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HERNDON TOWN COUNCIL
Tuesday
October 27, 2020

Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments, Mayor Merkel stated that the October 27, 2020 Herndon Town Council Public Hearing would be by electronic means.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, October 22, 2020. In attendance electronically were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Jennifer Baker; Cesar del Aguila; Pradip Dhakal; Signe Friedrichs; and Bill McKenna.

Staff present during the meeting were: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; David Stromberg, Zoning Administrator; Lauri Sigler, Deputy Town Attorney; John Irish, Deputy Director of Public Works; and Amanda M. Kertz, Chief Deputy Town Clerk.

Announcements

Amanda M. Kertz, Chief Deputy Town Clerk welcomed those listening to the October 27, 2020 Town Council public hearing and stated that night's regularly scheduled Herndon Town Council meeting was a virtual meeting, which was being conducted electronically pursuant to:

- ❖ Virginia Code Section 2.2-3708.2, as amended;
- ❖ the Governor's Executive Orders, as amended; and

**October 27, 2020
(public hearing)**

- ❖ in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments.
- Proper notice of the electronic meeting was provided in accordance with the Code of Virginia;
- Agenda and meeting materials, along with information for viewing the meeting and submitting comments for the record are available on the town's website; and
- Electronic meetings will begin with a roll call to determine a quorum and all votes, including adjournment, will 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 asked Ms. Kertz to call the roll for attendance. Mayor Merkel asked each Councilmember to respond by clearly stating their name and indicating they were present.

Following the roll call for attendance, Mayor Merkel confirmed there was an electronic quorum present. All members were present electronically, with Mayor Merkel presiding. As Ms. Kertz had stated, the meeting that evening was being conducted pursuant to the appropriate laws associated with the COVID-19 pandemic disaster.

APPROVAL OF MINUTES

**Vote on October 6, 2020
Work Session Minutes**

On motion of Councilmember McKenna, seconded by Councilmember Friedrichs, and carried by unanimous roll call vote by electronic means, the minutes of the October 6, 2020 public hearing were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

**Vote on October 13, 2020
Public Hearing Minutes**

On motion of Councilmember McKenna, seconded by Vice Mayor Olem, and carried by unanimous roll call vote by electronic means, the minutes of the October 13, 2020 public

**October 27, 2020
(public hearing)**

hearing were approved. The vote was: Baker, del Aguila, Dhakal, 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, for comments followed by questions of Council.

Mr. Ashton stated that, although he missed the most recent call with Dr. Gloria Addo-Ayensu from the Fairfax County Health Department, he understood the county was still doing well. He had not received the most updated statistics. He encouraged everyone to continue wearing masks, washing hands, socially distancing, staying home if sick, and answering calls from the county health department. He attended a socially-distanced staff meeting with the Department of Public Works where the flu shot was re-emphasized, and he encouraged everyone to get their flu shot. He stated Halloween activity risks could be found on the town's website and that information came from state and county healthcare sources.

Mr. Ashton also stated outdoor seating for restaurants would expire at the end of November and staff was working on other possibilities to continue outdoor dining going forward. Staff was working with Fairfax County, who took action the prior week on outdoor seating, on how the regulations passed could work in the town. Staff planned to finalize plans later that month. He would use his emergency powers to sign any agreements and then bring those decisions to Council for approval.

Mr. Ashton also stated the draft Heritage District guidelines were done and he informed everyone of a Webex town hall event on Thursday, October 29. He encouraged those who were interested to sign up and attend.

Questions from Council

Responding to Councilmember Friedrichs' questions about safety regulations for outdoor restaurant seating, Mr. Ashton stated safety regulations would not be relaxed and the Fire Marshal would not be superseded. He stated the Fire Marshal would be working on more detailed guidelines for outdoor seating using a nuanced approach. He stated safety would not be sacrificed and the Fire Marshal would have primacy.

Councilmember Friedrichs provided further comments about outdoor dining.

3. COMMENTS FROM THE TOWN COUNCIL

Councilmember McKenna: Congratulated Mayor Merkel on being recognized before the Fairfax County Board of Supervisors, along with other women from Fairfax County.

**October 27, 2020
(public hearing)**

Councilmember Dhakal: Commended Mr. Ashton and staff for taking care of resident issues in a timely fashion.

Vice Mayor Olem: Echoed Councilmember McKenna's comments about Mayor Merkel and the other women recognized by the Fairfax County Board of Supervisors. She also let everyone know that her neighborhood would not be holding the "Haunted Island" or handing out candy on Halloween this year.

Mayor Merkel: Reminded those listening that there would not be a meeting on the following Tuesday (Election Day) and encouraged everyone to go vote. The Council's next work session would be on Tuesday, November 10.

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Merkel asked Amanda M. Kertz, Chief Deputy Town Clerk, whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and she stated that she had received comments for Comments from the Audience pertaining to CARES Act Funds. She had not received any transactional disclosures for that evening's meeting.

4. COMMENTS FROM THE AUDIENCE

Mayor Merkel outlined the participation process for Webex. She stated that the Council would use a speakers list to call on those who have registered to provide "Comments from the Audience" to address Council on any matter that was not listed as a public hearing item on that night's agenda. She would call on each person that signed up to speak and would also announce the name of the next speaker. She would then pause briefly while staff enabled the speaker's ability to address Council. Speakers would have up to three minutes and should state their name and address for the record. Comments from the Audience were limited to 45 minutes or approximately 15 speakers.

Mayor Merkel stated that a timer would appear on the Webex screen and encouraged speakers to wrap up when there were 30 seconds left on the timer. She stated that if staff saw that someone was having trouble connecting, the Town Clerk's office would contact them to add their comments to the record and to see what assistance could be provided. She then called on the following individual, who provided comments:

- Stevan Porter, 905 Vine Street, Herndon, thanked staff for assistance, voiced support for General item Ordinance 20-O-60 to amend Chapter 7 (ARTS DISTRICTS), and stated the importance of arts-oriented businesses and organizations for both tourism and town residents. A copy of his comments was provided to the Town Clerk's office as part of the record.

**October 27, 2020
(public hearing)**

Mayor Merkel encouraged members of the public to register for the speakers list on the town's website, www.herndon-va.gov and that the option to speak was part of the Webex registration form.

PUBLIC HEARINGS

5. **Ordinance 20-O-58, to authorize the use of eminent domain for the acquisition of a fee simple interest and a temporary easement on property owned by The Richmond Corporation at 640 Elden Street, Tax Map #: 0162-02-0225A, located in the northeast quadrant of the Elden Street and Monroe Street intersection, for public use by condemnation for transportation facility improvements at the Elden Street and Monroe Street intersection, Herndon.**

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, October 9 and Friday, October 16, 2020 issues.

Mayor Merkel opened that night's public hearings. She recognized the Deputy Director of Public Works, John Irish for the staff report and stated the Deputy Town Attorney, Lauri Sigler would also provide input.

Mr. Irish presented the staff report and PowerPoint, dated October 20, 2020, which are on file in the Town Clerk's office. He reviewed the project's location and proposed improvements: a new traffic signal, brick crosswalks and sidewalks with ADA compliant curb ramp, and a revised curb return in the southeast quadrant at the Elden and Monroe Street intersection. To construct the improvements, the acquisition of several interests in land were identified as necessary. He recognized Ms. Sigler to continue the staff report.

Ms. Sigler reviewed the state requirements for the town to use eminent domain and stated the town made a written, bona fide but ineffectual effort to acquire right-of-way in fee simple and a temporary easement from the landowner who did not respond to the offer. Therefore, the town now seeks to file a Certificate of Take and prosecute to completion a condemnation action against the land owned by The Richmond Corporation, as well as against The Richmond Corporation, for the town's condemnation of these necessary interests in land over the aforementioned real estate so that construction of this critical project can begin. Staff recommends approval of the proposed ordinance, as presented.

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

Vice Mayor Olem confirmed with Ms. Sigler that all owners involved in this project, except for The Richmond Corporation, responded, and she confirmed with Mr. Irish that 132 square feet was the amount that would be taken permanently.

**October 27, 2020
(public hearing)**

Councilmember Friedrichs and Ms. Sigler discussed how the amount given was established, and Mr. Irish stated the approximate project length would be six months after starting construction in response to her questions regarding the timeline.

Councilmember Baker confirmed with Ms. Sigler that there had been no response from The Richmond Corporation. Responding to further queries from Councilmember Baker, Mr. Irish stated the Certificate of Take would help prevent delays in the project and that access to other nearby businesses would not be taken away.

Responding to Councilmember del Aguila, Ms. Sigler stated the town would have title immediately on filing the Certificate of Take and discussed how often property owners did not respond.

Mayor Merkel reviewed the public comments process and asked Amanda M. Kertz, Chief Deputy Town Clerk, if there were any speakers registered for this item. Ms. Kertz confirmed there were no speakers registered.

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

Vice Mayor Olem moved approval of Ordinance 20-O-58, as presented. Councilmember Dhakal seconded the motion.

Vice Mayor Olem and Councilmember Friedrichs provided brief comments.

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-58, to authorize the use of eminent domain for the acquisition of a fee simple interest and a temporary construction easement on property owned by The Richmond Corporation at 640 Elden Street, Herndon, Virginia, Tax Map #: 0162-02-0225A, located in the northeast quadrant of the Elden Street and Monroe Street intersection, for public use by condemnation for transportation facility improvements at the Elden Street and Monroe Street intersection, Herndon Virginia.

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

1. The Town of Herndon made a bona fide but ineffectual effort to acquire the 132 square foot right of way in fee simple and the 111 square foot temporary construction and grading easement from The Richmond Corporation for \$5,291.96 (including landscaping) in connection with the Elden Street and Monroe Street

**October 27, 2020
(public hearing)**

intersection project. The landowner did not accept this offer and negotiations are at an impasse. Therefore, the Town Attorney and outside counsel on behalf of the Town are authorized and directed to file a Certificate of Take and prosecute to completion a condemnation action against the land owned by The Richmond Corporation as well as The Richmond Corporation for the Town's condemnation of these interests in property over real estate located at the northeast quadrant of the Elden Street and Monroe Street intersection designated as Tax Map #: 0162-02-0225A, and shown as on plat dated August 27, 2020, prepared by Rice Associates of Manassas, Virginia, which said plat is attached hereto and incorporated herein.

2. The Town Council approves the following proposed public use for this acquisition: a new traffic signal, brick crosswalks and sidewalks with ADA compliant curb ramps, and a revised curb return in the southeast quadrant of the intersection for improved vehicular and pedestrian traffic movements.
3. The Town Council directs the Town Manager, Town Attorney, and their outside counsel to acquire the above described interests in property for public use by condemnation, purchase, or other means. The Town staff is hereby authorized to pay the compensation set forth in paragraph 1 above into the Fairfax County Circuit Court contemporaneously with filing a Certificate of Take.
4. The property interests shall be used for the Elden Street and Monroe Street intersection project. The property interests are necessary for the construction, maintenance, improvement of, and access to, the transportation facility improvements, for the public safety and welfare of the Town.
5. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached is the plat dated August 27, 2020, prepared by Rice Associates of Manassas, Virginia, as referenced in the ordinance.]

October 27, 2020
(public hearing)

OWNER'S CERTIFICATE
THE UNDERSIGNED, OWNER OF THE LAND HEREIN SHOWN AND DESCRIBED IN THE
SURVEY'S CERTIFICATE, HEREBY CERTIFY THAT THE SAID SURVEY WAS PREPARED
FOR CONSTRUCTION AND MAINTENANCE OF STREET IMPROVEMENTS.

DATE: _____
OWNER: _____
ADDRESS: _____
CITY: _____

OWNER'S CERTIFICATE
I, _____, OWNER OF THE LAND HEREIN SHOWN AND DESCRIBED IN THE
SURVEY'S CERTIFICATE, HEREBY CERTIFY THAT THE SAID SURVEY WAS PREPARED
FOR CONSTRUCTION AND MAINTENANCE OF STREET IMPROVEMENTS.

DATE: _____
OWNER: _____
ADDRESS: _____
CITY: _____

NOTES
1. THE PROPERTY SHOWN HEREIN IS
LOCATED IN THE CITY OF RICHMOND,
STATE OF CALIFORNIA, COUNTY OF
SANTA CLAY, AND IS SUBJECT TO THE
SANTA CLAY COUNTY GENERAL ORDINANCE
NO. 100,000, AS AMENDED, WHICH
REQUIRES THE SUBMITTER TO PROVIDE
EVIDENCE OF THE NECESSITY FOR THE
IMPROVEMENTS TO BE CONSTRUCTED
ON THE LAND SHOWN HEREIN.

THE RICHMOND CORPORATION
1000 11th St.
RICHMOND, CA 94801
TEL: (415) 771-1111
FAX: (415) 771-1112
WWW.RICHMONDCORP.COM

RICE ASSOCIATES
Engineering, Planning, and Construction
1000 11th St., Suite 100
RICHMOND, CA 94801
TEL: (415) 771-1111
FAX: (415) 771-1112
WWW.RICEASSOCIATES.COM

AREA ILLUSTRATION
SOURCE: FOR PUBLIC STREET IMPROVEMENTS, 1/2 IN. = 1 FT.
CONSTRUCTION CONSTRUCTION, 1/2 IN. = 1 FT.

RA
RICE ASSOCIATES

Attachment
20-O-58

**October 27, 2020
(public hearing)**

6. **Ordinance 20-O-59, to consider Zoning Map Amendment, ZMA #20-01, 450, 455, 460, 465, 470, 475, 480, and 485 Springpark Place, to consider a zoning map amendment for a Unified Commercial Subdivision. The proposed rezoning would allow for the subdivision of four parcels into eight parcels with each parcel containing a building and associated improvements. Fairfax County Tax Map Reference Numbers: 0162-02-0164B, 0162-02-0164C, 0162-02-0164D, and 0162-02-0164E. Agent: Wire Gill, LLP. Applicant: Penzance. Property Owner: Springpark Place, LLC.**

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, October 9 and Friday, October 16, 2020 issues.

Mayor Merkel recognized the Zoning Administrator, David Stromberg, for the staff report.

Mr. Stromberg presented the staff report and PowerPoint dated October 20, 2020, which are on file in the Town Clerk's office. The applicant was seeking a rezoning to allow for a future unified commercial subdivision. The site currently consisted of eight buildings on four parcels. The applicant intended to subdivide the property into eight lots with each respective lot containing a building and associated site improvements which require Town Council approval. He reviewed the location, zoning, proposed site division, and project details.

At its September 28, 2020 public hearing, the Planning Commission recommended approval. The Commission shared staff's concerns regarding shared parking and long-term infrastructure maintenance and was satisfied with the revisions the applicant made to the proffer statement. Staff recommends approval of the proposed ordinance as presented.

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

Responding to Councilmember Friedrichs, Mr. Stromberg stated that Herndon does have other unified commercial subdivisions and that the owners would be limited with modifications. He also confirmed that to make major changes, like adding a second level, the property owners could join back together and request a rezoning in the future, if all the owners agreed on the change. This was to prevent one singular property from redeveloping on its own.

Mayor Merkel recognized Ken Wire, Wire/Gill LLP, applicant's agent, for comments. She stated that Lauren Kowall with Penzance, applicant, was also available for questions.

- Mr. Wire expressed his appreciation to staff and provided comments about the property and the proffers.

**October 27, 2020
(public hearing)**

Mayor Merkel asked Amanda M. Kertz, Chief Deputy Town Clerk, if there were any speakers registered for this item. Ms. Kertz confirmed there were no speakers registered.

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

Councilmember Friedrichs moved approval of Ordinance 20-O-59, dated and distributed October 26, 2020, revised as follows:

- **REVISE** page 1, paragraph A:

“A.Development Plan dated August 26, 2020 and the Proffer Statement dated **October 16** ~~September 23~~, 2020...”

Councilmember Baker seconded the motion.

There were brief comments from Council.

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

Ordinance 20-O-59, Zoning Map Amendment ZMA #20-01. To amend the zoning of the property at 450, 455, 460, 465, 470, 475, 480, and 485 Springpark Place, identified as Fairfax County Tax Map Reference Numbers 0162-02-0164B, 0162-02-0164C, 0162-02-0164D, and 0162-02-0164E, to allow for a unified commercial subdivision and to offer proffers. The property is zoned PD-B, Planned Development – Business, and its land use designation in the Comprehensive Plan is “Office Parks and Flexible Space”

In adopting this Ordinance, the Town Council has considered the factors set out in 15.2-2284, Code of Virginia (1950) as amended.

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

A. The zoning of the property described below, lying in the Town of Herndon, Fairfax County, Virginia, is amended to allow a Unified Commercial Subdivision as proposed in the Springpark Place LLC/Wire Gill LLP/Vika Virginia LLC Development Plan dated August 26, 2020 and the Proffer Statement dated October 16, 2020 for ZMA #20-01 and in accordance with Sections 78-50.5 and 78-155.1 of the Town of Herndon Zoning Ordinance.

**October 27, 2020
(public hearing)**

The property is shown in the above referenced Development Plan and described in the land records of Fairfax County in Deed Book 25891 on page 1661 and in Deed Book 6330 page 1112. The total land area of the property is 21.75 acres.

B. This rezoning shall be governed by this ordinance, the Town of Herndon Zoning Ordinance, the above referenced Proffer Statement for ZMA #20-01 and the above referenced Generalized Development Plan for ZMA #20-01. The Proffer Statement is included as an attachment to this ordinance. This Zoning Map Amendment is consistent with the adopted 2030 Comprehensive Plan of the Town of Herndon.

C. The Town Council approves the following modifications to the zoning regulations, as allowed under Section 78-50.2(d):

- A modification to Section 78-100.5 to allow compact parking spaces (minimum 16 feet by 7.5 feet).
- A modification to Section 78-130.9 to allow the maximum lighting requirements to be exceeded at property lines interior to the development.
- A modification to Section 78-50.5(f)(2) to allow the maximum permitted density to exceed 0.4 on Lots 1A, 1B, and 3A in accordance with the Generalized Development Plan.
- A modification to Section 78-50-5(g) to allow a lower percentage of open space on Lots 1B and 3A in accordance with the Generalized Development Plan.
- A modification to Section 78-100.2 to allow a lower amount of required parking on Lots 1A, 1B, 3A, and 4A in accordance with the Generalized Development Plan.

D. As to the modifications set out in item C. above, the Town Council finds that such modifications will afford equal or greater assurance of meeting the goals of the zoning ordinance, Town of Herndon, Virginia, as set out in the preamble of that ordinance.

E. This ordinance shall be effective on and after its adoption.

[*The version of Ordinance 20-O-59 that was approved by the Town Council on October 27, 2020 inadvertently omitted Lot 3B from the parking space modification and only listed Lots 1A, 1B, 3A, and 4A. The ordinance was later readopted by the Town Council on January 26, 2021 to include Lot 3B.]

[Note: Attached for reference, at the end of the minutes, are the Proffer Statement dated October 16, 2020 and the proposed Springpark Place LLC/Wire Gill LLP/Vika Virginia LLC Development Plan dated August 26, 2020 as referenced in the ordinance.]

**October 27, 2020
(public hearing)**

GENERAL

7. **Ordinance 20-O-60, to amend Chapter 7 (ARTS DISTRICTS), to amend the definition of an Arts Business and to create a new definition for Arts Focused Redevelopment and establish new incentives for creation and support of new arts redevelopment projects.**

Mayor Merkel recognized the Town Attorney, Lesa Yeatts for the staff report.

Ms. Yeatts presented the staff report dated October 20, 2020, which is on file in the Town Clerk's office. The proposed ordinance would amend Chapter 7 (ARTS DISTRICTS) of the town code, which the Council established in January 2016 under the authority of the Code of Virginia. The amendment would create a new definition of "arts business," add a new term called an "arts focused redevelopment," and establish incentives for support and creation of arts focused redevelopment projects. An "arts business" would now be called an "arts business or organization" to include not-for-profit organizations.

Ms. Yeatts discussed the specifications to qualify as an arts business or organization, which included that greater than 50 percent of the floor area of the business or organization must be used for arts instruction, media arts, performing arts, performing arts venues, visual arts creation, or visual arts exhibits as defined in the town code. The business or organization could engage in related, incidental retail sales, as an accessory use. An "arts focused redevelopment" would be entitled to other incentives in addition to those available to an individual arts business or organization. To qualify as an arts focused redevelopment project, the project must be located in the Planned Development – Traditional Downtown (PD-TD) zoning district on or after the adoption of this ordinance, among other requirements included in the staff report. Ms. Yeatts also discussed the incentives available to the arts focused redevelopment property, which included an annual rebate up to 100 percent of the town's real estate taxes attributable to the redevelopment for up to 10 years. Staff hoped that the incentives offered in this ordinance would encourage businesses to request rezoning to PD-TD.

Ms. Yeatts stated that the proposed amendments would create additional opportunities to expand the type, quantity, and quality of art offerings to town residents and increase the town's presence as a destination for art activities. She stated that the town's Zoning Administrator, David Stromberg, was available for questions on this item. Staff recommends approval of the proposed ordinance, as presented.

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

There was a brief question and answer session between Councilmember Friedrichs, Ms. Yeatts, and Mr. Ashton about the zoning area, tax rebates, and qualifications for the incentives.

**October 27, 2020
(public hearing)**

Ms. Yeatts clarified with Councilmember Friedrichs that there were two different types of incentives being discussed.

Responding to Councilmember del Aguila, Mr. Ashton stated that there had not been changes to this item since the work session, but another downtown property owner had called his office to thank staff and the Council for their efforts on this item.

Councilmember Dhakal asked for further clarification on Councilmember Friedrichs' question about property value and the related tax rebates which Mr. Ashton and Mr. Stromberg provided.

Vice Mayor Olem moved approval of Ordinance 20-O-60, as presented. Mayor Merkel seconded the motion.

There were brief comments from Council.

All Councilmembers, Vice Mayor Olem, and Mayor Merkel provided comments supporting Ordinance 20-O-60.

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-60, to amend Chapter 7 (ARTS DISTRICTS), to amend the definition of an Arts Business and to create a new definition for Arts Focused Redevelopment and establish new incentives for creation and support of new arts redevelopment projects.

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

1. The following section of the Herndon Town Code (2000), as amended, is amended and re-ordained as follows:

Chapter 7 - ARTS DISTRICTS

ARTICLE I. - IN GENERAL

Sec. 7-1. - Introduction, intent and purpose.

In accordance with Section 15.2-943.1 of the Code of Virginia, as amended, it is tThe purpose of this chapter is to create arts districts to attract new arts venues, support existing arts venues, and to encourage the expansion of existing venues

**October 27, 2020
(public hearing)**

in the town. These new, existing, and expanded businesses will increase the town's presence as a destination for arts activities, as well as the opportunities and benefits to town residents of arts offerings.

(Ord. No. 16-O-02, § 1, 1-12-2016)

Sec. 7-2. - Definitions.

When used in this chapter, the following terms shall have the meanings ascribed in this section:

Arts business or organization is a business **or not-for-profit** organization **physically located within a town arts district where the principal use, defined as greater than 50% of the floor area, is used** ~~primarily engaged in~~ for arts instruction, media arts, performing arts, performing arts venue, visual arts creation or visual arts exhibit as defined herein. The term includes a museum and an arts office use. The business may engage in related, incidental retail sales-, **as an accessory use.**

Arts focused redevelopment is a new redevelopment project physically located within a town arts district on or after October 27, 2020, and in the PD-TD - Planned Development – Traditional Downtown zoning district, where a minimum of 15% of the ground-level gross floor area of the redevelopment project, exclusive of structured parking, is dedicated to qualified arts businesses or organizations including visual arts exhibits.

Arts instruction teaches individuals skills in the performing arts, media arts, or visual arts through experience, study, performance and assessment, providing participatory learning and engaging students with skilled artists, teachers, and art.

Arts office is an office use associated with an arts business **or organization**, such as performing arts events organization and promotion, or arts production.

Business shall have the same meaning as provided for in the business license tax in chapter 30 of this Code.

District means an arts district established pursuant to section 7-3 herein.

Existing business or organization is an arts business **or organization** which is physically located within the district prior to July 1, 2016.

Expanded business or organization is an existing arts business **or organization** which expands physically into new space within the district, to add at least 20 percent in gross square feet (enclosed or outdoors).

**October 27, 2020
(public hearing)**

Media arts are film, video, audio and other forms of digital and Web-based media, including the production, exhibition, distribution, and preservation of the work.

Museum is a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or aesthetic purposes which, using a professional staff, owns or uses tangible objects, cares for them, and exhibits them to the public in a physical setting on a regular basis.

New business is a new arts business **or organization** physically located or locating in the district on or after July 1, 2016, which was not actively engaged in the conduct of trade or business in the district prior to the submission of a completed program qualification application. The new business **or organization** shall generate a new use of the land or building, and not the continuation of an existing use. An existing business **or organization** shall not qualify for incentives by reorganizing or changing its form in a manner that does not alter the basis of the business assets or result in a taxable event.

Performing arts are live music, theater, dance (excluding dance as exercise or fitness activity), and opera.

Performing arts venue is a place of indoor or outdoor public assembly for the presentation of the performing arts or media arts.

Qualified arts business or organization is an existing or new arts business, in an **arts** district that has successfully completed the process described in section 7-6 herein. Businesses providing personal services, **including but not limited to a bank, real estate office or attorney's office; or a bowling alley; a brewpub; a restaurant; or** a business intended primarily for exercise or fitness, are not eligible to be qualified arts businesses.

***Qualified arts focused redevelopment* is an arts focused redevelopment in an arts district that has successfully completed the process described in section 7-6 herein.**

Visual arts are the arts of painting, photography, sculpture, printmaking, drawing, design, folk and traditional arts and craft.

Visual arts exhibit is a business or gallery **or defined outdoor area within an arts focused redevelopment** which displays the visual arts to visitors.

(Ord. No. 16-O-02, § 1, 1-12-2016)

**October 27, 2020
(public hearing)**

Sec. 7-3. – Districts, establishment and boundaries.

There is hereby established a Downtown Herndon Arts District, consisting of all the area as shown on the map entitled "Herndon Arts District," dated January 12, 2016. The Herndon Arts District Map is hereby declared to be a part of this article and to have the same force and effect as if it was fully set forth and described herein. The Herndon Arts District Map shall be kept on file in the office of the community development department.

The town shall provide identifying signs or markings to delineate and identify any arts district created pursuant to this section.

(Ord. No. 16-O-02, § 1, 1-12-2016) **ARTICLE II. - ARTS DISTRICT INCENTIVES**

Sec. 7-4. - Waiver of fees.

- (a) A qualified arts business is afforded a 100 percent reduction of planning, zoning, and building permit application fees up to \$2,000.00 total for any single project incurred in the initial establishment of the business, or expansion of the business, in an arts district.
- (b) A qualified arts focused redevelopment is entitled to any eligible waiver of fees provided for in Section 7-4(a), or is afforded a 50 percent reduction in the water availability fees, sewer availability fees and building permit fees incurred in the initial establishment of the redevelopment project, whichever is greater.

Sec. 7-4.1 – Rebate of real property taxes.

- (a) A qualified arts focused redevelopment shall be entitled to an annual rebate of up to 100 percent of the real property taxes attributed to the total redevelopment project for the real estate property taxes due to the town for up to 10 consecutive calendar years. Year one is the calendar year in which the arts focused redevelopment becomes qualified if it is qualified prior to June 30 of the first year. Otherwise, year one shall be the year following the year in which the arts focused redevelopment is qualified. In the case of a multi-year incentives, an arts focused redevelopment shall establish its qualification for the incentives on an annual basis by January 1.

**October 27, 2020
(public hearing)**

Sec. 7-4.2 – Exemptions from town zoning ordinance.

- (a) Notwithstanding a written proffer to the contrary, a qualified arts focused redevelopment shall be entitled to a reduction in the number of parking spaces required for multi-family residential uses to not less than 1.25 spaces per dwelling unit.
- (b) Notwithstanding a written proffer to the contrary, a qualified arts focused redevelopment shall be entitled to defer a per residential unit proffer contribution to the town for recreational amenities so that the total contribution shall be paid no later than 10 years from the date of approval of the application issued pursuant to section 7-6 herein.

(Ord. No. 16-O-02, § 1, 1-12-2016)

Sec. 7-5. – Signage.

A qualified arts business is eligible for any provisions described for arts districts in ~~section 7-8-508.7 of the zoning ordinance.~~ **Chapter 78 of the Town Code.**

(Ord. No. 16-O-02, § 1, 1-12-2016)

ARTICLE III. – ADMINISTRATION AND ENFORCEMENT

Sec. 7-6. - Applications.

- (a) The town manager or his designee will administer applications through the community development department. In determining eligibility for the incentives contained herein, the town manager or his designee shall be guided by this chapter.
- (b) A new or existing arts business **or organization or an arts focused redevelopment** seeking to obtain the incentives of an arts district will meet with the community development department staff and submit a completed qualification application. The community development department shall perform an initial review of the business or project to determine if it qualifies for incentives and then forward the application and recommendation to the town manager or his designee. The town manager, or his designee acting as the agent of the town council, shall review the application and recommendation and make a final determination as to whether the business or project is qualified for the incentives herein.

**October 27, 2020
(public hearing)**

- (c) The application shall be signed by an official officer, member, agent or representative of the business authorized to sign on its behalf.
- (d) If the town manager or his designee denies an application, he shall do so in writing stating the reasons therefore, and affording the applicant an opportunity to respond in writing or in person.

(Ord. No. 16-O-02, § 1, 1-12-2016)

Sec. 7-7. – Compliance with article.

A qualified arts business **or organization or a qualified arts focused redevelopment** that fails to pay in full any tax imposed by the town by the due date shall lose its incentive eligibility and its entitlement to any incentives afforded under this article until such taxes are paid in full.

Sec. 7-8. – Confidentiality.

To the extent permitted under the Virginia Freedom of Information Act, confidential business records shall be safeguarded from disclosure; provided, however, that as a condition of receiving the incentives provided herein, each applicant agrees to the release by the town of the monetary value of any incentive received. This agreement shall appear prominently upon the application for incentives and each signature upon an application shall bind the applicant to this condition.

(Ord. No. 16-O-02, § 1, 1-12-2016)

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

CONSENT AGENDA

- 8. **Resolution 20-G-48, to award Contract #D-20-01, General Engineering Services; and**
- 9. **Resolution 20-G-49, to appoint Jay Donahue as a “town resident” member to the Herndon Planning Commission.**

On motion of Vice Mayor Olem, seconded by Councilmember Dhakal, the 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.”

**October 27, 2020
(public hearing)**

Resolution 20-G-48, to award of Contract #D-20-01, General Engineering Services.

- WHEREAS,** general engineering services are required for Capital Improvement Program (CIP) projects; and
- WHEREAS,** general services task order consultants have been determined to be a cost effective and efficient means in completing task requirements in support of the execution of the CIP and other Town Council approved efforts; and
- WHEREAS,** RFP #D-20-01 was advertised on October 29, 2019 and clearly identified the nature of the intended services; and
- WHEREAS,** on November 22, 2019 the Town received 15 proposals from general engineering services firms; and
- WHEREAS,** an evaluation committee reviewed the proposals and selected three of the applicants to interview, and interviews took place on August 20th of 2020; and
- WHEREAS,** the selection committee selected J2 Engineers, Inc. as the best qualified to provide general engineering services for town projects; and
- WHEREAS,** negotiations with J2 Engineers, Inc. have resulted in favorable hourly rates and unit costs for the variety of professional and non-professional disciplines and supporting tasks that will be required for the assigned work as follows:

Principal-Expert Witness	\$332.00/hour
Principal	\$220.00/hour
Associate	\$200.00/hour
Sr. Project Manager	\$195.00/hour
Sr. Transportation Engineer	\$195.00/hour
Sr. Land Planner / Sr. Landscape Architect	\$175.00/hour
Land Planner / Landscape Architect	\$165.00/hour
Project Manager	\$165.00/hour
Engineer III	\$125.00/hour
Engineer II	\$115.00/hour
Engineer I	\$105.00/hour
Sr. Landscape Designer	\$140.00/hour
Landscape Designer II	\$120.00/hour
Landscape Designer I	\$105.00/hour
Technician III	\$110.00/hour

**October 27, 2020
(public hearing)**

Technician II	\$100.00/hour
Technician I	\$ 90.00/hour
Licensed Land Surveyor	\$150.00/hour
Project Surveyor	\$130.00/hour
Survey Crew (1 Person)	\$100.00/hour
Survey Crew (2 Person)	\$150.00/hour
Survey Crew (3 Person)	\$170.00/hour
Survey Computer	\$105.00/hour
Clerical	\$ 68.00/hour; and

WHEREAS, funds to support individual Task Orders will be provided from the appropriate Capital Improvement and Professional Services accounts.

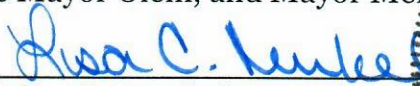
NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards Contract #D-20-01, General Engineering Services, to J2 Engineers, Inc. at the negotiated hourly and unit rates.

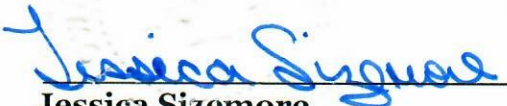
Resolution 20-G-49, to appoint Jay Donahue as a “town resident” member to the Herndon Planning Commission.

BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby appoints Jay Donahue as a “town resident” member to the Herndon Planning Commission to fill an unexpired a four-year term ending July 31, 2023.

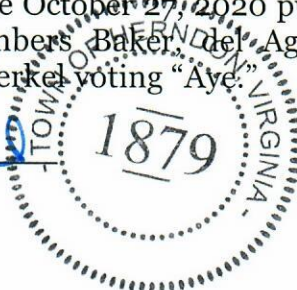
10. ADJOURNMENT

On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the meeting of the October 27, 2020 public hearing adjourned at 8:15 p.m. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting “Aye.”


Lisa C. Merkel
Mayor


Jessica Sizemore
Legislative Assistant

Minutes approved by Town Council: November 17, 2020.



PROFFER STATEMENT
ZMA #20-01
Spring Park Office Park: Unified Commercial Subdivision

October 16, 2020

Pursuant to Section 15.2-2303 of the Code of Virginia (1950, as amended) and Section 78-50.8 of the Town of Herndon Zoning Ordinance, as amended (the "Zoning Ordinance"), the undersigned, for themselves and their successors and/or assigns (referred to hereafter, both collectively and, where appropriate, individually, as the "Applicant"), as owner of the property described as Fairfax County 2015 Tax map parcels 16-2-((2))-164B; 16-2-((2))-164C, 16-2-((2))-164D and 16-2-((2))-164E (the "Property") hereby proffer that in the event this ZMA# 20-01 is approved and a Unified Commercial Subdivision is granted by the Herndon Town Council as provided for in Section 78-40.5(d) of the Herndon Zoning Ordinance, the development of the Property shall be in substantial conformance with the conditions set forth in these proffers ("Proffers") and the Generalized Development Plan (the "GDP") described in Proffer 1 below. The purpose of the proffered rezoning and GDP approval is to allow for the subsequent Unified Commercial Subdivision of the Property with existing improvements to remain. No improvements or modifications to the Property are requested with this proffered rezoning.

1. GDP.

a. The Property is developed in substantial conformance with the Generalized Development Plan prepared by VIK A, Inc. dated August 24, 2020 (the "GDP") and these Proffers. It is understood by the Applicant that all other applicable regulations and policies governing land development within the Town of Herndon (the "Town") shall apply to the Property and unless specifically modified by the language of this approval. Modifications to the applicable Zoning Ordinance for open space, FAR and parking for certain future Lots are shown on the GDP.

b. Minor modifications of the GDP may be permitted without the need for amendments to this approval when necessitated by final engineering or site design provided that modifications are in substantial conformance with the GDP and these Proffers. Substantial conformity shall be determined as provided in the Zoning Ordinance.

c. The purpose of this ZMA# 20-01 is to allow for the subdivision of the property from Four (4) lots to Eight (8) lots with the existing buildings and improvements to remain, subject to the requirements of Section 78-40.5(d) of the Zoning Ordinance and subject to administrative subdivision approval pursuant to Chapter 70 of the Herndon Code of Ordinances that can occur upon approval of the ZMA#20-01. Applicant acknowledges the administrative Unified Commercial Subdivision process can occur upon approval of the Zoning Map Amendment and GDP pursuant to these Proffers.

2. USES.

Any use or combination of uses permitted in the PD-B may be established on the Property.

3. PARKING.

- a. Parking shall be provided as shown in the GDP and may be modified administratively should it be permitted by the Zoning Administrator.
- b. Each future Lot owner will own and manage all parking spaces within their respective future Lots. As detailed in Proffer 7., a property owners association will require shared parking among future Lots so long as there is excess parking.

4. APPROVED SITE PLANS.

- a. No changes to the existing building or site are proposed as part of this approval.
- b. The Applicant agrees to be bound to the approved Phase 1 Site Plan and Phase 2 Site Plan (TP #85-89) approved on May 9, 1985 and April 15, 1986 respectively ("Approved Site Plans") except when modified as outlined in Proffer 4.c.
- c. New site plans will govern respective future Lots upon Unified Commercial Subdivision, which will then govern development. The Applicant may seek minor administrative revisions to its site plans and site plan revisions approved by the Town as permitted by the Zoning Ordinance and these proffers.

5. UNIFIED COMMERCIAL SUBDIVISION.

Upon approval of the GDP and these proffers the Applicant shall seek administrative approval of the subdivision of the Property in substantial conformance with the subdivision plat entitled "Plat Showing Lots 1A, 1B, 2A, 2B, 3A, 3B, 4A & 4B Being a Resubdivision of Lots 1, 2, 3, & 4 Spring Park Technology Center" prepared by VIKI Virginia LLC dated June 17, 2020 (the "Plat") and these Proffers. It is understood by the Applicant that all other applicable regulations and policies governing land development within the Town of Herndon (the "Town") shall apply to the Property and its subdivision unless specifically modified by the language of this approval.

6. DEED OF RESUBDIVISION.

Prior to the recordation of the subdivision plat and pursuant to and consistent with Section 78-40.5(d)(1) of the Zoning Ordinance, the Applicant agrees to submit a Deed of Resubdivision for review and administrative approval by the Town that shall include a declaration of covenants, conditions and restrictions, easements and cross-

easements or other measures which require the subdivision to be developed, maintained and utilized as a unified whole and will allow for use and access of the Property running to the benefit of future lot owners, lessees, tenants and patrons.

7. The Property shall be subject to an owner's association and all Lot owners shall be members of the association that shall be responsible for the management and maintenance of certain shared elements located on the Property. Prior to the recordation of the subdivision plat, the Declaration of Association ("Association") shall be submitted for review and approval by the Town which shall include the following terms and provisions.
 - a. That the Lot owners will own and manage all improvements and infrastructure on their respective lots in accordance with the GDP and these proffers unless otherwise specifically provided in the Association or deed of subdivision.
 - b. That the Association shall establish a shared parking system and allocate parking between and among the Lots.
 - c. Lot owners are responsible for stormwater management facilities located on their respective Lots. In the event stormwater management facilities are located on Lot(s) that serve other Lot(s), the Lot(s) that benefit from the shared stormwater management facility and the Lot(s) where the facility is located shall jointly be responsible for its maintenance. The Association shall have the ability to maintain any common area facility if the owner of such Lot(s) fails to do so.
 - d. Lot owners shall allow for inter-parcel vehicular and pedestrian access over all roads, sidewalks, driveways and other surface elements by other Lot owners, tenants, employees, licensees, guests or patrons as shown on the GDP.

8. SUCCESSORS AND ASSIGNS.

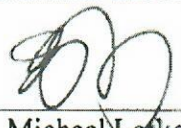
These proffers shall bind and inure to the benefit of the Applicant and its successors and assigns.

APPLICANT:

SPRINGPARK PLACE LLC,
a Delaware limited liability company

By: Penzance DC Real Estate Fund REIT LLC,
a Delaware limited liability company, its sole member

By: Penzance DC Real Estate Fund REIT Manager LLC,
a Delaware limited liability company, its manager

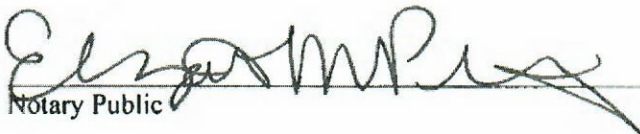
By: 

Michael Lefkowitz,
Authorized Signatory

DISTRICT OF COLUMBIA:

The foregoing instrument was acknowledged before me this 21 day of October, 2020, by

Michael Lefkowitz as Signatory of an on behalf of
Spring Park Place LLC.


Notary Public

Notary Registration No.:

My Commission Expires: 6-30-2023



