

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON POLICE DEPARTMENT – COMMUNITY ROOM
397 HERNDON PARKWAY
April 19, 2022
7:00 PM**

CALL TO ORDER

1. Roll Call & Determination of Quorum

PUBLIC HEARINGS

2. Ordinance 22-O-06, to amend Chapter 74 (UTILITIES), Article II (Sewers & Sewage Disposal), Division 5 (Sanitary Sewer System Rates & Charges), Section 74-262; and Article III (Water), Division 2 (Service), Section 74-326 (Schedule of Charges), to increase the service and usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2022
3. Ordinance 22-O-07, to amend Chapter 30 (FINANCE AND TAXATION), Article VII (Business, Professional, Occupational License), Section 30-211 (Definitions), and Section 30-246 (Enumeration), and to add Section 30-266 (Personal, Business Services, and all other business occupations not specifically listed) to recognize the massage therapist occupation as a business and to classify massage therapist for BPOL tax purposes
4. Ordinance 22-O-08, to amend Chapter 30 (FINANCE AND TAXATION), Article II (Real and Personal Property), Section 30-39 (Date real property taxes due and payable; penalties and interest) to reduce the rate of interest on any unpaid tax from ten to one percent and to change the interest rate to accrue upon failure to pay any installment when due
5. Ordinance 22-O-09, to establish the compensation to be paid to the Town of Herndon mayor and council members, as provided under Section § 15.2-1414.7 of the Code of Virginia. No increase in salary shall take effect during the incumbents' term in office
6. Ordinance 22-O-10, to Levy Taxes on Real Estate and Manufactured Homes, and Other Subjects for the Fiscal Year 2023 Budget
7. Resolution 22-G-27, to Adopt a Fiscal Planning Resolution for the Fiscal Year 2023 Budget for the Town of Herndon
8. Ordinance 22-O-11, to Appropriate Funds to implement the Fiscal Year 2023 Budget for the Town of Herndon, establishing the Pay Plan, and reserving on-going and Capital Funding for this Fiscal Year
9. Ordinance 22-O-12, to amend Chapter 66 (STREETS, SIDEWALKS AND CERTAIN OTHER PUBLIC PLACES), Sec. 66-1, and to create a new Article VI (Encroachments Over and Upon Public Rights-of-Ways), Division 1 (Generally), and Division 2 (Outdoor Seating Administrative Encroachments), to permit seasonal outdoor seating on public property

10. Resolution 22-G-30, to approve a Temporary License Agreement between the Town and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce for use of Town-owned property for portable toilets and an ice machine for Friday Night Live events

GENERAL

11. Resolution 22-G-28, to amend the Chestnut Grove Cemetery Fee Schedule
12. Resolution 22-G-29, to amend the Herndon Centennial Golf Course Fee Schedule

CONSENT

13. Resolution 22-G-31, to consider an extension of Special Exception SE #21-01, 400 Herndon Parkway, Peppertree Montessori & Preschool, to permit a private school/daycare within an existing office building

ROUNDTABLE

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 26, 2022

Ordinance- to amend Chapter 74 (UTILITIES), Article II (Sewers & Sewage Disposal), Division 5 (Sanitary Sewer System Rates & Charges), Section 74-262 (Schedule of Rates); and Article III (Water), Division 2 (Service), Subdivision II (In-Town Service Charges), Section 74-326 (Schedule of Charges), to increase the service and usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2022.

BE IT ORDAINED by the Town Council for the Town of Herndon, Virginia, that:

1. The following sections or provision of the Herndon Town Code, as amended, are amended and re-ordained as follows:

CHAPTER 74 (UTILITIES)

ARTICLE II. SEWERS & SEWAGE DISPOSAL

DIVISION 5. SANITARY SEWER SYSTEM RATES & CHARGES

Sec. 74-262. Schedule of Rates.

- (a) The rate schedule for sanitary sewer service shall be determined on the basis of water consumed and shall be charged at the rate of ~~\$6.28~~ **\$7.16** per 1,000 gallons of water used, except as otherwise provided in this division.

(f) A service charge per bill rendered shall be assessed for all metered water service as follows:

Quarterly Billing

<i>Meter Size (inches)</i>	<i>Charge</i>
5/8	\$ 7.40
3/4	\$ 10.21
1	\$ 15.85
1 1/2	\$ 29.96
2	\$ 46.89
3	\$ 92.02
4	\$ 142.79
6	\$ 283.83

ARTICLE III. WATER

DIVISION 2. SERVICE

Subdivision II. In-Town Service Charges

Sec. 74-326. Schedule of charges.

(a) The water usage charge shall be ~~\$3.21~~ **\$3.31** per 1,000 gallons, based on the consumption of water as measured by readings of the water meter serving the property.

(b) A service charge per bill rendered shall be assessed for all metered water service as follows:

Quarterly Billing

<i>Meter Size (inches)</i>	<i>Charge</i>
5/8	\$ 10.54 \$ 8.97
3/4	\$ 15.80 13.45
1	\$ 26.33 22.41
1 1/2	\$ 52.68 44.83
2	\$ 84.27 71.72
3	\$ 168.55 143.45
4	\$ 263.36 224.14
6	\$ 526.73 448.28

(c) All water consumed during the peak use periods in excess of the average consumption of the preceding two winter quarter billing periods shall be charged an additional amount of ~~\$5.46~~ **\$5.64** per 1,000 gallons. This peak use period charge shall be applied in addition to the base water usage charge in subsection (a) above.

2. This ordinance shall be effective for all meter readings taken on or after July 1, 2022.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 26, 2022

Ordinance, to amend Chapter 30 (FINANCE AND TAXATION), Article VII (Business, Professional, Occupational License), Division 1 (Generally), Section 30-211 (Definitions), Section 30-246 (Enumeration), and to add Section 30-266 (Personal, Business Services, and all other business occupations not specifically listed), to recognize the massage therapist occupation as a business and to classify massage therapist for BPOL tax purposes.

BE IT ORDAINED by the Town Council for the Town of Herndon, Virginia that:

1. The following sections or provision of the Herndon Town Code (2000), as amended, are amended and re-ordained as follows:

CHAPTER 30 (FINANCE AND TAXATION)

ARTICLE VII. BUSINESS, PROFESSIONAL, OCCUPATIONAL LICENSE

DIVISION 1. GENERALLY

Sec. 30-211. Definitions

License year means the calendar year for which a license is issued for the privilege of engaging in business.

***Massage* means the treatment, for compensation, of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body, unless the massage is excluded from regulation by Code of County of Fairfax § 28.1-1-4.**

***Massage establishment* means any fixed place of business where a massage is administered to a client, unless the place is excluded from regulation by Code of County of Fairfax § 28.1-1-4.**

***Massage therapist* means any individual certified as a massage therapist by the Board of Nursing of the Commonwealth of Virginia.**

Operator of coin-operated machines means any person selling, leasing, renting or otherwise furnishing or providing a coin-operated amusement machine operated on the coin-in-the-slot principal; provided, however, that this term shall not include a person owning fewer than three coin-operated machines and operating such machines on property owned or leased by such person.

DIVISION 2. FEES AND TAXES

Sec. 30-246. Enumeration

(b) There is no fee for the issuance of such license. In addition to the license tax specified in subsection (a) of this section, and except as may be otherwise provided in this article or in Code of Virginia, §§ 58.1-3712, 58.1-3712.1 and 58.1-3713, every such person or business with annual gross receipts, purchases, or retail or wholesale sales, as appropriate, of more than \$100,000.00 shall be assessed and required to pay annually a license tax on all the gross receipts, purchases, or retail or wholesale sales, as appropriate, of such persons includable as provided in this article at a rate set forth in this subsection (b) for the class of enterprise listed:

- (1) For contractors and persons constructing for their own account for sale, \$0.13 per \$100.00 of gross receipts (Code of Virginia, § 58.1-3706 A.1);
- (2) For retailers, including those engaged in the short-term rental business as defined in Code of Virginia, § 58.1-3510.4(B) (however defined), (but excluding those engaged in commercial leasing covered by section 30-265) \$0.13 per \$100.00 of gross receipts (Code of Virginia, § 58.1-3706 A.2);
- (3) For financial, real estate and professional services, \$0.40 per \$100.00 of gross receipts (for the license tax for money lenders, see section 30-252) (Code of Virginia, § 58.1-3706 A.3);
- (4) For personal and business services and all other businesses and occupations not specifically listed or exempted in this article or otherwise by law, \$0.21 per \$100.00 of gross receipts (for the license tax for repair services, see section 30-263) (Code of Virginia, § 58.1-3706 A.4);
- (5) For wholesalers, including peddlers at wholesale, \$0.05 per \$100.00 of purchases (Code of Virginia, §§ 58.1-3718, 58.1-3719);

- (6) For carnivals, circuses and speedways, \$0.00 for each performance held in this town (Code of Virginia, § 58.1-3728);
- (7) For fortunetellers, clairvoyants and practitioners of palmistry, \$500.00 per year (Code of Virginia, § 58.1-3726);
- ~~(8) For massage parlors, \$1,000 per year (Code of Virginia § 58.1-3706);~~
- (8) For itinerant merchants or peddlers (except as provided below), \$12.50 per week, not to exceed \$500.00 per year (Code of Virginia, § 58.1-3717);
- ~~(9)~~(9) For photographers, \$30.00 per year (Code of Virginia, § 58.1-3727);
- ~~(11)~~(10) For permanent coliseums, arenas or auditoriums having a maximum capacity in excess of 10,000 persons, open to the public, \$1,000.00 per year (Code of Virginia, § 58.1-3729);
- ~~(12)~~(11) For savings and loan associations and credit unions, \$50.00 per year (Code of Virginia, § 58.1-3730); and
- ~~(13)~~(12) For direct sellers as defined in Code of Virginia, § 58.1-3719.1, with total annual sales in excess of \$4,000.00, \$0.20 per \$100.00 of total annual retail sales, or \$0.05 per \$100.00 of total annual wholesale sales, whichever is applicable (Code of Virginia, § 58.1-3719.1). Direct sellers are governed by rules governing emerging businesses set out in Section 30-247(b)—(d).

Sec. 30-266. Personal, Business Services, and all other business occupations not specifically listed.

Every person conducting or engaging in any personal service occupation, businesses, trades, or callings not specifically classified as “financial, real estate, or professional service” shall pay an annual license tax of \$0.21 per \$100.00 of gross receipts of the base year. The license tax imposed by this section shall be in addition to any other specific town license tax. Massage therapists and massage establishments under this chapter should be considered as other business occupation for business tax purposes so as long as they are in compliance with Chapter 14-70 Massage Regulation.

- 2. This ordinance shall be effective on and after July 1, 2022.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 26, 2022

Ordinance- to amend Chapter 30 (FINANCE AND TAXATION), Article II (Real and Personal Property), Division 2 (Assessment and Collection), Section 30-39 (Date real property taxes due and payable; penalties and interest), to reduce the rate of interest on any unpaid tax from ten to one percent and to change the interest rate to accrue upon failure to pay any installment when due.

BE IT ORDAINED by the Town Council for the Town of Herndon, Virginia that:

1. The following sections or provision of the Herndon Town Code (2000), as amended, are amended and re-ordained as follows:

CHAPTER 30 (FINANCE AND TAXATION)

ARTICLE II. REAL AND PERSONAL PROPERTY

DIVISION 2. ASSESSMENT AND COLLECTION

Sec. 30-39. Date real property taxes due and payable; penalties and interest.

(b) Upon failure to pay any installment when due, a penalty of ten percent will be incurred and assessed, and interest will accrue and be assessed on any unpaid tax and penalty at the rate of ~~ten~~ **one** percent per annum beginning the first day following the day such taxes are due. ~~For the second and subsequent years of delinquency, interest will accrue and be assessed on any unpaid tax at a rate of interest established pursuant to section 6621 of the Internal Revenue Code, as amended, or ten percent annually, whichever is greater.~~ **Interest on any tax payment that is past due shall begin to accrue on the date after the tax is due and such interest shall continue to accrue until the date on which payment is made.** Any penalty assessed shall become a part of the tax and in no case shall exceed the amount of the tax assessable.

2. The ordinance shall be effective on and after June 1, 2022.

-TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 26, 2022

Ordinance- to establish the compensation to be paid to the Town of Herndon mayor and council members, as provided under Section § 15.2-1414.7 of the Code of Virginia.

WHEREAS, the Code of Virginia Sec. § 15.2-1414.7 provides that a town council may establish the compensation to be paid to council members and the mayor, however no increase in salary of a council member or mayor shall take effect during the incumbent council member's or mayor's term in office; and

WHEREAS, the compensation levels of the mayor and council have not been adjusted since June 1986, and it is the opinion of the town council that the compensation be increased at this time in view of the amount of time and effort involved in serving.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that the compensation paid the mayor be increased to ***sixteen thousand dollars (\$16,000)*** per annum and the compensation for council members' be increased to ***fifteen thousand dollars (\$15,000)*** per annum.

BE IT FURTHER ORDAINED by the Town Council of the Town of Herndon, Virginia, that this ordinance shall become effective on January 1, 2023, beginning with the term of the 2023-24 Herndon Mayor and Town Council Members.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 26, 2022

Ordinance- to Levy Taxes on Real Estate and Manufactured Homes, and Other Subjects for the Fiscal Year 2023 Budget.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that the Town Council fixes and orders the tax levies for the fiscal year beginning July 1, 2022 and ending June 30, 2023, as follows:

Real Estate

On each \$100.00 of the valuation of real estate and improvements to the Town.
\$.2650

Personal Property and Merchants' Capital

On each \$100.00 of the valuation of tangible personal property classified by Section 58.1- 3503 and 58.1-3510 of the Code of Virginia.
\$.00

Vehicles Used as Manufactured Homes and Offices

On each \$100.00 of the valuation of vehicles without motive power, used or designed to be used as manufactured homes as classified by Section 58.1-3506(A), paragraph 10, of the Code of Virginia.
\$.2650

Farm Machinery, Farm Tools and Farm Livestock

On each \$100.00 of the valuation of farm machinery, farm tools and farm livestock as classified by Section 58.1-3505 of the Code of Virginia.
\$.00

Machinery and Tools

On each \$100.00 of the valuation of machinery and tools classified by Section 58.1-3507 of the Code of Virginia.
\$.00

Other Classifications of Tangible Personal Property

On each \$100.00 of the valuation of tangible personal property as classified by Section 58.1-3506 [except for Section 58.1-3506(A), paragraph 10] of the Code of Virginia.
\$.00

Miscellaneous Levies

Except as provided above and other ordinances adopted by the Town Council in this budget cycle all other taxes and licenses previously enacted by the town are imposed and levy made to the same extent and at the same rate as during the Fiscal Year 2022.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

APRIL 26, 2022

Resolution- to adopt a Fiscal Planning Resolution for the Fiscal Year 2023 Budget for the Town of Herndon.

WHEREAS, the Town Manager of the Town of Herndon, Virginia, has submitted to the Town Council of the Town of Herndon, Virginia, a proposed budget; and

WHEREAS, the town properly advertised the April 12 and April 26, 2022 public hearings on the proposed budget; and

WHEREAS, it is the intent of the Town Council of the Town of Herndon, Virginia, to adopt the proposed budget with amendments, if any.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby adopts for the purpose of fiscal planning during the fiscal year 2023 for the Town of Herndon, Virginia, the budget prepared by the Town Manager, set out in "Proposed FY 2023 Budget" dated April 1, 2022, on file in the office of the Town Manager.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 26, 2022

Ordinance- to Appropriate Funds to implement the Fiscal Year 2023 Budget for the Town of Herndon, establishing the Pay Plan, and reserving on-going and Capital Funding for this Fiscal Year.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that:

1. There is appropriated and authorized for expenditure during the Fiscal Year 2023 such sums as appear in the Fiscal Planning Budget for the Fiscal Year 2023 as set out in "Proposed Fiscal Year 2023 Annual Budget" dated April 1, 2022, on file in the office of the Town Manager, and as may be subsequently modified by the Town Council.
2. No money shall be withdrawn from the treasury of the town and no obligation for expenditure of money can be incurred, except in accordance with the Fiscal Planning Budget, or with supplemental appropriations as may be made by the Town Council.
3. The town advertised the public hearing at least once in The Fairfax County Times newspaper and held a public hearing on the proposed budget at least seven days prior to approval of the proposed budget.
4. The Fiscal Year 2023 proposed schedule of salaries, set out in the Fiscal Planning Budget, are adopted effective July 1, 2022.
5. The Town Council may award to the Town Manager and the Town Attorney bonuses as provided for in the Fiscal Planning Budget for Fiscal Year 2023 for exceptional services rendered. Any such bonuses shall not become a part of these officers' annual salary.
6. The Town Council reserves, encumbers, and appropriates for Fiscal Year 2022 funding for capital and on-going projects, for which funds were previously appropriated. The Town Manager as of July 1, 2022, shall take the appropriate accounting steps to reserve and encumber these funds as of that date for Fiscal Year 2023 and to report to the Mayor and Town Council in this regard.

STAFF REPORT

Town Council
April 19, 2022

Title:

Ordinance, to amend Chapter 66 (STREETS, SIDEWALKS AND CERTAIN OTHER PUBLIC PLACES) Sec. 66-1 and create new Article VI (Encroachments Over and Upon Public Rights-of-Ways) Division 1 (Generally), and Division 2 (Outdoor Seating Administrative Encroachments), to permit seasonal outdoor seating on public property

Staff Contact:

David Stromberg, AICP, Zoning Administrator
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Lauri Sigler, Deputy Town Attorney
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Background and Description:

The Governor passed an Executive Order at the beginning of the Pandemic declaring a state of emergency, which was followed by a series of additional Executive Orders when indoor capacity was limited. These orders coincided with the town council's own declaration of a state of emergency and adoption of an ordinance and series of amendments to address Continuity of Governmental Operations during Pandemic Disaster (COVID-19). Additionally, the Virginia Alcoholic Beverage Control Authority (ABC) temporarily relaxed regulations that would have otherwise been applicable to restaurants that serve alcoholic beverages. Multiple downtown restaurants took advantage of the relaxed regulations that made it easier to allow outdoor dining/seating on public property. This included sidewalks, parking lots, and on-street parking spaces by the issuance of Temporary License Agreements.

The Temporary License Agreements that allowed the use of public property for outdoor restaurant seating expired in November 2021. Due to the popularity of outdoor seating, Town Council directed staff to bring forward a Town Code amendment to permit outdoor seating on public property for their consideration.

Outdoor dining is currently permitted and regulated on private property by the Zoning Ordinance.

Outdoor seating on Private Property – Existing zoning regulations:

- Allowed by-right for all eating establishments
- Must be located on same private property as establishment
- Must meet Americans with Disabilities Act (ADA) requirements
- Must add parking if over 32 seats are added
- Must comply with building code requirements
- Restroom facilities must be able to accommodate additional patrons
- Must comply with health department requirements (Fairfax County)
- Must comply with Fire Marshal (Fairfax County)
- Must comply with Virginia Alcohol & Beverage Control (ABC)

Proposed Amendments to Chapter 66 would permit outdoor dining/seating on:

- Public Right of Way including Sidewalks
- On-street parking spaces
- Off-street public shared parking spaces
- Applications would be administratively reviewed and approved pursuant to design standards, described as “Seasonal Outdoor Seating Requirement” in the proposed ordinance, and compliance with applicable laws
- Maximum permit term is from March 15-October 31 per calendar year

General Requirements for seasonal outdoor seating on public property:

- Must have liability insurance
 - Town to be listed as additional insured
- Must be current on taxes
- Only allowed downtown
 - PD-TD (Planned Development – Traditional Downtown), PD-D (Planned Development – Downtown), and CC (Central Commercial) zoning districts
- Public shared parking program
 - Only allowed on unallocated spaces in public parking lots
- Currently 11 unallocated spaces
- Must be in an allowed location
 - Lynn Street
 - Pine Street
 - Station Street
 - Center Street (700 block)
- Limited to two on-street spaces in front of the establishment
- At any one time, the total number of issued permits for right-of-way seating on public streets shall be limited to no more than twenty percent (20%) of the total parking spaces along a street block.
- Similar to permitted outdoor dining on private property seasonal outdoor seating on public property must also:

- Must meet Americans with Disabilities Act (ADA) requirements
- Must add parking if over 32 seats are added
- Must comply with building code requirements
- Restroom facilities must be able to accommodate additional patrons
- Must comply with health department requirements (Fairfax County)
- Must comply with Fire Marshal (Fairfax County)
- Must comply with Virginia Alcohol & Beverage Control (ABC)

Fiscal Impact:

\$100 annual application fee
\$10 per square foot per term

Staff Recommendation:

The Mayor and Town Council adopt the attached Ordinance as proposed.

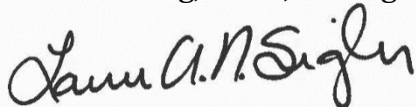
Attachments:

Ordinance

Prepared and Approved by:



David Stromberg, AICP, Zoning Administrator



Lauri A.N. Sigler, Deputy Town Attorney

1 **TOWN OF HERNDON, VIRGINIA**

2
3 **ORDINANCE**

4
5 **April 26, 2022**

6
7 **Ordinance – to amend Chapter 66 (STREETS, SIDEWALKS AND CERTAIN**
8 **OTHER PUBLIC PLACES) Sec. 66-1 and create new Article VI**
9 **(Encroachments Over and Upon Public Rights-of-Ways)**
10 **Division 1 (Generally), and Division 2 (Outdoor Seating**
11 **Administrative Encroachments), to permit seasonal outdoor**
12 **seating on public property**

13
14 **BE IT ORDAINED** by the Town Council of the Town of Herndon, Virginia, that:

- 15
16 1. The following sections or provisions of the Herndon Town Code (2000), are
17 amended as follows:

18
19 **CHAPTER 66 (STREETS, SIDEWALKS AND CERTAIN**
20 **OTHER PUBLIC PLACES)**

21
22 **Article I. In General**

23
24 **Sec. 66-1. - Obstructing streets and sidewalks.**

25 Except as may otherwise be provided by **article VI of this chapter**, this Code or
26 resolution of the town council adopted pursuant to general law for the placement
27 of improvements in a public right-of-way for a public purpose or the temporary
28 closing of streets for other than public purposes, no person shall obstruct a street
29 or sidewalk by placing or permitting thereon any bench, carton, barrel, box, cart,
30 vehicle, merchandise, snow or ice from private land used for commercial purposes,
31 or other article or fixture whatsoever, whether for exhibition, sale, or other
32 purposes.

33
34 ***

35 **Article V. Shared Mobility Devices**

36 **DIVISION 1. IN GENERAL**

37 ***

Secs. 66-112 - 66-120. - Reserved.

Article VI. Encroachments Over and Upon Public Rights-of Ways.

DIVISION 1. –GENERALLY

Sec. 66-121. Purpose of article.

It is the general policy of the town that the public rights-of-way are to be reserved for public use or open space; and that the rights of the public, present and future, are not to be diminished by the installation of private improvements within public rights-of-way. Notwithstanding the foregoing, limited private encroachments into public rights-of-way may be permitted, subject to the express terms of this article and compliance with other provisions of this chapter.

Secs. 66-122 - 66-130. – Reserved.

DIVISION 2. – OUTDOOR SEATING ADMINISTRATIVE ENCROACHMENTS

Sec. 66-131. Administrative approval required for seasonal outdoor seating.

In accordance with the Code of Virginia § 15.2-2009, as amended, the town council hereby authorizes the director of community development and the director of public works or their designee, upon application to the department of community development, to administratively approve seasonal outdoor seating areas that encroach into public rights-of-way and other public places subject to the terms and conditions of article VI of this chapter. Furthermore, the town council hereby authorizes the director of public works to enforce the provisions of this Division.

If an application for an outdoor seating encroachment does not meet all of the criteria of Sec. 66-133, then the directors of public works and community development or their designees are prohibited from administratively approving the encroachment application, which said application must be denied.

Sec. 66-132. Seasonal Outdoor seating permit; definitions.

The terms used in the division and not here defined shall carry their ordinary meanings. For purposes of this division, the terms set out below shall carry the meanings set out below:

ABC. The Virginia Department of Alcoholic Beverage Control.

ADA. The Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008, 42 U.S.C. §§ 12101, et seq.

Director of community development. The director of the department of community development and their authorized designees.

Director of public works. The director of the department of public works and their authorized designees.

Eating Establishment. Any business meeting the criteria in Sec. 78-71.6 of the zoning ordinance which is properly licensed and lawfully located in the PD-TD, Planned Development Traditional Downtown, PD-D, Planned Development Downtown, and CC, Central Commercial zoning districts.

Public Shared Parking Spaces. Shall have meaning as defined in Sec. 78-180 of the zoning ordinance but specifically exclude public shared parking spaces located on public streets.

Public Shared Parking Seating Area. An area on a public shared parking space to be used for seasonal outdoor seating associated with an adjacent eating establishment.

Principal Operator. The person or entity that operates an establishment.

Public Parking. For the purpose of this division, includes parking spaces located in public right-of-way (on-street parking spaces) or, in a public street easement, but specifically excluding public shared parking spaces.

Public Right-of-Way. For the purpose of this Division includes dedicated and otherwise acquired public right-of-way and public street easements having the characteristics of a municipal public street for the purpose of public travel and other uses consistent with a public municipal street.

Public Sidewalk. For the purpose of this Division includes dedicated and otherwise acquired public right-of-way and public streetscape easements having the characteristics of a municipal sidewalk for the purpose of non-vehicular public travel and other uses consistent with a public municipal sidewalk.

Seasonal outdoor seating. Any group of tables, chairs, or other seating fixtures and all related appurtenances maintained within the public sidewalk, or other right-of-way when located adjacent to an eating establishment having the same principal operator. Further, outdoor seating shall be temporary in nature, shall not be permanently affixed so as to extend below the sidewalk or other right-of-way, must not involve penetration of the sidewalk or right-of-way surface or be attached to any building, and shall be readily removable without damage to the surface of the sidewalk or other right-of-way. The maximum time period for outdoor seating pursuant to the division is from March 15 to October 31 per calendar year.

Sidewalk Seating Area. An area on a public sidewalk or public streetscape easement to be used for seasonal outdoor seating associated with an adjacent eating establishment

Right-of-Way Seating Area. An extension of the sidewalk into the parking lane on a public right-of-way or public street easement to be used for seasonal outdoor seating associated with an adjacent eating establishment. The establishment of a Right-of-Way Seating Area for eligible Eating Establishments is limited to Lynn Street, Pine Street, Station Street, and the 700 block of Center Street.

Sec. 66-133. Seasonal outdoor seating permit; requirements.

(a) *Permit required; enforcement.* Subject to the provisions of this Division, seasonal outdoor seating may encroach into a portion of the public sidewalk, public right-of-way, or public shared parking only upon issuance of a seasonal outdoor seating permit as provided for in this Division. No other use of the area devoted to the seasonal outdoor seating shall be permitted. It shall be the responsibility of the director of public works to enforce the provisions of this division.

(b) *Application requirements.*

(1) Application for a seasonal outdoor seating permit shall be made to the director of community development on such application form and subject to such written procedures as the director may establish. Application for a seasonal outdoor seating permit shall be made by the principal operator of an eating establishment that is located at street level adjacent to the proposed outdoor seating area. The application shall be signed by principal operator of the eating establishment and by the owner of the property on which the eating establishment is located if the property owner is not the eating establishment operator.

(2) Seasonal outdoor seating areas whether in a sidewalk or public right-of way, must comply with all Seasonal Outdoor Seating Requirements, which address the allowed locations, design requirements, safety, and maintenance responsibilities that are approved by the directors of community development and public works

(3) Application fee. A nonrefundable application fee of \$100.00 shall accompany each application for a seasonal outdoor seating permit.

(4) Term of permit. Each seasonal outdoor seating permit is limited to a period beginning March 15 through October 31 of each calendar year. Such permit will have to be applied for on an annual basis and will not automatically renew.

(5) Fees for use of public sidewalk, public right-of-way, or public share parking shall be ten dollars (\$10.00) per square foot per term.

(c) *Limitations on right-of-way seating areas.* An eating establishment shall be limited to the permitted use of two (2) public parking spaces per establishment. At any one time, the town shall limit the total number of issued permits for right-of-way seating areas to no more than twenty percent (20%) of the total parking spaces along a street block. Permits will be issued based on the order of complete applications received.

(d) *Limitations on use of public shared parking.* An eating establishment shall be limited to the permitted use of two (2) public shared parking space per establishment, however the use of public shared parking spaces can only be used for seasonal outdoor seating if the parking

spaces have not been allocated through the public shared parking program pursuant to Sec. 78-100.7 of the zoning ordinance.

If as described in Sec. 66-137(b)(1)f, a development applicant has voluntarily proffered or chosen to participate in the public shared parking program and the only remaining spaces are occupied by an eating establishment pursuant to this division, the director of public works shall provide written notice to the principal operator and owner of the property

(e) *Liability insurance and indemnity.* Prior to approval of any seasonal outdoor seating permit, the applicant shall submit a certificate of liability insurance in such amounts and such coverages as may be required by the risk manager, naming the Town of Herndon as an additional insured in a form satisfactory to the risk manager.

(f) *Fees and taxes to be paid.* All Town of Herndon fees and taxes required by law and applicable to the eating establishment, or to the property on which the eating establishment is located, shall be paid in full and all required town licenses shall be current prior to approval of a seasonal outdoor seating permit.

(g) *Encroachment Agreement.* Prior to the approval of a seasonal outdoor seating permit the applicant shall submit an executed encroachment agreement, incorporating all terms and conditions imposed by town staff and in a form approved by the town attorney or their designee, which shall include but not be limited to provisions regarding insurance and indemnification as may be required by the risk manager.

Sec. 66-134. Seasonal Outdoor seating permit; review process.

(a) After a complete application, including all required materials as set forth in Sec. 66-133 is submitted, the director of community development and the director of public works shall jointly approve the seasonal outdoor seating permit, approve the seasonal outdoor seating permit with conditions, or deny the seasonal outdoor seating permit.

(b) Standards for application review. Approval of a seasonal outdoor seating permit shall be granted only if:

(1) The eating establishment is properly licensed and lawfully located in a PD-TD, Planned Development Traditional Downtown, PD-D, Planned Development Downtown, or CC, Central Commercial zoning districts;

(2) The proposed seasonal outdoor seating complies with the uniform statewide building code, state and local fire codes, state and local

health codes, and all applicable provisions of federal, state, and local law, including this division;

(3) The proposed seasonal outdoor seating complies with all Seasonal Outdoor Seating Requirements;

(4) The public sidewalk maintains 60 inches passage way to back of curb and 36 inch passage around any sidewalk obstruction;

(5) The eating establishment complies with ADA requirements for the indoor and outdoor seating areas. This includes required ADA access within the outdoor seating area;

(6) The proposed outdoor seating will not unreasonably interfere with the normal use of town property by the town or general public, and does not present a safety, health, or environmental hazard; and

(7) The proposed outdoor seating area shall not block egress from the adjacent buildings, block or hinder access to any fire hydrant, fire lane or fire department hose connection.

(c) Availability of approved permit on the premises. If approved, the seasonal outdoor seating permit shall be available on the premises of the eating establishment at all times and shall be provided to representatives of the town upon request.

Sec. 66-135. Seasonal outdoor seating permit; changes to approved permit.

No material change to an approved seasonal outdoor seating permit shall be made without prior written approval by the director of community development and the director of public works, provided that the director of public works may modify an approved permit if they find there is a public need relative to use of the adjacent sidewalk area or right-of-way.

Sec. 66-136. Seasonal outdoor seating permit; duration and transferability.

(a) A seasonal outdoor seating permit shall be valid from March 15 to October 31 per calendar year, unless a shorter time is specified. A seasonal outdoor seating permit shall be valid until the time stated in the permit, the establishment ceases operation, the permit is suspended, or the permit is revoked.

(b) A seasonal outdoor seating permit shall not be transferable to another principal operator or location.

Sec. 66-137. Seasonal outdoor seating permit; enforcement, revocation and suspension.

(a) *Generally.* Operation of seasonal outdoor seating is a licensed privilege granted by the Town of Herndon to occupy a portion of the public right-of-way or public shared parking and is predicated on the seasonal outdoor seating being operated in compliance with all applicable regulations and on maintaining the superseding public interest in the use of public rights-of-

ways in the town and shall be revocable at the pleasure of the town council.

(b) *Administrative revocation of approved permit by the director of public works.*

(1) The director of public works shall have the authority to revoke an approved seasonal outdoor seating permit if any of the following occurs:

a. The applicant has misrepresented facts or provided false information in the seasonal outdoor seating permit application;

b. The outdoor seating area is operated in violation of the terms or conditions of the outdoor seating permit, encroachment agreement or, ABC regulations;

c. The outdoor seating area or the eating establishment is operated in violation of the zoning ordinance, town code, or other applicable federal, state or local law;

d. The outdoor seating area constitutes a public nuisance or a hazard to the public health, safety, or welfare of the public, or is endangering the life or property of others;

e. The eating establishment has delinquent taxes, unpaid fees, or has not maintained all licenses necessary for operation of the eating establishment and outdoor seating area; or

f. The director of public works determines that there is a superseding public need relative to the portion of the public sidewalk, public right-of-way, or public shared parking space(s) occupied by or otherwise affected by the outdoor seating, including but not limited to: 1) work or repair in the public sidewalk or public right-of-way areas, or 2) need of access for work or repair to a public facility or public utility or 3) if a development applicant has voluntarily proffered or chosen to participate in the public shared parking program and the only remaining spaces are occupied by outdoor seating.

(2) The director of public works shall provide written notice that shall be reasonable under the circumstances to the principal operator and owner of the property where the eating establishment is located setting forth the effective date of the revocation and the grounds therefor. Such revocation shall not be appealable.

(3) In the case of revocation of a seasonal outdoor seating permit on grounds other than specified in subsection (b)(1)f of this subsection, the principal operator of the seasonal outdoor seating shall not be permitted to re-apply for an administrative seasonal outdoor seating permit to operate an outdoor seating area for the same establishment within one year of revocation.

(c) *Administrative suspension of an approved permit by the director of public works.*

(1) The director of public works shall have the authority to suspend an approved outdoor seating permit for a period of up to 30 days, or such longer period as may be necessary, if any of the conditions of subsection (b)(1) occur.

(2) The director of public works shall provide written notice to the principal operator setting forth the effective date of the suspension, the length of the suspension, and the grounds therefor.

(3) The director of public works may reinstate a seasonal outdoor seating permit if the director is satisfied that the grounds for the suspension have been abated.

Sec. 66-138. Seasonal outdoor seating permit; marking of outdoor seating area for inspection.

After approval of a seasonal outdoor seating permit and prior to initial occupancy of any area approved for use for outdoor seating, the principal operator of the outdoor seating shall mark the corners of the approved outdoor seating area in a conspicuous but non-permanent manner on the sidewalk surface or other public space and shall notify the director of public works for inspection by the town building official and approval of the same.

Secs. 66-139 - 66-150. - Reserved.

2. This ordinance shall be effective on and after the date of its adoption.



STAFF REPORT

Town Council
April 26, 2022

Title:

Resolution, to approve a Temporary License Agreement between the Town and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce for use of Town-owned property for portable toilets and an ice machine for Friday Night Live events.

Staff Contacts:

Lauri A.N. Sigler
(703)787-7370
lauri.sigler@herndon-va.gov

Description:

This Temporary License Agreement grants permission to the Chamber to use Town-owned property in the Herndon Municipal Center parking lot for placement of portable toilets and in the Herndon Municipal Center parking garage for placement of an ice cooler machine for Friday Night Live events. The portable toilets and ice cooler machine will be in place for approximately 16 weeks beginning on May 6, 2022 and ending on August 26, 2022.

Recommendation:

Staff recommends the Mayor and Town Council adopt the attached Resolution approving the Temporary License Agreement.

Attachments:

1. Resolution
2. Draft Temporary License Agreement

Prepared and Approved by:

A handwritten signature in black ink that reads "Lauri A.N. Sigler". The signature is written in a cursive, flowing style.

Lauri A.N. Sigler, Deputy Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

APRIL 26, 2022

Resolution- to approve a Temporary License Agreement between the Town and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce for use of Town-owned property for portable toilets and an ice machine for Friday Night Live events.

BE IT RESOLVED by the Town Council for the Town of Herndon, Virginia that:

1. The Town Council approves a temporary license agreement dated April 26, 2022 between the Town of Herndon (Town) as licensor and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce (the Chamber) as licensee. The license allows the Chamber to use designated town-owned property in the Herndon Municipal Center parking lot for placement of portable toilets and designated town-owned property in the Herndon Municipal Center parking garage for placement of an ice cooler machine for Friday Night Live events on May 6, 13, 20, 27, June 10, 17, 24, July 1, 8, 15, 22, 29, August 5, 12, 19, 26 of 2022
2. The Mayor is authorized to sign and deliver this license agreement and any other instrument to evidence or support the license agreement

TEMPORARY LICENSE AGREEMENT

This Agreement ("Agreement") is made this 26th day of April 2022 by and between DULLES REGIONAL CHAMBER OF COMMERCE d/b/a Herndon Chamber of Commerce, a Virginia corporation ("Chamber") and the TOWN OF HERNDON, VIRGINIA, a municipal corporation ("Town").

WHEREAS Chamber represents that they have a Special Event Contract to conduct Friday Night Live events in the Town of Herndon on May 6, 13, 20, 27, June 10, 17, 24, July 1, 8, 15, 22, 29, August 5, 12, 19, 26 of 2022 and that Chamber desires to use the Town's property for placement of portable toilets and an ice cooler machine;

WHEREAS the Town desires to permit the use of the Town's property for placement of portable toilets and an ice cooler machine on these dates.

Now therefore, the parties agree as follows:

1. The Town hereby grants Chamber authorization to temporarily use Town-owned property for placement of portable toilets in a place designated by the Town in the Herndon Municipal Center parking lot and an ice cooler machine in a location designated by the Town in the Herndon Municipal Center parking garage.
2. Chamber shall comply with the terms of the License and all applicable town, state and federal laws and regulations obtaining and maintaining at all times any other permit(s) required under applicable law for this use.
3. The parties expressly agree and contract that there shall be no fee for the use of the Town property for this purpose on these dates.
4. The permission to use the property granted by this agreement is nonexclusive in nature, and the Town reserves the right to make concurrent use of the Property.
5. Chamber hereby assumes all risk of damage by reason of its occupation of the Town's property caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and Chamber hereby agrees to hold harmless and indemnify the Town, its officers, agents and employees, from and against any such liability for such damage or injury to the extent permitted under the laws of the Commonwealth of Virginia.
6. Chamber shall secure, provide and maintain insurance to protect the Town of such type and in such amount as is described below naming the Town as an additional insured. This Agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives Chamber written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

Commercial General Liability – Combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate. Policy shall be endorsed to name the Town as an additional insured.

The insurance required hereunder shall be maintained in effect during the duration of this Agreement. Insurance Policy(s) shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) calendar days advance written notice thereof to the Town.

7. Ice cooler machine hasp/lock shall be repaired and maintained in good condition so that the doors are properly secured when cooler is not supervised.

8. Portable Toilets shall be secured in the lot in a manner to minimize the risk of accidental or intentional tip over of the portable toilets. In the case of a tip over, the Chamber shall be responsible for re-setting the toilet facility and clean up of spills on the same day that the Chamber notices or is notified of the tip over. Portable toilets shall be serviced between the end of each concert and noon on the following Monday.

9. Termination: The Town may terminate this Agreement upon 24 hours' notice to Chamber for cause.

10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.

11. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

DULLES REGIONAL CHAMBER OF
COMMERCE d/b/a HERNDON
CHAMBER OF COMMERCE

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Lesa J. Yeatts, Town Attorney

By _____
Name: _____
Title: _____

TOWN OF HERNDON, VIRGINIA

Sheila A. Olem, Mayor

TOWN OF HERNDON, VIRGINIA

RESOLUTION

APRIL 26, 2022

Resolution- to amend the fee schedule for the Chestnut Grove Cemetery.

WHEREAS, the Town Council of the Town of Herndon, Virginia, has established the established fees for the Chestnut Grove Cemetery; and

WHEREAS, with the continuing decrease in burial sites during the past several years, and the need for additional funding support to maintain the cemetery enterprise fund operations, fee adjustments are recommended; and

WHEREAS, it is recommended that the fees be modified as follows:

SITES	Current Fees	Proposed Fees
Lots 1 through 605 (older section)	\$ 3,295	3,795
Lots 606 through 999 (Sec.7-back)	3,295	3,795
Lots 2200 through 2226	3,695	4,195
Lots 3300 through 3335	3,695	4,195
Lots 4200 through 4246	3,695	4,195
Lots 5200 through 5217	3,695	4,195
Park/Infant-Child	975	975
<i>Estate Lots</i>		
Interment Rights (6)	35,995	35,995
Interment Rights (4)	23,995	23,995
<i>Mausoleum</i> (including bronze crypt plate)		
Level 1 & Level 4	5,695	5,695
Level 2 & Level 3	6,195	6,195
<i>Cremation Sites</i>		
Land Cremation Sites Non-Park		
Single	2,700	3,000
Land Cremation Sites Park		
Single	2,700	3,000
Columbaria 3, 4, 5 & 6 (including memorial plate)		
Single	3,250	3,850
INTERMENTS		
Weekdays before 2:00 p.m.		
Adult	1,695	1,895
Infant/Child	495	495
Cremation (Ground Burial)*	1,095	1,295
Columbarium*	1,095	1,295
Mausoleum*	1,895	2,095
*Includes tent and chairs		

	<i>Current Fees</i>	<i>Proposed Fees</i>
<i>Additional Fees for Interment</i>		
Weekdays after 2:00 p.m.	500	500
Saturdays	500	700
Sundays & Holidays	750	1,000

	<i>Current Fees</i>	<i>Proposed Fees</i>
<i>Additional Rights of Interment</i>		
Traditional Site	1,700	2,000
Cremation Site	1,300	1,500

GENERAL SERVICE FEES

Disinterment	3,000	4,000
Deed Transfer	175	175
Tent & Chair Rental	450	450
Memorial Permit Fee	125	175

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby amends the Chestnut Grove Cemetery Fee Schedule and directs the Chestnut Grove staff to implement the amended fee schedule effective July 1, 2022.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

APRIL 26, 2022

Resolution-to amend the Herndon Centennial Golf Course Fee Schedule.

WHEREAS, the Town Council of the Town of Herndon, Virginia, has established fees for the Herndon Centennial Golf Course; and

WHEREAS, the Herndon Centennial Golf Course is an enterprise fund operation and must generate sufficient revenues to meet all personnel, operating, capital and debt service expenses; and

WHEREAS, it is the intent of the town council to remain competitively priced relative to other area public golf courses, yet fair to town citizens; and

WHEREAS, in accordance with established policy, town residents are provided a ten percent (10%) discount off green fees rounded to the nearest dollar amount; and

WHEREAS, the town manager or the town manager's designee may increase or decrease rates during peak or non-peak times or during various weather conditions to not exceed more than ten percent (10%) of the rate; and

WHEREAS, staff recommends that the town council adopt the amended fees proposed below to the Herndon Centennial Golf Course fee schedule.

Green Fees

	<u>Current</u>	<u>Proposed</u>
Weekday (18 holes)	\$34.00	\$38.00
Weekday (9 holes)	\$25.00	\$27.00
Weekend (18 holes)	\$49.00	\$54.00
Weekend (9 holes)	\$30.00	\$34.00
Weekday Sr. /Jr. (18 holes)	\$27.00	\$32.00
Weekday Sr. /Jr. (9 holes)	\$19.00	\$22.00

Cart Fees*

	<u>Current</u>	<u>Proposed</u>
18 holes (per person)	\$16.98	\$18.87
9 holes (per person)	\$11.28	\$13.21

* Cart fees are before tax amounts. Six percent (6%) sales tax will be charged on cart fees.

Annual Passes

	<u>5 day/ 7day Current</u>	<u>5 day/ 7 day Proposed</u>
Mon.-Fri. Annual Pass	\$1,300/\$2,000	\$1,450/\$2,200
Senior Mon.-Fri. Annual Pass	\$1,175	\$1,300
Junior Mon.-Fri. Pass (New)	N/A	\$900

Twilight Rates discounted \$6.00 after 3 p.m. and \$15.00 after 6 p.m.

Weekend Rates start Fridays at 12:00 p.m.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby amends the Herndon Centennial Golf Course fee schedule and directs staff to implement the amended fee schedule effective upon adoption.

STAFF REPORT

Town Council

April 19, 2022

Title: Resolution, to consider an extension of special exception, **SE #21-01, 400 Herndon Parkway, Peppertree Montessori & Preschool**, to permit a private school/daycare within an existing office building.

Synopsis

Special exception SE #21-01 was approved by the town council on April 27, 2021 to permit a private school/daycare within an existing office building.

Section 78-155.3(g)(1) of the zoning ordinance states that a special exception shall expire and become void if a building permit for the development approved by the special exception is not issued within one year from the date of approval.

The applicant has experienced difficulties in securing a professional designer due to the limited scope of services and the high workloads for professional designers. The applicant has also experienced difficulties with contractors obtaining materials due to the worldwide supply chain shortages.

Summary Information

Address	400 Herndon Parkway
Fairfax County Tax Map Number	0171-06-F3
Owners	DK Herndon Parkway, LLC
Applicant	Gwendolyn Dozier
Business	Peppertree Montessori and Preschool
Existing Zoning	Office & Light Industrial (O&LI)
Existing Use	Office Space
Land Use Designation	Office Parks & Flexible Space
Adjacent Land Use Designation	North: Office Parks & Flexible Space South: Community Facilities, Office Parks and Flexible Space East: Community Facilities West: Office Parks & Flexible Space
Total Site Area	241,835 square feet (5.55 acres)
Building Area	19,547 square feet (1 story building)
Tenant Space Area	4,951 square feet

Staff Recommendation	Approve the extension
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Location Map



Background & Approval

The town council, with positive recommendations by staff and the planning commission, approved special exception SE #21-01 to allow Peppertree Montessori to operate a private school/daycare at 400 Herndon Parkway. The approval is for up to 50 children at one time and the size of the school is 4,951 square feet. The special exception was approved by resolution (attachment #2) with six conditions:

1. Substantial conformity with the concept plan and application materials.
2. Dedicated and marked child pickup and drop-off spaces.
3. Maximum 50 children permitted on-site at one time.
4. Outdoor, fenced, recreation area of at least 1,000 square feet.
5. Maximum number of children in play area at one time.
6. Pass a zoning inspection to show compliance with the conditions.

If approved, this application will be extended until October 27, 2022.

Staff Analysis

Zoning Ordinance Compliance

Section 78-155.3(g)(2) of the zoning ordinance provides that the town council can grant the extension to a previously approved special exception upon a showing of good cause.

The applicant explains in their extension request (attachment #3) that they have had problems obtaining materials from contractors and difficulty securing professional design services. Multiple design consultants that work with the town on a regular basis

have explained that they have been and remain extremely busy and the town has experienced delays on its own capital improvement projects due to worldwide supply chain shortages.

Staff finds that the applicant has shown good cause for an extension and still supports the project as originally approved by the town council on April 27, 2021.

Town Council Alternatives

The following alternatives are available to the Town Council for its decision on Special Exception #21-01:

1. Approval of the extension in accordance with the attached resolution.
2. Denial of the extension based on a failure to show good cause.
3. Continuance of the application to the next Town Council public hearing if additional time for review is necessary

Attachments

1. Draft Resolution
2. Original Town Council Resolution dated April 27, 2021
3. Applicant Extension Request Letter

Staff Signature

A handwritten signature in blue ink, appearing to read "David Stromberg", is written over a horizontal line.

David Stromberg, AICP, Zoning Administrator

TOWN OF HERNDON, VIRGINIA

RESOLUTION

APRIL 26, 2022

Resolution- to consider an extension of Special Exception, SE #21-01, 400 Herndon Parkway, Suite 150, Peppertree Montessori & Preschool, to permit a private school/daycare within an existing office building.

WHEREAS, the applicant, Gwendolyn Dozier, Peppertree Montessori, has received a special exception to permit a private school/daycare within an existing office building located at 400 Herndon Parkway and further identified as Fairfax County Tax Map # 0171-06-F3; and

WHEREAS, the applicant has submitted a request for extension of the approved special exception in accordance with Section 78-155.3(g) of the zoning ordinance, which allows the town council to extend the approval a further six months (October 27, 2022); and

WHEREAS, the Town Council finds that the extension as requested is made with good cause.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby:

Approves the extension of Special Exception SE #21-01, with all of the conditions of the original approval, dated April 27, 2021.

[INSERT CONDITIONS]



Elizabeth M. Gilleran, AICP
Director of Community Development
T (703) 787-7380
F (703) 481-5280
community.development@herndon-va.gov

TOWN COUNCIL
Sheila A. Olem, Mayor
Cesar del Aguila, Vice Mayor
Naila Alam
Pradip Dhakal
Signe Friedrichs
Sean M. Regan
Jasbinder Singh

April 28, 2021

Gwendolyn Dozier
400 Herndon Parkway, Suite 150
Herndon, VA 20170

RE: Resolution, to consider a special exception, **SE #21-01, 400 Herndon Parkway, Peppertree Montessori & Preschool**, to permit a private school/daycare within an existing office building. The property is zoned O&LI, Office and Light Industrial. The property is designated in the Herndon 2030 Comprehensive Plan Land Use Map as "Office Parks and Flexible Space". The property is located on the west side of Herndon Parkway, approximately 900 feet from its intersection with Spring Street, and is approximately 5.5 acres in area. Fairfax County Tax Map Reference Number: 0171 06 F3. Applicant: Gwendolyn Dozier, Managing member, Peppertree Montessori, LLC. Property Owner: DK Herndon Parkway, LLC.

Dear Ms. Dozier,

This is to notify you that at its meeting held on Tuesday, April 27, 2021 the Herndon Town Council **approved**, special exception, **SE #21-01**, in accordance in the attached resolution and conditions, #21-G-41.

If you have any questions, please feel free to contact this office, Monday-Friday from 8:00am-5:00pm at 703-787-7380.

Sincerely,

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

David Stromberg, AICP
Zoning Administrator

c: William H. Ashton II, Town Manager (via-email)

DK Herndon Parkway LLC
1777 Reisterstown Rd., Suite 165
Baltimore, MD 21208

TOWN OF HERNDON, VIRGINIA

RESOLUTION

APRIL 27, 2021

Resolution- **to consider a special exception, SE #21-01, 400 Herndon Parkway, Peppertree Montessori & Preschool, to permit a private school/daycare within an existing office building.**

WHEREAS, the applicant, Gwendolyn Dozier, has submitted a request for a special exception to permit a private school/daycare within an existing office building located at 400 Herndon Parkway and further identified as Fairfax County Tax Map # 0171-06-F3; and

WHEREAS, the Planning Commission has reviewed this application and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code; and

WHEREAS, following the public hearing, the Planning Commission has recommended that the application be approved with conditions based upon the finding that the proposed use meets the purpose and intent of the Zoning Ordinance, in particular, Sections 78-71.2 and 78-155.3; and

WHEREAS, the Town Council has reviewed this application and the Planning Commission recommendation and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code; and

WHEREAS, if granted, the uses permitted under the special exception are pursuant to this resolution and associated conditions; and

WHEREAS, if granted, special exceptions may be amended pursuant to Section 78-155.3(j) of the Town of Herndon Zoning Ordinance; and

WHEREAS, if granted, special exceptions may be revoked pursuant to Section 78-155.3(h) of the Town of Herndon Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby:

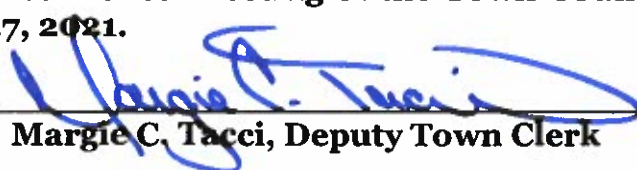
Approves Special Exception Application SE #21-01, in accordance with the conditions set forth below to achieve compliance with the standards found in Section 78-155.3:

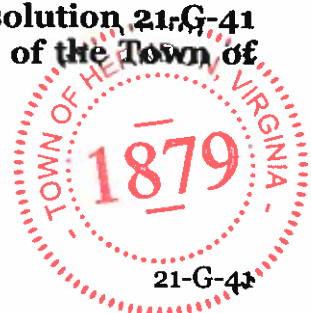
1. Substantial Conformity. The development and maintenance of the special exception use for a Montessori school and daycare pursuant to Section 78-71.2 of the Herndon Zoning Ordinance (the "Zoning

Ordinance”) shall be in substantial conformance with the SE #21-01 application materials submitted January 22, 2021 and concept plan dated March 5, 2021 (the “Concept Plan”). Approval of this application on the parcel identified as Fairfax County Tax Map Number 0171-06-F3, known as 400 Herndon Parkway, Herndon, Virginia (the “Property”), shall not relieve the applicant or the owners of the Property, or their successors or parties developing, establishing, or operating the approved special exception, from the obligation to comply with and conform to any other Zoning Ordinance, codified ordinance, or regulatory requirement.

2. Child & Pick-Up & Drop-Off. Child pick-up and drop-off shall occur in the 10 marked parking spaces located in front of the entrance to the Montessori & preschool, as shown on the special exception plan dated March 5, 2021.
3. Number of Permitted Children. The number of children present on site shall not exceed 50 at any one time.
4. Outdoor Recreation Area. An outdoor, fenced playground area, no less than 1,000 square feet, shall be constructed in the approximate location as shown on the Concept Plan, prior to the issuance of a business license or final certificate of occupancy. When playing outside, all children shall be within the fenced recreation area. There shall be a minimum of two staff members supervising the children while in the outdoor recreation area. If the number of staff required by the Virginia Department of Social Services is greater than two, then that shall be the minimum number of staff required.
5. Number of Permitted Children in Outdoor Recreation Area. The maximum number of children permitted in the outdoor recreation area at any one time shall comply with Section 78-71.2(d)(2)(b) of the zoning ordinance, which requires 100 square feet for per child.
6. Zoning Inspection Permit and Inspections. A Zoning Inspection Permit is required prior to issuance of the business license. Following the business license, the use shall be inspected by zoning and building officials during reasonable hours and upon reasonable prior notice.

This is certified to be a true and accurate copy of Resolution 21-G-41 adopted at a legally convened meeting of the Town Council of the Town of Herndon on April 27, 2021.


Margie C. Tacci, Deputy Town Clerk





March 28, 2022

Mr. David Stromberg
Zoning Administrator
Town of Herndon
777 Lynn Street
Herndon, Virginia 20170

Dear Mr. Stromberg:

Our school, Peppertree Montessori and Preschool, is requesting an extension for our Special Exception approval. We received our approval on April 27, 2021. The reason for our request is two-fold. Our fire monitoring system took over four months to receive our equipment. The first order had malfunctioned parts. The company re-ordered immediately; however, the parts were discontinued which meant they had to search for a new company. Unfortunately, the company that had the parts was backlogged with orders, unable to receive their equipment. The contractors we work with begin calling several other suppliers all over the US. Our contractor explained that companies simply could not receive their shipments and gave several promise dates to our contractors for shipping. Once parts were located and in stock our contractor drove to Pennsylvania to pick-up the parts.

Our second delay has been due to the great, great, difficulty we are experiencing in finding a company that would prepare the Minor Site Plan. We did not anticipate the great difficulty with locating someone to complete the project. When we first began

the project last summer, we contacted Pablo Novella and he explained that the difficulty we were experiencing locating a company. Mr. Novella assured us other businesses were able to complete the process and he supplied several recommendations to us. We first contacted the company Vika that produced the site plan for our building as we felt it would be the path of least resistance to have the fence drawing added. Vika declined the project because they had no time, and they had a large workload due to the pandemic. Vika also said the money they would need to charge us would be outrageous. We proceeded to call all the recommended companies referred to us by Mr. Novella and the responses we received from companies ranged from they did not have time to engage in the project or it would be a minimum of 5-8 months before they would have time to look at our project. Most also told us the project was too small for them, too much work for 1,000 square feet playground fence area. Many companies also explained that since the pandemic their workload has tripled. We thought we had someone capable of completing the project a few months back only to find out they were not licensed in Virginia. No one has provided a quote in writing as of today. Just last week we had one company verbally quote us 40K and then they dropped out of the project, and we never received a written quote. Two days ago, we received another referral and he said as a civil engineer he mainly does large projects.

As of March 25, 2021, we are continuously working to locate someone to prepare the Minor Site Plan. This week Pablo Novella followed-up on a question we wanted to that only a civil engineer could prepare the Minor Site Plan. He verified that an architect, surveyor or an engineer licensed in Virginia could prepare the plan.

Unfortunately, we have missed out on \$125K from the Child Care Stabilization grant which offered help for child-care centers in Virginia which would allow them stay in business. However, because we have been unable to obtain our occupancy certificate, we could not receive a license and we became ineligible. Schools were not required to have any students, only an occupancy based on the building inspector who had given us an estimate of 136 students.

We leased this space in October, 2020.

We are asking for an extension to finalize the process that will allow us to receive our certificate of occupancy.

Should you have any questions please feel free to contact me via email or my cell phone at 202-683-0952.

Thank you,
Liezal E. Dozier, President
Peppertree Montessori and Preschool