

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON COUNCIL CHAMBERS BUILDING *
765 LYNN STREET
February 16, 2021
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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments. Individuals are encouraged to submit written comments for the record to town.clerk@herndon-va.gov

CALL TO ORDER

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

PUBLIC HEARINGS

3. Resolution 21-G-26, to consider a special exception, SE #20-04, 459 Herndon Parkway, suites 7 & 8, Christ Fellowship Church, to permit a religious institution with a capacity of 300 or fewer persons
4. Resolution 21-G-27, to solicit public comment for consideration during the development of the Town Manager's proposed budget for fiscal year 2022

GENERAL

5. Ordinance 21-O-04, to approve and authorize the Mayor to sign a Lease Agreement between the Town and The Herndon Historical Society, for space at 717 Lynn Street, commonly known as the Depot

DISCUSSION

6. Presentation by Davenport & Company (Discussion by the Town Manager)

ROUNDTABLE

CLOSED MEETING

A closed meeting as provided under:

- Section 2.2-3711(A)(1) of the Code of Virginia for discussion of prospective candidates relative to appointments to boards & commissions
- Section 2.2-3711 (A)(8) of the Code of Virginia to consult with legal counsel regarding the acquisition of an interest in real property located in the PD-TOC for a public purpose where such discussion or consultation in an open meeting would adversely affect the bargaining position, negotiating strategy or litigating posture of the Council



STAFF REPORT

Town Council

February 16, 2021

Title: Resolution, to consider a special exception, **SE #20-04**, 459 Herndon Parkway, suites 7 & 8, Christ Fellowship Church

Synopsis

The requirement for a special exception comes directly from the zoning ordinance. Each zoning district specifies which types of uses require special exception approval. A use will be listed in the zoning ordinance as a special exception use if it has the potential to disrupt other uses which are allowed as a matter of right in the zoning district. In Section 78-155.3(e), of the zoning ordinance is a list of standards that apply to all special exception uses. A copy of Section 78-155.3(e), is attached to this report as attachment #5.

The applicant is requesting to operate a religious facility use within a portion of an existing office building. A religious facility is listed as a special exception use in the Office and Light Industrial (O&LI) zoning district.

The staff reviewed this application and believes that, with the recommended conditions, approving the religious facility use at this location will not disrupt or otherwise negatively impact nearby property owners.

Summary Information

Address	459 Herndon Parkway
Fairfax County Tax Map Number	0164-22-0007 and 0164-22-0008A
Owner	HLI Group, LLC
Applicant	George Churchwell
Agent	Ryan Rauner, Century 21 New Millennium
Prospective Buyer	Christ Fellowship Church
Existing Zoning	Office & Light Industrial (O&LI)
Existing Use	Office
Adjacent Land Uses	North: Office building South: Private school East: Mixed uses; industrial, personal services, restaurants. (Sunset Business Park) West: Office building
Total Site Area	107,157 square feet (2.46 acres)
Total Building Size	37,400 square feet (2 story building)
Total Suite Size	3,420 square feet (subject to this special exception)

Planning Commission Recommendation	Approval with staff conditions
Staff Recommendation	Approval with staff conditions (alternative #2)

Location Map



Site Description

The site is located at Suites 7 and 8A within the Parkway Crossing Condominiums, an existing two-story office building, containing approximately 37,400 square feet, divided among 22 suites. The two suites that are the subject of this application total 3,420 square feet. Some of the suites have direct access to the parking lot, while other suites only have direct access to the building common area. These suites in this application have both direct exterior access and access through the common area. The site has 136 surface-level parking spaces which wrap around the building.

The building is located on the southeast side of Herndon Parkway, approximately 350 feet from its intersection with Spring Street. Vehicle access to the site is achievable through the small roundabout at the Herndon Parkway entrance, or through the Sunset Business Park to Spring Street. The street frontage onto Herndon Parkway is within the boundaries of the VDOT East Spring Street Improvements Project. The existing tenants within the building include medical and professional offices.

Background

The building was constructed in 2005 as an office condominium, which is allowed by-right (administrative approval) in the Office and Light Industrial (O&LI) district.

No other special exceptions have been applied for or granted on this site.

Proposal

The applicant proposes to use Suites 7 and 8A within the Parkway Crossing Condominiums to operate Christ Fellowship Church. Church worship services are currently virtual due to the COVID-19 pandemic. The church has a congregation of approximately 40-50 members. Given the small size of the church, there are no full-time staff members, however, there is one part-time staff member. The applicant estimates that up to four members of the congregation will work or volunteer for weekend services. The church will conduct services and activities on weekends with more limited weekday activities or services. The applicant indicates that the weekday activities will primarily consist of small group prayer and youth group meetings. The applicant does not intend to add any additional accessory uses, such as a school or daycare..

The existing layout of the office suite, as shown in the floor plan of attachment #3, includes an existing foyer, office, conference room, kitchenette, and two single restrooms. The proposed floor plan, as shown in attachment #4, keeps those facilities while proposing to add a lobby, storage room, huddle room, meeting room, playroom for children during services, and a sanctuary with 44 seats.

The existing office suite has two points of entry/exit. One is located near the front of the building and leads to the building common area. The building common area has entrances/exits to both the front and rear parking lots and also provides access to the suites located on the second floor. The second entry/exit is located in a front office within the suite and leads directly to the parking lot along Herndon Parkway. The applicant has proposed an option for a new lobby and rear entry door that would lead directly to the rear parking lot.

Staff Analysis

Zoning Ordinance Compliance

The zoning ordinance has two classifications for religious facilities; those that accommodate fewer than 300 people and those that accommodate more than 300 people. In the Office and Light Industrial zoning district, a religious facility of 300 or fewer people requires a special exception. Other places of assembly such as community centers, schools, or museums also require a special exception in the same zoning district.

Staff relies on the standards listed in Section 78-155.3(e), a copy of which is attached to this report as attachment #5, in its evaluation of special exceptions. The table below shows a summary of this application and the criteria for approval.

Standard from Section 78-153.3(e)	Meets or Does not meet Criteria	Why the application meets or does not meet the criteria of Section 78- 153.3(e)
Is consistent with the Comprehensive Plan	Meets	The Comprehensive Plan encourages a mix of uses, where appropriate in the “Regional Corridor Mixed Use land use designation.
Is free of conflict with any provision of this chapter and related regulations or any other applicable local, state, or federal laws and regulations	Meets	As proposed, this application complies with the zoning ordinance, and other local, state, and federal laws.
Does not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.	Meets	The proposed use of a religious facility should not adversely affect the health or safety of nearby workers.
Minimizes adverse visual impact of the proposed use on adjacent lands	Meets	The proposed religious facility will not have exterior visual impacts and any signage is required to follow the same sign requirements as office users.
Contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices	Not Applicable	The proposal does not involve new construction.
Minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.	Meets with Conditions	Staff recommended conditions limit the overall capacity in order to prevent negative impacts to parking, loading, and noise.
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	Meets with Conditions	The religious facility use is not expected to impact property values and with the staff recommended conditions will not prevent other suite owners from continuing their by-right office uses.

are permitted in the zoning district		
Does not significantly and adversely impact the natural environment, including but not limited to, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment	Not Applicable	The religious facility use is going into an existing building.
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	Meets with Conditions	The religious facility is proposed in a developed site with existing ingress and egress points. With the capacity limitations there is no or negligible difference in the traffic generated versus a use allowed by right in this zoning district.
Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities)	Meets	The Department of Public Works has reviewed this proposal and found no or negligible impacts to roads, water, or sewer.
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.	Not Applicable	The religious facility is going into an existing building.
If located in the floodplain overlay district, meets floodplain overlay standards.	Not Applicable	This property is not located within the floodplain overlay district.

Comprehensive Plan Adherence

While the Regional Corridor Mixed Use land use designation is the most intense land use category within the Herndon 2030 Comprehensive Plan, the goals of this category still encourage flexibility and a mixture of uses. For example, Land Use Policy #2 for Regional Corridor Mixed Use encourages the creation of an attractive environment where companies and businesses locate and remain within the town limits.

Parking

The site has 136 surface-level parking spaces. The parking spaces are community property that are managed by the “Parkway Crossing, A Professional Office Condominium Unit Owners Association,” which is the condo association for this office park. The applicant has stated that under the condo association bylaws, they are allocated 11 parking spaces for their two units that total 3,420 square feet. It should be noted that the condominium association does not assign specific parking spaces to specific units.

The parking requirement for a religious facility is based on the number of seats in the principal place of worship, not on square footage. The requirement is one parking space for every four seats of worship.

The applicant states they are allocated 11 parking spaces within the lot based on the square footage of their units. In order to remain in compliance with the zoning ordinance, the maximum number of seats they could have in the main sanctuary is 44 (11 parking spaces x 4 seats/parking space = 44 seats). The applicant estimates that peak times will be on Saturday and Sunday from 10:00 AM to 2:00 PM.

Transit

The site is serviced by Fairfax Connector Route 952. The southbound bus stop is located approximately 190 feet from the condominium units, while the northbound bus stop is located approximately 320 feet from the condominium units. The site is also located approximately 2/3 of a mile from the Herndon Metrorail Station.

Analysis of Conditions

Below is a matrix of the conditions recommended by staff.

Condition	Covered by language in the Zoning Code	Reason for Condition

1)Substantial Conformance with the submitted plan	No	This condition is what gives the town the authority to ensure the religious facility operates in the way that is presented to the town council.
2) Permitted use	No	This condition states on the record that this special exception is allowing the religious facility at this location.
3)Prohibited accessory uses	Yes	The zoning ordinance requires a special exception if a religious facility intends to add a school or daycare as an accessory use. This condition clarifies that a daycare or school are not part of the proposal with this application.
4) Occupancy limited to 44 seats	No	This condition limits the number of attendees to mitigate or prevent negative impacts on existing parking, noise, and other disturbances to adjacent property owners.
5) Inspection of the facility	Partially	The zoning ordinance provides legal authority to inspect properties for violations. This condition provides authority to perform inspections inside the facility in a more timely manner than the standard violation process.
6) Expiration of the special exception upon a change in ownership or discontinuation of the use	Partially	The zoning ordinance states that a special exception expires if there is a change in ownership, discontinuation of the use, or failure to start the use. This condition has been modified to allow the property to transfer from HLI Group, LLC to Christ Fellowship Church.
7) Revocation of the special exception	Yes	This condition restates that the zoning ordinance allows the town to revoke a special exception through the public hearing process.

Planning Commission Recommendation

The planning commission initially heard this application at the work session on November 9, 2020. The planning commission voted on November 16, 2020 to continue the public hearing due to a letter submitted by the attorney representing the Parkway Crossing condo association. The applicant then requested to have the case continued from the December 14, 2020 planning commission public hearing in order to resolve any outstanding concerns with the Parkway Crossing Condo association.

The planning commission voted 6-0 to approve special exception SE #20-04 with the staff conditions at the January 25, 2021 public hearing.

Staff Recommendation

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

The zoning ordinance allows for flexibility for instance like this, where a religious facility can be located within an existing office building in the O & LI district. Based upon the special exception application which was submitted and reviewed for compliance with the aforementioned town code sections, staff believes this proposal meets the conditions for approval of a special exception and recommends approval with the attached conditions.

Town Council Alternatives

The following alternatives are available to the Town Council for its decision on Special Exception SE #20-04:

1. Motion to approve without conditions
2. Motion to approve with staff recommended conditions
3. Motion to approve with alternate conditions
4. Motion to deny
5. Motion to continue the public hearing to a date certain

Attachments

1. Draft Resolution
2. Draft Conditions
3. Existing Floor Plan
4. Proposed Floor Plan
5. Site Images
6. Zoning Ordinance Section 78-155.3(e)
7. Zoning Ordinance Section 78-71.4(d)(3)

Staff Signatures



Michael Wallick, AICP, Transportation Planner



David Stromberg, AICP, Zoning Administrator

TOWN OF HERNDON, VIRGINIA

RESOLUTION

FEBRUARY 23, 2021

Resolution- to consider a special exception, SE #20-04, 459 Herndon Parkway, suites 7 & 8, Christ Fellowship Church, to permit a religious institution with a capacity of 300 or fewer persons.

WHEREAS, the applicant, HLI Group, LLC, has submitted a request for a special exception to permit a religious institution with capacity of 300 or fewer persons on a property located at 459 Herndon Parkway, suites 7 and 8, and identified as Fairfax County Tax Map # 0164 22 0007, # 0164 22 0008A; 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 religious institution meets the purpose and intent of the Zoning Ordinance, in particular Sections 78-71.4(d)(3) and 78-155.3.

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

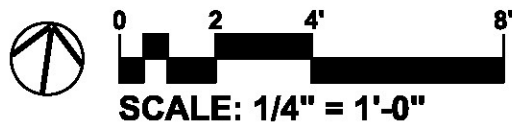
NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby:

Approves Special Exception Application SE #20-04, in accordance with the conditions set forth below to achieve compliance with the standards found in Sections 78-71.4(d)(3) and 78-155.3;

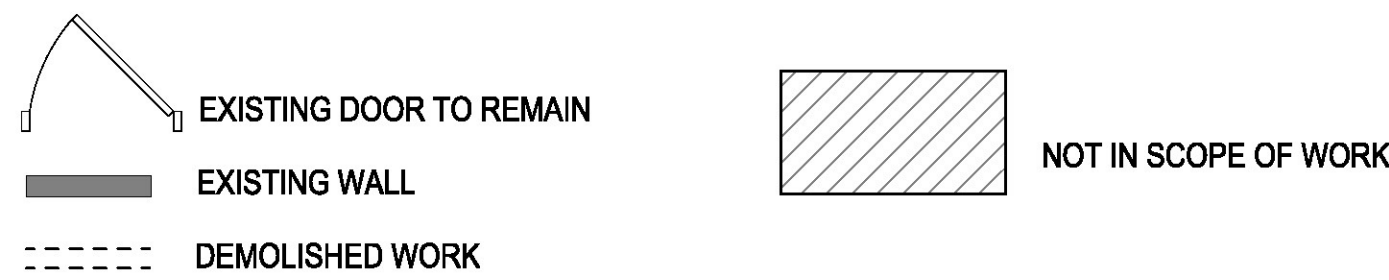
[INSERT CONDITIONS]

DRAFT CONDITIONS
SPECIAL EXCEPTION SE #20-04
459 HERNDON PARKWAY
FEBRUARY 23, 2021

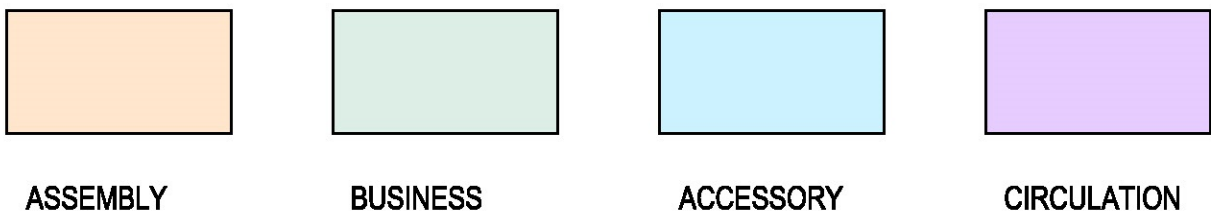
1. Substantial conformity. The site shall be operated in substantial conformance with these conditions and the floor plan received by staff on January 5, 2020.
2. Permitted Use. This special exception is granted to allow a religious institution at 459 Herndon Parkway, Suites 7 and 8.
3. Prohibited Accessory Uses. This special exception does not authorize a daycare or school accessory use. A daycare or school accessory use may be granted through an additional special exception application.
4. Occupancy. The number of church attendees at any one time, exclusive of staff and volunteers, shall be limited to 44.
5. Inspection. The premises shall be made available for inspection by authorized representatives of the town upon reasonable notice.
6. Expiration. This special exception does not run with the land and shall expire under the following condition(s):
 - a. A discontinuation of the use for which the special exception was granted for a continuous twelve-month period;
 - b. Failure to commence operation of the use within twenty-four months of approval of the special exception;
 - c. A change in substantial ownership or possession of the subject land.
 - d. Notwithstanding the foregoing, the transfer in ownership from the current owner, HLI Group, LLC, to the prospective purchaser, Christ Fellowship Church, shall not cause this special exception to be void.
7. 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.



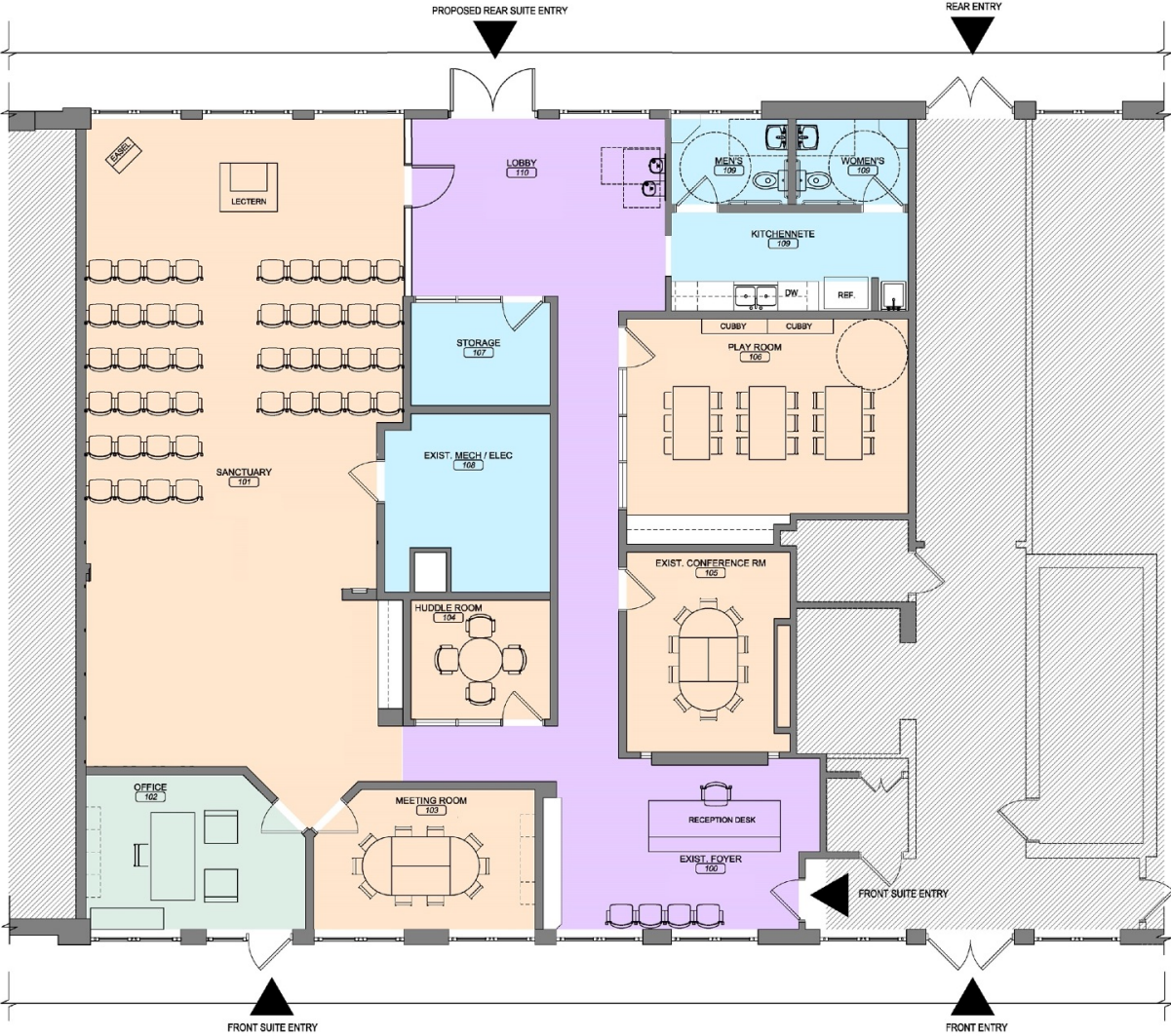
LEGEND



OCCUPANCY CLASSIFICATION



Received
January 5, 2021



LEGEND



OCCUPANCY CLASSIFICATION



Received
January 5, 2021

SE #20-04 Site Images

Suite 7 Close Up

Source: Photograph from November 3, 2020 Site Visit



Front Parking Lot (Facing north from site entrance at south end of parking lot)

Source: Photograph from November 3, 2020 Site Visit



Front Parking Lot (Facing north at north end of parking lot)

Source: Photograph from November 3, 2020 Site Visit



Rear Parking Lot (Facing south at north end of parking lot)

Source: Photograph from November 3, 2020 Site Visit



2019 Site Aerial

Source: Fairfax County GIS 2019 Aerial Imagery



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. 78-71.4. - Institutional and community service use category.

(3) *Religious institutions.* The following shall apply to religious institutions in any zoning district.

- a. *Associated child daycare centers.* Any child daycare center associated with the religious institution is considered an accessory use and shall comply with the standards of section 78-80.4(i).
- b. *Associated public or private school.* Any school (public or private) associated with the religious institution is considered an accessory use and shall comply with the standards of section 78-80.4(r), school uses in conjunction with religious institutions.
- c. *Landscaped buffer.* The religious institution shall provide a landscaped buffer a minimum of 15 feet in width along the yard(s) adjacent to lands on which there is existing single-family detached development and adjacent to undeveloped land in single-family attached and detached residential districts.
- d. *Waiver of standard(s).* The town council shall have the authority to grant waivers to any of the standards listed in this section to respond to an applicant's justifiable claim that the standards pose a substantial burden on religious exercise as guaranteed by the federal Religious Land Use and Institutionalized Persons Act of 2000 (42 USC § 2000), as amended. In granting such a waiver, the town council may require conditions consistent with the federal act that will secure substantially the objectives of the standard and that will substantially mitigate any potential adverse impact on the environment or surrounding land uses.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

FEBRUARY 23, 2021

Resolution- to solicit public comment for consideration during the development of the Town Manager's proposed budget for Fiscal Year 2022.

WHEREAS, each February, the Herndon Town Council conducts a public hearing to provide the opportunity for citizen comment for consideration during the development of the Town Manager's proposed budget; and

WHEREAS, Town Council will conduct public hearings on April 13 and 27, which are advertised in the Fairfax County Times newspaper and information on the Town Manager's proposed budget and public hearing agendas are posted on the Town's website – www.herndon-va.gov – after April 1, 2021.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby extends its appreciation to all citizens who have provided input and further encourages residents to participate in budget public hearings on April 13 and 27.

STAFF REPORT

Town Council
February 16, 2021

Title:

Ordinance, to approve and authorize the Mayor to sign a Lease Agreement between the Town and The Herndon Historical Society, for space at 717 Lynn Street, commonly known as the Depot.

Staff Contact:

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

Description:

Before you is a new proposed lease between the Town and The Herndon Historical Society for space in the Depot at 717 Lynn Street. Staff is recommending your approval of this new lease.

Originally built in 1857 for the Alexandria, Loudoun & Hampshire Railroad, the Depot has a long history in Herndon. It was ultimately acquired by the Town in 1979. The property on which the Depot sits has been licensed to the Town by the Northern Virginia Regional Park Authority since 1982 with terms that the property and Depot would be used specifically for public recreational, historic, or cultural purposes.

The Herndon Historical Society has leased a large section of the Depot since before the Town took ownership in 1979, for use as a museum and visitor's center. A smaller section of the Depot is currently leased to NextStop Theatre Company (The Elden Street Players) for use as an office and for various recreational events.

The Town is currently party to a five year lease with The Herndon Historical Society that is set to expire on February 28, 2021. Both the Town and The Herndon Historical Society wish to renew this lease.

The new proposed lease with the Herndon Historical Society would be month-to-month for a 3 year term beginning on March 1, 2021 and expiring on February 29, 2024. The rent for this space is currently and is proposed to remain \$1.00 per year.

Fiscal Impact:

Due to the age and condition of the Depot, as well as the time limitations on the lease, it is doubtful that this property would have any market lease value.

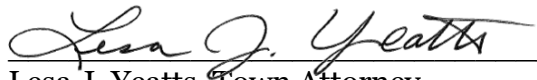
Staff Recommendation:

That the Mayor and Town Council adopt the attached ordinance approving and authorizing the Mayor to sign the new lease.

Attachments:

Ordinance
Draft Lease
Lease Exhibit

Prepared and Approved by:



Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

FEBRUARY 23, 2021

Ordinance- to approve and authorize the Mayor to sign a Lease Agreement between the Town and The Herndon Historical Society, for space at 717 Lynn Street, commonly known as the Depot.

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

1. The Town Council approves a lease dated February 23, 2021, by which the Town would lease to The Herndon Historical Society certain space in part of the Town's building at 717 Lynn Street, Herndon, Virginia. The rent shall be \$1.00 per year. The term shall be month-to-month from March 1, 2021 through February 29, 2024. The lease may contain certain other terms agreed to by the Mayor and Town Manager.
2. This ordinance shall be effective on and after the date of its adoption.

LEASE

THIS LEASE made on the 23rd day of February 2021, by and between THE TOWN OF HERNDON, a municipal corporation (Landlord) and THE HERNDON HISTORICAL SOCIETY (Tenant).

Recitals

Landlord is the owner of a building located at 717 Lynn Street, Herndon, Virginia, called the "Depot."

Landlord and Tenant have agreed that Tenant will lease from Landlord, in consideration of the rent, and under the terms and conditions specified here, the "Station Agent's Office", the "Commander Herndon Room" and the "Meeting Room" in the Depot, the "leased premises." The leased premises are shown as "B", "C" and "D" on plan entitled "Herndon Depot & Museum," dated December 8, 1980, attached and incorporated by reference.

THEREFORE, the parties agree as follows in consideration of the mutual benefits and burdens of this lease.

1. Commencement and Ending Date of Term. Beginning March 1, 2021, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may remain in the leased premises on a month-to-month basis with the Tenant having the right to terminate the Lease upon 30 days prior written notice to the Landlord, and the Landlord having the right to terminate the Lease upon 90 days prior written notice to the Tenant. In any event, the term of this lease shall expire February 29, 2024.

2. Rent. Tenant shall pay Landlord on demand \$1.00 per year.

3. Use of Premises. Tenant shall use the leased premises solely for a historical museum. Tenant shall provide access to the restrooms in the leased premises to The

Elden Street Players, also a tenant of Landlord leasing space in the Depot.

4. Policy Compliance. Tenant shall comply with all policies regarding the use of Town buildings, including the prohibition of alcohol and the use of recreational drugs or tobacco, as well as the Town building key policy.

5. Utility Charges. Landlord shall maintain and pay the cost of all utilities except telecommunications on the leased premises.

6. Liability Insurance. Tenant shall keep in effect a General Liability insurance policy with respect to the leased premises with a minimum limit of \$1,000,000.00 of coverage. The policy shall name the Town of Herndon as an additional insured. Satisfactory proof of insurance will be required. Town reserves the right to require additional insurance.

7. Hold Harmless of Landlord. Tenant shall hold harmless Landlord, its officers, agents, and employees from any and all claims, actions, damages, liability and expense, including reasonable attorney's fees, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises, or the occupancy or use by Tenant of the leased premises or any part thereof.

8. Default. Tenant shall be in default upon failure to perform any term of this lease for more than five days after written notice of such failure shall have been given to Tenant or after Tenant's abandonment of the leased premises.

9. Rights and Remedies on Default. Landlord shall have the following rights on default of Tenant, which shall be cumulative, none excluding any other right allowed by this lease or by law.

a. Landlord may enter the leased premises and repossess the leased premises and remove Tenant and any others who may be occupying the leased premises and remove any property.

b. Landlord may seize, remove and sell all of the personal property and fixtures (except historical artifacts) of Tenant on the leased premises or remove and store such property at the cost of and for the account of Tenant.

10. Waste or Nuisance. Tenant shall not commit any waste or nuisance upon the leased premises.

11. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any equipment in the leased premises in their existing condition. Tenant shall at all times keep the leased premises in a clean and sanitary condition and in good repair. If Landlord is required to make any repairs by reason of Tenant's negligent or intentional act or omission, Tenant shall pay to Landlord the cost of the repairs as additional rent within ten days after written notice. Landlord shall be responsible for roof, structural integrity of the building, and replacement and repair of utility systems except telecommunications related to the leased premises. Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

12. Notification of Hazard. Tenant and Landlord shall give immediate notice to the other in case of fire, accident, or defect in the leased premises or in any fixtures or personal property comprising the leased premises.

13. Alterations and Improvements. Tenant shall not make or cause to be made

any alterations to the leased premises without first obtaining Landlord's written consent.

14. Removal of Improvements and Restoration by Tenant. All alterations made by Tenant shall remain the property of Tenant for the term of the lease. Landlord and Tenant shall agree in writing prior to the installation of any fixture in which Tenant will retain title to the fixture at the expiration of the lease. If Tenant retains title, Tenant will remove the property at the expiration of the term of the lease and leave the leased premises in the same condition as at the commencement of the lease. If Landlord acquires title, the property will remain part of the leased premises and Tenant shall not have any obligation to remove it. Absent such written agreement, Landlord shall have the option upon expiration or termination of the term of this lease to retain the alterations as a part of the leased premises, or to require Tenant to remove all the alterations and restore the leased premises to the same condition as at the commencement of the lease. If Tenant fails to remove such alterations and restore the leased premises as requested by Landlord, then Landlord may remove them and restore the leased premises and Tenant shall pay Landlord's costs as additional rent.

15. Loss and Damage. Landlord shall not be liable for any loss or damage to property of Tenant located on the leased premises. Landlord shall not be liable for any injury, death, or damage to persons or property associated with Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the leased premises. Landlord shall not be liable for any latent defect in the leased premises or in the building of which they form a part. All property of Tenant kept or stored on the leased premises shall be so kept or stored at the risk of Tenant and Tenant

shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

16. Right of Entry. Landlord shall have the right to enter the leased premises during normal business hours to examine the same upon reasonable notice, either oral or written. Landlord shall have the right to make such repairs, alterations, improvements or additions as may be reasonably necessary and to temporarily close doors, entryways, and other spaces and to interrupt or temporarily suspend utility and other building services and facilities, without the same constituting an eviction of Tenant in whole or in part.

17. Quiet Enjoyment. Upon the observance of all Tenant's obligations of this lease, Tenant shall peaceably and quietly hold and enjoy the leased premises.

18. Surrender of Premises. At the expiration or termination of the term of this lease, Tenant shall surrender the leased premises in the same condition that the leased premises were in at the commencement of this lease, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord.

19. Assignment and Subletting. Tenant may not assign this lease without prior written consent of Landlord. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

20. Binding on Successors/Assigns. All of the terms of this lease shall bind the successors and assigns of Landlord and Tenant, except where the assignment is ineffective due to lack of Landlord's consent.

21. Prior Leases. All prior leases between the parties are terminated.

22. Recitals. The recitals are part of this lease.

23. Custodial. Landlord shall provide, routine custodial services for the Depot, with Tenant providing periodic, detailed cleaning of historical artifacts in the Historical museum.

24. In the event that the tenant currently occupying the "Waiting Room" shown as "A" on the plan entitled "Herndon Depot & Museum," dated December 8, 1980, attached and incorporated to this lease by reference, vacates those premises during the term of this lease, and the Town does not need to use the premises itself, Town agrees to offer said premises for lease to Tenant at mutually agreeable terms.

LESSOR

LESSEE

TOWN OF HERNDON

HERNDON HISTORICAL SOCIETY

By: _____

By: _____

Name: Sheila A. Olem

Name: Marcy D. Saunders, Nancy G. Saunders

Title: Mayor

Title: Herndon Historical Society Board President

ATTEST

APPROVED AS TO FORM

By: _____

By: _____

Name: _____

Name: Lesa J. Yeatts

Title: _____

Title: Town Attorney