



PLANNING COMMISSION MEETING AGENDA

Town Council Chambers
765 Lynn Street, Herndon, VA 20170
Monday, May 22, 2023 | 7:00 p.m.

1. Call to Order

2. Approval of Minutes

- a. April 10, 2023, Planning Commission Work Session Minutes
- b. April 24, 2023, Planning Commission Regular Meeting Minutes

3. Comments

- a. Comments from the Staff Members
- b. Comments from the Commissioners

- c. Comments from Citizens

Members of the public may, for one 3-minute period, provide public comments, requests, consent or general item comments, and comments on matters not included on the agenda.

4. Public Hearings

- a. **APPLICATION FOR A SPECIAL EXCEPTION AMENDMENT – SE #21-05, 299 Herndon Parkway, Suite 107 and 108, Fancy Lashes and Beyond, LLC**, to consider an amendment to a special exception approved by Town Council on November 16, 2021, to allow an expansion of personal service use consisting of cosmetics and aesthetic services, from unit 108 to include unit 107. The property is zoned CO, Commercial Office. The property is designated in the Herndon 2030 Comprehensive Plan as "Business Corridor Use". The property is located within the Herndon Park Condominium office building and is located at the northeast corner of the intersection Herndon Parkway and Elden Street. Unit 108 consists of approximately 966 square feet and Unit 107 consists of approximately 933 square feet. Both units are within a multi-unit building (Building 2). Fairfax County Tax Map Reference Number: 0171 13 0108 and 0171 13 0107. Applicant: Fancy Lashes and Beyond, LLC. Property Owners: Tommy Nguyen and Phuong Thuy Le Tran.
- b. **ZONING MAP AMENDMENT – ZMA #22-001, 500, 555, and 585 Grove Street**, a zoning map amendment from CS, Commercial Services, to PD-B, Planned Development - Business District, with proffered conditions to permit a new post-secondary education use within vacant office space. The site consists of three existing office buildings on two different parcels. The first parcel, Fairfax County Tax Map No. 0162 02 0203D with an address of 500 Grove Street,

Herndon, Virginia 20170; is approximately 1.187 acres, and is currently improved with an existing office building with a density of 0.60 FAR (Floor Area Ratio). The second parcel, Fairfax County Tax Map No. 0162 02 0190C with an address of 555 and 585 Grove Street, Herndon, Virginia 20170; is approximately 3.266 acres, and is currently improved with two existing office buildings with a density of 0.52 FAR. The total land area between the two sites is approximately 4.453 acres, with a total density of 0.54 FAR between the two parcels. Site developments are proposed to enhance pedestrian circulation, address accessibility concerns, and provide landscape improvements with no proposed increase to the current FAR. The maximum permitted density in the PD-B zoning district is up to 0.8 FAR. The parcels are designated as Business Corridor in the Comprehensive Plan. The parcels are located at the northwest and southwest corners of the intersection of Grant Street and Grove Street. Applicant / Agent: Mark M. Viani, Bean, Kinney & Korman, P.C. Property owners: HERITAGE EDUCATION TRUST LLC (Tax Map No. 0162 02 0190C) and SAFA TRUST INC. (Tax Map No. 0162 02 0203D).

- c. **ZONING ORDINANCE TEXT AMENDMENT, ZOTA #23-02**, to amend Chapter 78 (ZONING), Section 78-150.3 (Board of Zoning Appeals), and Section 78-155.4 (Variances), to make housekeeping amendments aligning the zoning ordinance with the Code of Virginia and to consider adopting a time limit of up to one year before the Board of Zoning Appeals will consider substantially the same application on the same property.

5. Adjournment



MEMORANDUM

To: Chair Michael Romeo and Members of the Planning Commission

From: Fadrique Iglesias, Community Planner

Date: May 17, 2023

Subject: Addendum to the SE-21-05 Amendment Staff Report for the Town Council Working Session from May 8, 2023

This memorandum serves as an addendum to the staff report dated May 8, 2023, provided at the work session. As part of the proposal, staff provided the following information at the work session:

The original SE#21-05 states that business operations are proposed by appointment only from the hours of 10 am to 6 pm Mondays through Saturdays and with a proposed maximum customer count of five (5) at any given time.

The original SE#21-05 allowed a proposed maximum customer of six (6) at any given time. In addition, the applicant requested to increase the allowed proposed maximum of customer count of six (6) plus eight (8) employees at any given time. However, considering the distribution of the existing businesses and uses on the lower level, staff believes that duplicating the "3 staff + 3 clients" formula for each office space (12 in total) prevents increasing congestion and parking availability considering other current and future tenants at 299 Herndon Parkway.

The SE#21-05 amendment proposes a condition to limit the maximum number of people at any time to twelve (12). The applicant estimates a customer count of six (6) plus six (6) employees at any given time for both units, 107 and 108, consistent with the original application, yet the condition provides the flexibility to vary the number of staff and customers, provided the total does not exceed twelve.

The revised conditions are shown below, and the resolution has been updated to reflect the updated conditions.

Staff Recommendation

The Planning Commission Recommends approval of Special Exception Application Amendment SE #21-05 that shall run with the land and not be voided or extinguished from a change in ownership of the property in accordance with the conditions set forth below to achieve compliance with the standards found in Section 78-155.3;

1. The personal services business space shall be constructed and utilized in substantial conformance with the submitted application;

2. The business operations shall be conducted by appointment only and limited to 12 total people, including employees, occupying the space at any given time; and
3. The allocation of retail sales floor space shall be limited to not more than 50 square feet within the tenant space in Suite 108. There will not be any additional retail in Suite 107.

Attachments:

1. Draft Planning Commission Resolution
2. Revised Staff Report, dated May 8, 2023

TOWN OF HERNDON, VIRGINIA

PLANNING COMMISSION

RESOLUTION

May 22, 2023

Resolution- 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.

The applicant, Phuong Le Tran and Tommy Nguyen, have submitted a request for a special exception amendment to permit an expansion of personal service use consisting of cosmetics and aesthetic services from Suite 108 to include Suite 107 within the multi-tenant commercial office building at **299 Herndon Parkway**, building 2, and identified as Fairfax County Tax Maps #0171 13 0108 and #0171 13 0107.

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 recommended that the application be approved with amended conditions based upon the finding that the amended conditions still meet the purpose and intent of the Zoning Ordinance, in particular Section 78-155.3(f)(3) or Section 78-155.3(e)

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

The Planning Commission Recommends approval of Special Exception Application Amendment SE #21-05 that shall run with the land and not be voided or extinguished from a change in ownership of the property in accordance with the conditions set forth below to achieve compliance with the standards found in Section 78-155.3;

1. The personal services business space shall be constructed and utilized in substantial conformance with the submitted application;
2. The business operations shall be conducted by appointment only and limited to 12 total people, including employees, occupying the space at any given time; and
3. The allocation of retail sales floor space shall be limited to not more than 50 square feet within the tenant space in Suite 108. There will not be any additional retail in Suite 107.

STAFF REPORT
Planning Commission
May 8, 2023

Title: APPLICATION FOR A SPECIAL EXCEPTION AMENDMENT – SE #21-05, 299 - Herndon Parkway, Suite 107 and 108.

Staff Contact: Fadrique Iglesias, Community Planner
fadrique.iglesias@herndon-va.gov (703) 787-7380
David Stromberg, AICP, Zoning Administrator
david.stromberg@herndon-va.gov (703) 787-7380

Summary Information

Applicant Request	This application is to consider an amendment to a special exception approved by Town Council on November 16, 2021, to allow an expansion of personal service use consisting of cosmetics and aesthetic services, from unit 108 to include unit 107 within the first floor of the multi-tenant commercial office building. The site is located within the Herndon Park Condominium Center. This amendment seeks to expand the footprint of the existing Unit 108 (approximately 966 square feet) by adding the recently acquired adjacent Unit 107 (approximately 933 square feet) and connecting them by an interior entrance door. Both units are within a multi-unit building (Building 2).
Address	299 Herndon Pkwy Ste 107 Herndon VA 20170 4467
Fairfax County Tax Map Numbers	0171 13 0108 and 0171 13 0107
Owner & Applicant	Tommy Nguyen Phuong Thuy Le Tran
Business	Fancy Lashes and Beyond, LLC
Existing Zoning	CO, Commercial Office
Adjacent Zoning	North: RM, Residential, Multi-family South: O&LI, Office & Light Industrial East: R-15, Residential, Single-family West: CS, Commercial Services
Land Use Designation	Business Corridor
Adjacent Land Use Designation	North: Neighborhood Conservation South: Community Facilities East: Community Facilities West: Business Corridor
Total Site Area	Unit 107: 933 square feet (tenant space) Unit 108: 966 square feet (tenant space)
Building Size	Three-story, approximately 30,000 square feet (gross floor area)
Existing Use	Multi-story, multi-tenant commercial office

Staff Recommendations

Staff Recommendation	Approval with conditions
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Background

A complete background and analysis of this application is contained in the October 18, 2021, Planning Commission Staff Report. Staff, the planning commission, and town council determined that the original application complied with the criteria of Section 78-155.3(e), Review Standards for Special Exceptions and Section 78-40.3 - CO - Commercial office district.

Anticipated Impacts

This application, as proposed and with conditions recommended by staff, would not adversely impact adjacent properties.

Location Map



Site Description

The SE #21-01 was granted for Unit 107, a 933 square foot tenant space, contained within a three-story multi-tenant commercial office building which is connected to a second similar building (297 Herndon Parkway). The objective of this amendment is to extend the special exception to the adjacent Unit 108. Both commercial spaces are surrounded by associated business parking at the northwest corner of the intersection of Herndon Parkway and Elden Street. The two attached buildings, parking and surrounding site features comprise what is also known as Herndon Park Condominium Center and was

constructed circa 1987. Two-way vehicular circulation is achieved through two-way double loaded drive aisles on the east and west sides of the site and wrapping around the northern part of the site. The site is accessed from Herndon Parkway at the northwest corner of the site and at the southeast corner of the site along Elden Street.

Proposal

The applicant proposes to reconfigure the existing 933 square feet of tenant space, by expanding the existing cosmetics and personal services business located in unit 108, more specifically providing cosmetic eyelashes and skin care services, and incorporating a newly signature service of shampoo therapy. The new proposed space, located in unit 107, will have a unisex bathroom, a utility room, three recliners separated by wood dividers, two shampoo beds also separated by wood dividers, a guest waiting area at the main entrance, a hair dryer room, and a lunchroom separated by a sliding door, with access to unit 108.

The original SE#21-05 states that business operations are proposed by appointment only from the hours of 10 am to 6 pm Mondays through Saturdays and with a proposed maximum customer count of six (6) at any given time. The SE#21-05 amendment proposes a maximum customer count of six (6) plus six (6) employees at any given time for both units, 107 and 108, in accordance with Town Ordinance¹, which requires “1 space per 200 square feet of floor area” to Other Personal Services and Retail Sales Uses.

Staff Analysis

Zoning Ordinance Compliance

The proposed personal services use, and retail sales use is only allowed by special exception in accordance with the Town’s Zoning Ordinance 78-40.3 - *CO - Commercial office district*, Table 78-40.3(c)(3).

The zoning ordinance allows for flexibility for instances like this, when businesses that are traditionally located with other commercial service and retail sales uses have operational characteristics that make them appropriate to operate in traditional office park developments, provided there are adequate development and land use controls. In this case, the proposed personal services and retail sales uses are consistent with the purpose and intent of the Commercial Office Zoning District and the additional controls that can be implemented through the special exception process.

Based upon the application, which was submitted and reviewed for compliance with the aforementioned town code sections, staff believes this proposal complies with the referenced Town of Herndon Zoning Ordinance section and will be compatible with the existing uses on site and not negatively impact adjacent residential uses to the north of

¹ *Other Personal Services and Retail Sales Uses: 1 space per 200 square feet of floor area.*
TABLE 78-100.2(a): MINIMUM OFF-STREET PARKING STANDARDS FOR R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W, PD-UR ZONING DISTRICTS

the site. Staff also evaluated the criteria for review of special exceptions found in Zoning Ordinance Section 78-153.3(e):

Criteria from Section 78-153.3(e)	Meets/ Does Not Meet	Why the application meets or does not meet the criteria of Section 78-153.3(e)
a. Is consistent with the Comprehensive Plan.	Meets	The Comprehensive Plan Land Use Section provides polices for provision of goods and services to the local community and positive economic benefits of new businesses. The proposed uses will be in conformance with the comprehensive plan polices.
b. Is free of conflict with any provision of this chapter and related regulations or any other applicable local, state, or federal laws and regulations.	Meets	The proposed special exception uses are provisioned with the base zoning district and do not create any substantial conflicts with other regulatory requirements. The use and business operations will be conditioned to ensure the use continually meets the purpose and intent of the Commercial Office Zoning District.
c. Does not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.	Meets with conditions	The proposed uses are generally compatible to the site / neighborhood. This proposed project does not alter the intensity of use of the site and does not disproportionately increase the number of users or vehicular traffic on the site during limited business hours. Thus, health and safety of the occupants and the neighborhood is not impacted negatively.
d. Consistent with the purpose and intent of the zoning district in which it is located or will improve compatibility among uses and will ensure efficient development within the town.	Meets	The proposed use, personal services, is compatible with the intent of the CO district “to provide development opportunities for office uses that are principally used during daylight hours and that may serve as a transition between residential and retail commercial and service commercial uses.”
e. Minimizes adverse visual impact of the proposed use on adjacent lands.	Meets	The proposed uses are exclusively indoors and will not alter or increase impacts on any adjacent lands.
f. Contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices.	Not Applicable	The only physical alterations are internal to the existing structure and thus not subject to this criterion.

g. Minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.	Meets with conditions	Staff recommended conditions limit the overall capacity and distribution of customers in order to prevent negative impacts to parking, loading, and noise.
h. Avoids significant adverse impacts on the property values of surrounding lands or substantially and permanently injures the use of neighboring property for those uses that are permitted in the zoning district.	Meets	The proposed use has virtually no external impacts and provides needed space utilization for the new business owners
i. Does not significantly and adversely impact the natural environment, including but not limited to, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.	Meets	The proposed use is exclusively indoors and will not alter and not impact any adjacent lands.
j. Results in development that is adequately served by transportation facilities, including whether or not a substantial deterioration of the level of service on the town's transportation network would occur and whether or not the proposed use is designed to ensure safe ingress and egress onto the site and safe road conditions on and around the site.	Not Applicable	The only physical alterations are internal to the existing structure and thus not subject to this criterion.
k. Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).	Not Applicable	The only physical alterations are internal to the existing structure and thus not subject to this criterion.
l. If infill and redevelopment is consistent with the redevelopment criteria and other applicable guidelines as stated in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as amended.	Not Applicable	The only physical alterations are internal to the existing structure and thus not subject to this criterion.
m. If located in the floodplain overlay district, meets floodplain overlay standards.	Meets	There are no physical changes in the building footprints or grading within the FPO and this site will be removed from the FPO.

Comprehensive Plan Adherence

The proposal is consistent with the Herndon 2030 Comprehensive Plan Business Corridor Land Use Policies and encourage uses that provide a variety of goods and services as well as promote economic development that helps increase employment and add to the community tax base. Most particularly, the proposal aligns with Land Use

Policies for Business Corridor #1 and #3 (Herndon 2030 Comprehensive Plan, pages III- 11 through III-12).

Transportation

The property contains a parking lot with 108 spaces. Additionally, the business is located approximately 100 feet from the nearest Fairfax Connector bus stop along Route 926 on Elden Street and 200 feet from the nearest Fairfax Connector bus stop along Route 924 on Herndon Parkway.

Analysis of Conditions

Staff is recommending three conditions for this special exception, listed in the following conditions analysis table. Staff believes these conditions provide reasonable ways in which the proposed use can be permitted while properly mitigating potential impacts, as well as achieving the purpose and intent of the applicable zoning district.

#	Condition	Covered by language in the Zoning Code	Reason for Condition
1	Substantial conformance with the submitted application	No	This condition is what gives the town the authority to ensure the proposed use is developed in the way that is presented to the Planning Commission and the Town Council.
2	Business operations shall be conducted by appointment only and limited to 12 total people, inclusive of employees, occupying the space at any given time.	No	Personal service typically generates more land use impacts than office uses. Conditions to limit occupancy and requiring appointments will maintain a similar intensity as uses that are allowed by right in this zoning district. SE-21-05 allowed 6 total people, therefore is reasonable to increase the limit proportionally.
3	Allocation of retail sales to not more than 50 square feet within the tenant space.	No	Limiting retail space will allow the owner to have accessory retail associated with their provided services without the impacts generated by a full retail outlet. There will not be any additional retail in Suite 107.

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). In addition, the applicant has not proposed any new exterior business signage for Unit 107; however, the properties (297-299 Herndon Parkway) is subject to the sign standards of an approved master sign plan (MSP), MSP #26 Herndon Park, as well as sign standards contained in Article XIV – Signs of the Town’s Zoning Ordinance. In this case, any new exterior signage will be subject to an

administrative staff review or formal review and approval of the new signage by the Town's Architectural Review Board subsequent to approval of this special exception.

Planning Commission Alternatives

The following alternatives are available to the Planning Commission for its decision on whether amend the Special Exception #21-05:

1. Recommendation for approval.
2. Recommendation for approval with conditions.
3. Recommendation for denial.
4. Continuance of the application to the June 26, 2023 Planning Commission meeting or later specified meeting date.

Staff Recommendation

Staff is recommending approval of Special Exception amendment, SE #21-05 in accordance with Alternative #2, maintaining and updating the following conditions:

1. The personal services business space (Units 107 and 108) shall be utilized in substantial conformance with the amended proposal and updated first floor plan received on April 8, 2023.
2. The business operations shall be conducted by appointment only and limited to 12 total people, including employees, occupying the space at any given time; and
3. The allocation of retail sales floor space shall be limited to not more than 50 square feet within the tenant space, as stated in the original SE #21-05.

Attachments

1. Applicant Narrative
2. Proposed Special Exception Floor Plan, dated April 08, 2023
3. Special Exception SE #21-05 Town Council Resolution
4. TP #86-08

Staff Signatures



Fadrique Iglesias, Community Planner



MEMORANDUM

To: Chair Michael Romeo and Members of the Planning Commission

From: Ben Schitter, Development Program Planner

Date: May 17, 2023

Subject: ZMA #22-001 500, 555 & 585 Grove Street – Memorandum

This memorandum serves as a notification that there are no new documents for review in addition to the documents previously submitted prior to the May 8th work session.

Staff Recommendation

As noted in the staff report, staff is recommending continuance of ZMA #22-001. A continuance will allow the applicant additional time to respond to the issues raised by staff review of the GDP and any issues raised by the planning commission.

STAFF REPORT
Planning Commission
May 8, 2023

Title:

Zoning Ordinance Text Amendment ZOTA #23-02 to amend Chapter 78 (ZONING), Section 78-150.3 (Board of Zoning Appeals), and Section 78-155.4 (Variances), to make housekeeping amendments aligning the zoning ordinance with the Code of Virginia and to consider adopting a time limit of up to one year before the Board of Zoning Appeals will consider substantially the same application on the same property.

Staff Contact:

David Stromberg, AICP – Zoning Administrator; david.stromberg@herndon-va.gov

Summary Information:

This text amendment will bring applicable sections related to the BZA, Board of Zoning Appeals, into alignment with changes made to the Code of Virginia by the Virginia General Assembly. The specific sections in the Code of Virginia are Section 15.2-2309, Powers and Duties of Boards of Zoning Appeals, and Section 15.2-2310, Applications for Special Exceptions and Variances. Among the mandated updates, the draft language also includes an optional provision that would adopt a time limit that restricts the reapplication of substantially the same variance after it has been denied by the BZA.

The town council passed an initiating resolution for this text amendment on April 11, 2023.

Background:

Zoning History

The bulk of this zoning ordinance text amendment is to bring the section of the zoning ordinance pertaining to variances into alignment with the Code of Virginia. As the General Assembly makes changes to the Code of Virginia, the town must update its zoning ordinance to remain current with state regulations. The last time the zoning ordinance section on variances has been updated was November 2015.

This text amendment has been drafted to allow the adoption of an optional provision in the Code of Virginia that allows a locality to restrict the amount of time before substantially the same variance will be heard again, after said variance has been denied

by the BZA. The time limit allowed by the Code of Virginia is up to one year. The draft language is shown on lines 95-97. This language is optional, not mandatory.

Recently, the BZA heard three variance applications on the same property. The three variance requests were all denied by the BZA. If a variance is denied by the BZA, an applicant has the right to appeal the decision of the BZA to Fairfax County Circuit Court. In the recent cases, a new variance that was slightly different than the previous request was submitted to BZA, rather than appealing the BZA's decision in Circuit Court. This occurred twice, for a total of three variance requests that could be considered substantially the same.

Upon request by the BZA, staff prepared a memo outlining the options available to prevent an applicant from resubmitting substantially the same application to the BZA, after the board had already denied the initial request. The BZA met at their regular public meeting on March 23, 2023 to discuss the pros and cons of amending the zoning ordinance to prohibit rehearing substantially the same application after a denial. After discussion, the BZA was unable to come to consensus on a recommendation for the optional language restricting reapplications.

Staff Analysis

Consistency with the Comprehensive Plan

The comprehensive plan does not specifically address variances, as the plan is general in nature.

Meets Regulations

The housekeeping amendments will bring the zoning ordinance into better alignment with the Code of Virginia. Regarding the reapplication time limit, Section 15.2-2310 of the Code of Virginia states, "Any locality may provide by ordinance that substantially the same application will of be considered by the board within a specified period, not exceeding one year."

Need for Current Amendment

Virginia is a Dillon Rule state, so the town's zoning ordinance must be in alignment with the Code of Virginia. This text amendment will amend the following two provisions in order to achieve that goal.

1. Delete Section 78-155.4(d)(1)(f), which is one of the seven required findings for the granting of a variance, and states, "*The character of the zoning district in which the property is located will not be changed by the granting of the variance.*" This

criterion is no longer a required finding in deciding a variance pursuant to the Code of Virginia.

2. Add Section 78-155.4(d)(3), regarding variances granted to provide reasonable accommodation for persons with a disability, and states, *“Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. §12131 et. Seq.), as applicable.”* This language is not in the zoning ordinance and must be added.

Impact if Approved

If approved, the zoning ordinance section for variances will be brought into alignment with the Code of Virginia.

Adopting the optional draft language, Section 78-155.4(k), Reapplication time limit, (lines 95-97) may result in a reduction of the public frustration and fatigue from adjacent property owners who repeatedly receive notice regarding applications and wish to make the time to provide comment. Alternatively, adopting the optional language may have negative unintended consequences. The Code of Virginia uses the term, “substantially the same application.” The zoning administrator is responsible for determining whether an application is “substantially the same.” This determination could be appealed and would be heard by the BZA, so there would still be another meeting and it would likely be confusing to the public because the meeting would be about the determination, not the original variance request. If the BZA overturned the zoning administrator’s determination that the variance application is not “substantially the same,” then the variance request could be brought forward at the next available public hearing.

Planning Commission Alternatives:

The following alternatives are available to the Planning Commission for its decision on Zoning Ordinance Text Amendment ZOTA #23-02:

1. Recommend the Town Council approve the draft ordinance **without** Section 78-155.4(k), reapplication time limit.
2. Recommend the Town Council approve the draft ordinance **with** Section 78-155.4(k), reapplication time limit.
3. Recommend the Town Council deny the draft ordinance.

4. Continue the public hearing on this draft ordinance to the June 26, 2023 public hearing.

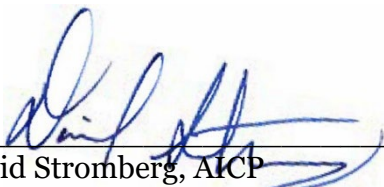
Staff Recommendation

Staff recommends the planning commission make a motion to approve the draft ordinance in accordance with **alternative 1 or 2.**

Staff is requesting feedback from the Planning Commission regarding Section 78-155.4(k), reapplication time limit.

Attachments:

1. Draft Ordinance



David Stromberg, AICP
Zoning Administrator

TOWN OF HERNDON, VIRGINIA

ORDINANCE

_____, 2023

Ordinance – 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.

Section 78-150.3 – Board of Zoning Appeals

(b) *Membership.* The membership of the board of zoning appeals shall be as follows.

(5) *Training.* Newly appointed members of the board of zoning appeals shall be offered training and certification by the ~~Citizens Planning Education Association of Virginia~~ *Virginia Commonwealth University Center for Urban and Regional Analysis Land Use Education Program* or similar certification to be completed within two years of appointment.

Section 78-155.4 – Variances.

(a) *Purpose and intent.* The purpose and intent of this section is to establish procedures for the review of variances, *as authorized pursuant to the Code of Virginia.*

(c) *Variance procedures.*

(2) *Board of zoning appeals public hearing, review, and action.* After public notification and scheduling a public hearing, the zoning administrator shall transmit a copy of the application to the board of zoning appeals, which shall conduct a public hearing on the application and review the application as follows:

b. After the close of the public hearing, the board of zoning appeals shall approve, approve with conditions, or disapprove the application based on the standards in Section 78-155.4(d), ~~standards~~ *Variance review standards*, ~~as well as any other information deemed to be relevant.~~ *and Section 15.2-2309(2) of the Code of Virginia.*

(d) *Variance review standards.*

(1) *Variance criteria.* Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of

the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the applicable provision of this chapter, *or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability*, and all of the following:

- (a) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
- (b) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- (c) The condition or situation of the property concerned is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the *zoning* ordinance;
- (d) The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property;
- (e) The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application.
- ~~(f) The character of the zoning district in which the property is located will not be changed by the granting of the variance.~~

(2) *Variances in the floodplain overlay district.* In the floodplain overlay district, variances shall be issued only in accord with the standards above and evaluated and processed as follows:

- (a) In passing upon applications for variances related to floodplain districts, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

13. *Variances will not be issued for any accessory structure with the SFHA.*

14. Such other factors which are relevant to the purposes of this section.

(3) Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with disabilities Act of 1990 (42 U.S.C. § 12131 et. Seq.), as applicable.

- (e) *Limitations on expansions once variance is granted.* Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance on or after July 1, 2006 shall be treated as conforming for all purposes under state law and town ordinance;

however, the use or the structure permitted by variance may not be expanded *unless the expansion is within an area of the site or part of the structure for which no variance is required under the zoning ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.* ~~For this subsection, "property" means only the zoning rights affected by the variance and the real estate rights directly supporting or related to these zoning rights, as determined by the zoning administrator. "Property" shall not necessarily mean the entire parcel of real estate that is the subject of a variance.~~

(g) *Appeal to circuit court.* Any person jointly or severally aggrieved by any decision of the board of zoning appeals, or any *aggrieved* taxpayer or any officer, department, board, or agency of Fairfax County or the town, may *file a petition* ~~appeal the decision to~~ *with the clerk of* the Circuit Court of Fairfax County *that shall be styled "In Re: date Decision of the Board of Zoning Appeals of Town of Herndon"* pursuant to, and within the time limits specified in, Code of Virginia §15.2-2314.

(1) If appealed, the petition shall specify the grounds on which the petitioner is aggrieved and be received by the clerk of the Circuit Court of Fairfax County within 30 days after the final decision of the board.

(k) Reapplication time limit. A variance application that is substantially the same as a denied application will not be considered by the board within a 12-month period from the date of denial.