

February 20, 2023

Mr. Douglas Wallace
Ashley Associates, LLC
14704 Rabbit Run Ct.
Centerville, VA 20120

Re: **Zoning Administrator Decision ZAD #22-02**
Wallace Condominium Units 296 A3 and 296 A4
Fairfax County Tax Map Numbers 0162 02 0296A3 and 0162 02 0296A4

Dear Mr. Wallace:

This letter is in response to your request (attachment 1) for a zoning determination relating to the above-mentioned property. Your request is for a determination regarding if the two second floor units (unit A3 and A4) are allowed as residential units and if associated on-site parking is required for those residential units.

The subject property was rezoned on November 10, 1998 (ZMA #98-102 and Ordinance 98-O-32, attachment 2) from CCD, Central Commercial District (currently known as CC, Central Commercial) to PD-MU, Planned Development – Mixed Use (currently known as PD-D, Planned Development – Downtown).

The town council granted a modification as part of Ordinance 98-O-32 that allowed, “...parking space requirements to be calculated at a rate of 1.85 spaces per thousand square feet of gross floor area of the total building, in consideration of the fact that the structure in existence at the time of adoption of this ordinance is a contributing heritage structure, and the referenced parking ratio is equivalent to providing 3.3 parking spaces per thousand square feet for the building addition shown on the Generalized Development Plan reference in paragraph C.1 above.”

The GDP, Generalized Development Plan, dated November 5, 1998, is included as attachment 3. The GDP shows that the total square footage for the existing structure and the proposed addition of Dairy Queen total 5,401 square feet and that 10 parking spaces will be purchased through the public shared parking program. With the modification, 5,401 square feet, at 1.85 spaces per 1,000 square feet, results in 10 parking spaces required.

Section 78-100.7(a)(5) of the zoning ordinance stipulates the required computation for public shared parking. Section 78-100.7(a)(5)(b) stipulates that residential development shall be computed at a rate of 1.5 per dwelling unit, of which only 0.5 or less may be in the form of public shared parking. Section 28-29-2A-(e) and (f) of the zoning ordinance in effect at the time of the rezoning and modification had a requirement of 3.3 spaces per 1,000 gross floor area of *both* residential and nonresidential uses (attachment 4).

Based on the public records available, I have made the following determinations:

February 14, 2023

- The modification granted through Ordinance 98-O-32 and ZMA #98-102 allowed all permitted uses in the existing building and proposed addition, totaling 5,401 square feet, to be met with the purchase of 10 public shared parking spaces.
- Units A3 and A4 are allowed to be used as residential units without the need for on-site additional parking.
- Any expansion of the gross floor area beyond that shown in the GDP will require additional parking per Article X of the zoning ordinance.

Pursuant to Section 15.2-2299 of the Code of Virginia (1950), as amended, you have the right to appeal this decision to the Town Council of the Town of Herndon, Virginia, within thirty (30) days after receipt of this letter. The decision(s) set forth in this letter shall be final and not appealable if not appealed within the thirty-day period.

If you wish to appeal this decision you must do so in the specified time by submitting a written request specifying the grounds upon which you are aggrieved to the Zoning Administrator and Town Clerk, located in the Community Development Department at 777 Lynn Street Herndon, Virginia.

If you have questions about the application or process, please contact the Zoning Administrator's staff at 777 Lynn Street Herndon, Virginia, or call (703) 787-7380.

Sincerely,

David Stromberg, AICP
Zoning Administrator

Attachments:

1. Determination request by Mr. Douglas Wallace and dated December 14, 2022
2. ZMA #98-102 and Ordinance 98-O-32
3. Generalized Development Plan dated November 5, 1998
4. Section 28-29-2A-(e) and (f) of the October 26, 1971 zoning ordinance, as amended

ASHLEY ASSOCIATES, LLC

14704 RABBIT RUN CT.

CENTREVILLE, VA 20120

(703) 471-6093

December 14, 2022

VIA EMAIL AND HAND DELIVERY

David Stromberg, Zoning Administrator
Town of Herndon, Department of Community Development
Herndon Municipal Center
777 Lynn St., 2nd Floor
Herndon, VA 20170

RE: Wallace Condominium Units 296 A3, Wallace Condominium Unit 296 A4
Tax Map No: 016-2-02-0296A3, 0296A4

Dear Mr. Stromberg:

Pursuant to our recent conversations, we are requesting a determination from your office regarding the above-referenced property and their use as residential units and any requirement for on-site parking.

After much research into the history of the building which was built circa 1925, it is clear that the original upstairs of the original building was used as a residence, probably from 1925 until the mid- 1960's. This information was obtained from two wonderful resources, Ms. Barbara Glakas and Mr. Carol Groff. You will know Ms. Glakas, but Mr. Groff is a long time Herndon resident, recently relocated, who is a wealth of knowledge about Town history.

Specifically, he informs me that the first floor was occupied by Taylor Jewelers from his earliest memory(Mr. Groff is in his early 80's). The Taylor family lived in what is now Unit 3 the entire time. Mr. Taylor died in 1956 and Mrs. Taylor lived there until the mid-60's when she built a house at the corner of Peachtree Street and Elden Street. I have attached a photo of what was clearly the kitchen with the built in china cabinet and the abandoned gas connections.

When we purchased this property from the owners at the time, John and Marie Nettleton, we were clearly of the impression that the property was "mixed use" allowing either residential or commercial use

I also purchased ten(10) parking spaces at the time of the DQ expansion in 1998.

In light of the changes brought to the market from the pandemic, the likelihood of our being able to rent these upstairs units to any business, is very unlikely. Unit 3 has sat empty for almost three(3) years. In addition, Unit 4 will be vacant upon my retirement within the next few years.

It serves no one to have these units vacant and there is no possibility of on-site parking.

In conclusion, we respectfully request a determination as to the residential use of the above properties and any need for on-site parking.

Thank you very much for your kind consideration,

Sincerely,

A handwritten signature in cursive script that reads "D Wallace".

Douglas Wallace, Managing Member

TOWN OF HERNDON, VIRGINIA

ORDINANCE

NOVEMBER 10, 1998

ORDINANCE - To change the zoning classification of a parcel identified as Fairfax County Tax Map Reference 16-2-002-297, containing .0639 acres, from CCD, Central Commercial District, to PD-MU, Planned Development-Mixed Use, and a portion of a parcel identified as Fairfax County Tax Map Reference 16-2-002-301C, from PD-MU, Planned Development-Mixed Use with proffers, to PD-MU, Planned Development-Mixed Use with amended proffers, and to amend the zoning map to show this change of zoning classification, for the property located at 779 Station Street, Herndon, Virginia.

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

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

- A. The zoning classification of the land described below is changed from CCD, Central Commercial District, to PD-MU, Planned Development-Mixed Use District:**

Land lying in the Town of Herndon, Fairfax County, Virginia, bearing Fairfax County Tax Map Reference 10-2-002-297, described as follows:

Beginning at a point on the west line of Station Street, said point marking the south east corner of the property of Lawrence Cushman (#773 & #775 Station Street).

Thence, departing Station Street, running with the north east line of Cushman; N 42°15'00" W – 57.83 feet to the north east corner of Cushman, lying on the east line of the property of the Town of Herndon.

Thence, departing Cushman, running with the east line of the Town of Herndon the following courses (1) N 48°35'00" – 0.52 feet, (2) N 41°42'00"W – 52.64 feet, and (3) N 48°10'00"E – 25.08 feet to the south west corner of the property of Steven Mitchell (#781 Station Street) said point lying on the east line of the property of the Town of Herndon.

Thence, departing the Town property, running with the southeast line of Mitchell; S 41°42'00"E – 110.47 feet to a point on the west line of Station Street.

Thence, departing Mitchell, running with the west line of Station Street; S 48°10'00"W – 25.05 feet to the point of beginning, containing 2,785 square feet or 0.0639 acres of land.

- B. The zoning classification of the land described below is changed to reflect an amendment to the proffered conditions in the Planned Development Mixed Use, PDMU, District, as**

adopted by Ordinance 91-O-15, adopted April 9, 1991 and Ordinance 95-O-16, adopted July 18, 1995, but only for the land described below. The remaining land described by the ordinances set out in this paragraph (B) shall remain as rezoned by those ordinances, with the original proffers set out in those ordinances.

Land lying in the Town of Herndon, Fairfax County, Virginia, as part of the land bearing Fairfax County Tax Map Reference 16-2-002-301C, described as follows:

Beginning at a point on the north east line of Lynn Street (variable width), lying on the north west line of the property of Lawrence Cushman (#773 & #775 Station Street.)

Thence, departing Cushman, running with the north east line of Lynn Street N 41°23'31"W – 11.31 feet to a point on the northeast line of Lynn Street.

Thence departing Lynn Street, running with a proposed new division line through parcel 301C of the property of the Town of Herndon; the following courses: (1) N48°36'29"E – 3.36 feet, (2) N 32°57'34"W – 9.18 feet, (3) N 37°10'56" W – 12.24 feet, (4) N 40°31'57" W – 19.96 feet, and (5) N 48°10'00" E – 4.90 feet to the north west corner of the property of Ashley Associates, LLC (#777 and #779 Station Street.)

Thence, running with the common line between Ashley Associates, LLC and the Town of Herndon's Parcel 301C, S 41°42'00"E – 52.64 feet to a corner of Ashley Associates, LLC and the Town of Herndon's Parcel 301C.

Thence, continuing with the common line between Ashley and the Town S 48°35'00"W - .52 feet to the north east corner of the property of Lawrence Cushman and S 48°35'00" W 10.56 with Cushman's north west line to the point of beginning, containing 361 square feet or 0.0083 acres of land.

- C. This rezoning is a conditional rezoning and shall be governed by the Town of Herndon Zoning Ordinance and the following proffer statement, which shall apply to both properties described in paragraphs A and B above (except for the remaining land referred to in paragraph B.) As to the land specifically described in paragraph B above, the proffers in this ordinance shall supersede the proffers described in the ordinances set out in paragraph B above.

"The undersigned hereby proffer for itself as applicant, owner, and for subsequent applicants and owners, that in the event the subject property is rezoned to the PD-MU zoning district by the Town Council of the Town of Herndon, Virginia, the development of the property that is the subject of this application shall be in substantial conformity with the following conditions pursuant to the Virginia Code, Title 15.2, Chapter 22, Article 7, and the Town of Herndon Zoning Ordinance, Section 28-41-2.

1. Except where modified by the following proffers, the development of the subject property shall be in substantial conformity with that

certain Generalized Development Plan ("GDP") dated August 10, 1998, revised September 23, 1998, and November 5, 1998, prepared by Tri-Tek Engineering, 690 Center Street, Suite 300, Herndon, Virginia 20170. This plan is incorporated by reference. However, minor modifications may be made as a part of the final site plan approval.

2. The architectural treatment of the building shall be in general conformity with the architectural elevation alternatives incorporated by reference as approved by the Town of Herndon Heritage Preservation Review Board. These alternatives consist of three (3) pages, were prepared by Lucarelli, Montes, Wells Architects, 6809 Whittier Avenue, Suite 100, McLean, VA 22101, dated September 25, 1998.
3. The signage modification request shall apply to the use of the proposed building on the property for a restaurant known as a "Dairy Queen." Any changes in use from the "Dairy Queen" will require compliance with the sign ordinance of the Town of Herndon or obtaining a new modification of the sign ordinance requirements.
4. The materials for the building construction shall be brick if so designated by the Town Council.
5. The existing legal access points to Mr. Cushman for the use of his property shall not be adversely affected by the construction of the building and tower by the applicant.

These proffers shall be binding upon the heirs, executors, administrators, assigns and successors in interest of the applicant and owners."

D. Modifications granted by the Town Council, pursuant to Section 28-14-2(b) of the Town of Herndon Zoning Ordinance, as part of this zoning map amendment, include:

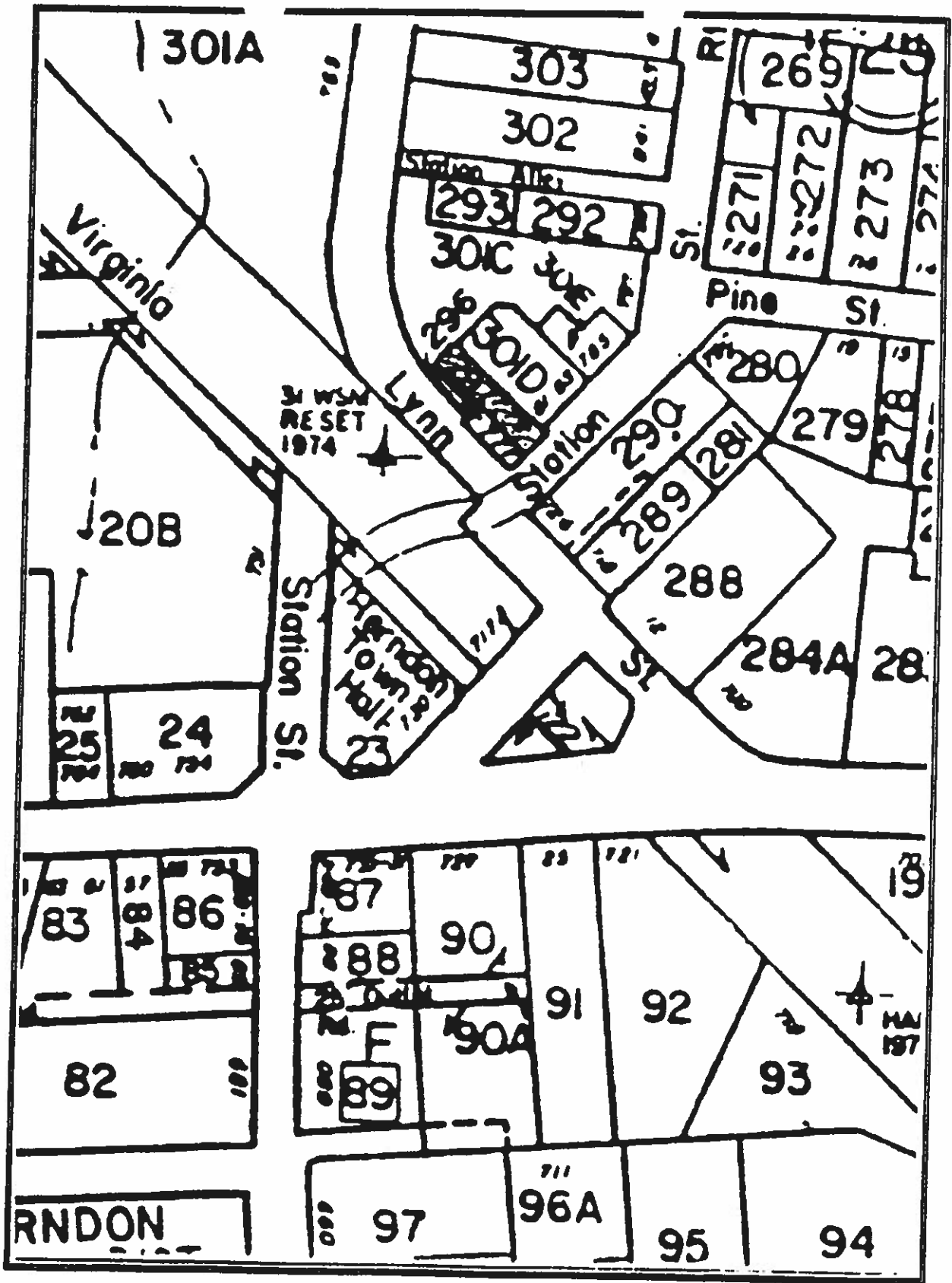
1. Modification of the setback requirement in Section 28-15A-7 to allow a sidewalk and landscape area of a minimum (for both) of 7.5 feet in width, measured from the back of curb along Station Street.
2. Modification of the parking requirement in Section 28-15A-10 and Section 28-29-2A(e)(1) to allow parking space requirements to be computed at the rate of 1.85 spaces per thousand square feet of gross floor area of the total building, in consideration of the fact that the structure in existence at the time of adoption of this ordinance is a contributing heritage structure, and the referenced parking ratio is equivalent to providing 3.3 parking spaces per thousand square feet for the

building addition shown on the Generalized Development Plan reference in paragraph C.1. above.

3. Modification of the signage requirement in Section 28-30-2(e) to allow up to 87 square feet of signage, on the northwest and southwest building elevations combined, for "Dairy Queen." The total sign area on the building shall not exceed an average of 50 square feet per establishment and a master sign plan shall be submitted by the applicant at the time of Site Plan application.

In granting these modifications, the Planning Commission and the Town Council have considered the factors set out in Section 28-14-2(b), Zoning Ordinance, Herndon Town Code (1992), as amended, and the Town Council finds that such modifications will afford equal or greater assurance of meeting the goals of the Zoning Ordinance, Town of Herndon, as set out in the preamble of that ordinance and the goals of the Statement of Intent of Article 15A, Zoning Ordinance, Herndon Town Code (1992), as amended.

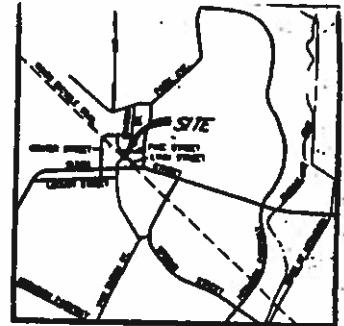
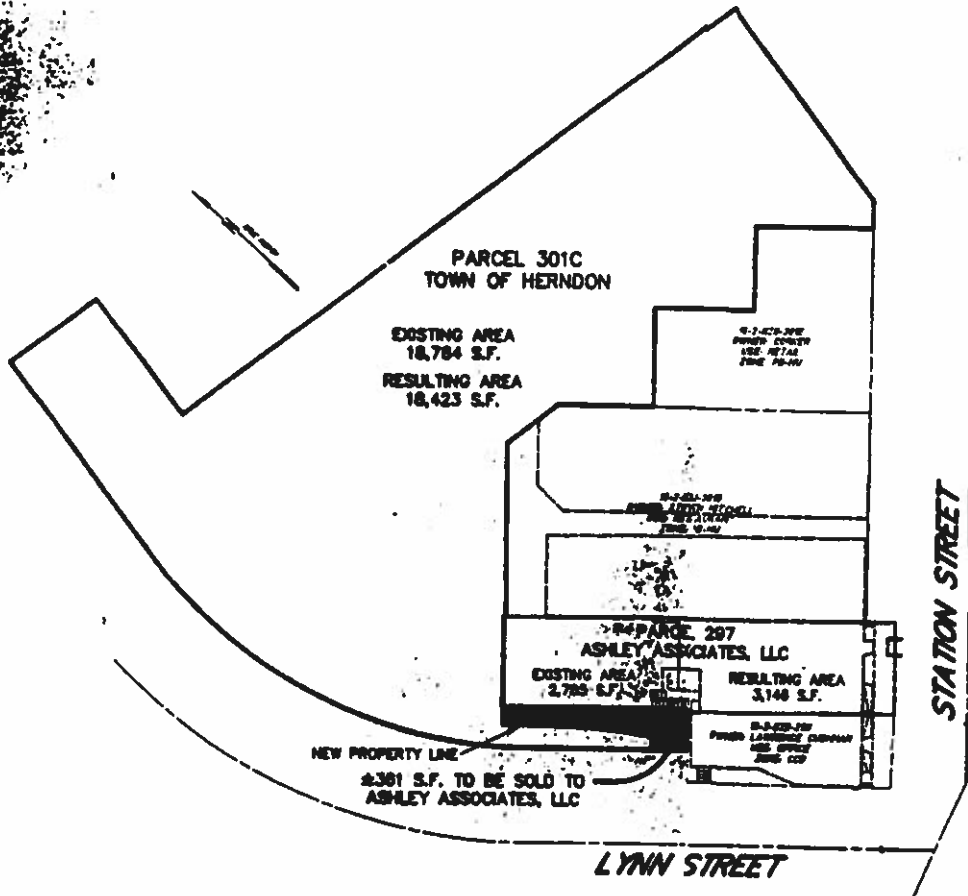
- E. The official zoning map of the Town of Herndon is amended to show this change in zoning classification and shall be annotated to indicate the presence of proffered conditions on the property described in paragraphs A and B above.
- F. This ordinance shall be effective on and after its adoption.



LOCATION MAP

ZONING MAP AMENDMENT 98-102. Ashley Associates, LLC

FAIRFAX COUNTY TAX MAP REFERENCE 16-2-002-297, portion of 16-2-002-301C



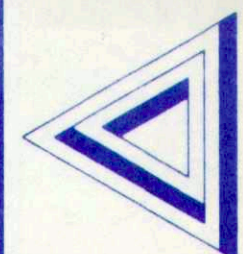
VORACITY MAP
SCALE: 1" = 200'



EXHIBIT SHOWING
PORTION OF PARCEL 301C
TO BE ADJUSTED INTO
PARCEL 297

TOWN OF HERNDON
PROFESSIONAL ENGINEER
DATE: AUGUST 11 2008 SCALE: 1" = 30'

TRI-TEK ENGINEERING
INC. A ENVIRONMENTAL & LAND PLANNING & SERVICES
A PROFESSIONAL CORPORATION
600 Stone Street, Suite 100

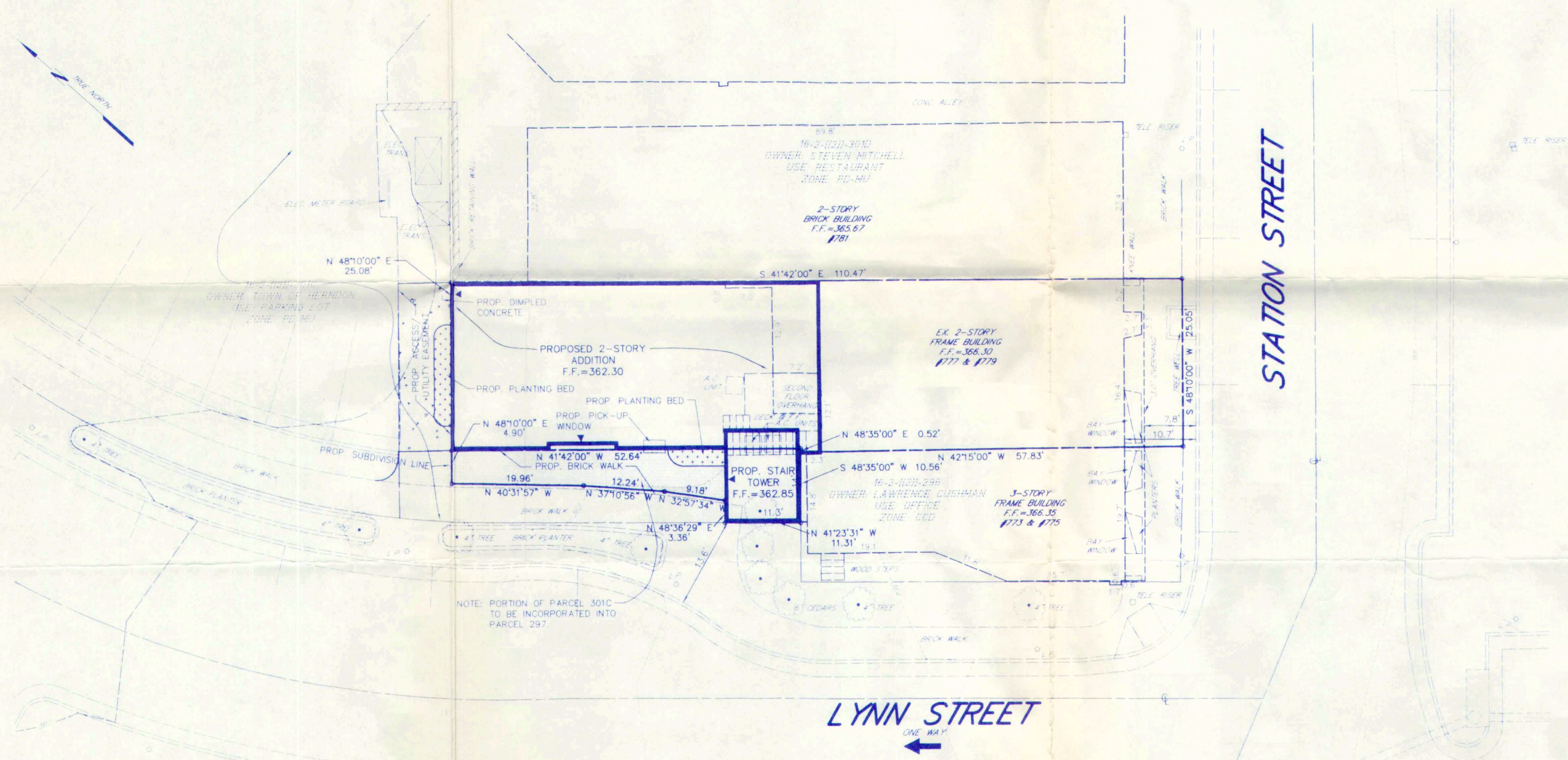
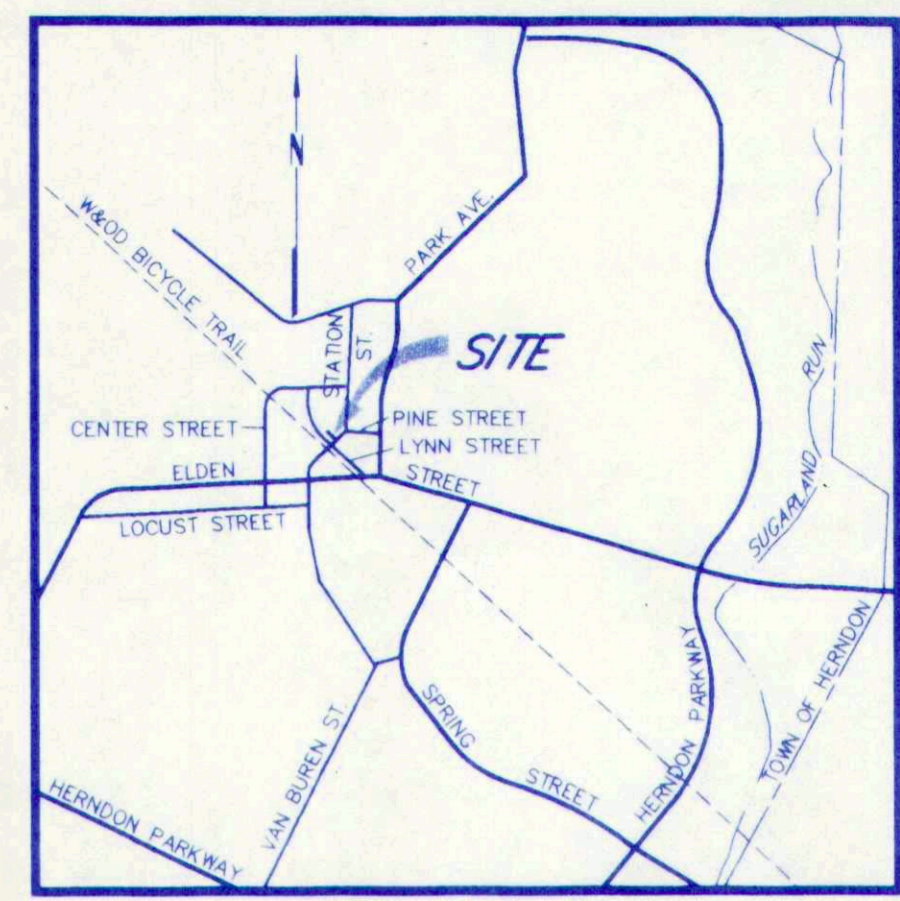


TRI-TEK ENGINEERING
 ENVIRONMENTAL, LAND PLANNING & SURVEYING
 a professional corporation
 Herndon, Virginia 20170-5018 (703) 481-5900

ASHLEY ASSOCIATES, LLC
 TOWN OF HERNDON, VIRGINIA

GENERALIZED DEVELOPMENT PLAN

APPROVED BY TOWN COUNCIL 11-10-98



SITE DATA:

- SITE AREA: 3,146 S.F. (0.0722 AC.)
 AREA TO BE REZONED: 2,785 S.F. (0.0639 AC.)
- TAX MAP NO. 16-2-((2))-297, PORTION OF 301C
- ZONING:
 EXISTING = CCD/HERNDON PRESERVATION DISTRICT (HPD) & PD-MU/HPD
 PROPOSED = PD-MU/HPD
- BUILDING FLOOR AREA:
 EXISTING = 2,522 S.F.
 PROPOSED = 2,879 S.F.
 TOTAL = 5,401 S.F.
- FAR: MAXIMUM PERMITTED = 2.5
 PROPOSED = 5,401 S.F./3,146 S.F. = 1.72
- MINIMUM LOT AREA: NONE
- SETBACK REGULATIONS:
 REQUIRED = 12 FT. FROM BACK OF CURB TO BUILDING
 PROVIDED = 7.5 FT.
 *A MODIFICATION IS REQUESTED TO THE STREETScape REQUIREMENT OF 12 FT. FOR THE SETBACK ALONG STATION STREET.
- PARKING:
 REQUIRED FOR EXISTING USE:
 2,522 S.F. X 3.3 SPACES PER 1,000 S.F. = 8.3 OR 9 SPACES
 REQUIRED FOR BUILDING ADDITION PER PD-MU:
 2,879 S.F. X 3.3 SPACES PER 1,000 S.F. = 9.5 OR 10 SPACES
 *THE APPLICANT WILL PROVIDE 10 SPACES WITHIN THE PUBLIC SHARED PARKING PROGRAM.
- HEIGHT REGULATIONS:
 PERMITTED = 50 FT. OR 30 FT. PLUS ONE (1) FOOT OF ADDITIONAL HEIGHT FOR EACH ONE (1) FOOT OF HORIZONTAL DISTANCE FROM THE R.O.W. LINE.
 PROPOSED = 30 FT.
- OPEN SPACE:
 REQUIRED = 3,146 S.F. X 0.15 = 472 S.F.
 PROVIDED = 351 S.F. OR 11.2% (RESIDUAL OPEN SPACE SHALL BE PROVIDED OFFSITE TO MEET 15% REQUIREMENT)
- A WAIVER OF STORMWATER MANAGEMENT AND BMP CONTROLS WILL BE REQUESTED BY THIS APPLICATION. THIS SITE MEETS THE REQUIREMENTS FOR OPTING OUT OF THE RMA DESIGNATION AND THEREFORE WILL NOT REQUIRE THE IMPLEMENTATION OF BMP CONTROLS. THE INCREASE IN STORMWATER RUNOFF FROM DEVELOPMENT OF THIS SITE IS ESTIMATED TO ONLY BE ±0.12 CFS OF RUNOFF. THE EXISTING DOWNSTREAM CLOSED OUTFALL SYSTEM IS ADEQUATE TO ACCEPT THIS MINIMAL AMOUNT OF ADDITIONAL RUNOFF AND THEREFORE NO ONSITE STORMWATER MANAGEMENT IS NEEDED.
- LANDSCAPING TO BE PROVIDED AS GENERALLY SET FORTH BY THE GDP.
- A MODIFICATION IS REQUESTED TO PERMIT ADDITIONAL SIGNAGE ABOVE THAT PERMITTED.
- SANITARY SEWER AND WATER SERVICES WILL CONNECT TO EXISTING SERVICES WITHIN THE EXISTING BUILDING WHICH ARE PROVIDED FROM STATION STREET. STORM DRAINAGE FROM THE SITE WILL SHEET FLOW TO THE EXISTING INLET WITHIN THE "JAMES BUILDING" LOT. ELECTRIC AND GAS SERVICE WILL BE PROVIDED TO THE BUILDING FROM THE REAR OF THE SITE.
- ALL REFUSE/STORAGE WILL BE FULLY CONTAINED WITHIN THE BUILDING.

GENERAL NOTES:

- THE REZONING AND DEVELOPMENT OF THIS PROPERTY IS IN ACCORDANCE WITH THE TOWN OF HERNDON'S ADOPTED COMPREHENSIVE PLAN.
- TO THE BEST OF OUR KNOWLEDGE THE PROPOSED DEVELOPMENT CONFORMS TO THE PROVISIONS OF ALL APPLICABLE ORDINANCES, REGULATIONS AND ADOPTED STANDARDS SET FORTH BY THE TOWN, UNLESS MODIFIED ABOVE. ANY WAIVERS TO THESE STANDARDS IF IDENTIFIED DURING THE SITE PLAN PROCESS WILL BE ADDRESSED BY THE SITE PLAN APPLICATION.
- DEVELOPMENT OF THE SUBJECT PROPERTY IS ANTICIPATED FOLLOWING RECEIPT OF ALL NECESSARY APPLICABLE APPROVALS.

THE UNDERSIGNED PROFFERS THAT THE DEVELOPMENT OF THE SUBJECT PROPERTY OF THIS APPLICATION SHALL BE IN SUBSTANTIAL CONFORMITY WITH THE CONDITIONS SET FORTH IN THIS SUBMISSION.



DATE	REVISION
8/10/98	AMENDED PER TOWN COMMENTS.
9/23/98	AMENDED PER TOWN COMMENTS.
11/5/98	AMENDED PER TOWN COMMENTS.

SCALE: 1"=10'
 DATE: 7/20/98
 DRN: M.S.O.
 CKD: T.D.B.
 SHEET 1 OF 1

made as an element of a development plan for a Planned Development - Mixed Use development or as an optional element to fulfill parking requirements in the Central Commercial District. (9/10/96)

- (d) The Town Council by ordinance may prospectively adjust the capital cost and the yearly cost for operation, maintenance, and administration to reflect the actual cost of these elements, as determined by certification of the Town Manager. The adjustment may not occur more than once every two calendar years. (9/10/96)
- (e) The following regulations shall guide the use of public shared parking for non-residential uses: (9/10/96)
 - (1) Parking space requirements shall be computed at the rate of 3.3 spaces per 1,000 gross square feet of non-residential floor area in the proposed development. (9/10/96)
 - (2) Reserved spaces shall not be counted for the purpose of computing the required number of spaces except those spaces reserved for and marked for use by disabled persons. (9/10/96)
 - (3) The Town shall be responsible for providing the land or facility within Sectors 1 and 2 for the public shared parking. The gross number of spaces designated by the Town and available as public shared parking shall be equivalent to or greater than the gross number of spaces allocated through development approval by the Town to properties participating in the public shared parking program. (9/10/96)
 - (4) A public shared parking option shall attach to the land and bind the successors and assigns of the person who applied for and is accorded these rights and responsibilities. (9/10/96)
 - (5) There shall be no double counting of public shared parking spaces. (9/10/96)
 - (6) Except as set out in this section, the other provisions of Article 29 shall apply to parking requirements in the Planned Development - Mixed Use and Central Commercial districts. (9/10/96)
 - (7) Town Council shall declare by resolution public land to be used for public shared parking. Subject to the terms of §28-29-2A(e)(3), the Town Council by resolution may amend the declaration, may substitute new land for land formerly so declared, or may release land from such a declaration. (9/10/96)

- (8) In declaring public land to be used for public shared parking, the Town Council retains full police power over this land. The land shall be characterized as land in the nature of a public street or public square. The Town Council, among other powers, may restrict, condition, authorize temporary private use of under general law, temporarily prevent, or otherwise control the terms of public use of this land, while substantively realizing the goal of providing public parking. (9/10/96)
- (f) The required parking spaces for residential elements using public shared parking shall be 3.3 spaces per 1,000 gross square feet of residential floor area in the proposed development. Use of public shared parking for residential uses shall be limited to parking for dwelling units above the street level floor. The same regulations governing commercial spaces set out in subparagraph (e) above apply with necessary changes to residential spaces, except that no residential unit shall require more than three parking spaces. No visitor or recreational spaces shall be required in this case. (9/10/96)
- (g) Vehicle storage, vehicle repair, and recreational vehicle parking shall not be permitted in public shared parking areas. (9/10/96)

Section 28-29-3. Required Off-Street Parking, and Standing and Loading Spaces.

Parking, standing or loading spaces shall be provided for each use, as permitted in respective classifications, in not less than the amounts set forth in the following chart (except for public shared parking) for every building, or addition thereto, and for all uses of land hereafter established or expanded. (9/10/96)

- (a) Use of parking, standing or loading space: Parking, standing or loading spaces required by this chapter shall be used only for those purposes. Any other use of such spaces, including any repair work or service of any kind, shall constitute a separate commercial use of the spaces in violation of the provisions of this Chapter. (9/10/96)
- (b) Minimum size of off-street parking and loading spaces and aisle dimensions: There shall be three categories of off-street parking and loading dimensions:
- (1) Standard Car Parking Spaces and Standing spaces. (9/10/96)
 - (2) Parking spaces for the disabled. (9/10/96)
 - (3) Loading spaces. (9/10/96)