

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON POLICE DEPARTMENT – COMMUNITY ROOM
397 HERNDON PARKWAY
October 19, 2021
7:00 PM**

CALL TO ORDER

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

PUBLIC HEARINGS

3. Ordinance 21-O-22, to consider zoning ordinance text amendment, ZOTA #21-03, to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), to revise or establish new limitations on size, bulk, and setbacks for accessory dwelling units; to eliminate the special exception requirement for accessory dwelling units in certain situations; and to eliminate the minimum age and physical, mental, or cognitive disability requirements for accessory dwelling units

GENERAL

4. Resolution 21-G-80, to ratify a Second Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Elden Street Players d/b/a NextStop Theatre Company
5. Resolution 21-G-81, establishing the Town of Herndon's 2022 Legislative Program to request that the 2022 Virginia General Assembly amend Title 37 of the Code of Virginia to provide more capacity to address the needs of those in emotional crisis and to prohibit the issuance of Temporary Detention Orders (TDO) when space is not available; and to advise on matters of legislative interest on which the Town takes a position
6. Resolution 21-G-82, to approve a Funding Agreement for Consulting Services, between the Town of Herndon and certain owners of property located in the Transit-Related Growth Area to provide funding for planning consultant services related to the preparation of a Transit-Related Growth Small Area Plan

ROUNDTABLE

STAFF REPORT

Town Council

October 19, 2021

Title: Ordinance, to consider zoning ordinance text amendment, ZOTA #21-03, to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), to revise or establish new limitations on size, bulk, and setbacks for accessory dwelling units; to eliminate the special exception requirement for accessory dwelling units in certain situations; and to eliminate the minimum age and physical, mental, or cognitive disability requirements for accessory dwelling units

Summary Information:

The town council approved Resolution 21-G-56 to initiate consideration of this zoning ordinance text amendment on June 8, 2021. This resolution is in response to the letter from the planning commission, dated April 29, 2021, to the town council regarding the commission's support to update the regulations for accessory dwelling units.

The current zoning regulations for accessory dwelling units have existed mostly unchanged since their adoption in 1983.

The most significant changes proposed in this zoning ordinance text amendment are the following:

- Elimination of the pre-requisite that an owner or occupant of an accessory dwelling unit be at least 62 years old or physically, mentally, or cognitively disabled.
- Elimination of the special exception requirement when an accessory dwelling unit is proposed with a single family detached dwelling. The special exception requirement remains if proposed in a townhouse.
- Elimination of the requirement that physical improvements must be removed upon a change in ownership or occupancy.
- Revisions to the maximum allowable size of an accessory dwelling unit and establishment of minimum setback requirements for detached accessory dwelling units.

Research Indicates:

- A more inclusive and less restrictive accessory dwelling unit ordinance, as proposed, may or may not lead to more affordable dwelling units.
- It will lead to additional rental units, some of which will be of modest size, which may be reflected in the rent.

- It will create what is referred to “gentle densification” and provide additional options for renters, allowing them to live in neighborhoods previously unavailable to them.
- The expansion of options for renters, and gentle densification is seen as an equity issue as it allows someone who cannot afford to purchase home in a single family detached or attached neighborhood to live within such a community.
- For those homeowners who choose to build an accessory dwelling unit in a portion of their home or in a new detached structure, the rent can offset the cost of the construction and provide the homeowner with income that allows them to retain and maintain their home and potentially augment a fixed or low income and help to build equity.
- While due to cost and personal preference, the percentage of property owners who pursue building an accessory dwelling unit is generally low, some minor increase in the tax base may be realized due to the value of the improvements.
- While the cost of permitting and construction can discourage homeowners from building accessory dwelling units, some jurisdictions have found ways to encourage construction through detailed information packages, pattern books and even preapproved architectural drawings.

Background:

Zoning History

The provisions regulating accessory dwelling units were first adopted by the town council in July 1983. The ordinance that was adopted allowed an accessory dwelling unit in an existing single family detached home as long as the proposal complied with 12 requirements listed in the zoning ordinance and obtained a conditional use permit (now called special exceptions).

The two stated goals of the 1983 accessory dwelling unit zoning text amendment are summarized as follows:

1. To enable elderly and handicapped persons to rent to tenants, thereby acquiring income, companionship, security and services and making it possible for the people to remain in their homes and neighborhoods when they might otherwise be able to because of financial or health reasons; and
2. To make smaller, less expensive residential units available for rental to elderly and handicapped persons who otherwise may not be able to afford adequate housing.

At the time, the town intentionally adopted stringent criteria in order to ensure “the character and integrity” of residential neighborhoods was not diminished by the allowance of accessory dwelling units. Among the zoning requirements was a provision

that the conditional use permit expire in 90 days after a change in ownership. The intent of the expiration requirement was to prevent developer speculation or absentee investment properties.

The 2006 overhaul of the zoning ordinance included minor changes to the requirements and allowed accessory dwelling units as a detached structure.

Staff Analysis:

Consistency with the Comprehensive Plan

Staff believes the current draft of the zoning text amendment is consistent with the Comprehensive Plan and specifically aligns with the following adopted policies for “Neighborhood Conservation” and “Housing.”

- Neighborhood Conservation #5: “Neighborhood Conservation supports accessory uses associated with residential neighborhoods such as home based businesses and permitted accessory dwelling units.”
 - The current ordinance allows accessory dwelling units but limits this accessory use to people who are 62 years or older or who have a disability. The proposed ordinance will allow more people to have access to this accessory use.
- Housing #1.a.: “Encourage policies that maintain and encourage a balanced and diverse housing stock in terms of dwelling type, lot size, cost and tenure.”
 - The town has little to no studio, one-bedroom, or two-bedroom dwelling units within single-family neighborhoods. Multifamily condominiums or apartments are the only properties in town where these smaller types of dwellings are available, and they are located outside of single-family neighborhoods. The proposed ordinance will allow a new housing type that is extremely limited in town and allow those who would like to but who cannot currently afford to live in single-family neighborhoods the option to do so.

Need for Current Amendment

Both the planning commission and the town council have expressed to staff the need to reexamine the current regulations for accessory dwelling units. Recent special exception applications for accessory dwelling units have brought forward concerns posed by the existing standards. Among these concerns are the amount of personal or medical information needed from applicants, the requirement to remove some of the improvements upon a change in ownership, and whether accessory dwelling units should be going through the special exception process.

Several adjacent jurisdictions have recently revised their accessory dwelling unit regulations. Generally speaking, the revisions have been to relax the regulations in order to allow for easier approval of accessory dwelling units.

The town population in 1980 was 11,449 and in 2020 it was 24,655 (2020 Census). Good planning and zoning practice dictate a reexamination of a local regulations when a specific topic is undergoing changes at the regional and national level and when demographics are changing.

Proposed Changes

The draft ordinance includes minor changes for clarity as well as significant changes, which are explained in more detail below.

1. Distinguishing between physical type of accessory dwelling units.
 - a. The zoning ordinance does not currently distinguish between internal, attached, and detached accessory dwelling units. This creates ambiguity and confusion.
 - i. Internal accessory dwelling units are completely within the principal residential structure.
 - ii. Attached accessory dwelling units are an addition that is attached to the existing principle residential structure.
 - iii. Detached accessory dwelling units are in a separate building than the principal residential structure.
 - b. The proposed amendment distinguishes between internal, attached, and detached accessory dwelling units.
 - i. This change follows national best practices for accessory dwelling units. It also allows for different standards between detached accessory dwelling units and internal/attached accessory dwelling units.
2. Special exception requirement.
 - a. The zoning ordinance currently requires a special exception for any proposed accessory dwelling unit.
 - b. The proposed amendment eliminates the special exception requirement for any accessory dwelling unit associated with a single family detached dwelling. The special exception requirement remains if an accessory dwelling unit is proposed in a townhouse.
3. Maximum size requirement.
 - a. The zoning ordinance currently limits the maximum size of an accessory dwelling unit to 1,200 square feet or 33 percent of the principal dwelling square footage, whichever is less. This limit is for both internal and detached accessory dwelling units. The size can be further limited through the special exception process.
 - b. The proposed amendment stipulates a maximum of 900 square feet for a detached accessory dwelling unit. The maximum for an internal or attached unit is proposed at 1,200 square feet or 40 percent of the principal dwelling, whichever is less.

- i. The zoning ordinance already limits the maximum footprint of all buildings on a residential lot to 25% of the lot area. This text amendment does not supersede that limitation.
4. Restrictions on location.
 - a. The zoning ordinance limits the location of an accessory dwelling unit the same as any other detached accessory structure, such as a garage or shed. The minimum setback is 2 feet from the rear or side property line. A greater setback could be imposed as a condition through the special exception process.
 - b. The proposed amendment requires a minimum 10 foot setback from the side and rear property lines as well as 10 feet from the principal dwelling for a detached accessory dwelling unit. A property owner may convert an existing accessory building that is less than 10 feet to a property line into an accessory dwelling unit if that building existed before the date of adoption of this text amendment.
 - i. The planning commission has recommended an additional setback of 10 feet from any other accessory structures.
5. Occupancy requirements and removal of physical improvements.
 - a. The current zoning ordinance has two occupancy requirements in order for the property to be eligible for an accessory dwelling unit: 1) The property owner must live in the principal dwelling or the accessory dwelling unit, and; 2) At least one person in either the principal dwelling or the accessory dwelling must be over 62 years old or have a physical, mental, or cognitive disability.
 - i. If either of these conditions cease to exist, then the accessory dwelling unit is no longer legal, and the physical improvements must be removed.
 - b. The proposed amendment eliminates the requirement that one of the occupants is either over 62 years old or has a physical, mental, or cognitive disability. It is still a requirement for the owner to live in either the principal or accessory dwelling unit.
 - i. If the owner moves away and does not occupy the principal or accessory dwelling unit, then all people living on the property must meet the definition of a family (see #6 for details). The physical improvements are not required to be removed.
6. Maximum number of people.
 - a. The current zoning ordinance limits the maximum number of people who can live in a principal dwelling to one family. Two additional, unrelated people can live in the accessory dwelling unit.
 - i. A family is defined as the following: any number of people related to the second degree of consanguinity; up to four unrelated people; two unrelated people and their respective children; or up to eight people in a residential facility (group home) as defined by the Code of Virginia.

- b. The proposed ordinance will still limit the maximum number of people who can live in a principal dwelling to one family. Three additional, unrelated people would be allowed to live in the accessory dwelling unit.
 - i. If the owner no longer lives at the property, then the three, unrelated, additional people are not allowed to remain. Everyone, regardless of whether they live in the principle dwelling unit or accessory dwelling unit, must meet the definition of a family.
- 7. Parking.
 - a. The current zoning ordinance requires one off-street parking space for an accessory dwelling unit. The space is in addition to the two off-street parking spaces required for a single family residence.
 - b. The proposed ordinance will still require one additional off-street parking space for an accessory dwelling unit.
 - i. The accessory dwelling parking requirement may be reevaluated in the future as multi-modal street improvements continue and additional trails connecting neighborhoods to the Metro station are installed.

Review Criteria for Zoning Text Amendments

Section 78-155.2(g) of the zoning ordinance lists the criteria for evaluating zoning map amendments (rezonings) and zoning text amendments. This section mirrors the criteria listed in Section 15.2-2284 of the Code of Virginia.

Criteria from Section 78-155.2(g)	Why ZOTA #21-03 meets the criteria from Section 78-155.2(g)
Is consistent with the Comprehensive Plan.	The ZOTA will encourage additional accessory dwellings uses and additional housing types which are limited within the town. These are goals of the Neighborhood Conservation and Housing sections.
Free of conflict with any provision of this chapter, related town regulations, or any other applicable local, state, or federal laws and regulations.	Nothing in this ZOTA exempts an accessory dwelling unit from meeting all federal, state, and local stormwater management, building code, and zoning ordinance requirements.
Changed conditions that justify an amendment.	The town population grew from 11,449 in 1980 to 24,655 in 2020 (US Census Bureau). The existing regulations on accessory dwelling units were adopted in 1983.
Addresses a demonstrated community need.	This zoning text amendment was brought forward by the planning commission, which consists of town residents that are appointed by the town council.

Consistent with the purpose and intent of the zoning districts in this chapter, or will improve compatibility among uses and will ensure efficient development within the town.	The proposed text amendment includes standards and limitations on size, intensity, parking, and location to keep the use incidental and compatible with surrounding uses.
Results in a logical and orderly development pattern, consistent with accepted or emerging planning practices.	The American Planning Association and AARP have published materials supporting the benefits to communities of relaxing accessory dwelling unit regulations. This ZOTA incorporates several of the recommendations from these publications.
Avoids adverse impact to the natural environment, including but not limited to, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.	Nothing in this ZOTA exempts an accessory dwelling unit from meeting all federal, state, and local stormwater management, building code, and zoning ordinance requirements.
Results in development that is adequately served by other public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities)	It is expected that this ZOTA would allow for approximately 2-3 new accessory dwelling units per year, based on rates of construction from Arlington County. This will not have an impact on the town's transportation network.

Impact if ZOTA #21-03 is Approved

The 1983 regulations were intended to allow an elderly or disabled person to rent out an accessory dwelling unit for income, provide space for a caretaker, or to move into an accessory dwelling unit that is owned by someone else. This limited the amount of property owners who could benefit from this accessory use and established a lengthy legislative process, in addition to administrative reviews. It also necessitated the need for costly improvements, namely the kitchen of the accessory dwelling unit, to be removed if the property changed hands or the elderly or disabled individual was no longer living on site.

If approved, this zoning text amendment would allow owners who do not meet the age/disability requirement to benefit from the same property right, provided they comply with the requirements contained within this text amendment. This text amendment also provides assurance that significant financial improvements made to property is not required to be removed after a change in circumstances.

There is a significant cost component associated with internal, attached, or detached accessory dwelling units. In the four years since Arlington County has allowed accessory

dwelling units by-right, they have issued permits for 96. Arlington has approximately 27,700 detached dwelling units, which works out to .0035 percent. If the same percentage is applied to the 3,037 detached dwelling units within Herndon, it can be expected that there would be 10-11 new accessory dwelling units in a four-year period (or 2-3 per year). This would be a mix of internal, attached, and detached units.

Impact if ZOTA #21-03 is Denied

If this text amendment is denied, it will continue to restrict this accessory use to those who are over 62 or disabled. Those who do meet the criteria will still be required to go through the four to six month special exception process. Property owners who receive special exception approval will be required to remove improvements to convert the property back to a legal use if they sell the property.

One concern about accessory dwelling units is that they will allow illegal overcrowding in the town. Illegal overcrowding has been and remains a challenge within the town. It can result in complaints, excessive vehicles, and, most importantly, unsafe living conditions for the occupants. It is unlikely that failure to pass this zoning text amendment will alleviate any of the aforementioned problems.

If illegal accessory dwelling units are found through zoning enforcement, there is currently no legal option to obtain permits and come into compliance unless the owner meets the age/disability requirement. The only method of abatement is to rip out all components of the accessory dwelling unit. If this ZOTA is denied, enforcement staff are required to prosecute all accessory dwelling units and are not able to focus their efforts on those units which have generated complaints or are providing unsafe living conditions.

Town Council Alternatives:

The following alternatives are available to the town council for its decision on Zoning Ordinance Text Amendment ZOTA #21-03:

1. Approve the draft ordinance as presented by staff
2. Approve the draft ordinance with planning commission modification
3. Deny the draft ordinance
4. Continue the public hearing on this draft ordinance to the November 16, 2021 public hearing
5. Refer the draft ordinance back to the planning commission

Planning Commission Recommendation:

Community Development staff provided background information and research on accessory dwelling units to the planning commission at several work sessions in early 2021, prior to the initiation of ZOTA #21-03.

ZOTA #21-03 was formally presented to the planning commission on the following dates: July 12, 2021 (work session), July 26, 2021 (public hearing), August 9, 2021 (work

session), August 23, 2021 (public hearing), September 13, 2021 (work session), September 27, 2021 (public hearing). The language was revised between each public hearing based on feedback from the commission and comments submitted by the public.

The planning commission voted 6-1 on September 27, 2021 to recommend approval of ZOTA #21-01 with one additional modification: That a10 foot setback be required between a detached accessory dwelling unit and any other detached accessory structure. The dissenting commissioner stated that her reason for voting “nay” on the motion is because she believed the modification was unnecessary and preferred to support the original motion which was to approve ZOTA #21-01 as originally presented that evening.

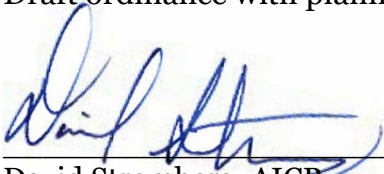
Recommendation:

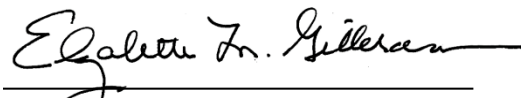
Approve ZOTA #21-03 in accordance with **alternative 1**.

Staff believes the draft zoning text amendment mitigates any potential negative consequences of allowing accessory dwelling units on more properties. The text amendment limits the size, location, and occupancy of accessory dwelling units and requires additional parking. Accessory dwelling units will still be subject to other sections of the zoning ordinance and the building code. Staff does not believe it is necessary to require an additional 10 feet of separation between detached accessory dwelling units and other accessory buildings, as recommended by the planning commission. Lastly, this text amendment will improve the health, safety, and welfare of town residents by ensuring that more spaces where people in town are living will have the proper building, electrical, and plumbing permits.

Attachments:

1. Draft ordinance as presented by staff
2. Draft ordinance with planning commission recommended changes



David Stromberg, AICP
Zoning Administrator

Elizabeth Gilleran, AICP
Director of Community Development

TOWN OF HERNDON, VIRGINIA

ORDINANCE

OCTOBER 26, 2021

Ordinance, to consider zoning ordinance text amendment, ZOTA #21-03, to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), to revise or establish new limitations on size, bulk, and setbacks for accessory dwelling units; to eliminate the special exception requirement for accessory dwelling units in certain situations; and to eliminate the minimum age and physical, mental, or cognitive disability requirements for accessory dwelling units

Sec. 78-71.1. - Residential use category.

- (a) *Characteristics.* The residential use category is characterized by the residential occupancy of a dwelling or residential facility by an individual or a household meeting the definition of a family. Tenancy is arranged on a month-to-month or longer basis.
- (b) *Examples.* Example use types include single-family detached dwellings, duplex dwellings, multi-family dwellings, assisted living for the elderly or persons with disabilities, or townhouse dwellings. Group homes are also included as described in the Code of Virginia, § 15.2-2291.
- (c) *Similar use types, accessory uses and prohibited use types.*
 - (1) *Transient lodging.* Transient lodging is not permitted in the residential use category. Transient lodging, including, hotels, motels, inns, conference centers, boarding houses and lodging houses, are in the lodging businesses category.
 - (2) *Convalescent home.* Convalescent home is in the institutional and community services use category.
 - (3) *Home-based businesses.* Home-based businesses, including childcare in the home, are permitted as accessory uses that are subject to additional standards. (See section 78-80.5).
 - (4) *Bed and breakfast and short-term rentals.* Bed and breakfast establishments are permitted as accessory uses subject to additional standards in 78-80.4(d), bed and breakfast establishment *and 78-80.4(u), short-term rentals.*
 - (5) *Accessory dwelling.* Accessory dwelling units are permitted as accessory uses subject to additional standards. ~~See Article VIII, Accessory Uses and Structures.~~ *As listed in Section 78-80.4(a).*
- (d) *Residential use category specific use standards.* All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply, unless, in the judgment of the reviewing authority, exceptional circumstances warrant adjustment:

- (3) *Establishment of unauthorized dwelling units prohibited.* Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is prohibited ~~and subject to the following~~ *except when legally established as an accessory use pursuant to Section 78-80.4(a).*

~~a. *Change in use or special exception.* Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is not permitted except in accordance with procedures for a change in use as authorized by the town or unless an accessory dwelling unit has been approved through a special exception.~~

~~b~~*a. Conditions constituting an unauthorized dwelling unit.* An unauthorized dwelling unit within a building shall be presumed to have been created when contiguous areas for living, sleeping, eating, cooking, and sanitation are designed in such a manner as to establish a distinct, separate, and self-contained living or housekeeping unit. The existence of any one of the following conditions shall be considered to be an unauthorized dwelling unit, *when established absent approval of a legally established accessory dwelling pursuant to 78-80.4(a).*

1. A secured internal access/connection is maintained that prevents full access to all of the common living areas (exclusive of private bedroom/bath areas) to all occupants of the dwelling unit.
2. More than one assigned address or more than one electric, water or gas meter serving the building.
3. Use of part of a previously approved dwelling unit for an additional dwelling unit providing complete, independent living facilities for a single-family dwelling including provisions for living, sleeping, eating, or sanitation.

~~e. *Additional procedures.* The building official and the zoning administrator may request additional administrative steps, such as the recording of a "declaration of use", when such steps are determined to be warranted by specific conditions, such as a separate exterior entry. The creation of a dwelling unit shall comply with all rules, regulations, ordinances and other requirements of the town of Herndon. Building permits, inspections, and approvals are required for all building, electrical, mechanical, or plumbing work performed. Where a conflict arises between these standards and other requirements, the most restrictive shall govern.~~

Section 78-80.1. – Accessory uses and structures.

- (a) *Purpose and intent.* Sections 78-80.1 through 78-80.5 authorize the establishment of accessory uses and structures that are incidental and customarily subordinate to principal uses. The town's intent is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, and so long as they comply with the standards set forth in this section to reduce potentially adverse impacts on surrounding properties. Some accessory uses are required (such as parking), some are permitted by right (such as signs), some are permitted as special exceptions (~~such as accessory dwelling units~~) and many are allowed in planned development districts.

- (c) *Standards for all accessory uses and structures.* The following standards apply to all accessory uses and structures:

- (1) *Relation to principal use.* Any accessory use or structure shall directly serve the principal use or structure.
- (2) *Incidental to primary use.* Any accessory use or structure be customarily accessory and clearly incidental to the principal use.
- (3) *Subordinate in nature.* Any accessory use or structure shall be subordinate in area, extent, and purpose to the principal use or structure. An accessory use may not exceed

25 percent of the floor area shared with the principal use, and any combination of more than two accessory uses may not exceed 50 percent of the floor area shared with the principal use, *unless otherwise specified in this section.*

(4) *Ownership.* Any accessory use or structure shall be owned or operated by the same entity owning the principal use or structure.

(5) *Location.* Any accessory use or structure shall be located on the same lot as the principal use or structure ~~or on a contiguous lot.~~

(6) *Compliance.* Together with the principal use or structure, any accessory use or structure shall not violate the bulk, density, parking, landscaping, or open space standards of this chapter. Therefore, all accessory uses and structures shall conform to the applicable requirements of this chapter, including the use regulations in Article VII, Use Regulations, and the dimensional standards in individual zoning districts.

Sec. 78-80.2. - Table of permitted and allowed accessory uses and structures.

(c) *Table of permitted and allowed accessory uses and structures.* The Table of Permitted and Allowed Accessory Uses and Structures, Table 78-80.2. C. identifies the uses permitted within base districts. (See also section 78-70.2(d): Table of Principal Permitted and Allowed Uses, and Table 78-90.1(b), Allowed Temporary Uses and Structures; See also use specific standards in section 78-80.4)

Table 78-80.2(c): TABLE OF PERMITTED AND ALLOWED ACCESSORY USES & STRUCTURES

**KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;
Z=Use Allowed Subject to Zoning Map Amendment Approval**

Notes: 1. A blank cell means the use is prohibited in the district; 2. Uses may be subject to use specific standards noted in the last column.

** For Permitted Accessory Uses in PD-TOC see section 78-50.8; For Accessory Uses Permitted and Allowed in PD-W see section 78-50.9

	Residential Districts				Business Districts				Planned Development District					Supp'l Reqs.
ACCESSORY USE	R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-UR	PD-TOC PD-W	See Section

Accessory Dwelling Unit - <i>Internal or Attached</i>	S <i>P</i>	S <i>P</i>	S						Z <i>P</i>		<i>P</i>	<i>P</i>	**	§78-80.4(a)
<i>Accessory Dwelling Unit - Detached</i>	<i>P</i>	<i>P</i>							<i>P</i>		<i>P</i>	<i>P</i>		<i>§78-80.4(a)</i>
Accessory Food Preparation Area - Secondary Kitchen	S <i>P</i>	S <i>P</i>	S <i>P</i>		S				S <i>P</i>		S <i>P</i>	S <i>P</i>	**	§78-80.4(b)
Accessory Food Preparation - Wet Bar	P	P	P	P	P	P	P	P	P	P	P	P	**	§78-80.4(b)

110

111 **Sec. 78-80.3. - Accessory structure standards.**

112 Accessory structures and features shall comply with the following zoning-district specific
 113 standards.

114 (a) *Accessory structures in residential districts.* Accessory structures in residential district shall
 115 meet the following standards, *unless otherwise specified in this section*:

116 (1) *Location.* Accessory structures, except fences and walls, shall not be located within a
 117 required setback or required side yard, except accessory buildings on corner lots may be
 118 located within the side yard. Accessory structures except fences and walls shall be located
 119 so the structure is not closer than:

120 a. Five feet to any alley line;

121 b. Two feet to any side or rear lot line, except for a townhouse dwelling lot, where the
 122 accessory structure may be located on the side or rear lot line.

123 c. Ten feet to the principal dwelling for any single-family detached or duplex dwelling.

124 (2) *Maximum height.* The height of an accessory structure shall not exceed the lesser of the
 125 height of the principal structure on the site, or 15 feet.

126 (3) *Maximum floor area.* On any lot, the combined floor area of all detached accessory
 127 structures shall not be greater than 50 percent of the floor area of the principal structure,
 128 unless otherwise specified in this chapter.

129 (4) *Residential occupancy.* Residential occupancy shall not be allowed in any accessory
 130 structure except under the provisions of section 78-80.4, accessory dwelling unit.

131 (5) *Temporary accessory structures.* Temporary accessory structures shall be governed by
 132 the procedures and standards of section 78-155.6(e)(4), temporary use site plan, and
 133 Article IX, Temporary Uses and Structures.

(6) ~~Required approvals. On lots with single family detached or duplex dwellings, the construction, replacement or enlargement of an accessory building when the alteration is:~~

a. ~~Less than 750 square feet may require a building permit and a building location survey in accordance with section 78-155.6(c)(1).~~

b. ~~Seven hundred fifty square feet of floor area or more must be approved through a single lot development plan in accordance with section 78-155.6(c)(2).~~

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

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

(a) *Accessory dwelling unit.* An accessory dwelling unit *is permitted in the zoning districts specified in Table 78-80.2(c) and* shall comply with the following standards:

(1) ~~Special exception required. An accessory dwelling unit shall be permitted by special exception in accordance with section 78-155.3 and Article VIII, Accessory Use Regulations.~~ *A special exception shall be required when an internal accessory dwelling unit is proposed in a single family attached townhouse.*

(2) ~~Compliance with building code and zoning standards.~~ An accessory dwelling unit shall comply with all applicable building *code* and development standards. ~~for dwelling units in the zoning district in which the accessory dwelling unit will be located. An accessory dwelling unit shall also comply with all applicable standards for the principal dwelling.~~

(3) *No mobile homes or recreational vehicles as accessory dwellings.* Mobile homes, recreational vehicles, travel trailers, *manufactured homes*, and the like shall not be used as accessory dwelling units.

(4) *One accessory unit per lot.* There shall be no more than one accessory dwelling unit on a lot in addition to the principal dwelling.

(5) *Size limit.*

a. *Internal or attached.* The floor area of an *internal or attached* accessory dwelling unit shall not exceed ~~35~~ *40* percent of the gross floor area of the principal dwelling, or 1,200 square feet, whichever is less.

b. *Detached.* *The maximum gross floor area of a detached accessory dwelling unit shall not exceed 900 square feet.*

1. *Covered or screened porches do not count towards the maximum floor area. Porches otherwise enclosed do not count towards the maximum floor area unless the space is conditioned.*

2. *Detached accessory dwelling units and any associated porches count towards the minimum lot coverage allowed in the underlying district.*

(6) *Location.*

a. *Detached accessory dwelling units are limited to the rear yard. A detached accessory dwelling unit shall have a minimum setback of 10 feet from the rear and side property lines and 10 feet from the principal structure.*

1. *Existing accessory structures. A detached accessory dwelling may be incorporated into a detached accessory structure that does not meet the*

- 176 *above setbacks provided the detached accessory structure legally existed*
 177 *on or before October 26, 2021.*
- 178 2. *Encroachments. Encroachments into the setback are limited to the*
 179 *following features and must comply with the provisions of Table 78-21(f):*
 180 *Chimney, eaves, trim, fascia boards, sills, cornices, bay windows, patios,*
 181 *retaining walls, terraces, and similar features (other than decks located*
 182 *more than two feet above grade).*
- 183 b. *Attached accessory dwelling units shall meet the setback requirements of the*
 184 *underlying zoning district.*
- 185 (67) *Entrance location. If the accessory dwelling unit is a part of the principal structure*
 186 *on the lot, any external entrance for the accessory dwelling unit shall be located on the*
 187 *side or rear of the structure.*
- 188 a. *The external entrance for internal or attached accessory dwelling units shall be*
 189 *located on the side or the rear of the structure. On corner lots, the entrance may*
 190 *face the secondary front setback.*
- 191 b. *A sliding door is not permitted as the main exterior entrance to the accessory*
 192 *dwelling unit.*
- 193 (78) *Limit on bedrooms. and occupancy. An accessory dwelling unit shall not contain*
 194 *more than two bedrooms or be occupied by more than two three persons.*
- 195 (89) *Occupancy standards. An accessory dwelling unit shall be subject to the dwelling*
 196 *unit occupancy standards of section 78-170.6. Either the accessory dwelling unit or the*
 197 *principal dwelling shall be occupied by the owner of the principal dwelling as their*
 198 *primary residence. If the owner of the principal dwelling ceases to occupy one of the*
 199 *dwelling units as their primary residence, the entire property is limited to one family*
 200 *as defined in Section 78-180. Additionally, either the accessory dwelling unit or the*
 201 *principal dwelling on a property shall be occupied by at least one person who meets the*
 202 *following qualifications:*
- 203 a. ~~The person is at least 62 years of age; or~~
- 204 b. ~~The person has a physical, mental, or cognitive disability:~~
- 205 1. ~~As certified by the Social Security Administration, the Veterans Administration,~~
 206 ~~or the Railroad Retirement Board; or~~
- 207 2. ~~As confirmed in writing signed by a licensed medical practitioner or a~~
 208 ~~practitioner licensed in an allied health field.~~
- 209 3. ~~This section shall not be deemed to exclude individuals who meet the~~
 210 ~~qualifications above and are able to seek or engage in employment.~~
- 211 (910) *Parking. There shall be a minimum of one off-street parking space with convenient*
 212 *access to a street for the accessory dwelling unit. The off-street parking shall be in*
 213 *addition to the requirements specified for the principal dwelling. the off-street spaces*
 214 *required in Article X – Parking, Loading, and Circulation, for the principal dwelling.*
- 215 (1011) *Not to be sold separately. Accessory dwelling units shall not be sold apart from the*
 216 *principal dwelling upon the same lot where they are located.*
- 217 (12) ~~Utilities. Water and sewer service shall be provided from the principal structure and~~
 218 ~~not from new taps to the main lines.~~

(~~11~~12) *Compliance with health, safety, sanitation and building code regulations.* Any accessory dwelling unit shall meet the applicable code regulations for building, safety, health, and sanitation standards. During reasonable hours upon prior notice, the applicant shall make provisions to allow officials to make the appropriate inspections.

(~~12~~13) *Zoning permit and special exception time limits.* A zoning inspection permit is required for an accessory dwelling unit. The ~~special exception and zoning inspection permit for the accessory dwelling unit shall expire~~ *at any time the use does not comply with any of the conditions of approval or the terms of this chapter.*

a. ~~Ninety days from the date on which the owner no longer occupies the property. The owner shall notify the zoning administrator at such time as the owner no longer occupies the property.~~

b. ~~Two years from the date of approval of the special exception if required improvements have not been completed.~~

c. ~~One year from the date the use ceased.~~

d. ~~At any time the use does not comply with any of the conditions of approval or the terms of this chapter.~~

(~~13~~14) *Conflicting provisions.* In the case of any conflict between the accessory dwelling unit standards of this section and any other requirement of this chapter or the subdivision ordinance, the standards of this section shall control.

(b) *Accessory food preparation area.* Accessory food preparation areas include secondary kitchens and wet bars.

(1) *Secondary kitchens.* Secondary kitchens, as defined in Article XVIII, are permitted by ~~special exception in residential dwellings~~ *in the zoning districts specified in Table 78-80.2(c), and* in accordance with ~~all of the following provisions~~

a. ~~A secondary kitchen shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.~~

b. ~~The location of the secondary kitchen~~ *is located on the same floor as the primary kitchen and the secondary kitchen* is not separated from the remainder of the dwelling unit by door(s) equipped with any of the following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition. *A second kitchen within an accessory dwelling unit is regulated under Section 78-80.4(a).*

c. ~~A unique and compelling need is demonstrated by the applicant.~~

d. ~~A zoning inspection permit is applied for and approved.~~

e. ~~The proposed activity meets the standards of section 78-155.3(c), review standards for special exceptions.~~

f. ~~Secondary kitchens shall not be permitted in accessory structures except under the provisions of section 78-80.4, accessory dwelling unit.~~

(2) *Wet bars.* Wet bars, as defined in Article XVIII, are permitted by-right in accordance with all of the following provisions:

a. A wet bar shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.

- 262 b. The location of the wet bar, when in the same structure as the primary kitchen, shall
263 not be separated from the remainder of the dwelling unit by door(s) equipped with
264 any of the following: an entry lock set, deadlock, slide lock or chain, or similar
265 locking apparatus or through the construction of other forms of partition.
- 266 c. A wet bar shall not contain any oven exceeding 2.2 cubic feet, a stove, range,
267 stovetop, grill, 240-volt electrical outlet(s) or any gas lines, a sink having a waste line
268 drain in excess of one and one-half inches in diameter, a rough in for any of the
269 above items, portable burner(s) and/or portable cooktops.
- 270 d. Wet bars located outside of any building and associated with patio areas may have
271 grills, cooktops and gas lines, but shall not be enclosed on more than two sides.
- 272 e. *No more than one wet bar is permitted per dwelling unit.*

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TOWN OF HERNDON, VIRGINIA

ORDINANCE

OCTOBER 26, 2021

Ordinance, to consider zoning ordinance text amendment, ZOTA #21-03, to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), to revise or establish new limitations on size, bulk, and setbacks for accessory dwelling units; to eliminate the special exception requirement for accessory dwelling units in certain situations; and to eliminate the minimum age and physical, mental, or cognitive disability requirements for accessory dwelling units

Sec. 78-71.1. - Residential use category.

- (a) *Characteristics.* The residential use category is characterized by the residential occupancy of a dwelling or residential facility by an individual or a household meeting the definition of a family. Tenancy is arranged on a month-to-month or longer basis.
- (b) *Examples.* Example use types include single-family detached dwellings, duplex dwellings, multi-family dwellings, assisted living for the elderly or persons with disabilities, or townhouse dwellings. Group homes are also included as described in the Code of Virginia, § 15.2-2291.
- (c) *Similar use types, accessory uses and prohibited use types.*
- (1) *Transient lodging.* Transient lodging is not permitted in the residential use category. Transient lodging, including, hotels, motels, inns, conference centers, boarding houses and lodging houses, are in the lodging businesses category.
- (2) *Convalescent home.* Convalescent home is in the institutional and community services use category.
- (3) *Home-based businesses.* Home-based businesses, including childcare in the home, are permitted as accessory uses that are subject to additional standards. (See section 78-80.5).
- (4) *Bed and breakfast and short-term rentals.* Bed and breakfast establishments are permitted as accessory uses subject to additional standards in 78-80.4(d), bed and breakfast establishment *and 78-80.4(u), short-term rentals.*
- (5) *Accessory dwelling.* Accessory dwelling units are permitted as accessory uses subject to additional standards. ~~See Article VIII, Accessory Uses and Structures.~~ *As listed in Section 78-80.4(a).*
- (d) *Residential use category specific use standards.* All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply, unless, in the judgment of the reviewing authority, exceptional circumstances warrant adjustment:

- (3) *Establishment of unauthorized dwelling units prohibited.* Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is prohibited ~~and subject to the following~~ *except when legally established as an accessory use pursuant to Section 78-80.4(a).*

~~a. *Change in use or special exception.* Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is not permitted except in accordance with procedures for a change in use as authorized by the town or unless an accessory dwelling unit has been approved through a special exception.~~

~~b.a. *Conditions constituting an unauthorized dwelling unit.* An unauthorized dwelling unit within a building shall be presumed to have been created when contiguous areas for living, sleeping, eating, cooking, and sanitation are designed in such a manner as to establish a distinct, separate, and self-contained living or housekeeping unit. The existence of any one of the following conditions shall be considered to be an unauthorized dwelling unit, *when established absent approval of a legally established accessory dwelling pursuant to 78-80.4(a).*~~

- ~~1. A secured internal access/connection is maintained that prevents full access to all of the common living areas (exclusive of private bedroom/bath areas) to all occupants of the dwelling unit.~~
- ~~2. More than one assigned address or more than one electric, water or gas meter serving the building.~~
- ~~3. Use of part of a previously approved dwelling unit for an additional dwelling unit providing complete, independent living facilities for a single-family dwelling including provisions for living, sleeping, eating, or sanitation.~~

~~e. *Additional procedures.* The building official and the zoning administrator may request additional administrative steps, such as the recording of a "declaration of use", when such steps are determined to be warranted by specific conditions, such as a separate exterior entry. The creation of a dwelling unit shall comply with all rules, regulations, ordinances and other requirements of the town of Herndon. Building permits, inspections, and approvals are required for all building, electrical, mechanical, or plumbing work performed. Where a conflict arises between these standards and other requirements, the most restrictive shall govern.~~

Section 78-80.1. – Accessory uses and structures.

- (a) *Purpose and intent.* Sections 78-80.1 through 78-80.5 authorize the establishment of accessory uses and structures that are incidental and customarily subordinate to principal uses. The town's intent is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, and so long as they comply with the standards set forth in this section to reduce potentially adverse impacts on surrounding properties. Some accessory uses are required (such as parking), some are permitted by right (such as signs), some are permitted as special exceptions (~~such as accessory dwelling units~~) and many are allowed in planned development districts.

- (c) *Standards for all accessory uses and structures.* The following standards apply to all accessory uses and structures:

- (1) *Relation to principal use.* Any accessory use or structure shall directly serve the principal use or structure.
- (2) *Incidental to primary use.* Any accessory use or structure be customarily accessory and clearly incidental to the principal use.
- (3) *Subordinate in nature.* Any accessory use or structure shall be subordinate in area, extent, and purpose to the principal use or structure. An accessory use may not exceed

25 percent of the floor area shared with the principal use, and any combination of more than two accessory uses may not exceed 50 percent of the floor area shared with the principal use, *unless otherwise specified in this section.*

(4) *Ownership.* Any accessory use or structure shall be owned or operated by the same entity owning the principal use or structure.

(5) *Location.* Any accessory use or structure shall be located on the same lot as the principal use or structure ~~or on a contiguous lot.~~

(6) *Compliance.* Together with the principal use or structure, any accessory use or structure shall not violate the bulk, density, parking, landscaping, or open space standards of this chapter. Therefore, all accessory uses and structures shall conform to the applicable requirements of this chapter, including the use regulations in Article VII, Use Regulations, and the dimensional standards in individual zoning districts.

Sec. 78-80.2. - Table of permitted and allowed accessory uses and structures.

(c) *Table of permitted and allowed accessory uses and structures.* The Table of Permitted and Allowed Accessory Uses and Structures, Table 78-80.2. C. identifies the uses permitted within base districts. (See also section 78-70.2(d): Table of Principal Permitted and Allowed Uses, and Table 78-90.1(b), Allowed Temporary Uses and Structures; See also use specific standards in section 78-80.4)

Table 78-80.2(c): TABLE OF PERMITTED AND ALLOWED ACCESSORY USES & STRUCTURES														
KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;														
Z=Use Allowed Subject to Zoning Map Amendment Approval														
Notes: 1. A blank cell means the use is prohibited in the district; 2. Uses may be subject to use specific standards noted in the last column.														
** For Permitted Accessory Uses in PD-TOC see section 78-50.8; For Accessory Uses Permitted and Allowed in PD-W see section 78-50.9														
	Residential Districts				Business Districts				Planned Development District				Supp'l Reqs.	
ACCESSORY USE	R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-UR	PD-TOC PD-W	See Section

Accessory Dwelling Unit - <i>Internal or Attached</i>	S <i>P</i>	S <i>P</i>	S						Z <i>P</i>		<i>P</i>	<i>P</i>	**	§78-80.4(a)
<i>Accessory Dwelling Unit - Detached</i>	<i>P</i>	<i>P</i>							<i>P</i>		<i>P</i>	<i>P</i>		<i>§78-80.4(a)</i>
Accessory Food Preparation Area - Secondary Kitchen	S <i>P</i>	S <i>P</i>	S <i>P</i>		S				S <i>P</i>		S <i>P</i>	S <i>P</i>	**	§78-80.4(b)
Accessory Food Preparation - Wet Bar	P	P	P	P	P	P	P	P	P	P	P	P	**	§78-80.4(b)

110

111 **Sec. 78-80.3. - Accessory structure standards.**

112 Accessory structures and features shall comply with the following zoning-district specific
 113 standards.

114 (a) *Accessory structures in residential districts.* Accessory structures in residential district shall
 115 meet the following standards, *unless otherwise specified in this section*:

116 (1) *Location.* Accessory structures, except fences and walls, shall not be located within a
 117 required setback or required side yard, except accessory buildings on corner lots may be
 118 located within the side yard. Accessory structures except fences and walls shall be located
 119 so the structure is not closer than:

120 a. Five feet to any alley line;

121 b. Two feet to any side or rear lot line, except for a townhouse dwelling lot, where the
 122 accessory structure may be located on the side or rear lot line.

123 c. Ten feet to the principal dwelling for any single-family detached or duplex dwelling.

124 (2) *Maximum height.* The height of an accessory structure shall not exceed the lesser of the
 125 height of the principal structure on the site, or 15 feet.

126 (3) *Maximum floor area.* On any lot, the combined floor area of all detached accessory
 127 structures shall not be greater than 50 percent of the floor area of the principal structure,
 128 unless otherwise specified in this chapter.

129 (4) *Residential occupancy.* Residential occupancy shall not be allowed in any accessory
 130 structure except under the provisions of section 78-80.4, accessory dwelling unit.

131 (5) *Temporary accessory structures.* Temporary accessory structures shall be governed by
 132 the procedures and standards of section 78-155.6(e)(4), temporary use site plan, and
 133 Article IX, Temporary Uses and Structures.

(6) ~~Required approvals. On lots with single family detached or duplex dwellings, the construction, replacement or enlargement of an accessory building when the alteration is:~~

a. ~~Less than 750 square feet may require a building permit and a building location survey in accordance with section 78-155.6(c)(1).~~

b. ~~Seven hundred fifty square feet of floor area or more must be approved through a single lot development plan in accordance with section 78-155.6(c)(2).~~

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

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

(a) *Accessory dwelling unit.* An accessory dwelling unit *is permitted in the zoning districts specified in Table 78-80.2(c) and* shall comply with the following standards:

(1) ~~Special exception required. An accessory dwelling unit shall be permitted by special exception in accordance with section 78-155.3 and Article VIII, Accessory Use Regulations.~~ *A special exception shall be required when an internal accessory dwelling unit is proposed in a single family attached townhouse.*

(2) ~~Compliance with building code and zoning standards.~~ An accessory dwelling unit shall comply with all applicable building *code* and development standards. ~~for dwelling units in the zoning district in which the accessory dwelling unit will be located. An accessory dwelling unit shall also comply with all applicable standards for the principal dwelling.~~

(3) *No mobile homes or recreational vehicles as accessory dwellings.* Mobile homes, recreational vehicles, travel trailers, *manufactured homes*, and the like shall not be used as accessory dwelling units.

(4) *One accessory unit per lot.* There shall be no more than one accessory dwelling unit on a lot in addition to the principal dwelling.

(5) *Size limit.*

a. *Internal or attached.* The floor area of an *internal or attached* accessory dwelling unit shall not exceed ~~35~~ *40* percent of the gross floor area of the principal dwelling, or 1,200 square feet, whichever is less.

b. *Detached.* *The maximum gross floor area of a detached accessory dwelling unit shall not exceed 900 square feet.*

1. *Covered or screened porches do not count towards the maximum floor area. Porches otherwise enclosed do not count towards the maximum floor area unless the space is conditioned.*

2. *Detached accessory dwelling units and any associated porches count towards the minimum lot coverage allowed in the underlying district.*

(6) *Location.*

a. *Detached accessory dwelling units are limited to the rear yard. A detached accessory dwelling unit shall have a minimum setback of 10 feet from the rear and side property lines and 10 feet from the principal structure and any other accessory structures.*

1. *Existing accessory structures. A detached accessory dwelling may be incorporated into a detached accessory structure that does not meet the*

- 177 *above setbacks provided the detached accessory structure legally existed*
 178 *on or before October 26, 2021.*
- 179 2. *Encroachments. Encroachments into the setback are limited to the*
 180 *following features and must comply with the provisions of Table 78-21(f):*
 181 *Chimney, eaves, trim, fascia boards, sills, cornices, bay windows, patios,*
 182 *retaining walls, terraces, and similar features (other than decks located*
 183 *more than two feet above grade).*
- 184 b. *Attached accessory dwelling units shall meet the setback requirements of the*
 185 *underlying zoning district.*
- 186 (67) *Entrance location. If the accessory dwelling unit is a part of the principal structure*
 187 *on the lot, any external entrance for the accessory dwelling unit shall be located on the*
 188 *side or rear of the structure.*
- 189 a. *The external entrance for internal or attached accessory dwelling units shall be*
 190 *located on the side or the rear of the structure. On corner lots, the entrance may*
 191 *face the secondary front setback.*
- 192 b. *A sliding door is not permitted as the main exterior entrance to the accessory*
 193 *dwelling unit.*
- 194 (78) *Limit on bedrooms. and occupancy. An accessory dwelling unit shall not contain*
 195 *more than two bedrooms or be occupied by more than two three persons.*
- 196 (89) *Occupancy standards. An accessory dwelling unit shall be subject to the dwelling*
 197 *unit occupancy standards of section 78-170.6. Either the accessory dwelling unit or the*
 198 *principal dwelling shall be occupied by the owner of the principal dwelling as their*
 199 *primary residence. If the owner of the principal dwelling ceases to occupy one of the*
 200 *dwelling units as their primary residence, the entire property is limited to one family*
 201 *as defined in Section 78-180. Additionally, either the accessory dwelling unit or the*
 202 *principal dwelling on a property shall be occupied by at least one person who meets the*
 203 *following qualifications:*
- 204 a. ~~The person is at least 62 years of age; or~~
- 205 b. ~~The person has a physical, mental, or cognitive disability:~~
- 206 1. ~~As certified by the Social Security Administration, the Veterans Administration,~~
 207 ~~or the Railroad Retirement Board; or~~
- 208 2. ~~As confirmed in writing signed by a licensed medical practitioner or a~~
 209 ~~practitioner licensed in an allied health field.~~
- 210 3. ~~This section shall not be deemed to exclude individuals who meet the~~
 211 ~~qualifications above and are able to seek or engage in employment.~~
- 212 (910) *Parking. There shall be a minimum of one off-street parking space with convenient*
 213 *access to a street for the accessory dwelling unit. The off-street parking shall be in*
 214 *addition to the requirements specified for the principal dwelling. the off-street spaces*
 215 *required in Article X – Parking, Loading, and Circulation, for the principal dwelling.*
- 216 (1011) *Not to be sold separately. Accessory dwelling units shall not be sold apart from the*
 217 *principal dwelling upon the same lot where they are located.*
- 218 (12) *Utilities. Water and sewer service shall be provided from the principal structure and*
 219 *not from new taps to the main lines.*

~~(1112)~~ *Compliance with health, safety, sanitation and building code regulations.* Any accessory dwelling unit shall meet the applicable code regulations for building, safety, health, and sanitation standards. During reasonable hours upon prior notice, the applicant shall make provisions to allow officials to make the appropriate inspections.

~~(1213)~~ *Zoning permit and special exception time limits.* A zoning inspection permit is required for an accessory dwelling unit. The ~~special exception and zoning inspection permit for the accessory dwelling unit shall expire~~ *at any time the use does not comply with any of the conditions of approval or the terms of this chapter.*

~~a. Ninety days from the date on which the owner no longer occupies the property. The owner shall notify the zoning administrator at such time as the owner no longer occupies the property.~~

~~b. Two years from the date of approval of the special exception if required improvements have not been completed.~~

~~c. One year from the date the use ceased.~~

~~d. At any time the use does not comply with any of the conditions of approval or the terms of this chapter.~~

~~(1314)~~ *Conflicting provisions.* In the case of any conflict between the accessory dwelling unit standards of this section and any other requirement of this chapter or the subdivision ordinance, the standards of this section shall control.

(b) *Accessory food preparation area.* Accessory food preparation areas include secondary kitchens and wet bars.

(1) *Secondary kitchens.* Secondary kitchens, as defined in Article XVIII, are permitted by ~~special exception in residential dwellings~~ *in the zoning districts specified in Table 78-80.2(c), and* in accordance with ~~all of the following provisions~~

~~a. A secondary kitchen shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.~~

~~b.~~ *a. The location of the secondary kitchen is located on the same floor as the primary kitchen and the secondary kitchen* is not separated from the remainder of the dwelling unit by door(s) equipped with any of the following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition. *A second kitchen within an accessory dwelling unit is regulated under Section 78-80.4(a).*

~~c. A unique and compelling need is demonstrated by the applicant.~~

~~d.~~ *b. A zoning inspection permit is applied for and approved.*

~~e. The proposed activity meets the standards of section 78-155.3(c), review standards for special exceptions.~~

~~f. Secondary kitchens shall not be permitted in accessory structures except under the provisions of section 78-80.4, accessory dwelling unit.~~

(2) *Wet bars.* Wet bars, as defined in Article XVIII, are permitted by-right in accordance with all of the following provisions:

a. A wet bar shall not contribute toward establishment of an unauthorized dwelling as described in section 78-71.1(d)(3), establishment of unauthorized dwelling units.

- 263 b. The location of the wet bar, when in the same structure as the primary kitchen, shall
264 not be separated from the remainder of the dwelling unit by door(s) equipped with
265 any of the following: an entry lock set, deadlock, slide lock or chain, or similar
266 locking apparatus or through the construction of other forms of partition.
- 267 c. A wet bar shall not contain any oven exceeding 2.2 cubic feet, a stove, range,
268 stovetop, grill, 240-volt electrical outlet(s) or any gas lines, a sink having a waste line
269 drain in excess of one and one-half inches in diameter, a rough in for any of the
270 above items, portable burner(s) and/or portable cooktops.
- 271 d. Wet bars located outside of any building and associated with patio areas may have
272 grills, cooktops and gas lines, but shall not be enclosed on more than two sides.
- 273 e. *No more than one wet bar is permitted per dwelling unit.*

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STAFF REPORT

Town Council
October 12, 2021

Title:

Resolution, to ratify a Second Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Elden Street Players d/b/a NextStop Theatre Company.

Staff Contact:

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

Description:

NextStop currently leases 1,275 sq. ft of space that is used for rehearsal in the Town's building at 397 Herndon Parkway. The rent for this space is \$1.00 per year, which is consistent with similar leases on Town property. In this building, NextStop also has an additional lease that is used for storage.

The current lease for rehearsal space expires on October 14, 2021. This Extension extends the current lease term so that it will expire on June 30, 2022. This extension allows for the rehearsal space lease and the storage space lease to align and expire at the same time. Going forward, it will be more efficient for the Town and NextStop to manage the leases together and possibly combine them in the future.

The Town Manager has signed the Second Extension of Lease pursuant to the Town's Continuity of Government Ordinance. The Town Council must now consider ratification of the Extension of Lease to Board of Supervisors of Fairfax County, Virginia in order to extend the expiration date to November 11, 2022 to finalize its approval.

Fiscal Impact:

None.

Staff Recommendation:

The Mayor and Town Council ratify the Resolution as proposed.

Attachments:

1. Resolution
2. Second Extension of Lease Agreement

Prepared and Approved by:

A handwritten signature in cursive script, reading "Lesa J. Yeatts". The signature is written in black ink and is positioned above a horizontal line.

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

OCTOBER 26, 2021

Resolution- to ratify a Second Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Elden Street Players d/b/a NextStop Theatre Company.

WHEREAS, the parties entered into a Lease Agreement dated October 15, 2019 as extended by the Emergency Extension dated September 18, 2020 for 1,275 sq. ft of space rehearsal in the Town's building at 397 Herndon Parkway; and

WHEREAS, the Lease Agreement was set to expire on October 14, 2021; and

WHEREAS, Town and Lessee desired to extend the term of the Agreement to expire on June 30, 2022; and

WHEREAS, The Second Extension of Lease Agreement was signed by the Town Manager and ratified by Town Council.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Second Extension of Lease dated October 8th and signed by the Town Manager between the Town of Herndon and The Elden Street Players d/b/a NextStop Theatre Company for space in the Town's building at 397 Herndon Parkway in Herndon.

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

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-O-23, as amended, this Second Extension of Lease Agreement dated October 8, 2021 hereby extends the October 14, 2021 termination date of the existing Lease Agreement between the TOWN OF HERNDON, a municipal corporation (Landlord) and THE ELDEN STREET PLAYERS D/B/A NEXTSTOP THEATRE COMPANY (Tenant), dated October 15, 2019, as extended by the Extension of Lease dated September 18, 2020 (the Lease) for rehearsal space at 397 Herndon Parkway (the Premises), as set out in this Second Extension of Lease (the Extension). THEREFORE, for the consideration stated in the Lease, the parties agree as follows:

1. The Lease is incorporated by reference.
2. The Lease shall terminate on June 30, 2022.
3. In all other respects, the Lease is confirmed.

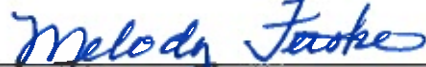
TOWN OF HERNDON, VIRGINIA

**THE ELDEN STREET PLAYERS D/B/A
NEXTSTOP THEATRE COMPANY**

By: 

Name: William H. Ashton II

Title: Town Manager

By: 

Name: MELODY FETSKE

Title: PRESIDENT

APPROVED AS TO FORM

By: 

Name: Lesa J. Yeatts

Title: Town Attorney



STAFF REPORT

Town Council
October 19, 2021

Title:

Resolution – Establishing the Town of Herndon’s 2022 Legislative Program to request that the 2022 Virginia General Assembly amend Title 37 of the Code of Virginia to provide more capacity to address the needs of those in emotional crisis and to prohibit the issuance of Temporary Detention Orders (TDO) when space is not available; and to advise on matters of legislative interest on which the Town takes a position.

Staff Contact:

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

Description:

Each year the Town advises the Town's representatives in the General Assembly of legislation which they wish to be advanced and legislative positions on important issues in the form of its Legislative Agenda. The positions and information provided by the Legislative Agenda play an important role in informing state legislators on how the actions they take at the General Assembly will affect the community. Generally, the Legislative Agenda mirrors that of the Virginia Municipal League which advocates on behalf of Towns and Cities throughout the Commonwealth and occasionally includes a specific request for legislation.

This year a specific request for legislation addressing the mental health bed crisis is requested. This issue directly affects our Herndon Police officers who are on the front line and sometimes end up taking individuals into custody pursuant to a magistrate issued order when a bed is not even available for them. Thus leaving the Herndon Police holding these individuals without of treatment.

Recommendation:

That the Mayor and Town Council adopt the Resolution.

Attachments:

Resolution

Prepared and Approved by:

A handwritten signature in cursive script, reading "Lesa J. Yeatts". The signature is written in black ink and is positioned above a horizontal line.

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

OCTOBER 26, 2021

Resolution- Establishing the Town of Herndon's 2022 Legislative Program to request that the 2022 Virginia General Assembly amend Title 37 of the Code of Virginia to provide more capacity to address the needs of those in emotional crisis and to prohibit the issuance of Temporary Detention Orders (TDO) when space is not available; and to advise on matters of legislative interest on which the Town takes a position.

Recitals

The Mayor and the Town Council of the Town of Herndon, Virginia, to render the Town government more responsive to the citizens, yearly advise the Town's representatives in the General Assembly of legislation which they wish to be advanced and legislative positions on important issues.

The Mayor and Town Council enjoy a favorable relationship with their representatives in the General Assembly and thank them for their interest and support.

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

1. Action Items

The Town Council respectfully requests the General Assembly to pass the following legislation:

Amendment of the Code of Virginia to request that the 2022 Virginia General Assembly amend Title 37 of the Code of Virginia to provide more capacity to address the needs of those in emotional crisis and to prohibit the issuance of Temporary Detention Orders (TDO) when space is not available

2. Informational Items

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

Additionally, the Town Council would be advising the 2022 General Assembly of the following positions without seeking any specific legislation:

Addressing Behavioral Health Services in Local and Regional Jails

New state regulations establishing behavioral health care will apply to every local and regional jail. The Town supports the state provision of adequate and necessary funding for such services through either enhanced jail per diem payments or other funding mechanisms to cover the additional costs to appropriately serve inmates with serious behavioral health needs.

Broadband

The Town supports affordable broadband or internet access for all Virginians. Localities understand the importance of robust broadband for economic development projects as well as in households. As the state and federal governments offer money to ensure all Virginians have broadband, they should also use their funding resources to make it affordable for all. This includes working with private broadband, internet, and wireless companies and potential new service providers, including electric cooperatives, to ensure access to robust service at an affordable cost.

Collective Bargaining

The Town shares concerns about the increase in the cost of government, bureaucracy in local government operations, and more adversarial employee relations and has opposed collective bargaining.

The Town does not support requiring localities to engage in collective bargaining.

Communications Sales and Use Tax

The Virginia Communications Sales and Use Tax was enacted to establish a statewide tax rate and to preempt local taxes on communications sales and services.

- The Town supports setting the tax rate at the same level as the state sales tax rate and broadening the coverage of the tax to include audio and video streaming services and prepaid calling cards.
- The Town opposes transfers of these revenues to the state general fund for purposes other than those currently stipulated in the Code of Virginia.

Economic Development

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

Expand Local Authority to Self-Certify Tax Exempt Utility Capital Improvements

The Town supports an amendment to Code of Virginia § 58.1-3660 enabling political subdivisions to self-certify equipment, facilities, devices, or other property intended for their own use in conjunction with the operation of their water, wastewater, stormwater, or solid waste management facilities or systems.

Freedom of Information Act (FOIA)

The Virginia FOIA drives and impacts localities every single day. The Town supports thoughtfully conceived legislation. The Town supports:

- FOIA legislation review by the FOIA Council prior to enactment.
- Expanding electronic meetings outside of declared emergency periods with flexibility for localities to determine how to include public participation and public comment.
- Clear guidelines on fees for FOIA requests but does not support shifting the burden of FOIA costs to localities.

Funding of Community Services, Boards, and Behavioral Health Authorities

- The Town supports sufficient and sustained state funding and technical assistance for community services boards/behavioral health authorities to implement STEP-VA requirements and to support the planning and implementation of Marcus Alert protocols. This funding should not come at the expense of other community-based service initiatives and requirements; nor should the burden of funding these state initiatives be shifted to local governments.
- Federal ARPA funds and robust state revenues offer an opportunity for the state to make new investments in the community and in the state hospitals.
 - Investments should go to both build the network of community-based services and to assist state hospitals with their vital mission.

Funding the Real Cost of Education

- Even though the Town does not have a school system, all of the Town's children attend Fairfax County schools located in the Town. The Town believes that a strong public school system is essential to economic development and prosperity.
- The state must be a reliable funding partner in accordance with the Virginia Constitution and state statutes.
- The Standards of Quality should recognize the resources, including staff positions, required for a high-quality public education system.

- The Town opposes changes in methodology and changes in the division of financial responsibility that result in a shift of funding responsibility from the state to localities.
- The Town opposes policies that lower state contributions but do nothing to address the cost of meeting the requirements of the Standards of Accreditation and Standards of Learning.

Land Use Control

The Town believes that localities must maintain control of local land use decisions. Neither the state nor the federal government should usurp or pre-empt a locality's authority to make such decisions; nor should they impose requirements that weaken planning and land use functions. This includes all types of housing to include but not limited to short-term rentals. The Town supports local government authority to promote affordable and mixed income housing as well as the required infrastructure to facilitate in-fill development, redevelopment and mixing of uses. Any mandate from the state should include full funding for the locality.

Local Option Income Tax

The Town believes that to broaden local tax bases, the General Assembly should authorize, at local option, a "piggy-back" income tax to be imposed at the local level for both general and special purposes. Such authority could help take the pressure off real estate taxes and help keep people in their homes as property values rise.

School Modernization and One Percent Local Option Sales Tax

The Town supports the statewide authority for local governments to impose a one percent sales tax to help raise funds for school construction and renovation. For those already imposing an approved one percent sales tax for local or regional special funding needs, an additional one percent for school infrastructure funding should be authorized for school construction and renovation purposes.

Sovereign Immunity

The Town agrees that expanding liability and eroding immunities at the state level across the nation have had a chilling effect on the actions of local government officials contributing to local government insurance problems, creating immense financial risks (particularly for legal costs), and posing a substantial obstacle to the provision of needed public services.

The Virginia General Assembly should strengthen and must maintain the principles of sovereign immunity for local governments and their officials.

State Assistance to Local Police Departments (HB 599)

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

Statewide Authority to Enter Into a Clean Energy Contract

The Town supports legislation that allows any locality to enter into a Clean Energy Contract also known as a Virtual Power Purchase Agreement (VPPA).

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

State actions to regulate private enterprises employing a business model that emphasizes the use of the internet to either provide retail, facilities, or ride-sharing services must acknowledge local government interests and include local governments in the decision-making.

As general principles, the Town believes state and local policies should 1) encourage a level playing field for competing services in the market place; 2) not provide a tax preference or tax policy advantage for one group at the expense of another group in the competitive field; 3) seek to preserve state and local revenue; 4) ensure safety, reliability, and access for consumers, providers, and the public; and 5) protect local government's ability to regulate businesses whether they are traditional, electronic, internet-based, virtual, or otherwise.

The Town also believes that the state should not prohibit the sharing of financial information between the Commonwealth and appropriate local authorities that is normally treated as a part of the public domain. The Town further believes that the state should not prohibit a locality from exercising its authority to enter into voluntary collection agreements provided that such agreements include provisions to protect the public's interest.

Utilities

Many local governments own and operate utilities that provide services that may include but are not limited to water, sewer, electric and natural gas. These utility services are funded by localities both outright and as enterprise funds and usually have bonding authority and financial restrictions on their operations. Moratoriums on service cut-offs without proof of COVID-related hardship result in lost revenues that cannot be recovered from citizens who were fully able to pay

for the service. Customers' bills become a significant financial hardship for them because they assumed the state was going to cover the expense during the moratorium.

The Town supports localities' right to manage the operation of utilities without state interference.

DRAFT



STAFF REPORT

Town Council - Work Session October 19, 2021

Title:

Resolution - to approve a Funding Agreement for Consulting Services, between the Town of Herndon and certain owners of property located in the Transit-Related Growth Area to provide funding for planning consultant services related to the preparation of a Transit-Related Growth Small Area Plan.

Staff Contacts:

William Ashton, Town Manager
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lauri.sigler@herndon-va.gov

Action Requested:

Town Council approval of the Funding Agreement for Consulting Services (the "Agreement") between the Town of Herndon and certain owners of property located in the Transit-Related Growth Area in the Town of Herndon. The Agreement provides for the property owners to pay the Town for planning consultant services related to the preparation of a Transit-Related Growth Small Area Plan. The Town will directly engage a planning consultant through its standard procurement procedures, who will at all times be under the exclusive supervision and control of the Town.

Approval of this Agreement would secure up to \$500,000.00 for consultant services for the development of a small area plan to guide future mixed-use development within walking distance of the Herndon Metrorail Station.

Background:

The Town Manager received a letter dated May 5, 2021, in which Herndon Van Buren LLC and Herndon Hotel Ownership LLC, who are owners of several properties located in the Transit-Related Growth ("TRG") Area, made a proposal to the Town where the property owners would provide the funding for the Town to hire a planning consultant for the preparation of a TRG Small Area Plan. The Town was also approached by an owner of additional properties, MBC Property Owners LLC, who is also interested in contributing funds for this effort. Collectively these

property owners will be referred to as the “TRG Owners”. The TRG Owners proposed that the funding proposal for the TRG Small Area Plan be memorialized in an agreement.

The area identified as the TRG lies on the north/west side of the Herndon Parkway from Van Buren Street to Spring Street and on the south/east side of the Herndon Parkway from the northern most property line of the Fairbrook property to Spring Street. It is bordered by established residential neighborhoods on the north and west and the Fairfax County Parkway to the east. Portions of the TRG are within 1/4 and 1/2 miles of the Herndon Metro Station.

The planning effort for the TRG is called for in the Metrorail Station Area Plan, which was adopted in 2012 and incorporated into the Town’s 2030 Comprehensive Plan. Furthermore, the 2030 Comprehensive Plan designates the TRG as Regional Corridor Mixed-Use. Good planning practice mandates that jurisdictions plan in accordance with the Comprehensive Plan. At this time the zoning ordinance (the implementing tool of the Comprehensive Plan) does not have a zoning district that would successfully accommodate mixed-use development within the TRG. A small area plan will supplement the Comprehensive Plan and is the best practice for development of a conceptual plan for real world implementation. The small area plan will encapsulate the Town’s vision for future development and provide detailed guidance based upon site specific opportunities and constraints. A small area plan for the TRG will enable property owners to move forward with redevelopment within the TRG in a manner that is compatible with the Town’s vision.

The TRG Small Area Plan study requires a complex analysis that will include, but not be limited to, a framework for infrastructure improvements, a street network and hierarchy, block sizes, land use, open space, building height, density, parking recommendations, retail strategy and general design guidelines. The study will be based on: a determination of constraints and opportunities; traffic analysis; water and sewer; availability of services for residents and employees; and economic factors. Equally important, the small area plan will provide guidance for how the transition between transit area development and the abutting established residential neighborhoods should be handled.

At the July 6, 2021, Town Council Work Session, staff made a presentation to start the discussion about the funding options for the preparation of a small area plan for the TRG Area and the importance of planning for future redevelopment in the TRG. After consideration the Town Council expressed interest in pursuing a funding agreement with the TRG Owners.

Description:

To enable the TRG small area plan process to move forward, the Town Attorney began discussions with the attorneys representing the TRG Owners resulting in the Agreement, attached hereto as Attachment 2. The sole purpose of the Agreement is to provide funding to the Town so that the Town can directly engage a planning

consultant through its standard procurement procedures with said consultant being at all times under the exclusive supervision and control of the Town.

The Town benefits from implementing the TRG Small Area Plan by providing guidance about development and improvements to property owners in this area rather than have it occur without a unified beneficial plan and the funding provided by the TRG Owners allows the Town to jumpstart the planning effort without delay. The TRG Owners also benefit from the study in that it will provide much needed guidance to plan for either significant capital investment in the current buildings or redevelopment of the properties to facilitate the transition of the area from a suburban development concept into a viable mixed-use transit-oriented community aligned with the upcoming opening of the Herndon Metro Station.

On October 12, 2021, the Town issued a Request For Proposal (“RFP”) for a “Transit-Related Small Area Plan” to solicit sealed proposals from qualified firms to assist the Town with the development of an area plan to guide potential redevelopment. Sealed proposals must be submitted to the Town by November 12, 2021. Staff will review proposals and interview consultants with the goal of awarding a contract by January 31, 2022.

The proposed Agreement with the TRG Owners makes it clear that the planning consultant “shall at all times be under the exclusive supervision and control of the Town.” The planning process will be directed by Town Staff. The Agreement also provides, for the creation of an Advisory Committee that will have seven (7) seats, two (2) of which will be representatives of the TRG Owners. The other seats will be appointed by the Herndon Town Manager and allocated as follows: two (2) Town of Herndon Planning Commission members; one (1) Town of Herndon staff member; and two (2) Town of Herndon residents. The TRG Owners and any other property owner in the TRG Small Area Plan area are free to provide input through the regular planning process.

The proposed Agreement provides that the TRG Owners will pay the Town a total of Five Hundred Thousand Dollars (\$500,000.00) in four (4) equal installments in advance of each of the four (4) target dates set out in the Agreement so that no fees are incurred by the Town. The Town will then pay the planning consultant at the conclusion of each of target dates as follows:

- 4 months from award of RFP: *Phase 1: Information Gathering*
- 9 months from award of RFP: *Phase 2: Exploration and Analysis*
- 14 months from award of RFP: *Phase 3: Visioning*
- 18 months from award of RFP: *Phase 4: Final Report/Plan Document*

If necessary, the target dates may be amended or extended by mutual consent of the Town and TRG Owners.

At critical decision points in the planning process the Planning Commission will be briefed on the issues and provide recommendations for consideration by the Town Council, and direction will then be sought from the Town Council. After the final report and TRG Small Area Plan has been submitted by the planning

consultant, the plan will be presented to the Planning Commission as required pursuant to the Code of Virginia for review and recommendation followed by consideration and final adoption by the Town Council at a public hearing.

Fiscal Impact:

The funds provided by TRG Owners pursuant to the Agreement are expected to cover the costs for hiring a consultant for the preparation of a TRG Small Area Plan.

If the actual costs exceed the funds promised in the Agreement the TRG Owners have the option to pay the additional funds or the Town would have to pay the difference.

Recommendation:

That the Town Council approve the Resolution as proposed.

Attachments:

1. Resolution
2. Funding Agreement for Consulting Services between Town of Herndon and MBC Property Owners LLC, Herndon Hotel Ownership LLC, and Herndon Van Buren LLC

Prepared and Approved By:



William Ashton, Town Manager



Lauri A.N. Sigler, Deputy Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

OCTOBER 26, 2021

Resolution- to approve a Funding Agreement for Consulting Services, between the Town of Herndon and certain owners of property located in the Transit-Related Growth Area to provide funding for planning consultant services related to the preparation of a Transit-Related Growth Small Area Plan.

WHEREAS, the Metrorail Station Urban Development Area of the Town of Herndon (“Town”) Comprehensive Plan calls for the creation of a Small Area Plan for the area known as the Transit-Related Growth Area (“TRG”); and

WHEREAS, the TRG Small Area Plan will encapsulate the Town’s vision for future development and provide more detail based upon site specific opportunities and constraints that will enable property owners to move forward with redevelopment of their property in a way that is compatible with the Town’s vision; and

WHEREAS, the creation of a TRG Small Area Plan requires complex analysis for which the Town will need to solicit requests for proposals through its regular procurement process for an outside planning consultant with the expertise to conduct a study and prepare a plan; and

WHEREAS, several different property owners of land located in the TRG (“TRG Owners”) approached the Town with a proposal to pay the costs for the Town to hire an outside planning consultant for the preparation of a TRG Small Area Plan where the planning consultant shall at all times be under the under the exclusive supervision and control of the Town; and

WHEREAS, the TRG Owners and the Town desire to enter into an Agreement for Consulting Services that will allow the development and preparation of a TRG Small Area Plan to move forward; and

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

1. ratifies and approves the Agreement for Consulting Services, including the Exhibits thereto;
2. authorizes the Mayor to sign on behalf of the Town the Agreement for Consulting Services substantially in the form and with the material

terms of that considered by the Town Council on October 26, 2021;
and

3. authorizes the Mayor to agree to changes to the Agreement for Consulting Services, including adjustment of the target dates, that do not change the Town's financial obligations, provided that the Town Attorney concurs with such changes.

FUNDING AGREEMENT FOR CONSULTING SERVICES

THIS FUNDING AGREEMENT FOR CONSULTANT SERVICES is entered into this _____ day of _____, 2021 (the "Agreement") by and between MBC PROPERTY OWNERS LLC, a _____ limited liability company, HERNDON VAN BUREN LLC, a Delaware limited liability company, HERNDON HOTEL OWNERSHIP LLC, a Delaware limited liability company (Collectively "Owners") and the TOWN OF HERNDON, VIRGINIA, a Virginia municipal corporation ("Town").

WHEREAS, the Owners are owners of certain properties listed on Exhibit "A", attached hereto, (the "TRG Owners") and located in the area generally known as the Transit-Related Growth Area ("TRG") as shown on Exhibit "B", attached hereto, have agreed to work with one another and the Town to provide funding for the necessary consultant services related to the preparation of the TRG Small Area Plan. The TRG Owners enter into this Agreement for the sole purpose of providing funding for the Town for this purpose. The TRG Owners have entered into a separate agreement to allocate cost sharing between the various property owners and will be sharing costs equally; and

WHEREAS, by an initial letter dated May 5, 2021, to the Mayor and Town Council, and through further detailed discussions, the TRG Owners offered to commit significant resources to fund and initiate the TRG planning effort including consultant services; and

WHEREAS, the Town and the TRG Owners share the mutual goal of creating a vision for the TRG Small Area Plan with the necessary infrastructure, uses and density that are consistent with similarly situated Metro station areas, as well as context sensitive and exemplary urban design; and

THEREFORE, in consideration of all the declarations and terms contained herein, the parties hereto agree as follows:

ARTICLE I

SCOPE OF SERVICES

A. The TRG Owners shall provide funding for the Town to engage certain consultants to process, prepare and draft the TRG Small Area Plan. The going-in mutual goal of the Town and the TRG Owners is to identify necessary infrastructure capacity and to create a plan for uses and density that are consistent with similarly situated Metro station areas as well as context sensitive and exemplary urban design. It is acknowledged by both parties that the TRG Small Area Plan is subject to the findings of the consultant studies including constraints and opportunities and also is subject to public input and requires ultimate approval by Town Council.

B. The TRG Small Area Plan encompasses the shared vision of the Town together with the TRG Owners that envisions the TRG as a new vibrant multimodal mixed-use center. It is a plan that will foster and guide redevelopment, and enhance the vitality and vibrancy of the transit area to become a place for people to work, live and enjoy. The site, which surrounds the Herndon Transit-Oriented Core (the “HTOC”) area on the east and north sides, will expand transit-oriented redevelopment adjacent to the Herndon Metro Station while protecting and transitioning to the adjacent existing residential neighborhoods. The TRG will establish its own unique sense of place along the Silver Line and incorporate a menu of design techniques that will enhance the sense of place and community for which the Town of Herndon is known.

It will be a transit-village, not apart from but within the Town of Herndon, a place where anyone can feel at ease, welcomed and part of the whole. A place which addresses the needs of its businesses, and daytime and nighttime residents through a symbiotic mix of uses, its encouragement for active modes of transportation and transit, foresight to accommodate new ways of doing business, and post-COVID trends in living, shopping and working. It is a plan that will speak to the future and provide guidance for the realization of an inclusive, active neighborhood. The TRG Small Area Plan will address future land use, density, transportation and connectivity, use mix, open spaces, economic, social and environmental sustainability and equity, building character, and implementation, and is intended to guide public and private investment. It will re-evaluate former findings and build upon updated analysis.

C. The Town will use the funding provided by the TRG Owners for the purpose of engaging a general planning consultant and subconsultants to include the cost of the transportation study which may be performed by the general planning consultant or a subconsultant. The TRG Small Area Plan will be a general framework plan, including but not limited to, infrastructure improvements, street framework and hierarchy, block sizes, land use, open space, building height, density, parking recommendations, retail strategy and general design guidelines. The consultant will perform the following tasks (the “Services”):

General Planning: The Town will engage a consultant, through its standard procurement procedures, to analyze the background of the area, site constraints, utilities, the integration of existing uses in the area, as appropriate and other relevant data relating to the fundamental planning of the TRG Small Area Plan (the “General Planning Consultant”). The General Planning Consultant will engage all of the subconsultants necessary to perform the tasks listed below (the sub-consultants and the General Planning Consultant collectively referred to herein as “General Consultants”).

Civic Engagement: The General Consultants will develop a civic engagement strategy in order to engage the communities both within the TRG Small Area Plan and in its surrounding neighborhoods. The General Consultants will manage outreach efforts, mailings, and other civic engagement tools. The General Consultants also will be responsible for organizing meetings and facilitating interaction with the community.

Infrastructure Analysis: The General Consultants will evaluate the infrastructure demands of the TRG Small Area Plan, including stormwater, sewer, water, roadway and public transportation.

Transportation Study: The General Consultants will perform a transportation study of the TRG Small Area Plan that will include an analysis of the transportation capacity for both roads, bicycles, pedestrians and public transportation utilization within and surrounding the TRG Small Area Plan boundaries. The analysis will be used to ensure potential appropriate use mix and density, in conjunction with other infrastructure and physical constraints.

ARTICLE II

TIMING AND ASSOCIATED DEADLINES

A. The Town shall establish a TRG Advisory Committee by December 1, 2021. It is currently intended that this group will have seven (7) seats, two (2) of which will be representatives of the TRG Owners. The other seats will be appointed by the Herndon Town Manager and allocated as follows: two (2) Town of Herndon Planning Commission member; one (1) Town of Herndon staff members; and two (2) Town of Herndon residents. The TRG Owners are free to provide input through the planning process.

B. Based on the October 12, 2021 issuance of the Request for Proposals (“RFP”), the Town shall select the General Planning Consultant no later than January 31, 2022.

C. The Town shall require the General Consultants to meet the following target dates for processing the TRG Small Area Plan:

Four (4) months from award of RFP: *Phase 1: Information Gathering*, is complete. The General Consultants will gather background information through meetings with staff and the Advisory Committee and engage in background document research along with Stakeholder Engagement/Listening through public outreach..

Nine (9) months from award of RFP: *Phase 2: Exploration and Analysis*, is

complete. The General Consultants shall have set the parameters for the future development of the TRG with the finalization of goals built upon the findings from Phase 1.

Fourteen (14) months from award of RFP: *Phase 3: Visioning*, is complete. The General Consultants shall have completed development of three conceptual urban framework plans (The Visioning Report), each with a rough diagram and narrative, to demonstrate potential development concepts. Eighteen (18) months from award of RFP: *Phase 4: Final Report/Plan Document*. Final draft of TRG Small Area Plan that encapsulates the process, existing conditions, vision, goals, findings, challenges and constraints and their proposed solutions for the TRG will be docketed and presented to the Planning Commission for review and recommendation followed by consideration by the Town Council..

D. These deadlines may be amended, accelerated or extended by mutual consent of the Town and TRG Owners.

ARTICLE III

COMPENSATION

A. The TRG Owners shall provide funding to the Town for all General Consultants in an amount not to exceed \$500,000.00 (hereafter, the "Monetary Payment"). The TRG Owners will pay the Town in advance for the consultants' services based upon the consultants' budget, so that no fees are incurred by the Town, subject to Section C below.

B. The Monetary Payment shall be payable in four equal installments of \$125,000 (each, an "Installment") directly to the Town to fund the Services. One Installment for each Phase shall be due on or before Phase set forth in Article II.C. The payment of each Installment shall be contingent, at the discretion of the TRG Owners, on the Town and consultants having met the performance goals of each Phase outlined in Article II above. The Town will pay the General Consultant upon completion of their services as agreed upon in their signed contract and scope of services with the Town.

C. In the event that the invoice totals for Services rendered during any quarter are more than the Installment for that quarter, then such expenses in excess of Services rendered may be applied by the Town to a subsequent Installment payment. In the event that the invoice totals for Services rendered during any quarter are less than the Installment for that quarter, the Town may use the remaining funds during any subsequent quarter, provided that any funds remaining after the completion of the Services contemplated herein are refunded to the TRG Owners. The TRG Owners shall have the option, but not the obligation to commit additional funds to complete the defined consultant services. Absent such election the the TRG Owners, the Town shall be solely

responsible for any Service costs that exceed the Monetary Payment.

D. The General Consultants shall at all times be under the exclusive supervision and control of the Town. Nothing in this Agreement shall be construed to prevent the TRG Owners, individually or collectively, from participating in the planning process and presenting their views and opinions to the consultants and Town Staff and Town Council.

E. In the event that the review and processing of the TRG Plan is for any reason terminated prior to Eighteen (18) months from award of the RFP, the monetary payments paid to Town as of the date of such termination shall be used to pay for Services already rendered and any remaining funds shall be returned to the TRG Owners in proportion to their respective contribution.

F. The TRG Owners have no obligation for any payment or funding beyond the Monetary Payment. In the event that the TRG Small Area Plan has not been completed by Eighteen (18) months from award of the RFP, or if the schedule outlined in Article II is not met, TRG Owners shall have the option to withhold future disbursements or any remaining Installments of the Monetary Payments.

G. The Town and the TRG Owners may mutually agree to use a portion of the agreed to funding under this Agreement to pursue Federal, State or other third-party grant funding to assist in the Town's preparation of the TRG Small Area Plan.

ARTICLE IV

MISCELLANEOUS TERMS

A. This Agreement, or any provision hereof, may not be modified unless agreed to in writing by the TRG Owners and the Town.

B. This Agreement shall run with the land of the TRG Owners as depicted on Exhibit "A" and shall be binding on, and inure to the benefit of the parties hereto, their successors, heirs and personal representatives, and permitted assigns. This Agreement may not be assigned to any party without the express written consent of the other party.

C. This document may be executed in counterparts, which taken together, shall constitute one and the same instrument.

D. This Agreement shall run for the duration of the TRG planning process provided that the TRG Owners may terminate this Agreement if the tasks identified in Article II are not completed within 18 months from the award of the RFP.

F. Nothing in this Agreement shall be construed to bind the Town to approve the TRG Small Area Plan or any subsequent development projects.

G. The parties hereto acknowledge and agree that this Agreement does not create a partnership between the TRG Owners and the Town and that no party shall have any obligation to the other beyond the terms and conditions of this Agreement.

H. Time is of the essence with respect to all aspects of the Agreement.

[Signatures appear on following pages.]

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the Effective Date.

TRG OWNERS

SHORENSTEIN

MBC Property Owners LLC, a _____

By: _____ [SEAL]

Name: _____

Title: _____

ROONEY

Herndon Van Buren LLC, a Delaware limited liability company

By: _____ [SEAL]

Name: _____

Title: _____

WIDEWATERS

Herndon Hotel Ownership LLC, a Delaware limited liability company

By: _____ [SEAL]

Name: _____

Title: _____

Executed and approved on behalf of the Town of Herndon, Virginia, by:

ATTEST:

TOWN OF HERNDON, VIRGINIA

Town Clerk

By _____
Sheila A. Olem
Mayor

Date: _____

APPROVED AS TO FORM:

Lesa J. Yeatts
Town Attorney

EXHIBIT “A”

Tax Map #	TRG Owner
0164 10 0001A5	MBC Property Owners LLC
0164 10 0001A6	MBC Property Owners LLC
0164 02 0015	Herndon Hotel Ownership LLC
0164 10 0001B	Herndon Van Buren LLC

Exhibit “B”

Herndon Transit-Related Growth Area (TRG)

