

TOWN OF HERNDON, VIRGINIA
PLANNING COMMISSION PUBLIC HEARING MINUTES

SEPTEMBER 13, 2010

The Planning Commission met on Monday, September 13, 2010, in the Ingram Council Chambers located at 765 Lynn Street, Herndon, Virginia. Chairman Robert P. Burk called the meeting to order at 7:00 p.m.

ROLL CALL:

Chairman Burk asked the Recording Secretary to call the roll.

Ms. Tappan called the roll, as follows:

Commissioner Bettard:	Present
Commissioner Burke	Present
Commissioner East:	Present
Commissioner Jonas:	Present
Vice Chairman LeReche:	Present
Commissioner Moses:	Present
Chairman Burk:	Present

Ms. Tappan turned the meeting over to Chairman Burk, who noted that a quorum was present.

Staff Present:

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

APPROVAL OF MINUTES:

Chairman Burk presented the minutes from the work session of July 12, 2010, the public hearing of August 2, 2010, and the work session of August 30, 2010, for review and approval.

MOTION: Commissioner East moved approval of the minutes from the work session of July 12, 2010, as submitted.

Vice Chairman LeReche seconded the motion. The motion carried 6-0-1 (Commissioner Jonas abstained).

MOTION: Commissioner East moved approval of the minutes from the work session of August 2, 2010, as submitted.

Vice Chairman LeReche seconded the motion. The motion carried unanimously, 7-0.

MOTION: Commissioner East moved approval of the minutes from the work session of August 30, 2010, as submitted.

Vice Chairman LeReche seconded the motion. The motion carried, 5-0-2 (Commissioners Bettard and Moses abstained).

APPROVAL OF AGENDA:

Chairman Burk suggested that the agenda move forward as presented.

COMMISSIONERS' COMMENTS:

There were no Commissioners' Comments.

STAFF COMMENTS:

There were no staff comments.

CITIZENS' COMMENTS:

There were no citizens' comments.

PUBLIC HEARING ITEMS:

1. **COMPREHENSIVE PLAN AMENDMENT, CPA #10-01, DOWNTOWN MASTER PLAN.** Amend the Town of Herndon 2030 Comprehensive Plan adopted August 12, 2008, to incorporate by reference a Downtown Master Plan. The plan amendment will also make minor changes to the appropriate plan text (mainly Chapter III: Land Use Plan) in order to reference a master plan. The Downtown Master Plan includes a map of specific planned land use and related information. The general purpose of the plan amendment is to carry out the vision, goals and objectives of the 2030 Comprehensive Plan to encourage a vital downtown with a mix of land uses. The master plan depicts residential, commercial and public uses and parking facilities to support these uses; the plan displays the approximate height and level of density on each block of a core downtown area. The area is similar or equal to areas displayed as Sectors 1, 2 and 3 in the 2030 Comprehensive Plan. 16 block areas are affected; they are located in the center of the Town of Herndon in the general area of Elden Street, Center Street, Vine Street, Lynn Street, Station Street, Spring Street, Pine Street, Monroe Street, Jefferson Street, Jackson Street, Van Buren Street and the Washington and Old Dominion Railroad Regional Park. Downtown Master Plan maps and related information are posted on the Town of Herndon website at www.herndon-va.gov (click on Planning and Zoning and follow links). A descriptive summary of the proposed action is to update plan text and maps to reflect changed conditions and to incorporate land use policy based on the results of a major community planning process. *Deferred from the August 2, 2010, public hearing.*

STAFF COMMENTS:

Dana E. Heiberg, Senior Planner, presented the staff memorandum dated September 8, 2010, which is on file in the Department of Community Development.

Staff recommended deferral of CPA #10-01 until the public hearing of October 4, 2010.

QUESTIONS FOR STAFF:

Commissioner East asked for clarification of the length of continuance for this item. He noted that Mr. Heiberg suggested deferral until the public hearing of October 4, 2010, and Ms. Gilleran's memorandum of September 8, 2010, recommended deferral until the public hearing of November 1, 2010.

Ms. Gilleran responded that staff would like to receive public testimony at the public hearing of October 4, 2010, but staff believed that it would be more likely that the Planning Commission would take action at the public hearing of November 1, 2010. She explained that staff was compiling information for presentation of the next work session and at the public hearing of October 4, 2010, but she did not believe that the Commission would be prepared at that time to make a decision on this item. The Commission may want to continue reviewing the materials and then make a decision at the public hearing in November.

Commissioner East noted that he was concerned about the fact that staff presented most of the new information at the work session and had offered only a brief staff report for that evening. He asked what staff expected the public to comment on at the public hearing of October 4, 2010, that would lead to the Commission's vote on November 1st.

Mr. Heiberg responded that they could expect staff to submit a memorandum to the Commission once the staff has worked through the pending meetings and compiled the information. He suggested that they would try to get the memorandum ready for the work session, and the public would have access to that memorandum in order to make comments at the public hearing on October 4, 2010.

Commissioner East asked, "If not the October public hearing?"

Ms. Gilleran responded, "That would be a maybe, because we haven't been able to arrange a meeting with the Fairfax County staff until soon after your next work session next Monday, which is coming up fast. We're meeting with them on the 22nd, and how much information we'll be able to find out at that time...they may need to do some additional research after they meet with us. We're not quite certain about the timing. You raised another interesting point, though, and that is ability to let the public be aware of the fact that this material is being considered by the Planning Commission. Several months ago, there was a lot of publicity about the Downtown Plan, and we've seen that decrease over time. There really hasn't been a lot of information in the paper. I'm not even certain how many members of the public are aware that this is back at the Planning Commission level and that you are holding public hearings. That has become more challenging as the number of local papers has decreased. Staff will give that some thought to see if we can figure out a way to resolve it. One easy way to do something is to make certain that our Public Information Officer includes it in the "News You Can Use" broadcast and we'll remember to speak to her about that. We'll also talk with her about perhaps some other potential solutions to that problem."

Commissioner East responded, "I think that what we're experiencing right now is that the loss of the Observer was greater than any of us anticipated, or the affect of it was greater than any of us anticipated. I think the point I'm getting to, and I would like to address the public now if you don't mind Mr. Chairman, is that in our last work session, and I see a couple of folks here who were at the last work session, there were a great many things discussed that were novel to our discussions of the Downtown and germane to, I think, the public discourse. My concern is, as these ideas move forward, that they don't sort of get locked in before we have a chance for input. So, I'm going to encourage the public...I hate to put this burden on the public, but such as it is, we don't have an Observer to air all of the sides now, to come to the work sessions, as well as the public hearings, because the work sessions are where these ideas have free rein and there is an open discussion about them. The public hearing is your chance to put your thoughts and your comments on the record. Because of the lack of public newspapers, this is a more difficult process now; a more difficult process than it was this time last year."

Vice Chairman LeReche commented, "In general, the two items that were discussed at the work session were the reclassification of the historic structures and there was also some discussion as to what level could the expenditure or cost of the garage and for that matter the art center, be levied on the Town? Are these two items being pinpointed back to the consultants as questions that we could use assistance on?"

Ms. Gilleran responded, "We have asked the consultant to consider what a structure attempting to incorporate the uses described for the art center...what that might look like on that site. We have not provided the consultant with a request concerning the use of the site as an arts center with mixed use incorporated into the fabric of the building and we have not gone back to the consultant about the parking garage. The parking garage financing is really the core issue that we are going to be discussing with Fairfax County. We've heard from the public and from some of the Downtown business people concerning TIF financing (Tax Increment Financing) or some version of that. It may not be a formal TIF, but some version of that, utilizing in part tax revenue from the County, as well as from the Town. Fairfax County has one parking garage that was built utilizing TIF in the Merrifield area. They are familiar with the various financing issues

surrounding that type of financing, so we are going to be meeting with Fairfax County to discuss that further. We really think that, at this point, they are going to be able to provide us with more specific information, compared to going back to the consultant, who would have general information about that type of endeavor. Concerning the arts center on Parcel E, we have not gone back to the consultant. What the consultant has told us to date concerning an arts center is that arts in the Downtown would, in fact, be a positive for the Downtown. It would help strengthen its appeal. It would encourage people to come down, use the restaurants, have a destination point that would be appropriate to a Downtown of the size and scale of Herndon. They said it could be many different things. It could be an art movie theater in the private realm; a private business. We do have some in Northern Virginia now, which tend to show more of the “art” films. It could be a public theater or a community theater, as we’ve been discussing. It could be an art venue such as ArtSpace, but something where you’re having activities that can help draw people into the Downtown. They said that for historic Downtowns of our scale, having the arts incorporated in the palette of uses is always beneficial. Concerning the location of it, as you know, in Plan B, they did keep it on Parcel E. They showed it as an expansion of the existing structure that would still hold the art activities. Plan A showed it moved to a different location; not looking at the financial part of it, looking at purely the use. They felt that either site, or in fact anywhere else in those Downtown blocks; they thought that that would work. They did not isolate a particular block or segment of the plan by saying, “if you’re going to have this use in the Downtown, you need to have it in this particular location.” They did not do that. One thing, and I’m not certain if you have it Dana, the little walk that they developed? When they [the consultants] developed what I’ll call the Downtown Stroll; a concept of lining the streets with uses that would encourage the public to have a loop stroll that they might do in an evening. You come Downtown, you have dinner, you then wander through some of the streets where they might be having some different activities. They did show the stroll heading down Lynn Street, the part of the plan that had the arts center at the corner of Lynn Street and Center Street, and it does not incorporate Parcel E. The reason for that is that Parcel E, in that particular plan, was to be residential. It was not meant to have ground floor retail, so it would not logically be part of that evening stroll. That being said, they did, as I mentioned, in Plan B, they showed the art use on Block E. At that time, they did not mention that being detrimental to the concept of having interesting streets where people would want to stroll along them. So, I don’t think that’s really an issue in this particular matter. Another change that you see, by moving the arts center or keeping it on Block E, the consultant is showing Center Street beyond the corner of Elden Street and Center Street, rapidly becoming residential in nature. They carry this up Center Street and past the bridge across from the library, when they recommended that we permit Carr Homes to come in and change the live/work units to purely residential townhouse units. So, in their plan, they are really showing Center Street definitely transforming into a residential roadway, and that was for several reasons. Again, in Plan B, they did have ArtSpace staying where it is and undergoing an expansion and they did not indicate to us that they thought it would be detrimental to the overall plan in any way.”

Chairman Burk asked, “Are you suggesting that we defer now until November or just to October and do it again in October?”

Ms. Gilleran responded, “After conferring with the Town Attorney, he suggests that you do the official motion to defer until the later date in November, but I am assured that you can still take public testimony in October, so we don’t have to remove it from the agenda until then.”

Chairman Burk asked, “Then there would be no action taken next month?”

Ms. Gilleran responded, “That is correct. If you choose the November date, then you would not be taking action next month, but you could still hear public comment.”

Commissioner East noted, “It would prevent us from taking action next month, because we would have deferred it to November.”

Ms. Gilleran responded, “Yes, that’s true.”

CITIZENS' COMMENTS:

Les Zidel of 1458 Kingsvale Circle stated, "I'm not here to go over any of the material that we've already given you in writing, and also for the testimony that we gave at the last hearing. But what I did want to address, are a couple of issues from the work session that I sat and listened to, particularly the question that George asked about why we should even change our recommendation. I thought that was an excellent question and I think that that deserves an answer, and I also want to stress the difference in this model from anything else that the Town has considered about an arts center. Somehow, and I really appreciate what Lisa has said tonight. I think it goes along way in getting from where we were 10 years ago to where we are now, but I think that there's still some missing pieces and that's what I want to address. First of all, let us be sure that we understand that we would be reaffirming a decision that the Town made in 2002 when they purchased Block E for the purpose of a future arts center. We also affirm that we need an economically viable plan, not only for this block, but for the whole Downtown core; a plan that will attract new businesses without making unattainable demands on the developing community or call for the development plan for unsuitable density for our Town. That's one of the things that I want to talk about. Going way back, the idea of an arts center has always been thought of as a public amenity. We all know what amenities mean...they mean it costs money. It's not going to be something that's going to self-sustain, and because of this, it was in direct competition (shall we say) with other needs in the Downtown...and those other needs include the parking structure, which is extremely important if we're going to have any additional development. So, the arts center not only was seen as a money drain, if you will, in the sense that a developer would have to make proffers that would impact what densities they would have to ask for and what other amenities could be created in the Downtown. It was seen as a stand alone arts center. Do you realize the significance of that? When you go out for a public/private partnership, as we did five years ago, it was seen in the documents that went to the developers, of which we didn't have any input at that time, that this was going to be an arts center over here, and the developer was going to build some commercial development to help pay for it, over here. Two different things going on. What we're talking about now is a totally different model. A model that takes both the public and the private, the private side being associated uses, and puts them in the same block...not separated. What that does, is it creates not only a coalition of forces to pay for the parking that can be shared, but also it creates a community of arts organizations, some of which are involved in public exhibitions, some of which are involved with public performance, but some are strictly commercial businesses. The arts are required, in a way, to find ways to make these public things pay for themselves. It's never going to be 100%, but we can do better than what we've done, and this is the challenge that needs to be figured out, not just for Herndon's suburban Downtown, but as a model for other suburban downtowns all across this country. How are we going to afford, with the new economies that we're going to have for our lifetime probably, to keep promoting public art and yet finding ways for it to pay a good portion of its way. Isn't that really the issue? I believe it is, because we still have, in the staff report, that the arts center is going to be listed as something we're asking developers to do for us. Well, there's no free lunch. Developers cannot build centers at intensity levels that are appropriate for the Town of Herndon. We figured this out long ago. Even if they could do it, and hand it over to us, the operating costs for such a center that doesn't have income producing entities other than for public performance, would fail on its own as well. I know I don't have much more time, in fact I don't have anymore time. What I really want to say to you is that we have a lot of work to do on this, and we're not there yet, but what we do know is that the old models will not work. We need to find a new way to accomplish this. I think we're on the road to it. We've already begun to have meetings on the County level. We're having meetings with other art organizations that are not only Herndon based, but Fairfax County based. We're going to begin talking to some state people, as well. What we're talking about is a regional center. We're not thinking of this as just a municipal project, and I don't think that has come through in the documentation that we've had. I want to say to you that what we're trying to find is a model not just for the immediate present, but for the future. We're not going to rebuild Downtown with old uses and expect them to work. Our Downtown hasn't been developed properly for a long time now, and there's a reason for that. The old uses simply can't work in the kind of structures with the undergrounding of utilities and the cost of development...it's too much for small people

to do...the mom and pop places. We don't have room for big boxes, we need to find what uses will work. We need to find a new kinetic energy to get this Town going. I'll end with one point; I have a graph at my desk here at ArtSpace of all of the projects that are already approved in Loudoun County. Many of them mention arts centers of some sort or another. Of course, they haven't dealt with any of the realities of the costs yet. What I want to point out to you is in this lull that we have economically...this is the right time to do the planning, so that we'll be out of the box as this recession ends. It may take several more years, but we've got several years of planning to do. What we're asking is don't sell this block out from under us, so that we cannot build a regional center. Unless we have the ability to add the commercial enterprises to the public, we cannot sustain a public arts center. It isn't like taking the arts center and moving it over here on top of something else, or putting it in another office building. The way it's going to have to work is through relationships and common areas between commercial entities and public entities, with the Trail, with the public open spaces...we need the right location and we'd be happy to sit down and talk about why we think Block E provides such a unique opportunity that no other Town in our region has. We have so much going for us. We should not be focusing on the negative, we should be focusing on the positive."

Richard Downer of 44354 Oakmont Manor Square, Ashburn distributed a flyer from Franklin Park Arts Center in Purcellville and stated, "What I passed around to you is part of a little exercise that we've been going through in looking at the various theaters around the area. We've made an appointment to look at the new Signature Theater, which has a very flexible space. We heard about the Franklin Farm Arts Center in Purcellville, so the other Sunday Linda and I drove out there and it's beautiful. This card shows you the aggressive stance that they are taking to bring various people...one of which I noticed was Mary Ann Redmond Band, was here last Monday...to make things happen in that community. It's a beautiful structure. It's got a very nice theater with fixed seating and a nice slope to it. I think it would be very enjoyable to watch any kind of performance there. They have a small gallery area and a small class area, and I think the theater area seats about 275 people, but I would have to confirm that. There's only one problem...it's a mile and a half west of Downtown Purcellville in the middle of a beautiful 100+ acre park. The activity that arts center creates does not benefit Downtown Purcellville directly. Indirectly, you can see they have a number of sponsors, but if you eat Downtown, you have to allow time to get out to the show. Would you get back in your car and drive back Downtown to have a drink after the show? Magnolia's, if you haven't eaten there, is by the old railroad station and it is very nice. This is the type of thing that we found. Les and I, very early on, went down to the Lorton work center in the old reformatory in Lorton. They've done a beautiful job down there, but it's in the middle of nowhere. If you need a sandwich while you are working in the gallery there, you need to get in the car and drive over to Occoquan to get something. That's one of the problems that they are having promoting that center. The thing that becomes so clear is that the right place for these types of activities is in the Downtown, where, if it's done properly, you can create this kind of activity but it will also help promote all of the businesses that are nearby. That's what we hope to show and hope to do...that we can come up with an arts/mixed-use center concept that will be a relatively new idea. We've got a lot more meetings to go to and flesh it all out. It is clear that the benefit that it would provide to Downtown Herndon in the form of increased activity...local as well as bringing people in, is the type of thing that we need in our Downtown. I appreciate everything you all have done to listen to us last week, and listen to us a little more here, and we will be back. I do support the continuation. I hope you will also explore parking. It got thrown out at the work session. The idea of not putting all the eggs in one basket for parking. To look at some smaller public parking areas around the Downtown. I hope you'll explore that too."

Chairman Burk closed the public hearing.

COMMENTS FROM THE COMMISSION:

MOTION: Commissioner East moved deferral of CPA #10-01 Downtown Master Plan to the Planning Commission public hearing of November 1, 2010. The commission needs additional time, as well as support from the staff, to explore issues associated with public financing and infrastructure and

development scenarios, including focus on Blocks D, E and F of the master plan. The commission will also consider other issues cited in the June 18, 2010, memorandum from Mayor DeBenedittis, including the reclassification of certain heritage structures and the inclusion of additional land area into the master plan. Specifically, an area between Jackson, Adams and Van Buren Streets (tax map 016-2-002, parcel 224) may be recommended as an addition to the Block O land area as shown on Option A.

Commissioner Bettard seconded the motion.

Mr. Kaufman stated, “There was a question raised earlier by a Commissioner about timeframes, and there is a statutory timeframe that’s usually the case when you’re talking about this type of thing. I think the General Assembly has gotten even more concerned about it. In 15.2-2229 of the State Code, there is an injunction or at least an aspiration, that the Planning Commission, after a Comprehensive Plan Amendment has been referred to it by the Town Council, act within 60 days or longer as specified by the Town Council. So, that probably won’t happen in this case. I also understand that the Town Council wanted the Planning Commission to, I think, act tonight on this plan or perhaps at another date.”

Ms. Gilleran responded, “Well, during the formal hearing when they remanded it to the Planning Commission, at that time, they did mention a date specific, but when we had our roundtable discussion (joint meeting) between the Town Council and the Planning Commission, several members of the Town Council, if not all of them, indicated that they would be more than willing to have the Planning Commission take additional time as needed. So, the formal action indicated a date certain, whereas, they have since indicated that they would be willing to support additional time.”

Mr. Kaufman asked, “And what was that date certain?”

Commissioner East responded, “September 13, 2010.”

Mr. Kaufman stated, “In a recent amendment to the State Code, of the one that I just mentioned, basically, the General Assembly said that if the local Commission fails to make a recommendation on the amendment within the timeframe, the Town Council may conduct its own public hearing, in other words, just proceed, but I don’t think that’s the case. I have no legal objection, even in the face of this timeframe, especially because the Town Council is working with you all and you’re working with the Town Council. I wanted to let you know about the timeframe. I don’t think it would legally affect your proposed action tonight and I have no legal objection to the motion. I would suggest that the motion include a reference to the continued public hearing to the October meeting, so that you can, if necessary, re-advertise it if that’s appropriate, and Lisa could make that decision. Certainly, you would let the public know that you’re going to hear public comment in October, and then have another continued public hearing in November, at which time you are contemplating action.”

AMENDED

MOTION: Commissioner East moved deferral of CPA #10-01 Downtown Master Plan to the Planning Commission public *hearings of October 4, 2010, and November 1, 2010*. The commission needs additional time, as well as support from the staff, to explore issues associated with public financing and infrastructure and development scenarios, including focus on Blocks D, E and F of the master plan. The commission will also consider other issues cited in the June 18, 2010, memorandum from Mayor DeBenedittis, including the reclassification of certain heritage structures and the inclusion of additional land area into the master plan. Specifically, an area between Jackson, Adams and Van Buren Streets (tax map 016-2-002, parcel 224) may be recommended as an addition to the Block O land area as shown on Option A.

Commissioner Bettard seconded the Amended Motion.

Commissioner East asked, “Does that satisfy your concerns Richard?”

Mr. Kaufman responded, “Yes, sir.”

Chairman Burk called for a vote on the motion. The motion carried unanimously, 7-0.

2. **APPLICATION FOR A SPECIAL EXCEPTION – SE #10-01, 703 Tamani Drive. Descriptive Summary of Proposed Action:** Consideration of an application for a special exception to permit an accessory dwelling unit to be occupied by a caregiver to assist the occupants of the principal dwelling who are at least 62 years of age and have a physical disabilities. The proposed accessory dwelling unit will be within the principal dwelling located at 703 Tamani Drive. The property is zoned PD-R, Planned Development – Residential, which permits an accessory dwelling unit with the granting of a special exception and compliance with the applicable requirements of Zoning Ordinance Section 78-402.7(a). The subject property is identified as Fairfax County Tax Map Reference 0161-18-0147A. Owner: Mr. Pandu R. Soprey. Applicant: Ms. Kamlesh Verma.

STAFF COMMENTS:

Mark R. Holland, Zoning Administrator, presented the staff report dated August 30, 2010, which is on file in the Department of Community Development.

Staff recommended approval of SE #10-01, with conditions.

QUESTIONS FOR STAFF:

Vice Chairman LeReche referred to the existing parking in the driveway and asked if the existing yard allowed the coverage necessary to keep the non-permeable areas the way that they are.

Mr. Holland responded that the maximum permitted area was 35% of coverage in the front yard, including the driveway and sidewalk. He added that this was a corner parcel, so the applicant’s had quite a bit of front yard area and would be well within the requirement.

Vice Chairman LeReche asked if the Special Exception and its conditions needed to be recorded as part of the land record or attached to the Deed so it would be clear and visible to anyone considering the purchase of the land, that they must convert this back to into, according to the way the proposed condition is dictated, “...all associated equipment and electrical must be removed prior to the sale...and also the permitting of an inspection by the zoning department to enforce it.”

Mr. Kaufman responded, “Mr. Chairman, I think the way that the staff has crafted proposed condition #15, adequately protects the Town from any situation where the property might be sold and the new owner would not be on record notice of the Special Exception after the sale. I’ve always recommended not putting zoning elements in the public land records. It’s not a matter of title, it is a matter of the zoning for the real estate, and that should not, from a legal standpoint and a title standpoint, be in the title records. However, any lawyer or anyone who is representing a purchaser should always check the zoning. I personally found out the hard way when I was a young lawyer in Roanoke. Even if that were not done, I think there’s more than enough adequate safeguards in this, that the Town Council has put into the Ordinance and the staff is recommending in the expiration condition, that would protect the Town. There is no need for recordation of this possible Special Exception if it were approved.”

Commissioner East referred to Condition #16: “The Town shall be notified at least 15 days prior to the sale or transfer of the property and, if possible, an affidavit by the future owners stating that use of the property shall continue to meet all of the

conditions.” He stated, “As I read through this, it seems to me that what you’re trying to get at is if the purchaser is going to continue the use of the property under the Special Exception Permit, then they’ll provide you with an affidavit. If they don’t intend to do it, they won’t be able to provide you with an affidavit. Isn’t that what you’re trying to get at here?”

Mr. Holland responded, “Yes, basically, yes.”

Commissioner East stated, “It doesn’t say that very eloquently. I’m not going to sit here and try to reword it for you, but I just want to get the idea that what you’re trying to get at is that if the new owner isn’t going to do it, and he can’t give you an affidavit, then the Special Exception permit expires. If he does give you an affidavit, then it doesn’t expire.”

Mr. Holland responded, “That’s correct.”

CITIZENS’ COMMENTS:

Paul Babka of 700 Tamani Drive stated, “I have no issue at all with this and going for the caregiver. I think it’s a great thing. I just wanted to ensure that a couple of exceptions might be stated so that this is actually going to get used for the use that it’s intended and being asked for and there are a couple of conditions that I would like for you to consider. Of course, we have an issue in Herndon with overcrowding, and I appreciate all the work you all have done to minimize and fix that here in Herndon, so these two things can be considered. The request that I read was a request for a single caregiver, but the documentation says that there can be up to two people living in the house, so if it’s for a single caregiver, I’d like to see it listed as such that this is allowed for a single individual to live in the house I would like to see the exception state that; and 2) There’s no stipulation that the individual or individuals moving into the house are, in fact, caregivers. That’s the intended use and we’ll take it for read, but if a future owner were to buy it and they were 62 or older, my reading of this is that there is absolutely nothing that could prevent them from renting this area out to two individuals and claiming them to be caregivers. What I’m recommending and I don’t know how this works, but as another stipulation that this individual who is living in the house, be recognized as a caregiver by the state of Virginia in some way or fashion, so that it’s forcing the space to be used for the purpose it’s being stated for.”

Bill Davis, President of the Four Seasons Recreation Association, 1201 Herndon Parkway stated, “This address, 703 Tamani Drive is a resident member of our association, and part of the Autumn Glen subdivision. First, I’d like to make a statement that supports the discussion that Ms. Gilleran and Commissioner East had earlier about communicating these things with the Town. The Association and the Board became aware of this issue this afternoon by a phone call that started out, “did you know that?” We’ve got to find a better way to let the Homeowners’ Associations know, and I’m not just speaking about Four Seasons, but all of the Herndon Associations know that there is activity going on in their neighborhoods. As far as this specific request, the Association would like to ask the Planning Commission to defer any activity on this for at least 30 days, if they would. While we understand that the residents are, for lack of a better term elderly, they are physically challenged and are looking for a caregiver. We feel that this matter needs a better look by the Association and the Planning Commission. We need to engage our attorney to review our covenants to see if there’s anything that this is in violation of, but unfortunately the time this afternoon did not permit us to get our attorneys involved. Also, the model of the house is what is known as a Berkeley, and one of the features of this house is that it has two master suites. We’re going to have to ask why they are building out an apartment, if you will, downstairs if there’s already a second master suite. Why can’t this person use the kitchen area that’s already up there? The other thing that we would like to challenge on this request, and Mr. LeReche please forgive me if I’m pronouncing your name wrong, is that we would like the wording in there that, yes, when this owner sells this property, if this exception is approved, that the structure be converted back to its original structural form, beyond just taking out the appliances and the wiring, that still leaves the mechanism there for the next owner to come in and just plug appliances in and again we have an apartment in our midst. It

would set a very bad precedent, not just for our neighborhood, but for the Town of Herndon.”

COMMENTS FROM THE APPLICANT:

Kamlesh Verma of 703 Tamani Drive stated, “The basement is already finished. It does have a bedroom. It does have a bath. The bedroom is with a window. It has underneath a separate entrance and an entrance from the inside of the unit. It does have existing wet bar. We are not going to change anything, except where the wine cooler is, move that and put a stove there. That’s all the change that we are applying for. We are not making any other structure changes. No structure changes and no other appliances or anything that is not there already, except for swapping the stove for the cooler in the same place. That’s item #1. Secondly, there are not two master suites in this particular house. There are three or four plans in the Berkeley style. The one we occupy is with only one master bedroom and it is very small. Some are extended, but this is not an extended model and it does not have a second master suite in this unit. We have taken one of the bedrooms and put in access to the elevator through that room. The other we are using for our temple or prayer room, or whatever and one is a guest bedroom. When we change, I want to understand what would we have to take off...just the stove that we are changing? Not anything else? Everything else is existing per plan. We applied for a bedroom, which was installed with a walk out entrance and the window. That was already approved and filed with the Town. Presently, there is no other change that we are making, except just plugging in a stove instead of the wine cooler.”

QUESTIONS FOR THE APPLICANT

There were no questions for the applicant.

Chairman Burk closed the public hearing.

COMMENTS FROM THE COMMISSION:

MOTION: Commissioner East moved to continue the public hearing and defer Special Exception SE #10-01 until the public hearing of October 4, 2010.

Vice Chairman LeReche seconded the motion.

Commissioner East explained, “I want to give the Homeowners’ Association the opportunity to review the application and to allow the Planning Commission more time to address the public comments during a work session, and to allow staff time to clean up the language in Condition #16.

Commissioner Burke commented, “I have no objection to the motion, however, I think it’s probably worth noting for the record that our action on this tonight, has no affect on the Homeowners’ Association’s ability to take action on this in any way they see fit. This is a question of Town Zoning Ordinances, and in fact there are Association documents that prohibit this activity, they have ample opportunity to do that. Just so that what we are doing clarifies that. That said, I certainly don’t have a problem deferring it.”

Vice Chairman LeReche commented, “I think the issues brought to light this evening are regarding the Virginia definition of caregiver; I’m not sure if there is one for a caregiver, and whether that’s a stipulation that we need to investigate or want to consider as well as the number of individuals that would limit that use. I think for clarification, we’re not looking at the number of master bedrooms or suites or access to a bedroom in the basement area, which you’ve provided legal egress from. This is an issue of putting in another kitchen for the utilization of this individual, whether he’s defined as a caregiver or whatever term we might want to use, is the only issue we’re looking at.”

Chairman Burk asked, “Does the Ordinance make mention of caregivers, or just the age requirement?”

Ms. Gilleran responded, “The Ordinance states that the qualifying person must be at least 62 years of age, or the person has a physical, mental or cognitive disability. I will go back to the office and see if there have been any decisions made in the past zoning decisions that would define that further. Technically, I don’t think the Ordinance utilizes the term “caregiver” or requires it to be a caregiver, if the person is 62 or older, but I will do additional research on that.”

Chairman Burk asked, “So, it could be that somebody 62 or over wanted some extra income?”

Ms. Gilleran responded, “I don’t believe that was the original intent, but I will verify that.”

Vice Chairman LeReche asked, “For clarification, it was the person requiring the care would be 62 and above, but it does not limit the age classification of the person who is going to be using that facility in the basement or wherever it is set up?”

Ms. Gilleran responded, “That is correct. You see, this Ordinance covers two different scenarios. In fact, we saw a Special Exception for the other scenario not too long ago, at the corner of Grant Street and Park Avenue, where there was a family that wanted to build a mother-in-law suite and since the mother-in-law was, in fact, 62 years or older, they were allowed to have that. No one in that situation was infirmed and neither occupant would be a caregiver. It was to allow the mother-in-law to move in, with a separate kitchen, to allow for independent living arrangements. I will go and check earlier determinations to see if there has been any further definition of the intent behind this, but at this time, I do not remember where it would be, per the Ordinance, a caregiver, per se.”

Commissioner Burke added, “If I could follow up on that, especially in view of Mr. Babka’s comments and the Chairman’s comment, there is nothing in here [the Ordinance] that specifies that it be occupied by a caregiver. We are, in effect, writing a requirement that isn’t present, if we specified that it be occupied by a caregiver. Your point about extra income...the only requirement that speaks to anyone is to the occupier of the dwelling. I think it’s probably a good point for Council as to whether the express purpose of the statute is being served by the language of the Ordinance.”

Mr. Kaufman commented, “I’m not aware that the word “caregiver” appears in here [the Ordinance].”

Chairman Burk asked, “At this point, we can’t raise the bar and limit more than the Ordinance already does. Is that correct?”

Mr. Kaufman responded, “Well, I think you could recommend that the Council do that and the Council could do that. I don’t see that in the documents that we’ve reviewed tonight. It’s always better to be consistent with the Town Council’s Ordinances.”

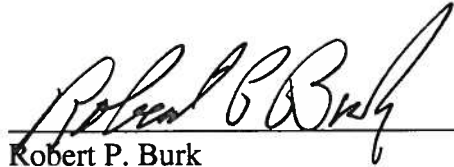
Chairman Burk called for a vote on the motion. The motion carried, 6-1 (Commissioner Bettard opposed.)

Commissioner East moved to adjourn.

Vice Chairman LeReche seconded the motion.

Chairman Burk called for a vote on the motion. The motion carried unanimously, 7-0.

The Planning Commission adjourned at 8:05 p.m.



Robert P. Burk
Chairman, Planning Commission



Patsy Tappan, Recording Secretary

Minutes Approved: 10/04/2010