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HERNDON TOWN COUNCIL
Tuesday
September 24, 2019

The Town Council met in public session on Tuesday, September 24, 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 Jennifer K. Baker; Cesar del Aguila; Pradip Dhakal; Bill McKenna; and Signe Friedrichs.

Chair Robert B. Walker, Architectural Review Board/Heritage Preservation Review Board (ARB/HPRB), was present.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Elizabeth Gilleran, Director of Community Development; Page Kalapasev, Director of Information Technology; Scott Robinson, Director of Public Works; Lauri Sigler, Deputy Town Attorney; John Irish, Deputy Director of Public Works; Bryce Perry, Deputy Director of Community Development; Dave Stromberg, Zoning Administrator; Michael Wallick, Transportation Planner; Christopher Garcia, Development Planner; and Erika Orellana, Acting Deputy Town Clerk.

Mayor Merkel called the meeting to order at 7:00 p.m., all members present, and with Mayor Merkel presiding.

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

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APPROVAL OF MINUTES

**Vote on September 3, 2019
Work Session Minutes**

On motion of Vice Mayor Olem, seconded by Councilmember McKenna, and carried by unanimous vote, the minutes of the September 3, 2019 work session were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

**Vote on September 10, 2019
Public Hearing Minutes**

On motion of Councilmember McKenna, seconded by Vice Mayor Olem, and carried by unanimous vote, the minutes of the September 10, 2019 public hearing were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

**Vote on September 17, 2019
Work Session Minutes**

On motion of Councilmember McKenna, seconded by Vice Mayor Olem, and carried by unanimous vote, the minutes of the September 17, 2019 work session were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

PRESENTATIONS

3. Proclamation, to recognize "Hispanic Heritage Month," September 15 – October 15, 2019.

Councilmember del Aguila read the proclamation recognizing "Hispanic Heritage Month" into the record.

Following comments from Council, Val Kaiser, Chair, on behalf of the Dulles Regional Chamber of Commerce; and Rosalba Llenas and Nury Mena, Co-Chairs, Hispanic Business Council Committee of the Dulles Regional Chamber of Commerce; provided comments on the proclamation.

The proclamation was presented to Ms. Kaiser, Ms. Llenas, Ms. Mena, others from the Dulles Regional Chamber of Commerce, those who were present from the Hispanic Business Council Committee, and those from the community who wished to show their support.

After the presentation, Alex Rodriguez (address not provided), spoke about the proclamation and wished to correct an error. He stated that Hispanic Heritage Week

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was first proclaimed in 1968, but it was not until the 1980s, with the work of Congressman Torres and the Executive Director of the Congressional Hispanic Caucus, that Hispanic Heritage Month came into being. The Director of the Congressional Hispanic Caucus at that time was Bettie Baca who helped pass the legislation and was present this evening. There was a good article about the history of this month in the Los Angeles Times. Mr. Rodriguez thanked Council for the proclamation.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
Hispanic Heritage Month
September 15 - October 15, 2019**

Hispanic Heritage Week was first proclaimed in 1968. Since the 1980s, **Hispanic Heritage Month** has been celebrated annually from September 15 through October 15. This month honors the innumerable social, political, economic, and cultural contributions that Hispanics have made to our country. The Hispanic population of the United States, who trace their roots to Spain, Mexico and the Spanish-speaking nations of Central America, South America and the Caribbean, now constitutes over 18 percent of the nation's total population. Today, organizations in the United States use the term broadly to refer to persons with a historical and cultural relationship either with Spain, or with Spain and Portugal, regardless of race.

Five of our Central-American neighbors ~ Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua ~ gained independence from Spain on September 15, 1821, and Chile gained independence on September 18, 1821. Mexico's Independence Day is different from that of other nations. On September 16, 1810, the "Grito de Dolores" (Cry of Dolores) was declared by Father Miguel Hidalgo, beginning the Mexican War of Independence. September 16, 2019, marks 209 years of Mexican independence from Spanish rule.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim September 15 through October 15, 2019, as **Hispanic Heritage Month** in the Town of Herndon; and recognize that Americans of Hispanic and Latin heritage have a positive impact and enduring influence on our community through many fields ~ including business, law, politics, education, community service, the arts, sciences, and as members of our armed forces.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, encourage all residents to learn more about the history of Americans of Hispanic and Latin heritage; to observe this month with the appropriate programs and activities celebrating these diverse cultures; and highlight that this is also an opportune time to celebrate the heritage of people from the other Spanish-speaking countries throughout the world.

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4. Proclamation, to recognize “Herndon Arts Week,” October 6 – October 12, 2019.

Councilmember Friedrichs read the proclamation recognizing “Herndon Arts Week” into the record.

Following comments from Council, Mike O’Reilly, Board of Directors, and Joanna Ormesher, President and CEO, Arts Herndon, provided brief comments on the proclamation.

The proclamation was presented Ms. Ormesher, Mr. O’Reilly, members of Arts Herndon, Herndon area arts groups, and members of the audience who wished to show their support.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
Herndon Arts Week
October 6 – October 12, 2019**

Celebrated annually, **Herndon Arts Week** affirms the town’s commitment to the arts community in Herndon, and recognizes that the performing arts, visual arts, literature and the humanities, are pivotal to the enrichment of human expression. **Herndon Arts Week** ~ an initiative of Arts Herndon ~ promotes our many wonderful community artists, arts organizations and businesses in town. Arts Herndon, and community arts organizations ~ ArtSpace Herndon; Dark Horse Theatre and Calamity Improv; Herndon Schools Arts Pyramid; Herndon Community Band; Fairfax County Public Schools Arts Department, Fairfax County Public Library Young Readers and Herndon Fortnightly Library; Folk Club of Herndon and Reston; Frying Pan Farm Park; NextStop Theatre Company; Music Loft; Treble Clefs Chorale; The Artists of Lake Anne; The Herndon Artists Cooperative; Bach 2 Rock; Sterling Playmakers; Right on Records; Northern Virginia Community College; George Mason University; and art galleries in town ~ provide creative outlets for our citizens and enhance our town by developing and promoting the talents of local artists. Designating an annual arts week in Herndon provides a focal point to celebrate the unity created by our town’s diverse cultural heritage through the arts and demonstrates the vitality of our community artists across all fields. **Herndon Arts Week** brings public and private sectors together to reaffirm support for the arts and humanities, and to emphasize the significance of arts in our community.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim October 6 through October 12, 2019, as **Herndon Arts Week** in the Town of Herndon; recognize this important week in our community; and commend and support Arts Herndon ~ the town’s official arts agency ~ along with the many artists, arts groups, organizations, and clubs in the Greater Herndon Area ~ for their roles in organizing and hosting **Herndon Arts Week**.

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Further, the Mayor and Town Council of the Town of Herndon, Virginia, encourage all citizens to participate in the activities throughout **Herndon Arts Week** and to take part in arts events and activities throughout the year.

5. Certificate of Congratulations, to recognize Ian Nordling, Herndon Youth Advisory Council.

Mayor Merkel recognized Councilmember McKenna for comments and to introduce Ian Nordling, Herndon Youth Advisory Council (HYAC).

Councilmember McKenna provided comments about Ian Nordling and his role on the HYAC.

At 7:33 p.m., Mayor Merkel momentarily stepped away from the dais and returned at 7:34 p.m.

Following comments from Council, Elizabeth Vosseller, Director, Growing Kids Therapy Center (GKTC), and Ian's mother, Rosaleen Presley, on behalf of Ian, provided comments on the presentation.

The certificate was presented to Ian and his family; Ms. Vosseller and members of GKTC who were present; Ian's friends; neighbors; and his colleagues on the HYAC that were present.

6. COMMENTS FROM THE TOWN MANAGER

William H. Ashton, II, Town Manager stated he would reserve his comments for the State of the Town report that was on the General portion of the agenda this evening.

7. COMMENTS FROM THE TOWN COUNCIL

Councilmember McKenna: Thanked Mr. Ashton for speaking at the HYAC meeting last Thursday, September 19. He stated they had a good discussion, and he thought Lucy Brown, Chair, did a great job running the meeting. Next month, the HYAC was looking forward to visiting the Herndon Police Department (HPD).

Councilmember Friedrichs: Stated that she attended one of the sessions that Fairfax County held on their Strategic Plan. She encouraged those interested in the plan to visit the county's website, fairfaxcounty.gov, and provide feedback. She provided brief comments about the session.

Councilmember del Aguila: Stated that he attended the Centreville Immigration Forum Annual Dinner on Friday, September 20. He thanked the organization for inviting Council to attend.

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Councilmember del Aguila thanked the Pedestrian and Bicycle Advisory Committee (PBAC) for providing feedback on the town's Comprehensive Plan.

Councilmember del Aguila thanked the HPD for taking care of speeding issues at the Fortnightly Boulevard and Grace Street intersection.

Councilmember Baker: Stated that she attended the Dulles Regional Chamber of Commerce's Metro Monday on September 23. She provided comments about the event, where she heard an update on the Reston Station. Next month, Metro Monday would include an update on the Herndon Station and the Town Manager would speak.

Councilmember Baker stated that on Saturday, September 28, the Herndon High School (HHS) Band the "Pride of Herndon," would host its annual Showcase of Bands. She encouraged those interested to attend.

Councilmember Baker stated that several members of Council would be attending the Virginia Municipal League (VML) Conference in Roanoke, which started next weekend.

Vice Mayor Olem: Reminded those present that the town's annual Fall Clean-Up would be held during the week of October 7 through October 11 on your trash day.

Vice Mayor Olem encouraged those interested to attend NatureFest this Sunday, September 29, at Runnymede Park.

Vice Mayor Olem echoed Councilmember Baker's comments about the Showcase of Bands at HHS and stated she planned to attend. She stated that Herndon and the band have Arthur Nachman to thank for the turf fields at HHS. She stated that the reason Mr. Nachman worked to get those installed was because he was in the marching band.

8. COMMENTS FROM THE AUDIENCE

The following members of the audience provided comments:

- Steve Mitchell, 1291 Monroe Street, Herndon, provided comments on affordable housing and accessory dwelling units.

Mayor Merkel asked Mr. Mitchell to send his comments to the Council. She stated that the Council had scheduled a special work session to discuss affordable housing options for Thursday, October 17, 7:00 p.m. She encouraged Mr. Mitchell and all those interested to attend.

Mr. Mitchell stated that he would work with staff to provide information.

- Barbara Glakas, 935 Barton Oaks Place, Herndon, provided comments on an upcoming event with the Herndon Historical Society where Margaret Jamborsky, Herndon High School Band Parents Association, who worked on gathering

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information for the band's trip to Normandy and to honor the USS Herndon, would be the guest speaker.

Ms. Glakas thanked the Council for recognizing Hispanic Heritage Month earlier that evening and provided comments about diversity in the town.

PUBLIC HEARINGS

9. **Ordinance 19-O-30, to authorize the acquisition of a fee simple interest, permanent and temporary easements on property owned by James Gallagher Tax Map #016-2-22-0151 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon;**
10. **Ordinance 19-O-31, to authorize the acquisition of a temporary easement on property owned by The Montessori Country School, Inc. Tax Map #016-2-02-0149C for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon;**
11. **Ordinance 19-O-32, to authorize the acquisition of temporary and permanent easements on property owned by Presidents Court Homeowners Association Tax Map #016-4-19-0000-A1 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon;**
12. **Ordinance 19-O-33, to authorize the acquisition of fee simple interest and temporary easements on property owned by Vassili Fedousov Tax Map #016-2-02-0149 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon; and**
13. **Ordinance 19-O-34, to authorize the acquisition of a fee simple interest and temporary easement on property owned by Rosario E. Rivera Tax Map #016-2-22-0007 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearings had been duly advertised in the September 6, 2019 and September 13, 2019 issues.

Mayor Merkel opened the public hearings and stated that the next five ordinances related to transportation facility improvements on Van Buren Street. She would call for concurrent staff reports on these items, with separate public hearings and roll call votes. She recognized the Lesa Yeatts, Town Attorney, to start the presentation.

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Ms. Yeatts provided comments on the proposed ordinances. The Van Buren Street improvement project is a long-standing CIP item. The town intends to construct transportation facility improvements on Van Buren Street, from Spring Street to Herndon Parkway. To construct the improvements, the acquisition of several interests in land were identified as necessary. This project includes federal, state, and town funds. The proposed ordinances would request Council to authorize these interests by way of condemnation, through the town's power of eminent domain. The town was up against a deadline for some of the federal funding for the project, and had not successfully completed negotiations with the landowners. She stated that Courtney Harden, of Briglia Hundley, outside counsel, was here this evening. She recognized John Irish, Deputy Director of Public Works, for the staff reports.

Mr. Irish presented the concurrent staff reports and a PowerPoint dated September 24, 2019, which are on file in the Town Clerk's office. He discussed the scope, history, background, location, details, and funding for the project. The PowerPoint included an overview of the project's phases, where the easements would be located, and identified the types of easements. Most of the easements were temporary that would be returned to the property-owners following the completion of the project. The town would continue to negotiate with the landowners during the process. Mr. Irish stated that staff hoped to start utility relocation this fall. Staff recommends approval of the proposed ordinances, as presented.

Following the staff reports, Ms. Yeatts recognized Ms. Harden for comments.

Ms. Harden stated that she was assisting the town because of an appointment from the Virginia Attorney General's office to help localities with eminent domain. While the Virginia Department of Transportation (VDOT) is often the state agency that deals with condemnations for transportation projects, this was a locally administered project, which meant that the town would do the taking of land itself. She discussed the Van Buren complete streets project and the eminent domain process.

Seeing no questions from Council, Mayor Merkel stated that she would proceed with the separate public hearings on each item.

Ordinance 19-O-30, property owned by James Gallagher.

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

[Note: Mr. Fedousov's item was later in the agenda, Ordinance 19-O-33, property owned by Vassili Fedousov. The record reflects his comments here.]

- Vassili Fedousov, 401 Van Buren Street, Herndon, stated that he provided letters to the town about this project and did not receive an answer. He had several questions about his property, which would be impacted by one of the condemnations.

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Ms. Yeatts advised Mr. Fedousov that the Council would hold the public hearing on his property following two other properties on the agenda.

Mr. Fedousov indicated that he understood.

Following the public hearing, Councilmember McKenna moved approval of Ordinance 19-O-30 as presented. Vice Mayor Olem seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Ordinance 19-O-30, Authorizing the acquisition of fee simple interest, permanent and temporary easements on property owned by James Gallagher, Tax Map #016-2-22-0151 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street to Herndon Parkway.

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

1. The Town of Herndon made a bona fide but ineffectual effort to acquire 34 square foot fee simple interest, a 65 square foot permanent signal easement, and 258 square foot temporary construction and grading easement from James Gallagher for \$2,830 in connection with the Van Buren Street Improvement Project. The landowner did not accept this offer. Therefore, the Town Attorney and outside counsel on behalf of the Town are authorized and directed to file a Certificate of Take and prosecute to completion a condemnation action against the land owned by James Gallagher as well as James Gallagher for the Town's condemnation of these interests in property over real estate located at 359 Hillwood Court, Town of Herndon, Fairfax County, Virginia, designated as Tax #: 016-2-22-0151, and shown as Parcel 4 on Plat #2 of Job # RK1807.01, dated July 1, 2019, and revised through July 11, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia, which said plat is attached hereto and incorporated herein.
2. The Town Council approves the following proposed public use for this acquisition: the construction, maintenance, or improvement of the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage, for the public safety and welfare of the Town.

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3. The Town Council directs the Town Manager, Town Attorney, and their outside counsel to acquire the above described interests in property for public use by condemnation, purchase, or other means. The Town staff is hereby authorized to pay the compensation set forth in paragraph 1 above into the Fairfax County Circuit Court contemporaneously with filing a Certificate of Take.
4. The property interests shall be used for the Van Buren Street Improvement Project. The property interests are necessary for the construction, maintenance, or improvement of, and access to, the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage.
5. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is Parcel 4 on Plat #2 of Job # RK1807.01, dated July 1, 2019, and revised through July 11, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia.]

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Ordinance 19-O-31, property owned by The Montessori Country School, Inc.

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

- Jessie Ghanipour, 106 Pearl Street, Herndon, President of the Board, The Montessori Country School, stated, for the record, that The Montessori Country School, Inc., supported the initiatives and they have signed all the papers.

Following the public hearing, Councilmember del Aguila moved approval of Ordinance 19-O-31, as presented. Councilmember Baker seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-31, Authorizing the acquisition of a temporary easement on property owned by The Montessori Country School, Inc. Tax Map #016-2-22-0149C for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway.

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

1. The Town of Herndon made a bona fide but ineffectual effort to acquire a 915 square foot temporary construction and grading easement from The Montessori Country School, Inc. for \$1,680 in connection with the Van Buren Street Improvement Project. The landowner did not accept this offer. Therefore, the Town Attorney and outside counsel on behalf of the Town are authorized and directed to file a Certificate of Take and prosecute to completion a condemnation action against the land owned by The Montessori Country School, Inc. as well as The Montessori Country School Inc. for the Town's condemnation of these interests in property over real estate located at 621 Alabama Drive, Town of Herndon, Fairfax County, Virginia, designated at Tax Map #016-2-22-0149C, and shown as Parcel 2 on Plat #2 of Job # RK1807.01, dated July 1, 2019, and revised through July 11, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia, which said plat is attached hereto and incorporated herein.
2. The Town Council approves the following proposed public use for this acquisition: the construction, maintenance, or improvement of the public roadway, bike lanes, sidewalks, utility relocation, curb

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and gutter, and storm drainage, for the public safety and welfare of the Town.

3. The Town Council directs the Town Manager, Town Attorney, and their outside counsel to acquire the above described interests in property for public use by condemnation, purchase, or other means. The Town staff is hereby authorized to pay the compensation set forth in paragraph 1 above into the Fairfax County Circuit Court contemporaneously with filing a Certificate of Take.
4. The property interests shall be used for the Van Buren Street Improvement Project. The property interests are necessary for the construction, maintenance, or improvement of, and access to, the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage.
5. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is Parcel 2 on Plat #2 of Job # RK1807.01, dated July 1, 2019, and revised through July 11, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia.]

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(public hearing)

Ordinance 19-O-32, property owned by Presidents Court Homeowners Association (HOA).

In response to queries from Mayor Merkel, Lesa Yeatts, Town Attorney, stated that staff had been communicating with the Presidents Court HOA. The HOA requested a memorandum regarding some agreements with the town. Ms. Yeatts recommended proceeding with the public hearing.

Following the public hearing (there were no comments from the audience), Councilmember Baker moved approval of Ordinance 19-O-32 as presented. Councilmember McKenna seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-32, Authorizing the acquisition of temporary and permanent easements on property owned by Presidents Court Homeowners Association, Tax Map #016-4-19-000A1 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway.

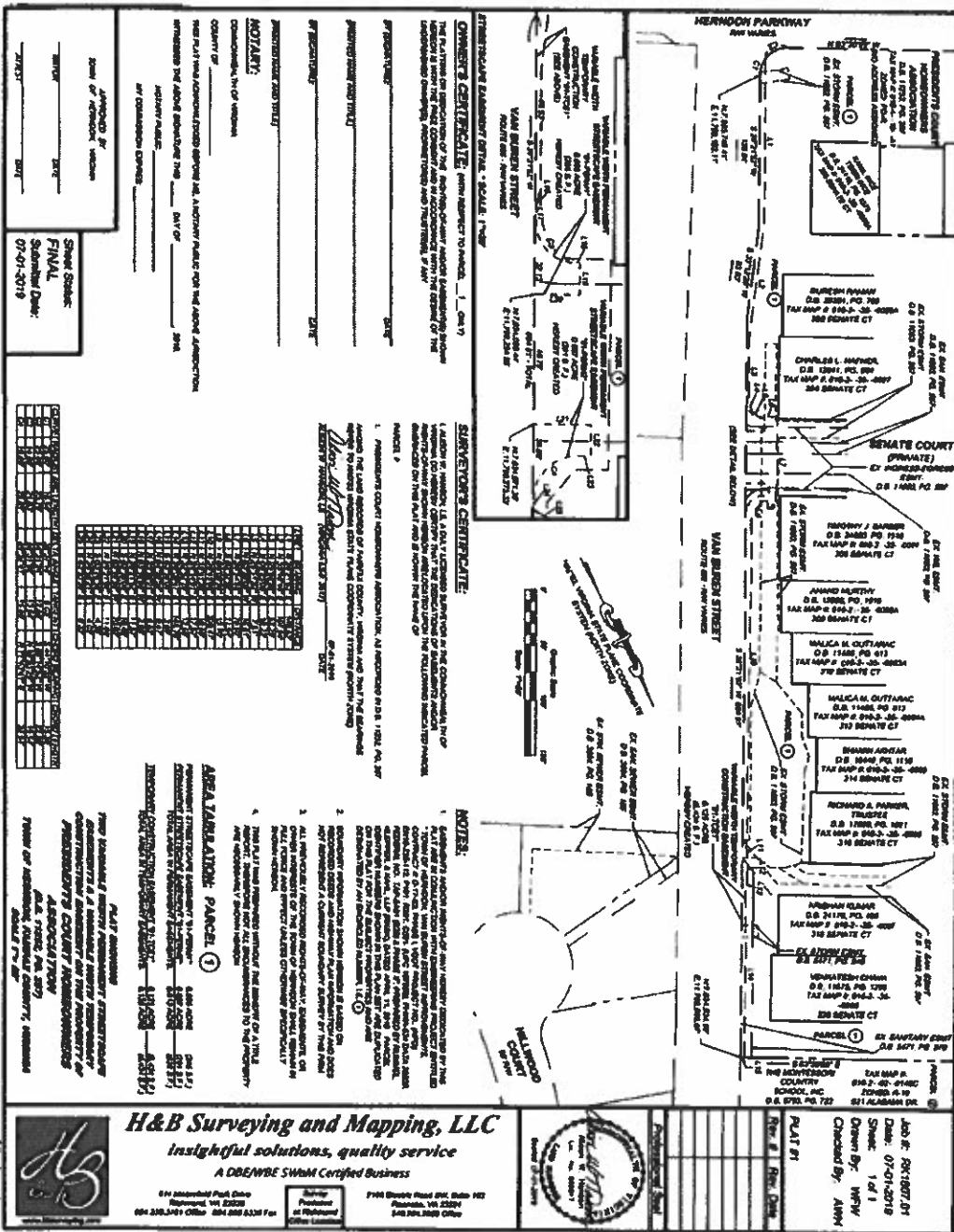
BE IT ORDAINED by the Council for the Town of Herndon that:

1. The Town of Herndon made a bona fide but ineffectual effort to acquire 536 square foot permanent streetscape easement and a 5,434 square foot temporary construction and grading easement from Presidents Court Homeowners Association for \$22,790.00 (including landscaping) in connection with the Van Buren Street Improvement Project. The landowner did not accept this offer. Therefore, the Town Attorney and outside counsel on behalf of the Town are authorized and directed to file a Certificate of Take and prosecute to completion a condemnation action against the land owned by the Presidents Court Homeowners Association as well as the Presidents Court Homeowners Association for the Town's condemnation of these interests in property over real estate located in the Town of Herndon, Fairfax County, Virginia, designated as Tax Map #16-4-19-000A1, and shown as Parcel 1 on Plat #1 of Job # RK1807.01, dated July 1, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia, which said plat is attached hereto and incorporated herein.

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2. The Town Council approves the following proposed public use for this acquisition: the construction, maintenance, or improvement of the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage, for the public safety and welfare of the Town.
3. The Town Council directs the Town Manager, Town Attorney, and their outside counsel to acquire the above described interests in property for public use by condemnation, purchase, or other means. The Town staff is hereby authorized to pay the compensation set forth in paragraph 1 above into the Fairfax County Circuit Court contemporaneously with filing a Certificate of Take.
4. The property interests shall be used for the Van Buren Street Improvement Project. The property interests are necessary for the construction, maintenance, or improvement of, and access to, the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage.
5. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is Parcel 1 on Plat #1 of Job # RK1807.01, dated July 1, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia.]



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Ordinance 19-O-33, property owned by Vassili Fedousov.

Mayor Merkel asked Mr. Fedousov if he had additional comments.

Mr. Fedousov indicated he had the same concerns as he expressed in his earlier testimony during the public hearing for Ordinance 19-O-30.

Responding to Mr. Fedousov and Mayor Merkel, Ms. Yeatts stated that Mr. Fedousov had submitted questions to Community Development staff through Richard Smith. She would ensure Mr. Fedousov's comments were received and that his concerns were being addressed on by the appropriate staff.

Following the public hearing, Councilmember Dhakal moved approval of Ordinance 19-O-33, as presented. Councilmember McKenna seconded the motion.

There were brief comments from Council.

There was a brief question and answer session between Councilmember Friedrichs and Mr. Irish about the subject property.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-33, Authorizing the acquisition of fee simple interest and temporary easements on property owned by Vassili Fedousov, Tax Map #016-2-02-0149 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway.

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

1. The Town of Herndon made a bona fide but ineffectual effort to acquire 1,004 square foot fee simple interest and 1,226 square foot temporary construction and grading easement from Vassili Fedousov for \$17,990 (including landscaping and asphalt pavement) in connection with the Van Buren Streets Improvement Project. The landowner did not accept this offer. Therefore, the Town Attorney and outside counsel on behalf of the Town are authorized and directed to file a Certificate of Take and prosecute to completion a condemnation action against the land owned by Vassili Fedousov as well as Vassili Fedousov for the Town's condemnation of these interests in property over real estate located at 401 Van Buren Street, Town of Herndon, Fairfax County, Virginia, designated as Tax Map #016-2-02-0149, and shown as Parcel 3 on Plat #3 of Job #RK1807.01, dated July 1, 2019,

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prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia, which said plat is attached hereto and incorporated herein.

2. The Town Council approves the following proposed public use for this acquisition: the construction, maintenance, or improvement of the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage, for the public safety and welfare of the Town.
3. The Town Council directs the Town Manager, Town Attorney, and their outside counsel to acquire the above described interests in property for public use by condemnation, purchase, or other means. The Town staff is hereby authorized to pay the compensation set forth in paragraph 1 above into the Fairfax County Circuit Court contemporaneously with filing a Certificate of Take.
4. The property interests shall be used for the Van Buren Street Improvement Project. The property interests are necessary for the construction, maintenance, or improvement of, and access to, the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage.
5. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is Parcel 3 on Plat #3 of Job #RK1807.01, dated July 1, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia.]

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Ordinance 19-O-34, property owned by Rosario E. Rivera.

Following the public hearing (there were no comments from the audience), Councilmember Baker moved approval of Ordinance 19-O-34, as presented. Councilmember Friedrichs seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Ordinance 19-O-34, Authorizing the acquisition of fee simple interest and temporary easement on property owned by Rosario E. Rivera, Tax Map #016-2-22-0007 for public use by condemnation (eminent domain) for the transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway.

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

1. The Town of Herndon made a bona fide but ineffectual effort to acquire 86 square foot fee simple interest and 467 square foot temporary construction and grading easement from Rosaria E. Rivera for \$2,420 in connection with the Van Buren Street Improvement Project. The landowner did not accept this offer. Therefore, the Town Attorney and outside counsel on behalf of the Town are authorized and directed to file a Certificate of Take and prosecute to completion a condemnation action against the land owned by Rosaria E. Rivera as well as Rosaria E. Rivera for the Town's condemnation of these interests in property over real estate located at 401 Hillwood Court, Town of Herndon, Fairfax County, Virginia, designated as Tax Map #016-2-22-0007, and shown as Parcel 5 on Plat #5 of Job # RK1807.01, dated June 28, 2019, and revised through July 11, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia, which said plat is attached hereto and incorporated herein.
2. The Town Council approves the following proposed public use for this acquisition: the construction, maintenance, or improvement of the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage, for the public safety and welfare of the Town.
3. The Town Council directs the Town Manager, Town Attorney, and their outside counsel to acquire the above described interests in property for public use by condemnation, purchase, or other means.

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The Town staff is hereby authorized to pay the compensation set forth in paragraph 1 above into the Fairfax County Circuit Court contemporaneously with filing a Certificate of Take.

4. The property interests shall be used for the Van Buren Street Improvement Project. The property interests are necessary for the construction, maintenance, or improvement of, and access to, the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage.
5. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is Parcel 5 on Plat #5 of Job # RK1807.01, dated June 28, 2019, and revised through July 11, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia.]

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(public hearing)

14. **Resolution 19-G-59, to consider authorization of an application to the Commonwealth Transportation Board for Virginia Department of Transportation (VDOT) – Transportation Alternatives Set-Aside funding for federal fiscal years 2021 and 2022 and endorsement of the “Central Elden Walkability Improvements” project.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearings had been duly advertised in the September 6, 2019 and September 13, 2019 issues.

Mayor Merkel opened the public hearings and recognized Michael Wallick, Transportation Planner, for the staff report.

Mr. Wallick presented the staff report and PowerPoint dated September 24, 2019, which are on file in the Town Clerk's office. Mr. Wallick outlined the project, which would include redesigning and reconstructing the streetscape on the south side of Elden Street, between Center Street to the east, and opposite Main Drive to the west. He reviewed the location, proposed improvements, the project's purpose, and funding sources. The Central Elden Walkability Improvements project would improve pedestrian safety, accessibility, and walkability between downtown and the south Elden Street corridor.

Mr. Wallick stated that the town would seek funding for this project through the VDOT administered Transportation Alternatives – Set Aside (TA Set-Aside) Program for FY 2021 and FY 2022. In accordance with the program, the town must provide a resolution to VDOT for consideration. Staff expected construction on this project to begin in 2025/2026, or in four years of funding, as required by the grant. Staff recommends approval of the proposed resolution, as presented.

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

There was a brief question and answer period between Councilmember del Aguila, Mr. Wallick, and Mr. Irish.

There was a brief question and answer period between Councilmember Friedrichs, Mayor Merkel, Mr. Irish, and Mr. Wallick.

There were further comments from Council.

Councilmember Dhakal asked, for the record, if the project would be ADA compliant even without moving the utility poles.

Mr. Wallick indicated that it would be ADA compliant.

There was a brief question and answer period between Councilmember Dhakal, Mr. Wallick, Mayor Merkel, and Mr. Ashton.

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There was a brief question and answer period between Mayor Merkel and Mr. Wallick.

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

- Alexandra Cummings, 803 Elden Street, Herndon, who asked about the trees that would be impacted by the project and about utility undergrounding; and
- Ron Cummings, 803 Elden Street, Herndon, who echoed his wife's (previous speaker) comments.

Following the public hearing, Vice Mayor Olem moved approval of Resolution 19-G-59, as presented. Councilmember McKenna seconded the motion.

There were brief comments from Council.

Councilmember del Aguila stated that he would commit to bringing up the discussion of undergrounding utilities in this area at the next Town Council Work Session.

Mayor Merkel provided comments about the undergrounding process and stated that it was a project that could be added to the CIP, if the town wanted to see it happen by a certain time. She offered to meet with the Cummings to discuss undergrounding and other matters about Herndon. She stated that her fellow Councilmembers would likely be open to meeting with them as well.

In response to Mayor Merkel, Mr. Ashton stated that the town hoped to have undergrounding commercial utilities included with the downtown redevelopment and Center Street realignment projects.

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

Resolution 19-G-59, to authorize an application to the Commonwealth Transportation Board for VDOT – Transportation Alternatives Set-Aside funding for federal fiscal years 2021 and 2022 and endorsement of the "Central Elden Walkability Improvements" project.

WHEREAS, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution be received from the sponsoring jurisdiction or agency requesting the Virginia Department of Transportation establish a Transportation Alternatives Set-Aside project to be administered by the Town of Herndon, Virginia; and

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- WHEREAS,** in 2008 the Town Council adopted the 2030 Comprehensive Plan which guides the town to *facilitate alternative modes of transportation within the town and provide safe streets that are friendly to pedestrians and bicyclists and continue to integrate pedestrian and bicycle facilities with the street and transit network*; and
- WHEREAS,** the Town Council's adopted 2035 Vision Statement expresses that *Residents walk, cycle, drive, or use public transit to their jobs, restaurants, and cultural events and Through thoughtful planning, the town has a network of sidewalks, trails, streets and connections to public transportation that provides residents the opportunity for one-car or no-car living*; and
- WHEREAS,** the Town of Herndon Pedestrian and Bicycle Advisory Committee (PBAC) identified the Central Elden Walkability Improvements project as a top priority within the PBAC recommended draft Town of Herndon Pedestrian Plan; and
- WHEREAS,** the current conditions of the streetscape within the project area are unsafe, uncomfortable, inadequate, and non ADA-compliant; and
- WHEREAS,** the project area is within one block of two schools and the sidewalk to be improved is frequently used by school children; and
- WHEREAS,** the proposed improvements would enhance pedestrian service levels, provide an important connection between south Elden Street's commercial corridor and downtown Herndon, and create a safe walking environment for all users; and
- WHEREAS,** the Planning Commission held a public hearing on August 26, 2019, which resulted in approval and certification of a recommending resolution which has been transmitted to the Town Council; and
- WHEREAS,** the Town Council held a public hearing on September 24, 2019.
- NOW, THEREFORE, BE IT RESOLVED,** that the Town of Herndon, Virginia requests the Commonwealth Transportation Board to establish a project for the Central Elden Walkability Improvements project; and
- BE IT FURTHER RESOLVED,** that the Town of Herndon, Virginia hereby commits to provide a minimum 20 percent matching contribution for this project and any additional funds necessary to complete the project; and

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BE IT FURTHER RESOLVED, that the Town of Herndon, Virginia hereby agrees to enter into a project administration agreement with the Virginia Department of Transportation and provide the necessary oversight to ensure the project is developed in accordance with all state and federal requirements for design, right of way acquisition, and construction of a federally funded transportation project; and

BE IT FURTHER RESOLVED, that the Town of Herndon, Virginia will be responsible for maintenance and operating costs of any improvement/facility constructed with Transportation Alternatives Set-Aside funds unless other arrangements have been made with the Department; and

BE IT FURTHER RESOLVED, that if the Town of Herndon, Virginia subsequently elects to cancel this project, the Town of Herndon, Virginia hereby agrees to reimburse the Virginia Department of Transportation for the total amount of costs expended by the Department through the date the Department is notified of such cancellation. The Town of Herndon, Virginia also agrees to repay any funds previously reimbursed that are later deemed ineligible by the Federal Highway Administration; and

BE IT FURTHER RESOLVED, that the Town of Herndon, Virginia hereby grants authority for the Town Manager to execute project agreements for any approved Transportation Alternatives Set-aside projects for Fiscal Year 2021-2022.

15. **Resolution 19-G-60, to consider an appeal of the Heritage Preservation Review Board's Decision on HPRB #19-29. The decision, made at the HPRB public hearing on August 21, 2019, approved, with conditions, an application for a Certificate of Appropriateness to replace metal shingles on an existing single-family house located at 631 Oak Street. The HPRB approval required that the replacement material be standing seam metal panels instead of architectural asphalt shingles as originally requested in the application. Property Owner/Appellant: Ann Vayda Null.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearings had been duly advertised in the September 6, 2019 and September 13, 2019 issues.

Mayor Merkel opened the public hearing and called for disclosures from Council.

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Disclosures

- Mayor Merkel and Councilmembers Baker and del Aguila stated for the record, that they are owners of real estate in the Heritage District. They stated that they are able to participate in the discussion and action on this application fairly, objectively, and in the public interest, and that they have filed the appropriate disclosures with the Town Clerk and Town Attorney.

Mayor Merkel stated that comments received by Council on this item had been entered into the record. She recognized Lesa Yeatts, Town Attorney, to outline the Council's role in the Heritage Preservation Review Board (HPRB) appeal process.

Town Attorney's Review of the Process

Ms. Yeatts stated that the appellant would state the grounds for the appeal and identify any materials or evidence from the record to support the appeal. The Council could ask any questions of the appellant. Town staff would provide its report, followed by Council's questions of staff. Mayor Merkel or staff would call on the Chair, Vice Chair, or any other member of the HPRB present, who would address Council on behalf of the HPRB. Council could question them. Following public comments, the applicant would have the opportunity for rebuttal. After Mayor Merkel closes the public hearing, the item would be at the Council level for discussion and action.

Comments of the Appellant

Mayor Merkel invited the appellant or appellant's agent to come forward to state for the record the grounds for the appeal and to identify any material or evidence to support the appeal. Following comments, Mayor Merkel would call on questions of the appellant.

- Ann Vayda Null, 631 Oak Street, Herndon, provided comments on the appeal.

Ms. Vayda asked if the Council would state the number of emails they received and the positions, as the HPRB had done at its meeting.

Mayor Merkel stated that she did not have a tally, but the Council received numerous emails, which Council had seen and were entered into the record.

Ms. Vayda stated that she has lived at 631 Oak Street since 1991 and that her goal was to continue living in Herndon as long as health allows. She thanked the staff, HPRB, and Council, and stated that she appreciated their efforts in this time-consuming process. Council had addressed her heritage structure and its failed roof. At last week's work session, she had the opportunity to hear Council's compassion for seniors, workforce, low income members of the town, and for others struggling to retain their lifelong homes, which she appreciated. She stated that the town took compassion on her neighbor on Wood Street and allowed her to make the same roof replacement that she requested. She understood the Heritage Guidelines were being

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updated and that the Council's compassion would be incorporated in those updates. Ms. Vayda asked for the Council's help to stay in the home she loves and hoped they would grant her ~ a senior citizen and single grandmother ~ an opportunity to live in a water-tight home, in the town that she loves.

Mayor Merkel asked Ms. Vayda to state, for the record, the grounds for the appeal and any identifying material or evidence to support her claim.

Ms. Vayda presented a piece of her roof that had fallen into her yard to Council. She stated that she had several more pieces.

Questions of the Appellant

There was discussion amongst Council and the appellant.

Councilmember Friedrichs stated that she knew Ms. Vayda forgot to tell the Council her grounds for the appeal and she wanted to remind her.

Ms. Vayda thought she had been clear. She stated that she would like to stay in her home and she would like the Council to help her do that.

There was a brief question and answer session between Councilmember del Aguila and Ms. Vayda.

In response to Councilmember del Aguila, Ms. Vayda stated that she had shared ownership of the home starting in 1991. Under the shared ownership arrangement, she was scraping, patching, and painting the roof. She has had sole ownership of the home since October of last year, and she used the intervening months to get funds. Sometime in May, June, or July, she applied to the HPRB. She stated that the roof had been leaking a long time.

In response to Councilmember del Aguila, Ms. Vayda affirmed that there was a lot of damage, including visible damage to the wood and mold.

Councilmember del Aguila asked if the delay was putting Ms. Vayda in danger, to which Ms. Vayda stated that she did get sinus infections, if the Council wanted to hear her medical problems.

Councilmember del Aguila stated that Council spent a lot of time addressing housing.

Ms. Vayda stated that she was willing to suffer, but she did not want her granddaughter breathing that stuff.

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In response to Councilmember del Aguila's queries about the materials and the HPRB's ruling, Ms. Vayda stated that the ruling had confused her as well, and she did not think the HPRB addressed the application that she submitted. There was no approval or denial of her application. She stated that she was not aware of any historical significance of the home.

There was a brief question and answer session between Councilmember Baker and Ms. Vayda.

In response to Councilmember Baker, Ms. Vayda stated that her roof was 27 squares, but that did not represent the hardship and labor involved, because it was a very steeply pitched roof that would require scaffolding and rappelling from the chimney.

Councilmember Baker stated that the HPRB Guidelines talk about financial hardship, but only in terms of roofing. There was not unanimous agreement about how that should be handled. She asked Ms. Vayda if she had the prices of the materials for the roof, so Council could see the differences. She stated that financial hardship was not about Ms. Vayda's W-2, but was about the difference between shingles versus a replacement. Ideally, Councilmember Baker would like to see three quotes ~ the replacement cost for metal shingles, standing metal seam ~ which was what the HPRB recommended ~ and asphalt shingles.

Ms. Vayda stated that she had submitted those numbers to the HPRB. She apologized that she was unprepared with the numbers but suggested that staff might have the information. She stated that the difference was tens of thousands. She believed that the term in the Guidelines was not hardship; it was financial consideration.

In response to queries from Councilmember Baker, Ms. Vayda stated that the financial aspect of what the town was potentially asking her was significant.

In response to Councilmember Baker's queries about the HPRB meeting and the types of shingles proposed, Ms. Vayda stated that at one point, staff had considered an ornamental fish-scale, low-relief, flat, lower quality material than what she proposed. She was looking to be water-tight for the remainder of her life. She stated this would introduce a third material. She had replaced the standing seam on the front porch, which was very expensive, but she thought it was aesthetically and historically appropriate. Ms. Vayda stated that her circumstances were diminished since that installation, but furthermore, the hiping of the main house would totally contraindicate standing seam.

Councilmember Baker stated that she noticed the standing metal seam on the front porch, but the porch had less slope.

Ms. Vayda stated that the front porch had a lower slope and less angles, while the roof line of the main house was hipped, meaning it had multiple angles, and it had dormers. She thought of standing seam as similar to stripes.

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Councilmember Baker stated that she was commenting on the fact that the standing metal seam suits the front porch and that she understood that Ms. Vayda had less options for the main roof. She reviewed the three options that were available at the HPRB public hearing, which were the material Ms. Vayda requested (asphalt), and the two suggested alternatives – standing metal seam and decorative asphalt shingles.

Ms. Vayda stated that the decorative asphalt shingles were lower quality, lower duration, and contrasted with the breezeway and the garage. She stated that her proposal would make a uniform roof of the three components.

Mayor Merkel stated that many of these questions could be answered with the staff's determination.

Ms. Vayda stated that she did not see these answers in the staff report.

Mayor Merkel stated that staff had not yet given its report this evening.

Councilmember Baker stated that she was trying to find a reasonable compromise that would meet the needs and integrity of the HPRB and would allow Ms. Vayda to get a roof that works for her financially and aesthetically. She stated that standing metal seam was not a good fit and that she did not think "metal for metal" was not the same. "Like for like" also should take shape and size into account. She would like to understand what Ms. Vayda would propose as a potential compromise.

Responding to Councilmember Baker, Ms. Vayda stated that she had offered this information to staff many times.

Councilmember Baker asked Ms. Vayda to advise the Council, because she was before them with her appeal.

Ms. Vayda stated that the dormer angle and shape on the roof would lend itself to standing seam. She was also willing to add snow guards, which were a historic feature that the HPRB tends to like. She suggested that the asphalt shingles would be on the steeply hipped portion of the roof.

In response to Councilmember Baker, Ms. Vayda stated that while the decorative asphalt would save her money in the short term, it would not keep the house water-tight for the long term. She stated that it might be possible that there was a type of decorative asphalt that would fit, if Councilmember Baker had found one that would work. She would prefer, aesthetically, to have the three different rooms in the same material. She emphasized that she was open to putting standing seam on the dormers.

There was a brief question and answer session between Mayor Merkel and Ms. Vayda.

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In response to queries from Mayor Merkel, Ms. Vayda stated that she requested the architectural asphalt shingles. She stated that decorative was an art term. She stated that the HPRB decided that she should have standing metal seam.

Mayor Merkel asked if Ms. Vayda's goal was to fix her roof as soon as possible in a way that she could afford.

Ms. Vayda agreed with Mayor Merkel's statement and stated that the roof was actively leaking.

Mayor Merkel asked the Town Attorney to clarify Council's role in an appeal.

Ms. Yeatts stated that the Council reviews the HPRB's decision during an appeal from that Board. The Council was not acting in a capacity to decide the application from the beginning. She stated that in trial terms, it would not be a de novo appeal. The Council would review what the HPRB decided. The Town Code states, in reviewing the decision, that the Council should look at the 11 factors the HPRB considered, which are noted in Town Code Section 78-60.3(f)1. In addition to those items, there was one factor that relates to roofs, where the roof was not replaced kind for kind. If the Council finds that the HPRB made the decision incorrectly, the Council could reverse or modify the decision. The Council needed to determine that the HPRB did something that was not correct, or that was not in accordance with the Guidelines. The Council could always affirm the decision. She stated that if the Council moves to remand the decision to the HPRB, the Council would need to cite something in the motion to remand that would explain what was missing or defective in the record, or explain the decision that would cause the Council to remand it to the HPRB.

In response to queries from Mayor Merkel, Ms. Yeatts stated that because the decision was to substitute material, a reversal would not mean approval of asphalt shingles. It would be a total reversal and the process would start all over again with a new application.

In response to queries from Councilmember Friedrichs, Ms. Yeatts stated that the appellant currently has an approved Certificate of Appropriateness (COA) for standing seam. If she wanted to use standing seam, she could have done so at any point until now. If the Council modified the decision and changed it to another material, the appellant could replace the roof as quickly as she would like, or as she could afford.

Mayor Merkel stated that she questioned the reversal because typically, when the Council reviews a HPRB appeal and considers reversing the decision, it would be a denial. This case was a little different, in that a reversal did not mean the appellant would get the material for which they applied. She stated that the Council needed to think through its decision on this item.

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Staff Report

Mayor Merkel called on staff from the Department of Community Development for the staff report. Following the report, she would call on questions from staff.

Dave Stromberg, Zoning Administrator, presented the staff report dated September 24, 2019, which is on file in the Town Clerk's office. He would walk through a timeline of events that led to this point; provide the options that were available to the Council; and answer questions. If he was not able to answer, the staff member who worked on the original staff reports to the HPRB and the Chair of the HPRB were here this evening.

Mr. Stromberg stated that the application for a COA was submitted July 15, 2019. A COA was required any time someone proposes to significantly alter an existing structure in the Heritage Preservation District, where this structure is located. The HPRB does not have to review a COA that is like for like replacement, only when a homeowner proposes a change. The application stated that the roof has a history of leaking since the appellant purchased it in 1991. The request was to remove the existing metal shingles and replace them with the architectural asphalt shingles. He stated that the application did not include any pictures or assessment of what kind of damage the roof caused. This is not a requirement, but typically, people include it when the leaks are really bad.

Staff reviewed the application and prepared a staff report for its August 7, 2019 HPRB work session. Mr. Stromberg stated that the most appropriate roof replacement for this structure, according to the Secretary of the Interior standards and the Heritage Guidelines, would be stamped metal shingles. He stated that the presence of metal roofs in the district has slowly been declining. After the first HPRB work session, staff prepared an updated memorandum, dated August 16, 2019 (Exhibit 3), which included the two alternatives that could still meet the Heritage Preservation Guidelines. These alternatives were not the most appropriate options, but would have satisfied the Guidelines. One alternative was the standing seam metal panels. The HPRB has approved metal shingle replacement with metal panel replacement in some previous cases, because the metal panels and the metal shingles were similar and common in the buildings constructed in Herndon around that time. The other alternative was the decorative asphalt shingles, which would change the roofing material. The decorative asphalt shingles mimic the size, shape, relief, and pattern of the original shingles. These cost less than the metal shingles or standing metal seam. Mr. Stromberg stated that these alternatives were presented at the HPRB meeting, and the appellant did not indicate that she would be amenable to them.

At its August 21, 2019, public hearing the HPRB approved, with conditions, an application for a COA to replace metal shingles on an existing single-family house located at 631 Oak Street with standing metal seam panels. On August 23, 2019, the property owner, Ann Vayda Null, submitted a request to appeal the decision of the HPRB to the Town Council. The grounds for appeal were not stated when the appeal was filed. Under the provisions of Section 78-60.3(g) of the Zoning Ordinance, the

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Council has five alternatives available. The Town Council may affirm, reverse, modify, remand the case back to the HPRB, or it could continue the case to a future public hearing for further debate and discussion.

Mr. Stromberg stated that at this point, if the appellant would be agreeable to the decorative asphalt shingles, staff is recommending that the Council modify the COA to allow the roof to be replaced with the decorative asphalt shingles. This action would be in accordance with Alternative 3(b) in the draft resolution staff prepared for Council. This would still comply with the Heritage Guidelines and would help to reduce some of the cost burden.

To address some of the appellant's earlier comments, Mr. Stromberg stated that when picking those shingle types, staff tried to use the same manufacturer of the architectural asphalt shingles the appellant choose. The architectural versus decorative was a different style type. In those categories, there were a variety of prices ranges, quality, and guarantees.

Questions of Staff

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

There was a brief question and answer session between Mayor Merkel and Mr. Stromberg.

In response to queries from Mayor Merkel, Mr. Stromberg stated that he believed one of the asphalt decorative shingles in the staff memorandum was CertainTeed, which he thought was the same type of asphalt shingle that the appellant requested. He stated that staff recommended a style of shingles.

There was a brief question and answer session between Councilmember Friedrichs, Mr. Stromberg, and Christopher Garcia, Development Planner.

In response to queries from Councilmember Friedrichs regarding the type of decorative asphalt shingle, Mr. Stromberg stated that staff selected the recommended style to mimic the existing roof and to have some differentiation between the addition that was added to the home, because the addition was built at a different time.

In response to queries from Councilmember Friedrichs about the shingles style, Mr. Garcia stated that staff recommended decorative asphalt, also known as dimensional shingles, which might be more feasible for property owners. As the Guidelines state, the roof is a character defining feature to the architecture of the town. Typically, they are called contributing structures, which this was one. He stated that the unique thing about Herndon is that it has a high concentration of the metal shingle roofs. Staff offered this option, not necessarily as an identical shape of asphalt shingle, but as one that symbolizes the decorative roofs in Herndon. Staff offered it as a different way to interpret the Guidelines and still maintain that prominent feature of these structures.

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Mr. Garcia stated that there were several different designs and staff would work with the appellant on the style.

Councilmember Friedrichs stated that when she called earlier today, she received prices for four different kinds of roofing that Ms. Vayda could use. She asked if she could share this information with Council.

In response to Councilmember Friedrichs, Ms. Yeatts stated that right now, the Council was asking for evidence from the staff or questions of staff. She did not know where Councilmember Friedrichs got her information.

Councilmember Friedrichs asked staff if they could share the prices.

In response to Councilmember Friedrichs, Mr. Garcia stated that he could, but not to stray too far from the question, which was to determine if the Board exercised their authority correctly, adhering to the review standards, Zoning Ordinance, and the Guidelines.

Mayor Merkel stated that there would be an appropriate time to list out prices during Council's discussion. She asked if there were further questions from Council.

In response to queries from Councilmember Friedrichs regarding the quality of the shingles, Mr. Garcia stated that the shingles would be from the same manufacturer that the appellant included on her original application. There are a number of providers in the market that have these types of shingles, so they may vary, but the asphalt quality would generally be the same. When you get to a metal of some sort, that would last a lot longer, as with this particular roof, which is probably running at 75 to 100 years in age. The time span and quality of the decorative asphalt shingles could be less, but it would be similar to the shingles included in her original application.

There was a brief question and answer session between Councilmember del Aguila and Mr. Garcia.

In response to queries from Councilmember del Aguila, Mr. Garcia stated that it was not correct to say that the roof could not be reproduced today. There are metal shingles in today's market that could be made very similar. They are constructed and assembled in a similar, but not exact, manner as they were when the roof was built. He stated that would be the most appropriate design solution. He stated that replacement has been accomplished historically in this district.

In response to queries from Councilmember del Aguila, Mr. Garcia stated that the appellant's application, in staff's opinion, was not in the spirit of the Guidelines. The material she requested was something that has been approved, but in non-contributing structures. He stated that the requested shingles could be found in town and in the district but not on contributing structures like the appellant's house. He stated that he believed there were two cases where this type of roof was used, one where the roof was

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put on first without a permit. Those "one-off cases" aside, by and large, the town has been consistent about replacing roofs with metal shingles or standing seam metal roofs in contributing structures.

There was a brief question and answer session between Mayor Merkel, Mr. Garcia, and Elizabeth Gilleran, Director of Community Development.

In response to queries from Mayor Merkel, Mr. Garcia stated that 631 Oak Street is a contributing structure. The town has allowed asphalt shingles on some non-contributing structures. He stated that this particular asphalt shingle had not been approved for contributing structures. In the past, there were a couple of instances where an asphalt shingle ended up on a roof, for additions, or as a single story structure. He agreed that the roof was the original part of the house.

Mayor Merkel recognized Ms. Gilleran for comments.

Ms. Gilleran stated that when it comes to the original part of a contributing structure, there was one case where asphalt was allowed, and that was the case on Wood Street, or the Lawrence case. This was a house that was suffering extreme damage. As she could recall from 1996, evidence was provided concerning the type of damage that was occurring in the house. The house was so damaged that Fairfax County Housing Department had considered helping the owner and inhabitant, because the house was really on its "last legs" due to the roofing problem. The county determined, due to various circumstances, that they would not provide assistance. When the HPRB decided this case, the HPRB said that the asphalt shingle did not meet the Guidelines for a contributing structure. It went to the Town Council, who said that the primary concern was that they were going to lose the contributing structure all together.

Mayor Merkel asked if the concern was that the structure could have crumbled under the weight of a metal roof.

In response to Mayor Merkel, Ms. Gilleran stated that because of the extreme financial consideration, there was no way for this person to obtain assistance from Fairfax County Housing. The condition was so extreme that the entire structure could have been lost. In Council's resolution, it was indicated that the house already had modern material on the external walls, prior to the existence of the Heritage District.

Councilmember del Aguila stated that staff's comments explained why metal roofs were declining.

In response to queries from Mayor Merkel, Ms. Gilleran stated that the decorative asphalt shingles were not available in 1996. She did not believe that staff had known about these shingles until relatively recently. The decorative shingles create a pattern and shadow line that is more akin to the metal shingles of the past.

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There was a brief question and answer session between Vice Mayor Olem and Mr. Stromberg.

In response to queries from Vice Mayor Olem, Mr. Stromberg stated that the application indicated that the roof had been leaking since 1991. He did not know if there was leaking issue when the porch part of the roof had been replaced.

Mayor Merkel stated that Council could ask that of the appellant.

Councilmember Friedrichs asked if she could now ask about the prices.

Mayor Merkel deferred to the Town Attorney.

Ms. Yeatts stated she was not sure what to what pricing Councilmember Friedrichs was referencing in considering the factors Council would use to make its decision. She was not sure if the pricing Councilmember Friedrichs mentioned was looked up today, or when the Board reviewed the application.

Following questions of staff, Mayor Merkel stated that the next person to call on was the Chair of the HPRB, who could discuss more of what happened at the HPRB meeting. They might have answers to some of Council's questions. Following that discussion, she would call on comments from the audience, and then the appellant would have an opportunity for rebuttal.

Comments from the HPRB

Robert Walker, Chair, HPRB, came forward to address the Council on behalf of the HPRB. Chair Walker reviewed the HPRB's ruling. First, he commended the appellant for filing this application. He stated this was a change in that it was not a "forgiveness application." He thought the Board tried and did follow the Guidelines and that they considered what should have been considered. He stated that there were numbers thrown about, but there were no certified estimates or anything of that sort. In that sense, he stated that they did consider the money. Staff, in this case, went above and beyond and did a lot of research on the materials that were available for roofs. He was not sure that staff would totally agree with him, but he thought that somewhere down the road, there would be an analogous sort of thing for roofs, similar to how HardiePlank was approved for siding. These new shingles that Mr. Garcia found, which mimic the shading, lines, and shape of metal roofs, might be that product. With the standing metal that was approved, there could be various heights in the seams. What the Board recommended was that they be "tamped down" or turned down, so they would be much smaller than the typical standing metal seam. He stated that the HPRB tried to work with the appellant on that option.

Chair Walker stated that Council had questioned if it was a historic building. He was not sure if it was historic, but it was a contributing structure under the definitions in the Guidelines. As staff pointed out, the roof was perhaps the most important part of a

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house. Chair Walker emphasized that he thought the Board did what they should have done in their consideration and, ultimately, in a way, what this application demonstrates is "either you want a preservation district, or you don't." He stated that it is a hardship in some terminology, but it was preservation, which was shrinking in the town.

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

In response to queries from Councilmember McKenna about what the Board approved, Chair Walker stated that he thought the Board denied the application, as presented, but allowed the standing seam.

There was a brief question and answer session between Mayor Merkel and Chair Walker.

In response to queries from Mayor Merkel, Chair Walker agreed that the two options presented to the applicant were standing seam metal and decorative asphalt. He said there was no articulated reason, but the Board gave it their consideration and thought, that standing metal was the best solution. He stated that the decorative asphalt was a new product, to which there was some question, and the appellant was "resistant to it."

In response to queries from Councilmember Dhakal, Chair Walker stated that the HPRB Guidelines were written in 1989. Recently, the Council issued a contract and the town began the process to update the Guidelines.

Mayor Merkel stated that the Council anticipated reviewing a draft of the revised Guidelines in the coming months.

Chair Walker briefly discussed the town's process for updating the HPRB Guidelines.

There was a brief question and answer session between Councilmember del Aguila and Chair Walker.

In response to queries from Councilmember del Aguila regarding the standards for roof replacement, Chair Walker echoed Mr. Garcia's comments and stated that the preferred material is like for like, which would have been metal shingles. While the standing seam is a different product, the HPRB thought it would be an appropriate replacement. The newer decorative shingles might also be appropriate, but he was not sure they had enough information on those shingles yet.

In response to Councilmember del Aguila's question about how much the HPRB considers financial burden, Chair Walker stated that he did not think the Guidelines state "financial burden." He stated that was not the language. He stated that "buying a house in that district is a burden."

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Councilmember del Aguila stated that he was asking because he and the Council have received letters or have been stopped on the street and have been asked to address this.

There was a brief question and answer session between Vice Mayor Olem and Chair Walker.

In response to Vice Mayor Olem, Chair Walker stated that he believed the term "not financially feasible" was the language used in the Guidelines. He stated that the court had told the HPRB that they have to consider the economics. The HPRB thought what they could of it.

In response to queries from Vice Mayor Olem, Chair Walker stated that applicants typically come in with quotes, on letterhead, with a description of the estimate. He stated that in looking at the gross numbers, you cannot compare "apples to apples," because the roofs do not all have the same lifespan. The metal roofs could last 75 to 100 years, while the asphalt could last 20 to 25 years. He stated that it was not appropriate to only look at the numbers.

Vice Mayor Olem stated that she has a newer home, not in the historic district, and that it has architectural shingles. During a couple of really bad storms, she had some leaks, so this type of shingle was not completely water-tight.

In response to queries from Vice Mayor Olem, Chair Walker stated that a few years ago, the Board heard a case that went to the Circuit Court. That was the decision in which the court stated that the HPRB had to consider finances for roofs. It did not tell the HPRB what level of consideration that it should give, or what they needed to do, but in this case, he thought the Board considered it and decided that the standing seam was the best alternative. He stated that option was less expensive than metal shingles.

There was a brief question and answer session between Councilmember Baker and Chair Walker.

In response to queries from Councilmember Baker, Chair Walker stated that the responsibility to share the financial information, in legal terms, is that the applicant has the burden of proof.

Councilmember Baker asked Chair Walker about the HPRB's discussion with the applicant about the decorative asphalt shingles. She stated it was in everyone's, including the appellant's, best interest to keep up their home.

Responding to Councilmember Baker, Chair Walker stated that the decorative shingle alternative resulted from staff's research after the HPRB work session. At the public hearing, there was considerable discussion between staff and the applicant about those shingles.

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Chair Walker stated that the Board did not talk about the alternative shingles too much because they had discussed it with the applicant.

Mayor Merkel clarified for the audience that an appeal cannot be discussed at a work session, so the Council had to discuss it all now.

Comments from the Audience

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

- Rosaleen Presley, 134 Pearl Street, Herndon, stated that she has seen the work Ms. Vayda has put into her home, which she is now basically doing on her own. She asked the Council to grant Ms. Vayda's request and stated that it was imperative. She was aware of what it takes to be a homeowner, and she would like Council to consider that while costs of living and property value have gone up, the major costs the happen every 25 years could be major. She hoped the Council would consider newer products that could mimic what was in the town.

Rebuttal

Following public comment, Mayor Merkel asked appellant or appellant's agent if they would like an opportunity for rebuttal.

- Ms. Vayda, appellant, stated there was another member of the audience who had been here on her behalf, but their babysitter called them home.

Ms. Vayda stated that this was the first she heard of the request for photos of damage or certified pricing. She stated that she repeatedly asked staff what more they needed and at every juncture, as she wanted to be as helpful and complete as possible. She would be happy to provide photos and she had plenty of evidence, they just needed to ask.

Ms. Vayda stated that the "fish scale," snipped, or rounded corner asphalt-style shingles do not resemble the rectangular, punched tin shingles. CertainTeed had a huge range of qualities that start at "builders grade" and go to lifetime and beyond. What she would call the decorative, or dimensional style, was seen in the corners. The architectural style that she proposed was dimensional from the roof, because it casts shadows and has a texture. It was higher quality, more expensive, and would give it a richer look. On Florence Place, she stated that 631 was the only one of three contributing structures that was salvageable. She hoped to preserve it. The other two were failed due to roofing issues. Their ceilings, like Ms. Lawrence's, were falling in.

Ms. Vayda stated that "no realtor, no financial institution...and, more importantly, no town representative, ever informed me of the Heritage burden of this ownership. At no time was I notified." She stated that she has since learned, but it was through her own initiative. She did not think that the town has a process in place to inform

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homeowners of “the burden the town is imposing on them.” She was grateful for the Circuit Court decision, which she was unaware of until now. She hoped that she would not have to go that route.

Ms. Vayda stated that standing seam is only “marginally” less expensive than new metal shingles. The delta is “dwarfed” by the difference between asphalt and metal.

Vice Mayor Olem stated that she would still like to hear why the appellant was appealing the decision of the HPRB. She asked what the appeal was.

Ms. Vayda stated that the HPRB approved an application to which she was not a party. She stated that she was sorry, but she could not answer the question, because she did not understand what happened to her. She did not understand the process and thought that appeal to the Town Council was her only recourse.

Mayor Merkel stated that it was the proper course of action to appeal to this body.

Vice Mayor Olem stated that Ms. Vayda had two options, the metal shingles or standing seam.

Ms. Vayda stated that she thought she did not have COA for the metal shingles, but she also did not have the means.

Seeing no further comments from the audience, Mayor Merkel closed the public hearing and moved the matter to Council level for discussion and action.

Motions

Main Motion

(SUBSEQUENTLY SUBSTITUTED)

Vice Mayor Olem moved that the Town Council **AFFIRM** the decision of the HPRB.

Mayor Merkel stated that this motion meant standing seam, or that it upholds the HPRB’s decision.

Vice Mayor Olem stated that she had not heard anything that the HPRB did wrong.

Councilmember McKenna seconded the motion for purposes of discussion.

Process

Mayor Merkel announced that action on each motion would be by roll call vote.

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Discussion on the Main Motion

Vice Mayor Olem emphasized that she did not see anything that the HPRB did inappropriately. If the appellant did not want to use stamped shingles or standing seam, she could always go back to the HPRB with another material. The appellant did not like any of staff's other recommendations. She did not want to impose another thing on the appellant and she did not want to give the wrong impression to others in town, who could see this as a reason to go to court.

For clarification, Mayor Merkel stated that if the appellant was unhappy with the Council's decision, the next step would be to appeal the Council's decision to the Circuit Court. That was similar to what happened previously on a different case.

There was further discussion.

Councilmember McKenna stated that he seconded the motion because he thought there was a misalignment in communication. He was looking for material or evidence from the applicant, which was a little thin, but he was interested in the staff report and Chair Walker's comments. Councilmember McKenna thought there was evidentiary things that came into play that could change the stance, and he wanted to make sure the Council was doing this the right way. He seconded this motion because he thought a discussion was important, based on what staff and Chair Walker said.

Substitute Motion

(SUBSEQUENTLY WITHDRAWN)

Councilmember Friedrichs stated that she understood that Council does not want to imply the HPRB did not do this correctly. She thought the HPRB made an error, despite the fact that Ms. Vayda did not want it anyway, in not allowing the less expensive asphalt option. That would satisfy the HPRB requirements while being more affordable for the appellant.

Councilmember Friedrichs moved a substitute motion that the Town Council **MODIFY** the decision of the HPRB, on a finding of evidence in the record that the HPRB decision was incorrect based on the review of the standards in Section 78-60.3(f), as follows: **to approve decorative asphalt shingles, as recommended by staff.**

Councilmember del Aguila seconded the motion.

Mayor Merkel confirmed with the maker and seconder that the motion was to modify the decision to be the decorative asphalt shingles and not the standing seam. The maker and seconded confirmed that was their intent.

Clarification

Councilmember McKenna requested clarification on "incorrect." He questioned if the HPRB's decision was predicated on three materials associated with the application, or specifically for one material.

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The Town Attorney stated that the HPRB's decision speaks for itself. The decision substituted one material for the material stated in the application – the decision did not substitute “a substitute material.” She stated that if the Council found that there was something incorrect with the HPRB's decision, then that would support a decision to modify.

Mayor Merkel restated the motion on the floor, which was a substitute motion (Councilmember Friedrichs'), to modify the decision of the HPRB to substitute standing seam with decorative asphalt shingles.

Councilmember Baker asked if she could make a “friendly amendment” to the substitute motion.

Mayor Merkel stated that she would not entertain a “friendly amendment” to the substitute motion. She stated she thought the phrase “friendly amendment” was confusing. She stated that Councilmember Baker could make a substitute motion.

Mayor Merkel restated the motion on the floor, which was a substitute motion (Councilmember Friedrichs'), to modify the decision of the HPRB to substitute standing seam with decorative asphalt shingles

Mayor Merkel stated that if the substitute motion passed, then it became the decision. If the motion fails, the Council would go back to the main motion, which was to affirm the decision of the HPRB.

Discussion on the Substitute Motion

Councilmember Friedrichs stated that, aside from the fact that Council is trying to decide whether the HPRB made the decision correctly, as a Councilmember, she sees their goals are to uphold the requirements of the Historic Preservation Guidelines, and also to serve the public, including this individual. Although she knows Ms. Vayda does not like the option she proposed, it was much less expensive, it was water tight, and there were a lot of ways it could be designed. She stated this would be a compromise. She stated that she called all over the state, asked about grant money to help offset the costs, and has extensively researched the options, so she hoped that this would work.

Councilmember del Aguila stated, for discussion, that he wanted to support this in the broadest sense. He stated that the Council was forgetting the real human element. He stated that the Council spent hours discussing housing. He asked, how does the Council address the increasing demands of housing, not just for people coming to the town, but how to help people age in place. He stated that the Council was forgetting that the HPRB and HOAs have guidelines, not laws. His opinion was that the Council, in an executive role, could say or suggest that the town do something different for future benefit. He did not want to get into anyone's personal financial background and he stated that the Council would need to take the individual's word for it. He discussed how the word affordable could impact people differently. He stated, long term, there would be changes

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to the Guidelines and he was not sure he understood what the aversion was to be using this "as an example on how we might incorporate or include more people that are going to be in this situation." He stated that metal roofs are coming to an end because they are being replaced. He would support discussion on the motion.

**Substitute to the
Substitute Motion**

(DIED FOR LACK OF SECOND)

Councilmember Baker moved a substitute to the substitute motion that the Town Council **MODIFY** the decision of the HPRB, on a finding of evidence in the record that the HPRB decision was incorrect based on the review of the standards in Section 78-60.3(f), as follows: **to approve standing metal seam for the dormers and decorative asphalt shingles for the rest (hip part) of the roof.**

Councilmember Baker corrected her statement and stated that she meant to say "decorative" asphalt shingles.

Clarification

Mayor Merkel asked the Town Attorney to clarify the process regarding the number of substitute motions on the floor. She stated that she would prefer to take action on the substitute motion, prior to proceeding with additional substitutes.

Ms. Yeatts stated that at this point, there was a substitute to the main motion on the floor. Council could have another substitute motion on top of a substitute motion, but only two. She stated that Mayor Merkel's suggestion that Council vote on the first substitute motion would be fine.

Councilmember Baker stated another option would be for her to use "or" in her substitute motion.

The Town Attorney stated that the motion maker of the original substitute motion (Councilmember Friedrichs') could amend her motion, or she could restate her motion, but it would need a second before discussion. She deferred to Mayor Merkel, as Chair.

Mayor Merkel stated that she did not like using the friendly amendment process because it was very confusing.

Councilmember Baker stated the Council could not discuss the appeal during the work session, so they had to follow this process.

The Town Attorney suggested that the motion maker of the substitute motion could withdraw the motion and restate it. She agreed with Mayor Merkel that the motions were going far afield from Roberts Rules of Order.

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The substitute to the substitute motion (Councilmember Baker's) died for lack of a second.

Point of Order

Ms. Vayda approached the podium to clarify her earlier statement.

Mayor Merkel called Point of Order. She stated that the public hearing had closed and the item was at the Council level for discussion and action. The Council would not hear testimony from Ms. Vayda at this time.

Substitute Motion Withdrawn

Councilmember Friedrichs stated that she would modify her substitute motion to incorporate the language of Councilmember Baker's previous substitute to the substitute "to approve decorative asphalt shingles, as recommended by staff, or..."

Mayor Merkel suggested that if Councilmember Friedrichs wanted to make a total change to her substitute motion, it would be less confusing if she withdrew her substitute and then restated a new substitute motion.

Councilmember Friedrichs **WITHDREW** her substitute motion to replace metal standing seam with decorative asphalt shingles, as recommended by staff.

Substitute Motion (SUBSEQUENTLY FAILED)

Councilmember del Aguila moved a substitute motion that the Town Council **MODIFY** the decision of the HPRB to approve the current applicant's request based on a finding it was not economically feasible and to replace "standing seam" with "architectural asphalt shingles."

This motion was seconded by Councilmember Dhakal.

Clarification

Ms. Yeatts reminded the motion maker that a modification pursuant to the Town Code is only permitted if there is a finding that the decision of the HPRB was incorrect.

Councilmember del Aguila stated that he made his motion from the economic feasibility perspective. He stated that the town does not contribute to owners to protect historical structures and he believed the HPRB did not review the application as deeply as it should have. He stated that the town needed to look at the entire process and going forward, needed to consider how it would preserve and protect these investments.

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He stated that he was also concerned about the fact that the town does not contribute back to these individuals. He stated that the economic feasibility perspective was not looked at as deeply as it could have been.

Councilmember Dhakal seconded the motion because the Council has to be practical. The town wants to preserve the historic district, which it should, but at the same time, it should not be at the financial burden of the residents. He stated that the Guidelines, which could be changed, have not been updated since 1989. He stated that protecting the homeowners, not just with affordable housing, but looking at how they could stay in their homes, based on financial situations, has to be considered. Councilmember Dhakal stated that Ms. Vayda indicated financial consideration and that was why he supported this substitute motion. He stated that the Council should not impose anything on its residents, but they should find a solution to fit their financial needs.

**Substitute to the
Substitute Motion**

(SUBSEQUENTLY FAILED)

Councilmember Baker moved a substitute to the substitute motion that the Town Council **MODIFY** the decision of the HPRB, on a finding of evidence in the record that the HPRB decision was **incorrect/incomplete based on the review of the standards, as follows: to approve decorative asphalt shingles or standing metal seam, as recommended by staff.**

Councilmember Friedrichs seconded the motion.

Councilmember Baker stated that standing seam metal was not being removed.

Mayor Merkel stated that another way to say the motion was adding "or decorative asphalt shingles."

Councilmember Baker stated that the motion would provide the best compromise while keeping the integrity of the district and the intent of the HPRB, since staff offered these two options. She stated that tonight's discussion showed how hard this was, and the HPRB public hearing reflected how difficult it was. She stated that the HPRB did not discuss the second option and she would like the appellant to have that option.

Councilmember Friedrichs echoed Councilmember Baker's comments.

Councilmember del Aguila stated that what is appropriate for one person or group is not necessarily applicable to another group. He stated that the town was making a lot of assumptions, and the homeowners were the ones most qualified to make the decisions about what was less costly, or what was in the spirit of the Guidelines. If the Council planned to make changes to the Guidelines, he thought they should take this opportunity to use this as an example of what he thought would be a better HPRB going forward. It would also fit in the strategic vision for housing throughout the town.

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Vice Mayor Olem stated that she watched the HPRB public hearing on this item, read through some of the work session materials, and the applicant, at the time, did not want this type of product. She stated that other areas of the historic district, like Vine Haven, might come before the HPRB and want to replace their windows with cheaper material. She discussed the age of her roof and stated that she could not support coming up with a whole new set of Guidelines when the Council has not studied them. She stated if the Council thought the HPRB needed to work on it more, it could remand the decision. She did not see the Council modifying the decision with their limited knowledge of products.

Clarification

Mayor Merkel asked the Town Attorney if there was an issue, legal or otherwise, with a Certificate of Appropriateness having two options, as Councilmember Baker proposed in offering her substitute to the substitute motion.

Ms. Yeatts stated that she believed staff would say there were no legal issues. She stated it would give the appellant a broad range of choices and clear options, either standing seam or decorative asphalt shingles.

**Vote on the Second
Substitute Motion: (FAILED)**

Mayor Merkel restated the substitute to the substitute motion (Councilmember Baker's), which was that the Town Council **MODIFY** the decision of the HPRB on a finding of evidence in the record that the HPRB decision was **incorrect/incomplete based on the review of the standards, as follows: to approve decorative asphalt shingles or standing metal seam, as recommended by staff.**

The question was called on the motion, which failed by a roll call vote of 3-4. The vote was: Councilmembers Baker, Friedrichs, and McKenna voting "Aye." Councilmembers del Aguila and Dhakal, Vice Mayor Olem, and Mayor Merkel voting "No."

Clarification

Mayor Merkel stated that the motion on the floor was to modify the decision with regular asphalt.

In response to Mayor Merkel, The Town Attorney clarified that the substitute motion (Councilmember del Aguila's) was on the floor that the Town Council **MODIFY** the decision of the HPRB to approve the current applicant's request based on a finding it was not economically feasible and to replace "standing seam" with "architectural asphalt shingles."

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**Vote on the
Substitute Motion**

(FAILED)

Councilmember del Aguila called the question.

The question was called on the motion, which failed by a roll call vote of 2-5. The vote was: Councilmembers del Aguila and Dhakal voting "Aye." Councilmembers Baker, Friedrichs and McKenna, Vice Mayor Olem, and Mayor Merkel voting "No."

Clarification

Mayor Merkel stated that the remaining motion on the floor was the main motion (Vice Mayor Olem's) to **AFFIRM** the decision of the HPRB. She stated that at this point, the Council could entertain a substitute motion. She pointed out that should the main motion fail it would constitute "no decision."

Substitute Motion

(OUT OF ORDER)

Councilmember Friedrichs moved a substitute motion that the Town Council **MODIFY** the decision of the HPRB on a finding of evidence in the record that the HPRB decision was **incorrect or incomplete based on the review of the standards in Section 78-60.3(f), as follows: to approve decorative asphalt shingles, as recommended by staff, or standing metal seam.**

Ms. Yeatts clarified that the substitute motion had been on the floor and failed. Council would need to take action to reconsider the motion to proceed. She asked Councilmember Friedrichs if her intent was to make a motion to substitute or to reconsider.

Councilmember del Aguila asked for a point of order on a motion to reconsider.

Ms. Yeatts stated that a member on the opposing side would have to make a motion to reconsider, which would indicate that the member would like to change their vote and have the motion reconsidered.

Mayor Merkel asked Councilmember Friedrichs if she meant to make a motion identical to the one that failed.

Councilmember Friedrichs responded that was her intent.

Mayor Merkel stated, following discussion and input from the Town Attorney, that the Council could entertain a motion to reconsider, if one of the "opposing" votes would be willing to make such a motion.

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**Substitute Motion &
Vote on Substitute Motion** **(APPROVED)**

Councilmember Baker moved a substitute motion that the Town Council **MODIFY** the decision of the HPRB to approve decorative asphalt shingles, as recommended by staff.

Councilmember Friedrichs seconded the motion.

There were comments from Council.

Councilmember Baker stated that knowing where Council stands on this, she thought it would be important to find a compromise that would meet the integrity of the district and the HPRB, and would ensure that the appellant could live in a house that did not leak.

Councilmember Friedrichs echoed Councilmember Baker's comments. She believed that the historic district was a vital part of the town and disregarding the regulations would put the entire district at risk. She did not wish to do that. The burden and the benefit of the HPRB was worth it. She stated that she understood this topic, cared deeply, and understood the expenses. She thought this option had a similar cost to the option that was not acceptable in the historic preservation district.

In response to queries from Councilmember del Aguila, Councilmember Friedrichs stated that she verified the costs she quoted this evening with staff and stated that she had sent this information to Council.

For the record, Vice Mayor Olem stated that she supports having a Heritage Preservation District. She stated that she believed the HPRB did nothing wrong in their decision process. She stated that the HPRB could have worked with the applicant, had the applicant been open to that discussion. Unfortunately, that was not the case.

In response to queries from Councilmember Dhakal, Mayor Merkel stated that the decorative and architectural asphalt shingles were about the same price. Her understanding was that the decorative shingles were a little more expensive than the architectural shingles, but they were nowhere near as expensive as a standing seam roof.

Councilmember Dhakal stated that if the Council was approving based on a cost efficiency analysis, it would be easy for the Council to decide if there was concrete information on the delta between the costs.

Responding to Councilmember Dhakal, Mayor Merkel stated that was neither provided to the Town Council nor the HPRB.

Councilmember Baker stated that she was responding to Vice Mayor Olem's earlier comments. Councilmember Baker stated, for the record, that she felt that the HPRB did

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not consider or fully address the option of decorative asphalt shingles, which she believed was the right alternative. She stated that while a metal seamed roof would be the ideal option, it was not feasible. The financial consideration has nothing to do with Ms. Vayda's personal financial information, and she stated it should not matter for any appellant that comes before Council. Today, the Guidelines were to consider financial information for roofs. She stated that the financial consideration should be based on the fact that certain roof styles are three, to five, to six times more than the cost of other roof styles.

Councilmember McKenna stated that he agreed with some of what Councilmember Baker said and some of what Vice Mayor Olem said. He thought there were some clarification issues during the HPRB meeting. He also appreciated Councilmembers del Aguila and Dhakal's comments. Last August, he submitted approximately 17 pages of questions about the HPRB to Council. He stated this document was accessible by FOIA or he could email it. He stated that he understood economics, but what was in front of Council was based on the appellant's application and staff's recommendations, coupled with the questions that Council asked. Based on all that has happened, he would be comfortable with this decision.

Councilmember Friedrichs recalled from the HPRB meeting recording that they discussed four options. These were: the stamped tin roof, which was not feasible; standing seam; a product that has not yet been released, which was a less expensive metal tiled roof; and decorative asphalt.

Vice Mayor Olem emphasized that she did not see what the HPRB did wrong in making its decision. She stated that the price quotes provided were not provided in writing from the contractor. By not providing the HPRB with the quotes, it was hard for her to see that this was a serious financial issue.

Mayor Merkel stated that she, too, believed that the HPRB did nothing wrong in their decision process. She stated that she reviewed the record and had planned to affirm the HPRB's decision. However, it was clear to her that her a majority of her colleagues did not want to affirm the HPRB decision. She stated that Council could vote this down, but then Ms. Vayda would need to start all over and would not be able to replace her roof soon. She stated that Council needed to compromise and she could support, in this situation, the decision to modify with the decorative asphalt shingles.

The question was called on the motion, which carried by a roll call vote of 4-3. The vote was: Councilmembers Baker, Friedrichs, McKenna and Mayor Merkel voting "Aye." Councilmembers del Aguila and Dhakal and Vice Mayor Olem voting "No."

Clarification

Following the vote, in response to Mayor Merkel, Ms. Yeatts stated that staff would likely send out the revised Certificate of Appropriateness tomorrow or the following day.

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The Certificate of Appropriateness would now state that the application was approved for the appellant to replace the roof with decorative asphalt shingles.

Resolution 19-G-60, Appeal of the Heritage Preservation Review Board's decision on Application HPRB #19-29, which approved, with conditions, a Certificate of Appropriateness to replace metal shingles with standing seam metal panels instead of architectural asphalt shingles as originally requested, on an existing single-family house located at 631 Oak Street, Herndon, Virginia, Fairfax County Tax Map 0162-02-0101, property owner/Appellant: Ann Vayda Null.

WHEREAS, following the review and public hearing process on August 21, 2019, the Heritage Preservation Review Board approved an application for a Certificate of Appropriateness to replace the existing stamped metal shingle roof with a standing seam metal panel roof, instead of the architectural asphalt shingles originally requested in the application on the existing single-family house located at 631 Oak Street; and

WHEREAS, on August 23, the property owner, Ann Vayda Null, appealed the decision of the Heritage Preservation Review Board on application HPRB #19-29, in accordance with the provisions of the Herndon Town Code, Chapter 78 (ZONING), Section 78-60.3(g)(7); and

WHEREAS, following public notice, the Herndon Town Council held a public hearing on the appeal of application HPRB #19-29 on September 24, 2019; and

WHEREAS, the Town Council has reviewed the appeal and has considered the same standards and criteria that were considered by the Heritage Preservation Review Board as required for considering an application for an alteration to an existing structure within Herndon's Heritage Preservation District; considered the record in the case; and comments and evidence submitted by the appellant, town staff, the Chairman of the HPRB, and other necessary persons.

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

- **MODIFIES** the August 21, 2019 decision of the Heritage Preservation Review Board (HPRB) regarding HPRB #19-29 as follows:
 1. The replacement roof material shall be decorative asphalt shingles as recommended by Town staff; and

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2. The applicant shall submit amended application materials; to include the decorative asphalt shingle specifications that meet the above conditions for staff review and approval prior to approval of the Certificate of Appropriateness.

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

16. Resolution 19-G-61, to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event.

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing had been duly advertised in the Friday, September 13, 2019 issue.

Mayor Merkel opened the public hearing and recognized Lesa Yeatts, Town Attorney, for the staff report.

Lesa Yeatts, Town Attorney, presented the staff report dated September 24, 2019, which is on file in the Town Clerk's office. Jimmy's Old Town Tavern was requesting authorization to use designated alley public space located between 689 and 681 Spring Street for outdoor seating during an event from 11:00 a.m. to 11:00 p.m. on October 6, 2019. The applicant requested a Temporary Use Permit pursuant to the Zoning Ordinance and had obtained the required insurance. Staff recommends approval of the proposed resolution, as presented.

Following the public hearing (there were no comments from the audience), on motion of Councilmember Baker, seconded by Councilmember McKenna, and carried by unanimous vote, Resolution 19-G-61 was approved, as presented. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Resolution 19-G-61, to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event.

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

1. The Town Council approves a temporary license agreement dated September 24, 2019 between the Town of Herndon as licensor and JOTT, INC. d/b/a Jimmy's Old Town Tavern (Jimmy's) as licensee. The license allows Jimmy's to use designated alley public space adjacent to Jimmy's for outdoor seating during an event on October 6th of 2019. The license agreement may contain other terms agreed to by the Mayor and is on file in the office of the Town Attorney.

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- 2 The Mayor is authorized to sign and deliver this license agreement and any other instrument to evidence or support the license agreement
3. This resolution shall be effective on and after the date of its adoption.

[Note: Attached for reference is the temporary license agreement dated September 24, 2019 b/n the town and JOTT, Inc. d/b/a Jimmy's Old Town Tavern (Jimmy's).]

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AGREEMENT

This Agreement ("Agreement") is made this 24th day of September 2019 by and between JOTT, INC. d/b/a Jimmy's Old Town Tavern ("Jimmy's") and the TOWN OF HERNDON, VIRGINIA, ("Town").

WHEREAS Jimmy's represents that they have a Temporary Use Permit to conduct an event in the Town of Herndon on October 6th of 2019 represented in "Exhibit 1" attached hereto ("Permit") and that Jimmy's would like to use the Town's property behind Jimmy's Old Town Tavern Restaurant as shown on the Permit and known as the "Alley";

WHEREAS the Town desires to permit the use of the Alley by Jimmy's on these dates as described in the Permit (on October 6th of 2019 only).

Now therefore the parties agree as follows:

1. The Town hereby grants Jimmy's authorization to temporarily use the Alley for purposes described in the Permit
2. Jimmy's shall comply with the terms of the Permit 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 on this occasion only.
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. Jimmy's hereby assumes all risk of damage by reason of its occupation of the Alley 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 Jimmy's 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. Jimmy's 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 Jimmy's written confirmation that the type and amount of insurance is accepted.

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**September 24, 2019
(public hearing)**

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

8. 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.

9. 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.

JOTT, INC.

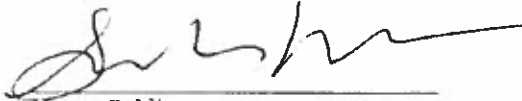
d/b/a Jimmy's Old Town Tavern

By 
James C. Cirrito
President

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 10th day of September 2019 by JAMES C. CIRRITO, President of JOTT, INC. d/b/a Jimmy's Old Town Tavern, a Virginia corporation, on its behalf.




Notary Public
My Commission Expires: 5/31/2022
Registration No.: 7771281

**September 24, 2019
(public hearing)**

ATTEST:

Lisa C. Merkel
Town Clerk

TOWN OF HERNDON, VIRGINIA

By

Lisa C. Merkel
Lisa C. Merkel
Mayor



COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 24th day of September, 2019 by LISA C. MERKEL, MAYOR of the TOWN OF HERNDON, VIRGINIA, a Virginia municipal corporation, on its behalf.

Margarita C. Tacci
Notary Public
My Commission Expires: 8.31.20
Registration No.: 295189

APPROVED AS TO FORM:

Lisa J. Yeatts
Lisa J. Yeatts
Town Attorney



**September 24, 2019
(public hearing)**

AGREEMENT

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**September 24, 2019
(public hearing)**

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JOTT, INC.

d/b/a Jimmy's Old Town Tavern

By 
James C. Cirrito
President

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 10th day of September 2019 by JAMES C. CIRRITO, President of JOTT, INC. d/b/a Jimmy's Old Town Tavern, a Virginia corporation, on its behalf.




Notary Public
My Commission Expires: 5/31/2022
Registration No.: 7771281

September 24, 2019
(public hearing)

ATTEST:


 Town Clerk

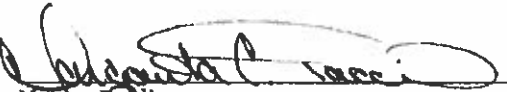
TOWN OF HERNDON, VIRGINIA

By 
 Lisa C. Merkel
 Mayor

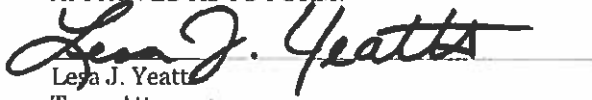


COMMONWEALTH OF VIRGINIA
 COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 24th day of September, 2019 by LISA C. MERKEL, MAYOR of the TOWN OF HERNDON, VIRGINIA, a Virginia municipal corporation, on its behalf.


 Notary Public
 My Commission Expires: 8.31.20
 Registration No.: 295189

APPROVED AS TO FORM:


 Lesa J. Yeatts
 Town Attorney



September 24, 2019
(public hearing)

Resolution 19-G-62, to approve a temporary license agreement for the use of the Town public parking lot designated as Fairfax County Tax Map #0162-02-0301C1, located behind Mediterranean Breeze at 781 Station Street, for a Saturday Anniversary event for Mile 20 at the Mediterranean Breeze. The property is zoned PD-D, Planned Development – Downtown, District.

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing had been duly advertised in the Friday, September 13, 2019 issue.

Mayor Merkel opened the public hearing and recognized Lesa Yeatts, Town Attorney, for the staff report.

Lesa Yeatts, Town Attorney, presented the staff report dated September 24, 2019, which is on file in the Town Clerk's office. She stated that the applicant, Mile 20, was requesting authorization to use the town public parking lot behind the Mediterranean Breeze on September 28, from 12:00 noon to 10:00 p.m. This was their first request to use this lot, which contains 38 public shared parking spaces. The applicant also requested a Temporary Use Permit, pursuant to the Zoning Ordinance. The applicant provided an adequate insurance certificate and their ABC license appears to be in order. Staff recommends approval of the proposed resolution, as presented.

Following the public hearing (there were no comments from the audience), Vice Mayor Olem moved approval of Resolution 19-G-62, as presented. Councilmember Baker seconded the motion.

There were brief comments from Council.

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

Resolution 19-G-62, to approve a temporary license agreement for the use of the Town public parking lot designated as Fairfax County Tax Map # 0162-02-0301C1, located behind Mediterranean Breeze at 781 Station Street, for a Saturday Anniversary event for Mile 20 at Mediterranean Breeze. The property is zoned PD-D, Planned Development - Downtown, District.

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

1. The Town Council approves a temporary license agreement dated September 24, 2019 between the Town of Herndon as licensor and TERYANNA, LLC. d/b/a Mile 20 at Mediterranean Breeze ("Mile 20") as licensee. The license allows Mile 20 to use a designated Town parking lot behind Mediterranean Breeze for an event on

**September 24, 2019
(public hearing)**

September 28th of 2019. The license agreement may contain other terms agreed to by the Mayor and is on file in the office of the Town Attorney.

- 2 The Mayor is authorized to sign and deliver this license agreement and any other instrument to evidence or support the license agreement
3. This resolution shall be effective on and after the date of its adoption.

[Note: Attached for reference is the temporary license agreement dated September 24, 2019 b/n the town and TERYANNA, LLC. d/b/a Mile 20 at Mediterranean Breeze ("Mile 20").]

**September 24, 2019
(public hearing)**

AGREEMENT

This Agreement ("Agreement") is made this 24th day of September 2019 by and between TERYANNA, LLC. d/b/a Mile 20 at Mediterranean Breeze ("Mile 20") and the TOWN OF HERNDON, VIRGINIA, ("Town").

WHEREAS Mile 20 represents that they have a Temporary Use Permit to conduct an event in the Town of Herndon on September 28th of 2019 represented in "Exhibit 1" attached hereto ("Permit") and that Mile 20 would like to use the Town public parking lot designated as Fairfax County Tax Map # 0162-02-0301C1 located behind Mediterranean Breeze at 781 Station Street ("Parking Lot").

WHEREAS the Town desires to permit the use of the parking lot by Mile 20 on these dates as described in the Permit (on September 28th of 2019 only).

Now therefore the parties agree as follows:

1. The Town hereby grants Mile 20 authorization to temporarily use the parking lot for purposes described in the Permit
2. Mile 20 shall comply with the terms of the Permit 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 on this occasion only.
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. Mile 20 hereby assumes all risk of damage by reason of its occupation of the parking lot 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 Mile 20 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. Mile 20 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 Mile 20 written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

**September 24, 2019
(public hearing)**

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. **Termination:** The Town may terminate this Agreement upon 24 hours notice to Mile 20 for cause.

8. 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.

9. 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.

TERYANNA, LLC.

d/b/a Mile 20 at Mediterranean Breeze

By: Phillip Orme
Phillip Orme
Title: owner

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 9th day of September 2019 by PHILLIP ORME, owner of TERYANNA, LLC d/b/a Mile 20 at Mediterranean Breeze, a Virginia limited liability corporation, on its behalf.



[Signature]
Notary Public
My Commission Expires: 5/31/2022
Registration No.: 7771261

September 24, 2019
(public hearing)

ATTEST:


Town Clerk

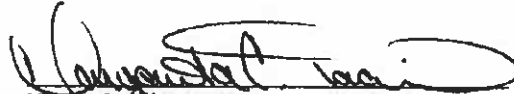
TOWN OF HERNDON, VIRGINIA

By 
Lisa C. Merkel
Mayor



COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 24th day of September, 2019 by LISA C. MERKEL, MAYOR of the TOWN OF HERNDON, VIRGINIA, a Virginia municipal corporation, on its behalf.


Notary Public
My Commission Expires: 8.31.20
Registration No.: 295189



APPROVED AS TO FORM:


Lesa J. Yeatts
Town Attorney

**September 24, 2019
(public hearing)**

AGREEMENT

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6. Mile 20 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 Mile 20 written confirmation that the type and amount of insurance is accepted.

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**September 24, 2019
(public hearing)**

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TERYANNA, LLC.

d/b/a Mile 20 at Mediterranean Breeze

By: Phillip Orme
Phillip Orme
Title: owner

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 24 day of September 2019 by PHILLIP ORME, owner of TERYANNA, LLC d/b/a Mile 20 at Mediterranean Breeze, a Virginia limited liability corporation, on its behalf.



[Signature]
Notary Public

My Commission Expires: 5/31/2022
Registration No.: 7771261

September 24, 2019
(public hearing)

ATTEST:


 Town Clerk

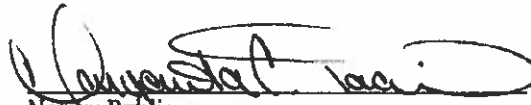
TOWN OF HERNDON, VIRGINIA

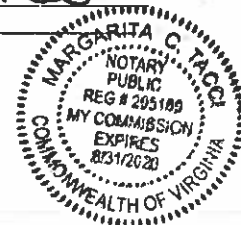
By 
 Lisa C. Merkel
 Mayor



COMMONWEALTH OF VIRGINIA
 COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 24th day of September, 2019 by LISA C. MERKEL, MAYOR of the TOWN OF HERNDON, VIRGINIA, a Virginia municipal corporation, on its behalf.


 Notary Public
 My Commission Expires: 8.31.20
 Registration No.: 295189



APPROVED AS TO FORM:


 Lesa J. Yeatts
 Town Attorney

**September 24, 2019
(public hearing)**

GENERAL

17. Resolution 19-G-63, to accept the State of the Town Report, Fiscal Year 2019.

Mayor Merkel stated that the town charter requires the Town Manager to submit an annual report at a public hearing in September. Due to the lateness of the hour and the few members of the public were present, she asked Lesa Yeatts, Town Attorney, to clarify if the Council could continue Resolution 19-G-63 to the next public hearing meeting. She stated a continuance would allow an opportunity for members of the public to hear what staff has done this past year. She asked Ms. Yeatts if the Town Manager submitted the report in writing this evening, if that would meet the required deadline.

Ms. Yeatts opined that the Town Manager could submit his report at tonight's public hearing, and then Council could continue the resolution.

For the record, Mayor Merkel stated that the Town Manager distributed the State of the Town Report for Fiscal Year 2019 at the September 24, 2019 public hearing.

William Ashton, Town Manager, stated that, pursuant to the Charter provisions of the specific task outlined for the Town Manager, the Council received the Annual Report today. He stated that staff would post the report on the town's website for the public. In lieu of an executive summary, staff had prepared a brochure, which was provided to Council, and would also be available on the town's website. The brochure would be mailed to residents later this week. Mr. Ashton stated that he would like to make the presentation highlighting the past year's accomplishments and recognize key staff at the next Town Council public hearing.

Councilmember Baker moved that the Town Council ask the Town Manager to forgo the presentation of his State of the Town Report for Fiscal Year 2019 until October 15, 2019. Councilmember McKenna seconded the motion.

There were comments from Council.

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

CONSENT AGENDA

18. Resolution 19-G-64, to Authorize an Application to the Virginia Department of Transportation (VDOT) for the Allocation of Revenue Sharing Funds.

On motion of Vice Mayor Olem, seconded by Councilmember McKenna, and carried by unanimous vote, the following consent agenda item was approved, without comment.

**September 24, 2019
(public hearing)**

The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Resolution 19-G-64, to Authorize an Application to the Virginia Department of Transportation (VDOT) for the Allocation of Revenue Sharing Funds.

WHEREAS, the Revenue Sharing Program provides additional funding to construct, improve or maintain the highway system; and

WHEREAS, the program is administered by the Virginia Department of Transportation in cooperation with the participating locality, under the authority of Section 33.1-23.05 of the Code of Virginia; and

WHEREAS, the Town of Herndon may directly apply for this program since it maintains its own streets; and

WHEREAS, the town must provide VDOT with a Revenue Sharing application and resolution, outlining its request to participate and support of the potential projects identified for possible funding by October 1, 2019; and

WHEREAS, the town staff desires to submit an application for an allocation of funds up to \$650,000 through the Virginia Department of Transportation Fiscal Years 2021 - 22 Revenue Sharing Program; and

WHEREAS, the town must commit a minimum of fifty percent in matching funds, or \$325,000 within the two fiscal years subsequent to allocation, along with a town/VDOT agreement prior to beginning a locally administered project; and

WHEREAS, these funds in the amount up to \$650,000, are requested to fund the Pavement Overlay Program in the town.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby authorizes an application be submitted for the allocation of up to \$650,000 through the Virginia Department of Transportation Revenue Sharing Program.

19. CLOSED MEETING

Mayor Merkel stated that the Herndon Town Council had a need to go into a Closed Meeting. Following a brief recess, the Council would reconvene in a Closed Meeting in the Hoover Conference Room.

**September 24, 2019
(public hearing)**

On motion of Vice Mayor Olem, seconded by Councilmember McKenna, and carried by unanimous vote, the Herndon Town Council went into Closed Meeting at 10:57 p.m., under sections 2.2-3711(A)(3) and (A)(8), to consult with legal counsel and to discuss and consider the acquisition of real property within the Herndon Transit Oriented Core for a public purpose where such discussion or consultation in an open meeting would adversely affect the negotiating or litigating posture of the Council.

Vote: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

20. RECESS

At 10:57 p.m., Mayor Merkel called a brief recess and at 11:03 p.m., the Closed Meeting reconvened in the Herndon Council Chambers Building, all members present, and with Mayor Merkel presiding.

21. CLOSED MEETING CONTINUED

On motion of Vice Mayor Olem, seconded by Councilmember Friedrichs, and carried by unanimous vote, the Herndon Town Council reconvened in public session at 11:28 p.m.

Vote: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

On motion of Councilmember Friedrichs, seconded by Vice Mayor Olem, and carried by unanimous vote, the Herndon Town Council approved the following Certification of Closed Meeting.

Vote: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Certification of Closed Meeting

WHEREAS, the Town Council of the Town of Herndon has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by this Town Council that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification

**September 24, 2019
(public hearing)**

resolution applies, and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed, or considered by the Town Council.

VOTE:

Ayes – 7

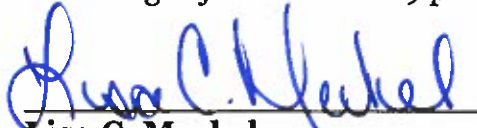
Nays – 0

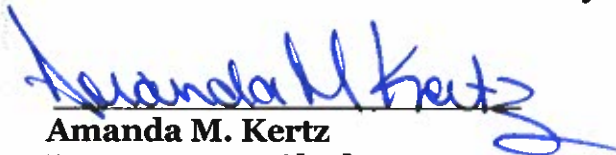
ABSENT DURING VOTE: 0

ABSENT DURING MEETING: 0

22. ADJOURNMENT

There being no further business, the meeting adjourned at 11:29 p.m.


Lisa C. Merkel
Mayor


Amanda M. Kertz
Deputy Town Clerk



Minutes approved by Town Council: October 29, 2019.

September 24, 2019
(public hearing)

NOTE:

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