TOWN OF Herndon VIRGINIA

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HERNDON TOWN COUNCIL
Tuesday
January 15, 2019

The Town Council met in public session on Tuesday, January 15, 2019, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Cesar del Aguila; Pradip Dhakal; Signe Friedrichs; and Bill McKenna.

Councilmember Jennifer K. Baker was absent.

Others present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Viki L. Wellershaus, Town Clerk; Elizabeth Gilleran, Director of Community Development; Anne Curtis, Chief Communications Officer; Page Kalapasev, Director of Information Technology; Cindy Roeder, Director of Parks and Recreation; Tammy Chastain and John Irish, Deputy Directors of Public Works; David Stromberg, Zoning Administrator; and Margie C. Tacci, Deputy Town Clerk.

Mayor Merkel called the meeting to order at 7:00 p.m., all members present, with the exception of Councilmember Baker, who was absent, and with Mayor Merkel presiding.

Mayor Merkel led the audience in the Pledge of Allegiance to the Flag of the United States of America.

1. **WELCOME**

Mayor Merkel stated that tonight was the first public hearing of the newly-elected Herndon Town Council. She welcomed her colleagues and stated that she was looking forward to working with them over the next two years.

Mayor Merkel stated that at last Tuesday's work session, the Council elected Sheila Olem as Vice Mayor for the 2019-2020 term.

2. ANNOUNCEMENT

Mayor Merkel announced that Councilmember Baker would be absent from tonight's meeting.

3. APPROVAL OF MINUTES

Vote on December 11, 2018
Public Hearing Minutes

On motion of Councilmember McKenna, seconded by Councilmember Friedrichs, and carried by a 6-0 vote, the minutes of the December 11, 2018 public hearing were approved. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye." Councilmember Baker was absent.

4. PRESENTATIONS

Certificate of Appreciation, to recognize Dale Frock, Department of Public Works, on the occasion of his retirement.

Mayor Merkel recognized Tammy Chastain, Deputy Director of Public Works, for an introduction and background on Mr. Frock's career with the town.

Following comments from Ms. Chastain and the Council, Mr. Frock provided comments on his recognition.

Certificate of Appreciation, to recognize Michael B. Berg, Herndon Police Department, on the occasion of his retirement.

Mayor Merkel recognized Chief Maggie DeBoard, Herndon Police, for an introduction and background on Mr. Berg's service with the town.

Chief DeBoard provided comments and presented the shadow box that the Herndon Police Department (HPD) gave to Mr. Berg.

Following comments from Council, Mr. Berg provided comments on his recognition.

Proclamation, to recognize "Herndon Town Incorporation Day," January 14, 2019.

Councilmember McKenna read the proclamation recognizing "Herndon Town Incorporation Day" into the record.

Following comments from Council, the proclamation was presented to Nancy Saunders, President; Charlie Waddell, Vice President; Barbara Glakas, Historian; and members of the Herndon Historical Society.

Following the presentation, Ms. Saunders, Mr. Waddell, and Ms. Glakas provided comments on the proclamation.

TOWN OF HERNDON, VIRGINIA
PROCLAMATION
Herndon Town Incorporation Day
January 14, 2019

The Town of Herndon, Virginia, was officially incorporated on January 14, 1879. In honor of the town's official birthday, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim January 14, 2019, as **Herndon Town Incorporation Day** in the Town of Herndon, to recognize the 140th anniversary of our town. With respect and reverence to the Town of Herndon and its history, the Town Council will highlight and proclaim each January 14 as **Herndon Town Incorporation Day**.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby express appreciation to mayors, councils, members of the Herndon Historical Society, town staff and volunteers, who ~ both in the past and in the present ~ continually strive to preserve and document the history of the Town of Herndon, and encourage the public's interest in our distinct heritage.

5. COMMENTS FROM THE TOWN MANAGER

There were no comments from the Town Manager.

6. COMMENTS FROM THE TOWN COUNCIL

Councilmember Dhakal: Provided comments on two events that he attended today, which were the Rowan Tree Co-Working Ribbon Cutting and the Herndon Chamber of Commerce meeting.

Councilmember Dhakal offered his sincerest condolences to Town Manager William Ashton and his family on the loss of Mr. Ashton's father.

Councilmember Dhakal discussed an app, Lynda Learning, which was part of the website LinkedIn and helps individuals learn new skills. He stated that the app was free with a membership to Fairfax County Public Library and he encouraged those interested to check it out.

Councilmember Dhakal thanked staff for their work on the Town Council Swearing-In Ceremony that was held last week. He stated that many new people attended the event and he hoped it would be an ice breaker for greater inclusivity.

Councilmember del Aguila: Discussed a ruling of the fourth Circuit Court, which he learned about at the Virginia Municipal League (VML) Newly Elected Officials Conference. He stated that as an elected official, he would not be texting, emailing or using a private server on his personal device. All business for the town would be done using town-issued devices, which he recommended his colleagues to follow.

Councilmember McKenna: Echoed Councilmember Dhakal's comments expressing condolences on the passing of Mr. Ashton's father.

Councilmember McKenna provided comments about the Town Council Swearing-In Ceremony. He thanked his friends and several staff members for helping to coordinate his family coming to the event, which he did not know about. He stated it was an emotional time and it meant a lot to him.

Councilmember Friedrichs: Stated that she hoped everyone enjoyed the holiday season.

Councilmember Friedrichs provided comments about several events in town. She encouraged everyone to see NextStop Theatre's current performance "Title of Show;" to visit ArtSpace's current exhibit "Three Moves to Divine," which was at ArtSpace through February 3; and to attend the first Community Garden meeting on Thursday, January 17, 6:30 p.m., at the Herndon Fortnightly Library.

Councilmember Friedrichs echoed her colleagues' comments about the Town Council Swearing-In Ceremony and that she also enjoyed the VML meeting earlier that day.

Councilmember Friedrichs stated that she supported the Council pursuing additional outreach to citizens, similar to the public meeting that the town held to discuss the Heritage Preservation Guidelines. She stated that the Council would also work to update its Code of Conduct.

Vice Mayor Olem: Thanked the Department of Public Works (DPW) for all their work in clearing the snow this past weekend.

Vice Mayor Olem thanked the citizens of the town and her colleagues on Council for the opportunity to serve as Vice Mayor. She was humbled and honored to have the position. She looked forward to working with everyone on the dais, town citizens, and staff.

Vice Mayor Olem echoed Councilmember Friedrichs' comments supporting the Council updating the Code of Conduct and holding community outreach meetings. She was

excited about the community outreach meetings and encouraged citizens to reach out to Councilmembers when they are out and about in town.

Vice Mayor Olem was saddened that her mother, Gracie, was not able to come up during her campaign or to attend the Town Council Swearing-In Ceremony. She was going to visit Gracie later this month.

Mayor Merkel: Stated that it was difficult to watch parents age and expressed her condolences to Mr. Ashton. She provided comments about visiting her mother when she was very ill this past fall. She wished all the best to Vice Mayor Olem's mother.

Mayor Merkel thanked those who attended the Rowan Tree Co-Working Ribbon Cutting and encouraged those interested to visit it.

Mayor Merkel echoed Councilmember Friedrichs' comments about the exhibit at Artspace, which she enjoyed attending. She discussed the exhibit, which included portraits of children and adults living in Ghana.

Mayor Merkel provided comments about the Herndon Youth Advisory Council (HYAC), of which Councilmember McKenna was the chair. She encouraged those interested to attend a HYAC meeting and to follow their new Instagram account @HerndonYAC. She has enjoyed her interactions with the students on the HYAC.

Mayor Merkel echoed her colleagues' comments about the Town Council Swearing-In Ceremony. She expressed her appreciation to all who attended and was glad to see many new people there. She was excited about serving on this Council and stated that the recording of the Swearing-In Ceremony was available on demand at HCTV.org. She recognized the two new Councilmembers, Councilmembers Dhakal and del Aguila. She stated that Councilmember del Aguila is the first Latino elected in Fairfax County and that Councilmember Dhakal was one of four Nepalese Americans to be elected in the country.

Mayor Merkel reminded everyone that town offices would be closed on Monday, January 21 in observation of Martin Luther King, Jr. Day. She encouraged citizens to visit the town's website www.herndon-va.gov for the refuse collection schedule and the hours of operation for the community center and golf course.

Mayor Merkel echoed Vice Mayor Olem's comments thanking DPW for their work in clearing the snow this past weekend.

7. **COMMENTS FROM THE AUDIENCE**

The following individuals came forward to provide comments:

- William Campenni, 1104 Iron Ridge Court, Herndon, congratulated the new Town Council and thanked DPW for their work in clearing the snow this past weekend.

  Mr. Campenni discussed Section 3.1 (Election, qualification and term of office of council members and mayor) of the Town Charter, regarding the political affiliation of candidates not being identified on the ballot. He provided comments about the 2018 town election and suggested either removing that section of the Town Charter, or expanding the Charter to enforce non-partisan elections.

- Jeff Smith, 1001 Trinity Gate Street, Herndon, provided comments on the 2018 town election and urged Council to put away any lingering issues for the benefit of the town.

  Mr. Smith thanked DPW for their work in clearing the snow this past weekend.

  Mr. Smith asked, with the current Federal Government shutdown, if the town looked into deferring any costs or fees, such as water bills, for government employees.

- Steve Mundt, 814 Locust Street, Herndon, congratulated the new Council and thanked them for serving the town. He provided comments on the 2018 town election and challenged the Council to adhere to their oaths of office.

  Mr. Mundt thanked DPW for their work in clearing the snow this past weekend. He suggested that the town consider an ordinance that would require businesses and homeowners to shovel their walkways because of safety concerns.

- Ann Vayda, 631 Oak Street, Herndon, thanked the previous speakers for their excellent points. She thanked the town for posting the Council's work session audio recording on its website. She would like to see audio, video, and a searchable transcript posted for meetings.

  Ms. Vayda requested urgent action to update the Code of Conduct and that the phrase "take under advisement" be removed and replaced by counting and casting votes. She stated that the Council needs diversity of thought from citizens, homeowners, and businesses.

  Ms. Vayda stated that she attended the community meeting to discuss the Heritage Preservation Guidelines, but she felt "ripped off" that she had not seen a product from the meeting.

January 15, 2019
(public hearing)

The following individuals came forward to provide comments on a Board of Zoning Appeals (BZA) matter, Appeal of a Zoning Administrators Decision, 759 Center Street, Herndon. The speakers asked the Town Council to look into the matter:

- Chris Devine, 759 Center Street, Herndon;
- Lon Dunn, Fantasia Drive, Herndon;
- Lea Devine, 12101 Eddyspark Drive, Herndon;
- Bill Hamlet, 1002 Monroe Street, Herndon; and
- Jason Baranowski, 1116 Artic Quill Road, Herndon.

Following comments from the audience, Mayor Merkel requested that the Town Attorney clarify the process on the BZA matter. It was her understanding that this appeal would be heard by the BZA and not the Town Council.

Lesa Yeatts, Town Attorney, agreed with Mayor Merkel that the BZA would hear the appeal of a Zoning Administrators Decision. From there it could be appealed to the Circuit Court. It would not be heard by the Town Council.

Mayor Merkel thanked the speakers for bringing the BZA matter to the town's attention.

8. PUBLIC HEARINGS

Ordinance 18-O-35, to authorize the encroachment of the front stoops of 701, 703, 705, 707, 709 and 711 Monroe Street, identified as Fairfax County Tax Map numbers: 0162 51 0007 through 0012, into the Monroe Street public access easement located directly adjacent thereto within the Town of Herndon.

(Note: this public hearing was continued from the Town Council's public hearing on December 11, 2018.)

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the December 28, 2018 and January 4, 2019 issues.

Mayor Merkel opened the public hearing and stated that this public hearing was continued from the December 11, 2018 meeting to allow proper notification to property owners. Since the public hearing had been advertised, several of the properties had changed owners, and the town wanted to allow time to notify all the current owners. She recognized Lesa Yeatts, Town Attorney, for comments.

Ms. Yeatts stated that some facts had transpired since last week's work session. This morning, representatives for Junction Square and Tradition Homes requested several amendments to the proposed ordinance and found a location issue with one of the stoops, which the town's engineers would have to evaluate. She stated that there was a joint request from staff and the applicant for the Council to consider continuing the public hearing to January 29, 2019.

John Irish, Deputy Director of Public Works, concurred with Ms. Yeatts' comments.

Following staff's comments and with the concurrence of Council, Mayor Merkel asked staff to forgo its report this week.

The public hearing was held, and the following individual provided testimony:

- Steve Mundt, 814 Locust Street, Herndon.

Councilmember McKenna moved to continue Ordinance 18-O-35 to January 29, 2019. Vice Mayor Olem seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by a 6-0 vote. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye." Councilmember Baker was absent.

Resolution 19-G-03, to consider a special exception SE #18-05, 537 Merlins Lane, to permit a home-based daycare with a maximum of twelve children. The zoning designation is PD-R, Planned Development-Residential; Sun Montessori; Applicant Tanushree Maitra.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the December 28, 2018 and January 4, 2019 issues.

Mayor Merkel opened the public hearing and stated that comments received on this item have been entered into the record. She called on David Stromberg, Zoning Administrator, for the staff report.

Mr. Stromberg presented the staff report and PowerPoint, which are on file in the Town Clerk's office. The proposed application is for a special exception to permit a home-based child daycare use for 12 children in the Planned Development – Residential (PD-R) zoning district. The applicant currently has a valid zoning inspection permit for seven children. He discussed the location, use, and application in further detail. Staff and the Planning

Commission recommend approval of the proposed resolution, in accordance with staff's conditions.

There was brief discussion amongst Council and staff on this item.

Mayor Merkel invited the applicant or applicant's agent forward for comments.

- Tanushree Maitra, 537 Merlins Lane, Herndon (applicant), provided brief comments on the application.

The public hearing was held, and the following individuals provided testimony. Both speakers requested that the town revisit its in-home daycare regulations:

- Jeff Smith, 1001 Trinity Gate Street, Herndon; and
- Charles Williams, 421 Queens Row Street, Herndon.

Following the public hearing, Vice Mayor Olem moved approval of Resolution 19-G-03, as presented. Councilmember Friedrichs seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by a 6-0 vote. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye." Councilmember Baker was absent.

Resolution 19-G-03, to consider Special Exception Application SE #18-05, to permit a home-based daycare with a maximum of 12 children in an existing single-family residence zoned PD-R, Planned Development-Residential.

WHEREAS, the applicant, Tanushree Maitra, has submitted a request for a special exception to permit a daycare with a maximum of 12 children on a property improved with a single-family residence and located at 537 Merlins Lane and identified as Fairfax County Tax Map # 0104 15 0179.

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 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 Section 78-155.3; and

WHEREAS, the Town Council has conducted a public hearing and has reviewed the Planning Commission recommendations.

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

Approves Special Exception Application SE #18-05, in accordance with the conditions set forth below to achieve compliance with the standards found in Section 78-155.3;

a. **Substantial Conformity.** The site shall be operated in substantial conformance with the special exception application submitted October 31, 2018, except as modified by these conditions.

b. **Permitted use & licensure.** The use shall be limited to a home-based child daycare with an on-site play area. The applicant must maintain a license as a Family Day home as defined by the Code of Virginia and Virginia Department of Social Services.

c. **Hours of Operation.** The hours of operation for the use shall not extend beyond 7:00 AM – 6:30 PM.

d. **Child drop-off & pickup.** Child drop-off and pickup shall be from the driveway of the subject property. The applicant shall notify all current and new clients in writing that the driveway is the only permitted drop-off/pickup zone.

e. **Number of permitted children.** The number of non-resident children present on site shall not exceed 12 at any one time during the permitted operational hours.

f. **Signs.** Signage related to the business shall not be permitted.

g. **Play area.** When playing outside all children shall be within the fenced playground area.

h. **Inspection.** The property owner shall, during hours of operation, make provisions to allow town officials to inspect the property.

i. **Expiration**. This Special Exception shall not run with the land and shall expire under the following condition(s):

i. A discontinuation of the use for which the special exception was granted for a continuous twelve-month period;

ii. Failure to obtain a Certificate of Occupancy for the proposed use within twelve months of approval of the special exception;

iii. A change in substantial ownership of possession of the subject land.

j. **Revocation.** Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h) of the zoning ordinance.

This resolution by its terms shall be effective on and after the date of its adoption.

9. CONSENT AGENDA

On motion of Vice Mayor Olem, seconded by Councilmember McKenna, and carried by a 6-0 vote, the following Consent agenda item was approved, without comment. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye." Councilmember Baker was absent.

Resolution 19-G-04, to award Contract #B-19-01, 3rd Street Water Tank Painting and Rehabilitation.

WHEREAS, the 3rd Street Water Tank Painting and Rehabilitation project is in the Capital Improvement Program; and

WHEREAS, Contract #B-19-01, 3rd Street Water Tank Painting and Rehabilitation, was advertised on October 16, 2018; and

WHEREAS, a pre-bid conference was held on November 1, 2018 and was attended by two firms; and

WHEREAS, the following bids were received and opened on December 4, 2018 at a public bid opening:

Contractor	Bid
Worldwide Industries Corp.	$791,640
D&M Painting Corporation	$986,000
Horizon Brothers Painting Corp.	$989,700
NOSTOS SS Contractors, LLC	$1,085,000
Manolis Painting, Inc.	$1,194,000; and

WHEREAS, Worldwide Industries Corp. submitted the lowest bid which was found to be responsive and responsible; and

WHEREAS, staff recommends in addition to the contract that a contingency of $79,000 which is approximately 10% of the bid, be authorized; and

WHEREAS, funds to support this contract are available in the Capital Projects Account Number 0020888-480020; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards Contract #B-19-01, 3rd Street Water Tank Painting and Rehabilitation, to Worldwide Industries Corp. in the amount of $791,640.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby authorizes a contingency of $79,000.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby authorizes the Town Manager's designee to approve contract modifications (change orders) that increase project scope and costs, utilizing the project contingency.

10. ADJOURNMENT

There being no further business, the meeting adjourned at 8:54 p.m.

Lisa C. Merkel

Lisa C. Merkel
Mayor

Amanda M. Kertz

Amanda M. Kertz
Deputy Town Clerk

TOWN OF HERNDON, VIRGINIA 1879

Minutes approved by Town Council: January 29, 2019.