



**HERNDON TOWN COUNCIL
Meeting Minutes
Tuesday, June 13, 2023**

The Town Council met in regular session on Tuesday, June 13, 2023, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Mayor Sheila Olem, Vice Mayor Clark Hedrick, and Councilmembers Naila Alam, Cesar del Aguila, Pradip Dhakal, Keven LeBlanc, and Donielle M. Scherff.

Historic District Review Board Member and Historic Preservationist Lauren Edmondson was present.

Donna Linton, Court Reporter, Amicus Reporting, was present.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Kirstyn Barr Jovanovich, Town Clerk; Lisa Gilleran, Director of Community Development; Marjorie Sloan, Director of Finance; Page Kalapasev, Director of Information Technology; Scott Robinson, Director of Public Works; Cindy Roeder, Director of Parks and Recreation; Lauri Sigler, Deputy Town Attorney; Bryce Perry, Deputy Director of Community Development; Captain Steven Pihonak, Herndon Police; David Stromberg, Zoning Administrator; Fadrique Iglesias, Community Planner; Tamsin Himes, Lead Planner; and Dave Bracamonte, Systems Manager.

1. CALL TO ORDER

Mayor Olem called the June 13, 2023, Town Council meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

Mayor Olem led the to the Pledge of Allegiance to the Flag of the United States of America.

Determination of a Quorum

Mayor Olem determined there was a quorum, with all members present.

Mayor Announcements

Mayor Olem stated that the Town Council and Planning Commission are holding a Special Joint Work Session on Tuesday, June 20, to discuss the Transit Related Growth (TRG) Area. The meeting is at 7:00 p.m. in the Herndon Police Department Community Room. For those unable to attend, the recording will be posted on the Town's website.

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Mayor Olem stated that Town offices will be closed for Juneteenth Day on Monday, June 19, 2023.

Mayor Olem stated that the next Town Council work session is on Tuesday, July 11, 2023, and the next public hearing is on Tuesday, July 18, 2023. She noted that Town offices will be closed on Tuesday, July 4, 2023, for Independence Day. On July 4, 2023, the Town will host the annual celebration and fireworks display starting at 6:30 p.m. at Bready Park. Information on the Town's hours of operation, trash, and recycling schedule for the upcoming holidays is available on the Town's website.

Mayor Olem reminded those participating in tonight's meeting to follow the Town's meeting guidelines that are displayed in the Council Chambers.

3. PRESENTATIONS/REPORTS/COMMENTS

a. Proclamation to recognize LGBTQ+ Pride Month

Mayor Olem recognized Councilmember LeBlanc to begin reading the Proclamation to Recognize LGBTQ+ Pride Month into the record. Mayor Olem read the second half of the proclamation.

b. Proclamation to recognize Juneteenth Day

Mayor Olem recognized Councilmember Scherff to read the Proclamation to Recognize Juneteenth Day into the record.

Mayor Olem stated that members of the audience are invited to comment on the proclamations during the "Comments from the Audience" portion of the agenda.

c. Town Manager Report

William H. Ashton II, Town Manager, stated he had heard that there was concern about safety where the W&OD Trail intersects with roadways in the Town. He stated that staff is partnering with the Northern Virginia Regional Park Authority (NVRPA) on an upcoming safety campaign for Trail users. There will be safety messages along the Trail, including signage specific to the Trail crossings at Van Buren Street and Crestview Drive. Herndon and NVRPA are also working with the towns of Vienna and Leesburg, along with the Green Lizard, to help get information out to the public.

Mr. Ashton stated that while the Town planned to upgrade the handicap ramps on Center Street during a water main replacement project, issues had been found in the roadway that will delay the ramp repairs. Once the roadway is addressed, staff will continue with the ramp upgrades, which he hopes will occur in the spring.

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Mr. Ashton reminded those present that the Department of Public Works staff starts their summer schedule on June 20, 2023, which means their work days will start at 6:00 a.m.

d. Councilmember Comments

Councilmember del Aguila: thanked those in attendance for coming to the meeting that evening. He stated that he is “a proud Democrat,” and when he was Chair of the Fairfax County Democratic Committee, he initiated a caucus to reach out to the LGBTQ+ community. He was hoping and looking forward to the first Pride Festival, which he said will be a funded item, along with Latino, Asian, and inter-faith festivals.

Councilmember del Aguila applauded the upcoming Juneteenth event and stated that he hoped it will become a budget line item in the future. He thought the Council should fund these types of events and have outreach to show their support for the diverse community.

Councilmember Dhakal: wished everyone a happy Pride Month and stated that the proclamation presented that evening is a powerful reminder of the progress that has been made, along with the work that still lies ahead. He reflected on the LGBTQ+ community and their resilience to overcome obstacles.

Councilmember Dhakal provided comments on the Juneteenth proclamation, which he said recognizes past injustices, along with progress toward equality. He stated that racism and injustice must be fought against, and he encouraged everyone to educate themselves and to amplify Black voices ~ working to build a future of equality, dignity, and respect.

Councilmember Dhakal looked forward to the Juneteenth event on Saturday, June 17, 2023, at ArtSpace. He offered kudos to Councilmember Scherff for all the work she is doing to make the event possible.

Councilmember Dhakal stated that the Herndon Diversity, Equity, and Inclusion Committee (HDEIC), a group of which he is Chair, is meeting on Thursday, June 15, 2023, at 7:00 p.m., in the Herndon Police Department Community Room. He encouraged the public to attend and stated they would be able to provide comments.

Councilmember LeBlanc: echoed his colleagues’ comments about the proclamations presented that evening. As he believes he is the first open member of the Pride Community to be elected in Herndon, he stated that reading the Pride Month proclamation is very meaningful to him. He shared that he recently attended the Reston Pride celebration with the owner of the Elden Street Tea Shop, a downtown small business. He enjoyed attending the event to support small businesses and the entire community.

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Councilmember LeBlanc commended staff, including the Herndon Police Department and the Department of Parks and Recreation, on a successful Herndon Festival. He thanked Councilmember Dhakal for introducing him to a contingent of Nepalese dignitaries at the Herndon Festival, with whom he discussed eco-tourism, and economic and community development.

Councilmember LeBlanc stated that he attended the Northern Virginia Transportation Authority (NVTA) Anniversary Celebration and emphasized the importance of that group for transportation funding in the region.

Councilmember LeBlanc highlighted and provided congratulatory comments about the Mason Small Business Development Center in Herndon and its Director, Vijay Vaswani, who was recently appointed to a national small business board, where he is representing millennial entrepreneurs.

Councilmember Alam: thanked those in the audience for attending that night's meeting. She stated that when she moved to Herndon, there were not a lot of diverse groups, and she said it is good to see that today.

Councilmember Alam commented on the items she presented at last week's Town Council work session, including Green Spaces, Electric Vehicles (EV), DMV, and Scams.

Councilmember Scherff: echoed her colleagues' comments about the proclamations presented that evening and stressed the importance of inclusion.

Councilmember Scherff stated that while Juneteenth is a new Federal Holiday, the celebration is 150 years old. She stated that this is the first year the Town has issued a proclamation for Juneteenth. She encouraged everyone to come to the Juneteenth event on Saturday, June 17, 2023, and outlined the schedule of activities planned for that day.

Vice Mayor Hedrick: echoed his colleagues' comments about the proclamations presented that evening.

Vice Mayor Hedrick provided comments on Memorial Day and the remembrance ceremony held at Chestnut Grove Cemetery. He stated that Memorial Day fits in broadly with the proclamations presented that evening, as we are still working to embody the promises that were made almost 250 years ago. He also wanted to recognize the sacrifices made by individuals and families throughout that time.

Mayor Olem: stated that she is excited to recognize Pride Month and thanked Councilmember LeBlanc for reading the proclamation with her. She stated that Herndon has recognized Pride Month since 2014 and continues to support the diverse LGBTQ+ community.

Mayor Olem thanked Councilmember Scherff for reading the Juneteenth Day Proclamation. She encouraged the community to celebrate Black history and culture and

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support equity. She recognized Darryl Smith, who was the first Black Herndon police officer and the first Black member of the Herndon Town Council. She encouraged the community to attend the Juneteenth event on Saturday.

Mayor Olem stated that from June 1 to June 4, the Town hosted the Herndon Festival at Northwest Federal Credit Union, and she thought it was a huge success. She gave kudos to the Departments of Parks and Recreation, Public Works, and the Herndon Police Department, for their hard work and efforts on the event.

Mayor Olem provided updates on several events she attended in the past two weeks: (1) Herndon High School graduation on Wednesday, June 7, 2023, (2) NVTVA Anniversary Celebration on Thursday, June 8, 2023, and she highlighted how the NVTVA works to fund transportation projects in Northern Virginia, and (3) ribbon cutting and grand opening for Salon de Muse on Saturday, June 10, 2023.

Comments and Disclosures for the Record

Mayor Olem asked Kirstyn Barr Jovanovich, Town Clerk, if she received comments for the record or signed disclosure declarations from Council.

Ms. Jovanovich stated that comments were entered into the record on public hearing item 5(a) Resolution 23-G-42 to consider an appeal of the Historic District Review Board's Decision on HDRB #23-001.

Ms. Jovanovich stated that the following Councilmembers entered signed transactional disclosure declarations into the record on Public Hearing Item 5(a), Resolution 23-G-42:

- Councilmember Alam provided a signed statement for the record that she has had discussions regarding the property located at 725 Elden Street; and she has met with the applicants and/or applicant's agent for HDRB #23-001 to discuss the proposed demolition of the two contributing structures.
- Councilmember Scherff provided a signed statement for the record that she has met with the applicants and/or applicant's agent for HDRB #23-001 to discuss the proposed demolition of the two contributing structures.
- Councilmembers del Aguila and LeBlanc provided signed statements for the record that they are owners of real estate within the Historic District; and have had discussions regarding the property located at 725 Elden Street.
- Councilmember Dhakal provided a signed statement for the record that he is an owner of real estate within the Historic District; and he has met with the applicants and/or applicant's agent for HDRB #23-001 to discuss the proposed demolition of the two contributing structures.

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All members have indicated that they are able to participate in the discussion and action on this item fairly, objectively, and in the public interest.

Ms. Jovanovich stated that the following Councilmembers entered signed transactional disclosure declarations into the record for Consent Agenda item 6(d), Resolution 23-G-46 to award and disburse funds to charitable or non-profit organizations for Fiscal Year 2024:

- Mayor Olem, and Councilmembers del Aguila, Dhakal, and Scherff each provided signed statements for the record that they are unpaid volunteers for various organizations in the community, some of which may receive funds or services from the town. Throughout the year, they may be invited to attend events hosted by these organizations as guests.
- Vice Mayor Hedrick provided a signed statement for the record that through the year, he may be invited to attend events hosted by these organizations as a guest.

All members have indicated that they are able to participate in the discussion and action on this item fairly, objectively, and in the public interest.

Additionally, on the same item, Consent Agenda item 6(d):

- Councilmember Alam provided a signed statement for the record that throughout the year, she may be invited to attend events hosted by these organizations as a guest.
- Councilmember LeBlanc provided a signed statement for the record that he is a member of the Board of Directors for Arts Herndon; is a volunteer lead for several community organizations, including organizations that have applied for funds from the Town; and he has personally donated to NextStop Theatre.

Both statements indicate that they will recuse and disqualify themselves from voting or participating in the discussions on this item.

Ms. Jovanovich stated that the following Councilmembers entered signed transactional disclosure declarations into the record for Consent Agenda item 6(e), Resolution 23-G-47 to award and disburse funds to Arts Herndon in support of a Juneteenth event:

- Councilmember LeBlanc provided a signed statement for the record that he serves on the Board of Directors for Arts Herndon.
- Councilmember Scherff provided a signed statement for the record that she is organizing the Juneteenth event.

Both statements indicate that they will recuse and disqualify themselves from voting or participating in the discussions on this item.

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All signed disclosure statements have been entered into the record with the Town Clerk and the Town Attorney.

Ms. Jovanovich stated that the Clerk did not receive additional comments or disclosures from Councilmembers on any other items listed on the agenda that evening.

COMMENTS FROM THE AUDIENCE

Mayor Olem reviewed the process and asked those who wanted to provide Comments from the Audience to come forward.

The following individuals provided comments:

- Chuck Hall, representing the Dulles Triangles, thanked the Council for presenting the LGBTQ+ Pride Month proclamation.
- Steve Mitchell, 1291 Monroe Street, provided comments on the Town's application process for seasonal outdoor seating, referring to written comments he submitted on the subject.

4. PUBLIC HEARINGS

- a. **Resolution 23-G-42 to consider an appeal of the Historic District Review Board's (HDRB) Decision on HDRB #23-001. The decision, made at the HDRB public hearing on April 19, 2023, denied a Certificate of Appropriateness to demolish two contributing structures, a two-story house and a single-story accessory structure at 725 Elden Street. Property Owner/Appellant: Adams Herndon Holdings, LLC. Agents: Michael L. O'Reilly, The O'Reilly Law Firm and David Kipper, Golden Real Estate Services**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing items had been duly advertised in the Friday, May 26, and June 2, 2023 issues.

Mayor Olem opened the public hearing and recognized Lesa Yeatts, Town Attorney, to outline the appeals process. Ms. Yeatts stated the sole issue for the Council's consideration is: did the HDRB correctly consider the review standards for demolition contained in the Town Code in reaching their decision to deny demolition. She stated that this is called a "decision on the record," meaning that no new evidence will be presented at this hearing. She outlined the appeals hearing process, stating that the appellant or their agent will first present their grounds for appeal, and the Zoning Administrator will present the HDRB's decision. Next, a member of the HDRB will address the Town Council and then the public will be given an opportunity to comment. Staff will be available to answer any additional questions and then the appellant will have an opportunity for rebuttal.

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Comments and Questions of the Appellant

Mayor Olem asked the appellant or appellant's agent to address Council on this item.

Mike O'Reilly, The O'Reilly Law Firm, appellant's (Adams Herndon Holding, LLC) agent, provided the grounds for appeal. He stated the appellant does not believe that the HDRB properly analyzed the requirements to allow a Certificate of Appropriateness for Demolition. He asked the appellant to address the Council to provide background on the case.

Kathryn Adams, appellant, was sworn in by the Court Reporter and provided comments on the appeal. She outlined why she applied for the Certificate of Appropriateness for Demolition. She has not designed what will replace the structure, stating that she did not think it was a good use of resources when the timing of demolition was unknown, and that it was not required for obtaining the demolition permit. Ms. Adams provided comments about the appeal process, her business, and the community.

Mr. O'Reilly went through the list of the nine requirements needed to obtain the Certificate of Appropriateness for Demolition. He outlined the reasons why he thought the appellant met those requirements.

There was discussion among the Council and the appellant's agent on the: (1) HDRB public hearing and appeal process, (2) requirements for demolition relative to the application, (3) residential versus commercial zoning on the property, (4) modifications and/or alternatives to demolition, (5) replacement of the demolished structure, (6) contributing structures in the Historic District, and (7) economic feasibility of rehabilitating the building.

[Councilmember del Aguila left the dais at 8:23 p.m. and returned at 8:24 p.m.]

Staff Report and Council Questions

Mayor Olem called on David Stromberg, Zoning Administrator, for the staff report.

Mr. Stromberg was sworn in by the Court Reporter. He presented the staff report and PowerPoint dated June 13, 2023.

Responding to an earlier request from Councilmember Scherff, Mr. Stromberg stated that there is a definition for a contributing structure that he can review.

Mr. Stromberg began his presentation and reviewed the application, the HDRB public hearing process, and the appeal to the Town Council. He discussed the HDRB's review of the application, the HDRB's decision, and provided an analysis of the statement of appeal. He listed the factors that the HDRB considered in their review, including: (1) impact of demolition to the Historic District, (2) a lack of photographs to report structural

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unsoundness as stated by the applicant, and (3) no consideration of rehabilitation options allowed under the Virginia Rehabilitation Code and International Existing Building Code.

Mr. Stromberg stated that the staff memo dated April 19, 2023, (Exhibit #3) clearly articulates how the application does not meet the standards of review for demolition, as listed in Section 78-60.3(f)(4) of the Zoning Ordinance. Mr. Stromberg emphasized that all nine standards for demolition in the aforementioned section of the Town Code must be met in order to issue a Certificate Of Appropriateness. Staff recommends that the Town Council affirm the decision of the HDRB based on the facts in the HDRB's record and the standards of review in Section 78-60.3(f)(4) of the Zoning Ordinance.

There was discussion among the Council and Mr. Stromberg on the appeal, including: (1) contributing structures in the Historic District, (2) materials used on the structure, (3) factors the HDRB considered in their review, (4) requirements for demolition, (5) zoning on the property, (6) HDRB appeals process and Historic District Guidelines, and (7) options available to the Town Council and appellant under the Town and State Codes.

Responding to Councilmember Dhakal, Mr. Stromberg stated that when a historic district is established, every contributing structure that helps create that district is included in the National Registry For Historic Places. He stated that a property is listed separately if it is located outside of a district.

Responding to Councilmember LeBlanc's request for a point of clarification, Ms. Yeatts opined that the sole issue before Council, by law, is to determine whether the HDRB properly evaluated the criteria in arriving at their decision to deny the demolition.

Responding to Councilmember LeBlanc's request for a second point of clarification, Ms. Yeatts opined that the Council's consideration is limited to the factors and laws related to the structure being considered in the appeal.

Responding to Councilmember Dhakal's question about topics that can be discussed during the appeal, Ms. Yeatts highlighted that the sole issue before the Council is determining whether the HDRB decided the matter correctly based on the established criteria. She noted staff's indication that there was no evidence of financial consideration presented to the HDRB during its review of this application.

Responding to Councilmember Scherff, Ms. Yeatts stated that the Council is determining whether the HDRB applied the guidelines under the Town Code. She advised that the HDRB Board Member present that evening is the best person to ask about the HDRB's decision.

Responding to Vice Mayor Hedrick, Mr. Stromberg stated that he will defer to the HDRB Board Member on what would allow a contributing structure in the Historic District to be demolished.

[Councilmember Scherff left the dais at 9:31 p.m. and returned at 9:34 p.m.]

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Comments and Questions of the HDRB Member

Mayor Olem invited Lauren Edmondson, HDRB Historic Preservationist and Board Member, to speak.

Board Member Edmondson was sworn in by the Court Reporter.

Board Member Edmondson provided an overview of the HDRB's consideration and action on HDRB #23-001. In her statement, she asserted that the HDRB properly considered and correctly applied the pertinent Historic Overlay District Guidelines and Zoning Ordinance requirements for issuance of a Certificate of Appropriateness for Demolition. She went through the list of the nine criteria for demolition and emphasized that to approve the Certificate of Appropriateness, all nine criteria have to be met.

There was discussion among the Council and Board Member Edmondson, focusing on: (1) evidence presented to the HDRB, (2) the applicant's engineering report, and (3) documentation that is required to submit an application.

[Councilmember del Aguila left the dais at 9:48 p.m. and returned at 9:50 p.m.]

Comments from the Audience

Mayor Olem called for comments from the audience.

[Mayor Olem left the dais at 9:56 p.m. and returned at 9:57 p.m.]

The speakers were sworn in by the Court Reporter.

The public hearing was held, and the following individuals provided testimony:

- Rich Klingeman, 721 Elden Street;
- Rosemary Renton, 802 Winterhaven Place;
- Anne Regan, 1000 Monroe Street;
- Mariah LaWalt, 620 Third Street;
- Sean Regan, 1000 Monroe Street;
- Barbara Glakas, 935 Barton Oaks Place;
- Steve Mitchell, owner of the James Building; and
- James Cudlip, 2513 James Madison Circle.

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Recess

Mayor Olem called a brief recess at 10:20 p.m., and at 10:26 p.m., the meeting reconvened in the Herndon Council Chambers. Mayor Olem determined there was a quorum, with six members present, with Mayor Olem presiding. Councilmember del Aguila returned to the dais at 10:27 p.m.

Staff Comments

Mayor Olem asked if staff would like to provide additional comments.

Mr. Stromberg provided additional comments. He stated that since John Orrison, Building Official, was not called on at the HDRB meeting, he did not attend tonight's Town Council meeting since new evidence cannot be introduced. Mr. Stromberg stated that Mr. Orrison read the applicant's engineering report and Mr. Orrison advised that there was not a lot of analysis on how the building could be used, or on how difficult it would be to change it to commercial use. Mr. Stromberg provided further comments on the structural report and stated that the engineer who authored the report did not attend any of the meetings to explain their evaluation.

Appellant Rebuttal

Mayor Olem asked if the appellant or appellant's agent wanted an opportunity for rebuttal.

Mr. O'Reilly, appellant's agent, provided the rebuttal. He expressed surprise that Mr. Stromberg asserted that the individual houses are listed on the National and State Register. He addressed the engineering report that was discussed at the HDRB meeting and at tonight's hearing. He said that he could have brought the engineer to the meetings if asked, but he thought the report itself was sufficient. Mr. O'Reilly stated that if there are other requirements for documentation, they should be stated when filing the original application.

Mayor Olem closed the public hearing and moved to Council level for discussion and action. She reminded Council that there are several options for action on this item, as reviewed by the Town Attorney and outlined in the resolution included in the agenda. These were to affirm, reverse, modify, or remand the HDRB's decision on HDRB #23-001. She stated that the motion maker must specifically state which action they are moving.

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Motions

Motion to Remand

Councilmember LeBlanc moved to remand Application HDRB #23-001, a request for a Certificate of Appropriateness for Demolition, back to the HDRB for further discussion, specifically addressing:

1. The Engineering Study regarding concerns about foundation, providing pictures, potential town inspection;
2. Review of live loads and rehabilitation; and
3. Economic feasibility, not just inclusive of the core funeral home business.

Motion seconded by Vice Mayor Hedrick.

There was discussion among the Council on the motion to remand, including: (1) Council's role in reviewing an HDRB appeal, (2) items requested in the remand, (3) appropriateness of the HDRB's decision, (4) the appeal process, and (5) criteria to obtain a Certificate of Appropriateness for Demolition.

Responding to a request from Vice Mayor Hedrick to review each of the nine criteria for demolition and how they were applied to this case, Mayor Olem stated that the motion to remand includes the specific items the HDRB is being asked to review. She noted that if a motion to reverse the decision is made, Council has to specifically state where the HDRB incorrectly applied the criteria.

Amendment

Responding to a question from Councilmember Scherff about timing, Mr. Stromberg stated the Council can set the date for the HDRB to consider the item.

Ms. Yeatts agreed with Mr. Stromberg, and she indicated that a Councilmember can make an amendment to the motion to add the HDRB meeting date.

Councilmember LeBlanc moved to amend the motion to remand Application HDRB #23-001, a request for a Certificate of Appropriateness for Demolition, back to the HDRB for further discussion, to a date certain of the HDRB's August 2, 2023 work session and its August 16, 2023 public hearing.

Vice Mayor Hedrick, seconder, concurred with the amendment.

There was brief discussion among the Council on the amended motion.

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The question was called on the motion, as amended, which failed by a 3-4 vote. The vote was: LeBlanc, Vice Mayor Hedrick, and Mayor Olem voting “Aye,” and Councilmembers Alam, del Aguila, Dhakal, and Scherff voting “No.”

Motion to Reverse

Initial Motion

Councilmember del Aguila made a motion to reverse the decision of the HDRB and approve Application #23-001, upon a finding of evidence in the record that the HDRB decision was incorrect based on the review standards, and further upon a finding that the applicant met all nine (9) standards in Section 78-60.3(f)(4) of the Zoning Ordinance and the criteria for demolition found in pages 124-127 of the Historic District Overlay Guidelines, and further upon a finding that:

- a. He believes the engineering study would suffice;
- b. He believes that the analysis of the application was not fully completed;
- c. He thinks the request for demolition should be approved;
- d. The new building will fit in the surrounding theme;
- e. The siding and shingle roof does not stay within the spirit of the original design;
- f. The building can be reproduced;
- g. The front porch is missing;
- h. There were no historical events in the building that we are aware of;
- i. It is structurally unsound; and
- j. It is commercial.

Motion seconded by Councilmember Alam.

Mayor Olem asked Councilmember del Aguila to clarify his motion. Councilmember del Aguila stated “take what was submitted, (a) through (i) as what I call discrepancies, and I’ll use going back to the engineering study as an example of a discrepancy.”

Mayor Olem asked if a recess was needed so that Councilmember del Aguila could write the motion down. Councilmember del Aguila stated he was not going to write it down, since he just said it.

Ms. Yeatts asked if the Court Reporter was able to read the motion back. The Court Reporter indicated that she would need clarification on where to read it back from.

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Councilmember del Aguila stated he would limit the motion to “reverse the decision of the HDRB and approve Application #23-001, upon finding of the evidence in the record that the HDRB decision was incorrect, based on the reviewing standards.”

Mayor Olem asked Councilmember del Aguila to state the rest of the motion. Councilmember del Aguila stated that he already said it.

Responding to the conversation, Ms. Yeatts stated that was the motion.

Mayor Olem asked Councilmember del Aguila to repeat the motion for the record.

Councilmember del Aguila started reading the resolution text. Kirstyn Barr Jovanovich, Town Clerk, asked for clarity on the points being cited in the motion for reversal.

Mayor Olem stated that the motion to reverse the decision and approve the application for demolition must state that all the applicable criteria in Section 78-60.3(f) have been met.

Clarification on the Motion to Reverse

Following discussion, Councilmember del Aguila revised his motion to reverse the decision of the HDRB and approve Application #23-001, upon a finding of evidence in the record that the HDRB decision was incorrect based on the review standards, and further upon a finding that the applicant met all the nine (9) standards in Section 78-60.3(f)(4) of the Zoning Ordinance and the criteria for demolition found in pages 124 -127 of the Historic District Overlay Guidelines, and further upon a finding that:

- a. Building or structure does not contribute to the character of the Historic District;
- b. Building or structure would not qualify as a national or state landmark building for a structure listed with the National Register of Historic Places, Virginia Landmark Register;
- c. Building or structure has a common design that could reasonably be reproduced;
- d. No historic events occurred in the building or structure;
- e. Building or structure has a degree of structural unsoundness;
- f. It is not practicable to relocate the building or structure or portions thereof;
- g. Proposed demolition does not adversely affect other historic landmarks located within the Historic District Overlay or adversely affects the character of the Historic District Overlay;
- h. Practical alternatives to demolition do not exist; and

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- i. An economic and structural feasibility study prepared by the qualified professionals submitted concluded rehabilitation or reusing the building or structure is not a practical alternative.

Mayor Olem confirmed Councilmember Alam's second to the motion.

There were comments from the Town Council, which are summarized below.

Vice Mayor Hedrick is concerned about reversing the decision of the HDRB based on what he said was inadequate evidence that the HDRB were in error in making their decision. Specifically, he did not think the first two criteria were met. He did not believe evidence was presented showing that the building does not contribute to the character of the Historic District. He is concerned with the idea that the building or structure would not qualify to be listed on the National Register of Historic Places or Virginia Landmark Register, because he did not think they were shown effort was made to qualify, or that the building would not qualify if the effort was made. He expressed concern that the engineering work did not provide sufficient evidence to show that some of the other criteria were not met. He believes there was enough evidence to show that it is unclear, which is why he supported remanding the decision.

Councilmember LeBlanc believed that in his motion to remand, he stated his position on this case. He believes that the HDRB acted in accordance with its current policies and practices. While he thinks discussion of process is warranted, it is not part of this judicial movement. He thought that the structural integrity could have been addressed in the timeframe provided in the previous motion by having the appellant's engineer come forward and address it. He believes this is "a direct attack on the Historic District" and he worries that a bad precedent is being set that will impact the homeowners in the Historic District who are able to obtain tax credits and preserve their homes. He discussed the character of the home, saying that he thinks it is historically significant and contributes to the fabric of the Town. He thought that as building elements adjust over time, stating that because items like the porch and gingerbread are not part of the house now does not mean that this building does not fit with the character and style of the Historic District.

Councilmember LeBlanc asked Councilmember Alam to provide her opinion as the seconder of the motion. Councilmember Alam stated that she is supporting the funeral home because they are serving the diverse community and she wants them to stay within the town.

Councilmember Scherff stated that not every commercial space can be zoned for a funeral home and that matters. She clarified that she is not saying that this impacts whether or not the HDRB did their job, but there is merit to Councilmember Alam's statement in being able to support this type of business and essential services for our region.

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Councilmember Dhakal stated that the HDRB made their decision based on the facts presented to them, but if the process itself is convoluted and subject to interpretation, it is difficult. He stated he knew the Council was not talking about process here, and further stated that since the engineering report states that the building does not support a commercial use and since there is no residential permit at that time, then the other eight criteria do not qualify. He said that is why the process is flawed. He further stated he is not in a position to make a decision on or approve this when the process is flawed. He further stated that he believes the Council's hands are tied and have been made to make a decision based on the nine criteria when they know that one criterion itself can invalidate the rest of the criteria.

Mayor Olem stated she can't support this motion, because she does not see why the Council would reverse the HDRB decision when they did not do anything inappropriately.

The question was called on the motion, which carried by a 4-3 vote. The vote was: Councilmembers Alam, del Aguila, Dhakal, and Scherff voting "Aye," and Councilmember LeBlanc, Vice Mayor Hedrick, and Mayor Olem voting "No."

b. Resolution 23-G-43 to approve a 10-year License Agreement between the Town and the Herndon Historical Society for use of designated town-owned public property, commonly known as the Carroll Cabin, for the installation and maintenance of interpretive panels

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing items had been duly advertised in the Friday, May 26, and June 2, 2023 issues.

Mayor Olem opened the public hearing and recognized Cindy Roeder, Director of Parks and Recreation, who presented the staff report and PowerPoint dated June 13, 2023. The proposed resolution approves a 10-year license agreement with the Herndon Historical Society related to the installation and maintenance of interpretive panels at the Carroll Cabin, located in Runnymede Park. The interpretive panels will provide information on how the house would have looked in the early 1900s and will include background and history about those that lived there. Staff recommends approval of the proposed resolution, as presented.

Responding to a question that Councilmember Scherff asked at the work session, Ms. Roeder stated the agreement can be terminated with 60 days' notice by either party.

Mayor Olem called for comments from the audience.

- Nancy Saunders, 13156 Fern Hollow Court, provided comments on the proposed agreement on behalf of the Herndon Historical Society.

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Seeing no further comments, Mayor Olem closed the public hearing and moved to Council level for discussion and action.

Councilmember Dhakal moved to approve Resolution 23-G-43 to approve a 10-year License Agreement between the Town and the Herndon Historical Society for use of designated town-owned public property, commonly known as the Carroll Cabin, for the installation and maintenance of interpretive panels, as presented.

Motion seconded by Vice Mayor Hedrick.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Alam, del Aguila, Dhakal, LeBlanc, and Scherff, Vice Mayor Hedrick and Mayor Olem voting “Aye.”

c. Resolution 23-G-44 to consider Special Exception Amendment Application SE #21-05, to permit an expansion of a personal service use consisting of cosmetics and aesthetic services within the multi-tenant commercial office building in a Commercial Office, CO, zoning district

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing items had been duly advertised in the Friday, May 26, and June 2, 2023 issues.

Mayor Olem opened the public hearing and recognized Fadrique Iglesias, Community Planner, who presented the staff report and PowerPoint dated June 13, 2023. The proposed application is for an amendment to a special exception that was approved by the Town Council on November 16, 2021. The amended special exception will permit the expansion of a personal service use business consisting of cosmetics and aesthetic services at 299 Herndon Parkway. Mr. Iglesias reviewed the site location and the applicant’s request, which is to expand the footprint of Unit 108 (approximately 966 square feet) by adding the adjacent Unit 107 (approximately 933 square feet) and connecting them by an interior door. Staff and the Planning Commission recommend approval of SE #21-05, with the conditions listed in the staff report and proposed resolution.

Mayor Olem asked if the applicant or applicant’s agent would like to address Council on this item.

Tommy Nguyen, applicant, provided comments on the application.

Mayor Olem called for comments from the audience. Seeing none, Mayor Olem closed the public hearing and moved to Council level for discussion and action.

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Vice Mayor Hedrick moved to approve Resolution 23-G-44 to consider Special Exception Amendment Application SE #21-05, to permit an expansion of a personal service use consisting of cosmetics and aesthetic services within the multi-tenant commercial office building in a Commercial Office, CO, zoning district, as presented.

Motion seconded by Councilmember Dhakal.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Alam, del Aguila, Dhakal, LeBlanc, and Scherff, Vice Mayor Hedrick and Mayor Olem voting "Aye."

- d. Ordinance 23-O-14 to amend Chapter 78 (Zoning), Article XV (Decision-Making Authorities, Application Review, and Permitting), Section 78-150.3 (Board of Zoning Appeals), and Section 78-155.4 (Variances) to bring the zoning ordinance into alignment with the Code of Virginia and to consider not hearing substantially the same application for a specific period of time, not to exceed one year**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing items had been duly advertised in the Friday, May 26, and June 2, 2023 issues.

Mayor Olem opened the public hearing and called on David Stromberg, Zoning Administrator, for the staff report. Mr. Stromberg stated that the presentation and draft ordinance have not changed since the work session. He stated that staff continues to recommend adopting the proposed ordinance that only includes the mandatory updates, which is Alternate B. That version does not include the language regarding the Board of Zoning Appeals not hearing substantially similar applications for a set period of time.

Mayor Olem called for comments from the audience. Seeing none, Mayor Olem closed the public hearing and moved to Council level for discussion and action.

Mayor Olem reminded Council that staff provided two versions of this ordinance, which are Alternate A, which has the language establishing a time limit on submitting substantially similar variance applications, and Alternate B, which does not include that language. The motion maker must clearly indicate which alternate they are moving.

Councilmember LeBlanc moved to approve Ordinance 23-O-14 to amend Chapter 78 (Zoning), Article XV (Decision-Making Authorities, Application Review, and Permitting), Section 78-150.3 (Board of Zoning Appeals), and Section 78-155.4 (Variances) to bring the zoning ordinance into alignment with the Code of Virginia and to consider not hearing substantially the same application for a specific period of time, not to exceed one year, in accordance with Alternate B.

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Motion seconded by Councilmember Scherff.

There were brief comments from the Council.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Alam, del Aguila, Dhakal, LeBlanc, and Scherff, Vice Mayor Hedrick and Mayor Olem voting “Aye.”

5. CONSENT

- a. Ordinance 23-O-15 to approve and authorize the Mayor to sign a Second Lease Extension between Town of Herndon and The Elden Street Players d/b/a NextStop Theatre Company, to extend the expiration date to June 30, 2024, for space at 397 Herndon Parkway for storage**
- b. Ordinance 23-O-16 to approve and authorize the Mayor to sign a Fourth Lease Extension between Town of Herndon and The Elden Street Players d/b/a NextStop Theatre Company, to extend the expiration date to June 30, 2024, for space at 397 Herndon Parkway for rehearsal**
- c. Resolution 23-G-45 to repeal Resolution 20-G-09 and preceding resolutions, regarding eligibility guidelines for disbursement of town funds to charitable or non-profit organizations**
- d. Resolution 23-G-46 to award and disburse funds to charitable or non-profit organizations for Fiscal Year 2024 for the Town of Herndon**
- e. Resolution 23-G-47 to award and disburse funds to Arts Herndon in support of a Juneteenth event**
- f. Resolution 23-G-48 to appoint members to the Herndon Diversity, Equity, and Inclusion Committee (HDEIC)**
- g. May 2, 2023 Town Council Work Session Minutes**
- h. May 9, 2023 Town Council Meeting Minutes**
- i. May 16, 2023 Town Council Work Session Minutes**
- j. May 23, 2023 Town Council Meeting Minutes**

Following input from Kirstyn Barr Jovanovich, Town Clerk, Mayor Olem stated that Councilmembers Alam, LeBlanc, and Scherff are leaving the dais for the vote on the Consent Agenda because of their disclosure statements indicating recusal on items 6(d) and/or 6(e).

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On motion of Councilmember del Aguila, seconded by Vice Mayor Hedrick, the Consent Agenda items were approved and carried by a 4-0 roll call vote, without comment. The vote was: Councilmembers del Aguila, Dhakal, and Vice Mayor Hedrick and Mayor Olem voting "Aye." Councilmembers Alam, LeBlanc, and Scherff were absent, having recused themselves from voting on the Consent agenda.

6. ADJOURNMENT

There being no further business, Mayor Olem adjourned the June 13, 2023 Town Council Regular Meeting at 11:46 p.m.

Amanda E. Monaw Kertz

Amanda E.M. Kertz
Chief Deputy Town Clerk



Minutes approved by Town Council: August 8, 2023

[Note: Approved resolutions and ordinances are on file in the Town Clerk's office.]