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BOARD OF ZONING APPEALS
Thursday
January 24, 2019

The Board of Zoning Appeals of the Town of Herndon, Virginia, met in public hearing on January 24, 2019 at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Chairman, Yung Kim, Vice Chairman Jeffrey Sevilá and members Tim Bonnett, Jay Donahue and Clark Hedrick.

Others present during the meeting: Lesa Yeatts, Town Attorney; David Stromberg, Zoning Administrator; Fermina Rochac, Community Inspector and Erika Orellana, Clerk to the Board of Zoning Appeals.

Chairman Kim called the meeting to order at 7:00 p.m.

1. DETERMINATION OF QUORUM

For the record, the clerk called the roll, five members present, which constituted a quorum.

ANNOUNCEMENT

Chairman Kim welcomed the new Board Member, Clark Hedrick, to the Board of Zoning Appeals.

Chairman Kim announced that the agenda had been revised and it had been circulated and posted on the Town's website.

2. NEW BUSINESS

ELECTION OF OFFICERS:

Election of Chairman for the Board of Zoning Appeals (BZA).

**January 24, 2019
(public hearing)**

On motion of Board Member Sevila, seconded by Board Member Bonnett, Mr. Sevila moved to nominate Yung Kim for the position of Chairman of the Board of Zoning Appeals for the 2019 term.

Chairman Kim accepted the nomination.

There were no other nominations, so the nominations were closed. The vote carried unanimously, 5-0. The vote was: Board Members Bonnett, Donahue, Hedrick, Vice Chairman Sevila and Chairman Kim voting "Aye."

Chairman Yung Kim was elected Chairman of the Board of Zoning Appeals for the 2019 term.

Election of Vice Chairman for the Board of Zoning Appeals (BZA).

On motion of Board Member Bonnett, seconded by Vice Chairman Sevila, Mr. Bonnett moved to nominate Jay Donahue for the position of Vice Chairman of the Board of Zoning Appeals for the 2019 term.

Jay Donahue accepted the nomination.

There were no other nominations, so the nominations were closed. The vote carried unanimously, 5-0. The vote was: Board Members Bonnett, Donahue, Hedrick, Vice Chairman Sevila and Chairman Kim voting "Aye."

Board Member Jay Donahue was elected Vice Chairman of the Board of Zoning Appeals for the 2019 term.

3. APPROVAL OF MINUTES

**November 29, 2018
Public Hearing**

On motion of Vice Chairman Donahue, seconded by Board Member Sevila and carried by a vote 5-0, the minutes of the November 29, 2018 meeting were approved. The vote was: Board Members Bonnett, Sevila, Hedrick, Vice Chairman Donahue and Chairman Kim voting "Aye."

4. COMMENTS FROM THE BOARD MEMBERS

There were no comments from the Board Members.

5. COMMENTS FROM THE STAFF

There were no comments from the Staff.

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6. COMMENTS FROM THE AUDIENCE

There were no comments from the Audience.

7. PUBLIC HEARING

BZA #19-01 – APPLICATION FOR AN APPEAL OF A ZONING ADMINISTRATORS DECISION. Descriptive Summary: An appeal of the Zoning Administrator’s decision issued on December 19, 2018 (ZE18-01517) that the observed concert events are an Indoor Entertainment use and not a permitted use on the subject property pursuant to Section 78-50.6 of the Town of Herndon Zoning Ordinance and the proffered conditions of Zoning Map Amendment ZMA #10-101, dated March 8, 2011. The subject property is located at 759 Center Street and is zoned PD-D, Planned Development-Downtown. Fairfax County Tax Map Reference Number: 0162 38 0087A. Property Owner/Appellant: Christopher Devine.

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 January 11, 2019 and January 18, 2019 issues.

Chairman Kim opened the public hearing.

Chairman Kim asked the clerk to give the oath to David Stromberg, Zoning Administrator, and Fermina Rochac, Community Inspector. Both Mr. Stromberg and Ms. Rochac were sworn in.

Chairman Kim recognized Mr. Stromberg to present the staff report and asked if there were any preliminary matters to be reviewed first. Mr. Stromberg announced that there weren’t any preliminary matters to be reviewed.

Mr. Stromberg presented the staff report dated January 24, 2019, which is on file in the Department of Community Development.

Community Inspector, Fermina Rochac, provided testimony to the Board explaining what she had witnessed on November 17, 2018 between the hours of 6:30 p.m. and 8:30 p.m.

The staff recommendation is to Affirm the Zoning Administrator’s decision that the concert events are not a permitted use on the subject property and uphold Notice of Violation ZE18-01517.

Chairman Kim asked the Board Members if there were any questions for Mr. Stromberg.

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Vice Chair Donahue and Board Members Hedrick and Bonnett had questions regarding the use of the word “commercial” in the zoning ordinance.

Chairman Kim asked Town Attorney Lesa Yeatts if she had any questions for Mr. Stromberg.

Attorney Yeatts asked Mr. Stromberg questions regarding the primary use of the property, accessory uses, investigations of the appellant’s website, and changes made to the website since the issuance of the Notice of Violation.

Chairman Kim asked Attorney Yeatts if she had questions for the inspector. Attorney Yeatts stated that she did have questions for Ms. Rochac and asked her to come forward.

Attorney Yeatts asked Ms. Rochac what caused her to go to the property on November 17th and to explain what she had witnessed. Ms. Rochac described why she was performing surveillance and what she observed on November 17 between 6:30 – 8:30 p.m.

Chairman Kim asked the clerk to give the oath to the appellant, Christopher Devine. Mr. Devine was sworn in.

Mr. Devine, appellant, presented his case for appeal.

Chairman Kim asked if there were any questions of the appellant from the Board Members.

Board Members Sevila, Hedrick, Bonnett, Vice Chair Donahue, and Chairman Kim asked questions of the appellant.

Chairman Kim called comments from the audience. Chairman Kim announced that several individuals had signed in to speak. Chairman Kim informed that each speaker would need to be sworn in by the Clerk and will need to state their name, address and zip code.

The Clerk gave the oath to the following individuals, who came forward to provide comments:

Lon Dunn, 12800 Fantasia Drive, Herndon, VA 20170.

Michael Bradley, 783 Station Street Apartment # 2, Herndon, VA 20170.

Steve Pendlebury, 12552 Mary Powell Lane, Herndon, VA 20171.

Crys Matthews, 917 Branch Drive, Herndon, VA 20170.

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Anders Thoueson, PO Box 2126 Merrifield, VA 22116.

Alan Gilbert, decided to pass on making a comment.

Justin Britt, 106 Fortnightly Boulevard, Herndon, VA, 20170.

Richard Downer, 815 Branch Drive #308, Herndon, VA 20170.

Nicole Wickenhiser, 1109 Burwick Drive, Herndon, VA 20170.

Chairman Kim asked Mr. Stromberg if he had any rebuttals to the comments made. Mr. Stromberg stated that he didn't.

Chairman Kim asked Mr. Devine if he had any questions. Mr. Devine stated he did not.

Chairman Kim closed the public hearing and moved to Board level for discussion.

Main Motion

(FAILED)

- Vice Chair Donahue moved to **AFFIRM** the Zoning Administrator's decision that the concert events are not a permitted use on the subject property and to uphold Notice of Violation ZE18-01517.

Motion seconded by Board Member Sevila.

Motion: Donahue

Second: Sevila

Yes: Donahue, Sevila,

No: Bonnett, Hedrick, Chairman Kim

Vote: 2-3

Main Motion

(FAILED)

- Board Member Bonnett moved to **REVERSE** the Zoning Administrator's decision that the concert events are not a permitted use on the subject property and render Notice of Violation ZE18-01517 void because the event is not a commercial event.

Main motion seconded by Board Member Hedrick.

- Chairman Kim moved to amend the main motion.

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Amended Motion

(FAILED)

- Chairman Kim moved to **REVERSE** the Zoning Administrator's decision that the concert events are not a permitted use and render Notice of Violation ZE18-01517 void because the use of the indoor entertainment event is not correctly identified due to the vagueness of the zoning ordinance and the use identified is not an obviously prohibited use.

Board Member Hedrick requested that Chairman Kim restate the amended motion.

Chairman Kim restated that he moves to **REVERSE** the Zoning Administrator's decision that the concert events are not a permitted use and render Notice of Violation ZE18-01517 void because the use of the event is not specifically identified in the zoning ordinance and therefore there is too much vagueness of the stated use as indoor entertainment.

Amended motion seconded by Board Member Bonnett.

Withdraw Main Motion

(APPROVED)

- Board Member Bonnett moved to withdraw the main motion.

Withdraw motion seconded by Board Member Hedrick.

Vote on the Main Motion

(APPROVED)

- Board Member Bonnett moved to **REVERSE** the Zoning Administrator's decision that the concert events are not a permitted use on the subject property and render Notice of Violation ZE18-01517 void due to the ambiguity within the ordinance and the ordinance not specifically identifying house concerts as not being permitted.

Motion seconded by Board Member Hedrick

On motion of Board Member Bonnett, seconded by Board Member Hedrick and carried by a vote of 3-2, the Board moved to **REVERSE** the Zoning Administrator's decision that the concert events are not a permitted use on the subject property and render Notice of Violation ZE18-01517 void due to the ambiguity within the ordinance and the ordinance not specifically identifying house concerts as not being permitted. The vote was: Board Members Bonnett, Hedrick and Chairman Kim voting "Aye." Vice Chair Donahue and Board Member Sevilla voting "nay."

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8. ADJOURNMENT

There being no further business, the meeting adjourned at 8:45 p.m.



**Yung Kim, Chairman
Board of Zoning Appeals**



**Erika Orellana
Clerk to the Board of Zoning Appeals**

Minutes approved by the Board of Zoning Appeals: May 23, 2019