

TOWN OF HERNDON, VIRGINIA

PLANNING COMMISSION PUBLIC HEARING MINUTES

APRIL 7, 2014

The Planning Commission met for a public hearing on Monday, April 7, 2014, in the Ingram Council Chambers located at 765 Lynn Street, Herndon, Virginia. Chairman Kevin J. East called the meeting to order at 7:00 p.m.

ROLL CALL:

Chairman East asked the Recording Secretary to call the roll.

Ms. Tappan called the roll, as follows:

Commissioner Bettard:	Absent
Commissioner R. Burk:	Present
Commissioner G. Burke:	Present
Vice Chairman LeReche:	Present
Commissioner Moses:	Present
Commissioner Regan:	Present
Chairman East:	Present

Ms. Tappan turned the meeting over to Chairman East, who noted that Commissioner G. Burke was absent but a quorum was present.

Staff Present:

Elizabeth M. Gilleran, Director of Community Development
 Dana E. Heiberg, Senior Planner
 Mark R. Holland, Zoning Administrator
 Richard B. Kaufman, Town Attorney
 Patsy Tappan, Recording Secretary

APPROVAL OF MINUTES:

Chairman East presented the minutes from the special community meeting of December 13, 2012, the public hearing of February 3, 2014, and the work session of February 23, 2014, and the work session of March 24, 2014, for review and approval:

MOTION: Commissioner Moses moved to approve the special community meeting minutes of December 13, 2012, as presented.

Commissioner Regan seconded the motion. The motion carried, 5-0-1 (Commissioner Bettard was absent; Commissioner R. Burk abstained).

MOTION: Vice Chairman LeReche moved to approve the public hearing minutes of February 3, 2014, as presented.

Commissioner R. Burk seconded the motion. The motion carried unanimously, 6-0 (Commissioner Bettard was absent).

MOTION: Commissioner G. Burke moved to approve the work session minutes of February 24, 2014, as presented.

Commissioner Moses seconded the motion. The motion carried unanimously, 6-0 (Commissioner Bettard was absent).

MOTION: Commissioner Regan moved to approve the work session minutes of March 24, 2014, as presented.

Commissioner Moses seconded the motion. The motion carried unanimously, 6-0 (Commissioner Bettard was absent).

APPROVAL OF AGENDA:

Vice Chairman LeReche recommended that the Commission hear SE #14-02 first on the agenda, and all other items would be heard in the order listed on the agenda. There were no objections from the Commissioners.

COMMISSIONERS' COMMENTS:

There were no Commissioners' comments.

STAFF COMMENTS:

There were no staff comments.

CITIZENS' COMMENTS:

There were no citizens' comments.

PUBLIC HEARING ITEMS:

- 6. APPLICATION FOR A SPECIAL EXCEPTION – SE #14-02, 898 Crestview Drive. Descriptive Summary of Proposed Action:** Consideration of an application for a special exception to permit the addition of toddler (16 months to two years of age) and pre-primary (two years to four years of age) programs to the curriculum of the Dulles Montessori School located at 898 Crestview Drive. The subject use currently operates under a special exception with an age limitation of four to 12 years of age. The subject property is zoned R-10, Residential, and is identified as Fairfax County Tax Map Reference 0103-02-0011A. Owner: RSVP Property Management LLC. Applicant: Laxmi S. Chauhan.

COMMENTS FROM STAFF:

Mark R. Holland, Zoning Administrator presented the staff report dated March 24, 2014, which is on file in the Department of Community Development.

Staff recommended approval of SE #14-02 with the conditions.

QUESTIONS FOR STAFF:

There were no questions for staff.

CITIZENS' COMMENTS:

There were no citizens' comments.

Chairman East closed the public hearing.

COMMENTS FROM THE COMMISSION:

MOTION: Vice Chairman LeReche moved to recommend approval of SE #14-02 to the Town Council with the following proposed conditions:

To be consistent with approved special exception, SE #05-08, the staff recommends the following conditions with modifications based on the proposed allowance for the addition of toddler and pre-primary programs as described:

1. Substantial Conformity. The site shall be developed and maintained in substantial conformance with the special exception plan dated on March 26, 2005.
2. Permitted Use. The use shall be limited to an elementary school to include toddler and pre-primary programs. The toddler program shall provide for students 16 months to two years in age and shall occupy a single classroom. The pre-primary program shall provide for students two years to four years in age and shall occupy two adjoining classrooms. The total number of students shall not exceed 99.
3. Student to Teacher Ratio. The toddler program shall maintain a ratio of one trained teacher for every five students. The pre-primary program shall maintain a ratio of one trained teacher for every eight students. All classrooms will be located of the first floor of the existing building.
4. Hours of Operation. The hours of operation are 7:00 a.m. until 6:30 p.m. Standard arrival time for the school shall be 8:15 until 8:30 for the upper grades and 8:45 until 9:00 for the lower grades. Standard departure time shall be 3:15 p.m. until 3:30 p.m. for the upper grades and 3:45 p.m. until 4:00 p.m. for the lower grades. Students enrolled in before or after school care shall arrive at or after 7:00 a.m. and shall depart at or after 4:00 p.m., but not later than 6:30 p.m. The school shall operate year round to include before and after school care, an elementary school consisting of grades K-6th, and a summer camp program.
5. Student Drop-off and Pick-Up. Child drop-off and pick-up shall be limited to the designated area adjacent to the rear entrance of the use. Children arriving by private vehicle shall not be dropped off or picked up in the drive aisle. A member of the school staff shall be present to assist students in to and out of the vehicle and supervise the process.
6. Commencement of Operation. Prior to commencement of operation, as permitted by the granting of this special exception, a new zoning inspection permit shall be applied for by the applicant and approved, if it is approved, by the town.
7. Maintenance of Site Amenities. As approved in special exception SE #05-08:
 - a. The active play area shall be located on the north side of the building and shall be surrounded by a 4 foot tall fence of a style and material approved by the Architectural Review Board. The number of children allowed outside to play in the play area shall be limited to no more than 25 at any one time, or to a number permitted in accordance with any State or other governing regulation based upon the size of the play area, whichever is less.
 - b. The applicant may build a quiet play or reading garden for passive quiet recreation and outdoor supervised classes on the south side of the building. The area designated as the quiet play or reading garden shall be at least 15 feet from the southern property line.
 - c. The basketball hoop shall be if relocated adjacent to the active play area.
 - d. The shed shall be moved to an existing paved area, not within a parking space, or removed from the site.
 - e. The dumpster shall be relocated to an existing paved area, not within a parking space, and a screen, as approved by the Architectural Review Board, shall be constructed.

8. Required Site Plan Revision. A site plan revision for the proposed modifications to the property shall be submitted for review and approval (if it is approved) prior to installation of the proposed structures. In addition to all other site plan requirements, the revision shall indicate proposed replacement landscaping.
9. Landscaping. As approved in special exception SE #05-08:
 - a. Fifteen 6 foot tall evergreen trees shall be planted along the southern and northern buffer areas where currently there is a lack of evergreen screening.
 - b. If located on the property, the dead evergreen tree located approximately at the midpoint of the southern property line shall be removed and replaced with one of the 15 new trees.
10. Staff Parking. The first eight parking spaces located along the northern edge of the drive aisle immediately adjacent to the Crestview Drive entrance/exit shall be restricted to staff parking.
11. Compliance with Other Regulations. The proposed use shall meet all applicable Town, County, State and Federal regulations.
12. Termination. This special exception may be terminated by the Town Council, following public hearing, based upon information provided by the Zoning Administrator, if the use is not operated in accordance with the zoning ordinance and the conditions set forth within this approval.
13. Expiration. This special exception shall automatically expire, without notice, twelve months after the date of Town Council approval unless the proposed use has commenced operation. Additional time to commence the operation may be granted by the Town Council if a written request is submitted to the Zoning Administrator at least sixty days prior to the expiration date.
14. Transferability. This special exception runs with the land identified as Fairfax County Tax Map Number 0103-02-0011A for the term specified and is not transferable to other properties.
15. Inspection. The property owner shall during reasonable hours upon prior notice make provisions to allow town officials to inspect the property.

Commissioner G. Burke seconded the motion.

Chairman East called for a vote on the motion. The motion carried unanimously, 6-0.

1. **ZONING ORDINANCE TEXT AMENDMENT, ZOTA #13-04. Descriptive Summary of Proposed Action:** Consideration of an amendment to the Town of Herndon Zoning Ordinance (2007), Herndon Town Code (2000), as amended, to amend §§ 78-500.1. Applicability adding clarification to purpose; and 78-500.3. Minimum off-street parking standards to update, clarify and relax general parking provisions including, but not limited to, changes to clarify the quality of estate or ownership of land for parking that the Town must provide and the point at which the Town must provide such land for parking; and to make clarifying changes relative to the Downtown Shared Parking Program. *Rescheduled from the March 3, 2014, public hearing.*

COMMENTS FROM STAFF:

Elizabeth M. Gilleran, Director of Community Development, presented the staff report dated November 18, 2013, and staff memoranda dated January 22, 2014, February 27, 2014, and March 20, 2014, all of which are on file in the Department of Community Development.

Staff recommended approval of ZOTA #13-04 to the Town Council excluding the standards for multi-family dwellings.

QUESTIONS FOR STAFF:

Vice Chairman LeReche asked for clarification of the parking ratios for the Downtown as compared to other areas.

Ms. Gilleran responded, “In the original Zoning Ordinance Text Amendment, there were changes to multi-family residential in the Downtown, as well as, in the general parking requirements for the remainder of the Town. The staff believes that, at this time, the multi-family parking should not be changed, anywhere in the Town, due to the fact that it would not make sense to, potentially, end up with an Ordinance that would propose less parking in, what I would consider, the more suburban areas of the Town for multi-family than in the Downtown, which, hopefully, will benefit from a mixed-use component. So, while we’re discussing Downtown parking and multi-family in the Downtown, the staff is recommending holding off on changing multi-family in the remainder of the Town, so we don’t have a disconnect.”

Chairman East asked for clarification that the text under consideration was Attachment #1 to the staff memorandum of March 20, 2014.

Ms. Gilleran responded, “You should have, attached to a cover memo dated March 20th in your packet, that states, “Public Hearing Item #1, April 7, 2014” up in the corner. The last page is a proposed resolution dated March 3, 2014. Staff believes that this provides the language necessary to be able to recommend approval of the parts of the Zoning Ordinance Text Amendment that staff is recommending move forward at this time. It also keeps certain parts of it at Planning Commission level for further discussion.”

CITIZENS’ COMMENTS:

Steve Mitchell of 1291 Monroe Street stated, “I concur with the staff and would strongly urge the Commission to defer anything to do with the Downtown issue, as far as parking. I’m assuming that we are talking about Attachment #1, as you said. My concerns are regarding some previous information I read that stated we were still dealing with the “bonus seven,” but I’m assured by Ms. Gilleran that it is part of the deferral. What I wanted to share with the Commission was, I’ve asked repeatedly, well, I’ve asked in the past for a baseline study of the CC-D that existed prior to the PD-MU. So, I took about 30 minutes last night and I went through the Fairfax County assessments, based on their Gross Floor Areas (that you find in the assessment summaries) and there are actually two blocks that I want to talk about:

1. Station Street/Lynn Street/Pine Street – approximately 47,000 square feet of existing commercial space (what we knew as CC-D), therefore it was never required to have parking. That’s just the way it is, in reality.
2. Elden Street/Station Street/Spring Street – basically the restaurants right there. That area has approximately 40,000 square feet.

Mr. Mitchell continued, “So, between the two of them, when you combine them, and I’m only using 3.3, because that’s what we use in PD-MU, but if you take that Gross Floor Area and use 3.3, you come up with 300 parking spaces to service the uses that are already here in Town. That’s a huge number. I don’t think any of us really, realized it was that much. Not to say that it’s right, wrong or indifferent, I’m just telling you that

the uses that we currently have on the books, if we use 3.3 per 1,000, we'd require an additional 300 parking spaces, minimum. We have to wrap all of this into a bubble and discuss all of these issues, not just what's going to happen new, but what already exists, too. What's going to happen, very shortly, is we're going to come to the "tipping point" and we're going to become "over-parked," and then we're going to decrease all of the land values and everything...as a land owner, it gets into rent bases and everything else. I see that coming. We want to participate...we want to make sure that we're correctly parked. We're not looking to stop anything, because I believe that residential use is the correct use for the Downtown. One comment on residential use: When all of these parking things came aboard 20 years ago, the Downtown was going to be a commercial district, whether it was PD-MU or not. There was no residential in it. We're changing it to residential now. Residential takes and makes all of your parking private, where before we were banking on 3.3 being public-shared parking. So, I concur with the staff. We have a lot of work to do. Let's get it done."

Melissa Landau of 797 Center Street stated, "We own the building at the corner of Center Street and Station Street. I guess we haven't paid enough attention as we should have, but we're kind of on the far end of Town. It came to our attention when we were invited to this meeting, really for the first time, that as one of the smaller businesses in Herndon, we own 5% of the shared parking spaces in the Town. We are in a house and it just astounded us when we realized that. Most of the shared parking is on the other side of Great Harvest from us, in the large lot. There is parking in the Town...we thought there was no shared parking in the Town Hall parking lot, we were told that eight spaces had been re-allocated and that we are, indeed, allowed to park in those parking spaces. Our staff has started doing it, but on Wednesdays, sometimes, there isn't even a parking space to be had. I would just like to say that, as you go through all of this, and you consider all of the changes that you are making, that you consider the fact that the Town parking and the businesses do extend over to where we are, and that as you continue to allocate and expand that part of Town, we're getting more and more choked out. Buildings were built behind us on Center Street that took away the two-hour and street parking from us a few years ago. They built a parking lot behind them, and we're not allowed to park in that parking lot, because it's private, but their clients and customers park along the street where our clients would have. So, we really feel like we're being "choked out" and that parking is becoming more and more difficult for us over on the other end of Town. I don't have a solution, except that maybe you could buy the lot across the street from us and make it Town parking, but beyond that I don't have a solution. I just ask that our issue be recognized."

Chairman East closed the public hearing.

COMMENTS FROM THE COMMISSION:

MOTION: Commissioner Regan moved to recommend approval of ZOTA #13-04 to the Town Council, as revised to exclude those standards governing multi-family uses and the creation of separate parking standards for uses in the Downtown zoning districts, CC, PD-TD and PD-D districts, which is outlined in the following Resolution:

TOWN OF HERNDON, VIRGINIA

PLANNING COMMISSION RESOLUTION

APRIL 7, 2014

Resolution — ZOTA #13-04. Recommending Zoning Ordinance Text Amendment #13-04 to the Town Council of the Town of Herndon, Virginia.

BE IT RESOLVED by the Planning Commission for the Town of Herndon that:

1. The Planning Commission has reviewed the proposed amendments to the Zoning Ordinance Article V and after public hearing is reporting to the Town Council at this time, in accord with Section 15.2-2285 of the Code of Virginia.

2. The Planning Commission recommends approval of changes to Section 78-500.3 Minimum off-street parking standards with the exception of multi-family and stacked townhouse dwellings and TABLE 78-500.3(a)(1): Minimum off-street parking standards in the PD-TD, CC and PD-D zoning districts.
3. The commission is not recommending changes to multi-family parking standards or to the creation of separate parking standards for the PD-TD, CC and PD-D zoning districts as the commission believes that additional consideration of these standards is warranted and should be subject to further study and stakeholder input.

Commissioner G. Burke seconded the motion.

Chairman East commented, “One of the things that troubled us, and one of the reasons we’ve taken so much time on this, is because Downtown parking is sort of our “800-pound gorilla.” We passed a rather ambitious Downtown Master Plan, which calls for a significant amount of redevelopment of the Downtown, both commercial and residential. Parking all of that is a significant issue, as you’ve heard from the staff report and also from Mr. Mitchell and Ms. Landau this evening. One of the reasons we agree with the staff on this particular portion of revising the parking standards for the Town, is that if we were to, actually, go ahead and revise the parking standards for the Downtown now, it’s like the “tail wagging the dog.” We don’t know what the demand on parking is going to be. We don’t know, right now, what the mix of residential and commercial is going to be. It seems to me, that the better solution to resolving the issues of Downtown parking is to consider them at the time that we consider Downtown development. Ms. Landau, I don’t have a solution to your issue, either. Maybe we should put a sign up on the street that says, “If you’re shopping here, park in back.” I don’t know. It is a reasonable solution, I think, that former Councilman Mitchell has raised, and we need to do this in concert with the rest of the plan for the Downtown.

Chairman East called for a vote on the motion. The motion carried unanimously, 6-0.

2. **TOWN OF HERNDON FY2015 – FY2020 CAPITAL IMPROVEMENT PROGRAM. Descriptive Summary of Proposed Action:** The Planning Commission will take public comment on the town’s Capital Improvement Program (CIP). The CIP is a financial planning document that establishes a six-year schedule for public improvements and serves as a companion policy document to the Town of Herndon 2030 Comprehensive Plan. The draft Town of Herndon CIP for FY2015-FY2020 will be considered for a recommendation to the Town Manager. *Rescheduled from the March 3, 2014, public hearing.*

COMMENTS FROM STAFF:

Dana E. Heiberg, Senior Planner, presented the staff memoranda dated February 19, 2014, February 26, 2104, and March 19, 2014, all of which are on file in the Department of Community Development.

Staff recommended approval to the Town Manager of the FY2015-FY2020 Capital Improvement Program.

QUESTIONS FOR STAFF:

Vice Chairman LeReche asked for an update on the proposed upgrade for the Police radios.

Mr. Heiberg responded, “I believe I included that in a memo. There was a time lag getting full information on that project, including some support for that project in the outyears, that’s coming from Fairfax County. We have significant funding for this project in FY2016, 2017, 2018 and 2019. We do have the Fairfax County E-911 funds

kicking in in FY2019, which is significant support. The Director of Finance has worked with Capital Lease/Purchase, which is identified as the funding source for the rest of the funding there, in order to address the need to secure that encrypted technology and install the new central console for that system.”

Chairman East asked a follow-up question regarding the encrypted radio overhaul for the Police Department, “When we first considered this, we did not know what the total cost would be, so now do we know the total cost? And did the impact of that cost cause any adjustment to any other item in the Capital Improvement budget?”

Mr. Heiberg responded, “I believe we have, as far as I am aware, good estimates, so that with the funding sources identified, the Fairfax County E-911 funds in FY2019 as I mentioned, and the Capital Lease/Purchase for the remainder, we have not decreased any other projects as a result of this.”

Chairman East asked, “I just want to clarify, since we have referenced HB2313 a great deal that is the gas tax overhaul legislation, which was passed by the General Assembly last year?”

Mr. Heiberg responded, “Yes.”

Chairman East continued, “We are already reaping the benefits of that.”

CITIZENS’ COMMENTS:

There were no citizens’ comments.

Chairman East closed the public hearing.

COMMENTS FROM THE COMMISSION:

MOTION: Commissioner R. Burk moved to approve and recommend to the Town Manager the FY2015-FY2020 Capital Improvement Program document labeled “Draft for Planning Commission Public Hearing March 3, 2014.

Commissioner Moses seconded the motion.

Chairman East commented, “Before I call the question, I just want to remind the folks here and the folks at home, that aside from the annual Town budget, which was just posted on the website last week, this is probably the most important exercise that we do during the year. If you read this document, even briefly, we are committing the Town to spending millions of dollars on capital improvements. This is where “government meets the road” so to speak. This is where we address water, we address sewer, and we address roads...all of those things that we create government to take care of. We take care of the things we all use together. It is important. I am a little dismayed that year after year, we seem to get few, if any, comments on it. We’re going to pass this on to the Town Council this evening, but I urge everyone...at one point in your life, it doesn’t have to go onto your bucket list, but at one point in your life take a look at the CIP. It’s an important document. It’s important to the Town inevitably, and ultimately, it’s important to you.”

Chairman East called for a vote on the motion. The motion carried unanimously, 6-0.

3. **ZONING ORDINANCE TEXT AMENDMENT, ZOTA #13-07. Descriptive Summary of Proposed Action:** Consideration of an amendment to the Town of Herndon Zoning Ordinance (2007), Herndon Town Code (2000), as amended, to revise § 78-203.6(b), Civil violations to allow civil violations of the Zoning Ordinance to be prosecuted as criminal violations when \$5,000 in cumulative fines have been issued for the same operative set of facts, instead of the current standard of issuance of three civil penalties. *Rescheduled from the March 3, 2014, public hearing.*

COMMENTS FROM STAFF:

Mark R. Holland, Zoning Administrator presented the staff report dated March 24, 2014, which is on file in the Department of Community Development.

Staff recommended approval of ZOTA #13-07 as submitted.

QUESTIONS FOR STAFF:

There were no questions for staff.

CITIZENS' COMMENTS:

There were no citizens' comments.

Chairman East closed the public hearing.

COMMENTS FROM THE COMMISSION:

MOTION: Commissioner G. Burke moved to recommend approval of ZOTA #13-07 to the Town Council as submitted.

Vice Chairman LeReche seconded the motion.

Chairman East called for a vote on the motion. The motion carried unanimously, 6-0.

4. **ZONING ORDINANCE TEXT AMENDMENT, ZOTA #13-15. Descriptive Summary of Proposed Action:** Consideration of an amendment to the Town of Herndon Zoning Ordinance (2007), Herndon Town Code (2000), as amended, to revise § 78-402.7(1), Keeping of livestock, and § 78-701, Definitions, to permit the keeping of up to four chickens in a residential district when certain standards are met. *Rescheduled from the March 3, 2014, public hearing*

COMMENTS FROM STAFF:

Mark R. Holland, Zoning Administrator presented the staff report dated March 24, 2014, and the staff memorandum dated April 2, 2014, both of which are on file in the Department of Community Development.

Staff recommended approval of ZOTA #13-15 with conditions.

QUESTIONS FOR STAFF:

Chairman East asked for clarification of the term “fowl” and what species it included besides chickens.

Mr. Holland responded, “Ducks, grouse, geese, pheasants, partridges, turkeys, etc.”

Chairman East asked, “Anything that’s considered a fowl?”

Mr. Holland responded, “Yes, anything that is defined as a fowl.”

Chairman East asked, “Not a turkey vulture?”

Mr. Holland responded, “I don’t think turkey vulture falls into that category.”

Chairman East commented, “The Planning Commission’s subcommittee on this issue made a series of specific recommendations with respect to the Zoning Ordinance Text Amendment. I don’t see that staff has, either, incorporated them or adopted them in

the proposed Text Amendment. Does staff oppose the recommendations by the Planning Commission's subcommittee?"

Mr. Holland responded, "We're not opposed to them, but it was preferred that we receive feedback from the Planning Commission as a whole, before they were incorporated into any type of proposed language to the Town Council."

Chairman East asked, "So, our work session is tonight?"

Mr. Holland responded, "In some regards, yes."

CITIZENS' COMMENTS:

Chairman East invoked the 3-minute rule for all speakers.

Cristina Lewandowski of 13500 Martha Jefferson Place stated, "I am here, both, as one of the co-presidents of the Herndon Environmental Network (HEN) and as a citizen interested in issues that affect our community at large, to support the keeping of micro-flocks of backyard chickens in the Town of Herndon. I would like to highlight a few findings from Jamie Bouvier's 2012 Survey of Municipal Laws relating to backyard poultry. According to Bouvier's survey, nine of the 2013 Forbes top ten healthiest housing markets allow urban chickens. Bouvier cites several studies showing that property values actually increased in cities where raising chickens was not unlawful. Eighty-four of the 100 most populated cities in the U.S. allow the keeping and raising of chickens. In the last two years, there have been nine new ordinances allowing chickens in Virginia. I will mention a few of these jurisdictions: Spotsylvania County, Chesterfield County, the cities of Chesapeake, Norfolk, Hampton, Fredericksburg, and even Virginia's capitol city Richmond. In 2013, Spotsylvania County approved backyard hens for four out of seven districts. In February of this year, they have preliminarily voted to allow chickens in the remaining three districts. Mary Lee Carter, one of the Planning Commissioners in Spotsylvania County, recently said, "Spotsylvania has issued eight permits for backyard chickens since its initial ordinance was approved in February 2013. The zoning office has not received any complaints about the legal chicken owners. In 2012, the City of Chesapeake approved an ordinance for a one-year test period and recently adopted the ordinance permanently. On a personal note, I have been impressed by the amount of research done by the members of the Hens for Herndon initiative. Herndon Environmental Network has supported this initiative, by providing a forum for residents, both HEN members and non-members to learn about this issue. We hosted Kathe Barsotti's hens at our booth at the Herndon Farmer's Market last year. I witnessed the curiosity and joy in the eyes of the numerous children who stopped by our booth. Children should not be denied the opportunity to care for all kinds of pets: cats, dogs and, why not, chickens? Every child should have an opportunity of this, especially in today's world, where most learning experiences are moving on-line. One of our goals is for Hens of Herndon and HEN to work with other Virginia hen keeper groups to provide access to Backyard Chickens 101 classes to help people decide if and how they might keep chickens."

Mary Shenk of 405 Virginia Avenue stated, "I am here tonight to speak out against the keeping of micro-flocks of chickens in the Town of Herndon. The ordinance currently allows families to own one hen. It has been presented that the keeping of one chicken is cruel, because they are flock animals. Therein lays your answer. Fairfax County has already done the research and deemed it inappropriate to have livestock or domestic fowl on less than two acres of land. If the ordinance is to be changed, I recommend that it be changed back to not allow any chickens in Herndon. The person requesting to keep chickens says they are to be pets. I believe her sole purpose for wanting chickens is for the eggs and one chicken cannot provide enough eggs for her family. There are plenty of feathered friends that could be pets and could also be kept in the house, where pets belong, such as parakeets, parrots, canaries, etc. I am making my plea to not allow chickens in Herndon and I ask that this decision be made before the electoral vote in May. Thank you for your time."

Aurora Eddy of 630 Oak Street stated, “I go over to my neighbor’s almost every day to visit her chickens and we’ve become really good friends. She also has some bunnies and without those friends, I kind of feel like I don’t have that connection with animals that I like to have. So, if you decide to keep no animals, it kind of rids the purpose of having any connection with animals at all, because if you have a connection with animals, it can really be any animal you want. I have some with bunnies, chickens, dogs, and cats, (but I’m allergic to them). When you don’t really have a friend that you can call on without other animals or people teasing you, it’s not really fun. You get to play with them and share your experiences with them, without them making something up that you don’t really like. I ask that we keep chickens in Herndon. Thank you for your time.”

Arthur Nachman of 866 Vine Street stated, “I do not support this ordinance. I attended the work session. I was very impressed with Vice Chairman LeReche’s painstaking review of all of the work that you did on setbacks and types of the dwellings that these chickens would live in, and I was very impressed with the amount of work. I’ve tried to listen to the passion of the people who are for it, and tried to use a little bit of my own feelings as a real estate agent, and I’m trying to understand why someone would want to have a chicken. If they want to have a chicken to lay an antibiotic free, hormone free, free range egg, they can go and purchase those very close to their home at either a Whole Foods or Harris Teeter or Trader Joe’s. So, the eggs can be handled outside of having them in their dwelling. If they want to raise the chicken for the flesh, the same can be true...they can purchase this. So, the last would come down to, as a pet. Unfortunately, with the society that we live in...and we live not in a rural area anymore, we live in a suburban towards an urban environment, this is not perceived as being normal and customary. As a real estate agent, I think that this would be a great hardship; not to the person that would own the chicken, but to their neighbors, perspective sellers or even perspective buyers coming in. So, the value of the property, which is something that the Commission, the Town and even their fellow citizens are here to help protect, I think would be damaged. So, for those reasons, I would suggest that you vote against this ordinance.”

Lane Jones of 702 Park Avenue stated, “I am in support of the pro-chicken lobby here. I would prefer not to impute motives into the people who would like to keep chickens. I think if we can prove that if chickens are kept in a sanitary manner; that they don’t annoy the neighbors in the way that barking dogs, perhaps, do; if they are properly cared for and not allowed to be abandoned, as you would abandon any other sort of animal under your custodial care, I see no reason why keeping of chickens is anyone’s business but the homeowner’s. I think that just about covers my stand.”

Melissa Landau of 797 Center Street stated, “I’m a residential realtor and I was really amazed at your statistic that said that the towns with the highest property values in America allow for chickens. I would say that statistics are not always a reflection of why things occur. Sometimes they just occur at the same time. As a realtor, I know that when I show properties, sometimes even a swimming pool can be determined to be something that will become a nuisance and will lower the property value if you are in an area where they have pools. I would, certainly, say the same thing about chickens. Unfortunately, although we don’t, as a Town, want to impose everybody’s feelings upon a certain property owner, the issue is this: The property owner will have the opportunity to decide not to keep the chickens anymore, but their next door neighbor won’t have that opportunity. I would not want to be the next door neighbor’s agent, who is trying to sell their property, because if I were selling the property of the people who own the chickens, I could say, “We could do a little buyer credit and you can put down new sod and you don’t have to have chickens.” But to the person who lives next door, their value will be compromised and they will not have any option or any way to deal with that. I’m also concerned with the fact that you all did put an incredible amount of work into this and that delegating this to the Town, to zoning or to animal control, will be an expense to the Town of Herndon. So, the entire population will be paying for this privilege for the people who want to own the chickens. We’re all going to be absorbing a cost here that I just don’t know if it facilitates enough people.”

Kathe Barsotti of 410 Virginia Avenue stated, "I'm proud to be a part of the Hens for Herndon movement toward more sustainable living with the Herndon Environmental Network. Having a happy, healthy micro-flock of hens in your backyard has, traditionally, been an initiative supported by government and should be a freedom that all Herndon can get behind. Herndon's current ordinance for allowing one chicken, is not workable in its place in Section 6 of the Code, due to conflict with Fairfax County Animal Control agreements with the Town. Having a few hens in one's backyard allows homeowners and residents to have access to healthy, grass fed eggs, which are scientifically proven to have more nutrients, like Omega-3 than store-bought eggs, including free range eggs, which the FDA has allowed to be called free range, even if the chickens do not have access to sunlight or grass. For a zero emissions lifestyle, you can't get closer to home than your backyard. Backyard flocks are also a more humane way of raising hens for eggs than factory farms. Progressive societies are moving toward sustainability, not away from it, and this is a progressive move for Herndon, in terms of sustainability, lower emissions, lower need for phosphorous laden chemical fertilizers and in attracting new growth in our community. Locally, Ashburn's Willowsford Residential Community with homes from \$500,000 to \$1 million, boasts a community farm complete with chickens, goats and community supported agriculture. Fairfax County does allow chickens on less than two acres with a permit fee and there are educational chicken groups in Alexandria, Arlington and Fairfax, including 4-H. I recently read that some 4-H-ers are having a hard time finding places where they can keep their chickens. The backyard is a perfect place for a child to keep three or four hens. In Spotsylvania, the County approved four of seven voting districts to allow chickens in 2013. In 2014, the remaining three districts agreed to allow chickens, as well, due to there being so little regulatory problems from the chicken owners. Soldsense even has a real estate web page to help people looking to buy homes in Fairfax County who want to keep chickens. I understand the concerns of prospective neighbors, who are worried over possible noise and smell issues. It is clear, however, that both are covered under existing Code, as are Electrical Permits for Accessory Buildings. Please note that chickens have been kept healthy for decades without modern conveniences, such as electric heat. If a chicken keeper wishes to get permits for electricity in their shed, they should have that option, but it is not required for keeping hens healthy. In conclusion, I wish to thank the Town staff, Council and Planning Commission for your time in hearing our concerns."

Kristin Eddy of 630 Oak Street stated, "I'm Aurora's mom, and I just wanted to say that I am in support, really, of our sense of community. I think Herndon has a tremendous sense of community and in a lot of the research that has been done with regard to the keeping of chickens, one of the most common, yet unforeseen things that comes out of this, is a sense of community that is fostered. So, I would urge you to look further into that matter, in the sense of hearing a lot of the discussion tonight about individuals worrying about having chickens in their neighbor's yards or as a neighbor would keep a chicken, to perhaps go around and look at homes not in this area, but where there are chickens being kept, to see firsthand if there really are problems. Or if you do hear from neighborhoods that, "Wow, we were really surprised that these chickens are quiet. We wouldn't know that they were here. They don't smell and that everyone's feathers got ruffled for no real, major, reasons, once the dust all settled." So, I would, certainly urge you...I was reading through the Memorandum from Mr. Holland, about this ZOTA #13-15, and on the last two pages where they have a list of other recommended items #1-15, there is some mention about heat sources. I would like to make a suggestion that chickens do not need heat sources. Truly, they can go without heat. That is something that they do not need. And, particularly, on #8 – where it says to "provide a compost pile", it should be compost pile, and certainly, that's another benefit to having chickens. You can use their waste for composting on your property. Certainly, and lastly, I guess, not viewing them as an agricultural source for eggs or meat, but that truly, chickens can make great pets. They aren't often seen that way, because usually, the argument that you hear for them is that they are great sources for eggs and they're easy to keep, but they also make great pets. As a mom with two young children, I would love to foster their sense of responsibility in having something beyond the usual dog (we do have dogs). Chickens will probably take as much time and effort as keeping a dog, in terms of the love, the care, the time and the money. Thank you for hearing me."

Ben Barsotti of 410 Virginia Avenue stated, “I think you should let us have hens in Herndon, because their eggs are healthier than store-bought eggs. It helps my mom with her arthritis, to eat healthier foods. They lay very colorful eggs they each have very special personalities. I think having hens in Herndon would be a very good idea. Thank you.”

John Staltz of 11922 Fawn Ridge Lane, Reston stated, “I’m here tonight to share a little perspective. We are in support of what Herndon is trying to do...to allow people to have hens in their backyards. We are even considering moving to Herndon, because in Reston, where it’s a lot more strict, and there would not be such an ordinance that would be passed. In Herndon, with one hen and possibly more, it makes it very attractive for us to move. Our children go to Herndon Elementary School doing the French Immersion Program, and we have many friends in the community of Herndon. I’ve had the experience of living, prior to Reston, around a neighborhood that allowed chickens and I want to impress upon you how, in a community where a lot of times people just lived inside their homes, and it was very hard to get to know your neighbor, the one family that had the hens in their backyard was the family where children would go and play, it would actually get people “out and about” to go and interact. In ways, it would be kind of like a barbeque and it was very interactive in terms of that community’s sense of being outside, and having the children, especially, migrate to that area. So, I wanted to share with you, that experience that’s part of my past, as well as my perspective of potentially moving to Herndon, if in fact this ordinance does get passed.”

Karl Haase of 637 Wood Street stated, “I’m here to talk with you about raising hens in Herndon, and particularly, I’m here to encourage you to allow it. Herndon stands to have a lot of benefits from allowing residents to raise micro-flocks. Micro-flocks allow citizens a new way to engage with each other and with the environment. It encourages sustainable living practices and gives important skills to people in times of a national crisis. During both World War I and World War II, the government encouraged two hens per person per household, to help reduce the burden on the agricultural industry. Times are easy right now, but they may not be easy in the future. It also connects people with agriculture and their food. We have a lot of worries about the quality and source of our food right now and this gives people a way to address that. And, very importantly, property rights are returned to the property owners. It’s the duty of government to protect property owners’ rights and the value of property is in its utility. It’s not an investment. The actual price goes up and down all of the time, but what you can do with your property is very, very important. On the other side of these potential rewards, there is minimal risk. There are multiple examples of other communities, literature, etc., that show that micro-flocks pose minimal risks to people in the community. Numerous studies have shown that property values are not affected. Health, aesthetic and environmental risks are minimal and easily negated. The animals, themselves, are not complicated creatures to take care of. The proposed changes to the zoning ordinance are very, very fair. Our group has provided a lot of material trying to address all of the concerns that people who are worried about this have raised, including the number of chickens per acre, a sunset clause, and there are fees, fees, fees. It’s going to be very expensive, in addition to all of the materials to raising the chickens, to getting it registered. Compared to a concealed gun permit, and drug possession fines; on the order of that, it’s actually cheaper to get a gun. We’ve talked in terms of visibility; we’ve talked about privacy fences and enclosures to keep predators from getting the chickens. The bases are really covered with respect to the concerns that the community has raised. So, I think that this is something that we can do as a community, and it’s going to make the Town a better place to live. I encourage you to vote for it. Thank you very much.”

Julie Cappiello of 409 Virginia Avenue stated, “I’m here tonight to protest the ordinance for allowing micro-flocks of chickens in the backyards of Herndon. I grew up around chickens and I know them to be dirty, noisy, smelly, attracting predators and harboring airborne diseases. No amount of research studies, the internet or other communities can convince me otherwise. I’m not against people wanting to keep chickens as pets, or for their eggs, but since it seems to be “trendy” in other communities, perhaps folks who want to keep chickens in their backyards would be happier, as well as the chickens might be, in those communities, or in a larger, more open, farmland atmosphere among others who feel the same way. I cannot even fathom why people who

have lived in Herndon for a very long time, as I have, or why people who have moved to Herndon to experience a small town or small city atmosphere, would be okay with chickens moving into backyards around them, as we've experienced on Virginia Avenue. It has been researched, apparently in the Town of Herndon, that there are no Homeowners' Associations in Herndon that allow backyard chickens. Why might this be? People may not want chickens foisted on them in a residential area, especially if they have small children with allergies, who'll be roaming around outside, as well as small pets. They might want to host family backyard barbeques, where they would be eating outside in their backyard next door to the backyard chickens. Or, again, they might want to sell their property and, hopefully, that it didn't decrease their value. It's confusing to me why any group that has the word "environmental" in its title, such as the Herndon Environmental Network, whom I certainly approve of, why they wouldn't concentrate on cleaning up the environment, as many of us would like to do, rather than polluting it with more noise and more dirt. What that says to me is, that these folks, obviously, hold their own specific desires and their animals, in a much higher regard than they hold the people who live around them in their neighborhoods. Not to mention the fact that they want to transform their backyards with high fences and elaborate chicken coops, for their neighbors to look onto also. I hope the Commission will not only consider the desires of this small, well organized group, who speaks out loudly and frequently for the chickens, but to think, also, of maybe hundreds of other Herndon citizens who aren't here tonight, who may not even be aware of the shift before us. I would hate to think that if this ordinance passed that people would be coming at you saying, "How did this happen? We didn't know about it." Again, chickens are dirty, in my opinion, noisy, smelly, attract predators and harbor airborne diseases. Thank you very much."

Catherine Caden of 813 Monroe Street stated, "I didn't have anything prepared to say tonight, except that I'm alarmed at the "alarmist" atmosphere coming from the opposition. I don't believe this is going to change the Town in the ways that they envision. This is only going to be a few applicants. I believe Fredericksburg, for example, has a total of eight applications in force. Don't quote me on that, but it's just not going to change the Town that much. I think the realtors in the room might be a little new to this issue. There are, certainly other reasons, which we've covered, for keeping chickens apart from, notwithstanding, the chance to buy products at Whole Foods. I would say that what we're talking about is not going to change Herndon. I think in view of the fact that there were no citizen comments about the CIP tonight; this is a real turnout for the books. The claim that this is going to be borne by all citizens, in terms of cost, is ludicrous. When we are talking about the CIP and millions of dollars, this is not an issue. So, just so you know, I'm in favor of keeping chicken. It's not for my own, personal, benefit. I don't have any personal interest in keeping them, but I do think citizens should have the right to do so, under the regulations that we have so laboriously discussed. Thank you very much."

Chairman East closed the public hearing.

COMMENTS FROM THE COMMISSION:

MOTION #1: Vice Chairman LeReche moved to recommend approval of ZOTA #13-15 to the Town Council for its consideration.

Motion #1 died due to lack of a second.

MOTION #2: Commissioner R. Burk moved to recommend denial of ZOTA #13-15 to the Town Council.

Commissioner Moses seconded the motion.

Commissioner G. Burke commented, "I'd like to point out that this was a recommendation made as a predicate to approval of the ordinance, by two of its members, neither of whom is me. (Reading from the Memorandum from the Subcommittee) "Appropriate regulations must be in place with exacting design requirements listing minimum and maximum square foot areas and setbacks for bird coops and runs. Proper maintenance intervals and procedures must be outlined and

methods of monitoring and inspections by Town staff must be developed, refined and enforced. These steps should be followed with rigid adherence to avoid potential health issues, nuisances and neighbor conflict and discord.” Let me just say that to my knowledge, very little if any, of that has found its way into this ordinance. While I have considerable respect for those who advocate for the ordinance, I’m unwilling, personally, to “put the cart before the horse” and approve the ordinance without addressing those items.”

Commissioner R. Burk commented, “First of all, I want to compliment the advocates. They put together the research and followed up on some of their quotes from the studies that have been done, and they faithfully stuck to the facts and the conclusion they put together was a very cogent argument. My thoughts are...there’s an ordinance in place now that is much more restrictive, and that was a situation when most of us bought houses and settled here. That is the order that is in place now, and in order to change that, and we should keep an open mind to change things. We don’t have to stick with the same ordinances if there’s no good reason for it. On the other hand, those who are proposing the change have a hurdle, since it is different from the existing situation. Those who oppose the change, I think...I hate to say “the upper hand” but all they are saying is keep it the way it is; we like the Town the way it is and we don’t want to change this aspect of it. I think this carries a lot of weight, because that’s what all of us bought into when we settled here. I think it’s a tough hurdle to say that you want to change something when, apparently, most people are happy with it. I support the denial.”

Commissioner Regan commented, “I want to make sure I understand, because I’m not all that familiar with Section 6 of the Town Code. Is it accurate to say that right now the Town allows one chicken?”

Chairman East responded, “Yes.”

Commissioner Regan continued, “So, following what Commissioner Burk was just saying, there’s a high threshold, or hurdle to clear to change something, right? But as I sit up here and I listen and really think about this, I’m just not so sure how different four chickens are from one chicken. We already allow one chicken. I don’t know how many complaints we get about houses with one chicken. I’m not sure if the way this is written, and frankly, the proposed changes that came out of Mr. Holland’s notes. I probably need to think more about how they would fit all together in a cohesive piece. I’m not sure that’s the right thing to do here, but I’m not so sure that four is materially different than one. Is one chicken silent, but when you get two of them together, they talk to each other and that makes it a whole lot louder? If one is okay, I’m just not sure how different four is. Part of the challenge here is that, you know, all of us have to project about what this is going to be like once it happens. That’s really challenging. To me, this is the perfect thing to do a pilot program on. I don’t know if that’s the purview of the Planning Commission and the zoning code to adopt a pilot program, but let’s allow 10 people to do this and see how it goes. Do it for a limited number of places and a limited amount of time and then see. There does seem to be a certain amount...when you hear about different municipalities where this is allowed, frankly, it just doesn’t sound like a really big deal. I do know that when we allowed the pig, that turned out not to be a really big deal. So, I’m reluctant to just reject this entirely. There are enough people who think this is a good idea, that there should be a way to do this that allows it to work, and yet, gives a reasonable confidence that we’re not compromising property values of the neighbors, or opening up something that is damaging to the community.”

Commissioner Moses commented, “I was part of the subcommittee that sat and listened to HEN and their presentation. I was very moved by their presentation, in the sense that it sounds like it would be a good idea to allow small flocks of chickens in Town. My problem is, every time I hear about these other communities that keep saying they are allowing this, no one is saying what size property these are going on. We’re not talking about properties that are two acres, or even one acre. This Town is generally made up of properties of less than 10,000 square feet. When you start putting small flocks of hens on 10,000 square feet, the exposure to your neighbors and the exposure to the community are much larger than if you were putting them on a one or two acre lot, as Fairfax County has proposed. Fairfax County has proposed something, and I’m sure they

have spent a lot more money and time on this situation that we have. When I've talked to three or four real estate agents, including the two who were here tonight, every one of them has said that this will cause a situation that may not devalue the property, but it will certainly make it much harder to market the properties for resale. The other side of this...we had a presentation in our work session the other night from a couple of gentlemen who came up from Richmond. They were talking about the new regulations that are coming in for the Chesapeake Bay Clear Water Act that's going to be hitting this Town and what we're going to have to do to maintain runoff. It's going to affect just about everybody in this Town and it could also affect what you are allowed to put on your property, as far as fertilizers and things from growth. These new regulations are coming down in July. We're not sure exactly what's going to happen, but these regulations are going to be much more strenuous than what we have right now. I, also, used to live in a community next to someone who had a small flock of chickens when I was a child. Yes, I enjoyed the chickens and I enjoyed being around them. I hate to say it, but I was also one of the ones who had to go out and butcher the chickens. It was not a pleasant experience, but it's what we had to do. Without the roosters, they are much quieter, but they are still noisy. They still put out waste that is smelly. To keep that going on a property owner who lives next door to you, would not be fair, in my opinion. So, that's part of the reason. Even though I was very sympathetic, and listened, I cannot support this."

Vice Chairman LeReche commented, "I served as the Chairman for the special committee to listen to both sides and, consequently, I felt it was my responsibility to do as much research as I could to get to the bottom and find out why this is becoming such a popular push on communities such as ours. Where a community like Herndon has the ability to enact its own regulations and laws, in spite of what Fairfax County says. In my research, I was somewhat surprised to see the number of communities that are adopting these rules, in spite of the work and effort and danger that these birds can bring to a community. Not to mention the discord created with the neighbors to whoever owns these chickens. Miss Eddy in the back, who said she plays with these chickens; I kind of cringed and said to myself, well what did you do to wash your hands before you went to school? These birds do carry diseases that can be spread. Those things can be taken care of through mitigation, careful handling and cleaning, and with regular maintenance. In my recommendations from the subcommittee, and Commissioner Moses had his say, as well, but I knew that we were on the fence and "which way the chicken flew" was going to be up for grabs this evening and probably for the next couple of meetings. If we cannot pass the motion, I would like to see the motion for this change deferred, so further discussions can be made. If it's out of my hands, then maybe the comments that I made and the recommendations that were put forth, can be presented to the Town Council for their deliberation. I felt that what I did was, through my research, I took the most restrictive aspects of what I saw in the multitude of communities that are allowing chickens and enforcing these regulations. I took the worst case and felt that by enacting setbacks to keep the chickens away from the neighbors; to keep the coops completely enclosed, and hopefully, the neighbors wouldn't know that they were there. I made these recommendations with that goal in mind, because I am thinking if I would want a chicken next door. If I didn't know it was there, I could care less, but if that chicken were to get loose, and I've talked to neighbors in my community and they asked me if I've ever been to Key West and seen the chickens that fly all over the place. I happened to visit Hawaii recently, and I saw chickens all over the place. They got out and loose because of a hurricane and they can't put a cap on them. They don't have the predators to take care of the chickens, in other words. The chickens got loose and now they are all over the island. So, that's a concern. These 15 items that I spelled out were to focus on those issues; keep them contained, to keep the people handling them safe and to keep the neighbors in the dark. If that can happen, then I think you can have chickens in the Town of Herndon. As far as the amount of land, several of these instances on the internet, they had chickens in apartment buildings. They had chickens in townhomes. So, it depends. You're probably reverting back to the same things that the people for the chickens are advocating against and that is the cruelty of keeping chickens contained in cages and so forth. That's why you put them outside. If there is a run, and again I did the research, and figured on, perhaps, 15 to 25 square feet per chicken would be enough land to raise these chickens, but the research says that once the chickens get on that grass, they are going to tear it up. So, you have to move those chickens from one part to the next. I threw a number in there

and said five, so you have 25 square feet per chicken and you have five areas where you could locate these areas, conceivably, you wouldn't have bare spots to the extent that diseases could occur. I did this with a very open mind and just wanted to pass that on to my fellow Commissioners. If the deliberations cease tonight, then it's going to be up to the Town Council. If not, then perhaps we defer it for another month to see if some of these ideas or recommendations can be put into the ordinance that the Town is proposing."

Commissioner Regan commented, "I really picked up on what Vice Chairman LeReche just said. I think there's a piece of the puzzle that we don't have yet. Again, the people here in Herndon aren't living with this problem right now, except in very limited circumstances, but in general, we are not. There are all kinds of people who are. They have adopted these ordinances and they've been on the books for two years or four years or eight years. Frankly, I think we owe it to ourselves to talk to those people and find out how it's gone. I appreciate that advocates on either side have done a certain amount of that, and I know that our staff is very busy and burdened, but I would like to think that we could talk to 10 jurisdictions and see how it's gone. How many complaints do they get? How many permits have they issued? Not just one or two places, but 10. We might even find a university study that's already done that work. Maybe it's available on the internet. We can share that around and find out how this is really going for the people that are living with it right now. I think that would reassure many of us; either that this is really a Pandora's Box and we ought not to touch it, or that this is more like the potbellied pig and has turned out okay. Perhaps there would be some wisdom in giving our staff the time to do exactly that, so maybe deferral is a wise path."

Chairman East asked for clarification from staff, "There's nothing to prevent the Planning Commission, regardless of the action we take on the proposed Zoning Ordinance Text Amendment, from making ancillary recommendations to the Town Council?"

Ms. Gilleran responded, "No, Mr. Chairman. You can pass along additional information."

Chairman East asked, "Such as a pilot program?"

Ms. Gilleran responded, "Such as a pilot program of some form; such as passing along Vice Chairman LeReche's and Commissioner Moses' recommendations."

Chairman East commented, "The good news is that we have natural predators in Northern Virginia. We have foxes, coyotes, hawks and vultures of every type. I'm not supporting the motion to deny. I feel that...Herndon started out as a farming community and like all farming communities adjacent to metropolitan areas across the country; we've become "suburbanized." One of the things that we have fought, as a community, to do is to resist the great "washing of suburbanization." So, we concentrate on our Downtown. We concentrate on our historical heritage. We have an Architectural Review Board, which looks after the appearance of the Town. There's a great deal that goes on in this Town that really works hard to differentiate us from Ashburn and Reston and great washes of unincorporated suburbia. We're incorporated and we're a Town. We have our own identity. We have had this community sitting here for almost 150 years. I'm not an advocate of saying, "Well, we used to be a farming town, so let's let all of the goats and cows and horses and chickens back in." That doesn't work, because we have changed as a community. I'm sympathetic to the notion that small and delicate slices of heritage are not a bad thing. I supported the baby goats, and I don't think that succeeded. I think I would support the chickens for the same reason. I am not persuaded that keeping chickens would cause massive outbreaks of disease, airborne or otherwise. I am not persuaded that keeping chickens is going to have a deleterious impact on property values. I made a list of the things that I think would have a deleterious impact on property values, if you would bear with me:

- Lack of upkeep
- Poor sanitary habits of your neighbors
- Abandoned motor vehicles or uncharacteristic motor vehicles

There are all sorts of things that you can do or not do to a property to have an impact on the value of the property next door. I'm pretty sure that chickens are pretty low on that ladder, if they are on that ladder at all. Similarly, I am not persuaded that the keeping of chickens is a property right. When you live in a community, there is a contract among its citizens as to what the proper use of land is. That's why we have zoning and that's why we have the Planning Commission. That's why we have Zoning Administrators and so on. We live as neighbors by agreement, but sometimes those agreements are informal, like if I live next door to you and you live next door to me. And sometimes, those agreements, because of the size of the community have to be a great deal more formal, such as the Zoning Code. So, yeah, I guess that it's easier to keep a gun as a right than it is to have a chicken as a right, but those are still things that you have to iron out in the process. I'd like to find a way, echoing what Commissioner Regan said, I'd like to find a way to try it out, without committing the Town to it. Setting up a maximum of 10 permits for two or three years, at a set fee, and under the conditions that Vice Chairman LeReche outlined, perhaps with the exception of heating, and see what happens. I think what we don't know is what happens. If we are going to deny this tonight, what you should know, all of you is that this will still go to the Town Council. It will go to the Town Council with a recommendation from the Planning Commission not to adopt it. A tie vote means that the motion will fail and we'll have to consider another motion. There are two things going on here: first we'll vote on the motion, and if the motion is tied, then the motion will fail and we'll have to consider another motion. Regardless of what we do, either voting this down or voting it up, it will go to the Town Council with that recommendation. Why do we have a tie vote? Because we have an absent Commissioner tonight. It happens. I'd like the other three Commissioners (Burk, Burke and Moses) to consider that maybe, trying it isn't such a half-bad idea, because what we don't know is what we don't know. I'm sort of "falling in the bucket of what we don't know can probably hurt us." So, I'd like to try to figure out a way if that we could pass along to the Town Council instead of a recommendation up or down; a recommendation that would say, "Let's give it a chance and if it works, fine, and if it doesn't work, we just take it off the books and everybody gets rid of their chickens."

Chairman East called for a vote on Motion #2. The motion failed, 3-3 (Chairman East, Vice Chairman LeReche and Commissioner Regan opposed the motion to deny).

Commissioner Regan asked, "So, a compromise motion that we could vote on this evening to recommend to the Town Council?"

Chairman East responded, "Yes. The motion has failed, which means that this will go to the Town Council without any recommendation from the Planning Commission."

Commissioner Moses asked, "I guess we can't defer it at this point?"

Chairman East responded, "We could defer."

Commissioner Moses commented, "I think there are still questions that need to be answered. We keep hearing about all of these other jurisdictions that have approved it. I do not hear in any of those jurisdictions, except for the few that the Vice Chairman has pointed out, that say that they keep the chickens in apartments and townhouses, but I haven't seen that study. What these other jurisdictions are saying the minimum is. We know what Fairfax County's is, but we don't know what Fredericksburg's is. Is it 10,000 square feet? Or is it four acres? I don't know what that is. I hate to place a burden on the Town to do that research."

Vice Chairman LeReche responded, "We have a matrix that was submitted to us by the advocates and I have not gone to check all of these individual communities. We are hearing it from one side, so what Commissioner Regan suggested, perhaps, is that we research with direct contact to these communities and find out if they have any issues. As far as the setbacks, I think that is all annotated here, which regulations are enforced and so forth. I took the worst case of those. After writing this letter, I knew that we needed to discuss this. I think the best thing for us to do is to defer this so we can go

back to a work session and talk about the details. See whether we can compromise with the Town as to how the ordinance should be written before we make any recommendation to the Town Council.”

Commissioner G. Burke commented, “I can’t support deferral. This has been before us for a considerable period of time, partially due to the extremely hard work of Vice Chairman LeReche and Commissioner Moses as members of the committee. You made specific recommendations. Those recommendations, to my knowledge, have not found their way into the ordinance. Tonight, we’ve done two things. We did not pass the ordinance. In addition, we did not reject the ordinance. That sounds to me like a “no recommendation.” I would like to leave it up to the Town Council to recognize the fact, that in two votes, we neither passed the ordinance nor rejected the ordinance. If they would like to read the record, talk to the proponents, do pretty much anything they want. They can do what we can do. Let’s get it where it belongs.”

Chairman East responded, “Clarification...one vote only, so far, right? And this has only been before us once before and that was in March, so this hasn’t been hanging around that long. We have stuff that hangs around much longer than this. Regardless of what we do, it goes to the Town Council.”

MOTION #3: Commissioner Regan moved to continue the public hearing and defer action on ZOTA #13-15 until the Planning Commission public hearing of May 5, 2014.

Vice Chairman LeReche seconded the motion.

Chairman East asked for the date of the next work session.

Ms. Gilleran responded that it was April 21, 2014.

Chairman East asked, “I hate to ask you this, but would it be too taxing a burden on staff to ask you to make 10 phone calls to 10 jurisdictions and just say, “Okay, you passed the ordinance...” I know we have one from Fairfax County, but if we picked 10, like Spotsylvania, Charlottesville, Fredericksburg and so on, would it be too much to ask you to make the 10 phone calls before the next work session? We have more information and then we can move on.”

Ms. Gilleran responded, “No, that would not be a problem. We have already spoken to several of them, but not 10. We did find out information regarding lot sizes, but we can call some of the others and get it up to 10.”

Chairman East responded, “Ask about complaints, specifically.”

Commissioner Regan added, “I feel compelled to, at least, briefly explain why I think deferral could make sense, and perhaps, this is just on my part and no one else’s up here. We had a work session on March 24th and this had been cooking for a few weeks before that. At that point, Vice Chairman LeReche and Commissioner Moses had had the meeting with stakeholders, and reported, generally, on what they heard and thought and started the idea of crafting some wording. It wasn’t until the next day, the 25th, that we received the memo from Mr. Holland that really laid this out. We haven’t had the opportunity, as a group, to discuss the details of this and decide if the setback is 35 feet or 30 feet or 20 feet. To do what we normally do in a work session and “grind through the gears of it.” So, I think, probably, a more seasoned Commissioner could do this on the fly, but I, personally, don’t feel able to do that. I feel like I would greatly benefit by having additional time. We may find that staff doesn’t even need to call 10 jurisdictions, if they can find an uninvolved third party resource that’s already pulled that information together and could share it with us. I think the time could relieve their effort.”

Chairman East commented, “Hence my comment to the Zoning Administrator that this was a work session tonight.”

Commissioner G. Burke commented, “Let me say one more thing about my opposition. It strikes me that if the time was not right to decide this, the motion for deferral should have been made before the discussion, not before we failed to make a decision on this matter. If we are not acting on correct information, that issue was present before any of us spoke tonight.”

Mr. Kaufman asked, “I’ve heard some talk tonight about Vice Chairman LeReche’s subcommittee and the work that it did. Is it the intent, if this motion passes of the Planning Commission that the staff redraft the ordinance to include those standards in the ordinance, so you can have them before the work session? Or leave them out so you can discuss them at the work session and then direct the staff?”

Chairman East responded, “The latter. That was the point of my initial comment and also the point of Commissioner Regan’s last comment. We really haven’t had a chance to take these recommendations under consideration. Before I call the question, let me address the folks here. This was on our public hearing agenda for last month. We deferred because we wanted to reach out to the community and get some input. We did that. We put together a committee; what we called the Chicken Committee, with Vice Chairman LeReche and Commissioner Moses. They held a public meeting on March 17th to get that information. As it turns out, and as it appears to me this evening, prior to this vote, that this issue in terms of an “issue qua issue” is a great deal more complex than either side would have us believe. What we do, as a Planning Commission, is to make sure that we get it right before we go to the Town Council. We don’t always succeed at that and there are probably people here and at home who can remind me of that, but we do try. The motion to defer is not a “slap in anyone’s face.” It’s not saying that your point of view has no value. It’s not saying that your point of view has no value. It’s just saying that we want more information before we make a decision on this.”

Chairman East called for a vote on Motion #3. The motion carried, 5-1 (Commissioner G. Burke opposed the motion for deferral).

- 5. ZONING MAP AMENDMENT, ZMA #14-101, DOWNTOWN MASTER PLAN BLOCK D AND E REZONING. Descriptive Summary of the Proposed Action:** To Change the Zoning Classification of town owned land in the Herndon Downtown described generally as land lying on the southwest side of the W&OD Trail, the east side of Center Street, the west side of Station Street, the north and south sides of Vine Street, and north of but not abutting Elden Street, and being described as Fairfax County Tax Parcels 16-2-((2))-10B, 16-2-((2))-17, 16-2-((2))-18, 16-2-((2))-20C, 16-2-((2))-20B (sometimes called 20F), as well as the right-of-way of Vine Street, and any other abutting or appurtenant streets or parts of streets, including 16-2-((2))-20D, 16-2-((2))-20E, and 16-2-((2))-10E, the right-of-way of former Spring, now Station, Street, located in the Town of Herndon, Virginia from CC central commercial zoning district to PD-TD planned development traditional downtown zoning district. The properties have a total area of approximately 2.944 acres or 128,241 square feet. The properties include the street addresses 731 Station Street and 750 Center Street and are also identified as Block D and E in the Downtown Master Plan of the Town of Herndon 2030 Comprehensive Plan. The applicant is the Town of Herndon. The proposed zoning change is consistent with the planned land use and density of the comprehensive plan which is mixed use including residential with a density range not specified but described in form as four-story residential and three-story commercial development supported with structured parking. The applicant is proposing proffered conditions to accompany the application and is requesting modifications to the zoning ordinance for submittal requirements, height and English basements, planting beds to allow for stormwater management, loading space striping, and landscape planting area along exposed parking garage frontage when architectural enhancement and a 12-foot wide streetscape per town standards is provided. Section 15.2-2286 of the Code of Virginia provides that whenever public necessity, convenience, general welfare or good zoning practice requires, the governing body may by ordinance amend, supplement or change the

regulations, district boundaries, or classifications of property. *Rescheduled from the March 3, 2014, public hearing.*

COMMENTS FROM STAFF:

Elizabeth M. Gilleran, Director of Community Development, presented the staff report dated February 24, 2014 and the staff memorandum dated March 20, 2014, both of which are on file in the Department of Community Development.

Staff recommended approval of ZMA #14-101 as submitted.

QUESTIONS FOR STAFF:

Vice Chairman LeReche thanked Ms. Gilleran for her presentation and asked if the changes that were being proposed would open the door for other developers to use this as an example to set up their “wish list” for design and proffers.

Ms. Gilleran asked, “The modifications?”

Vice Chairman LeReche responded, “Yes.”

Ms. Gilleran responded, “I believe that some of them may, but the modification that impacts the requirements concerning submittal documents, that would not, because the staff, within our modification request, cites the fact that this is a very unique situation. So, if you had land in private ownership, that argument could not be made. The issue of height, probably could be. Again, that’s four feet. The issue of the loading space not being painted, that could be...”

Vice Chairman LeReche asked, “May I just add...that is an attractive change and maybe we ought to look at that as an alternative to the fast rule that we have now...to create that as an example or a standard. You did mention height. In the package that we received, we have several elevations. One is Gunston Hall, which shows the English basement concept. Then, I count three floors plus a roof assembly that could very well house...you’re looking at a possibility of 5 stories, 4-1/2 of which would be above grade. Assuming that they’re able to berm, as depicted in this illustration, but this is the kind of concept that you’d be looking for facing Center Street?”

Ms. Gilleran responded, “The one regulatory plan on height shows the frontage along one parcel to be three stories and so, if we had the English basement, you would end up with three and a little over half of a story.”

Vice Chairman LeReche asked, “So, that would be knocked down one story at that point, but everywhere else, you would be up to 4-1/2? And that roof structure, are you calling that a story, or is that just a roof with a mansard that you can walk out on?”

Ms. Gilleran responded, “Right. If the height definition in the Zoning Ordinance states that with a flat roof that the height is up to, I believe, basically the membrane. On a flat roof, we would not be going above that. Now, whether or not that’s livable space up there, I don’t think we’d be thinking of it as another story. I think the way staff would look at it is that, if you had (in one of these areas that allows four stories) if an English basement would work, you might have an English basement and four stories, but you are still capped. I don’t know if you could achieve that, because you would still be capped by that 54 feet. You may be able to, since you don’t have any commercial on the ground floor, but I’d have to do the math on that.”

Vice Chairman LeReche asked, “Again, that illustration (and I know that’s just an example) is pretty attractive. It’s somewhat high density. If it is considered a floor, I think the way the zoning uses the average height of a pitched roof, so assuming that you have that average height, you still could probably get...not full story, but something considered a loft or penthouse, or something of that nature, which by Code, is one-third of the floor area beneath it. That still works for me, I just wanted to know, when we sign off on something like this, are people going to use it as an example to strive for?”

Ms. Gilleran responded, “And I think the important thing to remember is that, it doesn’t matter if there’s an English basement; it doesn’t matter if there’s a loft, ultimately, the 54 feet is your maximum.”

Vice Chairman LeReche noted, “One idea that popped into my head also, about the false front of the garage. As you pointed out, it is very attractive or you can have attractive fronts, and so forth, but one of the attractive aspects of Town are going into stores or entryways. I would hate to see this on a long access of a garage, but if you were to break this up somehow so that we could interact with the public, by using this as an entrance into the garage, or something, so a person would not be forced to walk the entire length or width of the garage. It would be rather boring. That’s my only concern on that aspect. Well done collecting this information.”

CITIZENS’ COMMENTS:

Karl Haase of 627 Wood Street stated, “I’d just like to say that I’m happy to see that the Town is moving forward with getting the Downtown more developed and incorporating mixed-use development. That’s really exciting. I have a couple of comments. With regard to some of the proffers, I feel like Darlington Oaks...these are great houses, and I’m not offending them, but they look like they took the Historic District and, kind of, put it in a blender, and then they put the contents as the façades. They are, otherwise, very nice buildings, so you get different architectural styles going up the buildings...you’ve got dormers that are six feet long. They are great houses to live in and there’s nothing wrong with them, but they could be right angle squares, and that would be cool with me. If you’re talking about building materials and matching styles that’s not a great example. The other thing about parking, looking a long way down the road...I know some people aren’t worried about global warming and they don’t think it’s real, but there are some of us who think this whole carbon thing is a big deal. You know, we’re going to need to get our carbon footprint to about 50% per person in the next 100 years. I think that planning for cars in the long-term is kind of a mistake. Yeah, in the short-term, people definitely need cars to get around. It’s very hard to live in Fairfax County or Herndon without a car right now, but someday, that’s not going to be true. We want to consider “release valves” with regard to parking and parking garages. While in 2030 we might need them, but we may not need them in 2050 or 2100. That’s all I have to say. Thank you very much.”

Chairman East closed the public hearing.

COMMENTS FROM THE COMMISSION:

MOTION: Vice Chairman LeReche moved to recommend approval of ZMA #14-101 to the Town Council as submitted.

Commissioner G. Burke seconded the motion.

Vice Chairman LeReche commented, “I think I had my say. I think it’s a good change in the direction of tightening of the planned development of the Downtown. I served on that subcommittee as well, and I’m very enthusiastic that this is moving in the right direction so that, hopefully, something does get built.”

Commissioner G. Burke commented, “Not that their work doesn’t always deserve compliments, but I’d like to compliment staff on their work on this, in particular. Thank you for your clear explanation, Ms. Gilleran.”

Vice Chairman LeReche seconded that thought.

Chairman East commented, “What you see before you this evening is something that, if I daresay, is novel. It’s unique. It’s different. What we are trying to do in this transaction, by rezoning our own land with proffers, has memorialized those things that are already in the Downtown Master Plan. It is different. I’m not sure I’ve ever heard of this being done before. Ms. Gilleran has this been done before elsewhere?”

Ms. Gilleran responded, “I’m not certain.”

Chairman East continued, “As Mr. Haase said, what this signifies is the next step in what will be a fairly long and drawn out process, but the next step in the realization of the Downtown Master Plan. What it also does is respond to much of the criticism that the Town received, not just the Planning Commission, but the Town Council and the Downtown Master Plan subcommittee that Vice Chairman LeReche and I served on. That a developer wasn’t going to touch a parcel that wasn’t “entitled.” What that means is a developer wasn’t going to come in and build on the Town’s land unless he knew what the rules were. Well, by golly, now you know what the rules are. So, what we’re hoping...and what the Town and Town staff is planning to do...and what I’m hoping this achieves is a realization is that the Town does mean business. That the Town is open for business. That the proffers are now memorialized with the land, so let’s come and develop it. Let’s see what we can do to implement the Downtown Master Plan. So, not just my compliments, but my hat’s off to staff. I think they’ve done a terrific job on this.”

Chairman East called for a vote on the motion. The motion passed unanimously, 6-0.

7. **ZONING ORDINANCE TEXT AMENDMENT, ZOTA #14-02. Descriptive Summary of Proposed Action:** Consideration of an amendment to the Town of Herndon Zoning Ordinance (2007), Herndon Town Code (2000), as amended, to revise § 78-400(b), Table of Principal Permitted and Allowed Uses, to permit multi-family residential dwellings within the Central Commercial, CC, zoning district.

COMMENTS FROM STAFF:

Mark R. Holland, Zoning Administrator presented the staff report dated March 24, 2014, which is on file in the Department of Community Development.

Staff recommended approval of SE #14-02 with conditions.

QUESTIONS FOR STAFF:

There were no questions for staff.

CITIZENS’ COMMENTS:

There were no citizens’ comments.

Chairman East closed the public hearing.

COMMENTS FROM THE COMMISSION:

MOTION: Commissioner Regan moved to recommend approval of ZOTA #14-02 to the Town Council as submitted.

Commissioner Moses seconded the motion.

Chairman East called for a vote on the motion. The motion passed unanimously, 6-0.

8. **SUBDIVISION ORDINANCE TEXT AMENDMENT, SOTA #14-01. Descriptive Summary of Proposed Action:** Consideration of an amendment to the Town of Herndon Subdivision Ordinance, Chapter 70, for implementation of the Virginia Stormwater Management Act (VA. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.).

- 9. ZONING ORDINANCE TEXT AMENDMENT, ZOTA #13-13. Descriptive Summary of Proposed Action:** Consideration of an amendment to the Town of Herndon Zoning Ordinance (2007), Herndon Town Code (2000), as amended, to revise Article II, Administration, Article III, Zoning Districts, and Article VII, Definitions, for Implementation of the Virginia Stormwater Management Act (VA. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.).

COMMENTS FROM STAFF:

Mr. Holland noted that SOTA #14-01 and ZOTA #13-13 were closely related, as they both deal with stormwater management.

Chairman East asked for a combined staff report for both items.

Mark R. Holland, Zoning Administrator presented a combined staff report for SOTA #14-01 and ZOTA #13-13 dated March 24, 2014, both of which are on file in the Department of Community Development.

Mr. Holland introduced consultant David Bulova, Senior Planner with AMEC Environment & Infrastructure, Inc., who was available to answer any questions that the Commission might have.

Staff recommended approval of SOTA #14-01 and ZOTA #13-13 as submitted.

QUESTIONS FOR STAFF:

Commissioner G. Burke asked, “Mr. Holland, with regard to the SOTA #14-01, if this is an unknown please just say so, I guess the term “revenue neutral” comes to mind. We will be collecting fees for the performance of certain responsibilities, correct?”

Mr. Holland responded, “Correct.”

Commissioner G. Burke asked, “Any thoughts on whether those fees will fall short of the costs of the responsibilities or exceed the cost of the responsibilities or is it an unknown at this point?”

Mr. Holland responded, “I would say that is an unknown at this point. Maybe Mr. Bulova has some insight on that, but I would say that is an unknown.”

Mr. Bulova responded, “As part of the preparations for these changes, one of the things that the state requires you to do is to put together a Funding and Staffing Plan, primarily for localities where these are new requirements. For Herndon, these aren’t particularly new; they’re simply enhanced or more stringent requirements. What our analysis showed is that there is the potential for this to take additional staff time for review, enforcement and implementation. Right now, we don’t think that the fees that you are going to be collecting will cover the full costs of those. Time will tell. If it turns out that you are not making this “cost neutral” the Town simply needs to document that and then you can go to the State Water Control Board and ask for an adjustment to the Fee Schedule. So, again, we anticipate that there might be a mismatch. We don’t know, but if there is, you have the authority to ask the state for a modification of that Fee Schedule.”

Chairman East asked if the Town would be required to amend the Comprehensive Plan, especially the appendices dealing with the Chesapeake Bay Preservation project.

Mr. Holland responded, “That is something that I would have to research. I’m not certain of that.”

Ms. Gilleran added, “Mr. Heiberg is our Comprehensive Planner, but I don’t think it would. In the discussions I’ve had with Kay Robertson, we haven’t thought that it would require a change to the Comprehensive Plan. The principles are the same.

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Basically, what we are talking about is who's collecting and some of the other basics. When you get to the Comprehensive Plan level, the intent is the same."

Chairman East asked, "I anticipate the answer is "no" but why not ask it? Does any of this impact the ability of the RPA adjacent to the Metro area to be developed?"

Mr. Holland responded, "You can develop within the RPA now, there are just certain restrictions."

Chairman East asked, "Does this further impact any of that?"

Mr. Holland responded, "It may shift some things, as far as responsibility, but it can still be done."

Chairman East asked, "So, these are administrative rather than substantive?"

Mr. Holland responded, "Correct. It's more like giving everything to the local jurisdiction rather than having the state come in and do inspections, review plans and that sort of thing."

Chairman East asked, "Does the phrase "unfunded mandate" have any meaning in this discussion?"

Mr. Holland responded, "Not to me."

CITIZENS' COMMENTS:

There were no citizens' comments.

Chairman East closed the public hearing.

COMMENTS FROM THE COMMISSION:

SUBDIVISION ORDINANCE TEXT AMENDMENT, SOTA #14-01:

MOTION: Commissioner R. Burk moved to recommend approval of SOTA #14-01 to the Town Council as submitted.

Commissioner G. Burke seconded the motion.

Chairman East called for a vote on the motion. The motion passed unanimously, 6-0.

ZONING ORDINANCE TEXT AMENDMENT, ZOTA #13-13:

MOTION: Commissioner R. Burk moved to recommend approval of ZOTA #13-13 to the Town Council as submitted.

Vice Chairman LeReche seconded the motion.

Chairman East called for a vote on the motion. The motion passed unanimously, 6-0.

COMMISSIONERS' COMMENTS:

Chairman East announced the upcoming scheduled meetings:

April 21, 2014	Planning Commission work session	7:00 p.m.
May 5, 2014	Planning Commission public hearing	7:00 p.m.

Chairman East asked the Recording Secretary if the Planning Commission had any further items of business on the agenda.

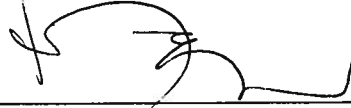
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Ms. Tappan responded, "We do not, Mr. Chairman."

MOTION: Vice Chairman LeReche moved to adjourn.

Commissioner Moses seconded the motion.

Chairman East called for a vote on the motion. The motion carried unanimously, 6-0. The Planning Commission adjourned at 9:55 p.m.



Kevin J. East
Chairman, Planning Commission



Patsy Tappan, Recording Secretary

Minutes Approved: 05/05/2014