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HERNDON TOWN COUNCIL
Tuesday
May 27, 2014

The Town Council met in public session on Tuesday, May 27, 2014 at 6:30 p.m. in the Herndon Council Chambers Building, 765 Lynn Street. In attendance were:

Mayor:

Lisa C. Merkel

Vice Mayor:

Connie Haines Hutchinson

Councilmembers:

C. Melissa Jonas

Dave A. Kirby

Sheila A. Olem

Charlie D. Waddell

Grace Han Wolf

Others present during the meeting: Richard B. Kaufman, Town Attorney

CLOSED MEETING

On motion of Councilmember Kirby, seconded by Councilmember Jonas, and carried by a 7-0 vote, the Herndon Town Council went into Closed Meeting at 6:30 p.m., under Section 2.2-3711(A)(7), Virginia Code for consultation with legal counsel pertaining to probable litigation, where such consultation in open meeting would adversely affect the litigating posture of the Town, relative to a BPOL tax refund case.

Vote: Councilmembers Hutchinson, Jonas, Kirby, Olem, Waddell, Wolf and Mayor Merkel voting "Aye."

On motion of Councilmember Jonas, seconded by Councilmember Olem, and carried by unanimous vote, the Herndon Town Council reconvened in public session at 6:57 p.m.

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Vote: Councilmembers Hutchinson, Jonas, Kirby, Olem, Waddell, Wolf and Mayor Merkel voting "Aye."

On motion of Councilmember Kirby, seconded by Vice Mayor Hutchinson, and carried by unanimous vote, the Herndon Town Council approved the following Certification of Closed Meeting.

Vote: Councilmembers Hutchinson, Jonas, Kirby, Olem, Waddell, Wolf and Mayor Merkel voting "Aye."

Certification of Closed Meeting

WHEREAS, the Town Council of the Town of Herndon has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by this Town Council that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed, or considered by the Town Council.

VOTE:

Ayes – 7

Nays – 0

ABSENT DURING VOTE: 0

ABSENT DURING MEETING: 0

RECESS

At 6:57 p.m., Mayor Merkel called a brief recess and at 7:00 p.m., the meeting reconvened in Herndon Council Chambers Building, with all members present, and with Mayor Merkel presiding.

Others present during the meeting were Arthur A. Anselene, Town Manager; Margie C. Tacci, Deputy Town Clerk II; Bradford C. Anzengruber, Police Captain; Elizabeth M. Gilleran, Director of Community Development; Mary K. Tuohy, Director of Finance; Linda A. Simmons, Director of Human Resources; Cindy S. Roeder, Director of

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Parks and Recreation; Robert B. Boxer; Director of Public Works; Anne P. Curtis, Chief Communications Officer; and Dana Heiberg, Senior Planner.

The meeting was called to order at 7:00 p.m. with all members present and with Mayor Merkel presiding. Mayor Merkel led the audience in the Pledge of Allegiance to the Flag of the United States of America.

1. ANNOUNCEMENT

Mayor Merkel announced that prior to tonight's meeting, Council met in closed session.

2. PRESENTATIONS

Presentation by The Council for the Arts of Herndon to the Scholarship Winners.

Mayor Merkel called upon Signe Friedrichs, Executive Director of the Council for the Arts of Herndon to provide background information on the scholarship winners.

Ms. Friedrichs announced the following scholarship winners:

- Tiberia Baicoianu;
- Mary Galvin;
- Blake Morgan;
- Ronan O'Day;
- Gabrielle Tourtellotte; and
- Leilani Wolf.

Mayor Merkel called upon the entire Town Council to join her and Ms. Friedrichs for the formal presentation to the winners.

Certificates of Congratulations, 2013-2014 Herndon High School Business Management Virtual Enterprise Team.

Mayor Merkel stated that it was her honor to recognize the Herndon High School Business Management Virtual Enterprise Team for their phenomenal year. The students, led by their teacher and coach Kathy Thomas, wrote a business plan for a company called the V-Lo Chip, which is a virtual location chip. She stated that this past December, the team placed first in the Commonwealth of Virginia at the

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state competition and went on to represent the state at the Virtual Enterprise National Competition, April 1-4, in New York City. At these competitions, the team earned five plaques and brought home national honors for Herndon High School and the state of Virginia.

Mayor Merkel called on Ms. Thomas to come forward to introduce the students and provide a brief PowerPoint, which is on file in the Town Clerk's office. Ms. Thomas introduced the students who provided additional information.

Mayor Merkel called upon the Business Management Virtual Enterprise Team; and other representatives from Herndon High School, to come forward to join her, Ms. Thomas and the entire Town Council for the formal presentation.

3. COMMENTS FROM THE TOWN MANAGER

Herndon Festival: Arthur A. Anselene, Town Manager, reminded everyone that this is the week of the Herndon Festival.

Responding to Mayor Merkel's query, Mr. Anselene stated that armbands for the festival could be obtained at the Herndon Community Center.

4. COMMENTS FROM THE TOWN COUNCIL

Councilmember Kirby: Expressed his appreciation to those who participated in the successful Memorial Day event. He reminded everyone that the American Legion would be selling snow cones at the Herndon Festival again this year.

Councilmember Olem: Congratulated Councilmember Kirby on the Memorial Day event, which she said was the best ever.

Councilmember Wolf: Reminded everyone that the Herndon Post Office entrance has been changed to the former exit. She expressed her appreciation to Councilmember Kirby for a wonderful Memorial Day event.

Mayor Merkel: Announced that registration for the 2014 Youth Police Academy is now open. The academy would take place the week of July 7-11 at the Herndon Police Station. This is a free program and is limited to the first 20 students who are 14-17 years old. She stated that applications are due June 9th and can be found on the town's homepage, along with more information on the program.

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5. COMMENTS FROM THE AUDIENCE

No Parking Signs: Ann Null, 631 Oaks Street, Herndon, requested that the No Parking Signs that are installed for the Herndon Festival on her street, be left year round. She expressed her appreciation to Councilmember Kirby for a wonderful Memorial Day event.

6. PUBLIC HEARINGS

Ordinance 14-O-16, Zoning Map Amendment ZMA #14-101, Downtown Master Plan Blocks D and E Rezoning.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the Friday, April 25 and Friday, May 2, 2014 issues.

Mayor Merkel stated that prior to tonight's meeting, comments were received regarding this item, which have been entered into the record. She noted that this public hearing was continued from May 13.

Elizabeth M. Gilleran, Director of Community Development, briefly presented the staff report dated May 13 and a PowerPoint, which are on file in the Town Clerk's office. She stated that the proposed ordinance, if approved, would allow for the rezoning of approximately 2.9 acres located within downtown Herndon. The property is currently zoned Central Commercial (CC) and the request is to change the zoning to Planned Development Traditional Downtown (PD-TD). The land is located between Center Street and Station Street with the W&OD Railroad Regional Park property to the north. The Ashwell property, Herndon Commerce Center and the Martin property are located south of the property. Included are 731 Station Street and 750 Center Street. In addition, the property is also identified as a portion of Block D and Block E in the Downtown Master Plan. Ms. Gilleran briefly reviewed the modifications and proffers that have been incorporated into the proposed ordinance. She stated that staff has not heard from the acoustic engineer regarding the sound attenuation. She stated that the sound attenuation levels in the proffers are currently at the same levels as Fortnightly. She stated that, if approved, language could be inserted that would allow staff to insert numbers that would reach the desired sound attenuation.

Responding to Mayor Merkel's query, Ms. Gilleran stated that Councilmember Jonas may be able to provide some language that staff could insert regarding sound attenuation.

Responding to Councilmember Kirby's query, Ms. Gilleran stated that staff is trying to achieve higher levels of sound deadening than is currently at Fortnightly.

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Responding to Vice Mayor Hutchinson's query, Ms. Gilleran stated that "shared use space" is a term referred to as space designed to be attractive to both pedestrians and vehicles, but there would always be a safe haven for the pedestrian. It is usually a travel area with a decorative surface instead of asphalt and would not be considered a loading space.

Mayor Merkel stated that 16 emails were received supporting the rezoning and one was received that expressed some concerns. One of the concerns was regarding the overhead utility lines and she questioned if language in the ordinance precluded overhead utility lines? She stated that several areas of concern were addressed in the revised proffer statement distributed this evening.

Ms. Gilleran stated that the ordinance attempts to reduce the number of overhead utility lines.

Mayor Merkel reviewed several of the revisions to numbers 14 and 15 of the proffers. She stated that it is clear that the town would like a green and lush environment.

Responding to Mayor Merkel's query, Ms. Gilleran stated that extending the town green over the trail was not discussed in detail because if Block E was not used for a non-profit public arts facility, as is currently envisioned, the best use was determined to be residential. She stated that proffer 5 was changed to accommodate a possible residential development on Block E.

Mayor Merkel stated that the Council wanted to ensure that the trail was activated throughout the downtown and that items such as bars and grills were prohibited, even if screened.

Councilmember Jonas read from amended proffer number 11 to clarify the language staff added today.

The public hearing was held and the following individuals presented testimony:

- Barbara Glakas, 935 Barton Oaks Place, Herndon, expressed her appreciation to the Council for taking her concerns into consideration. She expanded on her concern for true green space in the downtown and possibilities for a larger town green.
- Steve Mitchell, 1291 Monroe Street, Herndon, manager of James Building Development, expressed his appreciation to the Council for bringing this matter forward and to staff for their work on what he considers a good starting document. He stated that the document lays the groundwork for the next step. He stated that "may" and "will" mean the same and should be changed to "shall" throughout the document. He encouraged immediate RFP's to see what businesses have to offer.

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- Marcia Bouchard, 120 Pearl Street, Herndon, stated that she would like the town to work with high quality developers and to encourage nine foot ceilings in residential homes, which are the norm. She expressed support of the height modification.
- Arthur Nachman, 866 Vine Street, Herndon, expressed his support for the plan, as submitted, and stated that he concurred with Ms. Bouchard's comments. He stated that the proffer statements are a good starting point, which would be changed as time progresses. He stated that the downtown development is not a closed book.
- Les Zidel, 875 Grace Street, Herndon, stated that he supports the rezoning application and that it would be a good balance for the downtown. He stated that there must be enough flexibility to allow new ideas to come before the Council.
- Nancy Myers, 509 Herndon Woods, Court, Herndon, expressed her support for the proposed rezoning and urged the Council to move forward.
- Ann Null, 631 Oak Street, Herndon, expressed her appreciation to those involved for their work on this project. She would like to see more architectural diversity allowed throughout the downtown and not to allow building construction such as stone against stone or brick against brick.

Main Motion

(Subsequently Amended and Approved)

Following the public hearing, Councilmember Jonas moved approval of Ordinance 14-O-16, Zoning Map Amendment ZMA #14-101, Downtown Master Plan Blocks D and E Rezoning, incorporating the amended proffers dated and distributed May 27, 2014, further revised as follows:

- **REVISE** page six, item 11, 2nd sentence under "Noise Attenuation," to read:

"11. Noise Attenuation. The Applicants shall install sound reducing windows and construct sound insulated exterior walls on residential façades facing the Washington & Old Dominion Regional Trail and Station Street. The windows and walls shall meet attenuation standards determined through professional consultation by staff to achieve the desired effect while still being readily available to the building industry. ~~the following standards: exterior walls not less than 45 Ldn and windows not less than 33STC."~~

- **REVISE** page seven, item 14, last sentence under "Public Open Space," to read:

"14. Public Open Space. ...The Applicants shall provide any needed public access easement to be dedicated to the Town of Herndon. The

Applicants shall work to unite the Town Green, the Washington and Old Dominion (W&OD) Trail and the property into a greater public open space.

This motion was seconded by Vice Mayor Hutchinson.

Councilmember Jonas asked the town attorney to clarify the general use of “will” versus “shall.” She asked whether the Council, where appropriate, could consider “shall.”

Richard B. Kaufman, town attorney, stated proffer 14 contained one “will,” which was fine as written. “Will” is aspirational and is not binding, whereas “shall” is binding and mandatory. If the council’s intent is to make the sentence binding and mandatory, the language should be changed to “shall.” The town attorney indicated he had no legal issue with changing proffer 14 or any other place in the proffers where council wants to be clear with regard to “binding and mandatory.”

For the record, Councilmember Jonas stated the council’s intent, wherever deemed appropriate, to change “will” to “shall” throughout the proffers.

Vice Mayor Hutchinson clarified that discussion at the work session suggested “will” being changed to “may,” so not to be as dictative.

Amendment to (Accepted)
Main Motion

- As a “friendly” amendment, Councilmember Waddell asked that the proffers be further revised:
 - **REVISE** page six, item 8 under “Overhead Utilities,” to read:

“8. Overhead Utilities. ... In addition to the existing wires to be placed underground, all new utility lines shall be placed underground. Should the Town adopt an alternative **underground** utility layout plan prior to submittal of the first site plan associated with this zoning map amendment, the Applicant shall relocate the utilities in accordance with the adopted alternative **underground** utility layout plan if the alternative plan is determined by the Zoning Administrator to be a viable alternative for the Development.”

This was accepted by the maker and seconder of the motion.

Amendment to (Failed)
Main Motion

- Councilmember Waddell moved to amend Ordinance 14-O-16, as follows:
 - **REVISE** page three, Section C, 2nd paragraph, to read:

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“A modification to Section 78-303.2(e) Height and to Section 78-701 Definitions, to permit the height of buildings to exceed the 50 foot height limitation by 4 feet, and to allow an English basement, counted as a story, when two-thirds of its height are above grade and the Zoning Ordinance permits no more than one-half of the height to be above grade. not counted as a story, to have two-thirds of its height above grade when the

This motion was seconded by Vice Mayor Hutchinson.

**Vote on Amendment (Failed)
to Main Motion**

The question was called on the motion, which failed by a vote of 3-4. The vote was:

Vote: Councilmembers Kirby, Waddell and Vice Mayor Hutchinson voting “Aye.” Councilmembers Jonas, Olem, Wolf and Mayor Merkel voting “Nay.”

**Amendment to (Approved)
Main Motion**

- Councilmember Kirby moved to amend the main motion to further revise the proffers as:

Proffers dated & distributed May 27, 2014

- REVISE page six, item 8 under “Overhead Utilities,” to read:

“8. Undergrounding Overhead Utilities.”

This motion was seconded by Councilmember Olem.

**Vote on Amendment (Approved)
to Main Motion**

The question was called on the motion, which was carried by a unanimous vote. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell, Wolf, Vice Mayor Hutchinson and Mayor Merkel voting “Aye.”

**Amendment to (Failed)
Main Motion**

- Vice Mayor Hutchinson moved to amend the main motion to further revise the proffers as:

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- **REVISE** page two, item one under “Height,” to read:

“1. **Height.** ...Multi-family structures along the Center Street frontage of Parcel 16-2-((2))-20C shall not exceed 3 stories. ~~The three story restriction shall extend to a depth of 20 feet from the front facade facing Center Street, at which point a multi-family structure may extend up to 4 stories above finished grade.~~ With the exception of the Center Street...”

This motion was seconded by Councilmember Waddell.

Vice Mayor Hutchinson stated that the reason for having three stories on Center Street is because of the historic district and it would be a mistake to allow four stories.

**Vote on Amendment (Failed)
to Main Motion**

The question was called on the motion, which failed by a vote of 3-4. The vote was:

Vote: Councilmembers Kirby, Waddell and Vice Mayor Hutchinson voting “Aye.” Councilmembers Jonas, Olem, Wolf and Mayor Merkel voting “Nay.”

Councilmember Jonas stated this has taken many years and it is time to move forward and have something concrete for developers to look at.

Mayor Merkel concurred with the citizen who stated that tonight the town is opening the book. She stated that she has met with many developers who have stated that a few extra feet would be good for the downtown.

**Vote on Main Motion (Approved)
as amended**

Restated for clarity:

- to approve Ordinance 14-O-16, incorporating the amended proffers dated and distributed May 27, 2014 (as outlined earlier in the “summary of actions”) further revised as follows:

“8. Undergrounding Overhead Utilities.”

Overhead Utilities. ... In addition to the existing wires to be placed underground, all new utility lines shall be placed underground. Should the Town adopt an alternative underground utility layout plan prior to

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submittal of the first site plan associated with this zoning map amendment, the Applicant shall relocate the utilities in accordance with the adopted alternative underground utility layout plan if the alternative plan is determined by the Zoning Administrator to be a viable alternative for the Development.

11. **Noise Attenuation.** The Applicants shall install sound reducing windows and construct sound insulated exterior walls on residential façades facing the Washington & Old Dominion Regional Trail and Station Street. The windows and walls shall meet attenuation standards determined through professional consultation by staff to achieve the desired affect while still being readily available to the building industry. ~~the following standards: exterior walls not less than 45 Ldn and windows not less than 33STC.~~
14. **Public Open Space.** ...The Applicants shall provide any needed public access easement to be dedicated to the Town of Herndon. The Applicants shall work to unite the Town Green, the Washington and Old Dominion (W&OD) Trail and the property into a greater public open space.
- Intent of Council to change “will” to “shall” throughout the proffers wherever deemed appropriate;
 - Approval of Ordinance 14-O-16, incorporating the amended proffers dated and distributed May 27, 2014, further revised as follows:

The question was called on the motion, which was carried by a unanimous vote. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell, Wolf, Vice Mayor Hutchinson and Mayor Merkel voting “Aye.”

- 14-O-16 Ordinance, ZMA #14-101. To Change the Zoning Classification of the Property Identified as Fairfax County Tax Map Reference Numbers 0162-02-0017, 0162-02-0018, 0162-02-0020B (sometimes called 20F) 0162-02-0020C, 0162-02-0020D, 0162-02-0020E, 0162-02-0010E, a portion of 0162-02-0010B, and the portion of the Vine Street right of way adjoining these parcels and located between Center Street and the W&OD Railroad Regional Park property in the Town of Herndon, Virginia from CC central commercial zoning district to PD-TD planned development traditional downtown zoning district. The properties include the

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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.

In adopting this Ordinance, the Town Council has considered the factors set out in 15.2-2284, Code of Virginia (1950) as amended.

BE IT ORDAINED by the Town Council of the Town of Herndon that:

- A. The zoning classification of the property, lying in the Town of Herndon, Fairfax County, Virginia, described as follows is changed from Central Commercial (CC) to Planned Development Traditional Downtown (PD-TD).

Beginning at an iron pipe found on the easterly right of way line of Center Street – Route 2503 (60' right of way), said point also being at the northwesterly property corner of the Ashwell LLC property and 300 feet ± in a northerly direction from Elden Street – Route 228, thence running with the easterly right of way line of Center street the following courses and distances:

N03°57'19" w 73.75 feet to an iron pipe set;

N03°59'07" w 87.41 feet to an iron pipe found;

N04°05'21" w 115.98 feet to an iron pipe found;

Along the arc of a curve to the right 271.56 feet in radius, an arc distance of 135.69 feet, the chord of said arc running N10°13'30" e 134.28 feet to an iron pipe set on the southerly property line of the Northern Virginia Regional Park Authority property; thence S47°29'34" E 628.26 feet departing the easterly right of way line of Center Street and running with the southerly property line of the Northern Virginia Regional Park Authority property to a point at the northwesterly property corner of the Town of Herndon property (Tax map parcel 16-2 ((2)) part of 10b) and the easterly right of way line of Spring Street (not in use); thence S02°48'39" E 32.93 feet with the northwesterly property line of the Town of Herndon property and the aforesaid easterly right of way line of Spring Street (not in use) to a point on the westerly right of way line of Station Street – Route 2509 (computed) (r.o.w. varies); thence with the westerly right of way line of Station Street (computed) the following courses and distances:

Along the arc of a curve to the left 94.00 feet in radius, an arc distance of 38.49 feet, the chord of said arc running S44°45'21" w 38.22 feet to a point; along the arc of a curve to the left 109.00 feet in radius, an arc distance of 25.22 feet, the chord of said arc running S26°23'58" w 25.17 feet to a point; S01°38'43" e 74.30 feet to a point; thence, with the westerly right of way line of Station Street and continuing with the northerly property line of the Herndon Commerce Center condominium the following courses and distances:

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S85°30'18" w 26.24 feet to a point;

N04°29'42" w 5.00 feet to a point;

S85°30'18" w 104.60 feet to a point;

S04°29'42" e 5.00 feet to a point at the northeasterly property corner of the Alice Martin Family LLC property; thence S85°30'18" w 37.28 feet with the northerly property line of the Alice Martin Family LLC property to a drill hole set on the easterly property line of the Ashwell LLC Property; thence with the easterly and northerly property lines of the Ashwell LLC property the following courses and distances:

N04°27'30" e 103.31 feet to an iron pipe set;

S85°40'40" w 56.03 feet to an iron pipe set;

N04°03'20" w 104.19 feet to an iron rod found;

S85°26'08" w 211.06 feet to the point of beginning and containing ± 131,102 square feet or 3.00969 acres of land.

- B. This rezoning shall be governed by the Town of Herndon Zoning Ordinance, Proffers ZMA #14-101 dated and distributed May 27, 2014, the Generalized Development Plan and Exhibit A of the proffers. Further, this rezoning is consistent with the 2030 Comprehensive Plan of the Town of Herndon including the Downtown Master Plan adopted February 22, 2011 and the Downtown Pattern Book adopted January 29, 2013. The Town Council acknowledges the flexibility inherent in this form-based plan and pattern book, including options for placement of a parking structure and options to extend an alley or a public street along the current Vine Street right of way and connecting to Station Street or to provide circulation in an alternate fashion depending on the placement of the garage structure.
- C. The Town Council approves the following modifications to the zoning regulations, as allowed under Section 78-303.1(g)(4):

A modification to Section 78.201.3 (7) Submittal requirements, specifically of Sec. 78-201.3 (6), Sec. 78-201.3(7) and Sec. 78-201.3(10) to permit a Generalized Development Plan of a more conceptual nature and absent a seal by an engineer, architect, landscape architect or surveyor and not consisting of blue or black line copies; a Generalized Development Plan that does not contain the elements listed within the Zoning Ordinance; relief from the submission of traffic impact study and a development schedule at this time.

A modification to Section 78-303.2(e) Height and to Section 78-701 Definitions, to permit the height of buildings to exceed the 50 foot height limitation by 4 feet, and to allow an English basement, not counted as a story,

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to have two thirds of its height above grade when the Zoning Ordinance permits no more than one-half of the height to be above grade.

A modification to Sec. 78-511(1) Downtown streetscape, to permit planting beds along the Center Street streetscape to be used for stormwater management and water quality requirements to the extent that the planters are recognized by the Commonwealth of Virginia for stormwater management and best management practice use.

A modification of Sec. 78-500.4 Loading space standards, to allow a more decorative treatment and an alternative to asphalt as a pavement material.

A modification of Sec. 78-503.6 (3)d Exposed Parking Deck frontage located in the PD-D and PD-TD to allow architecturally enhanced parking garages without a 6 foot wide buffer.

- D. As to the modification set out in paragraph C. above, the Town Council finds that such modification will afford equal or greater assurances of meeting the goals of the zoning ordinance, Town of Herndon, Virginia, as set out in the preamble of that ordinance and the goals of the statement of intent of the PD-TD Planned Development Traditional Downtown zoning district.
- E. The official zoning map of the Town of Herndon, Virginia is amended to show this change in zoning classification and shall be annotated to indicate the property described in paragraph A. above as PD-TD - Planned Development Traditional Downtown.
- F. This ordinance shall be effective on and after its adoption.

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PROFFERS

ZMA #14-101

MAY 27, 2014

Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 78-202.1(e) of the Town of Herndon Zoning Ordinance (2006, as amended) (Zoning Ordinance), the undersigned, for themselves and their successors and/or assigns (referred to hereafter, both collectively and, where appropriate, individually as the "Applicants"), hereby proffer that the development of the parcels that are the subject of this application and which are shown on the Fairfax County 2014 tax maps as 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 (collectively, the "Property") shall be in substantial conformity with the conditions set forth in this submittal, and only if, Rezoning application ZMA #14-101 (this "Rezoning") is granted.

GENERAL

- 1. Generalized Development Plan.** The Property shall be developed in substantial conformance with the Downtown Center Station Generalized Development Plan ("GDP") dated February 17, 2014, and the adopted Town of Herndon Downtown Master Plan and the Herndon Downtown Pattern Book, a Guide for Downtown Development. It is understood by the Applicants that all other applicable regulations and policies governing land development within the Town of Herndon (Town) shall apply to the Property and its development unless specifically modified by the language of the approved Ordinance governing ZMA #14-101.
- 2. Proffered GDP Elements.** The proffered elements of the GDP are limited to the general location of the points of access, general location and mix of uses, maximum number of residential units, minimum and maximum building heights, general location of public space, and number of public shared parking spaces.
- 3. Minor Modifications.** Minor modification of the GDP may be permitted without the need for a Proffer Amendment when necessitated by sound engineering or final site design or engineering provided that the development is in substantial conformance with the GDP, these Proffers and the Herndon Downtown Pattern Book, a Guide for Downtown Development. Substantial conformity shall be determined per Section 78-202.1(e)d.4., Zoning Ordinance.

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4. **Transferring of the Property.** Future purchasers of the Property shall be advised of these Proffers and related obligations in the contract of sale and shall provide evidence of intent to abide by these proffers through the inclusion of a conceptual plan of development, and descriptive summary of development addressing all elements of these Proffers to the Town's Department of Community Development prior to site plan submission. The Town may request additional information, which the Zoning Administrator determines to be necessary to ensure compliance with the standards and guidelines of the adopted Downtown Plan, the Zoning Ordinance, the adopted Town of Herndon 2030 Comprehensive Plan, as amended, the Herndon Downtown Pattern Book, a Guide for Downtown Development and other additional standards and information determined by the Town to be appropriate and necessary using customary land use standards. Nothing in these proffers or the approval of ZMA #14-101 shall be construed as limiting the Applicants' ability to obtain additional benefits or obligations through contract negotiations unrelated to the ZMA process.

PROPOSED DEVELOPMENT

1. **Height.** Structures incorporating residential uses shall not exceed 4 stories above grade. Structures with upper floors dedicated to commercial and professional office uses shall not exceed 3 stories above grade. Multi-family structures along the Center Street frontage of Parcel 16-2-((2))-20C shall not exceed 3 stories. The three story restriction shall extend to a depth of 20 feet from the front facade facing Center Street, at which point a multi-family structure may extend up to 4 stories above finished grade. With the exception of the Center Street frontage of parcel 16-2-((2))-20C, described above, and modifications granted, if they are granted, as part of the approval of ZMA #14-101, the maximum height of all structures shall conform to the zoning regulations governing the Planned Development – Traditional Downtown District.

Building facades shall not be less than 20 feet in height as measured from the finished grade of the abutting public sidewalk to the top of the roof, exclusive of parapet, on flat-roofed buildings or to the eave of pitched roof buildings.

2. **Uses.** Uses west of the Spring Branch culvert shall consist of structured parking, multi-family residential, with or without stacked townhouses, and uses accessory to the multi-family uses.

Uses east of the Spring Branch culvert, and those spanning the culvert, shall consist of: structured parking; multi-family residential and uses accessory to multi-family uses; professional and commercial offices; arts facilities including art galleries, studios, classroom space for performing arts, music and visual arts; performance space; retail and restaurant uses.

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Any structures abutting the Station Street right-of-way, including structured parking, shall incorporate one or more of the following ground floor uses: arts facilities including art galleries, studios, classroom space for performing arts and visual arts, and performance space; retail and restaurant uses. Arts related uses and restaurant uses may include the temporary leasing of such space for special events, meetings and receptions.

In addition to the uses described in the previous paragraph, additional ground floor uses may be located within those portions of the ground floor not abutting the Station right-of-way or storefront space facing the Washington and Old Dominion Trail Park. The additional permitted ground floor uses are: multi-family residential and accessory uses, or commercial or professional offices. Upper floor uses shall consist of multi-family residential and accessory uses, or commercial and professional office uses.

The following uses shall not be permitted on the Property: nail salon, tattoo parlor, pawn shop, or uses purveying obscene materials. Uses that necessitate additional security shall rely on security measures not visible from the exterior of the building. Security measures such as but not limited to bars, grills, chains, security blinds or other barriers visible from the exterior of the building shall not be permitted. This prohibition shall not apply to clear impact glass within doors and windows.

3. Public Shared Parking. Applicants shall collaborate with the Town to provide a minimum of 220 public shared parking spaces to be controlled by the Town of Herndon within the Development.

4. Additional Parking. Applicants shall provide parking in addition to the Public Shared Parking described above in item 3. Additional parking for the Development shall be provided on site in the amounts required for the Zoning Ordinance at the time of site plan submission. Parking built for non-residential uses and any spaces designated as "visitor parking" for residential units within the Development shall be transferred to the Town of Herndon for inclusion into the Public Shared Parking program. Transfer shall occur at the time of occupancy permit approval for the square footage to be parked. Applicants shall pay the standard maintenance obligations of purchasers of Public Shared Parking for any parking spaces transferred to the Public Shared Parking program.

5. Architecture. The architecture of the structures shall be as generally described in the Herndon Downtown Pattern Book, a Guide to Downtown Development. The Town of Herndon Heritage Preservation Review Board (HPRB) shall use the Downtown Pattern Book, as well as the exhibits submitted with these proffers as guidance when determining the appropriateness of the architecture of the Development. At least one structure shall integrate public art into the facade. Structures shall not have stairwells open to the exterior. The ground floor of any structure fronting Station Street shall be comprised of storefront which shall wrap the northeast corner of the building and

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extend for the length of at least 60 feet along the north facade of the building. Security apparatus such as but not limited to bars, grills, chains, security blinds or other barriers shall not be permitted within storefronts in any location visible from the exterior of the building. The obscuring of security apparatus with blinds or shades shall not make such security apparatus allowable. This prohibition shall not apply to clear impact glass within doors and windows.

Appropriate surface materials for all habitable structures, and for the exposed facades of parking structures and accessory structures consist of: brick, stone, fiber cement siding in clapboard or shingle as deemed appropriate for the style of architecture, cellular PVC trim, or cast stone. Additional materials exhibiting a natural and historical appearance, of equal or greater durability may be used as allowed by the HPRB, if they are allowed. Panelized brick and stone veneers exhibiting a hand laid appearance may be appropriate, if it is approved by the HPRB.

Parking garage facades designed for future expansion may be screened using techniques other than the use of the above referenced materials. Alternative screening for such parking garage facades shall be reviewed and approved, if it is approved, by the Town of Herndon Heritage Preservation Review Board.

Along the foundation of all structures fronting the Washington & Old Dominion Trail property, the Applicants shall provide enhanced foundation plantings, the species and size of which shall be approved by the Zoning Administrator using recognized standards. Buildings located along the W&OD Trail frontage of Block E shall be designed and oriented to provide active, albeit not necessarily the primary facade, along the trail, and landscaping plantings shall be designed in a manner that extend rather than screen the trail and the adjacent Town Green.

The Applicants provide with these proffers Exhibit A, consisting of photographs and drawings of other projects, that demonstrates the level of detail and massing that is generally appropriate for

the Development. Exhibit A does not indicate a future preference for any specific architectural firm, and it is not intended to be used as a template for future development, but rather as a visual example to inform future actions. The architectural style of the Development will reflect the heritage district's period of significance with emphasis on the styles and massing of the early 20th Century.

6. **Streetscape.** The Applicants proffer to build the public streetscape along Center Street and Station Street abutting the Development and private or public streetscapes, lanes or alleys internal to the Development. The appearance, width, and other physical characteristics of these streetscapes shall be as follows:

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Center Street: Applicants shall build a public streetscape 12 feet in depth extending from back of curb. A public access easement to the Town is proffered over any portion of the Property that is incorporated into the public streetscape. Abutting the 12 foot streetscape, and located between the streetscape and the front facade of the adjoining building, shall be a strip of land, the minimum width of which shall be 5 feet, to provide for foundation plantings and entrance steps and related features. The materials of the public streetscape shall match the adopted materials of the Town of Herndon Streetscape Guidelines or Town approved alternatives based on customary standards. To achieve an enhanced buffer between the Development and the adjacent residential district, canopy trees within the streetscape shall have a minimum caliper of 4 inches at time of planting and shall be planted 25 feet on center and compatible with street light placement. The species and specifications of all streetscape plantings shall be as approved, if it is approved, by the Town of Herndon Zoning Administrator using recognized standards. Per Modification #3 of this application, if approved, the planting beds designed within the public streetscape may be designed and used to meet the Development's stormwater management and quality requirements. If the streetscape planters are used for this purpose, the Applicants shall provide an alternative design, with technical information required by Town of Herndon regulations and policies, for review by the Zoning Administrator who will determine if the facility meets all stormwater control and quality requirements and to ensure that the alternative plan is both aesthetically and technically appropriate (based on recognized standards) for Herndon's Downtown and as an element of the public streetscape. If the planting beds are used for stormwater purposes, the Applicants proffer to maintain functional capability of the bed to meet the Town's water control and quality requirements. The Applicants understand that a stormwater maintenance agreement will be required for the long-term care of the facility and any other facilities within the Development. Furthermore, the design of the facility will incorporate any necessary technical features to address road salts and snow piles and will be designed to provide both an attractive display of vegetation and trees, to be reviewed and approved, if it is approved, by the Town of Herndon Zoning Administrator.

Station Street: The Applicants shall build a public streetscape 12 feet in depth extending from back of curb on Station Street. A public access easement shall be provided to the Town over any portion of the Property that is incorporated into the public streetscape. The tree grates and clay brick pavers of the public streetscape shall match the streetscape improvements along Station Street abutting the Herndon Commerce Center. Canopy trees, suitable for limbing up, as determined by the Zoning Administrator using recognized standards, shall be provided as to the street trees. In addition to the street trees, grates and pavers, within the streetscape amenity zone, the Applicants shall provide benches (minimum 2), litter receptacles (minimum 2) and a recycling receptacle. The style of these amenities will match the adopted Town of Herndon Streetscape Guidelines and the manufacturer and construction will be dependent upon approval, if it is approved, by the Zoning Administrator using recognized standards. In addition to those planters required by Section 78-503.6(a)(3)c, the Applicants shall provide additional commercial grade planting containers, a minimum of 3, to be located within this streetscape area. The containers

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shall be for the purpose of providing seasonal landscape color and shall be maintained by the Applicants.

Internal Public or Private Streetscapes, Lanes and Alleys: Internal vehicle drives, exclusive of drive aisles within structured parking facilities and surface parking lots, shall incorporate pedestrian facilities providing safe, convenient and attractive walkways. The pavement materials, lighting and other features will reflect the general style of the Development and such features and general layout of the pedestrian and vehicle access shall be reviewed and approved, if they are approved, by the Zoning Administrator using recognized standards. Shared use surfaces as shown on the adopted Downtown Master Plan are acceptable, provided they meet engineering and ADA requirements.

7. **Streetlights and On-Site Lighting.** At the time of site plan submission, the Applicants shall provide the necessary photometric plans and meet Town adopted lighting standards. The Applicants shall provide and install the Town approved standard Downtown Streetscape pole and fixture along Station Street, Center Street and any internal roads to be dedicated to the Town of Herndon. Alternative styles may be used within the development on private property if approved by the Zoning Administrator using recognized standards as a component of the site plan. Any alternative styles shall be subject to review and approval, if they are approved, by the HPRB.

8. **Undergrounding Utilities.** The Applicants shall remove all utility poles and underground wires abutting the Property along Station Street and the Vine Street extension. Applicants shall remove the poles and underground the wires located within the northern portion of the Property and running parallel to the land owned by the Northern Virginia Regional Park Authority. In addition to the existing wires to be placed underground, all new utility lines shall be placed underground. Should the Town adopt an alternative underground utility layout plan prior to submittal of the first site plan associated with this zoning map amendment, the Applicant shall relocate the utilities in accordance with the adopted alternative underground utility layout plan if the alternative plan is determined by the Zoning Administrator to be a viable alternative for the Development.

9. **Loading Spaces.** Per Modification #4, the Applicants shall provide one loading space to serve the uses fronting on Station Street. The loading space shall be located close to the Station Street commercial uses and provide convenient service, based on recognized standards. The Applicants shall provide a loading space in a location that can serve residents and the management of any residential structures located west of the culvert with move in/move out temporary parking. Such parking shall meet the standards described in Modification #4 and be located within the Development and not on the public right-of-way.

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10. Telecommunications Equipment. Telecommunications equipment may be placed on the proposed residential and non-residential buildings' rooftops. Any such facilities must comply with the applicable requirements of the Zoning Ordinance and federal law and be screened or setback sufficiently from the perimeter of the roof and penthouse such that the facilities are not visible from the streets, forming the boundary of the Property, at street level. Other screening measures may be used such as including the facilities as part of the architecture of the buildings, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas. Telecommunications equipment may also be architecturally integrated onto the facades of the buildings where necessary. Final decisions concerning the appropriateness of screening measures shall be by the Zoning Administrator, using recognized standards.

11. Noise Attenuation. The Applicants shall install sound reducing windows and construct sound insulated exterior walls on residential facades facing the Washington & Old Dominion Regional Trail and Station Street. The windows and walls shall meet attenuation standards determined through professional consultation by staff to achieve the desired effect while still being readily available to the building industry.

12. Notification of Exterior Noise Levels and Downtown Activity. The Applicants shall notify potential tenants or purchasers of individual residential units, either in the lease or sales contract, that the area surrounding the Development, particularly the Town Green and Town Hall Square, serves as an outdoor entertainment venue, with amplified sound and significant attendance under controlled conditions and hours.

13. Bicycle Parking. The Applicants shall provide bicycle racks, and bike storage areas throughout the Property both in exterior locations such as the public right-of-way alleys and courts as well as within the parking garages or other structures. The specific locations shall be determined at the time of site plan approval. Exterior bicycle racks shall be the post and circle design formerly approved by the Town of Herndon Heritage Preservation Review Board. Bicycle racks within structures shall allow attachment of the bicycle at two places. The Applicants shall provide bicycle parking at the rates required by the Town of Herndon Zoning Ordinance at the time of site plan submission.

14. Public Open Space. The Applicants shall construct an area of public open space at the northeast corner of the Property abutting the property of the Northern Virginia Regional Park Authority. The final design of the open space will be in collaboration with the Town of Herndon and may be designed to accommodate interactive art or water feature. The Applicants shall design the open space area in a manner that incorporates it into the overall design of the Development, while ensuring the open space area is visually and physically connected to the Station Street streetscape and inviting to non-residents of the Development. The Applicants shall secure the services of a registered architect or registered landscape architect to design the open space area. The design shall incorporate soft as well as hardscape. Tree canopy shall be used to provide areas of shade over some portion of the space during summer months. The Applicants shall provide any needed public access easement to be dedicated to the

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Town of Herndon. The Applicants shall work to unite the Town Green, the Washington and Old Dominion (W&OD) Trail and the property into a greater public open space.

15. Recreation. The Applicants shall include recreational amenities within the Development for use by residents of any residential units located within the Development. The range, type and size of the amenities shall reflect other similar developments within the Herndon and Dulles Corridor at time of site plan submission. Due to the increase in demand that the additional residential units will place on Town recreational services, the Applicants proffer \$1,800 per residential unit to be paid to the Town of Herndon at the time of issuance of a certificate of occupancy of the unit or units. Areas of soft landscaping within courtyards shall be incorporated into the Development for the passive or active enjoyment of the residents. The design of such landscaping and the selection of plant materials shall reflect solar and shadow conditions to ensure the health of trees or other plant material. Service or utility courts may be exempted from the requirement for soft landscaping where appropriate. Final decisions concerning the appropriateness of landscaping measures shall be by the Zoning Administrator, using recognized standards. The Applicant may include rooftop landscaping within the Development for the active or passive enjoyment of the residents or for energy and environmental purposes.

16. Vehicle Connectivity. One vehicle entrance and exit will be located along the Development's Station Street frontage. Vehicle connectivity through the site will occur in one of the following ways: An outdoor alley connecting the Station Street entrance/exit with Center Street; or a combination of outdoor alley and signed drive-aisle through a parking garage to Center Street; or a one-way alley from Center Street abutting the south property line of Parcel 16-2-((2))-20C and connecting to the Development's Station Street access. The third option, if selected, will be designed in a manner that will permit a widening of the alley into a two way alley, incorporating portions of parcels 16-2-((2))-26 and 16-2-((2))-27A, by the adjacent property owner at the time of development of Parcel 26 and 27A. The third option configuration may be incorporated into a parking structure drive-aisle.

17. Public Pedestrian Connectivity. Public pedestrian north/south and east/west connectivity through the site shall be effected through the use of public access easements. The pedestrian access may consist of dedicated pedestrian walkways, plazas, pedestrian friendly shared use space or any combination of the three. The public pedestrian access may be bridged by buildings but shall not be through parking garages. Direct access onto the property owned by the Northern Virginia Regional Park Authority shall be dependent upon approval by the Park Authority.

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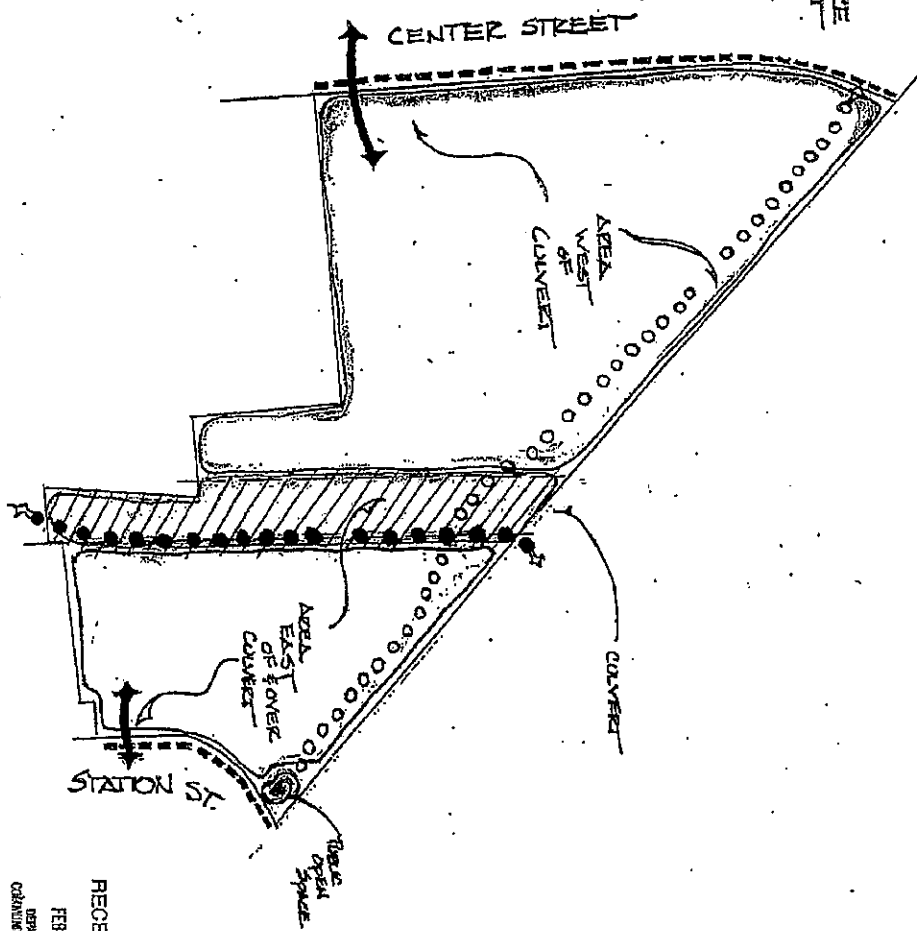
FOR ALLOWED USES
SEE PROFFER #2.

VEHICULAR EXIT/ENTRANCE
LOCATION ALONG STREET
FRONTAGE MAY VARY

PEDESTRIAN CONNECTIONS
0000 EAST/WEST
0000 NORTH/SOUTH
(LOCATIONS MAY VARY
GUIDED BY ADOPTED
DOWNTOWN PLAN)

PUBLIC STREETSCOPE

ZMA #14-101



RECEIVED ON
FEB 21 2014
DEPARTMENT OF
COMMUNITY DEVELOPMENT

Attachment 2
Generalized Development Plan
14-O-16

GENERALIZED DEVELOPMENT PLAN 2/17/14 ELIZABETH M. GILGERAN, AICP

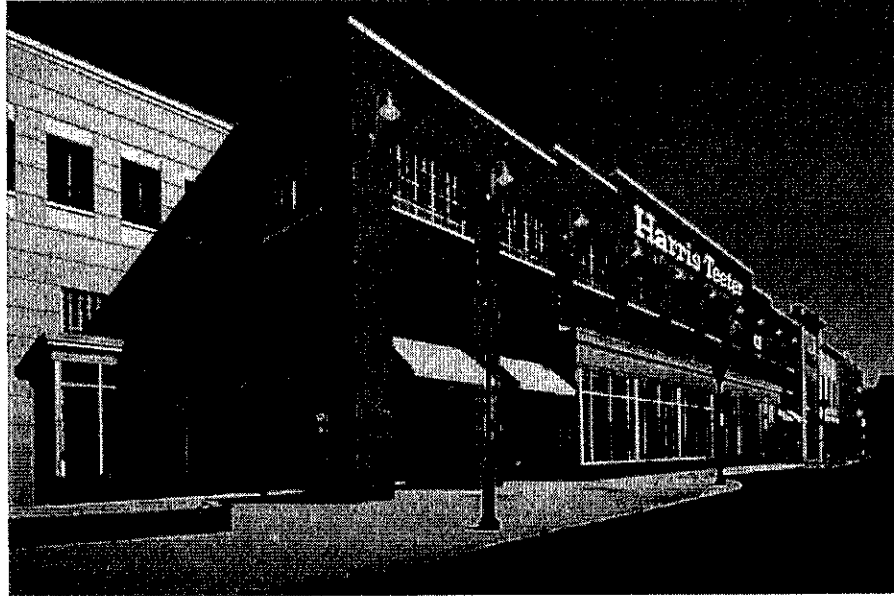
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Proffers

Exhibit A

Date: _____

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(public session)*



Woodland Park – MV+A Architects



Woodland Park – MV+A Architects₂

Attachment 3
Proffers Exhibit A
14-O-16

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Woodland Park – MV+A Architects

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Gunston Hall – Rust Orling Architecture

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Proposed South Elevation (Montgomery St.)
Scale: 1/4" = 1'-0"

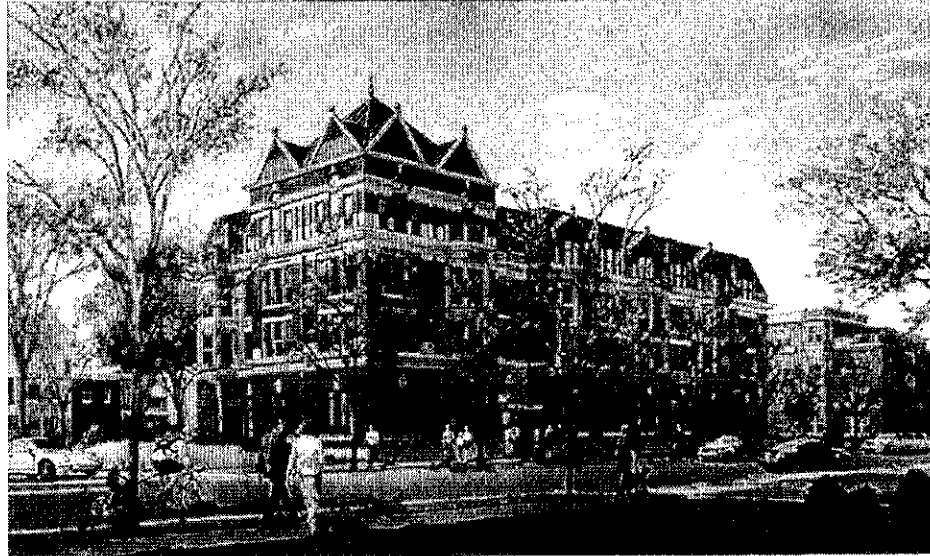


Rust Orling Architecture



Monarch – Rust Orling Architecture

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Slaters Lane – Rust Orling Architecture

*May 27, 2014
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Polleo Group

*May 27, 2014
(public session)*



Polleo Group

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(public session)*



Cunningham Quill Architects PLLC

Encore Development Corporation

The Heritage Foundation and 3rd Street Properties, LLC

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MODIFICATIONS

ZMA #14-101

May 27, 2014

The following Modifications are being requested to allow the fulfillment of the Downtown Plan and in keeping with Sec. 78-202.1(d)(4) of the Town of Herndon Zoning Ordinance (2006, as amended) (Zoning Ordinance).

1. Requested modifications from Sec. 78-201.3 Submittal requirements.

Modifications of Sec. 78-201.3 (6), Sec. 78-201.3(7) and Sec. 78-201.3(10) are being requested. Specifically modifications are being sought of subsections (a) and (h) of Sec. 78-201.3 (6), requirement for an engineer, architect, landscape architect or surveyor to seal the Generalized Development Plan and the requirement that the plan be submitted as blue or black line copies. A modification of Sec. 78-201.3(7) contents of plans is also being sought, as is a modification of Sec. 78-201.3(10) 1 and 2 requiring a traffic impact study and a development schedule.

Due to the nature of this rezoning as a Town initiated rezoning based upon the adopted Downtown Master Plan and the adopted Downtown Pattern Book A Guide to Downtown Development, and being that the Town, as the owner of the property, will retain a singular level of oversight throughout the land use approval process, the Town is proposing a simplified more flexible Generalized Development Plan (GDP). The proposed GDP will inform the process but allow for maximum flexibility in the future layout of the site, the primary parameters of the development having been determined through the Downtown Plan planning process and illustrated within the Downtown Pattern Book, A Guide to Downtown Development. To permit a more flexible GDP a modification of requirements listed within Sec. 78-201.3(7) is being requested.

Furthermore, due to the simplified nature of the GDP, the plan will not exhibit the level of detail that would necessitate the need for expertise in engineering, landscape architecture, or architecture. The plan will be drawn based upon a professionally prepared survey, but will not be sealed by a surveyor. The plan will be prepared by a planner who is certified by the American Institute of Certified Planners. Ammonia based or CAD generated blue line or black line print will not be produced, but the GDP will be reproduced using a copier and electronic versions will be available.

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During the Downtown Master Plan process traffic and level of service were studied and at time of site plan submittal, should ZMA #14-101 be approved, a new traffic study will be required. The applicants request that yet a third traffic study not be required at this time since several significant details of the development are not known which will be known at site plan stage and which will play a significant role in the analysis of the traffic. Due to these circumstances, the applicants are requesting a modification to not provide a new traffic impact study at this time.

In addition, the Zoning Ordinance requires a statement setting forth the proposed approximate development schedule. The applicant argues that this information is not available at this time, and can be provided at the time of site plan submittal, when an accurate estimation is possible.

2. Requested modification of Sec. 78-303.2(e)(8) PD-TD- Planned development traditional downtown – Height and 78-701 Definitions

The applicant is requesting modification of the above referenced section concerning the height of structures in the PD-TD. Section 78-303.2(e) states:

(8) Height.

a. The height of a structure shall generally follow the form of the Downtown Master Plan element of the 2030 Comprehensive Plan, as amended, incorporated by reference, and shall not exceed 50 feet from the finished grade except for architectural features such as parapet walls, elevator structures, heating, ventilation and air conditioning equipment and associated screening. These latter, excepted structures shall not exceed 64 feet in height from the finished grade. Further, these excepted structures shall not exceed 14 feet in additional height from the top of the highest story of the building at the main roof deck level or at the point on a sloped roof that is at the top of the highest floor of the building. No portion of a gable end peak, parapet wall or other structure shall exceed 64 feet from finished grade. Along a sloped street the finished grade shall be the average grade along the street frontage. Finished grade shall be determined per the definition of grade in Article VII, Definitions, of this chapter. These features are further described in section 78-402.7

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b. In accord with section 78-511, Downtown, building facades shall not be less than 20 feet in height as measured from the finished grade of the abutting public sidewalk to the top of the parapet on flat-roofed buildings or to the eave of pitched roof buildings. Single-family detached structures including accessory uses in the Downtown Master Plan area are excepted from this requirement.

The applicant is requesting that the following modification be allowed:

That the 50 foot height of the structure be increased to a maximum of 54 feet. Since the development and adoption of the Downtown Plan, the development industry has seen an increase in the height between floors. To allow higher quality, more desirable development, the allowable distance from floor to floor should be at least 11 to 12.0 feet for residential upper stories. In a 50 foot tall building, three residential floors with a floor to floor measurement of 12.0 feet would leave only 14 feet for the ground floor. Commercial ground floors should be at least 16 to 20 feet in height, necessitating a total building height of approximately 54 feet, and a corresponding increase in the allowable height of associated structures permitted above the maximum height.

Furthermore, the applicant is requesting a modification of height in regards to the definition of basement found in Sec. 78-701 of the Zoning Ordinance, which states that a basement has "more than one-half of its height below grade." The applicants request that this definition be modified to allow finished floor area with a minimum of 1/3 of its height below grade be considered as a basement level and not counted as a building story, thus providing for English basement conditions along street elevations.

The applicant is requesting these modifications to provide for functional as well as decorative features such as livable English basements, potential loft space in upper floor units, and higher quality residential and commercial development. The inclusion of English basements was prevalent in late 19th and early 20th century multi-family and townhouse structures. Although some portion of an English basement is visible, it does not constitute a full story and should not be considered such when determining the number of stories above finished grade. For functionality and safety, it is preferable that the height of an English basement extend above grade more than 1/2 of its height.

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3. Requested modification of Sec. 78-511(1) Downtown streetscape.

The applicant is requesting a modification of this section of the Zoning Ordinance which requires that abutting public rights-of-way be developed in accordance with the Herndon Guidelines for the Planning and Design for Town Streetscape Projects (dated November 25, 2008). At the time that these guidelines were developed the inclusion of stormwater planters within streetscapes was still relatively new and limited. The technology and aesthetics have advanced. The applicant proposes to have the option of using the planting beds along the Center Street streetscape to achieve stormwater management and quality requirements to the extent that the planters are recognized by the State for stormwater management and best management practice use. The design of the planter will be both functional and attractive and will take into account the use of salts and the piling of snow during winter months. Should this modification be granted the applicants will proffer that the maintenance of the stormwater features within the streetscape be the responsibility of the applicant or future owners of the development and the design shall be both aesthetically pleasing and functional, meeting any applicable standards and requirements of the Town of Herndon.

4. Requested modification of Sec. 78-500.4 Loading space standards.

The applicant intends to provide a loading area for the mixed use building on the east side of the development and a space for one moving truck to service any multi-family uses located on the west side of the property. The applicant is seeking a modification of the requirement to provide striping and labeling of the pavement should an alternative to asphalt be chosen as the pavement material. The applicant wishes to work with the Town staff to ensure functional loading spaces located within the Development but with flexibility as to the appearance so not to detract from urban design features that may be used whether in a shared use situation or just in an attempt to create a more attractive environment.

5. Requested modification of Sec. 78-503.6 (3)d Exposed Parking Deck frontage located in the PD-D and PD-TD.

Sec. 78-503.6 (3)d requires a landscape planting area with a minimum width of six feet located adjacent to any façade not wrapped by usable ground floor retail, office or lobby space and fronting a public street or pedestrian area. The applicant wishes to modify this section of the ordinance to allow:

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a. A parking garage adjacent to a public street, with a façade that is highly detailed and the massing of which is handled in a manner that evokes a habitable building, as determined by the Town Council during a public hearing, to abut the 12 foot wide public streetscape without a six foot wide planting area between the streetscape and building façade.

b. A parking garage, not abutting a public right-of-way, but adjacent to a pedestrian or vehicle area within the Development to abut the pedestrian or vehicle area without intervening landscaping, if it is the judgment of Town Council by ordinance that the façade of the garage and the design of the pedestrian or vehicle area is such that a buffer of landscaping is not warranted.

The applicant believes that such modifications are appropriate due to the nature of future Downtown development and the requirement within the requested modification that the Town Council shall be the arbiter of whether or not the façade of the garage is adequately detailed to be an attractive addition to the streetwall or the internal pedestrian and vehicle areas. It is the intent of the applicant to ensure an attractive built environment that does not necessitate hiding structures with walls of landscaping.

The applicant believes that the modification #1-#5 meet the intent of the Zoning Ordinance. The Zoning Ordinance states that the Planning Commission and Town Council when considering modifications shall be guided by the following:

1. Whether or not the public purposes of planned development or general regulations would be met to at least an equivalent degree by the modifications;
2. Whether or not the proposed modification is consistent with general law of this commonwealth;
3. Whether or not the proposed modification is consistent with good zoning practices and would result in a better development; and
4. Whether or not the planned development initially involves development of land under unified control, planned and developed as a whole in a single operation or in planned phases. Planned developments shall be developed according to detailed plans for streets, utilities, lot layout, building sites, site plans, floor plans and the like. Buildings in a planned development are intended to relate functionally to one another and be used, operated and maintained under a common program.

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Requested modification #1, is being requested due to the unique but advantageous situation that is afforded by this application. As the Town is the owner of the land, the Town will hold a unique position throughout the entitlement process and controls the final disposition of the property. The required submission materials are to protect the Town and its citizens from possible concerns that the Town as the owner can guard against without the usually required submittals.

Modifications #2, #3, #4 and #5 speak to the physical layout and construction of the development. In each case a variation of the requirements are requested to allow a broader range of options that are intended to enhance the exterior of the development. The intent is greater innovation and a more attractive built environment.

Each of these modifications is consistent with the laws of the Commonwealth. The modifications seek to enhance the future development making it a more attractive place to live, work and play which in turn will create a positive effect on real estate tax revenue. By creating a more attractive development these modifications meet the intent of the Zoning Ordinance and the adopted Downtown Master Plan. Due to the guidance of both the adopted Downtown Master Plan and the Downtown Pattern Book the development will meet the language of item #4 in the criteria for the approval of modifications.

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7. **CONSENT AGENDA**

Resolution 14-G-42, Authorizing the Town Attorney to File and Conduct a Civil Action to Pay into the Circuit Court funds from the Station Street Project Representing Unclaimed Proceeds for Land at 890 Station Street so that Conflicting Claims may be Adjudicated and the Town may be Dismissed as a Party as Having Discharged its Obligation to Pay Just Compensation for the Land;

Resolution 14-G-43, Virginia Retirement System Employer Contribution Rate;

Resolution 14-G-44, Award of Contract #14-14, Production and Printing of Annual "At Home in Herndon" Town Calendar; and

Resolution 14-G-45, Award of Contract IFB #14-08, Street Sweeper.

Vice Mayor Hutchinson moved approval of the referenced items on the "Consent Agenda" without comment. This motion was seconded by Councilmember Jonas and carried by a unanimous vote. The vote was:

Vote: Councilmembers Jonas, Kirby, Olem, Waddell and Wolf, Vice Mayor Hutchinson and Mayor Merkel voting "Aye."

14-G-42 Resolution, Authorizing the Town Attorney to file and conduct a civil action to pay into the Circuit Court funds from the Station Street project representing unclaimed proceeds for land at 890 Station Street so that conflicting claims may be adjudicated and the Town may be dismissed as a party as having discharged its obligation to pay just compensation for the land.

BE IT RESOLVED by the Council for the Town of Herndon that:

1. The Town Attorney is authorized and directed to file a civil action of interpleader and collateral relief to seek the judicial disposition of Station Street Improvement proceeds of \$27,170 for land acquired by the Town for this project at 890 Station Street. These funds have not been disbursed because of conflicting claims of the owner of 890 Station Street and two lenders that have filed deeds of trust liens on 890 Station Street to secure loans to the owner.
2. The civil action shall seek a court order allowing the Town to pay the \$27,170 into the Circuit Court, dismissing the Town as a party so that the other interested parties may adjudicate the disposition of these funds, and ordering the two lenders to sign

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and deliver to the Town certificates of partial satisfaction releasing the Town's land at 890 Station Street from the liens of the deeds of trust.

3. In this litigation, the Town Attorney shall seek to recover the Town's costs incurred in this civil action and seek to recover the Town's attorney's fees at the rate of \$245 per hour for the Town Attorney's time in preparing, filing, and conducting this civil action.
4. The Town Attorney and Town Manager are authorized to settle or otherwise dismiss this civil action in such a way that achieves the release from the Town's land at 890 Station Street from the liens of the deeds of trust. The Town Attorney shall advise the Mayor and Town Council of any such settlement or dismissal.
5. This resolution shall be effective on and after the date of its adoption.

14-G-43 Resolution, Virginia Retirement System Employer Contribution Rate.

BE IT RESOLVED that Town of Herndon 55325 does hereby acknowledge that its contribution rates effective July 1, 2014 shall be based on the higher of a) the contribution rate in effect for FY 2012, or b) eighty percent of the results of the June 30, 2013 actuarial valuation of assets and liabilities as approved by the Virginia Retirement System Board of Trustees for the 2014-16 biennium (the "Alternate Rate") provided that, at its option, the contribution rate may be based on the employer contribution rates certified by the Virginia Retirement System Board of Trustees pursuant to Virginia Code § 51.1-145(I) resulting from the June 30, 2013 actuarial value of assets and liabilities (the "Certified Rate"); and

BE IT ALSO RESOLVED that the Town of Herndon 55325 does hereby certify to the Virginia Retirement System Board of Trustees that it elects to pay the following contribution rate effective July 1, 2014:

(Check only one box)

- ✓ The Certified Rate of 9.77% The Alternate Rate of 7.82%;
and

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(public session)

BE IT ALSO RESOLVED that the Town of Herndon 55325 does hereby certify to the Virginia Retirement System Board of Trustees that it has reviewed and understands the information provided by the Virginia Retirement System outlining the potential future fiscal implications of any election made under the provisions of this resolution; and

NOW, THEREFORE, the officers of the Town of Herndon 55325 are hereby authorized and directed in the name of the Town of Herndon to carry out the provisions of this resolution, and said officers of the Town of Herndon are authorized and directed to pay over to the Treasurer of Virginia from time to time such sums as are due to be paid by the Town of Herndon for this purpose.

14-G-44 **Resolution, Award of Contract #14-14, Production and Printing of Annual "At Home in Herndon" Town Calendar.**

WHEREAS, the Town of Herndon publishes an annual "At Home in Herndon" Town Calendar, distributed free of charge to all residences and businesses each December and including information on events and services provided by the town; and

WHEREAS, the previous contract for production and printing of the calendar has expired; and

WHEREAS, the town issued an Invitation for Bid (IFB) #14-14 to solicit bids for producing and printing the calendar; and

WHEREAS, bids were received by April 30, 2014, from the following companies:

B&B Printing, Inc.	\$12,140.00
Graphic Image, Inc.	\$12,224.00
Amer. Institute for Preventative Medicine:	\$13,455.40;
and	

WHEREAS, B&B Printing, Inc. of Richmond, Virginia,, submitted the lowest responsive and responsible bid, in the amount of \$12,140.00 for one year with four one-year renewal options.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards Contract #14-14 to **B&B Printing, Inc., of Richmond, Virginia** for producing and printing the Herndon Town Calendar.

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(public session)

14-G-45 Resolution, Award of Contract - IFB #14-08, Street Sweeper.

WHEREAS, an Invitation for Bid was issued for a Street Sweeper to remove debris and oils from the street surface, which is a requirement of the storm water ordinance and which also beautifies the town; and

WHEREAS, the Invitation for Bid was posted March 12, 2014 on the eVA Commonwealth of Virginia procurement website to maximize fullest competition; and

WHEREAS, three bids were received on April 16, 2014;

Bidder	Amount/Unit Price
Virginia Public Works Equipment	\$189,950.00
Mid-Atlantic Waste Systems	\$195,600.00
Atlantic Machinery, Inc.	\$209,940.00; and

WHEREAS, Atlantic Machinery, Inc. offered the only responsive and responsible bid; and

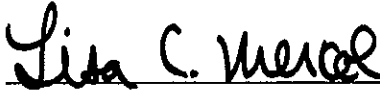
WHEREAS, funds are available to purchase the street sweeper at the cost established by this bid are available in account number 001-0886-441.80-03; and

WHEREAS, other Budget and Reserve accounts, as needed, will be used to fund the purchase of the street sweeper.


NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards Contract #14-08 to **Atlantic Machinery, Inc.** for a Schwarze A7 Street Sweeper

8. ADJOURNMENT

There being no further business, the meeting adjourned at 8:22 p.m.



Lisa C. Merkel
Mayor



Michelle J. Flores
Administrative Assistant

Minutes approved by Town Council: July 8, 2014.

