



This does not represent a verbatim transcript of the Town Council meeting. Visit www.herndon-va.gov "agendas & minutes" to view agendas and videos. Copies of videotapes of the public hearing meetings are available on request by contacting HCTV at 703-689-2323. Work sessions are not videotaped, but audio files are available. Individuals not having access to the town's website may contact the Town Clerk's office at 703-435-6804 or town.clerk@herndon-va.gov.

HERNDON TOWN COUNCIL

Tuesday
July 14, 2020

Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Order of the Governor EO-53, as amended; and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19) ~ adopted on March 24, 2020, as amended, Mayor Merkel stated that the July 14, 2020 Herndon Town Council Public Hearing would be by electronic means. The meeting was broadcast and recorded through Cisco Webex and details for the meeting were made available to the public on Thursday, July 9, 2020. In attendance electronically were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Jennifer Baker; Cesar del Aguila; Pradip Dhakal (disconnected from 7:27 p.m. to 7:29 p.m.); Signe Friedrichs; and Bill McKenna.

Staff present during the meeting were: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Jennie Tripoli, Director of Finance; Tammy Chastain, Deputy Director of Public Works; and Amanda M. Kertz, Deputy Town Clerk.

Staff Announcements

Amanda M. Kertz, Deputy Town Clerk, welcomed those listening to the July 14, 2020 public hearing. She stated that night's regularly scheduled Herndon Town Council meeting was a virtual meeting and that the public was encouraged to provide comments for the record at town.clerk@herndon-va.gov. She stated, for the record, that:

- The Town Council meeting that evening was conducted electronically pursuant to:
 - ❖ Virginia Code Section 2.2-3708.2, as amended;
 - ❖ the Order of the Governor EO-53, as amended; and
 - ❖ in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended.

**July 14, 2020
(public hearing)**

- Proper notice of the electronic meeting was provided in accordance with Section 2.2-3708.2 of the Code of Virginia, along with information for viewing the meeting and submitting comments for the record;
- The agenda and meeting materials were available on the town's website;
- Electronic meetings would begin with a roll call and determination of quorum; and
- All votes, including adjournment, would be by roll call vote.

CALL TO ORDER

1. Roll Call & Determination of Quorum

Mayor Merkel called the public hearing by electronic means to order at 7:00 p.m. and welcomed those who were joining the meeting over Webex. She then asked Ms. Kertz, Deputy Town Clerk, to call the roll for attendance, and for each Councilmember to respond by clearly stating their name and indicating they were present.

All members were present, electronically, with Mayor Merkel presiding. Mayor Merkel stated, for the record, that there was a quorum present, electronically, that evening. William H. Ashton II, Town Manager and Lesa Yeatts, Town Attorney, were also present.

Mayor Merkel asked that those on Council physically raise their hand if they wished to speak. She asked Council to unmute their microphones and to start their comments, motions, or seconds by stating their name when she recognized them.

APPROVAL OF MINUTES

**Vote on June 9, 2020
Public Hearing Minutes**

On motion of Councilmember McKenna, seconded by Councilmember Dhakal, and carried by unanimous roll call vote by electronic means, the minutes of the June 9, 2020 public hearing were approved. The vote was: Councilmembers Baker, Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

2. COMMENTS FROM THE TOWN MANAGER

Mayor Merkel recognized William H. Ashton II, Town Manager, to provide an update on the continuity of operations and matters related to the emergency, followed by questions of Council.

**July 14, 2020
(public hearing)**

Mr. Ashton provided updates on the COVID-19 emergency in the region and town operations.

Mr. Ashton stated that there was a statewide rise in the number of positive cases per day and percent positive of those tested that were driven out of the Tidewater region. He stated this may affect permissible activities if the Governor adjusts the executive reopening orders.

Mr. Ashton shared that Fairfax County numbers and percentages of positive cases, which had been decreasing steadily, had flattened and leveled off at that time.

Mr. Ashton shared that the 20170 zip code (Herndon) was still the fifth highest of 48 zip codes in Fairfax County in terms of overall positive COVID-19 cases. He stated that the data was not broken down into more specific demographic data and that just the zip code data was difficult to get from the health departments.

Mr. Ashton stated that staff was still working with the Fairfax County Health Department to increase testing in the town, especially for vulnerable populations. He stated that the numbers in the Hispanic population of Fairfax County were incredibly high compared to their representation in the overall population. He shared that he had read a Wall Street Journal article that this was a national phenomenon. He also stated there was a testing event focused on the most vulnerable community members scheduled. He stated that it would not be widely-announced, and the health department would handle it to target those most at-risk.

Mr. Ashton stated getting the right services once a positive case was identified was difficult, and now a county healthcare worker would conduct a screening over the phone for barriers such as living arrangements, food, and rent vulnerabilities, that would keep an individual from safely isolating or quarantining. He stated if there was a problem in any of the areas being screened, a county healthcare worker would help arrange for them to stay in a hotel. Mr. Ashton stated that the county had contracted several hotels for sheltering, and they were arranging food drop-offs and rent service for those who would need to make tough economic decisions about working, living, and eating if they tested positive. The town was helping the county as much as possible to coordinate these efforts.

Mr. Ashton stated there were no changes in town facility updates from the prior week, and he encouraged everyone to go to the website www.herndon-va.gov to track what was open in the town. He stated that the Herndon Centennial Golf Course (HCGC) had a record revenue month in June of around \$250,000 and that the town's surplus for FY 2020 was also around \$250,000.

**July 14, 2020
(public hearing)**

Questions of Council

Mayor Merkel confirmed with Mr. Ashton that the HCGC revenue for the month of June and the town's surplus in the General Fund for FY 2020 were two separate amounts that were both around \$250,000. Mr. Ashton confirmed this and stated that the precise golf course amount was \$253,000.

Councilmember Friedrichs provided appreciative comments on the staff and county health department's efforts and asked if the town could do more outreach.

In response to queries from Councilmember Friedrichs, Mr. Ashton stated that Anne Curtis, Chief Communications Officer, had been doing outreach and would continue to get the word out through the town's media channels. He stated that staff was working on further assistance from the county to ensure that needs were met for people who needed to isolate. He had talked with Dr. Gloria about sending out this message, since the county has access points to the various social programs. He stated that communication was critical and that he had followed and focused on this issue since the zip code data was released.

In response to Councilmember Friedrichs' mention of a comment about reaching out to homeowners' associations, Mr. Ashton stated that Ms. Curtis would be looking into that when she returned next week.

Mayor Merkel provided comments about the relationship between the town and the county, which was allowing for more testing. She referenced an email from Dr. Gloria, about community groups – including Healthworks Northern Virginia, Cornerstones, and Sanctuary DMV, among others – who were helping the county provide these much-needed services.

In response to queries from Vice Mayor Olem, Mr. Ashton stated that numbers of positive cases could only be narrowed down as far as zip code by the state and county health departments. He stated that providing smaller locality numbers could violate Health Insurance Portability and Accountability Act (HIPAA) and medical privacy.

Mayor Merkel provided comments about other small localities, such as the Town of Vienna, also being frustrated about not being able to hone in more on the numbers in their municipality.

3. COMMENTS FROM THE TOWN COUNCIL

Mayor Merkel reminded Council that comments should be limited to continuity of business and the State Of Emergency to comply with state code requirements. She asked the Council to unmute their microphones and state their name when she recognized them for comments.

**July 14, 2020
(public hearing)**

Vice Mayor Olem: Shared information with the public about National Night Out not being held Tuesday, August 4, 2020. She advised those listening that the next Council work session would be moved back to that date, which had originally been scheduled for Wednesday, August 5, 2020. She also stated that all of Council were available and willing to talk with any individuals who might have questions about things going on, either over the phone or socially distanced outside.

Councilmember Baker: Stated that she was not sure if this related to the State Of Emergency, but she had heard a lot of discussion related to the Comstock development. She stated that folks might have implied that it had been delayed because of COVID-19 and asked the Town Manager if he could speak to that topic.

Mr. Ashton stated that the delay was not related to COVID-19. He stated that the town and Comstock were working to resolve a myriad of contract closing issues. He had heard nothing from Comstock about having issues with COVID and stated that COVID-related issues had not impacted the town staff.

PUBLIC HEARINGS

Public Hearing Process

Mayor Merkel stated that there were several public hearings that night, and she would outline the participation process for Webex. At the appropriate time, she would ask that those wishing to address Council on the public hearing item to click the hand icon in Webex. To make sure she saw everyone who wishes to speak, Mayor Merkel stated that she would pause for a few seconds to wait for a member of the public to raise their hand. The Clerk would then advise of those who had their hand raised in the order she saw them on her screen. Mayor Merkel stated that she would take a brief pause while staff enabled the speaker's ability to address the Council and she would call on them when it was their turn to speak. She stated that if there was a member of the public who wished to address Council and they experienced technical issues; staff would contact them to see what assistance can be provided.

Comments for the Record

Mayor Merkel opened the public hearings and asked if any written comments were received for the record on any items listed on the agenda that evening.

Amanda M. Kertz, Deputy Town Clerk, responded that comments were received for public hearing item eight on the agenda, Resolution 20-G-20, to consider restructuring of some of the town's debt. The comments were provided to the Mayor, Town Council, Town Manager, and Director of Finance, and were entered into the record for the public hearing.

**July 14, 2020
(public hearing)**

Disclosure

Ms. Kertz entered into the record a signed Transactional Disclosure Declaration that she received for the lease amendments for the town's 3rd Street and Alabama Drive water towers to Celco Partnership d/b/a Verizon Wireless pursuant to Sections 2.2-3112(B)(2)(3) and 2.2-3115(G), of the Code of Virginia. She stated, for the record, that:

- ❖ **Vice Mayor Olem** provided a signed statement for the record, stating that she is an owner a commercial property in North Augusta, South Carolina. The group she leases to is in the Verizon Global Real Estate division of Celco Partnership d/b/a Verizon Wireless, out of Temple Terrace, Florida. The statement indicated that she is able to participate in the discussion and action on the applications fairly, objectively, and in the public interest. She filed the appropriate disclosure with the Town Clerk and Town Attorney.

4. Ordinance 20-O-19, to approve and authorize the Mayor to sign a second lease amendment to Celco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, and drawings at the Town's 3rd Street Water Tower.

[Note: This item was continued from the March 10th and April 14th Public Hearings.]

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, February 21 and Friday, February 28, 2020 issues.

Mayor Merkel announced this item had been continued from the Council's March 10, 2020 and April 14, 2020 meetings. She stated that the public hearing was opened and recognized Tammy Chastain, Deputy Director of Public Works, for the staff report.

Ms. Chastain presented the staff report initially dated March 3, 2020, which is on file in the Town Clerk's office. The proposed lease originated in 2002, was amended in 2012, and would expire August 31, 2027. This Second Amendment would update the approved equipment list; revise the upper size limit of the panel antennas; and specify equipment and size limits previously not included in the lease exhibits. The terms of the monthly rent would remain unchanged. Staff recommends approval of the proposed ordinance, as presented.

Mayor Merkel invited the applicant or applicant's agent from Celco Partnership d/b/a Verizon Wireless to provide comments. She asked Ms. Kertz if the representative from Celco/Verizon was on the Webex and if she had her hand raised to speak.

Ms. Chastain stated that she did not think the representative had been able to attend the Webex.

**July 14, 2020
(public hearing)**

Ms. Kertz confirmed that she did not see the representative on the Webex attendee list.

Mayor Merkel stated that members of the audience who wished to address Council on this item should click the hand icon to be recognized. Mayor Merkel asked Ms. Kertz if there was anyone who joined the Webex that would like to address council on this item.

Ms. Kertz confirmed there were no speakers.

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

Councilmember Friedrichs moved to approve Ordinance 20-O-19, as presented (there were no comments from the audience). 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 by electronic means. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Ordinance 20-O-19, to approve and authorize the Mayor to sign a second lease amendment to Cellco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, and drawings at the Town's 3rd Street Water Tower.

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

1. The Town Council approves this Second Amendment to Deed of Lease dated July 14, 2020. This instrument amends the original Deed of Lease dated June 9, 2002 and the First Amendment to Deed of Lease dated August 15, 2012.
2. This instrument updates the approved equipment list and premises description.
3. This instrument approves revising the quantity and upper size limit of the following: 1 generator enclosure up to 10' x 15', 5 equipment cabinets up to 75" H x 33" W x 33" D, 1 15 KW diesel generator up to 80" H x 30" W x 50" D, 12 antennas up to 98" H x 20" W x 10" D, 3 distribution boxes up to 20" H x 16" W x 12" D, 6 remote radio units (RRU's) up to 22" H x 15" W x 10" D, 6 coax and/or fiber hybrid cables up to 1 5/8" diameter.

**July 14, 2020
(public hearing)**

4. The Herndon 3rd Street Water Tower constitutes a municipal water storage and distribution resource, its dominant function. Town may maintain, paint, repair, and use the water tower for this purpose. Lessee and Sublessee, at their respective expense, upon not less than ninety days prior written notice from Town must move, temporarily remove, relocate, or temporarily disable their respective uses to accommodate such activities by Town. Rent shall abate during such temporary removal or temporary disabling when the Equipment is rendered useless. During a temporary relocation, Lessee or Sublessee, or both, is permitted to locate on the Premises a temporary communications facility, such as a cell on wheels. In the latter case, rent shall not abate.
5. In all other respects the original lease remains in effect.
6. The Mayor is authorized to sign and deliver the lease amendment and any ancillary instruments necessary to evidence or effectuate the lease amendment, provided they are consistent with this ordinance and on such form approved by the Town Attorney.
7. This ordinance shall be in effect on and after the date of its adoption.

[Note: Attached for reference is the second amendment to the deed of lease b/n the town and Cellco Partnership d/b/a Verizon Wireless dated July 14, 2020.]

**July 14, 2020
(public hearing)**

Page 1 of 3

SECOND AMENDMENT TO DEED OF LEASE

This Second Amendment to Deed of Lease ("Second Amendment"), is made this 14th day of July 2020 by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation, ("Town") and CELLCO PARTNERSHIP, a Delaware general partnership, d/b/a Verizon Wireless ("Lessee"), as successor in interest to Washington, D.C. SMSA Limited Partnership.

WHEREAS, Town and Lessee entered into a certain Deed of Lease dated June 9, 2002, as amended by the First Amendment to Deed of Lease dated August 15, 2012, (collectively referred to herein as the "Lease") whereby the Town leased to Lessee portions of Town's water tower and adjacent land known as the Third Street Water Tower, Third and Van Buren Street, Herndon, VA 20170, Fairfax County Tax Map Number 0104-02-0045A, all as more particularly described in the Original Deed of Lease.

WHEREAS, Town and Lessee hereby affirm that, as of the date hereof: (i) no breach or default by Town or Lessee occurred; and (ii) the Lease, and all the terms, covenants, conditions, provisions and agreements thereof, except as expressly modified by this Amendment are in full force and effect, with no defenses or offsets thereto; and

WHEREAS, Town and Lessee desire to amend the Lease as follows;

NOW THEREFORE, in consideration of the mutual covenants contained in the Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Lessee hereby agree as follows:

1. All capitalized terms shall have the meaning ascribed to them in the Lease unless otherwise defined in this Second Amendment.
2. Exhibit A1 and A2 are deleted in their entirety and replaced with Exhibit A dated March 10, 2020, Exhibit B, is deleted in its entirety and replaced with Exhibit B dated March 10, 2020, Exhibit C, is deleted in its entirety and replaced with Exhibit C, Pages 1-5 dated March 10, 2020, all are attached hereto and incorporated herein.
3. The premises description is hereby modified as described in Exhibit B dated March 10, 2020 and its equipment list and drawings as described in Exhibit C, Pages 1-5 dated March 10, 2020, both attached hereto and incorporated herein.
4. The Herndon 3rd Street Water Tower constitutes a municipal water storage and distribution resource, its dominant function. Town may maintain, paint, repair, and use the water tower for this purpose. Lessee and Sublessee, at their respective expense, upon not less than ninety days prior written notice from Town must move, temporarily remove, relocate, or temporarily disable their respective uses to accommodate such activities by Town. Rent shall abate during such temporary removal or temporary disabling when the Equipment is rendered useless. During a temporary relocation, Lessee or Sublessee, or both, is permitted to locate on the Premises a temporary communications facility, such as a cell on wheels. In the latter case, rent shall not abate.

Lessee Site: Monroe

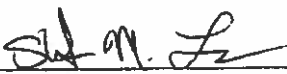
**July 14, 2020
(public hearing)**

Page 2 of 3

5. Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.
6. This Second Amendment to Deed of Lease will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.
7. Town represents and warrants to Lessee that the consent or approval of a third party has either been obtained or is not required with respect to the execution of this Amendment.
8. Except as specifically amended herein, the remaining terms of the Lease shall remain in full force and effect. To the extent any provision contained in this Second Amendment conflicts with the terms of the Lease, the terms and provisions of this Amendment shall prevail.

LESSEE:

**CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS**

BY: 
NAME: Stefania M. Lewis
TITLE: Sr. Mgr. Real Estate
DATE: 2/7/20

Additional signatures on following page

**July 14, 2020
(public hearing)**

Page 3 of 3

TOWN:

TOWN OF HERNDON, VIRGINIA

BY: 

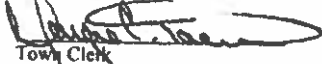
Lisa C. Merkel

Mayor

DATE: 3-10-2020



ATTEST:


Town Clerk

APPROVED AS TO FORM:


Lisa J. Yeatts
Town Attorney

**July 14, 2020
(public hearing)**

Exhibit A
March 10, 2020

The property lies in the Town of Herndon, Virginia and is described as follows:

1. 806 3rd Street
Herndon, VA 20170
2. Fairfax County Tax Map Number 10-4-2-45A

The geodetic coordinates of the Property are as follows:

North Latitude: 38° 58' 50"
West Longitude 77° 22' 59"

**July 14, 2020
(public hearing)**

**Exhibit B
March 10, 2020**

The premises shall consist of the following:

1. The Ground Space, consisting of approximately 324 square feet for placement of equipment cabinets and a back-up generator and associated concrete pad.
2. Space on the Tower sufficient to accommodate the placement, installation, operation and maintenance of the equipment (listed on Exhibit "C").
3. The Access easement.
4. The Utility Easements.
5. The premises are depicted on the attached drawings.

Nothing in this legal description shall convey to Lessee any rights in the Property other than what are specifically described in this Deed of Lease as to the Premises.

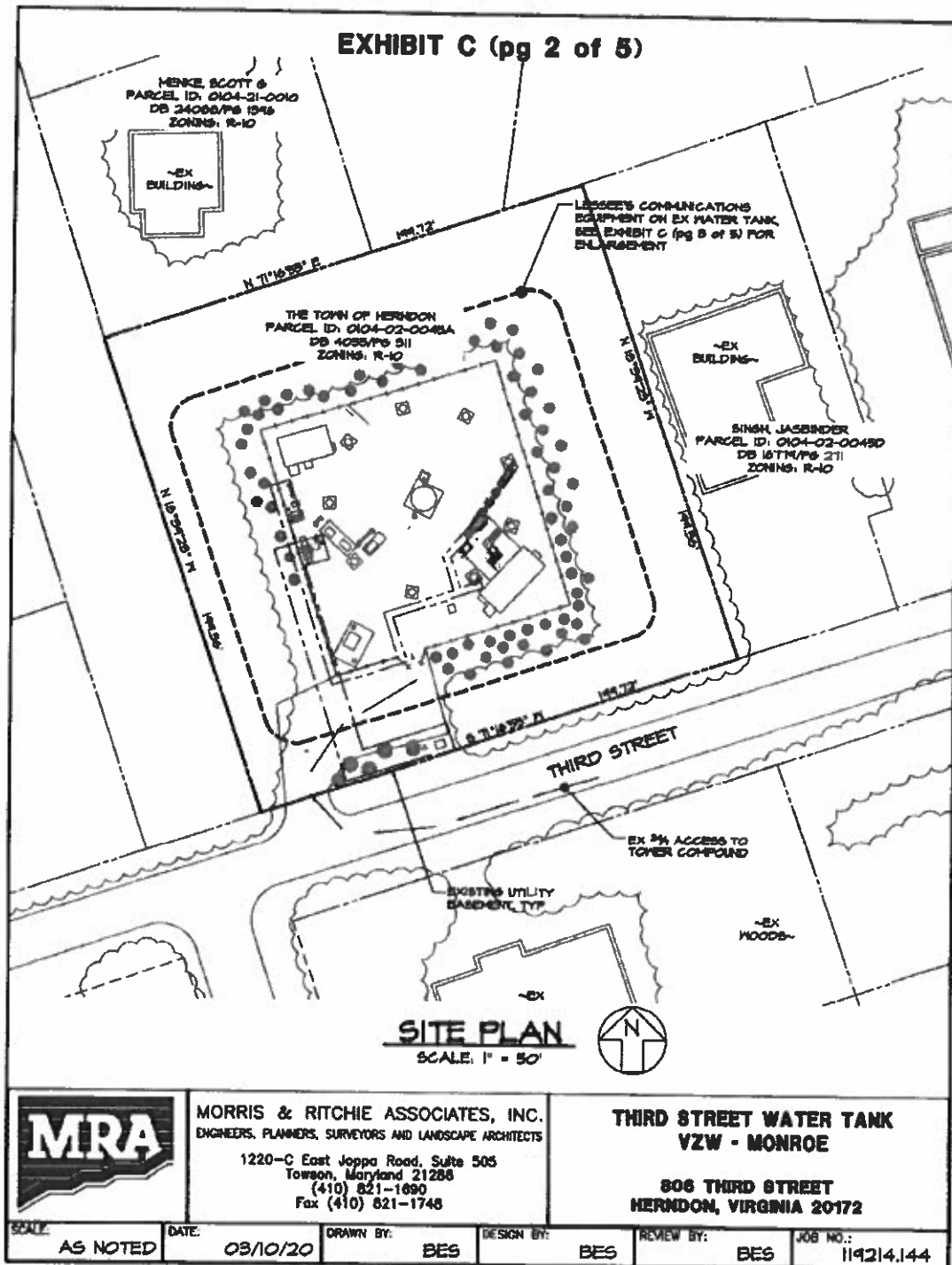
**July 14, 2020
(public hearing)**

**Exhibit C
Page 1 of 5
March 10, 2020**

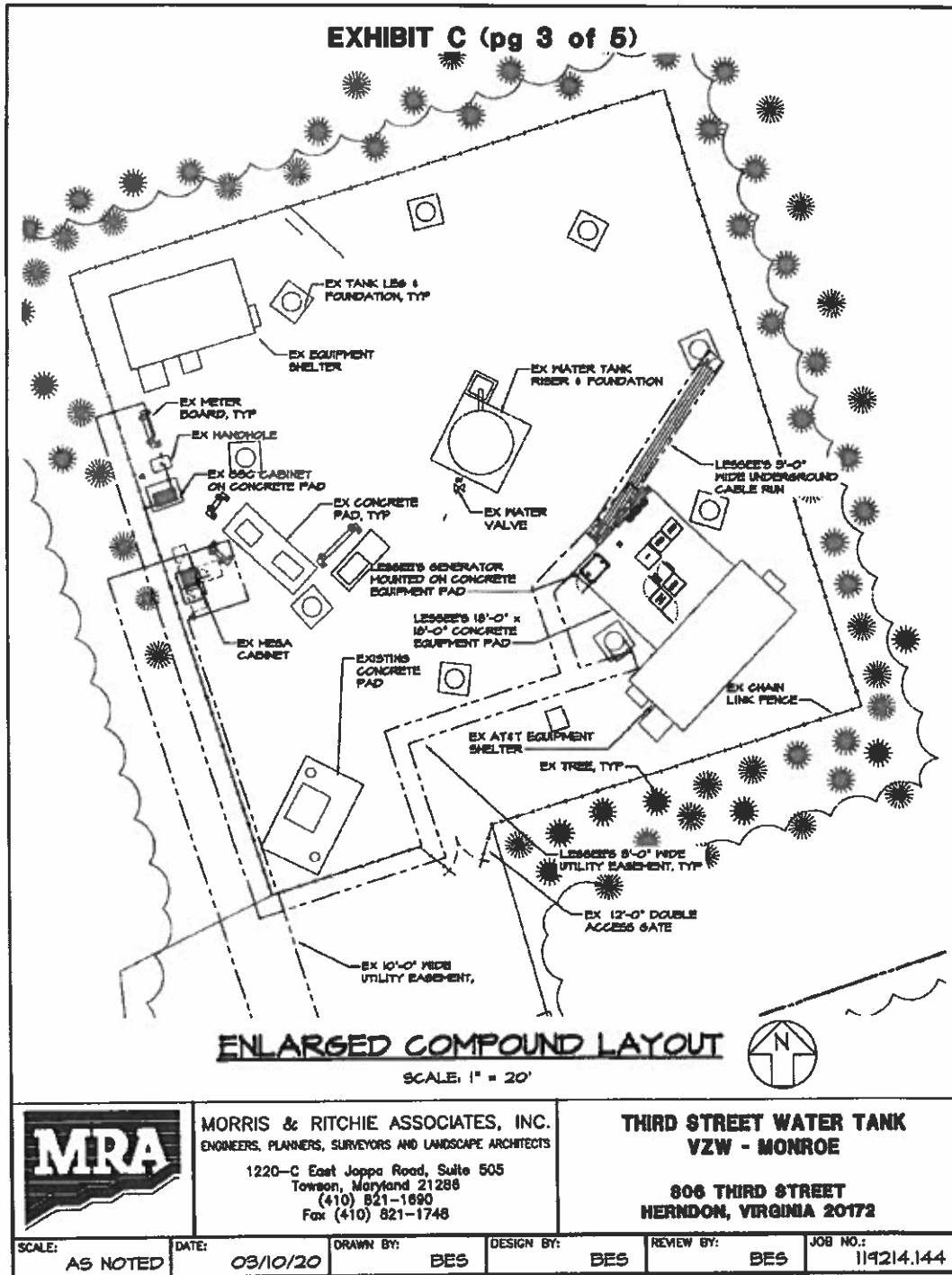
The following equipment together with any associated wires, cables, pipes, conduits and supporting structures associated with the equipment shall be located on the Third Street Water Tank as generally shown on the attached drawings.

<u>Quantity</u>	<u>Type</u>	<u>Approximate Size</u>
1	Generator Enclosure	10' X 15'
5	Equipment Cabinets	up to 75"H x 33" W x 33" D
1	15 KW Diesel Generator	80"H x 30" W x 50 " D
12	Antennas	up to 98" H x 20" W x 10" D
3	Distribution Boxes	up to 20" H x 16" W x 12" D
6	Remote Radio Units (RRU's)	up to 22" H x 15" W x 10 " D
6	Coax and/or Fiber Hybrid Cables	up to 1 5/8" diameter

July 14, 2020
(public hearing)

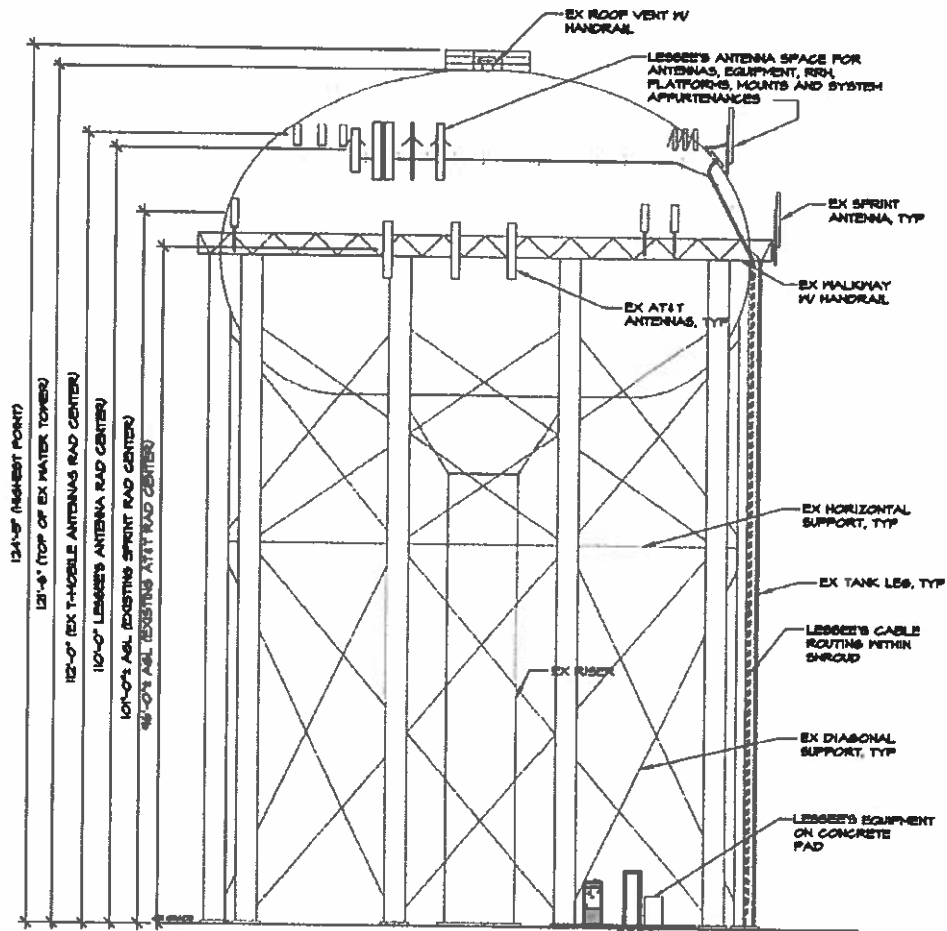


July 14, 2020
(public hearing)



July 14, 2020
(public hearing)

EXHIBIT C (pg 4 of 5)



WATER TOWER ELEVATION

SCALE: 1" = 20'



MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C East Joppa Road, Suite 505
Towson, Maryland 21286
(410) 821-1660
Fax (410) 821-1748

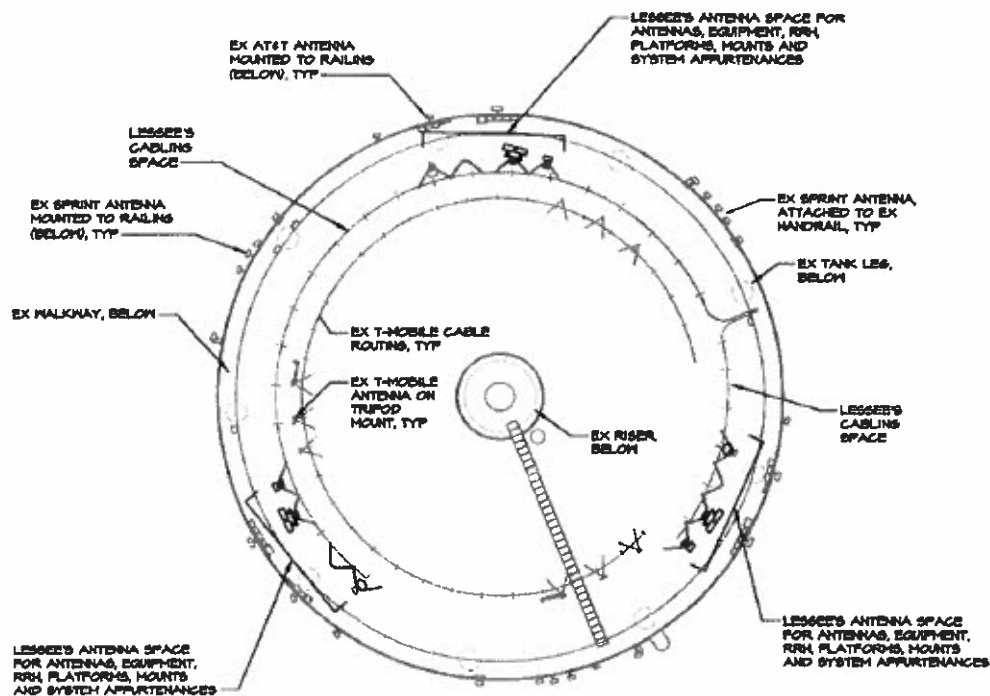
**THIRD STREET WATER TANK
VZW - MONROE**

**806 THIRD STREET
HERNDON, VIRGINIA 20172**

SCALE: AS NOTED	DATE: 03/10/20	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 119214.144
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July 14, 2020
(public hearing)

EXHIBIT C (pg 5 of 5)



ANTENNA SECTOR LAYOUT

SCALE: 1" = 20'



	MORRIS & RITCHIE ASSOCIATES, INC. ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS 1220-C East Joppa Road, Suite 505 Towson, Maryland 21286 (410) 821-1880 Fax (410) 821-1748			THIRD STREET WATER TANK VZW - MONROE 806 THIRD STREET HERNDON, VIRGINIA 20172	
	SCALE: AS NOTED	DATE: 03/10/20	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES

**July 14, 2020
(public hearing)**

5. Ordinance 20-O-40, to approve and authorize the Mayor to sign a second lease amendment to Celco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, and drawings at the Town's Alabama Drive Water Tower.

Mayor Merkel stated that the Deputy Town Clerk had previously entered Vice Mayor Olem's disclosure on this item into the record.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, June 26 and Friday, July 3, 2020 issues.

Mayor Merkel stated that the public hearing was opened and recognized Tammy Chastain, Deputy Director of Public Works, for the staff report.

Ms. Chastain presented the staff report dated July 7, 2020, which is on file in the Town Clerk's office. The proposed lease originated on February 15, 2008, and a first amendment was executed on August 15, 2012 providing three additional five-year amendments to the deed of lease. This Second Amendment would update the approved equipment list; revise the upper size limit of the panel antennas; and specify equipment and size limits previously not included in the lease exhibits. She stated that the terms of the monthly rent would not change as per the original Deed of Lease. Staff recommends approval of the proposed ordinance, as presented.

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

In response to queries from Vice Mayor Olem, Ms. Chastain confirmed, for the record, that this tower was not in use as a water tower.

Mayor Merkel asked if a representative from Celco Partnership d/b/a Verizon Wireless was present and would like to address the Council on this item.

Ms. Kertz confirmed that she did not see the representative on the Webex attendee list.

Mayor Merkel stated that members of the audience who wished to address Council on this item should click the hand icon to be recognized. Mayor Merkel asked Ms. Kertz if there was anyone who joined the Webex that would like to address council on this item.

Ms. Kertz confirmed there were no speakers.

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

**July 14, 2020
(public hearing)**

On motion of Vice Mayor Olem, seconded by Councilmember Baker (there were no comments from the audience), and carried by a 6-0 roll call vote by electronic means, Ordinance 20-O-40 was approved, as presented. The vote was: Councilmembers Baker, del Aguila, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Dhakal was away from the dais.

[Note: At 7:27 p.m., Mayor Merkel noted that Councilmember Dhakal was having trouble with his Webex audio. She advised that his vote would be counted as "away from the dais" on this item and asked the Information Technology staff to reach out to him about his connection to Webex.]

Ordinance 20-O-40, to approve and authorize the Mayor to sign a second lease amendment to Celco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, and drawings at the Town's Alabama Drive Water Tower.

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

1. The Town Council approves this Second Amendment to Deed of Lease dated July 14, 2020. This instrument amends the original Deed of Lease dated February 15, 2008 and the First Amendment to Deed of Lease dated August 15, 2012.
2. This instrument updates the approved equipment list and premises description.
3. This instrument approves revising the quantity and upper size limit of equipment to the following: 1 generator enclosure up to 11' x 13', 1 equipment shelter up to 12' x 20', 1 15 KW diesel generator up to 88" L x 40" W x 50" H, 15 antennas up to 98.5" H x 20" W x 10" D, 3 distribution boxes up to 20" H x 16" W x 11" D, 6 remote radio units (RRU's) up to 27" H x 13" W x 8" D, 6 diplexers up to 8" H x 8" W x 6" D, 3 hyperflex cables up to 1 3/4" diameter.
4. The Herndon Alabama Drive Water Tower constitutes a municipal water storage and distribution resource, its dominant function. Town may maintain, paint, repair, and use the water tower for this purpose. Lessee and Sublessee, at their respective expense, upon not less than ninety days prior written notice from Town must move, temporarily remove, relocate, or temporarily disable their respective uses to accommodate such activities by Town. Rent shall abate during such temporary removal or temporary disabling when the Equipment is rendered useless. During a temporary relocation,

**July 14, 2020
(public hearing)**

Lessee or Sublessee, or both, is permitted to locate on the Premises a temporary communications facility, such as a cell on wheels. In the latter case, rent shall not abate.

5. In all other respects the original lease remains in effect.
6. The Mayor is authorized to sign and deliver the lease amendment and any ancillary instruments necessary to evidence or effectuate the lease amendment, provided they are consistent with this ordinance and on such form approved by the Town Attorney.
7. This ordinance shall be in effect on and after the date of its adoption.

[Note: Attached for reference is the second amendment to the deed of lease b/n the town and Cellco Partnership d/b/a Verizon Wireless dated July 14, 2020.]

**July 14, 2020
(public hearing)**

Page 1 of 3

SECOND AMENDMENT TO DEED OF LEASE

This Second Amendment to Deed of Lease ("Second Amendment"), is made this 14th day of July 2020 by and between the **TOWN OF HERNDON, VIRGINIA**, a municipal corporation, ("Town") and **CELLCO PARTNERSHIP**, a Delaware general partnership, d/b/a Verizon Wireless ("Lessee"), as successor in interest to Washington, D.C. SMSA Limited Partnership.

WHEREAS, Town and Lessee entered into a certain Deed of Lease dated February 15, 2008, as amended by the First Amendment to Deed of Lease dated August 15, 2012, (collectively referred to herein as the "Lease") whereby the Town leased to Lessee portions of Town's water tower and adjacent land known as the Alabama Drive Water Tower located at 624 Alabama Drive in Herndon, Virginia 20170, Fairfax County Tax Map Number 0162-02-0148, all as more particularly described in the Original Deed of Lease.

WHEREAS, Town and Lessee hereby affirm that, as of the date hereof: (i) no breach or default by Town or Lessee occurred; and (ii) the Lease, and all the terms, covenants, conditions, provisions and agreements thereof, except as expressly modified by this Amendment are in full force and effect, with no defenses or offsets thereto; and

WHEREAS, Town and Lessee desire to amend the Lease as follows;

NOW THEREFORE, in consideration of the mutual covenants contained in the Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Lessee hereby agree as follows:

1. All capitalized terms shall have the meaning ascribed to them in the Lease unless otherwise defined in this Second Amendment.
2. Exhibit A is deleted in its entirety and replaced with Exhibit A dated July 14, 2020, Exhibit B (Revised 2012), Exhibit B1, Exhibit B2, and Exhibit B-3 are deleted in their entirety and replaced with Exhibit B dated July 14, 2020, Exhibit C (Revised 2012), is deleted in its entirety and replaced with Exhibit C, Pages 1-4 dated July 14, 2020, all are attached hereto and incorporated herein.
3. The premises description is hereby modified as described in Exhibit B dated July 14, 2020 and its equipment list and drawings as described in Exhibit C, Pages 1-4 dated July 14, 2020, both attached hereto and incorporated herein.
4. The Herndon Alabama Drive Water Tower constitutes a municipal water storage and distribution resource, its dominant function. Town may maintain, paint, repair, and use the water tower for this purpose. Lessee at its expense, upon not less than ninety days prior written notice from Town must move, temporarily remove, relocate, or temporarily disable its respective uses to accommodate such activities by Town. Rent shall abate during such temporary removal or temporary disabling when the Equipment is rendered useless. During a temporary relocation, Lessee is permitted to locate on the Premises a temporary communications facility, such as a cell on wheels. In the latter case, rent shall not abate.

Lessee Site Name/ID: Bruin Park/179366

**July 14, 2020
(public hearing)**

Page 2 of 3

5. Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.
6. This Second Amendment will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.
7. Town represents and warrants to Lessee that the consent or approval of a third party has either been obtained or is not required with respect to the execution of this Amendment.
8. Except as specifically amended herein, the remaining terms of the Lease shall remain in full force and effect. To the extent any provision contained in this Second Amendment conflicts with the terms of the Lease, the terms and provisions of this Amendment shall prevail.

LESSEE:

**CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS**

BY: 
Stefanie M. Lewis (S.E., 701.534.4138)
NAME: Stefanie M. Lewis
TITLE: Sr. Mgr. - Real Estate/Regulatory
DATE: 06/17/2020

Additional signatures on following page

Lessee Site Name/ID: Bruin Park/179366

**July 14, 2020
(public hearing)**

Page 3 of 3

TOWN:

TOWN OF HERNDON, VIRGINIA

BY: _____
Lisa C. Merkel
Mayor
DATE: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Lesia J. Yeatts
Town Attorney

Lessee Site Name/ID: Bruin Park/179366

**July 14, 2020
(public hearing)**

**Exhibit A
July 14, 2020**

The property lies in the Town of Herndon, Virginia and is described as follows:

1. 624 Alabama Drive
Herndon, VA 20170
2. Fairfax County Tax Map Number 16-2-02-0148

The geodetic coordinates of the Property are as follows:

North Latitude: 38° 58' 24.4"

West Longitude 78° 36' 0.0"

**July 14, 2020
(public hearing)**

**Exhibit B
July 14, 2020**

The premises shall consist of the following:

1. The Ground Space, consisting of approximately 442 square feet for placement of equipment shelter and a back-up generator and associated concrete pad and enclosure.
2. Space on the Tower sufficient to accommodate the placement, installation, operation and maintenance of the equipment (listed on Exhibit C , Pages 1-4 dated July 14, 2020).
3. The Access Easement.
4. The Utility Easements.
5. The premises are depicted on the attached drawings.

Nothing in this legal description shall convey to Lessee any rights in the Property other than what are specifically described in this Deed of Lease as to the Premises.

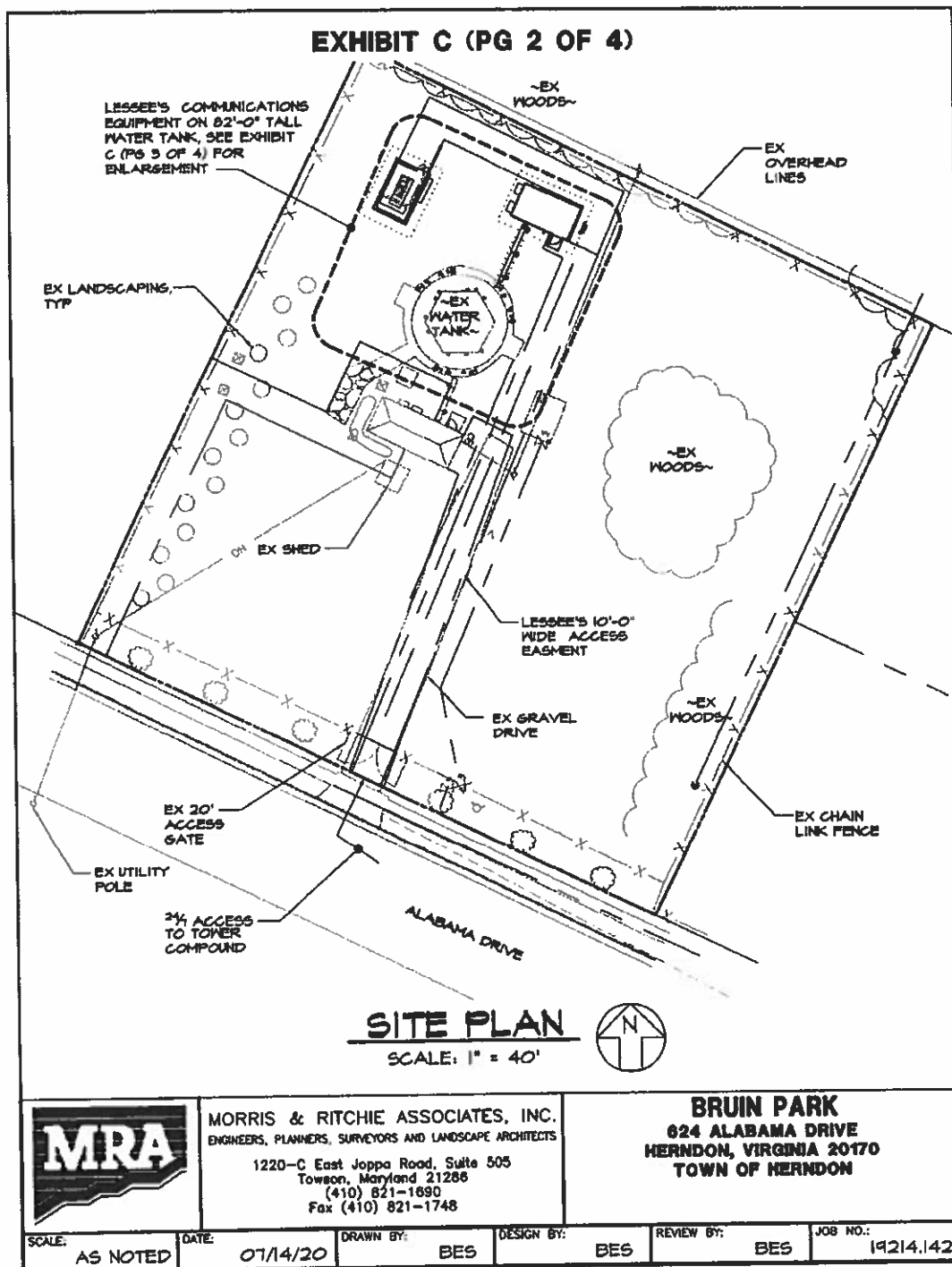
**July 14, 2020
(public hearing)**

**Exhibit C
Page 1 of 4
July 14, 2020**

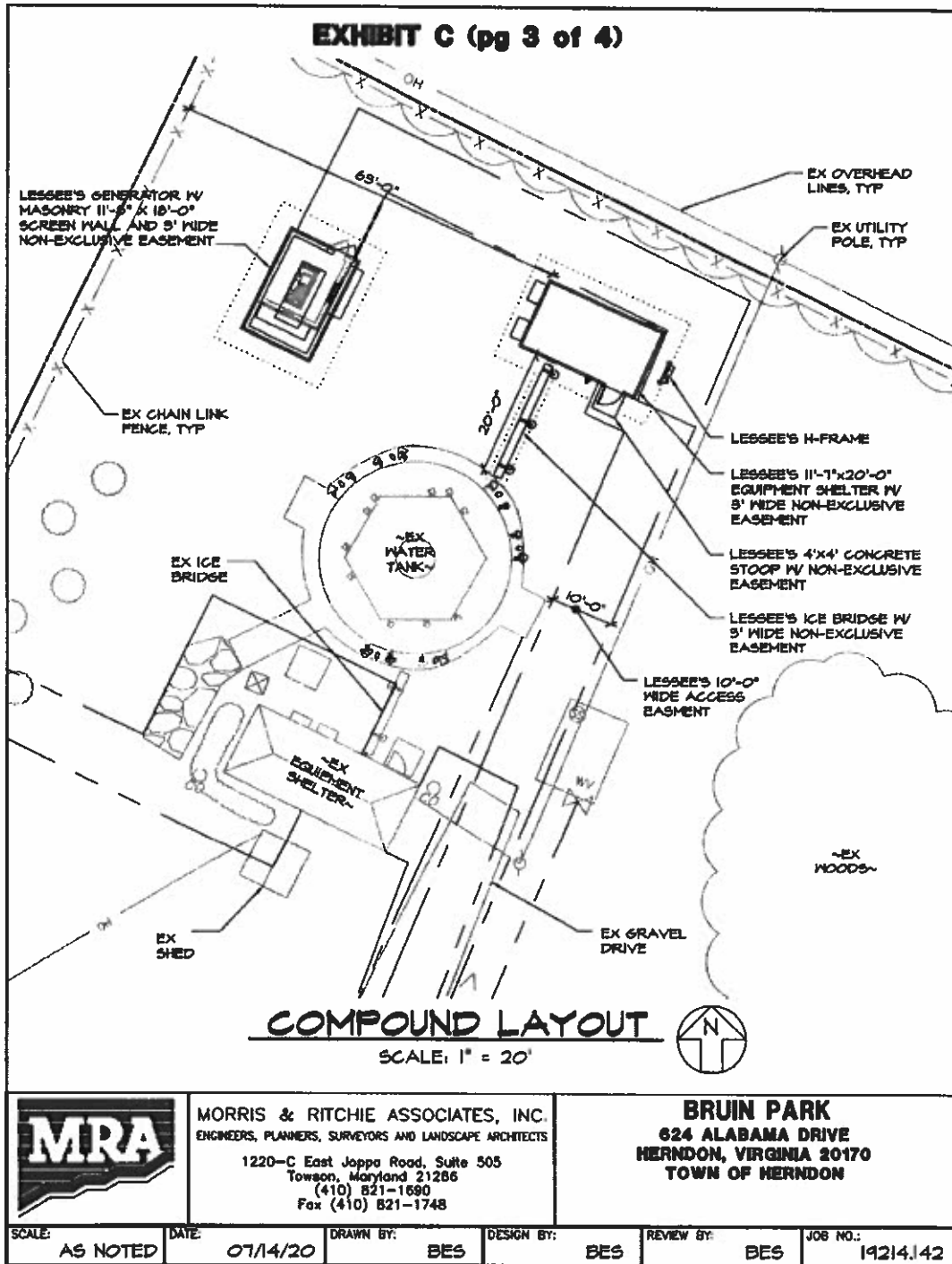
The following equipment together with any associated wires, cables, pipes, conduits and supporting structures associated with the equipment shall be located on the Third Street Water Tank as generally shown on the attached drawings.

<u>Quantity</u>	<u>Type</u>	<u>Approximate Size</u>
1	Generator Enclosure	11' X 13'
1	Equipment Shelter	12' X 20'
1	15 KW Diesel Generator	88" L x 40" W x 50" H
15	Antennas	up to 98.5" H x 20" W x 10" D
3	Distribution Boxes	up to 20" H x 16" W x 11" D
6	Remote Radio Units (RRU's)	up to 27" H x 13" W x 8" D
6	Diplexers	up to 8" H x 8" W x 6" D
3	Hyperflex Cables	up to 1 3/4" diameter

July 14, 2020
(public hearing)

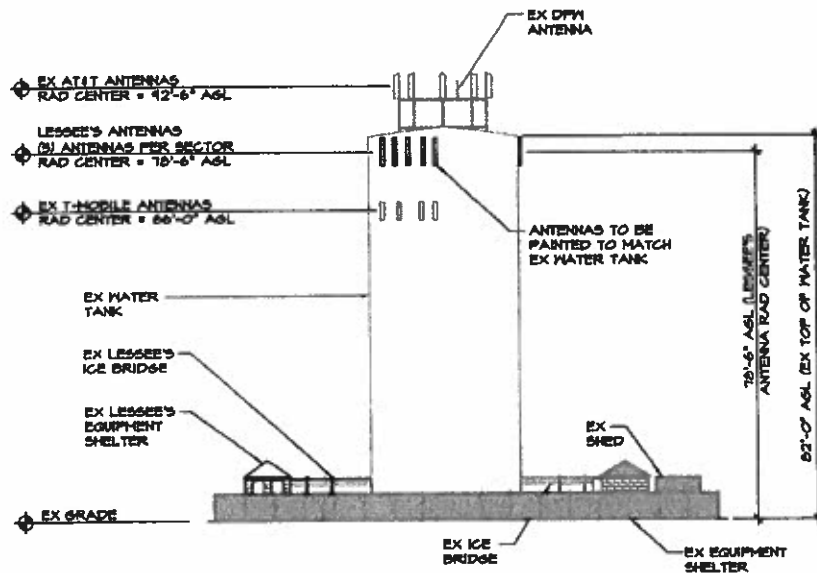


July 14, 2020
(public hearing)



July 14, 2020
(public hearing)

EXHIBIT C (pg 4 of 4)



WATER TANK ELEVATION

SCALE: 1" = 20'



MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C East Joppa Road, Suite 505
Towson, Maryland 21286
(410) 821-1890
Fax (410) 821-1748

BRUIN PARK
624 ALABAMA DRIVE
HERNDON, VIRGINIA 20170
TOWN OF HERNDON

SCALE: AS NOTED	DATE: 07/14/20	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19214.142
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July 14, 2020
(public hearing)

BUDGET ITEMS

6. Resolution 20-G-18, to authorize the Reserve of FY 2020 Funding for Capital and On-going Projects and for Outstanding Encumbrances at June 30, 2020; and
7. Ordinance 20-O-41, to consider amending the Fiscal Year (FY) 2021 Adopted Budget which, if adopted by Town Council, will amend the budgets of the General Fund, Water and Sewer Fund, Chestnut Grove Cemetery Fund, Downtown Parking Enterprise Fund, and Capital Projects Funds by recognizing the estimated outstanding encumbrances and authorized reserved amounts for FY 2020 as appropriated amounts for FY 2021.

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, July 3, 2020 issue.

Mayor Merkel stated that the next two public hearings on that night's agenda were related to the town's FY 2020 and FY 2021 budgets. Staff would present the reports concurrently on these items, which would be followed by separate public hearings. At the end of each public hearing, Mayor Merkel would ask for a motion, followed by Council discussion and vote by roll calls on each. She recognized Jennie Tripoli, Director of Finance, for the staff report.

Ms. Tripoli presented the staff reports dated July 7, 2020 concurrently, which are on file in the Town Clerk's office. As is the town's fiscal practice, outstanding purchase orders as of June 30, 2020 would be recorded as a Reserve for Encumbrances in the General Fund and re-appropriated as part of the town's FY 2021 adopted budget. These would include projects that were in progress but were not completed by June 30, 2020. She stated that even though these items were procedural, because the town was in the financial situation it was in, staff limited these items to capital projects, grant funded, and other mission critical items.

Ms. Tripoli stated that the proposed ordinance would amend the FY 2021 budget for the same dollar amounts that were reserved. She stated these were estimates and the town would not spend all the money at once. Rather, she would come back to Council in September or October, when the numbers were more finalized, to adjust the proposed estimates. Staff recommends approval of the proposed resolution and ordinance, as presented.

[Note: At 7:29 p.m., Mayor Merkel stated that Councilmember Dhakal had let her know that he resolved his connectivity issues and was connected to the Webex.]

There was brief discussion amongst Council and staff on these items.

**July 14, 2020
(public hearing)**

In response to queries from Councilmember Friedrichs, Ms. Tripoli briefly reviewed the projects that had not yet finished as of June 30, 2020, which included updated vehicles, use of CARES Act funds, Information Technology, and transportation funding. She agreed with Councilmember Friedrichs that the town had appropriated most of these funds, which included the CARES Act and seized asset monies. Many of the town's grants were reimbursements, but the commitments were already there.

Vote on Resolution 20-G-18

Mayor Merkel stated that members of the audience who wished to address Council on this item should click the hand icon to be recognized. Mayor Merkel asked Ms. Kertz if there was anyone who joined the Webex that would like to address council on this item.

Ms. Kertz confirmed there were no speakers.

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

Councilmember Friedrichs moved to approve Resolution 20-G-18, as presented (there were no comments from the audience). 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 by electronic means. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Resolution 20-G-18, to authorize the Reserve of FY 2020 Funding for On-going Operations & Maintenance and Capital Projects and for Outstanding Encumbrances at June 30, 2020.

WHEREAS, the Town of Herndon closes its fiscal year on June 30, 2020; and

WHEREAS, the FY 2020 Annual Budget and subsequent amendments to the annual budget authorized and appropriated various monies for specific activities which were expected to be concluded at the close of the fiscal year; and

WHEREAS, it is the intent of the Town Council to reserve, encumber and re-appropriate these funds into the next fiscal year; and

WHEREAS, staff have reviewed the various accounts and balances and recommends the establishment of the estimated encumbrances and reserves as listed on the attached Schedules.

**July 14, 2020
(public hearing)**

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby establishes and re-appropriates the reserved or encumbered amounts for the fiscal year ended June 30, 2020, as listed on the attached Schedules.

BE IT FURTHER RESOLVED that this resolution is effective retroactively to June 30, 2020.

[Note: Attached for reference are Schedules 1 through 3.]

**July 14, 2020
(public hearing)**

Schedule 1
Page 1 of 1

Schedule 1 – Operations & Maintenance Reserves

Fund	Department	Cost Center	Amount	Type	Description of Project
General Fund	Emergency	0019494	431,000	O&M	Estimated unused portion of \$500k CARES funding appropriation for COVID-19-related expenditures
General Fund	HPD Operations	0010770	35,000	O&M	Use of state seized asset funding for updated cruiser graphics
General Fund	DPW-Admin	0010880	20,000	O&M	Engineering completion/short-term server room HVAC solution
Total O&M			<u>\$ 486,000</u>		

**July 14, 2020
(public hearing)**

Schedule 2
Page 1 of 1

Schedule 2 – Capital Reserves

Fund	Account Number	Description	Amount
Capital Projects Fund	0150880-491710	Stream Restoration	\$ 110,375
Capital Projects Fund	0150885-490150	Gateway/Wayfinding/Historical	55,391
Capital Projects Fund	0150885-491860	Bicycle Facilities/Accomodatn	62,000
Capital Projects Fund	0150886-491470	Hern Pk/Spring St to Fx Co Pkw	1,549,000
Capital Projects Fund	0150886-491630	Sidewalks & Minor Trails	42,000
Capital Projects Fund	0150886-491650	Elden-Center St Intersection	1,623,329
Capital Projects Fund	0150886-491740	H Parkway/VanBuren Intersectio	2,900,232
Capital Projects Fund	0150886-491780	Trails to Herndon Metro	589,270
Capital Projects Fund	0150886-491790	Veh/Ped Access to Metro	1,236,290
Capital Projects Fund	0150886-491800	Sterling/HP Inter-70%	45,496
Capital Projects Fund	0150886-491810	Van Buren Complete Streets	2,760,298
Capital Projects Fund	0150886-491830	Elden/Monroe Intersection	2,672,865
Capital Projects Fund	0150886-491840	Van Buren-Hern Pk to S Town Ln	2,630,000
Capital Projects Fund	0150886-491910	Traffic Signal UPS	50,000
Capital Projects Fund	0159999-490080	Storm Drain Improve	323,688
Capital Projects Fund	0159999-490360	Bready Pk Court Ren	125,000
Capital Projects Fund	0159999-490650	Downtown Improve	533,887
Capital Projects Fund	0159999-490670	DT U&L Underground	840,000
Capital Projects Fund	0159999-491900	Parking & Arts Center	462,500
Total Capital Projects Fund			\$ 18,611,621
Water & Sewer Fund	0020887-480020	Capital Projects	\$ 1,419,000
Water & Sewer Fund	0020887-480190	Sewer Facility Repair	730,700
Water & Sewer Fund	0020887-480410	Utility Capacity Study	15,000
Water & Sewer Fund	0020887-481100	SCADA	15,700
Water & Sewer Fund	0020888-480020	Capital Projects	1,419,750
Water & Sewer Fund	0020888-480350	Water Tank Pumps & Tank Rehab	31,850
Total Water & Sewer Fund			\$ 3,632,000
Total Capital Reserves			22,243,621

July 14, 2020
(public hearing)

Schedule 3
Page 1 of 1

Schedule 3 – Estimated Outstanding Encumbrances at June 30, 2020, by Fund

General Fund	\$ 200,000
Water & Sewer Fund	491,000
Chestnut Grove Cemetery Fund	1,702
Capital Projects Fund	2,444,000
<u>Downtown Parking Fund</u>	<u>40,000</u>
Total	\$3,176,702

**July 14, 2020
(public hearing)**

Vote on Ordinance 20-O-41

Mayor Merkel stated that members of the audience who wished to address Council on this item should click the hand icon to be recognized. Mayor Merkel asked Ms. Kertz if there was anyone who joined the Webex that would like to address council on this item.

Ms. Kertz confirmed there were no speakers.

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

On motion of Vice Mayor Olem (there were no comments from the audience), seconded by Councilmember McKenna, and carried by unanimous roll call vote by electronic means, Ordinance 20-O-41 was approved, as presented. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Ordinance 20-O-41, Amending the Fiscal Year (FY) 2021 Adopted Budget by recognizing the outstanding encumbrances and authorized reserved amounts for FY 2020 as appropriated amounts for FY 2021.

Recital

In adopting this ordinance, the Town Council has considered the Town Manager's recommended budget modifications as described in Attachment A, FY 2021 Budget Amendment Number 1.

BE IT ORDAINED by the Council of the Town of Herndon, Virginia, that the financial adjustments to the FY 2021 budget, as described in Attachment A, FY 2021 Budget Amendment Number 1 to this ordinance, are hereby approved. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is Attachment A, titled "FY 2021 Budget Amendment Number 1."]

**July 14, 2020
(public hearing)**

**Attachment A
Page 1 of 2**

**TOWN OF HERNDON, VA
FY 2021**

BUDGET AMENDMENT NUMBER 1

The following appropriations and revenue sources are proposed for amendment:

GENERAL FUND

Increase Expenditure Appropriations:	
Estimated Outstanding Encumbrances at June 30, 2020	\$200,000
State of Emergency (CARES Funding)	3,779,441
Authorized Reserves at June 30, 2020	<u>486,000</u>
Total General Fund Appropriation Increase:	<u>\$4,465,441</u>
Increase Revenue Account Budgets:	
Federal Grant – CARES Act	\$4,210,441
State Seized Assets	50,831
General Fund Designated Reserves	<u>204,169</u>
Total General Fund Revenue Increase	<u>\$4,465,441</u>

WATER & SEWER FUND

Increase Expense Appropriations:	
Estimated Outstanding Encumbrances at June 30, 2020	\$ 491,000
Authorized Reserves at June 30, 2020	<u>3,632,000</u>
Total Water & Sewer Fund Appropriation Increase:	<u>\$4,123,000</u>
Increase Revenue Account Budget:	
Water and Sewer Fund Designated Reserves:	<u>\$4,123,000</u>

CHESTNUT GROVE CEMETERY FUND

Increase Expense Appropriations:	
Estimated Outstanding Encumbrances at June 30, 2020	\$1,702
Authorized Reserves at June 30, 2020	<u>0</u>
Total Chestnut Grove Cemetery Fund Appropriation Increase:	<u>\$1,702</u>
Increase Revenue Account Budget:	
Cemetery Fund Designated Reserves:	<u>\$1,702</u>

DOWNTOWN PARKING ENTERPRISE FUND

Increase Expense Appropriations:	
Estimated Outstanding Encumbrances at June 30, 2020	\$40,000
Authorized Reserves at June 30, 2020	<u>0</u>
Total Downtown Parking Fund Appropriation Increase:	<u>\$40,000</u>
Increase Revenue Account Budget:	
Downtown Parking Enterprise Fund Designated Reserves:	<u>\$40,000</u>

**July 14, 2020
(public hearing)**

CAPITAL PROJECTS FUNDS

Expenditure Appropriations:

Estimated Outstanding Encumbrances at June 30, 2020	\$ 2,444,000
Authorized Reserves at June 30, 2020	18,611,621
Decrease Expenditure Appropriation	<u>(121,000)</u>
Net Capital Projects Funds Appropriation Increase:	<u>\$20,934,621</u>

Revenue Budgets:

Decrease Revenue Budget	\$(121,000)
Increase Capital Projects Funds Designated Reserves	<u>21,055,621</u>
Net Capital Projects Funds Revenue Increase	<u>\$20,934,621</u>

**July 14, 2020
(public hearing)**

GENERAL

8. Resolution 20-G-20, to provide for the issuance and sale of two series of General Obligation Refunding Bonds and to provide for the refunding of certain outstanding bonds.

Mayor Merkel stated that comments received on this item had been provided to Council and entered into the record. She recognized William H. Ashton II, Town Manager, to begin the presentation.

Mr. Ashton stated that during discussion on the FY 2021 budget, Councilmember del Aguila asked if the \$5.5 million being sequestered would be enough to support the town this fiscal year, and how much room was needed in subsequent years' budgets as the town dealt with a new fiscal reality. Staff did not have the data to answer his question at that time, but tonight, they would discuss one of the strategies that would help create the additional room. He reviewed the financial guidelines that the town has operated under since the start of the COVID-19 crisis, which included flexibility, adaptability, fiscally protecting the town, and not making decisions before the data warranted them.

Mr. Ashton stated that the town had an opportunity to restructure some of its debt by taking advantage of historically-low interest rates that would preserve, protect, and utilize the town's three AAA bond ratings. Doing this now would also allow the town to avoid a very large bond service payment due on August 1, 2020. Staff worked with its financial advisors and bond counsel, who helped develop a restructuring proposal and who sought bids from banks on the town's behalf. He recognized Kyle Laux, Senior Vice President, Davenport & Company; Chris Kulp, Partner, Hunton Andrews Kurth, LLP; and Jennie Tripoli, Director of Finance, to continue the staff report.

Mr. Laux presented the staff report and PowerPoint, dated July 14, 2020, which are on file in the Town Clerk's office. He provided background on the town's financial situation, its substantial fund balances, and the town's excellent credit ratings, which Mr. Ashton also discussed in his comments. Because of these factors, the town would not have to add any new debt to get through the current crisis. The town could take its existing debt and refinance it to reduce the interest rate, while smoothing out its debt paydown over time to conserve the town's fund balances for the current and future fiscal years.

Mr. Laux stated that the proposed strategy would refund approximately \$6.1 million of the town's existing debt, which would be approximately half of the tax-supported debt. Of the \$6.1 million, approximately \$5.4 million would be tax-exempt, and approximately \$1.2 million would be taxable, which was determined by the tax code. Mr. Laux reviewed the seven bids that were received and stated that after review and analysis by Davenport, the town's Bond Counsel, and staff, Chase Bank (Chase) was the recommended funding provider. He further discussed Chase's proposal, which included two interest rates: the tax-exempt bond (2020A) would have a 1.038 percent rate, which

**July 14, 2020
(public hearing)**

was fixed for the full 10 year term of the loan; and the taxable bond (2020B) would have a 1.159 percent rate, which was fixed for the full five year term of the loan. The rates would not have a variable component and the town would have prepayment flexibility without any penalty after the fifth year of the 10 year loan. Mr. Laux stated that the taxable bonds generally had slightly higher interest rates than the tax-exempt bonds, but that these rates were still quite low. The proposed loans offered by Chase would help preserve the town's fund balances and excellent credit ratings.

Mr. Laux stated that with this restructuring, the town would free up approximately \$775,000 in FY 2021, and that approximately \$2.5 million in cash flow would be freed from FY 2021 – FY 2024. Mr. Laux stated this recommendation would also ensure that the town's debt was paid off in a responsible manner for future generations.

Regarding the cost to the town, Mr. Laux stated when he used the two percent planning rate before the bids came in, he estimated that the restructuring would cost the town about \$300,000 over the 10 year life of the loan. With the proposed interest rates and using the present value of money, he stated this would be a break-even result for the town. He stated that the town should pay around \$18,000 less in total debt service than if it continued with the status quo. There was also substantial present value savings equal to approximately 3.7 percent, which he stated was an excellent figure.

Following Mr. Laux's recommendations there was brief discussion amongst Mr. Laux, Council, and staff.

In response to queries from Councilmember Dhakal, Mr. Laux stated that he agreed with his assessment. He concurred that the present value savings to the town was approximately \$225,000, which was about 3.7 percent of the total \$6.1 million in the loan.

In response to queries from Councilmember Friedrichs, Mr. Laux stated that if the Council approved the proposed resolution, the interest rates would be locked in with the bank. He explained why the town could not follow this process with all of its debt, which was due to various factors including existing interest rates and prepayment flexibility. He routinely monitors the town's bonds and interest rates for potential updates to bring forward to Council.

Councilmember Friedrichs outlined what the proposed resolution would do, which she stated included: maturity dates remaining the same; flattening payments; and decreasing town's cost. She stated that because the town was restructuring, the last payment would be similar to the first payment, whereas before, the last payment would have been much lower.

Mr. Laux stated that Councilmember Friedrichs provided an excellent assessment.

**July 14, 2020
(public hearing)**

There was a brief question and answer period between Councilmember del Aguila, Mr. Laux, and staff.

In response to queries from Councilmember del Aguila, Mr. Laux stated that the purpose of the proposed resolution was to help the town maintain its fund balances into the future. He stated that because the town was growing, there would inevitably be other needs in years FY 2025 – FY 2026, like transportation and capital projects, where there would be opportunities to “wrap around” the existing debt profile, or provide prepayments on the 10 year loan. He stated that the town would have several tools by which to manage the debt. He agreed that the proposal did not assume that the town would need to draw from its fund balance in the future.

Ms. Tripoli provided information about the town’s consultants ~ Mr. Laux and Mr. Kulp. She stated that Mr. Laux had nearly two decades of experience in public finance and Mr. Kulp had nearly three decades of similar experience. She reviewed the other clients the consultants’ firms worked for, which included several nearby localities. She stated that staff could not have accomplished what the town has financially over the past several years without them and thanked them for helping to put the town in an advantageous financial situation.

Mayor Merkel echoed Ms. Tripoli’s comments and stated that the town was fortunate to have an ongoing relationship with its consultants at Davenport and Hunton Andrews Kurth. She stated that they were instrumental in obtaining the town’s AAA ratings.

Vice Mayor Olem moved approval of Resolution 20-G-20, as presented. Councilmember Dhakal seconded the motion.

There were brief comments from Council.

Vice Mayor Olem thanked Mr. Laux and discussed how the AAA rating was like having an individual credit score of 800, along with how this would help the town get through the COVID crisis.

Councilmember Dhakal provided comments about the present value savings that the restructuring could provide.

Councilmember McKenna thanked Mr. Laux and Davenport and provided comments on the firm’s excellent reputation.

Mayor Merkel echoed her colleagues’ comments. She stated that there was concern from Council and the public that this process was moving fast. She stated that she had a better understanding of the circumstances that necessitated the Council to take action on this matter. She stated it would leverage town’s opportunity to obtain a one percent

**July 14, 2020
(public hearing)**

interest rate, which was almost unheard of. She stated that this could not come at a better time with all that was happening.

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

[Note: Attached below, starting on the next page, is the full text of Resolution 20-G-20.]

**July 14, 2020
(public hearing)**

COVERING CERTIFICATE FOR RESOLUTION

The undersigned Town Clerk of the Town of Herndon, Virginia (the "Town"), certifies as follows:

1. At the regular meeting on July 14, 2020, the Town Council of the Town (the "Council") adopted a resolution entitled "RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF TWO SERIES OF GENERAL OBLIGATION REFUNDING BONDS OF THE TOWN OF HERNDON, VIRGINIA, HERETOFORE AUTHORIZED, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$6,600,000, PROVIDING FOR THE FORM, DETAILS AND PAYMENT THEREOF AND PROVIDING FOR THE REFUNDING OF CERTAIN OUTSTANDING BONDS" (the "Resolution") by the recorded affirmative roll-call vote of a majority of all members elected to the Council as follows:

Member	Attendance (Present/Absent)	Vote (Aye/Nay/Abstain)
Lisa C. Merkel, Mayor	✓	Aye
Sheila A. Olem, Vice Mayor	✓	Aye
Cesar del Aguila	✓	Aye
Jennifer K. Baker	✓	Aye
Pradip Dhakal	✓	Aye
Signe Friedrichs	✓	Aye
Bill McKenna	✓	Aye

2. A true, correct and complete copy of the Resolution is attached hereto.

3. The Council meeting at which the Resolution was adopted was held at the time and place established by the Council for such meeting.

4. The Resolution has not been repealed, revoked, rescinded or amended and is in full force and effect on the date hereof.

WITNESS my signature and the seal of the Town of Herndon, Virginia this 14th day of July 2020.

(SEAL)

Viki L. Wellershaus
Viki L. Wellershaus, Town Clerk
Town of Herndon, Virginia



**July 14, 2020
(public hearing)**

**RESOLUTION PROVIDING FOR THE ISSUANCE AND
SALE OF TWO SERIES OF GENERAL OBLIGATION
REFUNDING BONDS OF THE TOWN OF HERNDON,
VIRGINIA, HERETOFORE AUTHORIZED, IN AN
AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED
\$6,600,000, PROVIDING FOR THE FORM, DETAILS AND
PAYMENT THEREOF AND PROVIDING FOR THE
REFUNDING OF CERTAIN OUTSTANDING BONDS**

WHEREAS, the Town of Herndon, Virginia (the "Town"), has previously issued its (1) \$600,000 General Obligation Bond, Series 2010A (the "2010A Bond"), (2) \$650,000 General Obligation Bond, Series 2010B (the "2010B Bond"), (3) \$1,625,000 General Obligation Bond, Series 2010C (the "2010C Bond"), (4) \$3,015,000 General Obligation Refunding Bond, Series 2010D (the "2010D Bond"), (5) \$5,221,000 General Obligation Refunding Bond, Series 2014 (the "2014 Bond"), and (6) \$969,000 General Obligation Public Improvement Bond, Series 2018A (Federally Taxable) (the "2018 Bond" and, collectively with the 2010A Bond, the 2010B Bond, the 2010C Bond, the 2010D Bond and the 2014 Bond, the "Prior Bonds");

WHEREAS, the Town Council of the Town (the "Council"), in consultation with Davenport & Company LLC, acting in its capacity as the Town's financial advisor (the "Financial Advisor"), has determined to refund all or a portion of the outstanding principal installments of the Prior Bonds to effect a strategic restructuring of such indebtedness for cash flow and other governmental purposes;

WHEREAS, the Town's administration, working in collaboration with the Financial Advisor, has recommended that the Town issue and sell (1) a federally tax-exempt general obligation refunding bond (as hereinafter described, the "2020 Tax-Exempt Bond") to refund all or a portion of the outstanding principal installments of the 2010A Bond, the 2010B Bond, the 2010C Bond and the 2014 Bond (such refunded installments, the "Tax-Exempt Refunded Bonds"), and (2) a federally taxable general obligation refunding bond (as hereinafter described, the "2020 Taxable Bond" and, together with the 2020 Tax-Exempt Bond, the "Bonds") to refund all or a portion of the outstanding principal installments of the 2010D Bond and the 2018 Bond (such refunded installments, the "Taxably Refunded Bonds" and, together with the Tax-Exempt Refunded Bonds, the "Refunded Bonds"), directly to one or more commercial banking or other financial institutions;

WHEREAS, on behalf of the Town, the Financial Advisor has solicited and received bids from various commercial banking and other financial institutions to make two loans to the Town to be evidenced by the purchase of the Bonds; and

WHEREAS, the Council desires to delegate to the Town Manager the authority to award the sale of the Bonds to one or more of the bidders and to determine the final terms of the Bonds within certain parameters set forth below;

**July 14, 2020
(public hearing)**

**BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HERNDON,
VIRGINIA:**

1. **Issuance, Sale and Award.** The Council finds that it shall serve a governmental purpose and be in the best interests of the Town and its citizens for the Town to modify the timing and amount of its future debt service requirements by effecting a strategic restructuring of the indebtedness represented by the Refunded Bonds. Accordingly, pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991 and the Town Charter, the Council hereby provides for the issuance and sale of (a) the 2020 Tax-Exempt Bond in a principal amount not to exceed \$5,400,000 to provide funds, together with other available monies of the Town, to (i) refund the Tax-Exempt Refunded Bonds and (ii) pay costs incurred in connection with such refunding and the costs of issuing the 2020 Tax-Exempt Bond, and (b) the 2020 Taxable Bond in a principal amount not to exceed \$1,200,000 to provide funds, together with other available monies of the Town, to (i) refund the Taxable Refunded Bonds and (ii) pay costs incurred in connection with such refunding and the costs of issuing the 2020 Taxable Bond. The Council hereby authorizes the Town Manager, in collaboration with the Financial Advisor, to negotiate with the bidders concerning the final terms of the Bonds, subject to the parameters set forth below, and, on the basis of such negotiations, to determine which bidder or bidders offers the best terms to the Town (such winning bidder or bidders referred to herein as the "Bank").

2. **Bond Details.**

(a) The 2020 Tax-Exempt Bond shall be issued in the form of a single, typewritten bond, designated "General Obligation Refunding Bond, Series 2020A (Federally Tax-Exempt)," shall be in registered form, shall be dated the date of its delivery and shall be numbered RA-1. The 2020 Tax-Exempt Bond shall contain such final terms as the Town Manager, in collaboration with the Financial Advisor, shall determine to be in the best interests of the Town; provided, however, that the 2020 Tax-Exempt Bond (i) shall be issued in an aggregate principal amount not to exceed \$5,400,000, (ii) shall bear interest at an annual rate not to exceed 2.00%, subject to adjustment, if any, as required by the terms of the bid submitted by the Bank and approved by the Town Manager, (iii) shall be sold to the Bank at a price of 100% of the original principal amount thereof, and (iv) shall mature no later than December 31, 2030. The principal of and interest due on the 2020 Tax-Exempt Bond shall be payable on dates and in amounts as determined by the Town Manager to be in the best interests of the Town.

(b) The 2020 Taxable Bond shall be issued in the form of a single, typewritten bond, designated "General Obligation Refunding Bond, Series 2020B (Federally Taxable)," shall be in registered form, shall be dated the date of its delivery and shall be numbered RB-1. The 2020 Taxable Bond shall contain such final terms as the Town Manager, in collaboration with the Financial Advisor, shall determine to be in the best interests of the Town; provided, however, that the 2020 Taxable Bond (i) shall be issued in an aggregate principal amount not to exceed \$1,200,000, (ii) shall bear interest at an annual rate not to exceed 2.00%, subject to adjustment, if any, as required by the terms of the bid submitted by the Bank and approved by the Town Manager, (iii) shall be sold to the Bank at a price of 100% of the original principal amount thereof, and (iv) shall mature no later than December 31, 2030. The principal of and interest due

**July 14, 2020
(public hearing)**

on the 2020 Taxable Bond shall be payable on dates and in amounts as determined by the Town Manager to be in the best interests of the Town.

(c) Following the determination of the final terms of the Bonds, the Council directs the Town Manager to execute a certificate setting forth such final terms and to file such certificate with the records of the Council. The actions of the Town Manager in entering into the loans evidenced by the Bonds shall be conclusive, and no further action with respect to the issuance, sale and award of the Bonds shall be necessary on the part of the Council.

(d) If the date on which any payment is due with respect to a Bond is not a Business Day (as hereinafter defined), the payment shall be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of payment. "Business Day" shall mean a day on which banking business is transacted, but not including a Saturday, Sunday, legal holiday or any other day on which banking institutions are authorized or required by law to close in the Commonwealth of Virginia.

(e) Principal, premium, if any, and interest shall be payable by the Registrar (as hereinafter defined) by check or draft mailed to the registered owner at the address as it appears on the registration books kept by the Registrar on the last Business Day of the month preceding each interest payment date; provided, however, at the request of the registered owner of a Bond, payment may be made by wire transfer pursuant to the most recent wire instructions received by the Registrar from such registered owner. Principal, premium, if any, and interest shall be payable in lawful money of the United States of America.

3. **Prepayment Provisions.** Each Bond may be subject to prepayment at the option of the Town on or after dates, if any, determined by the Town Manager, in whole or in part at any time, at a redemption price equal to the principal amount of the portion thereof to be redeemed, together with any interest accrued to the date fixed for redemption, plus a redemption premium, if any, determined by the Town Manager to be acceptable to the Town (which may include a "make-whole" redemption price as negotiated with the Bank).

4. **Pledge of Full Faith and Credit.** The full faith and credit of the Town are irrevocably pledged for the payment of principal of and premium, if any, and interest on the Bonds. Unless other funds are lawfully available and appropriated for timely payment of the Bonds, the Council shall levy and collect an annual *ad valorem* tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all locally taxable property in the Town sufficient to pay when due the principal of and premium, if any, and interest on the Bonds.

5. **Execution and Form.** The Bonds shall be signed by the manual or facsimile signature of the Mayor or Vice Mayor, and the Town's seal shall be affixed thereto and attested by the manual or facsimile signature of the Town Clerk (such term as used in this Resolution to include any Deputy or Assistant Clerk). If the Bonds bear facsimile signatures, they shall be authenticated by the Town Manager or Town Treasurer prior to delivery to the Bank. The Bonds shall be issued as typewritten bonds in substantially the form of Exhibit A attached hereto, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the Mayor or Vice Mayor, whose approval shall be evidenced conclusively by such officer's execution of the Bonds and delivery thereof to the Bank.

**July 14, 2020
(public hearing)**

6. Registration, Transfer and Ownership of Bond.

(a) The Bonds shall be issued in registered form without coupons, payable to the registered owner or its registered assigns. The Council hereby appoints the Town Treasurer to act as the initial paying agent and registrar for the Bonds (in both capacities and together with any successor paying agent and registrar, the "Registrar"); provided, however, the Council may at any time, in its sole discretion, after notice to the registered owner(s) of the Bonds, appoint a qualified bank or trust company to act as successor Registrar for the Bonds. The Registrar shall maintain registration books for the registration and transfer of the Bonds. Upon presentation and surrender of a Bond to the Registrar, or its corporate trust office if the Registrar is a bank or trust company, together with an assignment duly executed by the registered owner or its duly authorized attorney or legal representative in such form as shall be satisfactory to the Registrar, the Town shall execute, and the Registrar shall authenticate, if required by Section 5, and deliver in exchange a new Bond or Bonds having an equal aggregate principal amount, in authorized denominations, of the same form and maturity, bearing interest at the same rate and registered in the name(s) as requested by the then registered owner or its duly authorized attorney or legal representative. Any such exchange shall be at the expense of the Town, except that the Registrar may charge the person or entity requesting such exchange the amount of any tax or governmental charge required to be paid with respect thereto.

(b) The Registrar shall treat the registered owner as the person exclusively entitled to payment of principal of and premium, if any, and interest on a Bond and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person or entity shown as owner on the registration books on the last Business Day of the month preceding each payment date.

7. Preparation and Delivery of Bonds. The officers of the Town are hereby authorized and directed to take all proper steps to have the Bonds prepared and executed in accordance with its terms and to deliver the Bonds to the Bank upon payment therefor.

8. Mutilated, Lost or Destroyed Bond. If a Bond has been mutilated, lost or destroyed, the Town officers authorized under Section 5 above to execute the original Bond shall execute and deliver a new Bond of like date and tenor in exchange and substitution for, and upon cancellation of, such mutilated Bond or in lieu of and in substitution for such lost or destroyed Bond; provided, however, that such Town officers shall so execute and deliver only if the registered owner has paid the reasonable expenses and charges of the Town in connection therewith and, in the case of a lost or destroyed Bond, (a) has filed with the Town evidence satisfactory to such Town officers that such Bond was lost or destroyed and (b) has furnished to the Town satisfactory indemnity.

9. Deposit of Bond Proceeds. The Town Treasurer is authorized and directed to provide for delivery of the proceeds of the Bonds to or at the direction of the Town in such manner as necessary to (a) refund the Refunded Bonds and (b) pay the costs of issuing the Bonds and refunding the Refunded Bonds.

10. Escrow Deposit Agreement. The Town Manager, the Director of Finance and the Town Treasurer, any of whom may act, are authorized and directed to execute one or more escrow deposit agreements in connection with the Refunded Bonds (collectively, the "Escrow

**July 14, 2020
(public hearing)**

Agreement") between the Town and an escrow agent to be appointed by the Town Manager (the "Escrow Agent"). The Escrow Agreement shall be in the form approved by one of such authorized signatories, in collaboration with the Town Attorney and the Town's bond counsel. The execution and delivery of the Escrow Agreement by any of such authorized signatories shall constitute conclusive evidence of their approval of the Escrow Agreement. The Escrow Agreement shall provide for the irrevocable deposit of a portion of the Bond proceeds in one or more escrow funds that shall be sufficient, when held in cash and/or invested in noncallable obligations of, or unconditionally guaranteed by, the United States Government (the "Government Obligations"), to provide for payment of principal of and premium, if any, and interest on the Refunded Bonds. The Escrow Agent is authorized to execute, on behalf of the Town, an initial and final subscription form for the purchase of the Government Obligations, if and as necessary.

11. **Redemption of Refunded Bonds.** The Town Manager is authorized and directed to (a) determine which principal installments (or portions thereof) of the Prior Bonds, if any, shall constitute the Refunded Bonds and (b) take all proper steps to call for redemption the Refunded Bonds and prepare and deliver any such notices and correspondence necessary therefor.

12. **Arbitrage Covenants.** The Town covenants that it shall not take or omit to take any action the taking or omission of which will cause the 2020 Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or otherwise cause interest on the 2020 Tax-Exempt Bond to be includable in the gross income for federal income tax purposes of the registered owner(s) thereof under existing law. Without limiting the generality of the foregoing, the Town shall comply with any provision of law that may require the Town at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the 2020 Tax-Exempt Bond, unless the Town receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the 2020 Tax-Exempt Bond from being includable in the gross income for federal income tax purposes of the registered owner thereof under existing law. The Town shall pay any such required rebate from its legally available funds.

13. **Non-Arbitrage Certificate and Elections.** Such officers of the Town as may be requested by the Town's bond counsel are hereby authorized and directed to execute an appropriate certificate setting forth (a) the expected use and investment of the proceeds of the 2020 Tax-Exempt Bond in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code and regulations issued pursuant thereto and (b) any elections such officers deem desirable regarding rebate of earnings to the United States for purposes of complying with Section 148 of the Code. Such certificate shall be prepared in consultation with the Town's bond counsel, and such elections shall be made after consultation with bond counsel.

14. **Limitation on Private Use.** The Town covenants that it shall not permit the proceeds of the 2020 Tax-Exempt Bond or the facilities refinanced therewith to be used in any manner that would result in 5% or more of such proceeds or facilities, as applicable, (a) being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, (b) being used with respect to any output facility (other than a

**July 14, 2020
(public hearing)**

facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Section 141(c) of the Code; provided, however, that if the Town receives an opinion of nationally recognized bond counsel that any such covenants need not be complied with to prevent the interest on the 2020 Tax-Exempt Bond from being includable in the gross income for federal income tax purposes of the registered owner thereof under existing law, the Town need not comply with such covenants.

15. **Qualified Tax-Exempt Obligation.** If the Town Manager determines that (a) the Town is able to meet the requirements of Section 265(b)(3) of the Code with respect to the 2020 Tax-Exempt Bond, including (with certain exceptions) a restriction on the issuance by the Town of more than \$10,000,000 (in the aggregate) of tax-exempt obligations during the current calendar year, and (b) such designation is in the best interests of the Town, the Town Manager is hereby authorized to designate the 2020 Tax-Exempt Bond as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code.

16. **Provision of Financial Information.** The Town Manager or his designee is hereby authorized and directed to provide, for each fiscal year in which a Bond remains outstanding, a copy of the Town's comprehensive annual financial report and annual budget to the registered owner of such Bond.

17. **Other Actions.** All other actions of officers of the Town and the Council in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds and the refunding of the Refunded Bonds are hereby ratified, approved and confirmed. The officers of the Town are hereby authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the issuance, sale and delivery of the Bonds and the refunding of the Refunded Bonds.

18. **Repeal of Conflicting Resolutions.** All resolutions or parts of resolutions in conflict herewith are repealed.

19. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

**July 14, 2020
(public hearing)**

EXHIBIT A

FORM OF BOND

REGISTERED

REGISTERED

No. R[A/B]-1

_____, 2020

UNITED STATES OF AMERICA

COMMONWEALTH OF VIRGINIA

TOWN OF HERNDON

**General Obligation Public Improvement Bond
Series 2020[A/B] (Federally [Tax-Exempt/Taxable])**

The Town of Herndon, Virginia (the "Town"), for value received, promises to pay, to [] (the "Bank"), or its registered assigns or legal representative, the principal sum of [] **DOLLARS (\$_____)**, together with interest from the date of this bond on the unpaid principal, at the rate of []% per year, calculated on the basis of a 360-day year of twelve 30-day months, subject to prepayment as hereinafter provided. Installments of interest shall be payable semi-annually on [] and [], commencing [], and installments of principal shall be payable annually on [], commencing [], in the amounts set forth on Schedule I attached hereto. If not sooner paid, all amounts due under this bond shall be due and payable on [].

If the date on which any payment is due with respect to this bond is not a Business Day (as hereinafter defined), the payment shall be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of payment. "Business Day" shall mean a day on which banking business is transacted, but not including a Saturday, Sunday, legal holiday or any other day on which banking institutions are authorized or required by law to close in the Commonwealth of Virginia. Principal, premium, if any, and interest are payable in lawful money of the United States of America by the Town Treasurer, who has been appointed the initial paying agent and registrar for this bond (in both capacities, the "Registrar").

This bond is issued pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Town Charter and the Public Finance Act of 1991. This bond has been authorized and issued pursuant to a resolution adopted by the Town Council of the Town (the "Council") on July 14, 2020, to provide funds (a) to refund [all or a portion of the outstanding principal installments of _____], and (b) to pay the costs of refunding such principal installments and issuing this bond.

{This bond is subject to prepayment _____}.

**July 14, 2020
(public hearing)**

The full faith and credit of the Town are irrevocably pledged for the payment of principal of and premium, if any, and interest on this bond. Unless other funds are lawfully available and appropriated for timely payment of this bond, the Council shall levy and collect an annual *ad valorem* tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all locally taxable property in the Town sufficient to pay when due the principal of and premium, if any, and interest on this bond.

[The Town has designated this bond as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.]

The Registrar shall treat the registered owner of this bond as the person exclusively entitled to the payment of principal of and premium, if any, and interest on this bond and the exercise of all rights and powers of the owner, except that interest payments shall be made to the person shown as the owner on the registration books on the last Business Day of the month preceding each payment date.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or be performed precedent to and in connection with the issuance of this bond have happened, exist and have been performed, and this bond, together with all other indebtedness of the Town, is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the Town of Herndon, Virginia, has caused this bond to be to be signed by its [Mayor or Vice Mayor], its seal to be affixed hereto and attested by the [Town Clerk or Deputy Clerk], and this bond to be dated the date first written above.

(SEAL)

[Vice] Mayor, Town of Herndon, Virginia

[Deputy] Town Clerk, Town of Herndon, Virginia

**July 14, 2020
(public hearing)**

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please print or type name and address, including zip code, of Transferee)

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF TRANSFeree:

:
:
:
:

the within bond and all rights thereunder, hereby irrevocably constituting and appointing

Attorney, to transfer said bond on the books kept for the registration thereof, with full power of
substitution in the premises.

Dated: _____

Signature Guaranteed

NOTICE: Signature(s) must be guaranteed
by an Eligible Guarantor Institution such as
a Commercial Bank, Trust Company,
Securities Broker/Dealer, Credit Union, or
Savings Association who is a member of a
medallion program approved by The
Securities Transfer Association, Inc.

(Signature of Registered Owner)

NOTICE: The signature above must
correspond with the name of the registered
owner as it appears on the front of this bond
in every particular, without alteration or
enlargement or any change whatsoever.

**July 14, 2020
(public hearing)**

TRANSFER OF BOND

Transfer of this bond may be registered by the registered owner or its duly authorized attorney upon presentation hereof to the Registrar who shall make note of such transfer in books kept by the Registrar for that purpose and in the registration blank below.

Date of Registration

Name of Registered Owner

Signature of Registrar

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**July 14, 2020
(public hearing)**

SCHEDULE I

{Attach Amortization Schedule at Closing}

**July 14, 2020
(public hearing)**

CONSENT AGENDA

On motion of Councilmember Baker, seconded by Councilmember Friedrichs, the following Consent agenda items were approved by unanimous roll call vote by electronic means, without comment. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

9. Resolution 20-G-19, to change the Meeting Schedule for the Town Council Work Session in August 2020.

Resolution 20-G-19, to change the Meeting Schedule for the Town Council Work Session in August 2020.

WHEREAS, the Herndon Town Council's meeting schedule was adjusted to hold the work session on the first Wednesday in August to accommodate the participation of the elected officials in **National Night Out** activities; and

WHEREAS, as a result of COVID-19, the annual National Night Out will be rescheduled.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Herndon, Virginia, hereby reschedules its regular work session previously scheduled on Wednesday, August 5, 2020 **TO Tuesday, August 4, 2020, at 7:00 pm.**

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby request the town clerk to work in coordination with the Chief Communications Officer to ensure the change in schedule is widely publicized.

10. Resolution numbers 20-G-21 through 20-G-27, to ratify Temporary License Agreements between the Town of Herndon and Green Lizard Cycling; Jimmy's Old Town Tavern; Mile 20 at Mediterranean Breeze; Red Kimono LLC; Russia House Restaurant; Sully's Pour House; and Zeffirelli Ristorante Italiano, for use of public property or public right-of-way for temporary outdoor dining.

Resolution 20-G-21, to ratify a Temporary License Agreement between the Town of Herndon and Green Lizard Cycling for use of public property or public right-of-way for temporary outdoor dining.

WHEREAS, the Town of Herndon is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas; and

**July 14, 2020
(public hearing)**

WHEREAS, due to the COVID-19 pandemic, indoor dining service for businesses were prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, pursuant to the Governor's Executive Orders, as amended; and Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended, the Town Manager was authorized to approve temporary license agreements for use of public property or public right-of-way for temporary outdoor dining.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the temporary license agreement dated May 26, 2020 between the Town of Herndon and **Green Lizard Cycling** for use of public property or public right-of-way for temporary outdoor dining, 718 Lynn Street, Herndon.

[Note: Attached for reference is the temporary license agreement b/n the town and Green Lizard Cycling dated May 26, 2020.]

**July 14, 2020
(public hearing)**



APPLICATION

Temporary Outdoor Dining Permit

Permit Case Number: TDDP20- 006 Application Date: 5/29

Property Address: 718 Lynn Street

Establishment Name: Green Lizard Cycling

Hours of Operation: X M X T X W X Th X F X S X Sun from 7:00AM-8:00PM

Applicant Information (Principal Operator of dining establishment):

Name: Dave Meyer

Telephone No.: 907-317-2177

Email Address: dam@greenlizardcycling.com

Are you the property owner? N Y / N

Property Owner Information (if different from applicant):

Property Owner Y / N Authorized Agent Acting on Behalf of the Property Owner Y / N

Name(s): Town of Herndon

Mailing Address: _____

Telephone No: _____

Email Address: _____

Zoning Administrator Approval:

Date: 5/29/2020

REQUIRED APPLICATION SUBMISSION MATERIALS

- ☐ Written authorization or signature from the property owner if the principal operator is not the property owner;
- ☒ A plan which clearly shows the following:
- o Dimensions showing the layout and arrangement of the proposed outdoor seating area, including its overall dimensions, aisle widths, access to the adjacent building and restrooms, the locations of chairs, tables, umbrellas, barriers, and all other appurtenances to be located within the boundaries of the proposed outdoor seating area; if outdoor dining is located in a designated parking area, please show the location of available parking and identify traffic control measures.
 - o a copy of the Capacity Certificate for the establishment.
 - o if requesting a location on Town-owned property: A Certificate of Insurance showing that the Town of Herndon and its employees, volunteers, and agents have been added as

Department of Community Development
177 Lynn Street • Herndon, VA 20170 • (703) 757-7243
www.herdnontownva.gov

Page 1 of 4

July 14, 2020 (public hearing)

additional insureds to the applicant's Business Liability Insurance and, if applicable, Liquor Liability Insurance. The endorsement to the policy showing that the Town of Atlin has been added to the policy is also required. If the policy has additional insured language required by contract, please attach that portion of the policy to the Certificate of Insurance.

- c. If requesting a location on Town owned property, execute the Temporary Outdoor Dining Use Agreement.
 - Town property consists of sidewalks adjacent to a public street, public parking lots, and public open spaces.

☒ If alcohol will be served on site, a copy of Virginia ABC license.

☒ Pictures (2-3) of the location of the outdoor dining.

CONDITIONS OF TEMPORARY OUTDOOR DINING PERMIT

1. Temporary outdoor dining area:
 - a. Must be located directly adjacent to the establishment, or a location within 100' of the establishment;
 - b. Fencing / barriers must be installed (water-filled security barriers recommended);
 - c. Concrete barriers, provided by the town, are required on town property used for outdoor dining;
 - d. Any modification to the approved plan must be submitted and approved;
 - e. The proposed dining operation and location will not significantly interfere with pedestrian traffic or otherwise constitute a health and safety risk;
 - f. The only permitted furniture within the temporary outdoor dining area are tables, chairs, and properly anchored umbrellas, unless specifically approved by the town. Tents with a capacity greater than 50 or other structures requiring a separate building permit are not permitted unless specifically approved by the town. Any proposed lighting must be approved by the town and any cables must be secured so as not to create a tripping hazard.
2. Must comply with all applicable Governor's Executive Orders, as amended, including, but not limited to:
 - a. Establishments must limit occupancy of both the establishment and the outdoor dining area to 50% of the lowest occupancy limit on the certificate of occupancy;
 - b. No more than ten patrons may be seated as a party;
 - c. Tables at which dining parties are seated must be positioned six feet apart from other tables.
3. A copy of this permit must be kept on site at all times and a copy of the capacity certificate must be on display at all times;
4. Hours of operation shall be limited to between 6 am and 11 pm;
5. No other uses are permitted within the Temporary Outdoor Dining Area; including, but not limited to, live entertainment and retail sales;
6. No pets are permitted in Temporary Outdoor Dining Areas, except service animals;
7. No open flames, cooking or food prep is permitted in Temporary Outdoor Dining Areas;
8. Businesses are responsible for properly disposing of all trash in approved private refuse containers;
9. This permit shall expire 100 days from the Approval Date or 10 days from the filing or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first.

TEMPORARY LICENSE AGREEMENT – WHEN LOCATED ON TOWN PROPERTY

Page 2 of 4

**July 14, 2020
(public hearing)**

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement") is made as of the date it is signed by the Herndon Town Manager (the "Effective Date") by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "Town") and (the "Applicant") (collectively the "Parties")

WHEREAS, the Town is the owner of the public property or right-of-way including any adjacent sidewalks and green areas (the "Property"), as shown on EXHIBIT A - LICENSED AREA of the TEMPORARY OUTDOOR DINING PERMIT (the "Permit") attached hereto;

WHEREAS, due to the COVID-19 pandemic, indoor dining service for Applicant's business has been prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, the Parties desire to allow Applicant to enter upon the Property for the purpose of outdoor seating and dining (the "Use") in conjunction with the Applicant's business during the Term, as defined herein;

NOW, THEREFORE, that for and in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree as follows:

1. The Town hereby grants Applicant temporary use of the property for the purposes described in the permit.
2. This Agreement shall expire 60 days from the Effective Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first (the "Term").
3. The applicant shall comply with the terms of the Permit and all applicable town, state and federal laws and regulations and maintain all other permit(s) required under applicable law for the use.
4. The parties expressly agree and contract that there shall be no fee for the use of the Town property during this term only.
5. 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.
6. Applicant hereby assumes all risk of damage by reason of its occupation of the property caused by any default therein or actively occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and the applicant 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.
7. Applicant 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 the applicant written confirmation that the type and amount of insurance is accepted.

Page 3 of 4

**July 14, 2020
(public hearing)**

Insurance limits shall not be less than the following amounts:

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

Liaver Liability (if applicable) - \$1,000,000. 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 notice thereof to the Town.

8. **Termination:** The Town may terminate this Agreement upon 24 hours notice to Applicant for cause.
9. This Agreement is subject to ratification by the Town Council for the Town of Herndon pursuant to Ordinance #20-G-30.
10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.
11. This Agreement contains the entire and only agreement between the parties and it supercedes 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.

WITNESS the following signatures and seal: BUSINESS

By:



5/28/20

David A. Meyer Sr.
Owner

Its:

TOWN OF HERNDON:

By:

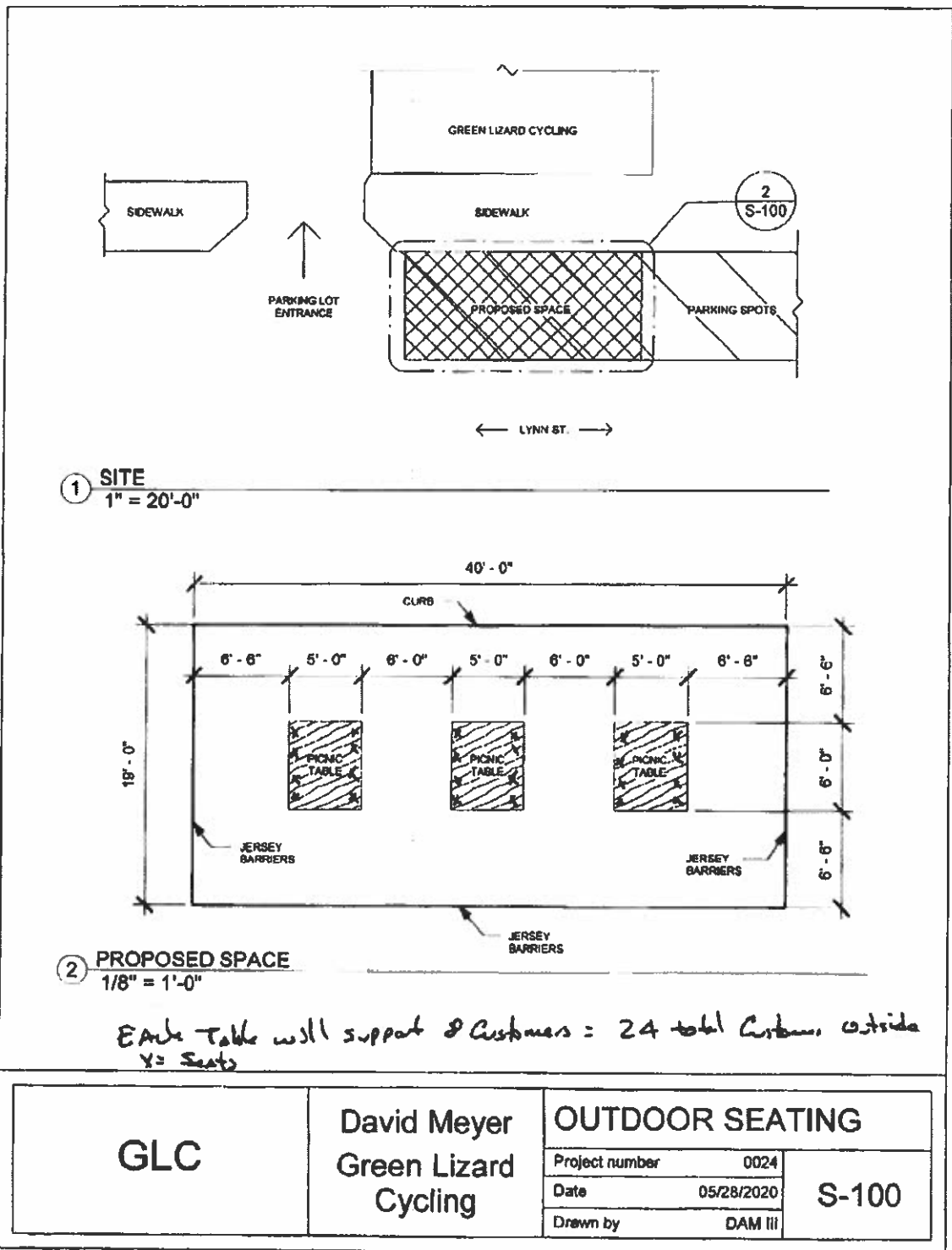


Town Manager

26 May 2020

Date

July 14, 2020
(public hearing)



**July 14, 2020
(public hearing)**

From: Orrison, John john.orrison@herndon-va.gov
 Subject: RE: Occupancy Permit - 718 Lynn Street
 Date: May 28, 2020 at 12:02 PM
 To: Building Inspections buildinginspections@herndon-va.gov
 Cc: Holste, Dennis Dennis.Holste@herndon-va.gov; dam@greenlizardcycling.com

Our records reflect an occupant load of 50 for 718 Lynn Street, Green Lizard Cycling.
 This is base on permit 13-13.

Sent from Mail for Windows 10

From: Building Inspections <buildinginspections@herndon-va.gov>
 Sent: Thursday, May 28, 2020 10:44:35 AM
 To: Orrison, John <john.orrison@herndon-va.gov>
 Cc: Holste, Dennis <Dennis.Holste@herndon-va.gov>; dam@greenlizardcycling.com
 <dam@greenlizardcycling.com>
 Subject: FW: Occupancy Permit - 718 Lynn Street

John:

Can you please respond to the email below?

Thanks!

Sue

Sue Jaston
 Department of Public Works
 703-435-6850 (Building Inspections)
 703-435-6853 (Public Works)

www.herndon-va.gov

TOWN OF
Herndon
 DEPARTMENT OF PUBLIC WORKS

From: Holste, Dennis <Dennis.Holste@herndon-va.gov>
 Sent: Thursday, May 28, 2020 10:39 AM
 To: Building Inspections <buildinginspections@herndon-va.gov>
 Cc: dam@greenlizardcycling.com
 Subject: Occupancy Permit - 718 Lynn Street

Good Morning,

Mr. Meyer is working on his application for a temporary outdoor dining permit. He is

July 14, 2020
(public hearing)



GREEN-2

OP ID: LV

CERTIFICATE OF LIABILITY INSURANCE

 DATE REISSUED
06/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER HRI Associates "Insurance Since 1853" 719 Pine Street Herndon, VA 20170-4880 Douglas G. Downer, CIC	CONTACT: Lori VanBuskirk TEL: 703-436-3800 FAX: 703-481-0234 EMAIL: certificates@hriassociates.com
INSURED Green Lizard Cycling, LLC 578 Lynn St Herndon, VA 20170	INSURER A: Cincinnati Insurance Company INSURER B: Hartford Insurance Group INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
A X COMMERCIAL GENERAL LIABILITY CLAIMS MADE ☒ OCCUR Liquor Liab GEN'L AGGREGATE LIMIT APPLIES PER ☒ POLICY ☐ PRO. ☐ LOC OTHER	ECP 035 26 65 ECP 035 26 65	12/15/2019 12/15/2019	12/15/2020 12/15/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RELATED PREMISES (PCA occurrence) \$ 2,000,000 MED EXP (ANY ONE PERSON) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMPOUND AGG \$ 4,000,000 Liquor L \$ 1,000,000 COMBINED SINGLE LIMIT (PCA accident) \$ 2,000,000 BODILY INJURY (PCA PERSON) \$ BODILY INJURY (PCA ACCIDENT) \$ PROPERTY DAMAGE (PCA ACCIDENT) \$
A AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY ☐ SO-OWNED AUTOS ☒ HIRE AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	ECP 035 26 65	12/15/2019	12/15/2020	BODILY INJURY (PCA PERSON) \$ BODILY INJURY (PCA ACCIDENT) \$ PROPERTY DAMAGE (PCA ACCIDENT) \$
A X UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS MADE LED ☒ RETENTION \$ None	ECP 035 26 65	12/15/2019	12/15/2020	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
B WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY EMPLOYER OR WORKER IN THE U.S. (N/A) IF YES, describe under DESCRIPTION OF OPERATIONS below	42 WEC CM5330	04/20/2020	04/20/2021	X PER STATUTE ☐ OTH. PR EL EACH ACCIDENT \$ 100,000 EL DISEASE - EA EMPLOYEE \$ 100,000 EL DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 The Town of Herndon is additional insured with respects to general liability and liquor liability, when required by written contract. 30 day notice of cancellation or non-renewal applies.

CERTIFICATE HOLDER

TOWN OF H

Town of Herndon
777 Lynn St
Herndon, VA 20170

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Lori VanBuskirk

ACORD 25 (2018/03)

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**July 14, 2020
(public hearing)**

Green Lizard Cycling
718 Lynn Street
Herndon VA, 20170
Owner Dave Meyer

To whom it may concern:

The above applicant has my approval to apply for a temporary outdoor dining permit.

Sincerely,
Arthur Nachman
Arthur Nachman, LP
City Council

July 14, 2020
(public hearing)



**July 14, 2020
(public hearing)**

Resolution 20-G-22, to ratify a Temporary License Agreement between the Town of Herndon and Jimmy's Old Town Tavern for use of public property or public right-of-way for temporary outdoor dining.

WHEREAS, the Town of Herndon is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas; and

WHEREAS, due to the COVID-19 pandemic, indoor dining service for businesses were prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, pursuant to the Governor's Executive Orders, as amended; and Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended, the Town Manager was authorized to approve temporary license agreements for use of public property or public right-of-way for temporary outdoor dining.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the temporary license agreement dated May 28, 2020 between the Town of Herndon and **Jimmy's Old Town Tavern** for use of public property or public right-of-way for temporary outdoor dining, 697 Spring Street, Herndon.

[Note: Attached for reference is the temporary license agreement b/n the town and Jimmy's Old Town Tavern dated May 28, 2020.]

**July 14, 2020
(public hearing)**

TOWN OF
Herndon
VIRGINIA

APPLICATION
Temporary Outdoor Dining Permit

Permit Case Number: TODP20-004 Application Date: 20

Property Address: 697 SPRING ST HERNDON VA 20170
Establishment Name: JIMMY'S OLD TOWN TAVERN
Hours of Operation: ☒ M ☒ T ☒ W ☒ Th ☒ F ☒ S ☒ Sun from 11 AM - 2 AM

Applicant Information (Principal Operator of dining establishment):
Name: James C. Cirrito
Telephone No.: 703-470-4014 Email Address: JIMCIRRITO@aol.com
Are you the property owner? N Y/N

Property Owner Information (if different from applicant):
Property Owner N Y/N Authorized Agent Acting on Behalf of the Property Owner Y Y/N
Name(s): Vicki Wilhelm
Mailing Address: AVL Management
P.O. Box 35 Woodstock MD 21163
Telephone No.: 410-418-4537 Email Address: Vwilhelm@a-lmanagement.com

Zoning Administrator Approval: _____ Date: _____

REQUIRED APPLICATION SUBMISSION MATERIALS

☐ Written authorization or signature from the property owner if the principal operator is not the property owner;

☐ A plan which clearly shows the following:

- dimensions showing the layout and arrangement of the proposed outdoor seating area, including its overall dimensions, aisle widths, access to the adjacent building and restrooms, the locations of chairs, tables, umbrellas, barriers, and of other appurtenances to be located within the boundaries of the proposed outdoor seating area. If outdoor dining is located in a designated parking area, please show the location of available parking and identify traffic control measures;
- a copy of the Occupancy Certificate for the establishment;
- If requesting a location on Town-owned property: A Certificate of Insurance showing that the Town of Herndon and its employees, volunteers, and agents have been listed as

Department of Community Development
777 WOODBURN AVENUE, SUITE 200 • FALLS CHURCH, VA 22044
(703) 441-2000 • FAX (703) 441-2001

PAGE 1 OF 2

**July 14, 2020
(public hearing)**

Insurance limits shall not be less than the following amounts:

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

Motor Liability (if applicable) - \$1,000,000. 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 notice thereof to the Town.

8. Termination: The Town may terminate this Agreement upon 24 hours notice to Applicant for cause.
9. This Agreement is subject to ratification by the Town Council for the Town of Herndon pursuant to Ordinance #20-O-30.
10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.
11. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

WITNESS the following signatures and seals: BUSINESS:

By: *James C. Smith* 5-27-2020

Its: _____

TOWN OF HERNDON:

By:

Wendy Rose

Town Manager

5/28/20

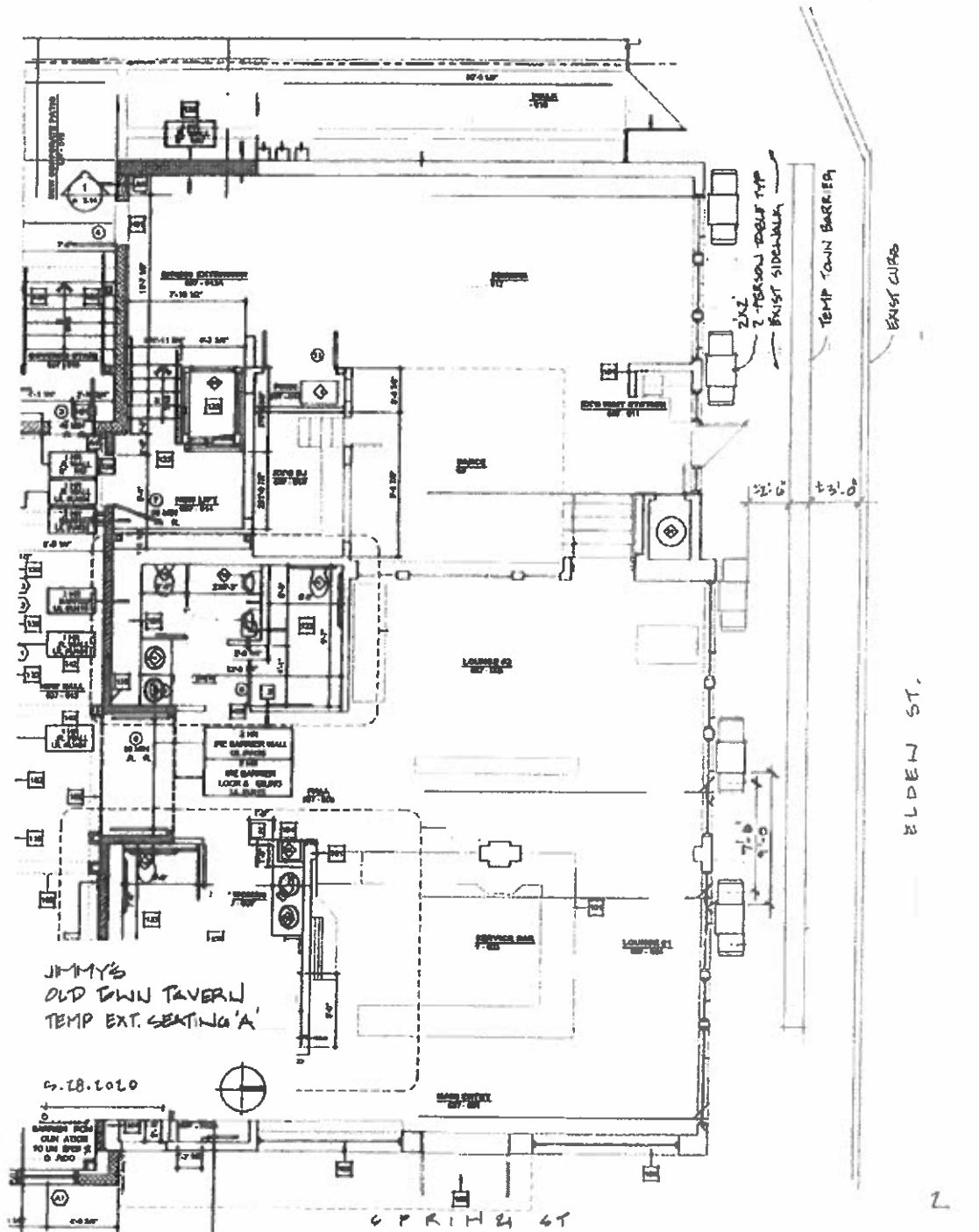
Date

July 14, 2020
(public hearing)

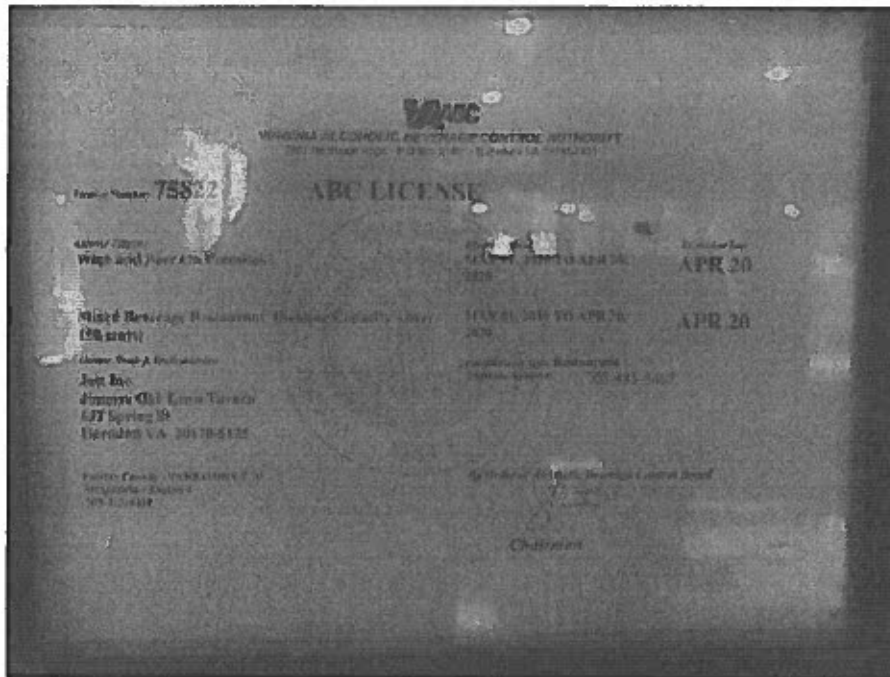
ACORD		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 05/27/20		
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).						
PRODUCER O'SULLIVAN INSURANCE AGENCY, LLC PO Box 968 Haymarket, VA 20168		CONTACT NAME PHONE (703) 726-6427 FAX (703) 832-0377 EMAIL osullivaninsurance@gmail.com ADDRESS				
INSURED JOTT, Inc Jimmy's Old Town Tavern 697 Spring St Herndon, VA 20170		INSURERS AFFORDING COVERAGE INSURER A Capitol Specialty INSURER B Erie INSURER C Accident Fund INSURER D Scottsdale INSURER E INSURER F				
COVERAGES		CERTIFICATE NUMBER		REVISION NUMBER		
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
LINE	TYPE OF INSURANCE	INSURER	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☐ GEN'L AGGREGATE LIMIT APPLIES PER ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:	Y	CS20001668-01	5/31/19	5/31/21	EACH OCCURRENCE \$ 1,000,000 UNEMPLOYMENT \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000 Liquor \$1,000,000 COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per person) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	Y	Q083130290	08/31/19	08/31/20	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per person) \$ PROPERTY DAMAGE (Per accident) \$
D	☐ UMBRELLA LIAB ☒ EXCESS LIAB ☐ RETENTIONS	X	XBS0127668	5/31/19	5/31/20	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 RETENTIONS \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in NE) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	ARPI2002605400	6/13/19	6/13/21	☒ E.L. STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	Bus Income Property Business Income		CS20001668-01	6/13/19	6/13/21	\$100,000 L1 \$200,000 L2 \$200,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101 Additional Remarks Schedule may be attached if more space is required) Additional Insured: Town of Herndon and its employees, volunteers, and agents						
CERTIFICATE HOLDER			CANCELLATION			
Town of Herndon 777 Lynn St Herndon, VA 20171			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS			
			AUTHORIZED REPRESENTATIVE 			

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July 14, 2020
(public hearing)



July 14, 2020
(public hearing)



**July 14, 2020
(public hearing)**



June 12, 2020

Town of Herndon
Dept. of Community Development
777 Lynn Street
Herndon VA, 20170

Re: Temporary Use Permit for the Extension of Retail Sales.

Dear Town of Herndon:

I hereby give permission for my business neighbor, Jimmy's Old Town Tavern, to provide outdoor seating on my property on Saturday, June 13, 2020 from 4pm - 2am, and Sunday, June 14, 2020 from 11am - 11pm. The location shall be behind our building and adjoins our businesses. The purpose of this is to allow the sale of food and beverages as an extension of the existing retail business known as Jimmy's Old Town Tavern.

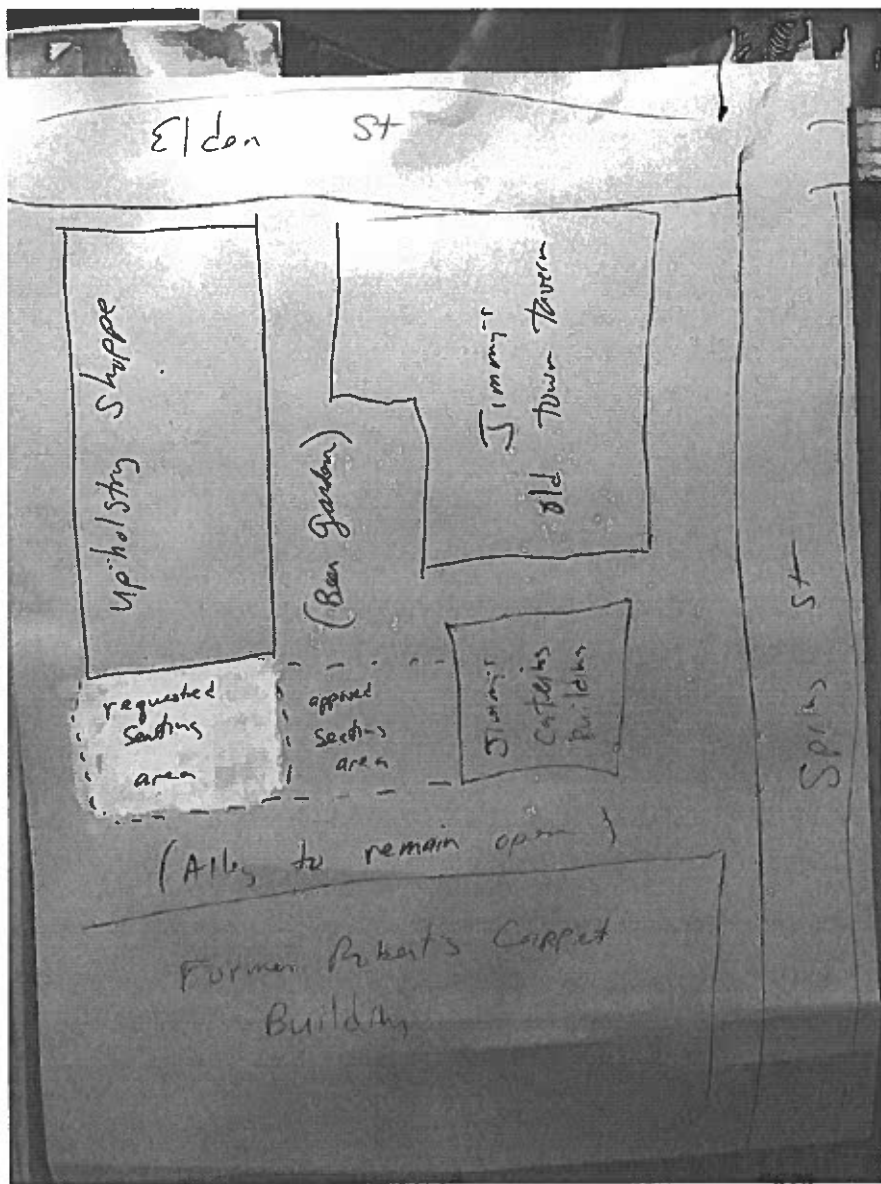
Sincerely,

Jeff Colpn, Owner
The Upholstery Shop
757 Elden Street
Herndon, VA 20170

Date: 

Attachment
30-4-20

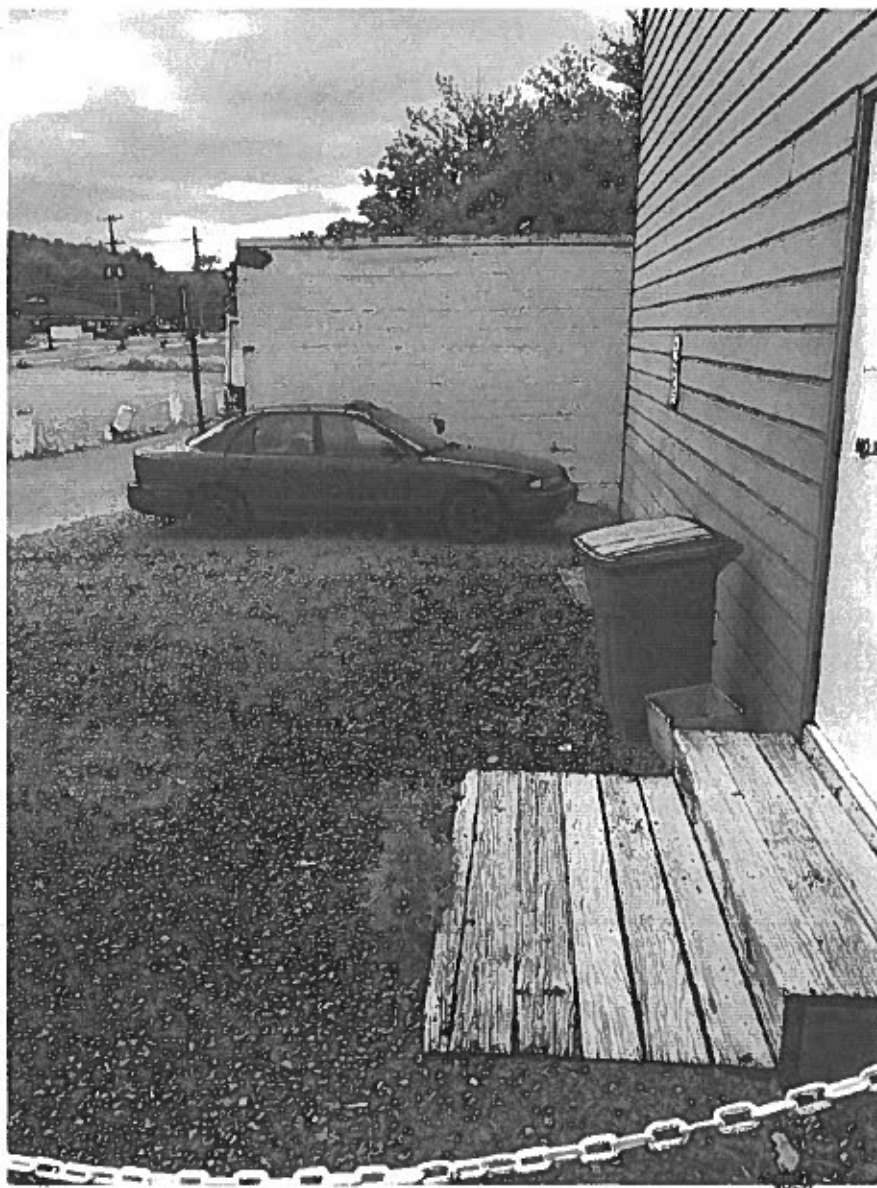
July 14, 2020
(public hearing)



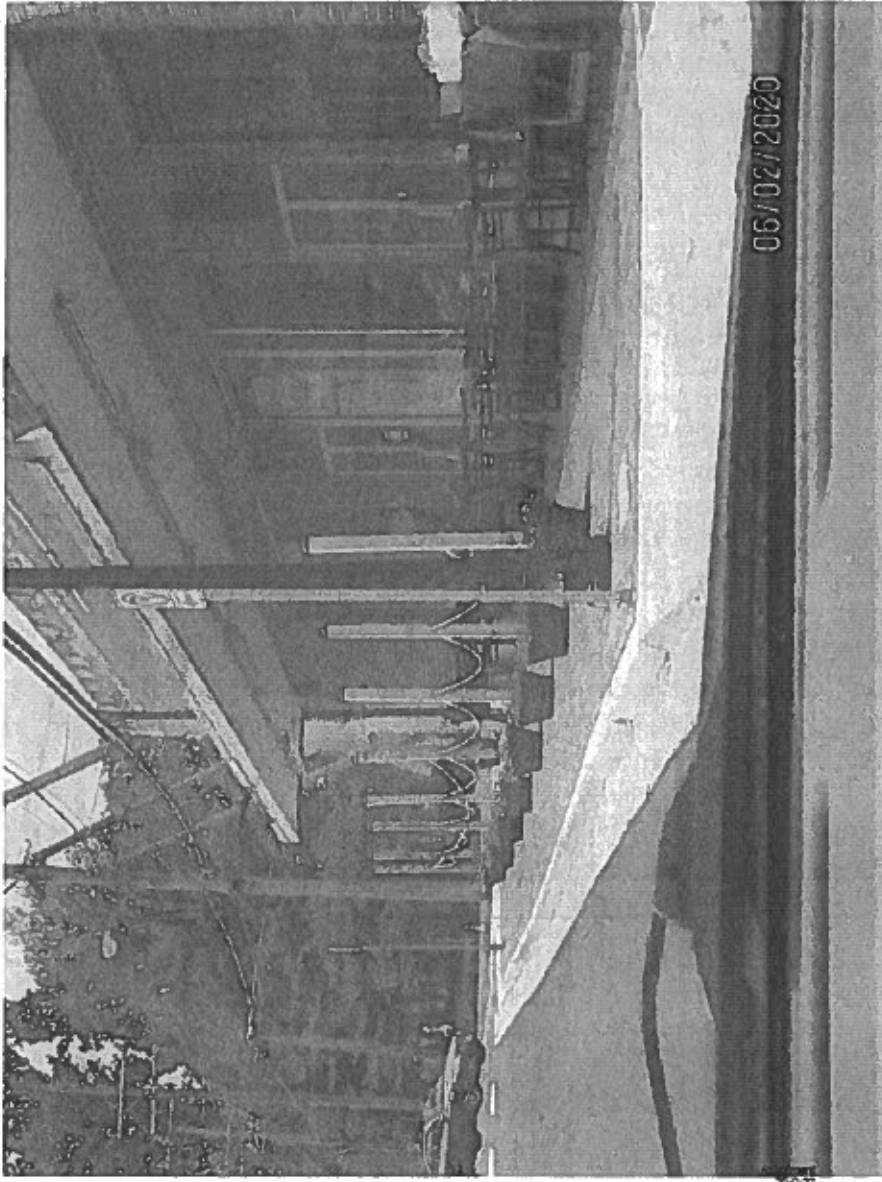
**July 14, 2020
(public hearing)**



**July 14, 2020
(public hearing)**



July 14, 2020
(public hearing)



**July 14, 2020
(public hearing)**

Resolution 20-G-23, to ratify a Temporary License Agreement between the Town of Herndon and Mile 20 at Mediterranean Breeze for use of public property or public right-of-way for temporary outdoor dining.

WHEREAS, the Town of Herndon is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas; and

WHEREAS, due to the COVID-19 pandemic, indoor dining service for businesses were prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, pursuant to the Governor's Executive Orders, as amended; and Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended, the Town Manager was authorized to approve temporary license agreements for use of public property or public right-of-way for temporary outdoor dining.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the temporary license agreement dated May 28, 2020 between the Town of Herndon and **Mile 20 at Mediterranean Breeze** for use of public property or public right-of-way for temporary outdoor dining, 781 Station Street, Herndon.

[Note: Attached for reference is the temporary license agreement b/n the town and Mile 20 at Mediterranean Breeze dated May 28, 2020.]

July 14, 2020
(public hearing)



APPLICATION
Temporary Outdoor Dining Permit

Permit Case Number: TODP20-003 Application Date: _____ 20__

Property Address: 781 Station St Herndon VA 20170

Establishment Name: Mile 20 at Mediterranean Breeze

Hours of Operation: M XT XW XTh XF XS XSun; from _____

Applicant Information (Principal Operator of dining establishment):

Name: Phillip Orwe

Telephone No.: (c) 301-641-0222 Email Address: medbreeze.va@yahoo.com

Are you the property owner? W Y/N

Property Owner Information (if different from applicant):

Property Owner Y/N Authorized Agent Acting on Behalf of the Property Owner Y/N

Name(s): Steve Mitchell - James Building Development

Mailing Address: 1291 Monroe St Herndon VA 20170

Telephone No.: 703-966-2576 Email Address: monroe1291@aol.com

Zoning Administrator Approval:

Date: 5/28/2020

REQUIRED APPLICATION SUBMISSION MATERIALS

☐ Written authorization or signature from the property owner if the principal operator is not the property owner;

☒ A plan which clearly shows the following:

- o dimensions showing the layout and arrangement of the proposed outdoor seating area, including its overall dimensions, aisle widths, access to the adjacent building and restrooms, the locations of chairs, tables, umbrellas, barriers, and all other appurtenances to be located within the boundaries of the proposed outdoor seating area; if outdoor dining is located in a designated parking area, please show the location of available parking and identify traffic control measures.
- o a copy of the Capacity Certificate for the establishment.
- o If requesting a location on town-owned property: A Certificate of Insurance showing that the Town of Herndon and its employees, volunteers, and agents have been added as

Department of Community Development
777 Lynn Street • Herndon, VA 20170 • (703) 787-7380
zoning.enforcement@herndon.va.gov

Page 1 of 4

**July 14, 2020
(public hearing)**

additional insureds to the applicants' Business Liability Insurance and, if applicable, Liquor Liability Insurance. The endorsement to the policy showing that the Town et al. has been added to the policy is also required. If the policy has additional Insured language required by contract, please attach that portion of the policy to the Certificate of Insurance.

- o If requesting a location on town-owned property, execute the Temporary Outdoor Dining Use Agreement.
 - Town property consists of sidewalks adjacent to a public street, public parking lots, and public open spaces.

☒ If alcohol will be served on site, a copy of Virginia ABC license.

☒ Pictures (2-3) of the location of the outdoor dining.

CONDITIONS OF TEMPORARY OUTDOOR DINING PERMIT

1. Temporary outdoor dining area:
 - a. Must be located directly adjacent to the establishment, or a location within 100' of the establishment;
 - b. Fencing / barriers must be installed (water-filled security barriers recommended);
 - c. Concrete barriers, provided by the town, are required on town property used for outdoor dining;
 - d. Any modification to the approved plan must be submitted and approved;
 - e. The proposed dining operation and location will not significantly interfere with pedestrian traffic or otherwise constitute a health and safety risk;
 - f. The only permitted furniture within the temporary outdoor dining area are tables, chairs, and properly anchored umbrellas, unless specifically approved by the town. Tents with a capacity greater than 50 or other structures requiring a separate building permit are not permitted unless specifically approved by the town. Any proposed lighting must be approved by the town and any cables must be secured so as not to create a tripping hazard.
2. Must comply with all applicable Governor's Executive Orders, as amended, including, but not limited to:
 - a. Establishments must limit occupancy of both the establishment and the outdoor dining area to 50% of the lowest occupancy load on the certificate of occupancy.
 - b. No more than ten patrons may be seated as a party.
 - c. Tables at which dining parties are seated must be positioned six feet apart from other tables.
3. A copy of this permit must be kept on site at all times and a copy of the capacity certificate must be on display at all times.
4. Hours of operation shall be limited to between 6 am and 11 pm.
5. No other uses are permitted within the Temporary Outdoor Dining Area: including, but not limited to, live entertainment and retail sales.
6. No pets are permitted in Temporary Outdoor Dining Areas, except service animals.
7. No open flames, cooking or food prep is permitted in Temporary Outdoor Dining Areas
8. Businesses are responsible for properly disposing of all trash in approved private refuse containers.
9. This permit shall expire 100 days from the Approval Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first.

Page 4 of 4

**July 14, 2020
(public hearing)**

TEMPORARY LICENSE AGREEMENT – WHEN LOCATED ON TOWN PROPERTY

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement"), is made as of the date it is signed by the Herndon Town Manager (the "Effective Date"), by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "Town") and (the "Applicant") (collectively, the "Parties").

WHEREAS, the Town is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas (the "Property"), as shown on EXHIBIT A – LICENSED AREA of the TEMPORARY OUTDOOR DINING PERMIT (the "Permit") attached hereto:

WHEREAS, due to the COVID-19 pandemic, indoor dining service for Applicant's business has been prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, the Parties desire to allow Applicant to enter upon the Property for the purpose of outdoor seating and dining (the "Use") in conjunction with the Applicant's business during the Term, as defined herein.

NOW, THEREFORE, that for and in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree as follows:

1. The Town hereby grants Applicant temporary use of the property for the purposes described in the permit.
2. This Agreement shall expire 100 days from the Effective Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first (the "term").
3. The applicant shall comply with the terms of the Permit and all applicable town, state, and federal laws and regulations and maintaining at all times any other permit(s) required under applicable law for the use.
4. The parties expressly agree and contract that there shall be no fee for the use of the Town property during this term only.
5. 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.
6. Applicant hereby assumes all risk of damage by reason of its occupation of the property caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and the applicant 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.
7. Applicant 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.

Page 4 of 4

**July 14, 2020
(public hearing)**

This agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives the applicant written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

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

Ucver Liability (If applicable) - \$1,000,000. 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 notice thereof to the Town.

8. Termination: The Town may terminate this Agreement upon 24 hours notice to Applicant for cause.
9. This Agreement is subject to ratification by the Town Council for the Town of Herndon pursuant to Ordinance #20-O-30.
10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.
11. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

WITNESS the following signatures and seals: BUSINESS:

By: Nelly H. Anne

Its: owner

TOWN OF HERNDON:

By: Wanda L. DeC...
Town Manager

26 May 2020
Date

**July 14, 2020
(public hearing)**



105' Fence line
along the bushes

- Map data ©2020, Map data ©2020 20 ft
- 6ft wide walkway down the side of driveway and will be helpful for walking through people
 - 17' x 9' each parking spot

- 6' to 8' long benches in every other parking spot to give 8'-10' foot gap between each table.
- Then in diagonal layout of spot w/ picnic table in open area between the rows of parking spaces.

Home

Work

Coronavirus (COVID-19)
Get local info & updates

Search this area

July 14, 2020
(public hearing)

VIRGINIA
DEPARTMENT OF PUBLIC WORKS
BUILDING INSPECTIONS

MAXIMUMS APPROVED

SECTION 1008.1 BOCA CODE AS ADOPTED BY THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE

LIVE LOAD _____ LBS. PER SQ FT.

OCCUPANCY LOAD 185 SEATING PERSONS

USE GROUP A-2

CONST. TYPE 5-B

FOR MEDITERRANEAN BREEZE RESTURANT
781 STATION STREET

APPROVED 6/1/05

John D. Davis
BUILDING INSPECTOR

**July 14, 2020
(public hearing)**

VABC
VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY
2901 Hermitage Road · P O Box 27491 · Richmond VA 23261-7491

License Number: 39202

ABC LICENSE

License Type(s):

Wine and Beer On and Off Premises/Delivery Permit

Effective Period

MAY 01, 2020 TO APR 30, 2021

Expiration Date

APR 21

Mixed Beverage Restaurant (Seating Capacity - over 150 seats)

MAY 01, 2020 TO APR 30, 2021

APR 21

Licensee Name & Trade Address:

**Teryanna LLC
Mile 20 at Mediterranean Breeze
781 Station St
Herndon VA 20170-4607**

Establishment Type: Restaurant

**Telephone Numbers: 703-435-4495
301-641-0222**

**Fairfax County - TERRITORY # 70
Alexandria - Region 4
703-313-4432**

By Order of Alcoholic Beverage Control Board

Maisha K. Everett

Chair

License Privileges and Instructions

The privilege(s) of this license is (are) hereby granted by the Virginia Alcoholic Beverage Control Board to the Licensee named above to operate in accordance with the terms of the license herein designated and the applicable statutes of the Commonwealth of Virginia and regulations of the Board.

The privilege(s) conferred by this license, except banquet licenses and mixed beverage special event licenses, shall continue until the last day of the twelfth month next ensuing or the last day of designated month of expiration, and thereafter year to year provided no cause exists for which the Board would be entitled to refuse to issue the license or until terminated by the operation of the law, voluntary surrender, Order of the Board, or failure to pay the required license tax or penalties. License periods may be adjusted as necessary to maintain distribution of annual license reissuance as equally as practicable on a monthly basis.

This license may be suspended or revoked in accordance with the Virginia Alcoholic Beverage Control Act or the Mixed Beverage Laws, whichever is applicable.

Please detach the above license which must be posted in a conspicuous place in the establishment. You may keep the bottom portion for reference.

A separate receipt may be obtained from the Board, if desired, in the event this license is terminated and returned to the Board.

Any questions relative to the issuance, privileges and maintenance of your ABC license should be addressed to your local ABC office.

**Teryanna LLC
Mile 20 at Mediterranean Breeze
781 Station St
Herndon VA 20170-4607**

July 14, 2020
(public hearing)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/27/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cushman Insurance Agency, Inc. P.O. Box 1069 Hendron VA 20172	CONTACT NAME Syeda Ayman-Ramman PHONE (A/C, H, E): (703) 471-4335 FAX (A/C, H): (703) 471-0938 E-MAIL ADDRESS: sayman@cushmaninsurance.com
INSURED Teryanna LLC T/A Mde 20 at Mediterranean Breeze 781 Station Street Hendron VA 20170	INSURERS AFFORDING COVERAGE INSURER A: Southern Insurance Companies of VA INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES		CERTIFICATE NUMBER: CL 1991017106	REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
WEB STR	TYPE OF INSURANCE	ADD. SUBS	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR		8559228139	07/12/2019	07/12/2020	EACH OCCURRENCE \$ 2,000,000
	☒ Liquor Liability					LIABILITY TO RENTED PREMISES (E&O) \$ 100,000
	GEN. AGGREGATE LIMIT APPLIES PER ☒ POLICY ☐ PRO. ACT ☐ LOC					MED EXP (per one person) \$ 5,000
	OTHER					PERSONAL & ADV INJURY \$ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY					GENERAL AGGREGATE \$ 4,000,000
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS MADE					PRODUCTS, COMP/OP AGG \$ 4,000,000
	DED RETENTION \$					
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A				COMBINED SINGLE LIMIT (E&O) \$
						BODILY INJURY (Per person) \$
						BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						EACH OCCURRENCE \$
						AGGREGATE \$
						PER STATUTE ☐ OTHER ☐
						E&L EACH ACCIDENT \$
						E&L DISEASE - EMPLOYEE \$
						E&L DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The Town of Hendron and its employees, volunteers, and agents are listed as additional insureds when required by written contract. 30 days notice of cancellation will be given.

CERTIFICATE HOLDER	CANCELLATION
Town of Hendron 777 Lynn St Hendron VA 20170	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

**July 14, 2020
(public hearing)**

Resolution 20-G-24, to ratify a Temporary License Agreement between the Town of Herndon and Red Kimono, LLC for use of public property or public right-of-way for temporary outdoor dining.

WHEREAS, the Town of Herndon is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas; and

WHEREAS, due to the COVID-19 pandemic, indoor dining service for businesses were prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, pursuant to the Governor's Executive Orders, as amended; and Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended, the Town Manager was authorized to approve temporary license agreements for use of public property or public right-of-way for temporary outdoor dining.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the temporary license agreement dated May 29, 2020 between the Town of Herndon and **Red Kimono, LLC** for use of public property or public right-of-way for temporary outdoor dining, 790 Station Street, Herndon.

[Note: Attached for reference is the temporary license agreement b/n the town and Red Kimono, LLC dated May 29, 2020.]

July 14, 2020
(public hearing)

TOWN OF
Herndon
VIRGINIA

APPLICATION

Temporary Outdoor Dining Permit

Permit Case Number: TDDP20-090 Application Date: 5/28 2020

Property Address: 790 Station Street, Herndon, VA 20170

Establishment Name: Red Kimono, LLC

Hours of Operation: V M T W Th F S S Sun: from 11:30 - 10:00

Name: Hyeon Kim

Telephone No.: 201-989-5880 Email Address: tn+hh22@gmail.com

Are you the property owner? N Y/N

Property Owner Yes

Name(s): LYNN STREET ASSOCIATES, LP by Arthur Nachman, Partner

Mailing Address: 720 Lynn Street
Herndon, VA 20170

Arthur D. Nachman 555-5000

Telephone No.: (703) 437-1300

Email Address: Arthur.Nachman@inf.com

Zoning Administrator Approval: [Signature]

Date: 5/29/2020

REQUIRED APPLICATION SUBMISSION MATERIALS

- ☒ Written authorization or signature from the property owner if the principal operator is not the property owner;
- ☒ A plan which clearly shows the following:
 - o dimensions showing the layout and arrangement of the proposed outdoor seating area, including its overall dimensions, aisle widths, access to the adjacent building and restrooms, the locations of chairs, tables, umbrellas, bariens, and all other appurtenances to be located within the boundaries of the proposed outdoor seating area; if outdoor dining is located in a designated parking area, please show the location of available parking and identify traffic control measures.
 - o a copy of the Capacity Certificate for the establishment.
 - o If requesting a location on town-owned property: A Certificate of Insurance showing that the Town of Herndon and its employees, volunteers, and agents have been added as

Department of Community Development
777 Lynn Street • Herndon, VA 20170 • (703) 767-7380
online.enquiries@herndonva.gov

Page 1 of 4

**July 14, 2020
(public hearing)**

additional insureds to the applicants' Business Liability Insurance and, if applicable, Liquor Liability Insurance. The endorsement to the policy showing that the Town et al. has been added to the policy is also required. If the policy has additional insured language required by contract, please attach that portion of the policy to the Certificate of Insurance.

- o If requesting a location on town-owned property, execute the Temporary Outdoor Dining Use Agreement.
 - Town property consists of sidewalks adjacent to a public street, public parking lots, and public open spaces.

☒ If alcohol will be served on site, a copy of Virginia ABC license.

☒ Pictures (2-3) of the location of the outdoor dining.

CONDITIONS OF TEMPORARY OUTDOOR DINING PERMIT

1. Temporary outdoor dining area:
 - a. Must be located directly adjacent to the establishment, or a location within 100' of the establishment;
 - b. Fencing / barriers must be installed (water-filled security barriers recommended);
 - c. Concrete barriers, provided by the town, are required on town property used for outdoor dining;
 - d. Any modification to the approved plan must be submitted and approved;
 - e. The proposed dining operation and location will not significantly interfere with pedestrian traffic or otherwise constitute a health and safety risk;
 - f. The only permitted furniture within the temporary outdoor dining area are tables, chairs, and properly anchored umbrellas, unless specifically approved by the town. Tents with a capacity greater than 50 or other structures requiring a separate building permit are not permitted unless specifically approved by the town. Any proposed lighting must be approved by the town and any cables must be secured so as not to create a tripping hazard.
2. Must comply with all applicable Governor's Executive Orders, as amended, including, but not limited to:
 - a. Establishments must limit occupancy of both the establishment and the outdoor dining area to 50% of the lowest occupancy load on the certificate of occupancy.
 - b. No more than ten patrons may be seated as a party.
 - c. Tables at which dining parties are seated must be positioned six feet apart from other tables.
3. A copy of this permit must be kept on site at all times and a copy of the capacity certificate must be on display at all times.
4. Hours of operation shall be limited to between 6 am and 11 pm.
5. No other uses are permitted within the Temporary Outdoor Dining Area; including, but not limited to, live entertainment and retail sales.
6. No pets are permitted in Temporary Outdoor Dining Areas, except service animals.
7. No open flames, cooking or food prep is permitted in Temporary Outdoor Dining Areas.
8. Businesses are responsible for properly disposing of all trash in approved private refuse containers.
9. This permit shall expire 100 days from the Approval Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first.

Page 2 of 4

**July 14, 2020
(public hearing)**

TEMPORARY LICENSE AGREEMENT – WHEN LOCATED ON TOWN PROPERTY

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement"), is made as of the date it is signed by the Herndon Town Manager (the "Effective Date"), by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "Town") and (the "Applicant") (collectively, the "Parties").

WHEREAS, the Town is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas (the "Property"), as shown on EXHIBIT A – LICENSED AREA of the TEMPORARY OUTDOOR DINING PERMIT (the "Permit") attached hereto;

WHEREAS, due to the COVID-19 pandemic, indoor dining service for Applicant's business has been prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, the Parties desire to allow Applicant to enter upon the Property for the purpose of outdoor seating and dining (the "Use") in conjunction with the Applicant's business during the Term, as defined herein.

NOW, THEREFORE, that for and in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree as follows:

1. The Town hereby grants Applicant temporary use of the property for the purposes described in the permit.
2. This Agreement shall expire 100 days from the Effective Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first (the "term").
3. The applicant shall comply with the terms of the Permit and all applicable town, state, and federal laws and regulations and maintaining at all times any other permit(s) required under applicable law for the use.
4. The parties expressly agree and contract that there shall be no fee for the use of the Town property during this term only.
5. 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.
6. Applicant hereby assumes all risk of damage by reason of its occupation of the property caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and the applicant 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.
7. Applicant 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.

Page 3 of 4

**July 14, 2020
(public hearing)**

This agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives the applicant written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

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

Umwelt Liability (if applicable) - \$1,000,000. 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 notice thereof to the Town.

8. Termination: The Town may terminate this Agreement upon 24 hours notice to Applicant for cause.
9. This Agreement is subject to ratification by the Town Council for the Town of Herndon pursuant to Ordinance #20-O-30.
10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.
11. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

WITNESS the following signatures and seals: BUSINESS:

By: W. J. M. Kim

Its: Owner

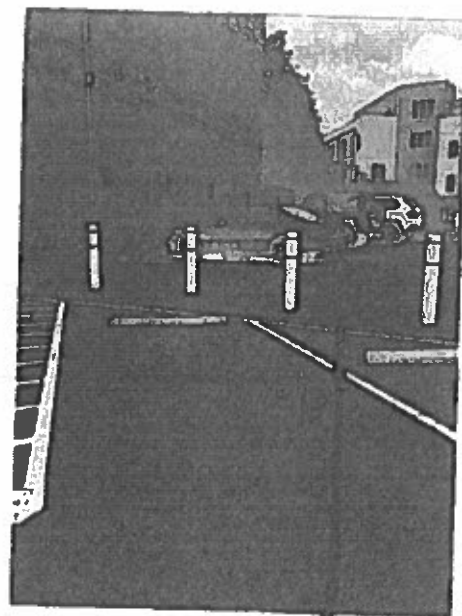
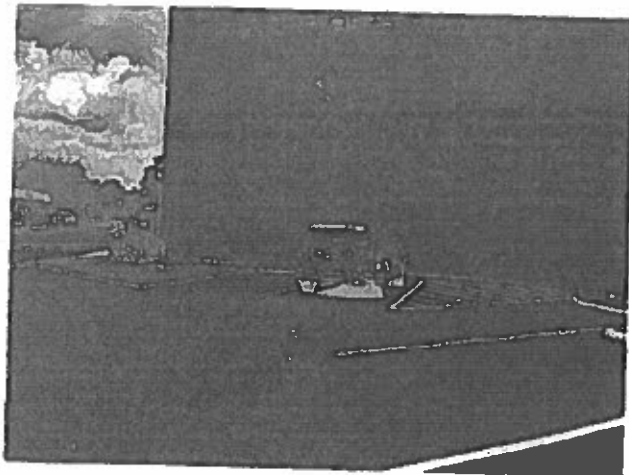
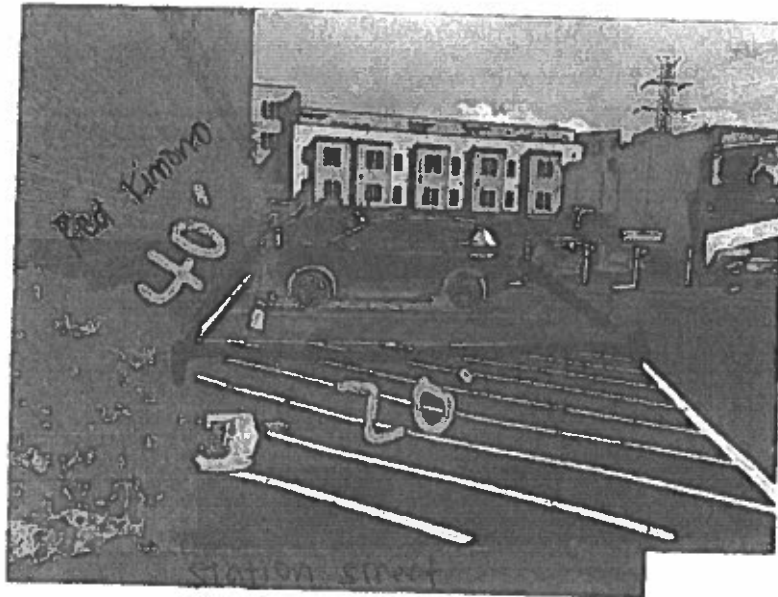
TOWN OF HERNDON:

By:

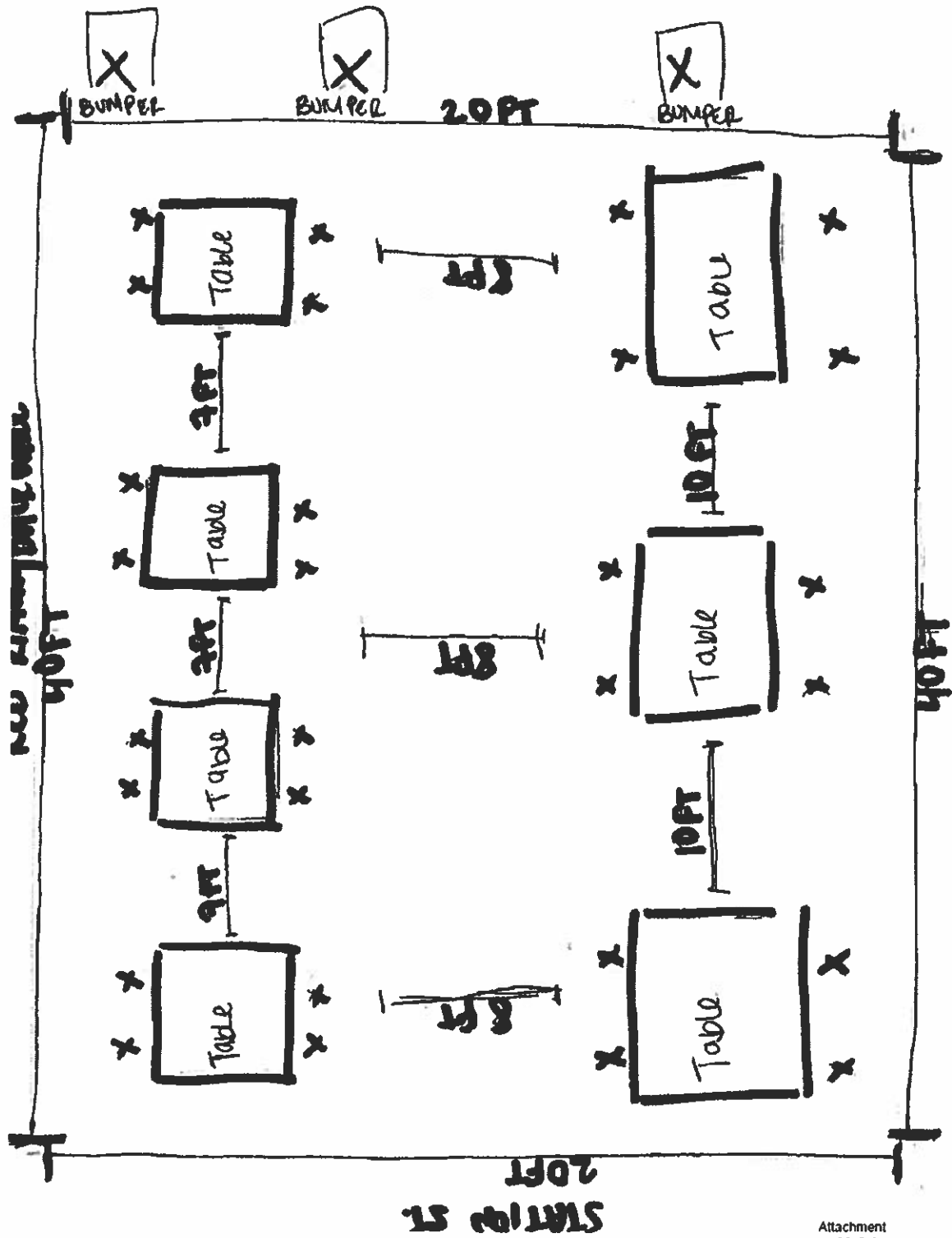
Wendy D. [Signature]
Town Manager

29 May 2020
Date

July 14, 2020
(public hearing)



July 14, 2020
(public hearing)



July 14, 2020
(public hearing)



VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY
2901 Hermitage Road · P O Box 27491 · Richmond VA 23261-7491

License Number: **93840**

ABC LICENSE

License Type(s):
Wine and Beer On Premises

Effective Period
FEB 01, 2020 TO JAN 31, 2021

Expiration Date
JAN 21

Mixed Beverage Restaurant (Seating Capacity - 1 to 100 seats)

FEB 01, 2020 TO JAN 31, 2021

JAN 21

License Name & Trade Address:

**Red Kimono LLC
Red Kimono Japanese and Korean Cuisine
790 Station St Ste 1000
Herndon VA 20170-4663**

Establishment Type: **Restaurant**
Telephone Numbers: **703-435-3515
201-989-5880**

Fairfax County - TERRITORY # 70
Alexandria - Region 4
703-313-4432

By Order of Alcoholic Beverage Control Board

Chairman

License Privileges and Instructions

The privilege(s) of this license is (are) hereby granted by the Virginia Alcoholic Beverage Control Board to the Licensee named above to operate in accordance with the terms of the license herein designated and the applicable statutes of the Commonwealth of Virginia and regulations of the Board.

The privilege(s) conferred by this license, except banquet licenses and mixed beverage special event licenses, shall continue until the last day of the twelfth month next ensuing or the last day of designated month of expiration, and thereafter year to year provided no cause exists for which the Board would be entitled to refuse to issue the license or until terminated by the operation of the law, voluntary surrender, Order of the Board, or failure to pay the required license tax or penalties. License periods may be adjusted as necessary to maintain distribution of annual license reissuance as equally as practicable on a monthly basis.

This license may be suspended or revoked in accordance with the Virginia Alcoholic Beverage Control Act or the Mixed Beverage Laws, whichever is applicable.

Please detach the above license which must be posted in a conspicuous place in the establishment. You may keep the bottom portion for reference.

A separate receipt may be obtained from the Board, if desired, in the event this license is terminated and returned to the Board.

Any questions relative to the issuance, privileges and maintenance of your ABC license should be addressed to your local ABC office.

**Red Kimono LLC
Red Kimono Japanese and Korean Cuisine
790 Station St Ste 1000
Herndon VA 20170-4663**

July 14, 2020
(public hearing)

ACORD		CERTIFICATE OF LIABILITY INSURANCE		DATE (mm/dd/yyyy) 05/29/2020	
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AFFECT, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).					
PRODUCER Henn Financial Group Inc 13480 BRADDOCK RD STE 304 CENTREVILLE VA 20121-2463		INSURED RED KIMONO LLC/ RED KIMONO JAPANESE AND KOREAN CUISINE 790 STATION ST STE 1000 HERNDON VA 20170-4463		AGENT HYOLING MOH Phone: (703) 266-7533 Fax: (703) 266-7533 Email: hmo@henn.com INSURANCE AFFORDING COVERAGE INSURER A: TRAVELERS INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:					
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
TYPE OF INSURANCE ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIM-AND-DEFENSE ☐ OCCUR ☐ GEN. AGGREGATE LIMIT APPLIES P.C.R. ☒ POLICY ☐ PRO. ☐ ACT ☐ LOC ☐ OTHER:	POLICY NUMBER 0K212365 680	PERIOD OF INSURANCE 11/01/2019 11/01/2020	LIMITS EACH OCCURRENCE DAMAGE TO RENTED PERSONAL AND AUTOMOBILE MED. EXP. (Inc and pers) \$ 5,000 PERSONAL & ADV. SERV. \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP. PROP. \$ 4,000,000 ADDITIONAL LIMITS BODILY INJURY (per person) \$ BODILY INJURY (per accident) \$ PROPERTY DAMAGE (per person) \$ EACH OCCURRENCE ADDITIONAL \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - SA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (attach 10% Additional Fees for Schedule, may be attached if more space is required) Towns of Herndon, Virginia is listed 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 notice thereof to the Town.	
CERTIFICATE HOLDER Town of Herndon, Virginia 777 Lynn Street Herndon VA 20170		CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: 			

ACORD 25 (2018/03)

The ACORD name and logo are registered marks of ACORD

Attachment
20-G-24

July 14, 2020
(public hearing)

CERTIFICATE OF OCCUPANCY

PERMANENT

Issue Date 1/08/18

Parcel Number 0162 02 0200

Property Address 700 STATION ST
HERNDON VA 20176

Subdivision Name HERNDON

Legal Description 700 STATION ST

Property Zoning CDD CENTRAL COMMERCIAL

Owner LYNN STREET ASSOCIATES LP

Contractor

Application number 18-0003013 000 000

Description of work CHANGE OF OCCUPANCY W/ NO AD

Construction type TYPE III-B 1BC

Occupancy type ASSEMBLY RESTAURANTS ETC

Flood Zone

Special conditions

Add Kitchen Restaurant

Fire Alarm Require

Fire Sprinkler Require

2012 USBC

Occupant Load 90 Seats

Inspected

Building Official

VOID UNLESS SIGNED BY BUILDING OFFICIAL

**July 14, 2020
(public hearing)**

LYNN STREET ASSOCIATES, LP
720 Lynn Street
Herndon, VA 20170
(703) 437-1300 (office)
Arthur.nachman@lnt.com (email)

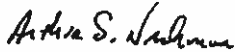
May 28, 2020

To Whom It May Concern:

As Landlord for Red Kimono, LLC ("Tenant") located at 790 Station Street, Herndon, VA 20170, I hereby approve outdoor seating and alcohol sales in the parking lot located adjacent to the property.

If you have addition questions, please do not hesitate to contact me.

Sincerely,



Arthur Nachman
Partner
Lynn Street Associates, LP

**July 14, 2020
(public hearing)**

Resolution 20-G-25, to ratify a Temporary License Agreement between the Town of Herndon and Russia House Restaurant for use of public property or public right-of-way for temporary outdoor dining.

WHEREAS, the Town of Herndon is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas; and

WHEREAS, due to the COVID-19 pandemic, indoor dining service for businesses were prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, pursuant to the Governor's Executive Orders, as amended; and Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended, the Town Manager was authorized to approve temporary license agreements for use of public property or public right-of-way for temporary outdoor dining.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the temporary license agreement dated June 4, 2020 between the Town of Herndon and **Russia House Restaurant** for use of public property or public right-of-way for temporary outdoor dining, 724 Pine Street, Herndon.

[Note: Attached for reference is the temporary license agreement b/n the town and Russia House Restaurant dated June 4, 2020.]

July 14, 2020
(public hearing)

TOWN OF Herndon

VIRGINIA

APPLICATION

Temporary Outdoor Dining Permit

Permit Case Number YODP20-005 Application Date May 17 2020

Property Address
724 Pine Street, Herndon, 20170
Establishment Name
Russia House Restaurant
Hours of Operation
S:30 To 9:30
M T W Th F S Sun

Applicant Information (Principal Operator of dining establishment).

Name Ali + Homeyra Darugar

Telephone No 703-787-8880 Email Address
adarugar@gmail.com

Are you the property owner? Y/N

Property Owner Information (if different from applicant)

Property Owner Y/N Authorized Agent Acting on Behalf of the Property Owner Y/N

Name(s) Edgar Guiterrez

Mailing Address
13575 Tabscott Drive

Charlottesville, VA 20151
Telephone No 571-331-8005 Email Address
prime-services-cg@yahoo.com

Zoning Administrator Approval:

Date: 5/29/2020

REQUIRED APPLICATION SUBMISSION MATERIALS

- ☐ Written authorization or signature from the property owner if the principal operator is not the property owner.
☐ A plan which clearly shows the following

Department of Community Development
777 Lynn Street • Herndon, VA 20170 • (703) 787-7380
zoning.enforcement@herndon-va.gov

Page
1 of 1

**July 14, 2020
(public hearing)**

- dimensions showing the layout and arrangement of the proposed outdoor seating area including its overall dimensions, aisle widths, access to the adjacent building and restrooms, the locations of chairs, tables, umbrellas, barriers, and all other appurtenances to be located within the boundaries of the proposed outdoor seating area. If outdoor dining is located in a designated parking area, please show the location of available parking and identify traffic control measures
- a copy of the Capacity Certificate for the establishment
- If requesting a location on town-owned property: A Certificate of Insurance showing that the Town of Herndon and its employees, volunteers, and agents have been added as additional insureds to the applicants' Business Liability Insurance and, if applicable, Liquor Liability Insurance. The endorsement to the policy showing that the Town et al has been added to the policy is also required. If the policy has additional insured language required by contract, please attach that portion of the policy to the Certificate of Insurance
- If requesting a location on town-owned property, execute the Temporary Outdoor Dining Use Agreement
 - Town property consists of sidewalks adjacent to a public street, public parking lots, and public open spaces

☒ If alcohol will be served on site, a copy of Virginia ABC license

☒ Pictures (2-3) of the location of the outdoor dining

CONDITIONS OF TEMPORARY OUTDOOR DINING PERMIT

- 1 Temporary outdoor dining area
 - a Must be located directly adjacent to the establishment or a location within 100' of the establishment
 - b Fencing / barriers must be installed (water-filled security barriers recommended)
 - c Concrete barriers, provided by the town, are required on town property used for outdoor dining
 - d Any modification to the approved plan must be submitted and approved
 - e The proposed dining operation and location will not significantly interfere with pedestrian traffic or otherwise constitute a health and safety risk
 - f The only permitted furniture within the temporary outdoor dining area are tables, chairs, and properly anchored umbrellas, unless specifically approved by the town. Tents with a capacity greater than 50 or other structures requiring a separate building permit are not permitted unless specifically approved by the town. Any proposed lighting must be approved by the town and any cables must be secured so as not to create a tripping hazard
- 2 Must comply with all applicable Governor's Executive Orders, as amended, including but not limited to:
 - a Establishments must limit occupancy of both the establishment and the outdoor dining area to 50% of the lowest occupancy load on the certificate of occupancy
 - b No more than ten patrons may be seated as a party
 - c Tables at which dining parties are seated must be positioned six feet apart from other tables
- 3 A copy of this permit must be kept on site at all times and a copy of the capacity certificate must be on display at all times
- 4 Hours of operation shall be limited to between 5 am and 11 pm
- 5 No other uses are permitted within the Temporary Outdoor Dining Area, including, but not limited to, live entertainment and retail sales
- 6 No pets are permitted in Temporary Outdoor Dining Areas, except service animals
- 7 No open flames, cooking or food prep is permitted in Temporary Outdoor Dining Areas
- 8 Businesses are responsible for properly disposing of all trash in approved private refuse containers
- 9 This permit shall expire 100 days from the Approval Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first

PPage
4 of 4

**July 14, 2020
(public hearing)**

TEMPORARY LICENSE AGREEMENT - WHEN LOCATED ON TOWN PROPERTY

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement") is made as of the date it is signed by the Herndon Town Manager (the "Effective Date"), by and between the TOWN OF HERNDON VIRGINIA a municipal corporation of the Commonwealth of Virginia (the "Town") and (the "Applicant") (collectively the "Parties")

WHEREAS, the Town is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas (the "Property"), as shown on EXHIBIT A - LICENSED AREA of the TEMPORARY OUTDOOR DINING PERMIT (the "Permit") attached hereto,

WHEREAS, due to the COVID-19 pandemic, indoor dining service for Applicant's business has been prohibited or limited by Executive Orders of Governor Northam, and

WHEREAS, the Parties desire to allow Applicant to enter upon the Property for the purpose of outdoor seating and dining (the "Use") in conjunction with the Applicant's business during the Term, as defined herein

NOW, THEREFORE, that for and in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree as follows

- 1 The Town hereby grants Applicant temporary use of the property for the purposes described in the permit
- 2 This Agreement shall expire 100 days from the Effective Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first (the "term")
- 3 The applicant shall comply with the terms of the Permit and all applicable town, state, and federal laws and regulations and maintaining at all times any other permit(s) required under applicable law for the use
- 4 The parties expressly agree and contract that there shall be no fee for the use of the Town property during this term only
- 5 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
- 6 Applicant hereby assumes all risk of damage by reason of its occupation of the property caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and the applicant 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
- 7 Applicant 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 the applicant written confirmation that the type and amount of insurance is accepted

Insurance limits shall not be less than the following amounts

PPage
4 of 4

**July 14, 2020
(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.
Liquor Liability (if applicable) - \$1,000,000. 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 notice thereof to the Town.

8. **Termination** - The Town may terminate this Agreement upon 24 hours notice to Applicant for cause.
9. This Agreement is subject to ratification by the Town Council for the Town of Herndon pursuant to Ordinance #20-O-30.
10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.
11. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

WITNESS the following signatures and seals: BUSINESS

By

Its

TOWN OF HERNDON

By

Town Manager

Date

**July 14, 2020
(public hearing)**



Virginia Alcoholic Beverage Control Authority

084954

Station Number

Wine and Beer On and Off Premises

ABC License

ABC License Restaurant (Seating Capacity - 1 to 100 seats)

Business Name & Type Address

Petal Ltd

Russle House Restaurant

724 Pine St

Herndon VA 20170-4660

Fairfax County - TELEPHONE 703-443-1100

Alcohol - 24/7 - Region 4

(703) 513-4433

Effective Date

APR 21

May 01, 2020 To APR 30, 2021

Expiration Date

APR 21

Restaurant Type

Restaurant

Telephone Number

(703) 787-4330

(703) 531-0411

By Order of the Alcoholic Beverage Control Board

Maria K. Everett

1 APR

Herndon

April 30 15 39 PM

Edit

July 14, 2020
(public hearing)

ACORD CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY) 06/01/2020					
PRODUCER GRO INSURANCE AGENCY GREGG GLOUGHER 104 PINE STREET SUITE 205 VIENNA, VA 22180		TEL: 703-242-5302 FAX: 703-242-9306		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.					
INSURED PERAL LTD DBA: RUSSIA HOUSE RESTAURANT 124 PINE STREET HERNDON, VA 20170 703-531-9611 EMAIL: ahsazugare@gmail.com		INSURERS AFFORDING COVERAGE		NAIC #					
		INSURER A: NATIONWIDE INSURANCE		23787					
		INSURER B:							
		INSURER C:							
		INSURER D:							
		INSURER E:							
COVERAGES									
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.									
FORM NO.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS				
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLA VS MADE X OCCUR GEN L AGGREGATE LIMIT \$100,000 PER POLICY 05/20/20 X LOC	ACP 2404741723	11/01/19	11/01/20	EACH OCCURRENCE \$1,000,000 PREMIER \$100,000 MEDICAL \$5,000 PERSONAL & ADV. \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS-COMPL. \$2,000,000				
X	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SOME OWNED AUTOS X NON-OWNED AUTOS	X	X	X	COMBINED SINGLE LIMIT \$2,000,000 BODILY INJURY (Per person) \$1,000,000 BODILY INJURY (Per accident) \$1,000,000 PROPERTY DAMAGE (Per accident) \$1,000,000				
	BARREL LIABILITY ANY AUTO				AUTO ONLY - \$1,000,000 OTHER THAN AUTO ONLY \$1,000,000				
	EXCESS/UMBRELLA LIABILITY OCCUR CLAIMS MADE DEDUCTION \$1,000,000				EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000				
A	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PERSONS EMPLOYED BY INSURED OFFICE (EXCLUDED) \$100,000 IF NOT EMPLOYED \$100,000	ACP 2404741723	11/01/19	11/01/20	MAXIMUM \$100,000 EACH ACCIDENT \$100,000 CL DISEASE \$100,000 CL DISEASE \$100,000				
A	LIQUOR LIABILITY	ACP 2404741723	11/01/19	11/01/20	\$1,000,000				
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT - SPECIAL PROVISIONS									
CERTIFICATE HOLDER ALSO LISTED AS ADDITIONAL INSURED									
<table border="1"> <thead> <tr> <th>CERTIFICATE HOLDER</th> <th>CANCELLATION</th> </tr> </thead> <tbody> <tr> <td>TOWN OF HERNDON 1777 Lynn Street Herndon, VA 20170</td> <td>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER SHALL UNDERTAKE TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Gregg R. Glagore-SGREG</td> </tr> </tbody> </table>						CERTIFICATE HOLDER	CANCELLATION	TOWN OF HERNDON 1777 Lynn Street Herndon, VA 20170	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER SHALL UNDERTAKE TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Gregg R. Glagore-SGREG
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ACORD 26 (2001/08) ACORD Advantage
1314317

Printed By: Certi/Category: Now

© ACORD CORPORATION 1988

Attachment
20-G-26

**July 14, 2020
(public hearing)**

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

July 14, 2020
(public hearing)

MAXIMUMS APPROVED

SECTION 1004 INTERNATIONAL BUILDING CODE AS ADOPTED BY THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE

LIVE LOAD 100 LBS. PER SQ. FT.

OCCUPANCY LOAD 78 Tables & Chairs w/8 Bar Stools

USE GROUP A-2 Assembly Use, Restaurant

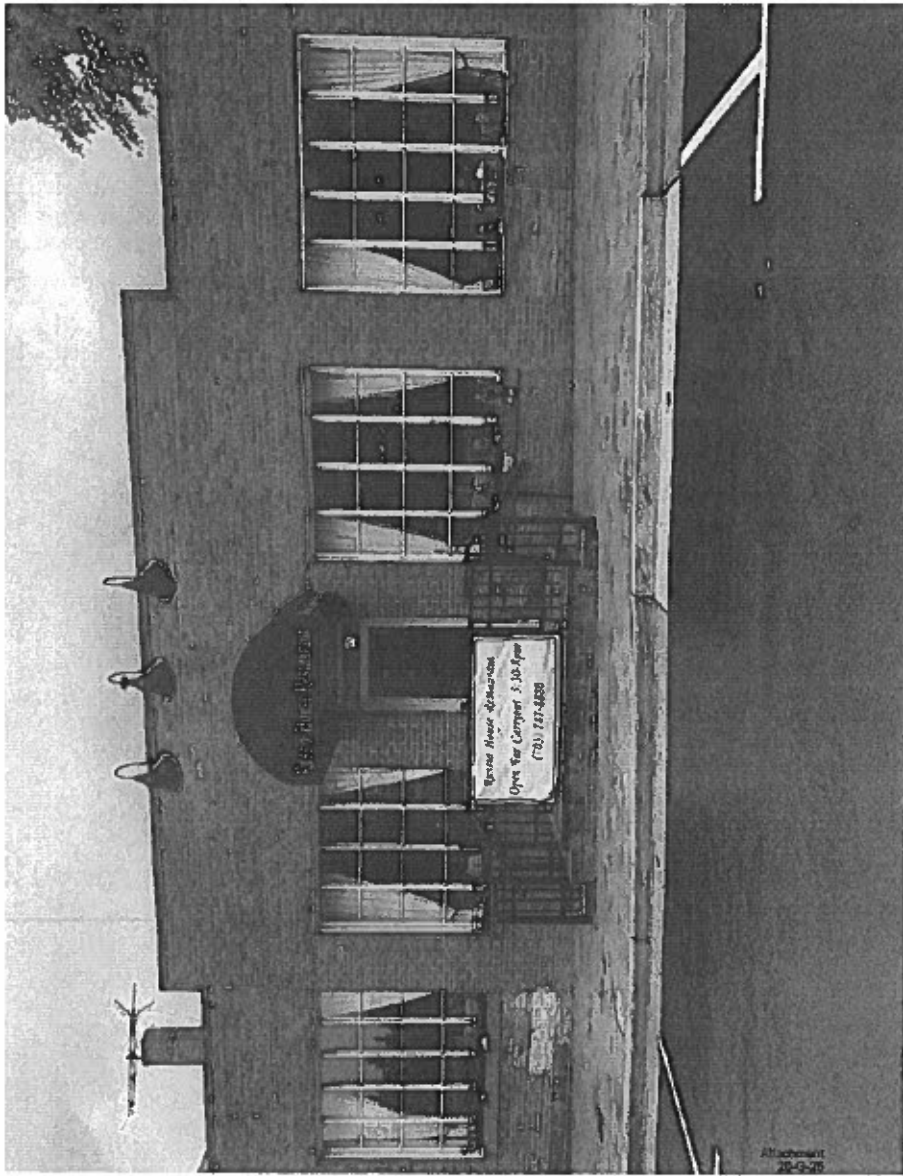
CONST. TYPE III-B ICC

FOR 724 Pine Street, Russia House Restaurant

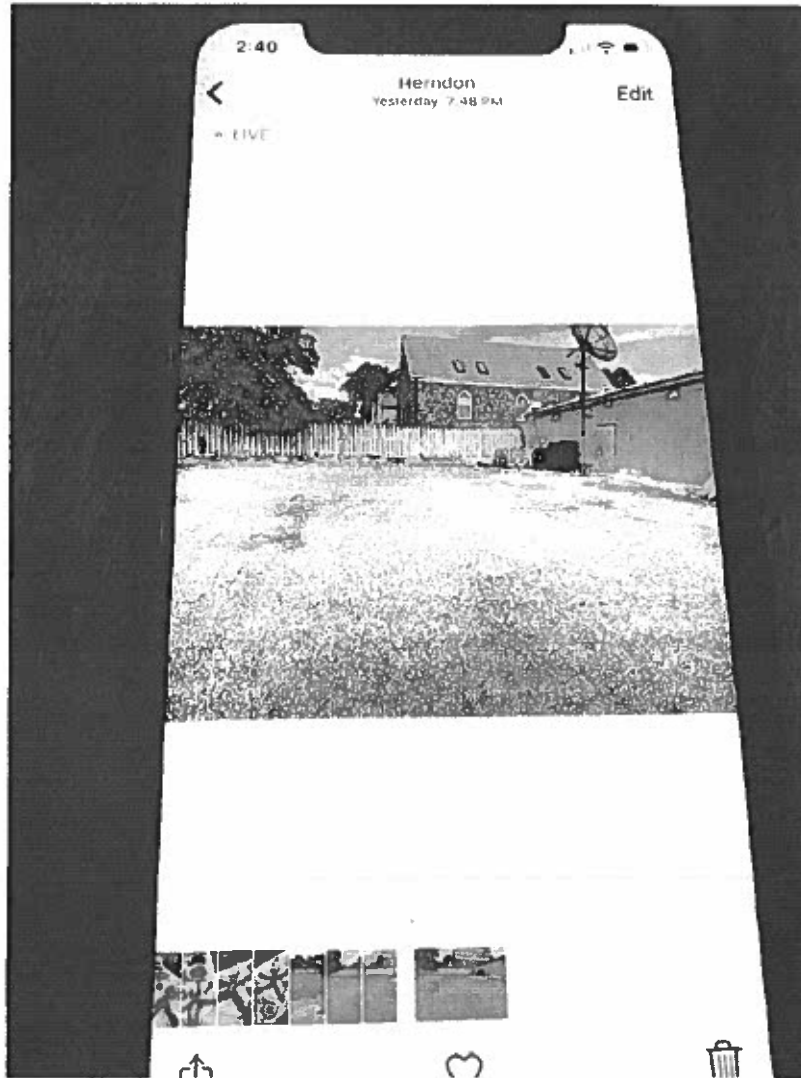
APPROVED May 8, 2014

John Crivian
BUILDING OFFICIAL

July 14, 2020
(public hearing)



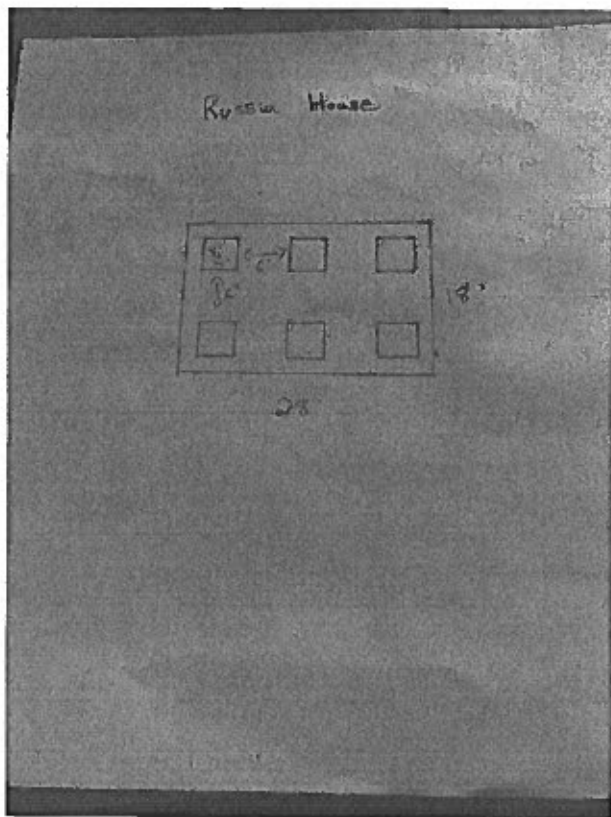
July 14, 2020
(public hearing)



10

Attachment
20-G-25

July 14, 2020
(public hearing)



**July 14, 2020
(public hearing)**

**July 14, 2020
(public hearing)**

Resolution 20-G-26, to ratify a Temporary License Agreement between the Town of Herndon and Sully's Pour House for use of public property or public right-of-way for temporary outdoor dining.

WHEREAS, the Town of Herndon is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas; and

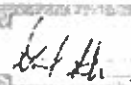
WHEREAS, due to the COVID-19 pandemic, indoor dining service for businesses were prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, pursuant to the Governor's Executive Orders, as amended; and Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended, the Town Manager was authorized to approve temporary license agreements for use of public property or public right-of-way for temporary outdoor dining.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the temporary license agreement dated May 29, 2020 between the Town of Herndon and **Sully's Pour House** for use of public property or public right-of-way for temporary outdoor dining, 754 Elden Street, #102, Herndon.

[Note: Attached for reference is the temporary license agreement b/n the town and Sully's Pour House dated May 29, 2020.]

July 14, 2020
(public hearing)

TOWN OF Herndon VIRGINIA	APPLICATION Temporary Outdoor Dining Permit
Permit Case Number: TODP20-007 _____ Application Date: <u>MAY 27</u> <u>20</u> _____	
Property Address: <u>754 ELDEN STREET # 102 HERNDON VA 20170</u>	
Establishment Name: <u>SULLY'S POUR HOUSE</u>	
Hours of Operation: <u>X</u> M <u>X</u> T <u>X</u> W <u>X</u> Th <u>X</u> F <u>X</u> S <u>X</u> Sun; from <u>11am-11pm</u>	
Applicant Information (Principal Operator of dining establishment):	
Name: <u>JENNA KUHN</u>	
Telephone No.: <u>7034640622</u> Email Address: <u>JENNA@SULLYSPOURHOUSE.COM</u>	
Are you the property owner? <u>N</u> Y/N	
Property Owner Information (If different from applicant):	
Property Owner <u>Y</u> / N Authorized Agent Acting on Behalf of the Property Owner <u>Y</u> / N	
Name(s): <u>GIL BLANKESPOOR</u>	
Mailing Address: <u>2003 LAKEPORT WAY RESTON VA 20191</u>	
Telephone No.: <u>7036208061</u> Email Address: <u>GILBLANKESPOOR@GMAIL.COM</u>	
Zoning Administrator Approval:  Date: <u>5/29/2020</u>	
REQUIRED APPLICATION SUBMISSION MATERIALS	
☐ Written authorization or signature from the property owner if the principal operator is not the property owner;	
☒ A plan which clearly shows the following:	
- o dimensions showing the layout and arrangement of the proposed outdoor seating area, including its overall dimensions, aisle widths, access to the adjacent building and restrooms, the locations of chairs, tables, umbrellas, barriers, and all other appurtenances to be located within the boundaries of the proposed outdoor seating area; if outdoor dining is located in a designated parking area, please show the location of available parking and identify traffic control measures. - o a copy of the Capacity Certificate for the establishment. - o If requesting a location on town-owned property: A Certificate of Insurance showing that the Town of Herndon and its employees, volunteers, and agents have been added as	
Department of Community Development 777 Lynn Street • Herndon, VA 20170 • (703) 782-7380 zoning.enforcement@herndon-va.gov	
Page 1 of 4	

**July 14, 2020
(public hearing)**

additional insureds to the applicants' Business Liability Insurance and, if applicable, Liquor Liability Insurance. The endorsement to the policy showing that the Town et al. has been added to the policy is also required. If the policy has additional insured language required by contract, please attach that portion of the policy to the Certificate of Insurance.

- o If requesting a location on town-owned property, execute the Temporary Outdoor Dining Use Agreement.
 - Town property consists of sidewalks adjacent to a public street, public parking lots, and public open spaces.

☒ If alcohol will be served on site, a copy of Virginia ABC license.

☒ Pictures (2-3) of the location of the outdoor dining.

CONDITIONS OF TEMPORARY OUTDOOR DINING PERMIT

1. Temporary outdoor dining area:
 - a. Must be located directly adjacent to the establishment, or a location within 100' of the establishment;
 - b. Fencing / barriers must be installed (water-filled security barriers recommended);
 - c. Concrete barriers, provided by the town, are required on town property used for outdoor dining;
 - d. Any modification to the approved plan must be submitted and approved;
 - e. The proposed dining operation and location will not significantly interfere with pedestrian traffic or otherwise constitute a health and safety risk;
 - f. The only permitted furniture within the temporary outdoor dining area are tables, chairs, and properly anchored umbrellas, unless specifically approved by the town. Tents with a capacity greater than 50 or other structures requiring a separate building permit are not permitted unless specifically approved by the town. Any proposed lighting must be approved by the town and any cables must be secured so as not to create a tripping hazard.
2. Must comply with all applicable Governor's Executive Orders, as amended, including, but not limited to:
 - a. Establishments must limit occupancy of both the establishment and the outdoor dining area to 50% of the lowest occupancy load on the certificate of occupancy.
 - b. No more than ten patrons may be seated as a party.
 - c. Tables at which dining parties are seated must be positioned six feet apart from other tables.
3. A copy of this permit must be kept on site at all times and a copy of the capacity certificate must be on display at all times.
4. Hours of operation shall be limited to between 6 am and 11 pm.
5. No other uses are permitted within the Temporary Outdoor Dining Area; including, but not limited to, live entertainment and retail sales.
6. No pets are permitted in Temporary Outdoor Dining Areas, except service animals.
7. No open flames, cooking or food prep is permitted in Temporary Outdoor Dining Areas.
8. Businesses are responsible for properly disposing of all trash in approved private refuse containers.
9. This permit shall expire 100 days from the Approval Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first.

Page 2 of 4

**July 14, 2020
(public hearing)**

TEMPORARY LICENSE AGREEMENT – WHEN LOCATED ON TOWN PROPERTY

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement"), is made as of the date it is signed by the Herndon Town Manager (the "Effective Date"), by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "Town") and (the "Applicant") (collectively, the "Parties").

WHEREAS, the Town is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas (the "Property"), as shown on EXHIBIT A – LICENSED AREA of the TEMPORARY OUTDOOR DINING PERMIT (the "Permit") attached hereto;

WHEREAS, due to the COVID-19 pandemic, indoor dining service for Applicant's business has been prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, the Parties desire to allow Applicant to enter upon the Property for the purpose of outdoor seating and dining (the "Use") in conjunction with the Applicant's business during the Term, as defined herein.

NOW, THEREFORE, that for and in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree as follows:

1. The Town hereby grants Applicant temporary use of the property for the purposes described in the permit.
2. This Agreement shall expire 100 days from the Effective Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first (the "Term").
3. The applicant shall comply with the terms of the Permit and all applicable town, state, and federal laws and regulations and maintaining at all times any other permit(s) required under applicable law for the use.
4. The parties expressly agree and contract that there shall be no fee for the use of the Town property during this term only.
5. 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.
6. Applicant hereby assumes all risk of damage by reason of its occupation of the property caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and the applicant 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.
7. Applicant 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.

Page 3 of 4

**July 14, 2020
(public hearing)**

This agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives the applicant written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

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

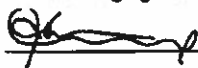
Umwelt Liability (if applicable) - \$1,000,000. Policy shall be endorsed to name the Town as an additional insured.

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 notice thereof to the Town.

8. Termination: The Town may terminate this Agreement upon 24 hours notice to Applicant for cause.
9. This Agreement is subject to ratification by the Town Council for the Town of Herndon pursuant to Ordinance #20-O-30.
10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.
11. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

WITNESS the following signatures and seals: BUSINESS:

By:



Its:

Jenna Kuhn -Owner

TOWN OF HERNDON:

By:

Wanda Hodge
Town Manager

29 May 2020
Date

July 14, 2020
(public hearing)



SULLY-1

OP ID: LT

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/29/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Langford Insurance Agency, Inc. 3107 Pine Oaks Way Herndon, VA 20171 Terry L. Williams	CONTACT Terry L. Williams PHONE: 703-938-3232 FAX: 703-938-2858 EMAIL: twilliams@langfordinsurance.com
INSURED Sully's Pour House (Meal Kitchens LLC dba) 42940 Golf View Drive Chantilly, VA 20152	INSURER(S) AFFORDING COVERAGE INSURER A: Cincinnati Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES		CERTIFICATE NUMBER:	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.			
FORM LTD	TYPE OF INSURANCE	POLICY NUMBER	POLICY PERIOD
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☐ GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC ☐ OTHER	EPP 0441808	05/30/2020 05/30/2021
			EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 500,000 MED EXP (Per occurrence) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOUNDING \$ 2,000,000
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	EPP 0441808	05/30/2020 05/30/2021
			COMBINED SINGLE LIMIT (Per occurrence) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per person) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LMB ☒ OCCUR ☐ EXCESS LMB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$	EPP 0441808	05/30/2020 05/30/2021
			EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
A	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ☐ ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER IS EXCLUDED? ☐ Y/N ☐ N/A	EWC 0441809	05/30/2020 05/30/2021
			PER STATUTE ☐ OTHER ☐ EL EACH ACCIDENT \$ 500,000 EL DISEASE - FA EMPLOYEE \$ 500,000 EL DISEASE - POLICY LIMIT \$ 500,000
A	Business Property	EPP 0441808	05/30/2020 05/30/2021
			Property 250,000
A	Liquor Liability	EPP 0441808	05/30/2020 05/30/2021
			Liquor 1,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) The Town of Herndon Virginia is an additional insured on the above general liability policy if required by written agreement.			

CERTIFICATE HOLDER TOWN-01 Town of Herndon 777 Lynn Street Herndon, VA 20170	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

ACORD 25 (2016/03)

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 Attachment
 20-G-26

**July 14, 2020
(public hearing)**

VAABC
Virginia Alcoholic Beverage Control Authority
2000 Marshall Road • P.O. Box 2780 • Alexandria, VA 22304-0780 • www.vaaabc.com

ABC LICENSE

License Number: 092413

License Type: Wine and Beer On Premises

License Period: JUN 01, 2019 TO JUN 30, 2020 **JUN 20**

License Period: JUN 31, 2020 TO JUN 30, 2021 **JUN 20**

Mixed Beverage Restaurant (Seating Capacity - 1 to 100 seats)

Licensee Name & Trade Address:
Messi Kuhns LLC
Sullys Pour House
754 Eldon St Ste 102
Hemdon VA 20170-4879

Commissioner's Office - Restaurant:
Alexandria, VA (703) 870-5565
(240) 800-5228

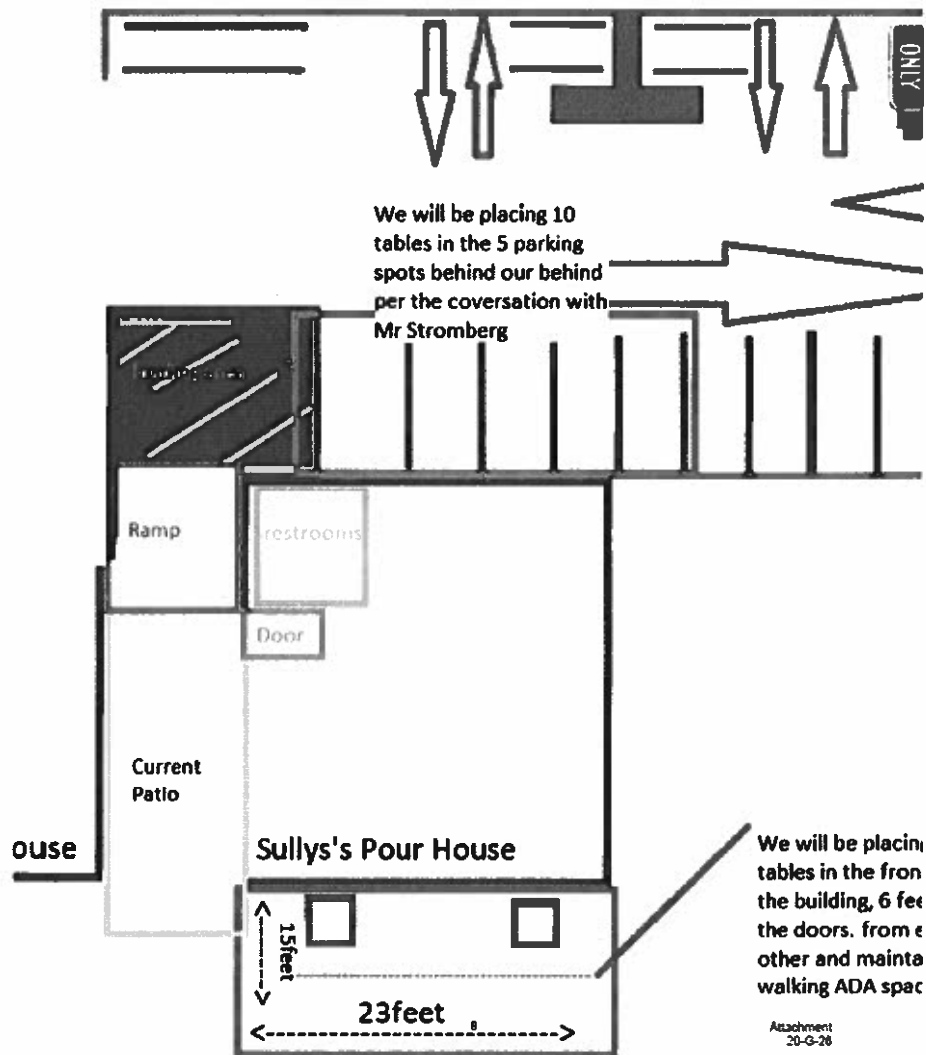
Fairfax County - TERRITORY # 70
Alexandria - Region 4
(703) 313-4432

By Order of the Alcoholic Beverage Control Board
Jeff P. [Signature]
Chairman

July 14, 2020
(public hearing)



July 14, 2020
(public hearing)



**July 14, 2020
(public hearing)**

Resolution 20-G-27, to ratify a Temporary License Agreement between the Town of Herndon and Zeffirelli Ristorante Italiano for use of public property or public right-of-way for temporary outdoor dining.

WHEREAS, the Town of Herndon is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas; and

WHEREAS, due to the COVID-19 pandemic, indoor dining service for businesses were prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, pursuant to the Governor's Executive Orders, as amended; and Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended, the Town Manager was authorized to approve temporary license agreements for use of public property or public right-of-way for temporary outdoor dining.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the temporary license agreement dated June 30, 2020 between the Town of Herndon and **Zeffirelli Ristorante Italiano** for use of public property or public right-of-way for temporary outdoor dining, 728 Pine Street, Herndon.

[Note: Attached for reference is the temporary license agreement b/n the town and Zeffirelli Ristorante Italiano dated June 30, 2020.]

July 14, 2020
(public hearing)



APPLICATION

Temporary Outdoor Dining Permit

Permit Case Number: TODP20-016 Application Date: _____ 20 ____

Property Address: 728 Pine Street, Herndon, VA 20170

Establishment Name: ZEFFIRELLI RISTORANTE ITALIANO

Hours of Operation: 1 M 1 T 1 W 1 Th 1 F 1 S Sun; from 5 PM - 10 PM

Applicant Information (Principal Operator of dining establishment):

Name: SYED HUSSAIN

Telephone No.: 703-318-7000 Email Address: ZEFL@AOL.COM

Are you the property owner? Yes Y/N

Property Owner Information (If different from applicant):

Property Owner _____ Y/N Authorized Agent Acting on Behalf of the Property Owner _____ Y/N

Name(s): SYED Z HUSSAIN

Mailing Address: 728 PINE STREET HERNDON, VA 20170

Telephone No.: 703-508-7769 (C) Email Address: ZEFL@AOL.COM

Zoning Administrator Approval:

Date: 6/25/2020

REQUIRED APPLICATION SUBMISSION MATERIALS

- ☐ Written authorization or signature from the property owner if the principal operator is not the property owner;
- ☒ A plan which clearly shows the following:
 - ☒ dimensions showing the layout and arrangement of the proposed outdoor seating area, including its overall dimensions, aisle widths, access to the adjacent building and restrooms, the locations of chairs, tables, umbrellas, barriers, and all other appurtenances to be located within the boundaries of the proposed outdoor seating area; if outdoor dining is located in a designated parking area, please show the location of available parking and identify traffic control measures.
 - ☐ a copy of the Capacity Certificate for the establishment.
 - ☐ If requesting a location on town-owned property: A Certificate of Insurance showing that the Town of Herndon and its employees, volunteers, and agents have been added as

Department of Community Development
777 Lynn Street • Herndon, VA 20170 • (703) 787-7380
zoning.enforcement@herndon-va.gov

Page 1 of 4

**July 14, 2020
(public hearing)**

additional insureds to the applicants' Business Liability Insurance and, if applicable, Liquor Liability Insurance. The endorsement to the policy showing that the Town et al. has been added to the policy is also required. If the policy has additional insured language required by contract, please attach that portion of the policy to the Certificate of Insurance.

- o If requesting a location on town-owned property, execute the Temporary Outdoor Dining Use Agreement.
 - Town property consists of sidewalks adjacent to a public street, public parking lots, and public open spaces.

☒ If alcohol will be served on site, a copy of Virginia ABC license.

☒ Pictures (2-3) of the location of the outdoor dining.

CONDITIONS OF TEMPORARY OUTDOOR DINING PERMIT

1. Temporary outdoor dining area:
 - a. Must be located directly adjacent to the establishment, or a location within 100' of the establishment;
 - b. Fencing / barriers must be installed (water-filled security barriers recommended);
 - c. Concrete barriers, provided by the town, are required on town property used for outdoor dining;
 - d. Any modification to the approved plan must be submitted and approved;
 - e. The proposed dining operation and location will not significantly interfere with pedestrian traffic or otherwise constitute a health and safety risk;
 - f. The only permitted furniture within the temporary outdoor dining area are tables, chairs, and properly anchored umbrellas, unless specifically approved by the town. Tents with a capacity greater than 50 or other structures requiring a separate building permit are not permitted unless specifically approved by the town. Any proposed lighting must be approved by the town and any cables must be secured so as not to create a tripping hazard.
2. Must comply with all applicable Governor's Executive Orders, as amended, including, but not limited to:
 - a. Establishments must limit occupancy of both the establishment and the outdoor dining area to 50% of the lowest occupancy load on the certificate of occupancy.
 - b. No more than ten patrons may be seated as a party.
 - c. Tables at which dining parties are seated must be positioned six feet apart from other tables.
3. A copy of this permit must be kept on site at all times and a copy of the capacity certificate must be on display at all times.
4. Hours of operation shall be limited to between 6 am and 11 pm.
5. No other uses are permitted within the Temporary Outdoor Dining Area; including, but not limited to, live entertainment and retail sales.
6. No pets are permitted in Temporary Outdoor Dining Areas, except service animals.
7. No open flames, cooking or food prep is permitted in Temporary Outdoor Dining Areas.
8. Businesses are responsible for properly disposing of all trash in approved private refuse containers.
9. This permit shall expire 100 days from the Approval Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first.

Page 2 of 4

**July 14, 2020
(public hearing)**

TEMPORARY LICENSE AGREEMENT - WHEN LOCATED ON TOWN PROPERTY

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement"), is made as of the date it is signed by the Herndon Town Manager (the "Effective Date"), by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "Town") and (the "Applicant") (collectively, the "Parties").

WHEREAS, the Town is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas (the "Property"), as shown on EXHIBIT A - LICENSED AREA of the TEMPORARY OUTDOOR DINING PERMIT (the "Permit") attached hereto;

WHEREAS, due to the COVID-19 pandemic, indoor dining service for Applicant's business has been prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, the Parties desire to allow Applicant to enter upon the Property for the purpose of outdoor seating and dining (the "Use") in conjunction with the Applicant's business during the Term, as defined herein,

NOW, THEREFORE, that for and in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree as follows:

1. The Town hereby grants Applicant temporary use of the property for the purposes described in the permit.
2. This Agreement shall expire 100 days from the Effective Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first (the "Term").
3. The applicant shall comply with the terms of the Permit and all applicable town, state, and federal laws and regulations and maintaining at all times any other permit(s) required under applicable law for the use.
4. The parties expressly agree and contract that there shall be no fee for the use of the Town property during this term only.
5. 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.
6. Applicant hereby assumes all risk of damage by reason of its occupation of the property caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and the applicant 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.
7. Applicant 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.

Page 3 of 4

**July 14, 2020
(public hearing)**

This agreement shall not take effect until evidence of insurance is provided to the Town and the town gives the applicant written confirmation that the type and amount of insurance accepted.

Insurance limits shall not be less than the following amounts:

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

Umbrella Liability (if applicable) - \$1,000,000. 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 notice thereof to the Town.

8. Termination: The Town may terminate this Agreement upon 24 hour notice to Applicant for cause.
9. This Agreement is subject to ratification by the Town Council for the Town of Herndon pursuant to Ordinance #20-O-30.
10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.
11. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

WITNESS the following signatures and seals: BUSINESS

By: _____

Its: _____

TOWN OF HERNDON:

By: _____

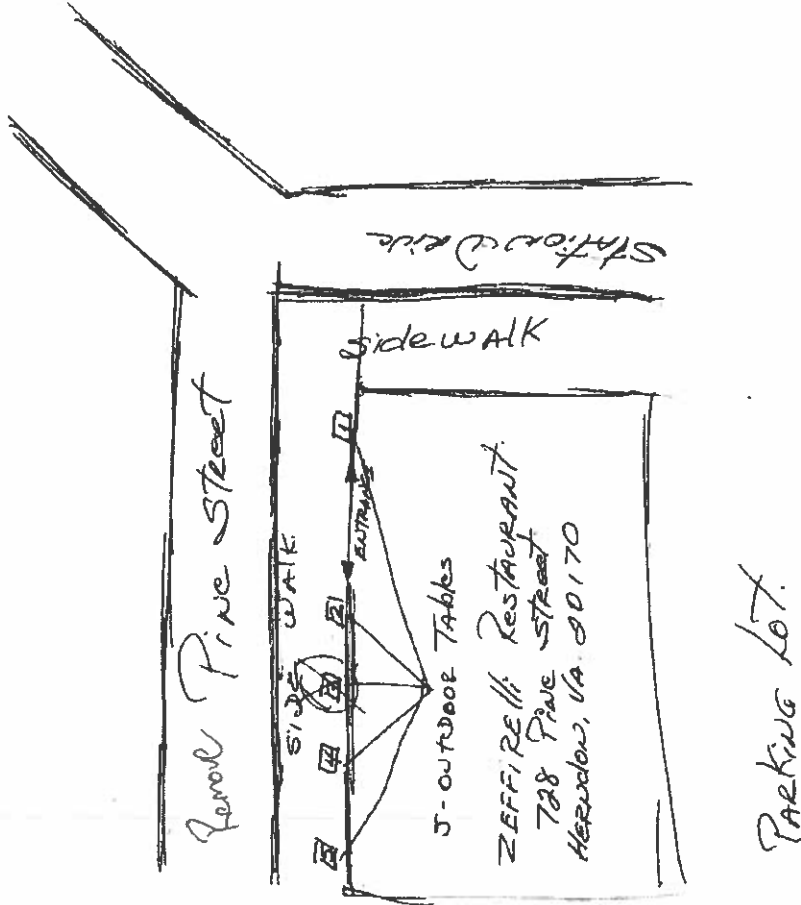
Town Manager

June 30, 2020

Date

Page 4 of 4

July 14, 2020
(public hearing)



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6

ALBUQUERQUE
20-9-27

July 14, 2020 (public hearing)

ERIE INSURANCE
COMMERCIAL GENERAL LIABILITY
CG 20 26 (Ed. 4/13) LP-9704

POLICY NUMBER 097-1400629

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s): The Town of Herndon and its employees, volunteers, and agents
Information required to complete this Schedule, if not shown above, will be shown in the Declarations

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law, and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

July 14, 2020
(public hearing)

VASC
VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY
2501 Herndon Road - P.O. Box 27461 - Herndon, VA 22061-0461

39278 ABC LICENSE

License Number 39278 **ABC LICENSE**

Class Type: Wine and Beer On and Off Premises **Expiration Date:** DEC 20

Licensee Name & Trade Address: **Expiration Date:** DEC 20
Pine Street Restaurant Inc
728 Pine St
Herndon VA 20170-4660

License Capacity: 150 seats **Expiration Date:** DEC 20
Pine Street Restaurant Inc
728 Pine St
Herndon VA 20170-4660

By Order of Alcoholic Beverage Control Board
[Signature]
Chairman

July 14, 2020
(public hearing)

VIRGINIA
DEPARTMENT OF PUBLIC WORKS
BUILDING INSPECTIONS

MAXIMUMS APPROVED
SECTION 1606.1 BUILD CODE AS ADOPTED BY THE VIRGINIA UNIFORM SIGNIFICANT BUILDING CODE

LIVE LOAD _____ LBS. PER SQ. FT.

OCCUPANCY LOAD _____ PERSONS PER SQ. FT.

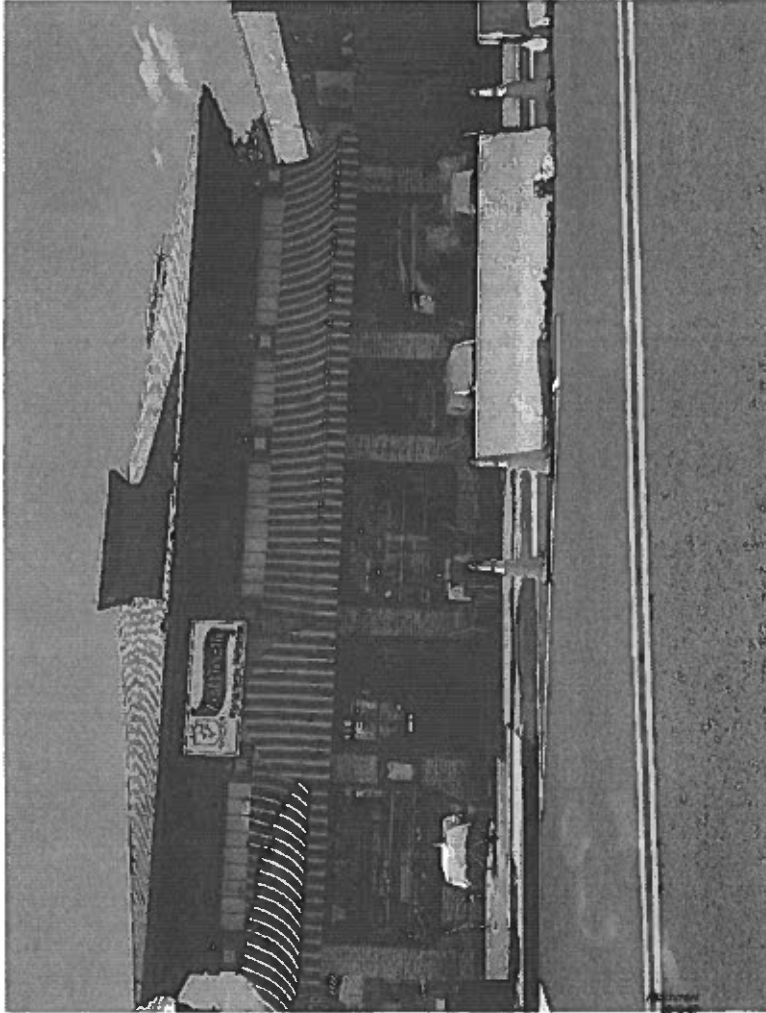
USE GROUP _____

CONST. TYPE _____

FOR 728 PINE STREET, Zephyrus, Virginia

APPROVED _____
PUBLIC INSPECTOR

**July 14, 2020
(public hearing)**



**July 14, 2020
(public hearing)**

11. ADJOURNMENT

On motion of Vice Mayor Olem, seconded by Councilmember Friedrichs, and carried by unanimous roll call vote by electronic means, the meeting of the July 14, 2020 public hearing adjourned at 8:27 p.m. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."


Lisa C. Merkel
Mayor


Amanda M. Kertz
Deputy Town Clerk



Minutes approved by Town Council: August 11, 2020.

**July 14, 2020
(public hearing)**

NOTE:

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