

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON COUNCIL CHAMBERS BUILDING *
765 LYNN STREET
DECEMBER 1, 2020
7:00 PM**

* The meeting is being held electronically pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; and 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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments. Public comments will be received through the town clerk at town.clerk@herndon-va.gov.

CALL TO ORDER

1. Roll Call & Determination of Quorum
2. Comments from the Town Manager

PRESENTATION (at the December 8 TCPH)

3. Presentation of the Town's Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended June 30, 2020 (by Brown Edwards and Company, LLP, Certified Public Accountants).

PUBLIC HEARINGS

4. Resolution 20-G-56, to consider Special Exception SE #20-02, 900 Ballou Street, to permit a secondary kitchen in a single-family residence in an R-15, Residential Single-Family District. Fairfax County Tax Map Reference Number: 0104 05 0035B. Applicant: Mohan Uprety. Property Owners: Mohan K. Uprety and Laxmi P. Uprety.
5. Resolution 20-G-57, to consider Special Exception SE #20-06, 652 Stuart Court, to permit a second kitchen/accessory dwelling unit in a single-family residence in an R-10, Residential Single-Family District. Fairfax County Tax Map Number: 0162 18100017. Applicant: Daniel P Brooks. Property Owners: Daniel P Brooks and Chris Mason Palmer.
6. Ordinance 20-O-63, to amend the Fiscal Year (FY) 2021 Adopted Budget which, if adopted by Town Council, will amend the budgets of the General Fund and Downtown Parking Fund.

GENERAL

7. Resolution 20-G-58, of official intent to reimburse expenditures with proceeds of a borrowing.

8. Resolution 20-G-59, Establishing the Town of Herndon's 2021 Legislative Program to advise the 2021 Virginia General Assembly on matters of legislative interest on which the Town takes a position.
9. NOVA Critical Incident Response Team MOU.
10. Resolution 20-G-60, to authorize project applications to the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program / Congestion Mitigation-Air Quality (RSTP/CMAQ) funding for Fiscal Year 2027 and to endorse the town's transportation projects included in VDOT's FY2021-2026 Six-Year Improvement Program.
11. Resolution 20-G-63, to authorize the Town Manager to sign a second Federal Subaward Agreement between the Town and Fairfax County for the use of additional Coronavirus Aid, Relief, and Economic Security (CARES) funds under the Commonwealth of Virginia's Municipal Utility Relief Program.

CONSENT AGENDA

12. IFB # 21-04 HVAC Preventative Maintenance.
13. Resolution 20-G-61, to ratify a Second Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.
14. Resolution 20-G-62, to ratify a Second Extension of Contract pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Fitzgerald Law Group, PLC for prosecutorial services.

ROUNDTABLE



STAFF REPORT

Town Council

December 1, 2020

Title: APPLICATION FOR A SPECIAL EXCEPTION – SE #20-02, 900 Ballou Street

Staff Contact: Michael Wallick, AICP, Transportation Planner
michael.wallick@herndon-va.gov (703) 787-7380

David Stromberg, AICP, Zoning Administrator
david.stromberg@herndon-va.gov (703) 787-7380

Summary Information

Applicant Request	Installation of a second kitchen in a new single family dwelling.
Address	900 Ballou Street
Fairfax County Tax Map Number	0104 05 0035B
Owners	Mohan K. Uprety and Laxmi P. Uprety
Applicant	Mohan K. Uprety
Existing Zoning	R-15
Adjacent Zoning	North: R-15 South: R-10 East: R-15 West: RTC
Land Use Designation	Neighborhood Conservation
Adjacent Land Use Designation	North: Neighborhood Conservation South: Neighborhood Conservation East: Neighborhood Conservation West: Community Facilities
Total Site Area	25,352 square feet (Lot), 8,378.82 Gross Floor Area
Existing Use	Residential
Related Cases	TP#20-04, Single Lot Development Plan to replace an existing dwelling with a new dwelling

Planning Commission Recommendation	Recommendation for approval in accordance with Resolution (Attachment #2)
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Staff Recommendation	Recommendation for approval in accordance with draft Resolution (Attachment #1)
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Location Map



Site Description

The lot is located at the northeast corner of the Park Avenue and Ballou Street intersection. The lot has a noticeable slope, with a high point along the eastern property line and decreasing grade towards Ballou Street. The lot is located within the Ballou Subdivision near the Herndon downtown, however, is not within the town's Historic District boundary.

Background

Prior to 2004, secondary kitchens were not permitted in residential dwelling units. The primary concern was that after a secondary kitchen is installed, a structure could then easily be converted without permits to create an unlawful second dwelling unit.

After 2004, secondary kitchens were permitted through the approval of a conditional use permit or special exception, but partial kitchens, or wet bars, were allowed with administrative approval of a Zoning Appropriateness Permit only.

In 2016, a zoning ordinance text amendment (ZOTA) was passed that clarified and defined the difference between a wet bar and a secondary kitchen. Wet bars are limited in the type of equipment that can be installed and are allowed by-right. Secondary

kitchens have the same components and appliances as the primary kitchen and require a special exception.

The existing house on the site is proposed to be torn down, and in its place is a proposed single-family detached house, totaling 8,378.82 square feet of Gross Floor Area, including finished basement level. The proposed new house is currently under review as Town Plan (TP) #20-04. The application for SE #20-02, includes the proposed architectural plans, dated October 1, 2020. The proposed new house includes a basement level, a main first floor level, and a second story level. Two wet bars are proposed on the basement level. Although one of the wet bars is not labeled as such, the counter and wet bar sink constitutes a wet bar. The applicant, who is also the property owner, has indicated that the existing house is used as rental property. The applicant has stated that he, with his family, intend to move into the proposed new dwelling upon construction.

Proposal

The two proposed kitchens would be located on the main level of a new single-family detached house. The applicant states that the primary need for a secondary kitchen is to provide a vegetarian kitchen as well as a non-vegetarian kitchen due to religious beliefs. The kitchen labeled “Dirty Kitchen” on the Main Level Floor Plan (Attachment #4) is designated as the kitchen where meat is prepared and cooked, and for purposes of this special exception application is the designated second kitchen.

The kitchen where meat is to be prepared is the smaller of the two kitchens. It includes a dishwasher, single sink, gas range, and single-door refrigerator. A puja room separates the two kitchens on the main level. The larger vegetarian kitchen includes a dishwasher, French door refrigerator, larger gas range, separate oven, kitchen island with sink, barstool seating, and a separate dining area, labeled on the plan as “Breakfast”.

Staff Analysis

Zoning Ordinance Compliance

The two applicable Zoning Ordinance sections for this proposal are Section 78-80.4(b); Accessory Food Preparation Areas and Section 78-155.3 Special Exceptions, attached to this report. Staff relies on the standards listed in Section 78-155.3(e), a copy of which is attached to this report, in its evaluation of Special Exception appropriateness, compatibility, and potential impacts. Staff believes this proposal complies with these two applicable sections of the Zoning Ordinance. The Zoning Ordinance allows for flexibility of a second kitchen for instances like this, when specific household circumstances create a need for a second kitchen for a family to use the house as intended. The applicant demonstrated a “unique and compelling need” for the secondary kitchen, as required by Section 78-80.4(b).

Comprehensive Plan Adherence

The Comprehensive Plan does not address details such as second kitchens within a dwelling unit. The property is within the Neighborhood Conservation land use designation.

Analysis of Conditions

Staff believes this proposal meets the conditions for approval of a special exception and recommends approval, with the attached conditions in Attachment #3. The conditions speak to what use the special exception is allowing, which is a second kitchen in the proposed single-family dwelling. The conditions have been drafted with the intent of preventing the single-family dwelling from being converted into a two-family dwelling.

Access to the two kitchens from the remainder of the house must be retained and not blocked by keyed locks, deadbolts, or other locking mechanisms like chains or bars. No portion of the house shall be separated or partitioned through the use of keyed locks, deadbolts or other locking mechanisms or drywall or other partitions to form a separate dwelling unit. The conditions require that the inhabitants of the proposed single-family dwelling consist of one family as defined by Section 78-180 of the Zoning Ordinance.

Customary conditions indicating that this special exception does not run with the land and is not transferable to a future owner or to a different parcel, and that the secondary kitchen shall be removed prior to the sale of the property are also included. The final condition is revocation. Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h).

Town Council Alternatives

The following alternatives are available to the Town Council for its decision on Special Exception #20-02:

1. Approval of SE #20-02 as submitted without the recommended conditions.
2. Approval of SE #20-02 in accordance with the draft resolution provided (Attachment #1) to include the recommended conditions.
3. Approval of SE #20-02 in accordance with the draft resolution provided (Attachment #1) with changes to the recommended conditions.
4. Denial of SE #20-02

The Town Council may also opt to continue the public hearing to a future Town Council meeting if the Council believes their review requires additional time.

Planning Commission Recommendation and Comments

The Planning Commission recommended approval of SE #20-02 in accordance with the resolution dated November 16, 2020 and provided as Attachment #2 to this report. The vote carried 6-0-1, with Commissioner Moses absent from the public hearing.

There was an item raised by the Planning Commission regarding Condition #7, “Transferability”. Condition #7 states that the special exception does not run with the land and is not transferable to a future owner or to a different parcel. The secondary kitchen shall be removed or converted to a use permitted by the Zoning Ordinance prior to the sale of the property. Some members of the Planning Commission had concerns with this condition because it requires the property owner to remove the secondary kitchen or convert it to an allowable use. Staff explained at the public hearing that the secondary kitchen could be converted to a wet bar, which is allowed by-right.

Several members of the public spoke during the public hearing. One speaker questioned the size and mass of the proposed house in comparison to the size and scale of other houses in the neighborhood and the potential adverse visual impacts. A commissioner asked what the maximum allowable square footage is for the lot. The zoning administrator explained that the square footage does not dictate the allowable size of the house, but rather the zoning ordinance regulates the required front, rear and side setback as well as the maximum height based upon the zoning district. The size, massing and scale of the existing neighborhood is not taken into consideration on lots with R-10 or R-15 zoning. The Comprehensive Plan does speak to neighborhood infill compatibility when considering a rezoning but within a standard by-right zoning district such measures are not possible.

Staff Recommendation

Staff recommends approval in accordance with **Alternative #2**.

The zoning ordinance lists uses permitted in a zoning district by-right, by special exception, or not permitted. Special exceptions differ from by-right uses in that they have the potential to have greater impact on neighboring properties and therefore are subject to more thorough review as specified in Section 78-155.3(e). Staff believes this proposal meets the conditions for approval of a special exception and recommends approval with the attached conditions.

Attachments

1. Draft Town Council Resolution
2. Planning Commission Resolution
3. Draft Conditions
4. New Single Family Dwelling Proposed Floor Plan
5. Zoning Ordinance Section 78-155.3(e)
6. Zoning Ordinance Section 78-80.4(b)

Staff Signatures



Michael Wallick, AICP, Transportation Planner



David Stromberg, AICP, Zoning Administrator

TOWN OF HERNDON, VIRGINIA

DRAFT RESOLUTION

December 8, 2020

Resolution- to consider Special Exception Application SE #20-02, to permit a second kitchen on a property where a new single family dwelling is proposed and located within the R-15 Zoning District.

WHEREAS, the applicant, Mohan Uprety, has submitted a request for a special exception to permit a second kitchen within a new single family residence on a property located at 900 Ballou Street and identified as Fairfax County Tax Map # 0104 05 0035B; and

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

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

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

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

Approves Special Exception Application SE #20-02, in accordance with the conditions set forth below to achieve compliance with the standards found in Sections 78-80.4(b) and 78-155.3;

[INSERT CONDITIONS]

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

TOWN OF HERNDON, VIRGINIA

PLANNING COMMISSION

RESOLUTION

NOVEMBER 16, 2020

Resolution- to consider Special Exception Application SE #20-02, to permit a second kitchen on a property where a new single family dwelling is proposed and located within the R-15 Zoning District.

WHEREAS, the applicant, Mohan Uprety, has submitted a request for a special exception to permit a second kitchen within a new single family residence on a property located at 900 Ballou Street and identified as Fairfax County Tax Map # 0104 05 0035B; and

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

WHEREAS, the Planning Commission has found that the application, SE #20-02 with conditions meets the purpose and intent of the Zoning Ordinance, in particular Sections 78-80.4(b) and 78-155.3.

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

Recommends approval of Special Exception Application SE #20-02, in accordance with the conditions set forth below to achieve compliance with the standards found in Sections 78-80.4(b) and 78-155.3;

[INSERT CONDITIONS]

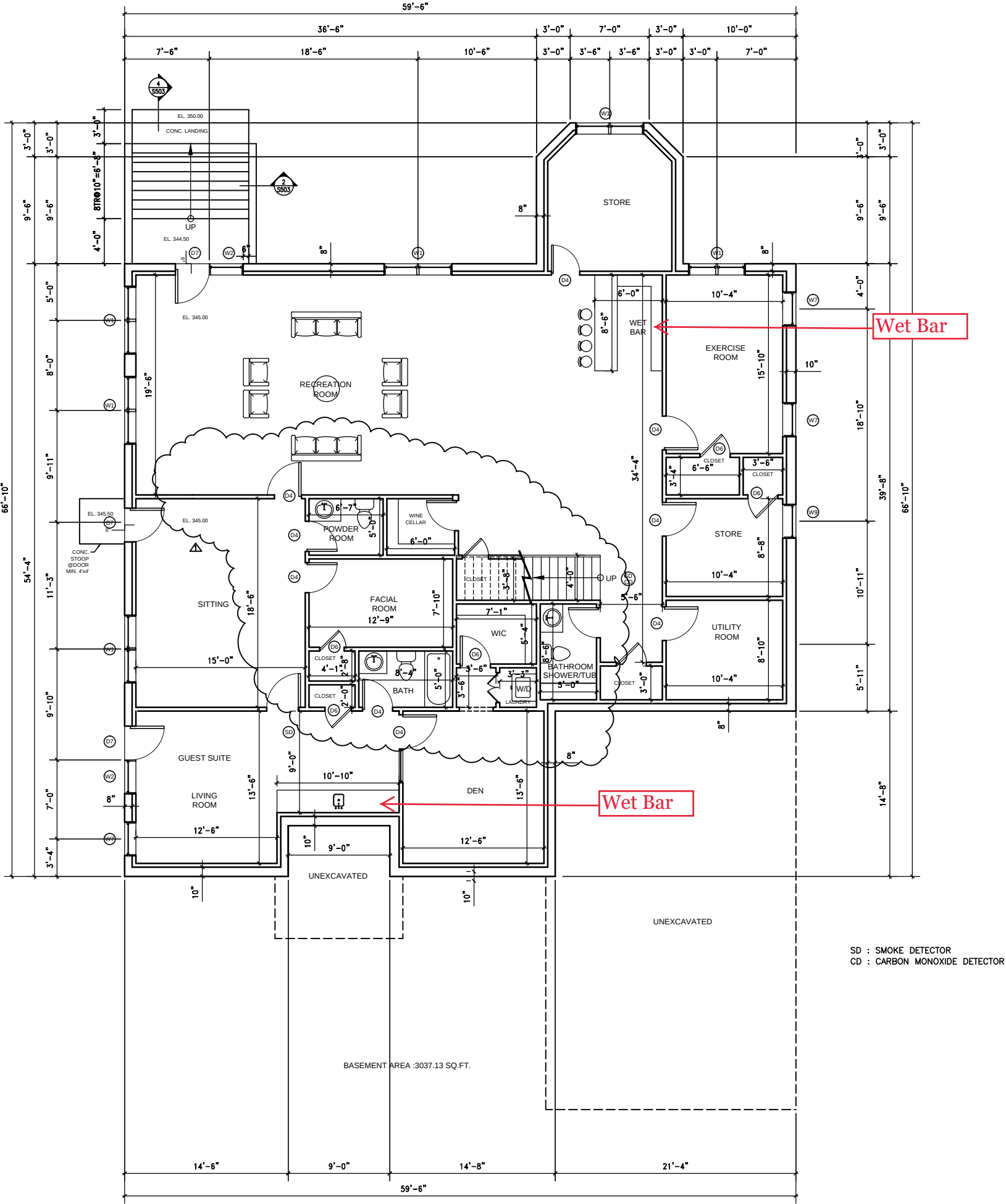
This is certified to be a true and accurate copy of the above resolution, for SE#20-02 adopted at a legally convened meeting of the Planning Commission of the Town of Herndon on November 16, 2020.



Erika Orellana, Clerk of the Boards & Commissions

Draft Conditions
SE #20-02
Town Council Public Hearing
December 8, 2020

1. Substantial Conformance. The development of the special exception use described in Condition 2 below including the internal layout of the proposed structure regarding dual kitchens and wet bars shall be in substantial conformance with the architectural plans submitted with this application and dated October 1, 2020. Approval of this application on the parcel identified as Fairfax County Tax Map Number 0104-05-0035B, known as 900 Ballou Street, Herndon, Virginia (the “Property”), shall not relieve the applicant or the owners of the Property, or their successors or parties developing, establishing, or operating the approved special exception, from the obligation to comply with and conform to any other Zoning Ordinance, codified ordinance, or regulatory requirement.
2. Permitted Use. This special exception is granted to allow a secondary kitchen in the new single family dwelling proposed on the Property in accordance with TP #20-04 and pursuant to Section 78-80.4(b) of the Town of Herndon Zoning Ordinance (the “Zoning Ordinance”) . It is not the intent of this approval to authorize a second kitchen in the existing structure located at 900 Ballou Street.
3. These conditions must be recorded by the applicant among the land records of Fairfax County for the Property prior to the issuance of the building permit for the new single family dwelling. A certified copy of the recorded conditions shall be provided to the Zoning Administrator.
4. Access. No portion of the house shall be separated or partitioned from other areas of the house through the use of keyed locks, deadbolts or other locking mechanisms or drywall or other partitions to form a separate dwelling unit.
5. Family. The inhabitants of the new single family dwelling on the Property shall consist of one family as defined by Section 78-180 of the Zoning Ordinance.
6. Inspection. The premises shall be made available for inspection by authorized representatives of the town upon reasonable notice.
7. Transferability. This special exception does not run with the land and is not transferable to a future owner or to a different parcel. The secondary kitchen shall be removed or converted to a use permitted by the Zoning Ordinance prior to the sale of the property.
8. Revocation. Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h) of the Zoning Ordinance. Revocation of this special exception shall require immediate removal of the secondary kitchen inclusive of all kitchen appliances, associated electrical outlets, plumbing, cabinetry and counters.



• RELEASE DATE: •

01/15/2020

10/01/2020 PERMIT COMMENTS

SINGLE FAMILY RESIDENCE

900 BALLAU STREET
HERNDON, VA 20170

Advance Structural Concepts, Inc.
Consulting & Architectural Engineers
10857 Main Street, Suite 101
Fairfax, VA 22030
(703) 865-7122
WWW.ADVANCESTRUCTURALCONCEPTS.NET

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COMMONWEALTH OF VIRGINIA

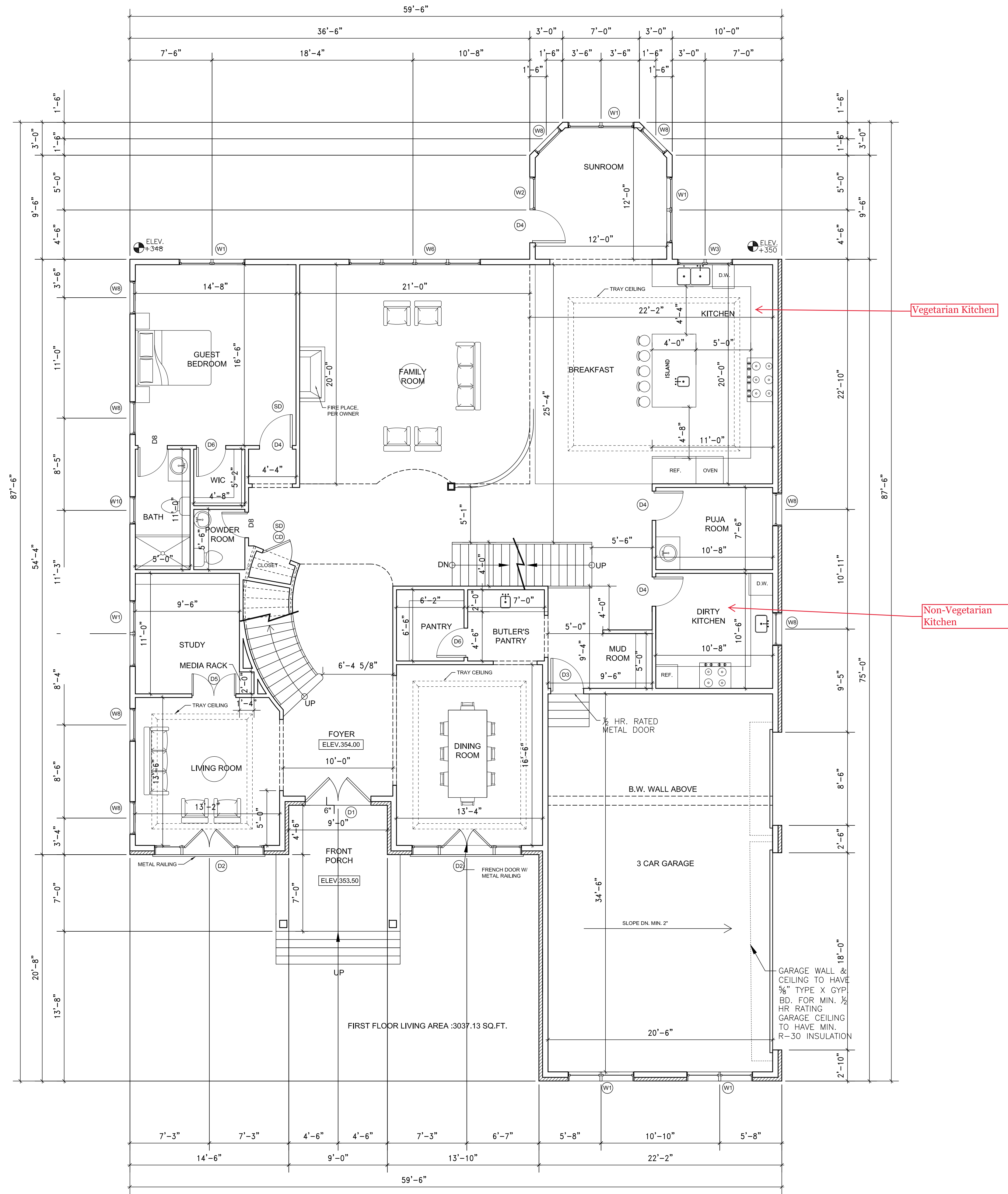
SATISH C. ABROL

Lic. No. 039430

Professional Engineer

BASEMENT
PLAN

A-100



1 FIRST FLOOR PLAN
A-101 SCALE: 3/16"=1'-0"

RELEASE DATE:

01/15/2020

SINGLE FAMILY RESIDENCE

900 BALLAU STREET
HERNDON, VA 20170

Advance Structural Concepts, Inc.
Consulting & Architectural Engineers
10857 Main Street, Suite 101
Fairfax, VA 22030
(703) 865-7122

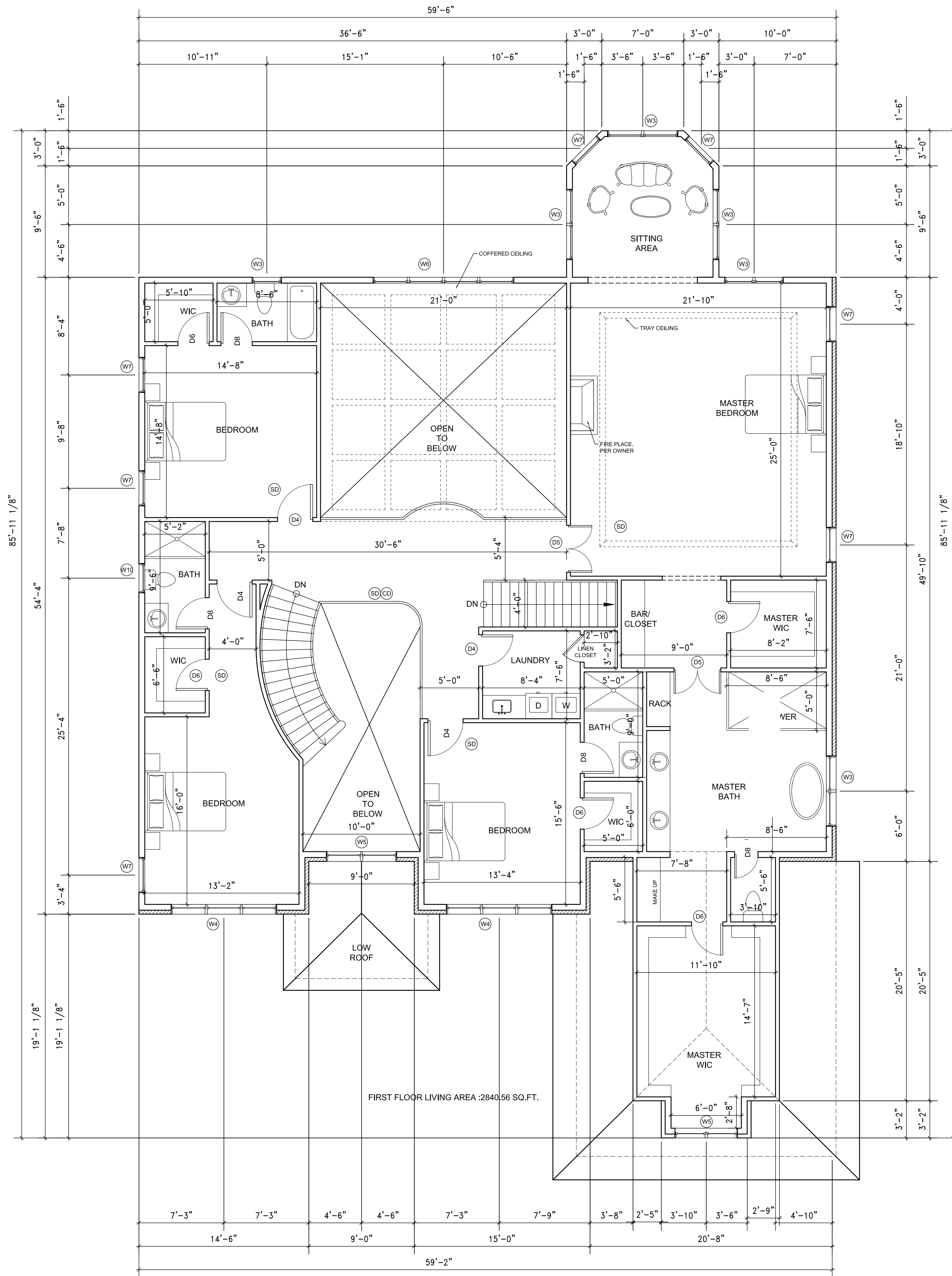
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FIRST FLOOR
PLAN

A-101



SINGLE FAMILY RESIDENCE

900 BALLAU STREET
HERNDON, VA 20170

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SECOND FLOOR PLAN

A-102

Sec. 78-155.3. - Special exception.

(e) *Review standards for special exceptions .*

- (1) *General standards for all special exceptions uses .* A special exception may be approved upon a determination by the planning commission and town council, respectively, as to whether, and the extent to which, the proposed use(s) meet the following standards:
 - a. Is consistent with the comprehensive plan.
 - b. Is free of conflict with any provision of this chapter and related town regulations or any other applicable local, state, or federal laws and regulations.
 - c. Does not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.
 - d. Consistent with the purpose and intent of the zoning district in which it is located, or will improve compatibility among uses and will ensure efficient development within the town.
 - e. Minimizes adverse visual impact of the proposed use on adjacent lands.
 - f. Contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices.
 - g. Minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.
 - h. Avoids significant adverse impacts on the property values of surrounding lands or substantially and permanently injures the use of neighboring property for those uses that are permitted in the zoning district.
 - i. Does not significantly and adversely impact the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
 - j. Results in development that is adequately served by transportation facilities, including whether or not a substantial deterioration of the level of service on the town's transportation network would occur and whether or not the proposed use is designed to ensure safe ingress and egress onto the site and safe road conditions on and around the site.
 - k. Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).
 - l. If infill and redevelopment is consistent with the redevelopment criteria and other applicable guidelines as stated in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as amended.
 - m. If located in the floodplain overlay district, meets floodplain overlay standards.
 - f. Additional common recreation space (developed) above that required by section 78-113.3, privately provided recreation areas, is provided in proportion to the requested increase in dwelling unit density.

Sec. 78-80.4. - Standards for specific accessory uses and structures by use type.

Accessory uses and structures listed below shall comply with the following specific standards.

- (b) *Accessory food preparation area.* Accessory food preparation areas include secondary kitchens and wet bars.
 - (1) *Secondary kitchens.* Secondary kitchens, as defined in Article XVIII, are permitted by special exception in residential dwellings in accordance with all of the following provisions
 - a. A secondary kitchen shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.
 - b. The location of the secondary kitchen is not separated from the remainder of the dwelling unit by door(s) equipped with any of the following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition.
 - c. A unique and compelling need is demonstrated by the applicant.
 - d. A zoning inspection permit is applied for and approved.
 - e. The proposed activity meets the standards of section 78-155.3(e), review standards for special exceptions.
 - f. Secondary kitchens shall not be permitted in accessory structures except under the provisions of section 78-80.4, accessory dwelling unit.



STAFF REPORT

Town Council

December 1, 2020

Title: APPLICATION FOR A SPECIAL EXCEPTION – SE #20-06, 652 Stuart Court

Staff Contact: Michael Wallick, AICP, Transportation Planner
michael.wallick@herndon-va.gov (703) 787-7380

David Stromberg, AICP, Zoning Administrator
david.stromberg@herndon-va.gov (703) 787-7380

Summary Information

Applicant Request	This application is for a special exception to permit an accessory dwelling unit, to include a secondary kitchen, in an existing residential single family dwelling.
Address	652 Stuart Court
Fairfax County Tax Map Number	0162 18100017
Owner	Daniel Brooks and Chris Mason Palmer
Applicant	Daniel Brooks
Existing Zoning	R-10
Adjacent Zoning	North: R-10 South: R-10 East: R-10 West: R-10
Land Use Designation	Neighborhood Conservation
Adjacent Land Use Designation	North: Neighborhood Conservation South: Neighborhood Conservation East: Neighborhood Conservation West: Neighborhood Conservation
Total Site Area	10,964 square feet (Lot), 2,336 square feet (Main House)
Existing Use	Residential
Related Cases	n/a

Planning Commission Recommendation	Recommendation for approval in accordance with Resolution (Attachment #2)
Staff Recommendation	Recommendation for approval in accordance with draft Resolution (Attachment #1)

Location Map



Site Description

The existing 2,336 square foot two story single-family detached house sits on a typical relatively flat lot on the north side of Stuart Court, approximately 150 feet west of its intersection with Missouri Avenue. The house is located within the Chandon Woods subdivision and was constructed in 1968.

Background

Building permits were applied for in the summer of 2019 for interior repair work for damage caused by a fire. The completed interior work was inspected by the town's Building Official for conformance with Building Code. Upon inspection of the work, the Building Official informed the property owner that a special exception must be obtained for the completed work to comply with the zoning ordinance. The property owner submitted an application for special exception to permit a secondary kitchen in the existing single family dwelling.

Upon further review of the special exception application by staff, the zoning administrator determined that the application met the criteria for both an accessory dwelling unit and secondary kitchen. While the accessory dwelling unit is connected to the remainder of

the house through interior doorway access to the family room, the intent and design of this portion of the house functions as an accessory dwelling unit. The renovations include not only the secondary kitchen, but a new bedroom and bathroom, making this an independent living area. The new bathroom includes a toilet, sink, and shower. The accessory dwelling unit contains an exterior door in the secondary kitchen and the new first floor bedroom, labeled on the floor plan (attachment #4) as “Sitting Room”.

Proposal

To provide independent living space, the applicant constructed a first-floor bedroom, bathroom, and kitchen totaling 485.5 square feet. The accessory dwelling unit is located in the space formerly occupied by the attached garage. A small portion of the remaining garage space, labeled as “Garage” on the floor plan (attachment #4), was converted to a storage area once the interior work was completed. The remaining garage space does not have exterior access and is connected to the accessory dwelling unit through access to the new first floor bedroom.

The secondary kitchen, which is labeled on the floor plan as “Wet Bar” was constructed with room for a stove and microwave, which would be installed upon approval of this special exception. The secondary kitchen also includes a sink with garbage disposal, refrigerator, dishwasher, and cabinet space. In addition to the exterior access, the secondary kitchen is connected to the bedroom through an interior door.

Staff Analysis

Zoning Ordinance Compliance

A special exception (formerly called a conditional use permit) has been required for an accessory dwelling unit since 1983. This is the case for both a detached accessory dwelling unit or when a portion of the primary dwelling is converted to have separate areas for living, sleeping, eating, and bathing.

In addition to the special exception requirement, the zoning ordinance requires the following standards to be met for accessory dwelling units:

- A mobile home or recreational vehicle cannot be used as an accessory dwelling unit.
- Accessory dwelling units are limited to one per lot.
- Size is limited to 35% of the primary dwelling or 1,200 square feet, whichever is less. In this case, 35% of the structure is 818 square feet and therefore the maximum size.
- There is a maximum of two bedrooms and two occupants in the accessory dwelling unit.

- The unit must be accessed from the side or the rear.
- The primary or accessory dwelling must be occupied by someone over 62 or with a disability.
- The property must be able to accommodate one additional parking space beyond the minimum of two required for a single family dwelling.
- The accessory dwelling unit must be converted upon sale of the property unless a special exception is approved upon application by a new owner.

The proposed accessory dwelling unit complies with the size and room limitations required by the zoning ordinance. Both property owners meet the age requirements and one will occupy the primary dwelling unit while the other will occupy the accessory dwelling unit located on the ground level.

The zoning ordinance allows for flexibility for instances like this, when specific household circumstances create a need for an accessory dwelling unit and second kitchen in order for a member of the household to age in place. Based upon the application which was submitted and reviewed for compliance with the aforementioned town code sections, staff believes this proposal complies with the Town of Herndon Zoning Ordinance.

Comprehensive Plan Adherence

The proposal is consistent with the Herndon 2030 Comprehensive Plan Neighborhood Conservation land use designation and Housing sections which encourage uses that support the senior population and accessory uses that comply with the zoning ordinance. Particularly, it aligns with Goal #3, which is to create policies and programs that promote stability and encourage property owners to maintain the appearance of their residences. Additionally, Land Use Policy #6 states that Neighborhood Conservation supports accessory uses associated with residential neighborhoods, such as home based businesses and permitted accessory dwelling units.

Transportation

The property contains a driveway which can fit three vehicles. Additionally, the house is located approximately 700 feet from the nearest Fairfax Connector bus stop, Route 924 (Bus Stop ID's 2373 and 2374). The property is also located approximately 2/3 of a mile from the Herndon Metrorail Station.

Analysis of Conditions

Draft conditions for approval of this special exception are listed in Attachment #3. The conditions speak to substantial conformity with the special exception materials which are included with this application. The conditions first speak to complying with the town's building and zoning standards for accessory dwelling units and secondary kitchens. The conditions permit only one accessory dwelling unit on this lot and limit the size to not

exceed 490 square feet, which will accommodate the applicant's request. The conditions permit no more than one bedroom in the accessory dwelling unit and cannot be occupied by more than two persons. The conditions require the occupant of the accessory dwelling unit to be at least 62 years of age, or have a physical, mental, or cognitive disability. The conditions require a minimum of one off-street parking space with convenient access to the street for the accessory dwelling unit. The parking shall be in addition to the two parking spaces required for the principal dwelling. The accessory dwelling unit shall not be sold separately from the principal dwelling unit upon the same lot. The accessory dwelling unit shall comply with health, safety, sanitation, and building code regulations and requires a zoning inspection permit prior to issuance of the occupancy permit. The approval is also linked to the property owner and not the land. Any change in ownership shall require removal of the secondary kitchen, and notice to the zoning administrator at least thirty days prior to the sale or transfer of the property. Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h).

Town Council Alternatives

The following alternatives are available to the Town Council for its decision on Special Exception #20-06:

1. Approval of SE #20-06 as submitted without the recommended conditions.
2. Approval of SE #20-06 in accordance with the draft resolution provided (Attachment #1) to include the recommended conditions.
3. Approval of SE #20-06 in accordance with the draft resolution provided (Attachment #1) with changes to the recommended conditions.
4. Denial of SE #20-06

The Town Council may also opt to continue the public hearing to a future Town Council meeting if the Council believes their review requires additional time.

Planning Commission Recommendation and Comments

The Planning Commission recommended approval of SE #20-06 in accordance with the resolution dated November 16, 2020 and provided as Attachment #2 to this report. The vote passed 5-1-1, with Commissioner Regan the lone Commissioner voting "denial" of the Special Exception. Commissioner Moses was absent for the public hearing.

There were two items raised by the Planning Commission regarding Condition #13, "Approval linked to Property owner, Not Land", and Condition #14, "Change in Ownership". Condition #13 states that the Special Exception shall not run with the land

and shall terminate by either a change in substantial ownership or possession of the Property, a discontinuation of the use for which the Special Exception was granted for a continuous six month period, a failure to obtain a Zoning Inspection Permit for the use for which the Special Exception granted within eighteen months from the date of approval of the Special Exception, or at any time the use does not comply with any of the conditions of the approved Special Exception. Both the applicant and some members of the Planning Commission had concerns regarding this condition not transferring with the land. It has been past practice by the town that Special Exception approvals are linked to the property owner and not transferable with the land as a means to best regulate lawful accessory dwelling units and avoid the possibility of illegally operated accessory dwelling units by future owners.

Condition #14 states that the owner shall remove the secondary kitchen at the time of approval of this Special Exception from the accessory dwelling unit and the zoning administrator shall be notified at least thirty days prior to the sale or transfer of the property. Some members of the Planning Commission had concerns with this condition because it requires the property owner to remove the secondary kitchen or convert it to an allowable use. Staff explained at the public hearing that the secondary kitchen could be converted a wet bar, which are allowed by-right.

Staff Recommendation

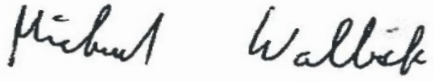
Staff recommends approval in accordance with **Alternative #2**.

The zoning ordinance lists uses permitted in a zoning district by-right, by special exception, or not permitted. Special exceptions differ from by-right uses in that they have the potential to have greater impact on neighboring properties and therefore are subject to more thorough review as specified in Section 78-155.3(e). Staff believes this proposal meets the conditions for approval of a special exception and recommends approval with the attached conditions.

Attachments

1. Draft Town Council Resolution
2. Planning Commission Resolution
3. Draft Conditions
4. Floor Plan
5. Zoning Ordinance Section 78-155.3(e)
6. Zoning Ordinance Section 78-80.4(a)
7. Zoning Ordinance Section 78-80.4(b)

Staff Signatures

Handwritten signature of Michael Wallick in black ink.

Michael Wallick, AICP, Transportation Planner

Handwritten signature of David Stromberg in blue ink.

David Stromberg, AICP, Zoning Administrator

TOWN OF HERNDON, VIRGINIA

DRAFT RESOLUTION

December 8, 2020

Resolution- to consider Special Exception Application SE #20-06, to permit an accessory dwelling unit, to include a secondary kitchen, in an existing single family dwelling within the R-10 Zoning District.

WHEREAS, the applicant, Daniel Brooks, has submitted a request for a special exception to permit an accessory dwelling unit and secondary kitchen within an existing residence on a property located at 652 Stuart Court and identified as Fairfax County Tax Map # 0162 18100017; and

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

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

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

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

Approves Special Exception Application SE #20-06, in accordance with the conditions set forth below to achieve compliance with the standards found in Sections 78-80.4(a), 78-80.4(b) and 78-155.3;

[INSERT CONDITIONS]

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

TOWN OF HERNDON, VIRGINIA

PLANNING COMMISSION

RESOLUTION

NOVEMBER 16, 2020

Resolution- to consider Special Exception Application SE #20-06, to permit an accessory dwelling unit, to include a secondary kitchen, in an existing single family dwelling within the R-10 Zoning District.

WHEREAS, the applicant, Daniel Brooks, has submitted a request for a special exception to permit an accessory dwelling unit and secondary kitchen within an existing residence on a property located at 652 Stuart Court and identified as Fairfax County Tax Map # 0162 18100017; and

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

WHEREAS, the Planning Commission has found that the application, SE #20-06 with conditions meets the purpose and intent of the Zoning Ordinance, in particular Sections 78-80.4(a), 78-80.4(b) and 78-155.3.

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

Recommends approval of Special Exception Application SE #20-06, in accordance with the conditions set forth below to achieve compliance with the standards found in Sections 78-80.4(a), 78-80.4(b) and 78-155.3;

[INSERT CONDITIONS]

This is certified to be a true and accurate copy of the above resolution, for SE#20-06 adopted at a legally convened meeting of the Planning Commission of the Town of Herndon on November 16, 2020.


Erika Orellana, Clerk of the Boards & Commissions

Draft Conditions
SE #20-06
Town Council Public Hearing
December 8, 2020

1. Substantial Conformity. The development and maintenance of the special exception use described in Condition 2 below shall be in substantial conformance with the SE#20-06 application materials submitted September 16, 2020. Approval of this application on the parcel identified as Fairfax County Tax Map Number 0162-18-100017, known as 652 Stuart Court, Herndon, Virginia (the “Property”) , shall not relieve the applicant or the owners of the Property, or their successors or parties developing, establishing, or operating the approved special exception, from the obligation to comply with and conform to any other Zoning Ordinance, codified ordinance, or regulatory requirement.
2. Permitted Use. This special exception is granted to allow an accessory dwelling unit in an existing single family dwelling on the Property pursuant to Section 78-80.4(a) of the Town of Herndon Zoning Ordinance (the “Zoning Ordinance”).
3. These conditions must be recorded by the applicant among the land records of Fairfax County for the Property prior to the issuance of the occupancy permit for the accessory dwelling unit. A certified copy of the recorded conditions shall be provided to the Zoning Administrator.
4. Compliance with Building and Zoning Standards. The accessory dwelling unit shall comply with all applicable building and development standards for dwelling units in the zoning district in which the accessory dwelling unit will be located.
5. One Accessory Dwelling Unit per Lot. There shall be no more than one accessory dwelling unit on the Property in addition to the principal dwelling.
6. Size Limit. The floor area of the accessory dwelling unit shall not exceed 490 square feet.
7. Limit on Bedrooms and Occupancy. The accessory dwelling unit shall not contain more than one bedroom or be occupied by more than two persons.

8. Occupancy Standards. The accessory dwelling unit shall be subject to the dwelling unit occupancy standards of section 78-170.6. Pursuant to Section 78-80.4(a)(8) of the Zoning Ordinance, either the accessory dwelling unit or the principal dwelling shall be occupied by the owner of the principal dwelling. Additionally, either the accessory dwelling unit or the principal dwelling on a property shall be occupied by at least one person who meets the following qualifications:

- a. The person is at least 62 years of age; or
- b. The person has a physical, mental, or cognitive disability:
 1. As certified by the Social Security Administration, the Veterans Administration, or the Railroad Retirement Board; or
 2. As confirmed in writing signed by a licensed medical practitioner or a practitioner licensed in an allied health field.
 3. This section shall not be deemed to exclude individuals who meet the qualifications above and are able to seek or engage in employment.

9. Parking. There shall be a minimum of one off-street parking space with convenient access to the street for the accessory dwelling unit. The parking shall be in addition to the two parking spaces required for the principal dwelling.

10. Not to be Sold Separately. The accessory dwelling unit shall not be sold apart from the principal dwelling upon the same lot.

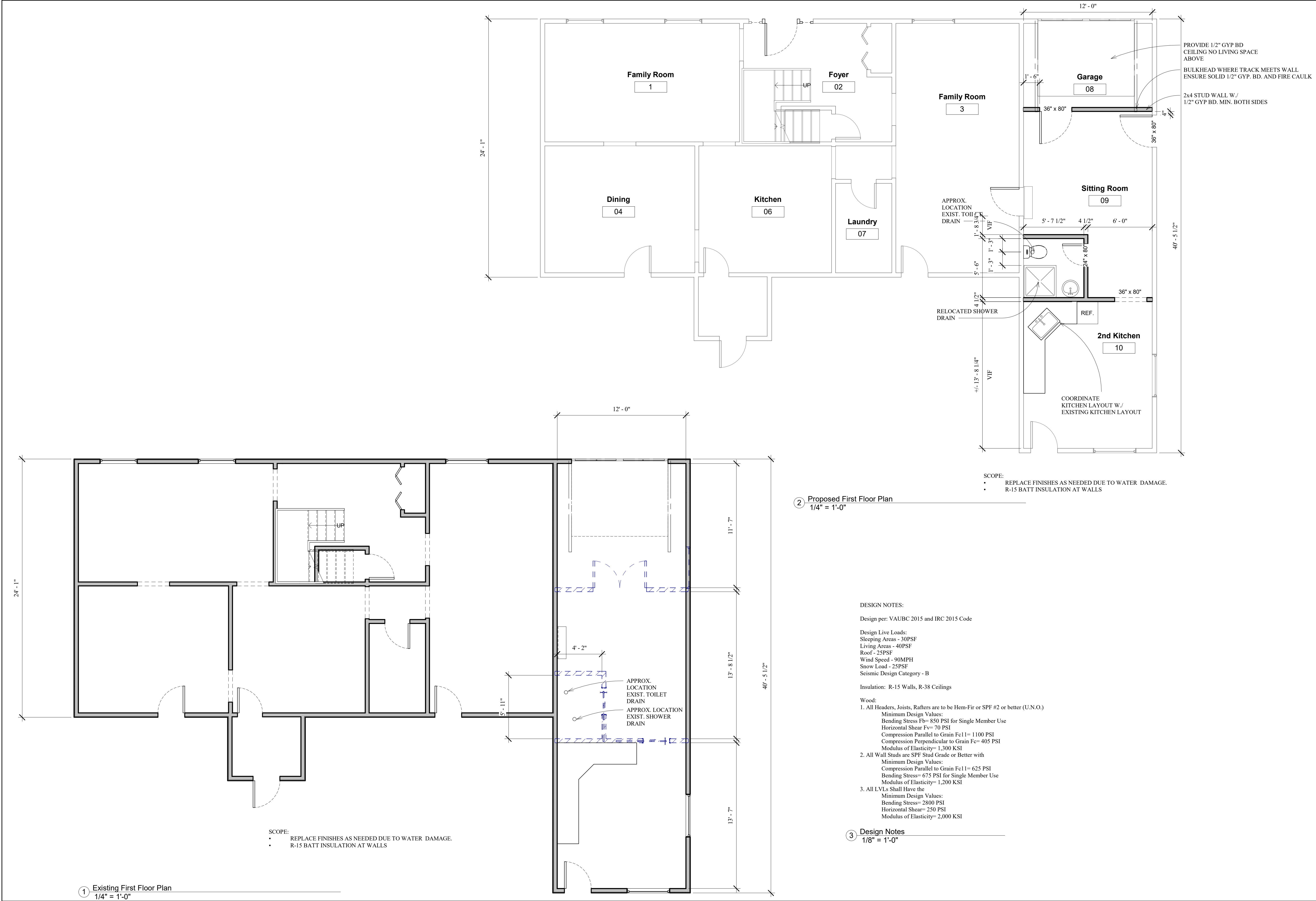
11. Compliance with Health, Safety, Sanitation and Building Code Regulations. The accessory dwelling unit shall meet the applicable code regulations for building, safety, health, and sanitation standards. During reasonable hours, the applicant shall make provisions to allow officials to make the appropriate inspections.

12. Zoning Inspection Permit and Inspections. A Zoning Inspection Permit for the accessory dwelling unit is required prior to issuance of the occupancy permit. Following occupancy, the accessory dwelling unit shall be inspected annually by zoning and building officials during reasonable hours and upon prior notice.

13. Approval linked to Property Owner, Not Land. This Special Exception shall not run with the land and shall terminate by either a change in substantial ownership or possession of the Property, a discontinuation of the use for which the Special Exception was granted for a continuous six month period, a failure to obtain a Zoning Inspection Permit for the use for which the Special Exception was granted within eighteen months from the date of approval of the Special Exception, or at any time the use does not comply with any of the conditions of the approved Special Exception.

14. Change in Ownership. The owner shall remove the secondary kitchen, as defined in the zoning ordinance at the time of approval of this Special Exception from the accessory dwelling unit and the zoning administrator shall be notified at least thirty days prior to the sale or transfer of the property. Upon the sale or transfer of the property, the property owners shall permit the inspection of the accessory dwelling unit by zoning and building officials within fifteen days to ensure compliance with the conditions of the Special Exception.

15. Revocation. Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h) of the Zoning Ordinance. Revocation of this special exception shall require immediate removal of the food preparation area, as defined in the zoning ordinance at the time of approval of this Special Exception from the accessory dwelling unit.



DESIGN NOTES:

Design per: VAUBC 2015 and IRC 2015 Code

Design Live Loads:
Sleeping Areas - 30PSF
Living Areas - 40PSF
Roof - 25PSF
Wind Speed - 90MPH
Snow Load - 25PSF
Seismic Design Category - B

Insulation: R-15 Walls, R-38 Ceilings

Wood:

- All Headers, Joists, Rafters are to be Hem-Fir or SPF #2 or better (U.N.O.)
Minimum Design Values:
Bending Stress Fb= 850 PSI for Single Member Use
Horizontal Shear Fv= 70 PSI
Compression Parallel to Grain Fc11= 1100 PSI
Compression Perpendicular to Grain Fc= 405 PSI
Modulus of Elasticity= 1,300 KSI
- All Wall Studs are SPF Stud Grade or Better with
Minimum Design Values:
Compression Parallel to Grain Fc11= 625 PSI
Bending Stress= 675 PSI for Single Member Use
Modulus of Elasticity= 1,200 KSI
- All LVs Shall Have the
Minimum Design Values:
Bending Stress= 2800 PSI
Horizontal Shear= 250 PSI
Modulus of Elasticity= 2,000 KSI

3 Design Notes

1/8" = 1'-0"



636 Wood Street
Herndon, VA 20170
703.819.9461
michaelw@mwarchitects.biz

652 Stuart Court
Herndon, VA 20170
Restoration Plans

Brooks Residence

SEAL:



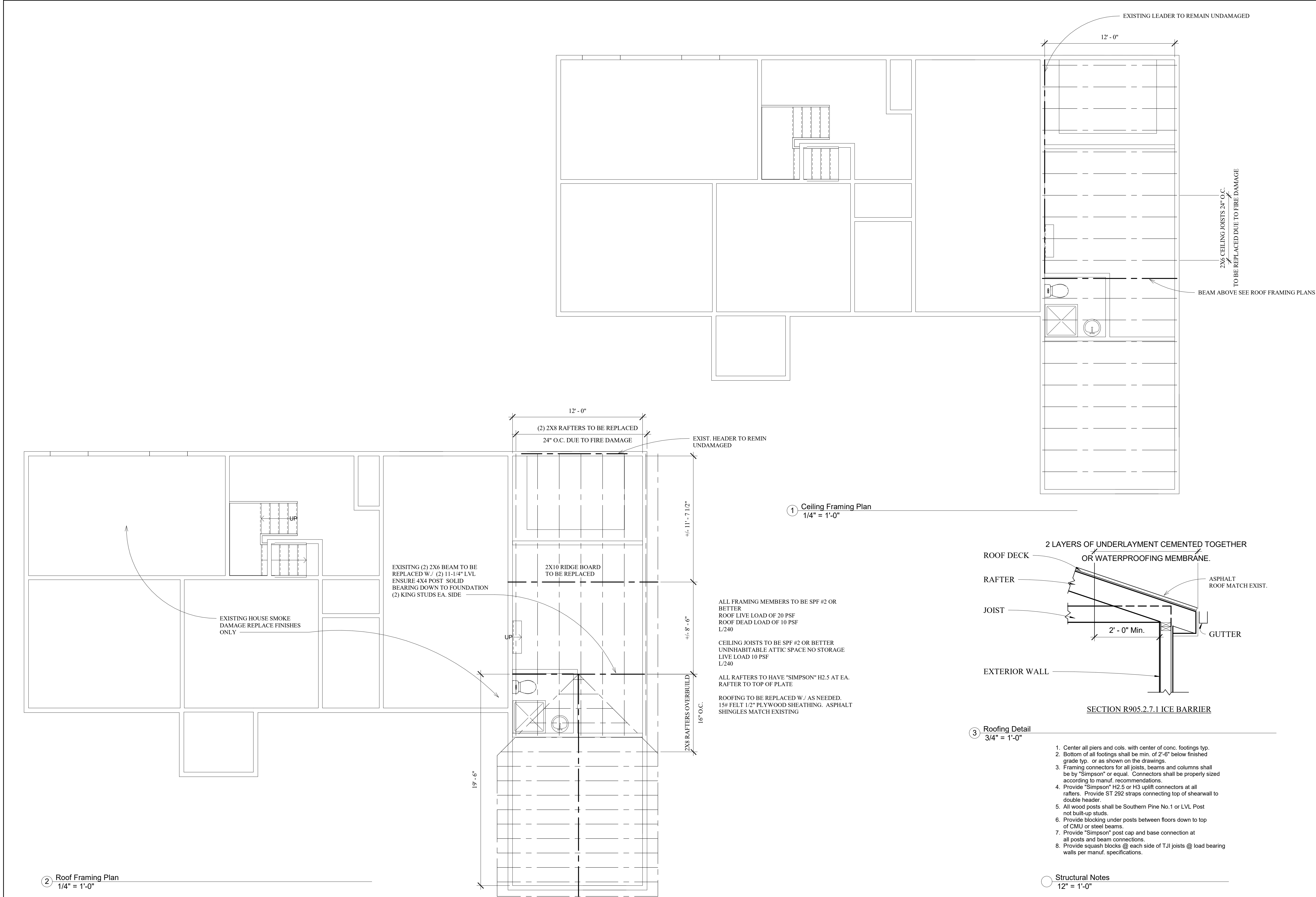
REVISIONS:

Permit Set 5.22.2019

Project number 19.153
Date 05.14.19
Drawn by MSW
Checked by MSW

A1.0

Scale As indicated



MW

ARCHITECTS

636 Wood Street
Herndon, VA 20170
703.819.9461
michaelw@mvaarchitects.biz

652 Stuart Court
Herndon, VA 20170

Roof Framing Plan

Brooks Residence

SEAL:



REVISIONS:
Permit Set 5.22.2019

Project number 19.153
Date 05.14.19
Drawn by MSW
Checked by MSW

A1.1

Scale As indicated

- Center all piers and cols. with center of conc. footings typ.
- Bottom of all footings shall be min. of 2'-6" below finished grade typ. or as shown on the drawings.
- Framing connectors for all joists, beams and columns shall be by "Simpson" or equal. Connectors shall be properly sized according to manuf. recommendations.
- Provide "Simpson" H2.5 or H3 uplift connectors at all rafters. Provide ST 292 straps connecting top of shearwall to double header.
- All wood posts shall be Southern Pine No. 1 or LVL Post not built-up studs.
- Provide blocking under posts between floors down to top of CMU or steel beams.
- Provide "Simpson" post cap and base connection at all posts and beam connections.
- Provide squash blocks @ each side of TJI joists @ load bearing walls per manuf. specifications.

Structural Notes
12" = 1'-0"

Sec. 78-155.3. - Special exception.

(e) *Review standards for special exceptions .*

- (1) *General standards for all special exceptions uses .* A special exception may be approved upon a determination by the planning commission and town council, respectively, as to whether, and the extent to which, the proposed use(s) meet the following standards:
 - a. Is consistent with the comprehensive plan.
 - b. Is free of conflict with any provision of this chapter and related town regulations or any other applicable local, state, or federal laws and regulations.
 - c. Does not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.
 - d. Consistent with the purpose and intent of the zoning district in which it is located, or will improve compatibility among uses and will ensure efficient development within the town.
 - e. Minimizes adverse visual impact of the proposed use on adjacent lands.
 - f. Contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices.
 - g. Minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.
 - h. Avoids significant adverse impacts on the property values of surrounding lands or substantially and permanently injures the use of neighboring property for those uses that are permitted in the zoning district.
 - i. Does not significantly and adversely impact the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
 - j. Results in development that is adequately served by transportation facilities, including whether or not a substantial deterioration of the level of service on the town's transportation network would occur and whether or not the proposed use is designed to ensure safe ingress and egress onto the site and safe road conditions on and around the site.
 - k. Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).
 - l. If infill and redevelopment is consistent with the redevelopment criteria and other applicable guidelines as stated in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as amended.
 - m. If located in the floodplain overlay district, meets floodplain overlay standards.
 - f. Additional common recreation space (developed) above that required by section 78-113.3, privately provided recreation areas, is provided in proportion to the requested increase in dwelling unit density.

Sec. 78-80.4. - Standards for specific accessory uses and structures by use type.

Accessory uses and structures listed below shall comply with the following specific standards.

(a) *Accessory dwelling unit.* An accessory dwelling unit shall comply with the following standards:

- (1) *Special exception required.* An accessory dwelling unit shall be permitted by special exception in accordance with section 78-155.3 and Article VIII, Accessory Use Regulations.
- (2) *Compliance with building and zoning standards.* An accessory dwelling unit shall comply with all applicable building and development standards for dwelling units in the zoning district in which the accessory dwelling unit will be located. An accessory dwelling unit shall also comply with all applicable standards for the principal dwelling.
- (3) *No mobile homes or recreational vehicles as accessory dwellings.* Mobile homes, recreational vehicles, travel trailers, and the like shall not be used as accessory dwelling units.
- (4) *One accessory unit per lot.* There shall be no more than one accessory dwelling unit on a lot in addition to the principal dwelling.
- (5) *Size limit.* The floor area of an accessory dwelling unit shall not exceed 35 percent of the gross floor area of the principal dwelling, or 1,200 square feet, whichever is less.
- (6) *Entrance location.* If the accessory dwelling unit is a part of the principal structure on the lot, any external entrance for the accessory dwelling unit shall be located on the side or rear of the structure.
- (7) *Limit on bedrooms and occupancy.* An accessory dwelling unit shall not contain more than two bedrooms or be occupied by more than two persons.
- (8) *Occupancy standards.* An accessory dwelling unit shall be subject to the dwelling unit occupancy standards of section 78-170.6. Either the accessory dwelling unit or the principal dwelling shall be occupied by the owner of the principal dwelling. Additionally, either the accessory dwelling unit or the principal dwelling on a property shall be occupied by at least one person who meets the following qualifications:
 - a. The person is at least 62 years of age; or
 - b. The person has a physical, mental, or cognitive disability:
 1. As certified by the Social Security Administration, the Veterans Administration, or the Railroad Retirement Board; or
 2. As confirmed in writing signed by a licensed medical practitioner or a practitioner licensed in an allied health field.
 3. This section shall not be deemed to exclude individuals who meet the qualifications above and are able to seek or engage in employment.
- (9) *Parking.* There shall be a minimum of one off-street parking space with convenient access to a street for the accessory dwelling unit. The parking shall be in addition to the requirements specified for the principal dwelling.
- (10) *Not to be sold separately.* Accessory dwelling units shall not be sold apart from the principal dwelling upon the same lot where they are located.
- (11) *Compliance with health, safety, sanitation and building code regulations.* Any accessory dwelling unit shall meet the applicable code regulations for building, safety, health, and sanitation standards. During reasonable hours upon prior notice, the applicant shall make provisions to allow officials to make the appropriate inspections.
- (12) *Zoning permit and special exception time limits.* A zoning inspection permit is required for an accessory dwelling unit. The special exception and zoning inspection permit for the accessory dwelling unit shall expire:

- a. Ninety days from the date on which the owner no longer occupies the property. The owner shall notify the zoning administrator at such time as the owner no longer occupies the property.
 - b. Two years from the date of approval of the special exception if required improvements have not been completed.
 - c. One year from the date the use ceased.
 - d. At any time the use does not comply with any of the conditions of approval or the terms of this chapter.
- (13) *Conflicting provisions.* In the case of any conflict between the accessory dwelling unit standards of this section and any other requirement of this chapter or the subdivision ordinance, the standards of this section shall control.

(Ord. No. [17-O-13](#), 8-8-2017; [Ord. No. 19-O-43](#), § 1, 12-10-2019; [Ord. No. 20-O-01](#), § 1, 1-14-2020)

Sec. 78-80.4. - Standards for specific accessory uses and structures by use type.

Accessory uses and structures listed below shall comply with the following specific standards.

- (b) *Accessory food preparation area.* Accessory food preparation areas include secondary kitchens and wet bars.
 - (1) *Secondary kitchens.* Secondary kitchens, as defined in Article XVIII, are permitted by special exception in residential dwellings in accordance with all of the following provisions
 - a. A secondary kitchen shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.
 - b. The location of the secondary kitchen is not separated from the remainder of the dwelling unit by door(s) equipped with any of the following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition.
 - c. A unique and compelling need is demonstrated by the applicant.
 - d. A zoning inspection permit is applied for and approved.
 - e. The proposed activity meets the standards of section 78-155.3(e), review standards for special exceptions.
 - f. Secondary kitchens shall not be permitted in accessory structures except under the provisions of section 78-80.4, accessory dwelling unit.



STAFF REPORT

Town Council
December 1, 2020

Title:

Ordinance – To consider amending the Fiscal Year (FY) 2021 Adopted Budget, which, if adopted, will amend the budgets of the General Fund and Downtown Parking Fund.

Staff Contact:

Jennie A. Tripoli, Director of Finance
Telephone: (703) 435-6898
E-mail: jennie.tripoli@herndon-va.gov

Description:

The proposed FY 2021 budget amendment serves the following purposes:

- To meet the condition that the Town of Herndon appropriate the funding required to meet its obligations under the November 17, 2020 amendment to the Comprehensive Agreement between the Town and Comstock Herndon Venture, LC for the downtown redevelopment project (\$2.8 million in the Downtown Parking Fund for a total appropriation of \$4.0 million);
- To use a portion of the FY 2020 surplus not related to CARES funding to fund two critical projects – the upgrade of the Town’s phone system and Fall cleanup (\$90k in the General Fund);
- To direct a portion of proceeds from sales of surplus vehicles and equipment in FY 2021 to fund the upgrade of the Town’s fuel pump computer system and increase contingency funding for potential snow removal (\$65k in the General Fund);
- To use proceeds from insurance recoveries occurring between July 1 and the date of this budget amendment to replenish funding in accounts that absorbed the expenditures to repair the damage (\$20.5k in the General Fund); and
- To appropriate funds related to off-cycle grants and donations (\$10.4k in the General Fund).

Fiscal Impact:

The overall fiscal impact in the General Fund is a reduction of the Unassigned Fund Balance of approximately \$90k. All the other General Fund items are funded with by insurance recoveries, proceeds from the sale of surplus vehicles and equipment, and off-cycle grants.

The overall fiscal impact of the \$2.8 million appropriation in the Downtown Parking Fund depends on the funding source(s) to be used – cash from the CIP fund, debt issuance, or a combination of the two.

Staff Recommendation:

Recommend that the Mayor and Town Council adopt the attached draft ordinance.

Attached Documents:

1. Ordinance - Budget Amendment FY 2021, Number 2, December 8, 2020
2. Attachment A, Budget Amendment FY 2021, Number 2

Staff:

Jennie A. Tripoli
Jennie A. Tripoli, CPA
Director of Finance

TOWN OF HERNDON, VIRGINIA

ORDINANCE

December 8, 2020

Ordinance – to consider amending the Fiscal Year (FY) 2021 Adopted Budget, which, if adopted, will amend the budgets of the General Fund and Downtown Parking Fund.

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 2.

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 2 to this ordinance, are hereby approved. This ordinance shall be effective on and after the date of its adoption.

TOWN OF HERNDON, VA
FY 2021

BUDGET AMENDMENT NUMBER 2

The following appropriations and revenue sources are proposed for amendment:

GENERAL FUND

Expenditure Appropriations:

Increase General Fund Expenditures:

Public Works	\$ 106,011
Information Technology	46,193
Non-Departmental	33,251
Community Development	250
Total	\$ 185,705

Revenue Budgets:

Increase State Grant Revenues	\$ 10,145
Increase Proceeds from Sale of Surplus Equipment	65,000
Increase Insurance Recoveries	20,467
Increase Use of Unassigned Fund Balance	89,843
Increase Not Otherwise Classified	250
Total	\$ 185,705

DOWNTOWN PARKING FUND

Expense Appropriations:

Increase Downtown Redevelopment Expenses	\$ 2,800,000
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Revenue Budget:

Increase Other Financing Sources	\$ 2,800,000
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STAFF REPORT

Town Council
December 1, 2020

Title:

Resolution of Official Intent to Reimburse Expenditures with Proceeds of a Borrowing

Staff Contact:

Jennie A. Tripoli, Director of Finance
Telephone: (703) 435-6898
E-mail: jennie.tripoli@herndon-va.gov

Bond Counsel:

Chris Kulp, Partner, Hunton Andrews Kurth, LLP

Description:

The proposed resolution gives the Town the option to use the proceeds of a future borrowing to reimburse itself for expenditures paid to Comstock Herndon Venture, LC or for other qualified expenditures related to the downtown redevelopment under the Comprehensive Agreement, as amended on November 17, 2020. This reimbursement resolution is neither an obligation nor an authorization to issue debt related to this project. Its purpose is to provide the Town with maximum flexibility when determining the ultimate funding source(s) for this project.

Fiscal Impact:

There is no fiscal impact associated with adopting the proposed resolution. The fiscal impact occurs when the Town determines the funding source(s) for these expenditures.

Staff Recommendation:

Recommend that the Mayor and Town Council adopt the attached draft resolution.

Attached Documents:

Draft - Resolution of Official Intent to Reimburse Expenditures with Proceeds of a Borrowing

Staff Contact:

Jennie A. Tripoli

Jennie A. Tripoli, CPA
Director of Finance

**RESOLUTION OF OFFICIAL INTENT TO REIMBURSE
EXPENDITURES WITH PROCEEDS OF A BORROWING**

WHEREAS, the Town of Herndon, Virginia (the “Town”), has entered into a Comprehensive Agreement dated November 1, 2017, as amended, with Comstock Herndon Venture LC, establishing a public-private partnership for the redevelopment of certain real estate owned by the Town into a mixed-use town center project, arts center and associated parking (the “Project”);

WHEREAS, the Town intends to commence work on the public portion of the Project and to advance its own funds to pay the related Project costs (the “Expenditures”);

WHEREAS, the Town may determine to issue tax-exempt obligations, taxable obligations, or a combination thereof (collectively, the “Bonds”), and use the proceeds to reimburse such Expenditures; and

WHEREAS, the Town desires to preserve its option under federal tax law to make such reimbursement by adopting this Resolution;

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

1. The Town may utilize the proceeds of Bonds in an amount not currently expected to exceed \$4,000,000 to pay or reimburse any Expenditures that are originally paid on or after the date of this Resolution (and including, as allowed under federal tax law, any Expenditures originally paid up to 60 days prior to the date of this Resolution).

2. Each Expenditure was or will be, unless otherwise approved by bond counsel, either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Bonds, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Town so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Town.

3. Any reimbursement allocation, which is a written allocation by the Town that evidences the Town’s use of Bond proceeds to reimburse an Expenditure, will be made no later than 18 months after the *later of* the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is originally paid. Notwithstanding such time limitation, the Town recognizes that exceptions are also available under federal tax law that allow reimbursements for certain “preliminary expenditures,” costs of issuance, certain de minimis amounts, expenditures by “small issuers” (based on the year of issuance and not the year of expenditure) and expenditures for certain construction projects of at least five years.

4. The Town intends that the adoption of this Resolution confirms the “official intent” within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended.

5. This Resolution shall take effect immediately upon its passage.



STAFF REPORT

**Town Council
December 1, 2020**

Title:

Resolution- Establishing the Town of Herndon's 2021 Legislative Program to advise the 2021 Virginia General Assembly on matters of legislative interest on which the Town takes a position.

Staff Contact:

Lesa J. Yeatts, Town Attorney
(703) 787-7370
lesa.yeatts@herndon-va.gov

Description:

1. Positions and Informational Items

The Town generally supports the positions of the Virginia Municipal League (VML) relative to issues and legislation affecting local governments.

Additionally, the Town Council would be advising the 2021 General Assembly of the following positions without seeking any specific legislation:

COVID-19 – Addressing Short and Long Term Needs

The Town supports:

- Increased state and federal funding and technical support to allow for robust and timely COVID-19 testing and contact tracing services throughout the Commonwealth.
- Creation of a state stockpile of personal protection equipment (PPE) to ensure that essential workers – including those in public safety, human services, transit, and public schools – get access to sufficient PPE on a timely basis.
- State funding for public health emergency services functions to enable the state and its local health departments and stakeholders to better prepare for and respond to public health emergencies such as a pandemic.

- Increased state funding for public health information technology resources and staff so that critical, timely information about public health emergencies is made available to state and local policy makers, first responders, and the public.
- Additional funding and programming to prevent evictions resulting from people battling the COVID-19 pandemic or economic hardship from job layoffs or reduced work hours.
- Additional funding to help households with extreme medical needs or financial insecurities because of the ailing economy make payments for utility services.
- Additional funding for local governments to work with local businesses to develop and implement strategies necessary to implement public health standards and combat the Coronavirus.
- Additional funding for local governments to keep public buildings and facilities both safe and free from the coronavirus.
- State efforts to persuade Congress to enact new legislation providing financial assistance to local governments and to individuals. Such assistance to localities should permit local governing bodies to replace lost local revenues with the additional federal money until the economic recovery takes hold.

Economic Development

The Town supports local flexibility to promote economic development as localities come out of this pandemic. A changed business landscape will necessitate a review of revenue sources to localities along with new ideas and actions that will broaden and diversify local revenue streams. Retention of current businesses is vital, and we support continued grant funding and common-sense restrictions for current businesses that are both efficient and effective.

FOIA

The Town supports the position that any proposed changes to the Freedom of Information Act legislation be sent to the FOIA Council for analysis and recommendations prior to General Assembly consideration or enactment.

Funding for Planning District Commissions

The Town supports increased state funding for the statewide network of planning district commissions/regional councils (PDCs). PDCs carry out efforts supported by state and local policy makers to advance and sustain regional coordination, cooperation, and technical assistance for the benefit of regions across the Commonwealth.

Land Use Control

The Town believes that localities must maintain control of local land use decisions. Neither the state nor the federal government should usurp or pre-empt a locality's authority to make such decisions; nor should they impose requirements that weaken planning and land use functions. This would include the authority to promote affordable and mixed income housing as well as the required infrastructure to facilitate in-fill development, redevelopment and mixing of uses.

Sovereign Immunity

The Town supports the position of VML that the Virginia General Assembly should strengthen and maintain the principles of sovereign immunity for local governments and their officials.

The Town supports limiting the liability for civil damages for injury or death resulting from or related to actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the localities business operations unless the government, or political subdivision failed to substantially comply with applicable COVID procedures established by the federal, state, or local agency which governs the business operations.

State Assistance to Local Police Departments (HB 599)

The Town supports state assistance to local police departments. Almost 70 percent of Virginians live in communities served by police departments. The state created a program of financial assistance to local police departments (HB 599) when it imposed an annexation moratorium on cities more than 30 years ago. It has increasingly de-emphasized this funding obligation as a priority but has never compromised on the annexation moratorium. The Town supports VML's position for the state to honor its commitment to local governments and public safety by funding the program as stipulated in the Code of Virginia.

Stormwater Local Assistance

The Town supports continued annual investment in the Stormwater Local Assistance Fund to assist localities with critical stormwater projects to comply with federal and state clean-water requirements.

Taxing, Licensing, and Regulating Internet-Based Businesses and Services

In taking state action to regulate private enterprises employing a business model that emphasizes the use of the Internet to either provide retailer facilities or ridesharing services, local government interests should be acknowledged, and localities should be included in the decision-making. The Town supports preservation of its ability to enter into voluntary collection agreements provided that such agreements include provisions to protect the public's interest.

Transportation Funding Assistance

The Town supports continued funding assistance and flexibility to continue local transportation programs and projects and the operation of public transit systems.

Utilities

The Town supports local autonomy regarding local utilities. Many local governments own and operate utilities that provide services that may include but are not limited to water, sewer, electric and natural gas. These utility services are funded by localities both outright and as enterprise funds. These utilities have bonding authority and financial restrictions on their operations. Localities must be able to manage revenues and expenditures related to these services without state interference.

Water Quality Funding

For continued successful local water quality improvement projects the Town supports the position that the state fully capitalize the Water Quality Improvement Fund and provide the necessary appropriations for local government water quality improvement projects to clean up the Chesapeake Bay and its tributaries. In addition, any changes to the state's stringent wastewater mandates imposed on localities must be scientifically and economically defensible, employing implementation strategies that produce any necessary wastewater improvements at the least cost.

2. The Town Attorney shall mail or deliver a copy of this resolution to the Town's representatives in the General Assembly, other selected members of the General Assembly, area local governments, and to other interested persons, as appropriate.

Recommendation:

I recommend the Mayor and Town Council adopt the resolution.

Attachments:

Resolution

Prepared and Approved by:



Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 8, 2020

Resolution- Establishing the Town of Herndon's 2021 Legislative Program to advise the 2021 Virginia General Assembly on matters of legislative interest on which the Town takes a position.

The Town generally supports the positions of the Virginia Municipal League (VML) relative to issues and legislation affecting local governments.

Additionally, the Town Council would be advising the 2021 General Assembly of the following positions without seeking any specific legislation:

COVID-19 – Addressing Short and Long Term Needs

The Town supports:

- Increased state and federal funding and technical support to allow for robust and timely COVID-19 testing and contact tracing services throughout the Commonwealth.
- Creation of a state stockpile of personal protection equipment (PPE) to ensure that essential workers – including those in public safety, human services, transit, and public schools – get access to sufficient PPE on a timely basis.
- State funding for public health emergency services functions to enable the state and its local health departments and stakeholders to better prepare for and respond to public health emergencies such as a pandemic.
- Increased state funding for public health information technology resources and staff so that critical, timely information about public health emergencies is made available to state and local policy makers, first responders, and the public.
- Additional funding and programming to prevent evictions resulting from people battling the COVID-19 pandemic or economic hardship from job layoffs or reduced work hours.
- Additional funding to help households with extreme medical needs or financial insecurities because of the ailing economy make payments for utility services.
- Additional funding for local governments to work with local businesses to develop and implement strategies necessary to implement public health standards and combat the Coronavirus.
- Additional funding for local governments to keep public buildings and facilities both safe and free from the coronavirus.

- State efforts to persuade Congress to enact new legislation providing financial assistance to local governments and to individuals. Such assistance to localities should permit local governing bodies to replace lost local revenues with the additional federal money until the economic recovery takes hold.

Economic Development

The Town supports local flexibility to promote economic development as localities come out of this pandemic. A changed business landscape will necessitate a review of revenue sources to localities along with new ideas and actions that will broaden and diversify local revenue streams. Retention of current businesses is vital, and we support continued grant funding and common-sense restrictions for current businesses that are both efficient and effective.

FOIA

The Town supports the position that any proposed changes to the Freedom of Information Act legislation be sent to the FOIA Council for analysis and recommendations prior to General Assembly consideration or enactment.

Funding for Planning District Commissions

The Town supports increased state funding for the statewide network of planning district commissions/regional councils (PDCs). PDCs carry out efforts supported by state and local policy makers to advance and sustain regional coordination, cooperation, and technical assistance for the benefit of regions across the Commonwealth.

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Fund and provide the necessary appropriations for local government water quality improvement projects to clean up the Chesapeake Bay and its tributaries. In addition, any changes to the state's stringent wastewater mandates imposed on localities must be scientifically and economically defensible, employing implementation strategies that produce any necessary wastewater improvements at the least cost.



STAFF REPORT

**Town Council Work Session
December 1, 2020**

Title:

Resolution, to authorize the Chief of Police to sign a Critical Incident Response Team (CIRT) Memorandum of Understanding (MOU) allowing for the participation of the Herndon Police Department in mutual aid response to working officer-involved critical incident investigations throughout the Northern Virginia region.

Staff Contact:

Colonel Maggie A. DeBoard, Chief of Police
(703)-435-6895
Maggie.Deboard@herndon-va.gov

Summary:

Over the past 12 months, the Northern Virginia Chiefs have worked cooperatively and proactively to develop a Critical Incident Response Team to provide for the independent and objective investigation of law enforcement officer-involved critical incidents such as police shootings, use of force incidents resulting in death or life-threatening injuries, in-custody deaths, and police officer suicides. The purpose of the CIRT is to ensure a thorough and objective investigation of all critical incidents and promote public confidence in this process by mitigating concerns regarding potential conflicts of interest should the affected agency investigate the incident itself.

Regional investigative teams such as the CIRT are common throughout the country. This concept is in line with current police reform demands that call for independent investigations of police use of force incidents and greater transparency of law enforcement actions. The NOVA Chiefs saw the value of this regional team in advance of the recent outcry for police reform and worked diligently to develop an effective team for the Northern Virginia area.

The Herndon Police Department is already dependent on an outside entity conducting officer-involved critical incidents due to size and limitations of investigative resources within the agency. In the past, this investigation has been conducted by the Fairfax County Police Department on request, with no formal MOU in place to guide protocols, and no guarantee of availability. By

participating in the formal CIRT, all participating agencies will share investigative resources with outlined and agreed upon procedures that will guide these investigations across the region. Our investigators and supervisors assigned to the CIRT will also gain valuable investigative experience and skills that can be applied to investigations they are assigned to work throughout our community.

The CIRT MOU was developed with input from law enforcement subject matter experts and chiefs, jurisdictional attorneys, and commonwealth attorneys in each of the participating jurisdictions. Jurisdictions in the region that are not currently participating will have the option of joining in the future. Once the MOU is signed, work will begin on CIRT SOPs to operationalize the agreement, with an expected start date of March 1, 2021.

Fiscal Impact:

Participating agencies have agreed to remain responsible for all investigative expenditures for its own personnel when the CIRT is activated. Participation in this CIRT is not expected to have any impact to the police department's current budget outside of expected overtime expenses that normally arise during a call out and investigation for an officer-involved critical incident.

Attachments:

Resolution
Memorandum of Understanding

Prepared and Approved by:



Maggie A. DeBoard, Chief of Police

TOWN OF HERNDON, VIRGINIA

RESOLUTION

December 8, 2020

Resolution- to authorize the Chief of Police to sign a Northern Virginia Critical Incident Response Team (CIRT) Memorandum of Understanding allowing for the participation of the Herndon Police Department in mutual aid response to working officer-involved critical incident investigations throughout the Northern Virginia region.

WHEREAS, the NOVA CIRT is an independent group of trained investigators and supervisors that provide expert, objective investigation of critical incidents involving law enforcement officers, throughout the Northern Virginia region; and

WHEREAS, A Memorandum of Understanding has been developed to allow for the participation of local law enforcement departments in the investigation of working officer-involved critical incident investigations as defined by the MOU; and

WHEREAS, the participation of the Herndon Police Department will assist in promoting public confidence that an objective investigation will occur when an officer is involved in a critical incident, with the goal of mitigating concerns regarding potential conflicts of interest; and

WHEREAS, Herndon Police Department personnel assigned to the CIRT will gain valuable investigative skills and expertise that will assist them in their investigative duties within the Town of Herndon; and

WHEREAS, this agreement is established under the authority of the Code of Virginia 15.2-1726, Agreements for cooperating in furnishing police services, and 15.2-1736, Mutual aid agreements among governing bodies of localities.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby authorizes the Chief of Police to sign a Memorandum of Understanding for participation in the Northern Virginia Critical Incident Response Team.

NORTHERN VIRGINIA CRITICAL INCIDENT RESPONSE TEAM

MEMORANDUM OF UNDERSTANDING

I. AGREEMENT

- A. This agreement is known as the Northern Virginia Critical Incident Response Team (CIRT) Memorandum of Understanding and is established under the authority of the Code of Virginia § 15.2-1726. *Agreements for consolidation of police departments or for cooperation in furnishing police services*, and § 15.2-1736. *Mutual aid agreements among governing bodies of localities*.
- B. All critical incident investigations shall be conducted pursuant to the protocols outlined in this Memorandum of Understanding (MOU). This MOU shall be in effect for a term commencing on this 15th day of December 2020 and shall be extended and renewed for consecutive periods of five years if mutually agreed upon by the Parties to the MOU.
 - 1. Any Chief Executive Officer (CEO), in a jurisdiction that is party to this agreement, may activate the CIRT upon the occurrence, within that CEO's jurisdiction, of any critical incident involving a law enforcement employee or a law enforcement officer suicide. Upon this activation, the matter will be investigated under the provisions of this MOU.
 - 2. The CIRT will conduct the criminal investigation of a critical incident in close conjunction with the Commonwealth's Attorney or Prosecuting Attorney for the jurisdiction which had the critical incident. The internal administrative investigation remains the responsibility of the affected Agency.
 - 3. CIRT will not investigate motor vehicle crashes resulting in the death of any person, unless the vehicle was used as deadly force.
- C. Any party may terminate its participation in this MOU upon thirty (30) days written notice to the CIRT Board of Directors. This MOU is not intended to increase the civil or criminal liability of member agencies or their employees and it shall not be construed as creating any mandatory obligation to, or on behalf of, third parties.

II. PURPOSE

- A. To promote public confidence that an objective investigation will occur when an officer is involved in a critical incident as defined by this MOU. This includes but is not limited to:
 - 1. Intentional and accidental shootings.
 - 2. Any action used by a sworn law enforcement officer which results in the death or a life-threatening injury of a person during the performance of the officer's duties.
 - 3. Any In-Custody Death as defined by this MOU.

4. Police officer suicide.
 5. CIRT will not investigate motor vehicle crashes resulting in the death of any person, unless the vehicle was used as deadly force.
- B. To establish uniform procedures and mutually agreed-upon investigative guidelines that allow for an objective investigation of a critical incident with the goal of mitigating concerns regarding potential conflicts of interest should the affected agency investigate the incident itself.
 - C. To present the completed case investigation, and provide updates as the investigation proceeds, to the affected Commonwealth's Attorney, or designated prosecuting authority, who shall determine whether to initiate or decline prosecution ensuring persons are held accountable for their criminal conduct and those who have not engaged in criminal conduct are absolved.
 - D. The CIRT will not conduct internal administrative investigations.

III. DUTIES

- A. Ensure a thorough and objective investigation of all critical incidents within the scope of CIRT responsibilities, in accordance with applicable laws, CIRT Standard Operating Procedure, and policies.
- B. Ensure that proper investigative procedures are followed, evidence is collected and preserved, and reports are generated in a timely manner.
- C. Supervisors assigned to CIRT and the internal affairs function of the affected law enforcement agency, will meet with the Involved Officer(s) at the beginning of the criminal investigation to explain the investigative process.
- D. Provide briefings and updates to the affected law enforcement agency, its liaison team, command staff, and the affected Commonwealth's Attorney, or designated prosecuting authority regarding the status of the investigation as needed or reasonably requested.
- E. Ensure CIRT is solely a fact-finding body and shall present the facts of the investigation to the Commonwealth's Attorney, or designated prosecuting authority.
- F. Refer the completed investigation to the affected Commonwealth's Attorney, or designated prosecuting authority, for review. The affected law enforcement agency shall be notified prior to the time the investigation is presented to the Commonwealth's Attorney, or designated prosecuting authority.
- G. At the conclusion of the investigation, provide the completed investigation to the internal affairs function of the affected law enforcement agency.
- H. Participate in any critical incident review meetings, as requested by the affected agency or Commonwealth's Attorney, or designated prosecuting authority.
- I. All CIRT members will sign a confidentiality agreement upon assignment to the CIRT.

IV. ACTIVATION

- A. Any Chief Executive Officer in a jurisdiction that is a party to this agreement may activate the CIRT upon the occurrence, within that CEO's jurisdiction, of any critical event as defined in II.A and Appendix A of this MOU involving a law enforcement employee which may have possible criminal liability attached or a law enforcement officer suicide. Upon activation, the matter will be investigated under the provisions of this MOU.
 - 1. All requests for CIRT assistance shall be made to the CIRT Commander, or if unavailable, the CIRT Assistant Commander, who will then notify and direct the appropriate CIRT Supervisor(s) to coordinate the CIRT response to the incident.
 - 2. CIRT members from the affected agency shall not participate in the CIRT critical incident investigation. However, they may be assigned as the affected agency's Liaison Officer.

V. PERSONNEL AND EQUIPMENT EXPENSE

- A. In the event of a CIRT activation, member agencies agree to relieve team members assigned to the investigative team for the duration of the investigation.
- B. Member agencies shall not be liable to each other regarding reimbursement for injuries to personnel or damage to equipment incurred when going to or returning from another jurisdiction.
- C. Member agencies shall not be accountable to each other for the salaries or expenses of their personnel, vehicles and equipment used in association with, or arising out of, the rendering of assistance pursuant to this agreement.
- D. The affected agency shall be responsible for all investigative expenditures and will provide all reasonable and necessary support, resources, equipment, and supplies as required by CIRT to conduct its investigation. Prior to incurring costs associated with obtaining specialized equipment or testing, the CIRT Commander, or designee, will attempt to identify if logistical support exists in the region and will consult with the Chief Executive Officer or designee of the affected agency.

VI. INTERNAL ADMINISTRATIVE INVESTIGATION

- A. The affected agency's Internal Administrative Investigation will be conducted independent of the CIRT investigation.
- B. The CIRT investigation will have priority over the affected agency's Internal Administrative Investigation.
- C. Investigators from the internal affairs function of the affected agency assigned to conduct the Internal Administrative Investigation may remotely observe the criminal investigation interviews.
- D. Investigators assigned to conduct the Internal Administrative Investigation will be provided access to the crime scene(s), in collaboration with the CIRT.

VII. CIRT STRUCTURE

A. Board of Directors

1. The Board of Directors for the Northern Virginia Critical Incident Response Team consists of the Chief Executive Officers from each of the member agencies that are a party to this MOU.
2. The main role of the Board of Directors is CIRT oversight, planning, guidance, and direction for the future.
3. The Board will appoint a CIRT commander for a two-year term. This term may be extended at the discretion of the Board of Directors.
4. Important matters shall be brought before the full board for a vote. The full board need not deliberate all matters, some may be delegated to subcommittees.
5. The Board of Directors, by majority, may elect to immediately stop an investigation and turn it over to the affected agency for willfully failing to abide by this agreement. Further action may also result in the agency's removal from the CIRT MOU.

B. CIRT Commander

1. Shall be a command level officer from a participating law enforcement agency and shall be appointed by the CIRT Board of Directors for a two-year term, regardless of agency assignment.
2. Shall provide an annual report to each member of the CIRT Board of Directors (TBD; e.g. February). The report will detail, at a minimum, CIRT investigations, training, and areas identified for further development or growth.
3. Shall clearly outline the goals, objectives and expectations of the CIRT to all members.
4. Shall establish procedures for the activation of CIRT and maintain and distribute CIRT notification rosters to each participating agency.
5. Shall establish Standard Operating Procedures (SOP) related to the investigative process that ensures a well-defined, systematic, criminal investigation and ensure that all parties understand the SOP. The SOP, when developed and/or updated, will be presented to the CIRT Board of Directors for approval.
6. Shall establish a standardized reporting document for use on all critical incident investigations.
7. Retains the ultimate responsibility for the management and conduct of the investigation team and its individual members and must ensure that there are no conflicts of interest that may impact the investigative process.
8. Shall not be assigned to investigate their own agency.
9. Will assign a CIRT Supervisor to manage the investigation.
10. Responsible for presenting the documented investigation to the affected agency

and affected Commonwealth's Attorney, or designated prosecuting authority.

11. Responsible for the readiness and training of CIRT members. At a minimum, personnel assigned to CIRT should attend a critical incident response/investigations course upon appointment.
12. Shall establish a method for the affected agency's personnel to readily identify CIRT members at the scene of a critical incident.
13. May remove any team member upon the recommendation of a CIRT Supervisor or at the request of a Chief Executive Officer.

C. Assistant CIRT Commander

1. Shall be a command level officer from a participating law enforcement agency and shall be appointed by the CIRT Board of Directors for a two-year term, regardless of agency assignment. The Assistant Commander and Commander shall not be from the same agency.
2. Serves when the Commander's agency is the agency affected by a critical incident.
3. Serves when the Commander is not available.
4. Will be responsible for scheduling routine team meetings and coordinating training courses for all members.

D. CIRT Supervisors

1. Each member agency should appoint one supervisor to serve a two-year term, regardless of agency assignment. This term may be extended at the discretion of each member agency's Chief Executive Officer.
2. Generally, supervisors will be rotated through incidents.
3. Shall not be assigned to investigate their own agency.
4. The Supervisor assigned to a CIRT investigation is responsible for directing the criminal investigation and ensuring the affected Commonwealth's Attorney has been notified of the event and is kept informed of the investigation.
5. The assigned Supervisor will determine the number of investigators required by the CIRT at the scene of a critical incident and is responsible for delegating investigative and administrative tasks to CIRT members.
6. The assigned Supervisor will designate a primary and secondary investigator to conduct the criminal investigation.
7. The assigned Supervisor may request the assistance of other CIRT Supervisors for various support functions but retains overall management responsibilities of the investigation.
8. The assigned Supervisor shall determine a location for the team to assemble and arrange for a briefing of the incident with the affected agency and affected Commonwealth's Attorney, or designated prosecuting authority. The affected agency shall identify an employee, who was not directly involved in the critical incident, to provide an initial briefing to the CIRT.

9. The assigned Supervisor will organize a team debriefing in order to review performance and training needs at the conclusion of a CIRT response.
10. Any CIRT Supervisor may propose training needs to the CIRT Commander that would enhance the knowledge, skills, and abilities of CIRT members.
11. Shall provide annual training to their own agency. Training should include, at a minimum, information contained in this MOU.
12. When the Commander and Assistant Commander are not available, two Supervisors will be appointed to serve as Commander and Assistant Commander during their absence.
 - a. The Commander will appoint the Acting Commander and Acting Assistant Commander. The appointment will be documented and distributed to all members and member agencies through written communication.

E. Investigations Team

1. CIRT Investigators will be appointed by their respective Chief Executive Officer.
 - a. Generally, investigators assigned to the CIRT will be appointed for a two-year term. This term may be extended at the discretion of each member agency's Chief Executive Officer.
 - b. The CIRT is made up of personnel from participating agencies and while larger agencies are expected to appoint 2-3 investigators to the Investigations Team smaller agencies may endeavor to appoint 1-2 investigators to the team.
 - c. Agencies should assign their most skilled and experienced personnel to investigate these incidents as the CIRT will be judged by the quality of their investigation.

VIII. EVIDENCE COLLECTION, PRESERVATION AND ANALYSIS

- A. Upon notification of a critical incident, the CIRT Commander or designee, shall immediately request a Crime Scene Unit from a non-involved CIRT agency.
 1. The assigned Crime Scene Unit shall report directly to the CIRT Commander or designee.
 2. The assigned Crime Scene Unit will be responsible for processing the crime scene(s) and collection and preservation of evidence.
- B. Scene Security
 1. The jurisdiction in which the incident occurred will have the responsibility for immediately securing the crime scene(s).
 2. This responsibility includes preservation of the integrity of the scene(s), its contents, controlling access, and the identification and separation of witnesses until the CIRT arrives and assumes command.

- C. Prior to returning the crime scene to the exclusive purview of the affected agency, the lead investigators, crime scene technicians, CIRT Supervisor(s), Liaison Officer and investigators from the internal affairs function for the affected agency will confer to determine if the collection of evidence is complete.
- D. Evidence collection and preservation shall be stored by the collecting agency to ensure chain of custody and quality control.
- E. The assigned Crime Scene Unit shall maintain a record of the affected agency's case number or evidence control number to ensure complete accountability of records.
- F. The assigned Crime Scene Unit shall provide the CIRT with the case number or evidence control number being used to log and store evidence.
- G. Upon conclusion of the criminal investigation and/or prosecution, if warranted, and the expiration of the Statute of Limitations for Civil Action, all evidence collected and stored by the collecting agency will be returned to the affected agency to be stored and retained per the affected agency policies and procedures.

IX. INTERVIEWING THE INVOLVED OFFICER(S)

- A. The formal interview will be conducted in accordance with the affected agency's policies and procedures.
- B. It is the intent of the CIRT to only conduct the criminal investigation and not become involved in the administrative investigation. It should be made clear to Involved Officer(s) that "Garrity" advisements do not apply.
- C. Interviews should be videotaped with an audio recording back up whenever possible.
 - 1. Interviews of incident participants and primary witnesses must, at a minimum be audio recorded.
- D. Members of the internal affairs function of the affected law enforcement agency will be provided with copies of all interviews for use during the Internal Administrative Investigation.

X. REPORT WRITING

- A. The affected agency shall document the critical incident on their standard report form. The involved officer(s) shall not be expected to complete this task.
 - 1. This initial report will be provided to the CIRT Commander or designee.
 - 2. The affected agency will generate a case/incident number to be used on all CIRT documents.
- B. Investigators shall deliver all reports to the assigned Supervisor, or designee.
 - 1. Investigators will write reports documenting their participation in the investigation.
 - 2. Investigators will not destroy any reports, notes or memorandums created during their involvement with the investigation.
 - 3. The lead investigator has the ultimate responsibility for report writing and for

collecting reports, notes and memorandums created during the investigation from other investigators and agencies.

4. Prompt completion and distribution of reports is essential.
5. At the conclusion of the investigation the Liaison Officer is responsible for collecting all investigative reports from the lead investigator and ensuring these documents are retained per the affected agency's policies and procedures.
 - a. Any and all records created during the investigation are considered property of the affected agency. Therefore, at the conclusion of the investigation, each investigator will ensure all records created have been provided to the lead investigator and will not retain any personal copies.

XI. AFFECTED AGENCY RESPONSIBILITY

A. Liaison Officer

1. The Commander, or designee, will assign a Liaison Officer who will act as the affected agency's point of contact for CIRT. They will typically be utilized to communicate and coordinate the activities between the affected agency, the CIRT, and the Commonwealth's Attorney, or designated prosecuting authority. The Liaison Officer will be selected from the affected agency's CIRT Supervisor or Investigations Team assigned member(s).
 2. The Liaison Officer should remain available to facilitate the assignment of additional resources and personnel as needed to aid the assigned CIRT Supervisor. This may include the sharing of previous agency criminal investigative reports, training records or other agency documents as needed by the CIRT.
 3. The Liaison Officer shall have the authority to activate investigative resources and personnel from their agency as requested by the assigned CIRT Supervisor.
- B.** The scene of an officer involved critical incident will be secured and preserved by the affected agency. Other than essential law enforcement information needed to preserve public safety and/or information necessary to reassure the community there is no active/ongoing threat, no information regarding the incident will be discussed until contact is made with and the arrival of a CIRT Supervisor.
- C.** The below guidelines, at a minimum, shall be incorporated into the CIRT SOP.
1. Officer Processing – Whenever possible, the Involved Officer(s) should be transported to the affected agency's police facility for processing and interviews.
 - a. The initial incident commander of the critical incident should ensure involved officers are photographed/video recorded as they appear on scene, to include any injuries sustained. This attempt to document an officer's appearance must not interfere with medical care.
 - b. Statements from the Involved Officer(s), beyond the public safety

statement, should only be taken by CIRT and/or members from the affected agency's internal affairs function.

- c. Unless extenuating circumstances exist, after the public safety statement is made and the scene is secured, the Involved Officer(s) should be afforded the opportunity to be checked by medics.
2. Additional Investigative Assistance – The CIRT may request additional personnel from the affected agency as needed. However, affected agency personnel shall only act under the command of a CIRT Supervisor.
3. Witness Interviews – Prior to CIRT arrival, when witnesses are unable or not willing to wait for those resources to arrive, detectives or officers from the affected agency may conduct those interviews. These interviews should be recorded, documented and contact information for future follow-up shall be obtained.
4. Media Relations
 - a. The affected agency's media office will maintain exclusive responsibility for the release of information to the media, publishing press releases, handling media inquiries, holding/coordinating press conferences, and releasing information to the public.
 - b. Prior to releasing any information and to maintain the integrity of the investigation, all media releases shall be reviewed with the CIRT Commander and Supervisor, the lead investigator, and the Chief Executive Officer or designee of the affected and/or employer agency.
5. Police Video or Audio Recording
 - a. Affected agency personnel responsible for police video recording systems will endeavor to ensure all video and/or audio recordings are downloaded and saved in accordance with the affected agency's policy.
 - b. Copies of all video and/or audio recordings will be made and distributed to CIRT.
6. Administrative procedures related to the Involved Officer(s) duty status, replacement weapon/firearm, care, peer support and access to Union Representative(s) will be subject to the affected agency policies and procedures.
7. Virginia Freedom of Information Act (FOIA)
 - a. The affected agency is responsible for handling all FOIA requests.
 - b. Any and all FOIA requests shall be handled in compliance with the affected agency's policies and procedures.
 - c. Prior to providing a response, the affected agency FOIA officer shall collaborate the FOIA response with all investigative parties.
 - d. No record created during the course of an investigation shall be destroyed and will be provided to the affected agency to be retained per agency policy.

XII. ROLE OF THE COMMONWEALTH’S ATTORNEY, OR DESIGNATED PROSECUTING AUTHORITY

- A. The affected Commonwealth’s Attorney, or designated prosecuting authority, shall be notified of all officer involved critical incidents and provided an initial assessment of the event by the CIRT Commander, or designee.
- B. Assist and advise the CIRT.
- C. Shall be given access to reports, videos, audio, interviews, and all relevant information gathered in respect to the investigation.
- D. The return of any evidence, to include involved weapons and vehicles, must be approved by the Commonwealth’s Attorney, or designated prosecuting authority, and coordinated between the CIRT Commander or designee, and the affected agency.

XIII. ROLE OF THE OFFICE OF THE CHIEF MEDICAL EXAMINER (OCME)

- A. The OCME shall be notified by the CIRT Commander or designee of any fatal incident and be requested to respond to the scene.

XIV. CIRT FINAL REPORT

- A. When the investigation is complete the CIRT Final Report will be presented by the CIRT Commander, or designee, to the affected Chief Executive Officer and Commonwealth’s Attorney, or designated prosecuting authority.
- B. The Chief Executive Officer of the affected agency may request that the CIRT Commander make a separate presentation to the affected agency and any other review board.
 - 1. No officer(s) directly involved in the incident may attend the presentation to the Commonwealth’s Attorney, or designated prosecuting authority.

XV. CIRT CASE FILE

- A. When the investigation is complete the entire CIRT case file will be provided to the internal affairs function for the affected agency. This will be facilitated by the Liaison Officer.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding as of the day and year shown below.

ARLINGTON COUNTY POLICE DEPARTMENT _____ Charles A. Penn, Acting Chief of Police Date	CITY OF FAIRFAX POLICE DEPARTMENT _____ Erin Schaible, Chief of Police Date
CITY OF FALLS CHURCH POLICE DEPARTMENT _____ Mary Gavin, Chief of Police Date	TOWN OF HEARNDON POLICE DEPARTMENT _____ Maggie A. DeBoard, Chief of Police Date
TOWN OF LEESBURG POLICE DEPARTMENT _____ Gregory C. Brown, Chief of Police Date	CITY OF MANASSAS POLICE DEPARTMENT _____ Douglas W. Keen, Chief of Police Date
CITY OF MANASSAS PARK POLICE DEPARTMENT _____ Mario Lugo, Chief of Police Date	METROPOLITAN WASHINGTON AIRPORTS AUTHORITY POLICE DEPARTMENT _____ David Huchler, Chief of Police Date
PRINCE WILLIAM COUNTY POLICE DEPARTMENT _____ Jarad L. Phelps, Acting Chief of Police Date	TOWN OF PURCELLVILLE POLICE DEPARTMENT _____ Cynthia McAllister, Chief of Police Date
TOWN OF VIENNA POLICE DEPARTMENT _____ Jim Morris, Chief of Police Date	

APPENDIX A - DEFINITIONS

Administrative Investigation – Non-criminal internal investigation by police department personnel utilized to identify any policy and/or procedure violations. Generally conducted by the Employer Agency's internal affairs function.

Affected Agency – The employing agency of the involved law enforcement officer(s).

Chief Executive Officer – The Chief of Police or Sheriff from each of the member agencies that are party to this MOU.

Command Level Officer – Officers with command rank (lieutenant, equivalent or above).

Criminal Investigation – Investigation conducted by the CIRT to determine if any criminal laws have been violated. The investigation shall be performed following standard operating procedures.

Critical Incident – *The discharge of a firearm, use of force, or other action by an officer(s) that results in death or serious bodily injury to any person, or the unexplained death of a person in police custody, or the suicide of an officer.*

In-Custody Death – Any custodial death where a subject is being detained, arrested, or is in the custody of a law enforcement officer except those that occur while the subject is under a physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of toxic substance.

Investigations Team – Those investigators assigned by the CIRT member agencies to conduct the criminal investigation of the incident.

Involved Officer – Unless otherwise indicated, refers to those sworn personnel in an on-duty or off-duty status whose use of force or other action results in the death or serious bodily injury to another person, and any officer who discharges his/her firearm at a subject or detainee, regardless of injury or death.

Member – Appointed or assigned personnel to the CIRT from member agencies.

Member Agency – The law enforcement agencies that are members of the Northern Virginia Critical Incident Response Team.

Officer-Involved Shooting – A discharge of a firearm by an officer during a hostile encounter, while on-duty or off-duty, irrespective of injuries to self, subjects, officers, or third parties.

Police Employee – A person compensated by a particular law enforcement agency or authorized volunteer of that law enforcement agency who performs an act for the benefit of and subject to the control of that agency. However, an officer acting pursuant to authority of a special commission is not considered an employee of that agency.

Serious Bodily Injury – Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

Subject – The person who is injured by the act of the Involved Officer, whether or not the injury is intentional.

Team Supervisor – The investigator who is assigned by the CIRT Commander to lead and manage the CIRT investigation.



STAFF REPORT

Town Council

December 1, 2020

Title:

Resolution authorizing two applications to the Regional Jurisdiction and Agency Coordinating Committee (RJACC) of the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) funding for Federal fiscal year 2027 and to endorse the town's transportation projects of the adopted Virginia Department of Transportation Six-Year Improvement Program for fiscal years 2021 through 2026.

Staff Contact:

Mark Duceman, AICP - Transportation Program Manager/Senior Planner

e-mail: mark.duceman@herndon-va.gov

Jaleh Moslehi, PE - Capital Projects Planner/Engineer

e-mail: jaleh.moslehi@herndon-va.gov

Summary:

A resolution directing staff to submit two project applications to the Regional Jurisdiction and Agency Coordinating Committee (RJACC) of the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) funding for Federal fiscal year 2027 (Attachment #1). Staff is proposing to submit one RSTP application and one CMAQ application to the NVTA-RJACC. The deadline for application submittals is January 15, 2021. The proposed projects and respective funding requests are listed below and project details are provided on the following pages.

RSTP Proposed Project (funding criteria: roadway projects that improve the region's transportation network and facilitate alternative modes of transportation)

- **Sterling Road Multimodal Improvements (CIP #10)**
- funding application request up to: \$1,000,000

CMAQ Proposed Project (funding criteria: advancing cost-effective transportation projects that reduce vehicle emissions and improve air quality for regional benefit)

- **Herndon Metrorail Intermodal Access Improvements - II (CIP #6)**
- funding application request up to: \$700,000

Project Description (RSTP):

Sterling Road Multimodal Improvements (from Elden Street to Rock Hill Road at the town limits): This project envisions the reconfiguration of Sterling Road to reflect the town's current plans for traffic access management and multimodal circulation along this residential street. For this year's CMAQ funding request, town staff is proposing a funding application amount of up to \$1,000,000 for fiscal year 2027. The project length is approximately 1.0 mile, located between Elden Street and Rock Hill Road, and includes the Herndon Parkway, Crestview Drive and Elden Street intersections.

The initial funding source for this project includes \$204,000 from NVTAs Local Revenue, per the town's FY21-FY26 Capital Improvement Program (CIP #10). Accordingly, initial concept planning efforts are now underway to include right-of-way survey followed by proposed roadway design concepts and its traffic impact analysis. As part of the traffic analysis a signal warrant evaluation is being prepared to determine the need for a new signalized intersection at Crestview Drive. Staff and the town's consultant are planning to present the concept design plans during Spring 2021.

The concept design is to include ADA accessible sidewalks and proposed bike lanes along the entire length of the project. The traffic study will also analyze the potential for better lane realignment at the Sterling Road intersections with Elden Street, Crestview Drive and Herndon Parkway. The project objective is to implement access management and multimodal measures, improve traffic signalization, add applicable turning lanes and provide for landscaping and safer ADA accessible sidewalks; all in an effort to increase safety, reduce congestion, enhance circulation and connectivity while retaining the residential character of the Sterling Road corridor.

The Sterling Road Multimodal Improvements project is included in the town's adopted FY21-FY26 Capital Improvement Program and 2030 Comprehensive Plan, as amended through November 17, 2020. It is also listed in the Northern Virginia Transportation Authority (NVTAs) TransAction plan. In addition to RSTP funding, this project is eligible under VDOT Smart-Scale and VDOT Revenue Sharing programs as well as the NVTAs Regional funding program.

Project Description (CMAQ):

Herndon Metrorail Intermodal Access Improvements - Phase II: The initial first phase of this project is fully funded and is comprised of previous Federal CMAQ funds and NVTa Regional funds as listed in the town's adopted FY2021-FY2026 Capital Improvement Program (CIP #6).

For this year's CMAQ funding request, town staff is proposing a funding application amount of up to \$700,000 for fiscal year 2027 to be directed towards improvements that are needed beyond the initial bus bay drop-off improvements of Phase I and after the opening of Dulles Metrorail. Specifically, this project includes a new signalized intersection at the future Worldgate Drive extension with Herndon Parkway, as per the town adopted 2030 Comprehensive Plan and its Metrorail Station Area Plan. In addition, pedestrian signalization and new street-lighting along with ADA accessible sidewalks, curb cuts, crosswalks and refuge islands will provide additional safety measures for both motorized and non-motorized traffic modes.

In the future, additional CMAQ funding is anticipated for further safety enhancements, pedestrian/bike signalization, street lighting, ADA sidewalks and curbing, refuge median islands, cycle tracks, trail connectivity and/or bus shelter facilities along Herndon Parkway between Van Buren Street and Spring Street, as redevelopment occurs in the area.

Recommendation:

Approve the draft Resolution dated (Attachment 1) which authorizes the FY2027 RSTP/CMAQ funding applications and endorses the town's transportation projects of the adopted FY21-FY26 VDOT Six-Year Transportation Improvement Program. The FY2027 RSTP/CMAQ applications seek Federal funds as an alternative to the use of town general funds for capital improvement projects.

Staff Comments:

Each of the town's two projects proposed for RSTP/CMAQ funding are listed in the town's FY2021-FY2026 Capital Improvement Program as well as the 2030 Comprehensive Plan, as amended through November 17, 2020.

Federal RSTP/CMAQ transportation funding is distributed to each state and then onto regions within each state based on population. Regional organizations are responsible for selecting specific projects for funding. In Northern Virginia, the Northern Virginia Transportation Authority - Regional Jurisdiction Agency Coordinating Committee (NVTa-RJACC) recommends applicable RSTP/CMAQ

transportation projects to the NVTB Board. Next, the project allocations are forwarded to the Virginia Commonwealth Transportation Board for final approval into the VDOT Six-Year Improvement Program adopted each year in June. There is no guarantee from year to year that any projects funded in the past will continue to be funded.

The attached resolution authorizes the submittal of two project applications to the NVTB-RJACC for RSTP and CMAQ funding for Federal fiscal year 2027. And, the resolution endorses the town's transportation projects for the Urban system component of the adopted VDOT Six-Year Improvement Program for fiscal years 2021-2026.

Attached Document:

Town Council Draft Resolution (dated December 8, 2020) authorizing two applications to NVTB to include one FY27 RSTP application for the “*Sterling Road Multimodal Improvements*” project and one FY27 CMAQ application for the “*Herndon Metrorail Intermodal Access Improvements - II*” (UPC 106986) project for Federal transportation funding.

Staff:

Jaleh Moslehi

Jaleh Moslehi, PE
Capital Projects Planner/Engineer

MED

Mark Duceman, AICP
Transportation Program Manager

Elizabeth M. Gilleran

Elizabeth M. Gilleran, AICP
Director of Community Development

TOWN OF HERNDON, VIRGINIA

RESOLUTION

December 8, 2020

Resolution- Authorizing two applications to the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) funding for the Federal fiscal year 2027 and to endorse project priorities of the Virginia Department of Transportation (VDOT) Six-Year Improvement Program for fiscal years 2021 through 2026.

WHEREAS, the town's RSTP project priority, titled '*Sterling Road Multimodal Improvements*' is for access management and multi-modal measures to improve traffic signalization, add applicable turning lanes and provide for landscaping and safer ADA accessible sidewalks and crosswalks; all in an effort to increase safety, reduce congestion, enhance circulation and connectivity while retaining the residential character of the Sterling Road corridor; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008, and as amended through November 17, 2020, advises the improvement of Sterling Road to enhance traffic mobility while providing for safer accommodations for pedestrians and bicyclists; and

WHEREAS, the Town of Herndon adopted FY2021-FY2026 Capital Improvement Program, includes the improvement of Sterling Road between Elden Street and Rock Hill Road at the town limits; and

WHEREAS, the '*Sterling Road Multimodal Improvements*' project is included in the Northern Virginia Transportation Authority's TransAction Plan; and

WHEREAS, the study now underway and being prepared by the town's transportation consultant includes proposed concept designs, traffic impact analysis and proposed new traffic signalization at Crestview Drive as well as the feasibility of a bike facility between Elden Street and the town limits; and

WHEREAS, the town's CMAQ project priority is titled '*Herndon Metrorail Intermodal Access Improvements*' for new intersection signalization as well as multimodal roadway, pedestrian, bike and transit enhancements that will serve transit-oriented development along Herndon Parkway; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008, and as amended through November 17, 2020, promotes the goal of facilitating alternative modes of transportation within the town; and

WHEREAS, the Town of Herndon adopted FY2021-FY2026 Capital Improvement Program, includes the improvements of vehicular and pedestrian access to Herndon Metrorail; and

WHEREAS, town approved engineering design plans prepared by the town's transportation consultant shows new traffic signalization at the proposed Worldgate Drive extension with Herndon Parkway as well as intersection enhancements such as pedestrian signalization, refuge islands and crosswalks; and

WHEREAS, the new signalization at the proposed Worldgate Drive and Herndon Parkway along with the vehicle/bus bays will provide an increase level of mulitmodal access and circulation, via new roadway connectivity and wide ADA accessible sidewalks with streetlights, to the pedestrian entrance facility of the Metrorail Station, as per town adopted Herndon Metrorail Station Area Plan and approved Dulles Corridor Rapid Transit Project - final Environmental Impact Statement; and

WHEREAS, the project includes roadway reconstruction as well as costs associated with relocating existing curbing, streetlights, sidewalks, and underground utilities to create better pedestrian and bicycle access to the pedestrian entrance facility located on the northside of the Herndon Metrorail Station; and

WHEREAS, the town's CMAQ project will improve and integrate pedestrian and bicycle facilities within the street and transit network in concert with the Trail and Sidewalk Program and other project components of the town's Capital Improvement Program involving transportation improvements; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, does hereby authorize the Town Manager to submit two applications to the Northern Virginia Transportation Authority, and through the Virginia Department of Transportation, for FY2027 Federal funding for the following projects:

- a) an allocation funding request of up to \$1,000,000 in Regional Surface Transportation Program (RSTP) funding for the '*Sterling Road Multimodal Improvements*' project (Elden Street to the town limits); and
- b) an allocation funding request of up to \$700,000 in Congestion Mitigation and Air Quality (CMAQ) funding for the '*Herndon Metrorail Intermodal Access Improvements*' project.

BE IT FURTHER RESOLVED that the Town Council continues to support the projects included in the state adopted FY2021-2026 Virginia Department of Transportation Six-Year Improvement Program, including East Elden Street Improvements and Widening (UPC 50100), East Spring Street Widening (UPC 105521), Herndon Metrorail Intermodal Access Improvements (UPC 104328, UPC 106986), Herndon Parkway and Van Buren Street Intersection Improvements (UPC 89889), Van Buren Street Multimodal Improvements (UPC 107658), Elden Street and Monroe Street Intersection Improvements (UPC 108690), Historic Herndon Revitalization (UPC 70321) and Herndon Trails to Metrorail (UPC 104342).



STAFF REPORT

Work Session December 1, 2020

Title:

Resolution to authorize the Town Manager to sign a second Federal Subaward Agreement between the Town and Fairfax County for the use of additional Coronavirus Aid, Relief, and Economic Security (CARES) funds under the Commonwealth of Virginia's Municipal Utility Relief Program

Staff Contact:

Jennie A. Tripoli, Director of Finance
Telephone: (703) 435-6898
E-mail: jennie.tripoli@herndon-va.gov

Description:

On November 19, 2020, the Town received a memorandum from the Commonwealth of Virginia's Department of Housing and Community Development informing municipal utilities of a COVID-19 Municipal Utility Relief Program for utility customers with accounts that are 30+ or 60+ days past due as of October 31, 2020. The fundamental goal of this program is to assist municipal utility customers experiencing economic hardship due to the COVID-19 pandemic. The deadline to apply for funds to cover these arrearages is November 30, 2020; awards could be disbursed as early as December 7, 2020. However, each municipal utility must partner with a county or city to act as its fiscal agent to receive funds, if awarded, through the Commonwealth's Department of Accounts.

The Town sent this information to Fairfax County on November 19, 2020 and expressed interest in participating in the program. During the weekly CARES funding call on November 25, 2020 between Fairfax County and its towns, County personnel informed the towns of their willingness to act as the fiscal agent for this program. They also informed the towns that they would issue a second Federal Subaward Agreement covering this program. However, because of the extremely short turnaround time, this second agreement will not be ready until early to mid-December. Staff requests that the Town Council authorize the Town Manager to sign this second Federal Subaward Agreement when available and to accept the additional CARES funding for the municipal utility relief if awarded.

Town staff submitted the application for this program on November 25, 2020.

Fiscal Impact:

The fiscal impact on the Water and Sewer Fund is not expected to exceed \$100,000. Potential awards exclude deposits, down payments, late fees, interest, and penalties. The Town must draft and send attestation forms to eligible customers, and those signed forms must be received by the Town no later than January 29, 2021. The program's requirements stipulate how municipal utilities must apply amounts awarded to eligible customer accounts.

Staff Recommendation:

Staff recommends that t the Mayor and Town Council adopt the attached resolution.

Attached Documents:

Draft - Resolution to authorize the Town Manager to sign a second Federal Subaward Agreement between the Town and Fairfax County for the use of additional CARES funds under the Commonwealth of Virginia's Municipal Utility Relief Program.

Prepared by:

Jennie A. Tripoli

Jennie A. Tripoli, CPA
Director of Finance

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 8, 2020

Resolution – to authorize the Town Manager to sign a second Federal Subaward Agreement between the Town and Fairfax County for the use of additional Coronavirus Aid, Relief, and Economic Security (CARES) funds under the Commonwealth of Virginia’s Municipal Utility Relief Program

WHEREAS, On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide support directly to state, local, and tribal governments to address the COVID-19 pandemic; and

WHEREAS, The first Federal Subaward Agreement between the Town of Herndon and Fairfax County for use of CARES Act funds was made as of July 6, 2020 and signed on July 29, 2020; and

WHEREAS, On November 19, 2020, the Commonwealth of Virginia’s Department of Housing and Community Development sent a memorandum to municipal utilities outlining the requirements and application process for a municipal utility relief program; and

WHEREAS, A requirement of the program is a partnership with Fairfax County to act as the Town’s fiscal agent; and

WHEREAS, Fairfax County has agreed to act as the Town’s fiscal agent for this program and will require a second Federal Subaward Agreement to be executed; and

WHEREAS, The second Federal Subaward Agreement will not be ready for signature until after the Town Council’s December 8, 2020 Public Session and time is of the essence with regard to disbursement of these funds.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby authorizes the Town Manager to sign the second Federal Subaward Agreement between the Town of Herndon and Fairfax County for use of CARES funds under the Commonwealth of Virginia’s Municipal Utility Relief Program.

STAFF REPORT

Town Council
December 1, 2020

Title:

Resolution – Award of Contract IFB #21-04, HVAC Preventative Maintenance Services

Staff Contact:

Tammy Chastain, Deputy Director of Public Works
(phone) 703-435-6860
(e-mail) tammy.chastain@herndon-va.gov

Background:

The purpose is to establish a term contract for services of a licensed and qualified contractor to furnish all supervision, labor, materials (belts, filters, etc.), and equipment for HVAC preventative maintenance services for all Town owned facilities. The contractor will perform quarterly services necessary to inspect, service, and install replacement parts to existing equipment in order to maintain the equipment in proper operating condition.

IFB #21-04, HVAC Preventative Maintenance Services was advertised on the Town of Herndon website and the eVA Commonwealth of Virginia procurement website to maximize fullest competition. On October 30, 2020, eight bids were publicly opened and read aloud, and the following bids were received:

	BID BASED ON YEARLY COST
Mechanical Services Industries, LLC	\$29,597.00
The Tustin Group	\$35,277.08
Kelly HVAC, Inc.	\$38,340.00
Atlantic Constructors, Inc.	\$44,100.00
Paramount Mechanical Corp.	\$52,846.00
Constellation New Energy	\$58,545.63
Uniaire	*\$45,515.00, missing addendums 1, 2 and 4.
Vernon Heating & Cooling	*\$0.00, No pricing listed.

The apparent lowest bidder, Mechanical Services Industries, LLC, has been found to be responsive and responsible.

December 1, 2020

Staff Report: Resolution– Award of Contract IFB #21-04, HVAC Preventative Maintenance Services

Page 2 of 2

The period of this contract shall be one (1) year from date of award. The Town reserves the right to renew this contract for four (4) additional years, one (1) year at a time.

Fiscal Impact:

Funds to support the work with bid item unit costs established by the contract are available in the following budget accounts: Building Maintenance Contract Services 001-08-84-000-420610 and Building Maintenance Repair Account 001-08-84-000-420820.

Staff Recommendation:

Staff recommends Contract IFB #21-04, HVAC Preventative Maintenance Services, be awarded to Mechanical Services Industries, LLC in the amount of \$ 29,597.00.

Attachments:

Draft Resolution

Staff:



Tammy Chastain
Deputy Director of Public Works



Gerald W. Amacker
Purchasing Agent

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 8, 2020

Resolution- Award of Contract IFB #21-04, HVAC Preventative Maintenance Services.

WHEREAS, staff developed a term contract for the HVAC Preventative Maintenance Services for town facilities; and

WHEREAS, IFB #21-04, HVAC Preventative Maintenance Services was advertised on the Town of Herndon website and eVA Commonwealth of Virginia procurement website to maximize fullest competition; and

WHEREAS, eight bids were received and publicly opened and read aloud on October 30, 2020 at 11:00 a.m. The results are listed below:

	BID BASED ON YEARLY COST
Mechanical Services Industries, LLC	\$29,597.00
The Tustin Group	\$35,277.08
Kelly HVAC, Inc.	\$38,340.00
Atlantic Constructors, Inc.	\$44,100.00
Paramount Mechanical Corp.	\$52,846.00
Constellation New Energy	\$58,545.63
Uniair	*\$45,515.00, missing addendums 1, 2 and 4.
Vernon Heating & Cooling	*\$0.00, No pricing listed. ;and

WHEREAS, in accordance with the specifications, the contract may be extended by the Town for four successive one-year periods; and

WHEREAS, it is the staff's recommendation to award the contract to the lowest responsive and responsible bidder, Mechanical Services Industries, LLC ;and

WHEREAS, funds to support the work with bid item unit costs established by the contract are available in the following Budget accounts: Building Maintenance Contract Services 001-08-84-000-420610 and Building Maintenance Repair Account 001-08-84-000-420820; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that Contract IFB #21-04, Preventative Maintenance Services, be awarded to Mechanical Services Industries, LLC.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 8, 2020

Resolution- to ratify a Second Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

WHEREAS, the parties entered into a License Agreement dated June 25, 2015, with an emergency extension dated August 20, 2020 for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes; and

WHEREAS, the License Agreement expired on November 30, 2020; and

WHEREAS, Town and Licensor desired to extend the term of the Agreement to expire on June 30, 2021; and

WHEREAS, The Extension of License was signed by the Town Manager and ratified by Town Council; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Second Extension of License dated November 30, 2020 and signed by the Town Manager between the Town of Herndon between the Town and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

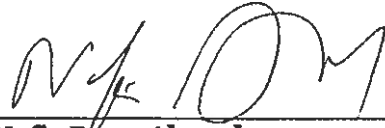
**Second Extension of License Pursuant to Ordinance 20-O-23 Continuity of
Governmental Operations due to State of Emergency,
Pandemic Disaster Covid-19**

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-O-23, as amended, this Second Extension of License dated November 30, 2020, hereby extends the November 30, 2020 termination date of the existing License between the TOWN OF HERNDON, VIRGINIA (Town) and NAFIS PETER AHMED AND RUTH LLABRES AHMED (Ahmed) dated June 25, 2015, with an Emergency Extension dated August 20, 2020, for the use of the lot at the corner Lynn Street and Station Street (the License) for a period of seven calendar months (the Extension).

THEREFORE, for the consideration stated in the License and herein, the parties agree as follows:

1. The License is incorporated by reference.
2. The License shall terminate on **June 30, 2021**.
3. Town will pay Ahmed \$1250.00 per calendar month during the Extension.
4. Town will provide Ahmed evidence of its insurance coverage for lot during the extension.
5. In all other respects, the License is confirmed.

Signatures on following pages


Nafis Peter Ahmed

DocuSigned by:

Ruth Llabres Ahmed

COMMONWEALTH OF VIRGINIA

COUNTY OF Fairfax:

The foregoing instrument was acknowledged before me this 23 day of November,
2020 by NAFIS PETER AHMED.


Notary Public

My Commission Expires: 4/30/2022

Registration No. 321408

MICHAEL L. O'REILLY
NOTARY PUBLIC
REGISTRATION # 321408
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2022

COMMONWEALTH OF VIRGINIA

COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____,
2020 by RUTH LLABRES AHMED.

Notary Public

My Commission Expires: _____

Registration No. _____

TOWN OF HERNDON, VIRGINIA



William H. Ashton II
Town Manager

COMMONWEALTH OF VIRGINIA

COUNTY OF Fairfax, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that William H. Ashton II as Town Manager of the Town of Herndon, Virginia, whose name is signed to the foregoing Extension of License, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 24th day of November, 2020.



My Commission Expires: 5/31/2022

My Notary Registration Number: 7771261



APPROVED AS TO FORM:



Lesa J. Yeatts
Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

December 8, 2020

Resolution - to ratify a Second Extension of Contract pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Fitzgerald Law Group, PLC for prosecutorial services.

WHEREAS, the parties entered into a contract dated May 19, 2015, as amended on June 5, 2018, and as extended due to emergency; and

WHEREAS, the Contract will expire on January 1, 2021; and

WHEREAS, Town and Fitzgerald desire to temporarily extend the term of the Contract to expire on June 30, 2021; and

WHEREAS, The Second Extension of Contract Extension was signed by the Town Manager and ratified by Town Council; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Second Extension of Contract dated November 30, 2020 and signed by the Town Manager between the Town of Herndon and The Fitzgerald Law Group, PLC for prosecutorial services

Second Extension of Contract Pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, due to State of Emergency, Pandemic Disaster COVID-19

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-O-23, as amended, this Second Extension of Contract dated November 30, 2020 hereby extends the January 1, 2021 termination date of the existing contract for prosecutorial services between the Town of Herndon, Virginia (Town) and the Fitzgerald Law Group, PLC (Fitzgerald) dated May 19, 2015, and amended on June 5, 2018, and extended due to emergency (Contract) for a period of six months (the Second Emergency Extension).

THEREFORE, for the consideration stated in the Contract, as amended, the parties agree as follows:

1. The Contract is incorporated by reference.
2. The Contract shall terminate on **June 30, 2021**.
3. Town shall continue to pay Fitzgerald \$6,499.73 per month for prosecutorial services during the Extension.
4. In all other respects, the Contract is confirmed.

TOWN OF HERNDON, VIRGINIA

THE FITZGERALD LAW GROUP, PLC

By: William H. Ashton II

By: _____

Name: William H. Ashton II

Name: Ellen Kay Fitzgerald

Title: Town Manager

Title: Attorney at Law

APPROVED AS TO FORM

By: Lesa J. Yeatts

Name: Lesa J. Yeatts

Title: Town Attorney