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**PLANNING COMMISSION
Public Hearing
Monday, November 16, 2020**

Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor’s Executive Orders, as amended; and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments, Chairman Romeo has stated that the October 26 2020, Planning Commission Public Hearing will be by electronic means. The meeting was broadcast and recorded through Cisco WebEx and details for the meeting were made available to the public on Wednesday, November 10, 2020. In attendance were: Chairman Michael Romeo, Vice Chair George Burke and Commissioners Jay Donahue, Paul LeReche, Sean Regan and Meron Yohannes. Commissioner Kevin Moses was absent. Due to technical issues, Commissioner Jay Donahue joined the meeting at 7:12 p.m.

Staff present during the meeting: Lesa Yeatts, Town Attorney; Elizabeth Gilleran, Director of Community Development; David Stromberg; Zoning Administrator, Michael Wallick, Transportation Planner and Erika Orellana, Clerk to Boards and Commissions.

STAFF ANNOUNCEMENTS

Erika Orellana, Clerk to Boards and Commissions, stated that the Planning Commission public hearing was held as a virtual meeting. The Clerk to the Boards and Commissions welcomed those listening and encouraged the public to provide comments for the record at planning.commission@herndon-va.gov.

Ms. Orellana stated, for the record, that:

- The Planning Commission public hearing that evening was conducted electronically Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor’s Executive Orders, as amended; and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as

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amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments.

- Proper notice of the electronic meeting was provided in accordance with Section 2.2-3708.2 of the Code of Virginia, along with information for viewing the meeting and submitting comments for the record;
- The agenda and meeting materials are available on the town's website;
- Electronic meetings will begin with a roll call and determination of quorum; and
- All votes, including adjournment, were by roll call vote.

ANNOUNCEMENT BY CHAIRMAN ROMEO

Chairman Romeo welcomed newly appointed Commissioner Jay Donahue and congratulated Commissioner Regan on his election to the Town Council.

APPROVAL OF AGENDA

On the motion of Vice Chair Burke, seconded by Commissioner LeReche and carried by a vote of 5-0, the approval of agenda. The vote was: Commissioners LeReche, Regan, Yohannes, Vice Chair Burke and Chairman Romeo voting "Aye." Commissioner Donahue and Commissioner Moses were absent. Due to technical issues, Commissioner Jay Donahue joined the meeting at 7:12 p.m.

1. CALL TO ORDER

Roll Call

Chairman Romeo called the virtual public hearing to order at 7:03p.m. and asked Ms. Orellana to call the roll for attendance. Five Planning Commissioners were present, electronically, with Chairman Romeo presiding.

DETERMINATION OF QUORUM/ ANNOUNCEMENT

Chairman Romeo stated, for the record, that there was a quorum present, virtually, that evening. Chairman Romeo stated that Lesa Yeatts, Town Attorney; Elizabeth Gilleran, Director of Community Development; David Stromberg; Zoning Administrator and Michael Wallick, Transportation Planner were also present.

Chairman Romeo stated that tonight's public hearing was conducted by electronic means pursuant to the appropriate laws.

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APPROVAL OF MINUTES

**2. Vote on October 5, 2020
Work Session Minutes**

On the motion of Vice Chair Burke, seconded by Commissioner Regan and carried by a vote of 5-0, the minutes for the October 5, 2020 work session were approved. The vote was: Commissioners LeReche, Regan, Yohannes, Vice Chair Burke and Chairman Romeo voting "Aye." Commissioner Donahue and Commissioner Moses were absent. Due to technical issues, Commissioner Jay Donahue joined the meeting at 7:12 p.m.

**3. Vote on October 26, 2020
Public Hearing Minutes**

On the motion of Vice Chair Burke, seconded by Commissioner Regan and carried by a vote of 5-0, the minutes for the October 26, 2020 public hearing were approved. The vote was: Commissioners LeReche, Regan, Yohannes, Vice Chair Burke and Chairman Romeo voting "Aye." Commissioner Donahue and Commissioner Moses were absent. Due to technical issues, Commissioner Jay Donahue joined the meeting at 7:12 p.m.

4. COMMENTS BY THE STAFF

There were no comments by the staff.

5. COMMENTS BY THE COMMISSIONERS

There were no comments by the Commissioners.

PUBLIC HEARINGS

6. APPLICATION FOR A SPECIAL EXCEPTION – SE #20-02, 900 Ballou Street, to consider a special exception to permit a secondary kitchen in a single-family residence in an R-15, Residential Single Family District. The secondary kitchen would be located in the in a new single family detached house proposed to be built and currently under review with a Single Lot Development Plan, TP#20-04. The property is designated in the Herndon 2030 Comprehensive Plan as "Neighborhood Conservation". The property is on the northeast corner of the Park Avenue and Ballou Street intersection. Fairfax County Tax Map Reference Number: 0104 05 0035B. Applicant: Mohan Uprety. Property Owners: Mohan K. Uprety and Laxmi P. Uprety.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, October 30, 2020 and November 6, 2020 issues.

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Chairman Romeo opened the public hearing and called on Michael Wallick, Transportation Planner, for the staff report and updates.

Mr. Wallick presented the staff report dated November 9, 2020 and staff memo dated November 13, 2020, which are on file in the Department of Community Development.

Chairman Romeo called on the Planning Commission individually for questions to Mr. Wallick.

Mr. Wallick and David Stromberg, Zoning Administrator responded to questions from Commissioner Donahue regarding “as intended” verbiage in the conditions. Commissioner LeReche asked for clarity on the verbiage in the conditions as well. Commissioner Regan asked for clarity on the layout of the proposed application. Mr. Wallick and Mr. Stromberg responded to their questions.

Chairman Romeo recognized the property owner, Mr. Uprety, to provide comments.

Mr. Uprety, provided his comments to the Planning Commission.

Chairman Romeo called on the Planning Commissioners individually for questions to the property owner, Mr. Uprety.

Vice Chair Burke thanked staff and the applicant for the effort put into the proposed application.

Chairman Romeo recognized the public for comments on this item.

The following individuals provided comments on this special exception application:

- Nicholas Zaffke
- Michael Manilli
- Emilio Lopez

Chairman Romeo asked Mr. Stromberg to clarify whether the zoning ordinance limits the maximum size of a single family house. Mr. Stromberg responded to Chairman Romeo that there is no maximum size limitation as long as the proposed single family dwelling can comply with setbacks and other development criteria. Mr. Stromberg stated that bulk and massing can be reviewed for new single family dwellings in the historic district overlay but that this property is outside of the historic district overlay.

Chairman Romeo asked applicant for the opportunity to rebuttal. Mr. Uprety provided his comments.

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Following the public hearing, Vice Chair Burke moved approval of SE#20-02 resolution with the conditions dated November 16, 2020 as presented by staff recommendation. This motion was seconded by Commissioner Regan.

There was a brief discussion from the Commissioners on this item.

The question was called on the motion, which carried by a vote of 6-0, The vote was: Commissioners Donahue, LeReche, Regan, Yohannes, Vice Chair Burke and Chairman Romeo voting "Aye." Commissioner Moses was absent.

[Note: Below is the approved resolution and conditions for SE#20-02.]

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

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

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

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

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

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

CONDITIONS

1. Substantial Conformance. The development of the special exception use described in Condition 2 below including the internal layout of the proposed structure regarding dual kitchens and wet bars shall be in substantial conformance with the architectural plans submitted with this application and dated October 1, 2020. Approval of this application on the parcel identified as Fairfax County Tax Map Number 0104-05-

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0035B, known as 900 Ballou Street, Herndon, Virginia (the "Property"), shall not relieve the applicant or the owners of the Property, or their successors or parties developing, establishing, or operating the approved special exception, from the obligation to comply with and conform to any other Zoning Ordinance, codified ordinance, or regulatory requirement.

2. Permitted Use. This special exception is granted to allow a secondary kitchen in the new single family dwelling proposed on the Property in accordance with TP #20-04 and pursuant to Section 78-80.4(b) of the Town of Herndon Zoning Ordinance (the "Zoning Ordinance") . It is not the intent of this approval to authorize a second kitchen in the existing structure located at 900 Ballou Street.
3. These conditions must be recorded by the applicant among the land records of Fairfax County for the Property prior to the issuance of the building permit for the new single family dwelling. A certified copy of the recorded conditions shall be provided to the Zoning Administrator.
4. Access. No portion of the house shall be separated or partitioned from other areas of the house through the use of keyed locks, deadbolts or other locking mechanisms or drywall or other partitions to form a separate dwelling unit.
5. Family. The inhabitants of the new single family dwelling on the Property shall consist of one family as defined by Section 78-180 of the Zoning Ordinance.
6. Inspection. The premises shall be made available for inspection by authorized representatives of the town upon reasonable notice.
7. Transferability. This special exception does not run with the land and is not transferable to a future owner or to a different parcel. The secondary kitchen shall be removed or converted to a use permitted by the Zoning Ordinance prior to the sale of the property.
8. Revocation. Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h) of the Zoning Ordinance. Revocation of this special exception shall require immediate removal of the secondary kitchen inclusive of all kitchen appliances, associated electrical outlets, plumbing, cabinetry and counters.
7. **APPLICATION FOR A SPECIAL EXCEPTION – SE #20-04, 459 Herndon Parkway, units 7 & 8A, Christ Fellowship Church**, to consider a special exception to permit a religious institution with a capacity of 300 or fewer persons. The property is zoned O&LI, Office & Light Industrial, and is designated in the Herndon 2030 Comprehensive Plan as "Regional Corridor Mixed Use". The property is located within the Parkway Crossing Condominiums and on the southeast side of Herndon Parkway approximately 350 feet from its intersection with Spring Street. Fairfax County Tax Map Reference Numbers: 0164-22-0007 and 0164-22-0008A. Applicant: George

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Churchwell. Property Owner: HLI Group LLC. Prospective Purchaser: Walter Hamilton, III, Christ Fellowship Church.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, October 30, 2020 and November 6, 2020 issues.

Chairman Romeo announced that comments were received for this item and entered into the record by the clerk.

Chairman Romeo opened the public hearing and called on Michael Wallick, Transportation Planner, for the staff report and updates.

Mr. Wallick presented the staff report dated November 9, 2020 and staff memo dated November 13, 2020, which are on file in the Department of Community Development.

Chairman Romeo called on the Planning Commissioners individually for questions to Mr. Wallick.

Mr. Wallick responded to question from Commissioner Regan regarding available parking at the proposed location.

Chairman Romeo recognized the applicants to provide their comments.

Both George Churchwell and Walter Hamilton, III, applicants, were present for the public hearing.

George Churchwell and Walter Hamilton, III, applicants, provided their comments.

Chairman Romeo called on the Planning Commissioners individually for questions to the applicants.

Commissioner Regan and Commissioner LeReche asked for clarity on the proposed application.

Commissioner LeReche asked Mr. Stromberg if the Planning Commission could change the parking ratio as is being requested by the applicants. Mr. Stromberg explained that a special exception allows conditions to be put in place to mitigate potential conflicts but that changes to the zoning ordinance cannot be made through the special exception process.

Chairman Romeo recognized the public for comments on this item.

There were no comments by the public for this item.

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Following the public hearing, Commissioner LeReche moved continuance of SE#20-04 to the December 14, 2020 public hearing in accordance with the staff memo dated November 13, 2020. This motion was seconded by Commissioner Yohannes.

There was no discussion on this motion.

The question was called on the motion, which carried by a vote of 6-0, The vote was: Commissioners Donahue, LeReche, Regan, Yohannes, Vice Chair Burke and Chairman Romeo voting "Aye." Commissioner Moses was absent.

8. **APPLICATION FOR A SPECIAL EXCEPTION - SE #20-06, 652 Stuart Court,** to consider a special exception to permit a second kitchen/accessory dwelling unit in a single-family residence in an R-10, Residential Single Family District. The second kitchen/accessory dwelling unit would be located within the existing structure. The property is designated in the Herndon 2030 Comprehensive Plan as "Neighborhood Conservation". The property is located on the north side of Stuart Court approximately 150 feet west of its intersection with Missouri Avenue. Fairfax County Tax Map Number: 0162 18100017. Applicant: Daniel P Brooks. Property Owners: Daniel P Brooks and Chris Mason Palmer.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, October 30, 2020 and November 6, 2020 issues.

Chairman Romeo opened the public hearing and called on Michael Wallick, Transportation Planner, for the staff report and updates.

Mr. Wallick presented the staff report dated November 9, 2020 and staff memo dated November 13, 2020, which are on file in the Department of Community Development.

Chairman Romeo called on the Planning Commissioners individually for questions to Mr. Wallick.

Mr. Wallick responded affirmatively to a question from Commissioner LeReche regarding the layout of the accessory dwelling unit and if it included the storage area labeled as "garage" on the plan.

Mr. Stromberg stated in response to a question by Commissioner Regan that the zoning ordinance does not prohibit an accessory dwelling unit from being rented out long term but that it would not be allowed to be used as a short-term rental.

Commissioner Regan asked staff for the history and intent of the provisions for accessory dwelling units. Lisa Gilleran, Director of Community Development

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elaborated on the history of zoning requirements for accessory dwelling units, which were adopted in the 1980s, to answer Commissioner Regan's question. Chairman Romeo recognized the applicant to provide comments.

Daniel Brooks, applicant/property owner, provided his comments.

Chairman Romeo called on the Planning Commissioners individually for questions to applicants.

Commissioner Regan asked the applicant if he intended to rent the property. Mr. Brooks responded it was not his intention but would like the option.

Chairman Romeo recognized the public for comments on this item.

There were no comments by the public for this item.

Following the public hearing, Vice Chair Burke moved approval of SE#20-06 with the conditions dated November 16, 2020 as presented by staff recommendation. This motion was seconded by Commissioner LeReche.

There was a brief discussion on this item by the Commissioners.

The question was called on the motion, which carried by a vote of 5-1, the vote was: Commissioners Donahue, LeReche, Yohannes, Vice Chair Burke and Chairman Romeo voting "Aye." Commissioner Regan voting 'Nay." Commissioner Moses was absent.

[Note: Below is the approved resolution and conditions for SE#20-06.]

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

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

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

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

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

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

CONDITIONS

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

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8. Occupancy Standards. The accessory dwelling unit shall be subject to the dwelling unit occupancy standards of section 78-170.6. Pursuant to Section 78-80.4(a)(8) of the Zoning Ordinance, either the accessory dwelling unit or the principal dwelling shall be occupied by the owner of the principal dwelling. Additionally, either the accessory dwelling unit or the principal dwelling on a property shall be occupied by at least one person who meets the following qualifications:
- a. The person is at least 62 years of age; or
 - b. The person has a physical, mental, or cognitive disability:
 - 1. As certified by the Social Security Administration, the Veterans Administration, or the Railroad Retirement Board; or
 - 2. As confirmed in writing signed by a licensed medical practitioner or a practitioner licensed in an allied health field.
 - 3. This section shall not be deemed to exclude individuals who meet the qualifications above and are able to seek or engage in employment.
9. Parking. There shall be a minimum of one off-street parking space with convenient access to the street for the accessory dwelling unit. The parking shall be in addition to the two parking spaces required for the principal dwelling.
10. Not to be Sold Separately. The accessory dwelling unit shall not be sold apart from the principal dwelling upon the same lot.
11. Compliance with Health, Safety, Sanitation and Building Code Regulations. The accessory dwelling unit shall meet the applicable code regulations for building, safety, health, and sanitation standards. During reasonable hours, the applicant shall make provisions to allow officials to make the appropriate inspections.
12. Zoning Inspection Permit and Inspections. A Zoning Inspection Permit for the accessory dwelling unit is required prior to issuance of the occupancy permit. Following occupancy, the accessory dwelling unit shall be inspected annually by zoning and building officials during reasonable hours and upon prior notice.
13. Approval linked to Property Owner, Not Land. This Special Exception shall not run with the land and shall terminate by either a change in substantial ownership or possession of the Property, a discontinuation of the use for which the Special Exception was granted for a continuous six month period, a failure to obtain a Zoning Inspection Permit for the use for which the Special Exception was granted

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within eighteen months from the date of approval of the Special Exception, or at any time the use does not comply with any of the conditions of the approved Special Exception.

14. Change in Ownership. The owner shall remove the food preparation area, as defined in the zoning ordinance at the time of approval of this Special Exception from the accessory dwelling unit and the zoning administrator shall be notified at least thirty days prior to the sale or transfer of the property. Upon the sale or transfer of the property, the property owners shall permit the inspection of the accessory dwelling unit by zoning and building officials within fifteen days to ensure compliance with the conditions of the Special Exception.
15. Revocation. Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h) of the Zoning Ordinance. Revocation of this special exception shall require immediate removal of the food preparation area, as defined in the zoning ordinance at the time of approval of this Special Exception from the accessory dwelling unit.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:32 p.m.



**Michael Romeo, Chairman
Planning Commission**



**Erika Orellana
Clerk to Boards and Commissions**

Minutes approved by the Planning Commission: December 14, 2020