

Summary of 2024 Taxes

Year	General Fund Net Taxes	Special Tax District	Service Charges	Interest	Penalty	Other Charges	Amount Paid	Balance Due
2024 1ST HALF DUE	\$2,114.16	\$551.57	\$0.00	\$0.00	\$0.00	\$0.00	-\$2,665.73	\$0.00
2024 2ND HALF DUE	\$2,114.15	\$551.55	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,665.70
Total:	\$4,228.31	\$1,103.12	\$0.00	\$0.00	\$0.00	\$0.00	-\$2,665.73	\$2,665.70

Prepays and Refunds

Prepays	\$0.00
Pending Refunds	\$0.00
GRAND TOTAL	\$2,665.70

Special tax districts include levies for pest infestation control (i.e. gypsy moth, mosquitoes), Community Center taxes, and Transportation Districts. For more information see <http://www.fairfaxcounty.gov/taxes/real-estate/tax-rates>.

Source: Fairfax County Department
of Tax Administration, Real Estate Division.

Town of Herndon, Virginia
Notice of Public Hearing

Notice is hereby given that the **Board of Zoning Appeals** (BZA) of the Town of Herndon, Virginia, will hold a public hearing on Thursday, September 26, 2024, at 7:00 p.m. in the Herndon Council Chambers Building, located at 765 Lynn Street, Herndon on the following items:

BOARD OF ZONING APPEALS, BZA #24-002, 641 Nash Street – Appeal of a Zoning Administrator’s Decision. An appeal of the Zoning Administrator’s decision issued on July 30, 2024, declaring Town Plan SLDP #23-03 to be withdrawn, pursuant to Section 78-153.1(c)(2), submittal of revised application and time limit for resubmission. The 10,194 square-foot lot is located at 641 Nash Street, on the southeast corner of Nash Street and Spring Street. The property is zoned R-10, Single Family Residential. Fairfax County Tax Map Number 0162 02 0139. Appellants and property owners: Francis Kenney Jr. and Caitlin Kenney.

BOARD OF ZONING APPEALS, BZA #24-005, 1119 Burwick Drive, to seek a variance from Table 78-21(f), Features Allowed Within Required Setbacks and Yards, to allow an addition to the existing single-family residence. The required rear yard setback is 18 feet and the existing residence is located approximately 18 feet from the rear property line. The existing deck is located approximately 9 feet from the rear property line. The applicant is requesting to cover 12 feet of the existing rear deck to create a covered, screened-in porch of 108 square feet. The 5,790 square-foot lot is located on the southeast side of the Burwick Drive cul-de-sac. The property is zoned PD-R, Planned Development – Residential. Fairfax County Tax Map Number 0104 19 0023. Applicant and property owners: Teresa M. Yacoub and Ehab S. Yacoub.

The public is encouraged to participate in the town’s public hearing process. Individuals having an interest in the above items are invited to attend the public hearing and state their opinions and may also submit comments to bza@herndon-va.gov. The proposed item is available for review by the public on the town’s website www.herndon-va.gov.

The Town of Herndon supports the Americans with Disabilities Act by making reasonable accommodations for persons with disabilities, so that they may participate in services, programs, or activities, offered by the town. Please call (703) 435-6804 to arrange for any accommodation that may be necessary to allow participation.

Amanda Morrow Kertz, Acting Town Clerk

Agenda Item: Resolution to establish the Board of Zoning Appeals meeting schedule for January 1, 2025, to December 31, 2025

Meeting Date: September 26, 2024

Category: New Business

Prepared by: David Stromberg, Zoning Administrator

Description:

The Board of Zoning Appeals bylaws prescribe the meeting schedule.

The Department of Community Development, in coordination with the Town Clerk's office, would like to propose a resolution to set the meeting schedule for Calendar Year 2025. The meeting schedule is generally modified to accommodate holidays and occasions of conflicts with other Town meetings and events. The adopted meeting schedule is included in the printed annual town calendar, which is currently under development.

Background:

Staff has prepared the proposed resolution for Calendar Year 2025 based on the following guidelines:

- Board of Zoning Appeals meetings are scheduled for the fourth Thursday of the month;
- Meeting dates may be changed by resolution of the board.

Budget Impact:

N/A

Recommendation:

Recommend approval of the 2025 Board of Zoning Appeals Meeting Schedule in accordance with the proposed resolution.

Attachments:

1. Resolution (Proposed)

**TOWN OF HERNDON, VIRGINIA
BOARD OF ZONING APPEALS**

RESOLUTION

SEPTEMBER 26, 2024

Resolution- **to establish the Board of Zoning Appeals meeting schedule for January 1, 2025, to December 31, 2025.**

BE IT RESOLVED by the Board of Zoning Appeals of the Town of Herndon, Virginia, that:

1. In accordance with the meeting schedule set out in the Board of Zoning Appeals bylaws, the meeting schedule for calendar year 2025 is hereby adopted as follows:

January 23, 2025	Regular Meeting
February 27, 2025	Regular Meeting
March 27, 2025	Regular Meeting
April 24, 2025	Regular Meeting
May 22, 2025	Regular Meeting
June 26, 2025	Regular Meeting
July 24, 2025	Regular Meeting
August 28, 2025	Regular Meeting
September 25, 2025	Regular Meeting
October 23, 2025	Regular Meeting
November 20, 2025	Regular Meeting
December 18, 2025	Regular Meeting

2. The Board of Zoning Appeals directs staff to include the meeting schedule in the 2025 annual town calendar.