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HERNDON TOWN COUNCIL
Tuesday
February 23, 2021

Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments, Mayor Olem stated that the February 23, 2021 Herndon Town Council Public Hearing would be by electronic means. The meeting was broadcast and recorded through Cisco Webex and details for the meeting were made available to the public on Thursday, February 18, 2021. In attendance electronically were: Mayor Sheila A. Olem; Vice Mayor Cesar del Aguila; and Councilmembers Naila Alam; Pradip Dhakal; Signe Friedrichs; Sean M. Regan; and Jasbinder Singh.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Elizabeth Gilleran, Director of Community Development; David Stromberg, Zoning Administrator; and Amanda M. Kertz, Chief Deputy Town Clerk.

Announcements

Amanda M. Kertz, Chief Deputy Town Clerk, welcomed those listening to the February 23, 2021 Town Council public hearing and stated that night's regularly scheduled Herndon Town Council meeting was a virtual meeting, which was being conducted electronically pursuant to:

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

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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments.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

CALL TO ORDER

1. Roll Call & Determination of Quorum

Mayor Olem called the public hearing by electronic means to order at 7:00 p.m. and asked Ms. Kertz to call the roll for attendance. Mayor Olem asked each Councilmember to respond by clearly stating their name and indicating they were present.

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

Mayor Olem asked those participating to follow the town's Meeting Guidelines used for all government meetings to maintain good order, which included: refraining from participation unless and until recognized by the chair; being respectful in your comments; refraining from threatening or intimidating language; and that profane, vulgar, obscene, or threatening remarks were not permitted. She stated that attacks on the character, motive, or other harmful remarks against individual members of Council, town staff, or the public, would not be tolerated.

ANNOUNCEMENTS

Mayor Olem stated the town would host its Third Housing Webex the following day from 2:00 to 3:00 p.m. Guest speakers would include Jim Edmondson, Principal, with the E&G Group; and Stephen Wilson, President-Principal, with the Stratford Capital Group Development. She indicated the recording of the meeting would be posted on Granicus. Mayor Olem thanked the Town Manager, Town Attorney, and the Economic Development Manager, for coordinating this meeting.

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APPROVAL OF MINUTES

**Vote on January 12, 2021
Public Hearing Minutes**

On motion of Councilmember Friedrichs, seconded by Councilmember Regan, and carried by unanimous roll call vote by electronic means, the minutes of the January 12, 2021 public hearing were approved. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

**Vote on January 19, 2021
Work Session Minutes**

On motion of Councilmember Dhakal, seconded by Councilmember Alam, and carried by unanimous roll call vote by electronic means, the minutes of the January 19, 2021 work session were approved. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

2. COMMENTS FROM THE TOWN MANAGER

Mayor Olem recognized William H. Ashton II, Town Manager, for comments followed by questions of Council

Mr. Ashton provided additional information about the Third Housing Webex. He felt it would be helpful for understanding financing of affordable and workforce housing options. He indicated the guest speakers had built a lot of the affordable workforce housing in the region, and they were responsible for tens of thousands of affordable units, nationally. They would be bringing financing experience to the conversation, and Mr. Ashton encouraged attendance.

Mr. Ashton then provided a COVID-19 update. He stated cases, percent positivity, ER visits, and hospitalizations all continued to decline. However, he reminded them the numbers were declining from a high place and the recent plateau was higher than the previous summer. Mr. Ashton shared that the county and region continued to vaccinate as fast as they received doses and there had been 168,000 doses of the vaccine administered. He also informed those listening that the 20170-zip code was 11th in the county for infection rates. He then provided new information he had just received from Dr. Gloria Addo-Ayensu about eight pharmacy networks in Virginia who would receive vaccines from a federal program, separate from the state allotments. He indicated that, to help coordinate efforts with local health departments, Giant would start registering people in the Fairfax County system and using their scheduler. This would be for individuals 65 and older, and new locations would be opening the following day. They would be advised as those additional Giant locations came online.

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Staff was still being placed on mandatory leave because of positive exposures and symptoms in compliance with state guidelines. He indicated this was causing some operational stress, but they were managing their way through. He reminded people to mask, social distance, wash hands, stay home, and answer health department calls even if they were vaccinated.

Questions from Council

Councilmember Friedrichs asked if the local Giant stores would give shots, and Mr. Ashton indicated he was unsure. The email had just been sent out a few moments prior, and more information would be coming. He reiterated these were a separate set of vaccinations from the federal government that would go straight to pharmacies. Councilmember Friedrichs provided brief comments about the need for vaccines in the area.

Vice Mayor del Aguila inquired about status updates for Strategic Initiative Discussion topics. Mr. Ashton indicated providing updates was his intention, and Council would see an update.

3. COMMENTS FROM THE TOWN COUNCIL

Vice Mayor del Aguila: Thanked Fairfax County Sheriff's Office for his first Pfizer vaccine and provided information about his experience. He encouraged those who were able to sign up and get their shots. He added that he was looking forward to Strategic Initiative Discussion updates.

Councilmember Friedrichs: Announced that on Saturday, February 27, 2021, the Herndon Rotary Club Satellite club, which she was chair of, would be collecting food for LINK Against Hunger. She listed canned items, cleaning products, paper products, and toiletries they would accept. They would also be collecting cleaning and hygiene items for victims of domestic violence through FAITH Social Services. It would be a contactless donation event, and they would remove donations from the trunks of cars. She also thanked the high school students who were coming to help.

Councilmember Friedrichs shared she was deeply touched by the outpouring of support for staff after her comments the prior week. Other members of Council, community members, former boards and commission members, and former councilmembers had all sent comments of support for staff. She thanked staff again, with an emphasis on the weather, increased meetings, and housing panels that had been going on. She indicated they were appreciated by Council and others, and she knew her colleagues joined her in deeply appreciating staff.

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Councilmember Alam: Stated she met with Mr. Ashton about DMV satellite visits to Herndon to help get DMV transactions completed and assist those with transportation limitations.

Councilmember Dhakal: Thanked Councilmember Friedrichs for her comments. He indicated that he also received concerns from residents about ongoing issues and past Council meetings. He expressed appreciation for and agreed with her comments. He also shared that he loved that Vice Mayor del Aguila always shared the concept of the contrarian view. He thought they could agree to disagree, and borrowed Councilmember Regan's phrase, "debate joyfully." He reiterated support for how Councilmember Friedrichs presented her thoughts at the work session. Councilmember Dhakal said that what and how something was said may have a lot of impact either positive or negative, and personal attacks could bring the entire morale down and defeat the entire purpose.

Mayor Olem: Gave another shoutout to DPW who had another hard weekend. She shared that the streets were cleaned, and others were jealous of how town staff take care of them. Mayor Olem thanked Councilmember Alam for her attention to bringing the satellite DMV to Herndon since the visiting bus no longer came. She also thanked Councilmember Friedrichs for comments about staff. She indicated it was very easy for Council to say they wanted things right now, but they were in the middle of a pandemic emergency, staff had a lot of constraints, and Council needed to have patience.

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Olem asked Ms. Kertz whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and Ms. Kertz stated that she had received comments on the "Comments from the Audience" portion of the agenda; and for Special Exception Application, SE #20-04, Christ Fellowship Church. All comments have been provided to council. Ms. Kertz stated that no disclosures were received from Council for any item on the agenda that evening.

4. COMMENTS FROM THE AUDIENCE

Mayor Olem stated that Council would use a speakers list to call on those who have registered to provide "Comments from the Audience" to address Council on any matter that was not listed as a public hearing item on that night's agenda.

Mayor Olem asked Ms. Kertz if there were any registered speakers, and Ms. Kertz confirmed there were no registered speakers for the meeting that evening.

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PUBLIC HEARINGS

5. **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.**

Mayor Olem recognized David Stromberg, Zoning Administrator who presented the staff report and PowerPoint dated February 23, 2021 which are on file in the Town Clerk's office.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, February 5, 2021 and Friday, February 12, 2021 issues.

Mr. Stromberg provided information about the zoning ordinance and special exception uses. He stated a use may be classified that way because of the potential to disrupt or negatively affect other adjacent properties. He indicated this process allowed the town to evaluate special exception applications based on operations and site specifics. If necessary, the town could put conditions on approval. The criteria were outlined in the zoning ordinance. He discussed the religious institution use with a capacity of 300 or less as permitted in the Office and Light Industrial (O&LI) Zoning District and the existing site.

Mr. Stromberg outlined the applicant's request and proposed floor plan, which included a sanctuary with 44 seats. The existing property had 136 shared parking spaces available to the condominium owner, which were allocated according to square footage of the office space. The zoning ordinance required one space for every four seats. There were 11 parking spaces proposed for this use.

Mr. Stromberg reviewed staff's proposed conditions, including those specific to this application, as provided in the PowerPoint. He clarified that staff added Condition 4, limiting the church to 44 attendees, after working with the applicant to address concerns about negative impacts of a higher occupancy. Staff recommended approval of this item with proposed staff conditions.

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

Councilmember Friedrichs asked if she was correct in understanding that the building's HOA regulations trump those of Council. Mr. Stromberg stated that was mostly correct. Condo or Homeowner Associations could create private agreements separate from the zoning ordinance. Items from private parties could be more restrictive, but they would not be enforced by the town. Council was evaluating compliance with the zoning ordinance.

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Councilmember Singh indicated he had a comment, and Mayor Olem asked that they only ask questions at that time. Councilmember Singh felt he needed to make a comment to set up his question. Mayor Olem requested that he ask the question. A question and answer session between Councilmember Singh and Mr. Stromberg followed.

Councilmember Singh asked Mr. Stromberg if he agreed that the special exception imposed greater impacts than normal. Mr. Stromberg said it could potentially have greater impact and explained that was why it went through the additional levels of staff, Planning Commission, and Council review.

Councilmember Singh asked if they applied the same standard for office space use, if they would need 11 parking spaces. Mr. Stromberg agreed, if that was the case, with that amount of square footage that would be correct.

Councilmember Singh provided further questions about traffic impacts with the number of parking spaces, and Mr. Stromberg confirmed staff's evaluation that the limit of 44 people would not create any greater impact.

Councilmember Singh asked if there were no other reasons for special exceptions except for it being a church. Mr. Stromberg confirmed that the impact would be the same for another use, if it were 44 people.

Councilmember Singh stated they were also assuming people would not walk or park nearby. Mr. Stromberg said that would be the same situation with any type of use.

Councilmember Singh thought that was a restrictive condition with no additional impacts, and Mr. Stromberg indicated he was not following Councilmember Singh's question. Councilmember Singh said that the 44-person limit was a restrictive condition, but people parking elsewhere would not create any additional impact. Mr. Stromberg stated this was a restrictive condition, but the applicant revised the application to 44 which was how the evaluation for capacity of a religious institution must be evaluated.

Councilmember Singh provided further comments on his understanding of minimum requirements and conditions being closely related to impacts. Councilmember Singh said for a 64-person occupancy at four people per parking space, 16 spaces would be needed, and he asked Mr. Stromberg to confirm, which he did.

Councilmember Singh thought the applicant would need five more spaces which would not create any significant impact. Mr. Stromberg stated he was not certain that would be the case. At the office calculation, that would be close to the 165 total parking spaces in the lot and the amounts provided per office space. That was why the condition was at the number it was.

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Councilmember Singh asked if Mr. Stromberg agreed the services would be on Saturday and Sunday, but generally those spaces would be available; it was his opinion that five spaces would not make that much of an impact. Mr. Stromberg responded and emphasized how the evaluations were made.

Councilmember Singh felt that was the type of analyses that should be done for Council to see impacts. He indicated he had looked at the space on the weekends. Regardless, he felt five spaces would not make a difference. Councilmember Singh indicated that, after comments, he wanted to make a motion.

Mayor Olem commented that she saw Mr. Churchwell (applicant) raising his hand to speak on the Webex, and that he would be able to do so after questions of Council.

Councilmember Dhakal wanted to clarify his understanding—that this special exception, staff study, and recommendation considered all the bylaws and how the maximum occupancy was determined.

Mr. Stromberg stated that was close to being correct. Staff only evaluated for compliance with the zoning ordinance. They did not evaluate compliance with any other types of agreements. In this case, the association indicated 11 parking spaces, and that was why the applicant changed that condition and staff added it. It complied with the zoning ordinance.

Councilmember Dhakal asked if the applicant was okay with the conditions, and Mr. Stromberg confirmed the applicant was okay with the conditions, as presented.

Councilmember Regan asked Mr. Stromberg about a recent neighborhood plan they had done, and if that plan was complete. Mr. Stromberg stated the plan referenced was outside of the geographic area of the South Elden Plan. Mr. Stromberg confirmed they had not moved forward on the “transit related growth” area and that further review of that area was forthcoming.

Mayor Olem asked if Mr. Stromberg had information about what the fire marshal’s occupancy was for the space. Mr. Stromberg stated they had not yet received the permit, but he thought it was around 50.

Councilmember Singh asked if the 44-person limit was driven by the number of parking spaces. Mr. Stromberg believed it was a consideration. Councilmember Singh provided further comments about the number. Mr. Stromberg stated the applicant would still be required to meet parking standards. They could only put conditions on the unit itself and could not form a condition about who could come by some other means. It would not be practical to enforce.

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Councilmember Singh thought if more people came, they would be in violation and it would be easy to violate. He thought it was an unreasonable restriction and they should start with what was possible and perhaps the restriction should be based on the fire marshal's occupancy number. He provided further comments about the possibility of more people coming to the church.

Mr. Stromberg stated if the congregation grew, they could potentially add more services at different times without impacting the 44-person limit.

Councilmember Singh disagreed with the occupancy restriction.

Mr. Stromberg reiterated staff's recommendation to keep the 44-person limit.

Vice Mayor del Aguila indicated he had questions regarding the fire marshal capacity and the 44-person limit. He asked if people came a different way (not by car) if they were still recommending a maximum of 44 seats. Vice Mayor del Aguila asked if that was what the applicant wanted or if it were based on staff analysis. Mr. Stromberg indicated it was based on both, and the applicant changed the number based on conversation they had.

Councilmember Friedrichs stated Council received letters from both the condominium association and the Town Attorney. Her understanding was that, regardless of what Council approved, the condo association would not allow the applicant to have more than 44 people. She asked Mr. Stromberg to opine.

Mr. Stromberg asked Lesa Yeatts, Town Attorney, to speak to that question.

Ms. Yeatts thought Councilmember Friedrichs phrased it in a different way. Whatever condo association rules may be regarding parking and occupancy, it was not the special exception approval that could put the applicant in violation. In this case, it would be if they activate the use and violate condo rules. Regardless of what Council approves, they would not put the applicant in violation; it would be if they activate the use and violate condo rules. Right now, approving the 11 spaces and 44 people, they know already there may be a violation, if they activate the use. That did not mean there is anything wrong with Council approving the special exception, as recommended by staff.

Councilmember Friedrichs asked if they, for example approved 20 more spaces, would they be overruling the condo association's right to restrict it to 44 people.

Ms. Yeatts indicated that if that was what their condo rules said, as Mr. Stromberg said, those private contracts could be more stringent than the zoning ordinance. Staff and Council had to abide by zoning ordinance, as it existed at that time.

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Councilmember Friedrichs asked if the 44-person number was the number allowed by the staff calculation under the zoning ordinance, as it was at that time.

Ms. Yeatts indicated they were dealing with the application they had; she did not know if they applicant had applied for some other number if staff's calculation would be different.

Mr. Stromberg said if they applied for more seats, they would need to have more dedicated parking. As staff they had to make an evaluation that there were still enough spaces for all the other uses. Staff based the evaluation on what they do know which was that 11 parking spaces equated to 44 seats in the sanctuary.

Councilmember Friedrichs provided further queries about if it was their impression that during COVID there was full use of the lot. She thought if they observed right now, they would see the result of people working elsewhere.

Mr. Stromberg indicated that there had been site visits which happened after COVID started. Parking studies from times prior to COVID had been provided for staff review.

Mayor Olem indicated representatives George Churchwell and Pastor Walter Hamilton were present for the application. She stated she would recognize them for comments and recognized Mr. Churchwell.

- Mr. Churchwell, current owner of the space, provided information about condo associations. He indicated Mr. Hamilton would stay within the boundaries of office space usage as he had when he used the unit. Mr. Hamilton would only be there on Sundays. He indicated the condo association was kind of opposed to this because of parking but was presently neutral. He said they were retaining a lawyer who would be presenting to change the parking allocations. He provided comments about COVID changes and the possibility it was being taken for granted that things would resume as normal. He also mentioned considerations and meetings with the Planning Commission to balance what they wanted with the what the condo association would allow.

Mayor Olem recognized Pastor Hamilton to speak.

- Pastor Walter Hamilton III, contract purchaser, shared that from the beginning they were looking to be good neighbors with no thoughts of being disruptive or causing hardship for the condo association. They agreed to go with parking requirements because of the small size of the church. They felt the space would accommodate their membership well. They also thought they would have very low impact. He indicated he worked full time and was familiar with the special exception process. He thought it was better to be a good neighbor and agreed to accept parking requirements and

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that was why they changed the plan. It was his understanding the 44-person limit and 11 parking spaces had to do with the size of the sanctuary, not the occupancy of the entire space. The parking required was for the number of seats in sanctuary.

Mr. Stromberg stated the parking was based on the maximum number of seats in the sanctuary and employees or volunteers did not count against the 44-seat number.

There was brief discussion amongst Council and the applicants.

Councilmember Regan had questions for Mr. Hamilton. He asked why Herndon and why this space. Mr. Hamilton said it was for a spiritual reason. The church had been in the Herndon community since 1991. He was the second pastor, and they had been looking all over Northern Virginia but kept being directed back to Herndon.

Councilmember Singh asked if the church needed more spaces if the association would accommodate that. Mr. Churchwell stated if he was up to him, he would. However, the condo association applied the rules and he was only one vote of 22 units.

Councilmember Singh provided personal comments about his temple and its expansion. That experience led him to have these questions. Mr. Churchwell responded that they have retained an attorney to change parking allocations since offices are not at the same value office space had changed.

Mayor Olem asked the Chief Deputy Clerk Amanda Kertz if there were any registered speakers for this item. Ms. Kertz indicated there was one registered speaker.

Mayor Olem reviewed information about speaking during the Webex, and recognized Mr. William Marr.

- Mr. Marr, representing the Parkway Crossing Condo Association, asked Council to review the letter he provided for the record, which was on file in the Town Clerk's office. He also said as Ms. Yeatts pointed out, the issue for the association went to the relationship between the condominium and the restrictions of the bylaws. He discussed the condo association's bylaws and parking restrictions for the units, which are provided in the condo documents. Contrary to what Mr. Churchwell indicated, he said that the condo association had never taken a position on this application. He stated that their issue dealt with restrictions, deeds, and bylaws. If it could not be resolved through planning process, then the association would look at pursuing separate from actions taken by Council.

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

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Main Motion **(Approved)**

Councilmember Friedrichs moved to approve Resolution 21-G-26, special exception SE #20-04, "to allow Christ Fellowship Church to permit a religious institution with a capacity of 300 or fewer persons," as presented. Councilmember Regan seconded the motion.

Statement

Councilmember Singh stated that "the occupancy be limited by whatever the fire marshal...fire code is and up to that point."

Mayor Olem asked Councilmember Singh if that was all, to which he asked Mayor Olem to call for a second.

Mayor Olem stated that she had not heard Councilmember Singh make a motion.

Motion **(Not Accepted)**

Councilmember Singh stated he was making a motion that "the occupancy be limited only by the fire marshal code."

There was no second on this motion.

Point of Order

Vice Mayor del Aguila called for point of order and stated he thought Councilmember Singh was making a Friendly Amendment to the Main Motion, because there was currently a motion on the floor.

Mayor Olem stated that Councilmember Singh said he had a motion.

Vice Mayor del Aguila stated he thought Councilmember Friedrichs' motion was on the floor, which had been seconded, to which Mayor Olem replied it was.

Clarification

Recognized by Mayor Olem, Ms. Yeatts stated that procedurally, she would view Councilmember Singh's motion as a Substitute Motion, but Councilmember Singh did not state that. However, it was neither seconded, nor was it accepted, as a Friendly Amendment.

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Point of Order

Vice Mayor del Aguila called for point of order and asked if Councilmember Singh's comment was a Substitute Motion or a Friendly Amendment to the Main Motion.

Ms. Yeatts stated that was up to the Motion Maker, and that procedurally, what Councilmember Singh (Motion Maker) offered was a Substitute Motion, if it was not identified as a Friendly Amendment.

Friendly Amendment **(Not Accepted)**
to the Main Motion

Councilmember Singh stated he would like to make a "Friendly Motion" to "increase the capacity up to whatever is allowed by the fire marshal code."

Point of Order

Councilmember Dhakal called for point of order and stated that the motion could either be a Friendly Amendment or a Substitute Motion, but it could not be a "Friendly Motion."

Clarification

Ms. Yeatts stated that technically, there was nothing called a Friendly Amendment. She opined that a Councilmember could make a Substitute Motion, or the Council could agree, and in this case, that would mean that Councilmember Friedrichs would allow her motion to be amended.

Ms. Yeatts stated that Mayor Olem could allow Councilmember Singh to clarify his motion.

Friendly Amendment **(Not Accepted)**
to the Main Motion

Mayor Olem asked if Councilmember Friedrichs would accept Councilmember Singh's Friendly Amendment.

Councilmember Friedrichs did not accept the Friendly Amendment.

Councilmember Dhakal addressed the parking situation and capacity. He thought that the 44-person limit was already more than would come, on average, by car. He did not want to create unintended consequences. It seemed that everyone was okay with the recommendation from staff, so he supported the motion under consideration.

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**Vote on the
Main Motion**

(Approved)

The main motion is restated here for clarity, which was to approve Resolution 21-G-26, special exception SE #20-04, "to allow Christ Fellowship Church to permit a religious institution with a capacity of 300 or fewer persons," as presented.

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

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.

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:

1. Substantial conformity. The site shall be operated in substantial conformance with these conditions and the floor plan received by staff on January 5, 2021.

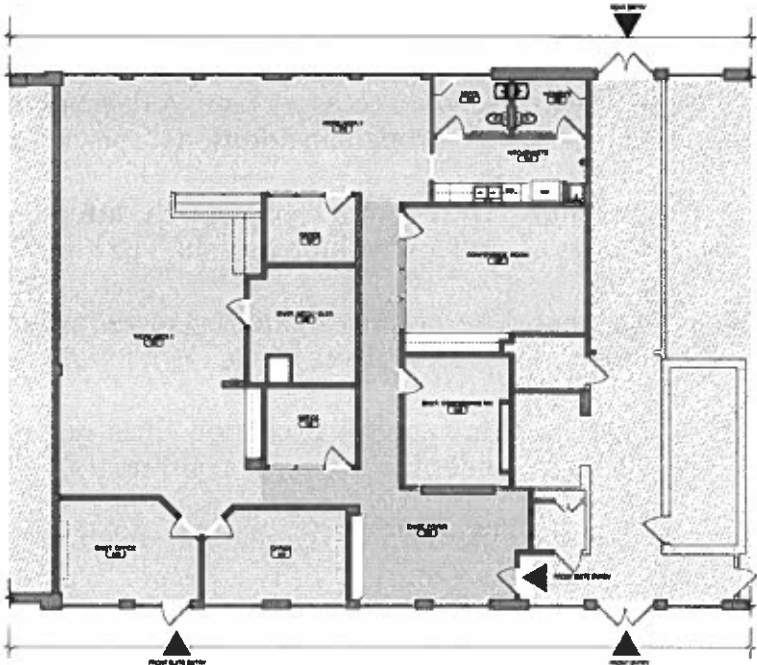
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2. Permitted Use. This special exception is granted to allow a religious institution at 459 Herndon Parkway, Suites 7 and 8.
3. Prohibited Accessory Uses. This special exception does not authorize a daycare or school accessory use. A daycare or school 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; and
 - 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.

[Note: Attached for reference are the existing and proposed floor plans submitted on January 5, 2021.]

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Attachment #3



LEGEND

- Existing doors to remain
- Proposed new doors
- Demolished doors
- Not in scope of work

OCCUPANCY CLASSIFICATION

- Assembly
- Business
- Education
- Healthcare
- Hotel/Motel
- Industrial
- Office
- Other
- Residential
- Storage
- Vehicle

Received
January 5, 2021

CFC CHURCH TENANT FIT-OUT PROJECT
459 HERNDON PKWY, SUITE 8A

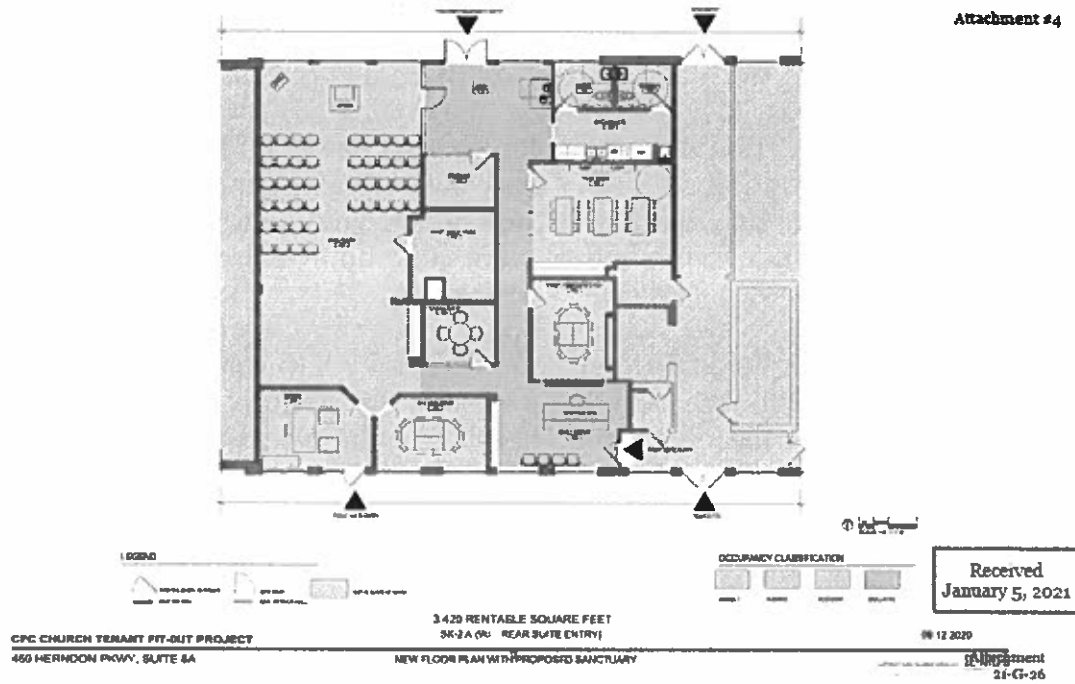
3,420 RENTABLE SQUARE FEET
SK-1
EXISTING FLOOR PLAN WITH PROPOSED DEMOLITION

09.12.2020

SE-ARCHS
Architects

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Attachment #4



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(public hearing)**

6. Resolution 21-G-27, to solicit public comment for consideration during the development of the Town Manager's proposed budget for fiscal year 2022.

Mayor Olem recognized Town Manager, William H. Ashton, II for the staff presentation.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing item had been duly advertised in the Friday, February 5, 2021 and Friday, February 12, 2021 issues.

Mr. Ashton stated solicitation of comments was part of the budget process at this time every year rather than waiting until April after delivering a proposed budget. Comments from the public hearings help staff craft the budget. The town was in an austere place and their options to include in the budget were quite limited. He encouraged comments on the budget be sent to town.clerk@herndon-va.gov.

He also discussed the individual Council sessions they had that week. He intended to have summary numbers for the next work session. Mr. Ashton encouraged the Council to continue this item to the next public hearing, if there was no one present to have more people speak on this item. He encouraged those interested to send in comments.

For the record, Mayor Olem stated the public hearings on the Town Manager's proposed budget would be on April 13th and April 27th.

Mayor Olem confirmed with Ms. Kertz that there were no registered speakers for this item. She then closed the public hearing and moved to Council level for discussion and action.

Councilmember Friedrichs moved to approve Resolution 21-G-27, as presented. Councilmember Dhakal seconded the motion.

Mayor Olem emphasized Council would hold budget discussions and ask for public comment at its April 13th and April 27th meetings. She encouraged public comment at any point prior to those meetings as well.

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

Resolution 21-G-27, 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

**February 23, 2021
(public hearing)**

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.

GENERAL

7. **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.**

Mayor Olem recognized the Town Attorney, Lesa Yeatts who presented the staff report dated February 23, 2021, which is on file in the Town Clerk's office.

Ms. Yeatts stated this was a new proposed lease between the town and The Herndon Historical Society for the Herndon Depot. She provided the historical background of the Depot and clarified the property was not owned by the town. The property was licensed by the town from the Northern Virginia Regional Park Authority and had been since 1982. The town owned the building but not the land. The current lease was for use of the building. Ms. Yeatts stated there were two tenants, and one tenant was NextStop Theatre Company whose new lease had recently been approved.

This would be a new lease to replace the current five-year lease The Herndon Historical Society had with the town. The Historical Society used the building to run a train-based museum that was open once or twice a month normally and by appointment during the COVID-19 pandemic. The current lease would expire at the end of the month. The new proposed lease would be month to month for a three-year term beginning March 1, 2021 and expiring on February 29, 2024. Rent was proposed to remain \$1.00 per year.

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

Councilmember Singh asked about NextStop Theatre Company lease. Ms. Yeatts said that lease was just renewed, and The Herndon Historical Society rented one end of the building.

Mayor Olem recognized Nancy Saunders, President of The Herndon Historical Society, who was available for comments.

**February 23, 2021
(public hearing)**

- Ms. Saunders indicated appreciation for being recognized and provided comments about opportunities for the town to enjoy the Depot.

Councilmember Dhakal moved to approve Ordinance 21-O-04, as presented. Councilmember Friedrichs seconded the motion.

Councilmember Dhakal provided appreciative comments about the Depot and Barbara Glakas, who was part of The Herndon Historical Society.

Councilmember Friedrichs felt the Depot was one of the most important buildings in the town and shared appreciation for the Depot, The Herndon Historical Society, and Ms. Glakas.

Mayor Olem provided further positive comments about the Depot and meetings she had attended there.

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

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.

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.

**February 23, 2021
(public hearing)**

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

**February 23, 2021
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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.

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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

**February 23, 2021
(public hearing)**

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

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(public hearing)**

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.

**February 23, 2021
(public hearing)**

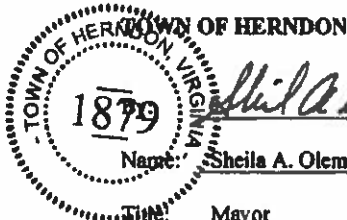
22. Recitals. The recitals are part of this lease.

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



Name: Sheila A. Olem

Title: Mayor

HERNDON HISTORICAL SOCIETY

By: _____

Name: Nancy D. Saunders, Nancy G. Saunders

Title: Herndon Historical Society Board President

ATTEST

APPROVED AS TO FORM

By: _____

Name: Margaret Tacci

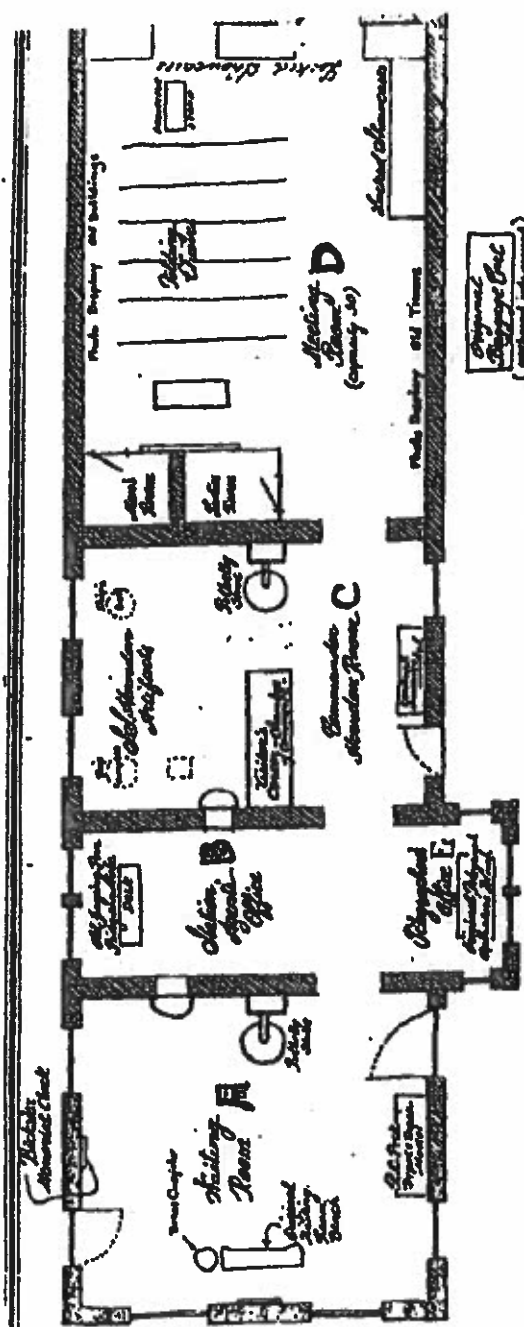
Title: Acting Town Clerk

By: _____

Name: Lesa J. Yeatts

Title: Town Attorney

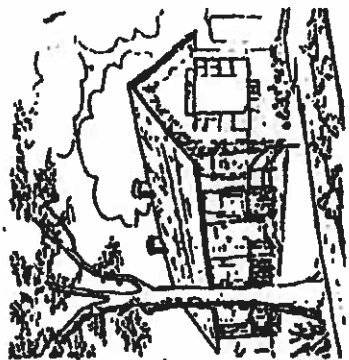
February 23, 2021
(public hearing)



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- A. Depot Waiting Room - To be furnished with benches, stove, brass cuspidor, traditional travel picture, scheduler clock and W.C. O.D. memorandum, small gift shop.
- B. Station Agent's Office - Desk, Pigskin Baby Moll Cabinet, safe, chairs, turn of century phone. Library of History of Harrodon & tapes & videotapes of oral histories.
- C. Commander Herndon Room-Mural of S.S. Central America, pictures, books about Quaker Harrodon's trip to the Amazon, locked bookcase, chairs, ship artifacts.
- D. Meeting Room - Chairs, table, wall displays, projector stand and screen, pictures of "Barn area, file cabinets, model Railroad display, locked shoeboxes.
- E. Telecommunications Office - Telegrapher's table with lamp and telegraph instruments.

This report prepared by Anthony DeBenedictis after instructions provided by "E.D. Rock and Mrs. H.C. Rock", December 2, 1950.



February 23, 2021
(public hearing)

CONSENT AGENDA

8. **Resolution 21-G-28, to appoint Mike McFarlane to the Herndon Planning Commission.**

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal, the Consent agenda item was approved by unanimous roll call vote by electronic means, without comment. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

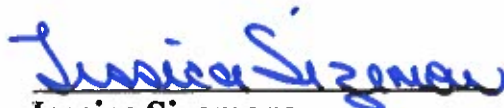
Resolution 21-G-28, to appoint Mike McFarlane to the Herndon Planning Commission.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby appoints **Mike McFarlane** as a "town resident" member to the Herndon Planning Commission to fill an unexpired four-year term ending August 31, 2024.

9. **ADJOURNMENT**

Councilmember Alam moved to adjourn the meeting of the February 23, 2021 public hearing, and Councilmember Dhakal seconded the motion. The question was called on the motion which carried by unanimous roll call vote by electronic means, and the meeting of the February 23, 2021 public hearing adjourned at 8:47 p.m. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."


Sheila A. Olem
Mayor


Jessica Sizemore
Legislative Assistant



Minutes approved by Town Council: **April 13, 2021.**