

March 15, 2024

Steven D. Mitchell
 1291 Monroe Street
 Herndon, VA 20170

Re: Zoning Administrator Determination ZAD #23-02
 801 2nd Street, Herndon, VA 20170
 Fairfax County Tax Map Number 0104 0306 A

Dear Mr. Mitchell:

This letter is in response to your request (Attachment 1) for a zoning determination relating to the above-mentioned property. The images referenced in your request are shown in ZE23-00100 (Attachment 2). Your request includes an interpretation of Section 78-100.9, Parking restrictions and specific standards for certain uses and in certain districts, and how this section applies to “architectural gravel” used as a hardscape area.

- Clarify if a vehicle unintentionally having wheels touching the hardscape area is a violation.
 - **Determination:** Any portion of a vehicle, including wheels and tires, that is physically touching a surface that is not a lawfully paved surface is a violation. This includes any portion of a hardscape area.
- Clarify if the hardscaped area to the south of the driveway is subject to a violation.
 - **Determination:** The area to the south of the driveway is subject to a violation if a vehicle is parked on the hardscape area. The existence of the area is not a violation in itself.
- Clarify if hardscaped material is an acceptable border of established paved driveways or parking areas.
 - **Determination:** Hardscape material is an acceptable border of established driveways or parking areas. If the hardscape material does not meet the definition of a paved surface, parking on the material is a violation.
- Clarify that hardscaped material is an acceptable method to landscape “the minimum distance between paved surface and the property line shall be two feet.”
- **Determination:** The full sentence in Section 78-100.9 states, “In accordance with Article III, Residential Districts, the minimum distance between paved surface and the property line shall be two feet.” A section of the Dimensional Standards table in Article III is shown below. Any material that meets the definition of a paved surface must be a minimum of two feet from the property line.

Distance between Paved Surfaces and Property Line, Minimum (feet)	2'	Subject to buffer requirements for nonresidential uses in Article XI, Development Standards.
---	----	--

Pursuant to Section 15.2-2311 of the Code of Virginia (1950), as amended, you have the right to appeal this decision to the Board of Zoning Appeals 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 completed application and \$100.00 fee to the Community Development Department at 777 Lynn Street, Herndon, Virginia 20170.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Stromberg", is written over a light blue rectangular background.

David Stromberg, AICP
Zoning Administrator

Attachments:

1. Determination request letter dated December 19, 2023
2. ZE23-00100

Stromberg, David

From: STEVEN D MITCHELL <monroe1291@aol.com>
Sent: Tuesday, December 19, 2023 4:51 AM
To: Gillie, James; Community Development; Stromberg, David; Town Manager
Cc: Ashton, Bill; Wanda Mitchell; STEVEN MITCHELL
Subject: Re: ZE23-00100 801 2ND STREET TM 0104 0306 A
Attachments: 801 2nd-Notice-Driveway.pdf

***** CAUTION *****

This message came from an EXTERNAL address. DO NOT click on links or attachments unless you know the sender and the content is safe.

Dear David and James,

We have had several communications both written correspondence and a verbal conversation.

I am reviewing the Notice of Violation case # ZE23-00100 to formulate the direction I must take to defend my property.

I do not contest the citing of the **"A graded surface or a surface covered with rolled stone or loose gravel is not a paved surface"**.

For your information as you may be aware, the tenant has moved the vehicles located in the planned hardscaped area next to the northerly side of the driveway. The picture sent with the Notice identifies the vehicles and location.

ARTICLE XVIII. - DEFINITIONS *Driveway. A private road connecting one or more houses, garages or other buildings with the street.*

I am concerned with the second photo showing the hardscaped area to the south of the driveway and being void of any vehicles. Your Notice implies this area is also illegal. The area is attached to the Notice as a reference.

The concern I have is the possibility of a vehicle unintentionally having wheels touching the hardscaped area and the Town citing me with a violation. I have overzealous neighbors and I want to know a customary and acceptable position the Town is enforcing.

Please clarify if this hardscaped area to the south of the driveway is subject to a Notice as described above.

Please clarify that hardscaped material is an acceptable border of established paved driveways or parking areas.

Please clarify that hardscaped material is an acceptable method to landscape *"the minimum distance between paved surface and the property line shall be **two feet.**"*

I would note the area of land disturbance and impervious coverage are not at issue.

I request a response by end of business today 12/19/2023. I must file a notice of appeal and the Notice is dated November 20, 2023.

Instead of filing an appeal, I would request the ZA to defer the time constraint to file an appeal. I believe the ZA has the authority to do. I will submit this correspondence for a letter of determination based on the above information.

I request you accept this correspondence as a request for determination by the ZA of the above mentioned issues.

I will deliver a hard copy this A.M. and fill out the appropriate request forms and pay the required fees.

If the Town defers until the ZA has had time to evaluate, I would be appreciative. If this process can not work for reasons unknown to me, I will proceed with the appeal. My request for determination will still move forward.

Thank you in advance for your time and consideration.

Steve

On Thursday, December 7, 2023 at 06:53:42 PM EST, STEVEN D MITCHELL <monroe1291@aol.com> wrote:

I forgot to ask for confirmation of receipt. I may still be having issues with the Town email system.

On Thursday, December 7, 2023 at 10:13:30 AM EST, STEVEN D MITCHELL <monroe1291@aol.com> wrote:

Dear James,

I have not heard from you on the Notice of Violation Case: # ZE23-00100.

David Stromberg, Zoning Administrator responded on Notice of Violation Case: # ZE23-00101 (Attached)

Mr. Mitchell,

Upon further review of the relevant sections of the zoning ordinance and town code, I have determined that the vehicle (Chevrolet Astro van with ladders) shown in ZE23-00101 does not meet the definition of a "Commercial Vehicle." ZE23-00101 is considered Null and Void.

Thank you,

I responded on Nov. 27th as evidenced below. I was informed you were out and assumed you would be in touch to discuss as implied in the Notice of Violation.

You ordered I correct by December 5, 2023. As evidenced below, I do not agree with your interpretation. I am creating a hardscape.

I request a letter from you in your capacity as Deputy Zoning Administrator or your office rescinding the order as I do not want unwarranted Zoning violation orders against property I own.

I did review the Notice and observed neither Notice received certified or US mail quoting Section 15.2-2311 of the Code of Virginia. This details my rights.

I would appreciate a response to the above. I have certain criteria I must meet as described in Section 15.2-2311.

Thank you in advance for your time and consideration.

Steve Mitchell

On Monday, November 27, 2023 at 08:23:56 PM EST, STEVEN MITCHELL <monroe1291@aol.com> wrote:

Dave, thank you for your quick response. I do not want to be involved with the investigation. I am thoroughly confident my tenants are not overcrowded. I did notice the letter from the town stated on information provided so obviously to me this indicates the town is relying on third-party comments. I hope the town has vetted and investigated to make sure there are no hidden agendas to this complaint. These types of complaints, that are typically anonymous, are interfering with my rights as a landlord. If the town wants to put stock into this information provided, they do so at their own peril without investigating before making accusations. I understand this is just a procedural matter in town's eyes. I raise this issue because on the same day receiving this letter, I received two notices of violation, as you are aware. One of them I have responded to and questioned the accuracy of the violation as stated in the letter I sent by email. The vehicle in question is not a commercial vehicle. It is my understanding and talking to the tenants they have removed the vehicle. I do not appreciate the intimidation tactics used that forced my tenants to do the removal of the van. As for the other violation. I will respond now. The picture you sent shows an empty driveway next to architecturally washed gravel that I intend to make a hard scape. If you look at the picture, you noticed larger rocks at the beginning, I am fully aware of requirements for parking areas and driveways. This is not either of those. This area will be a hardscaped area. I previously had a large area of bamboo. I not only removed the bamboo, I also dug up the root balls. The neighbor has done similar actions. I am in the process of creating the landscaped area. I would request an immediate response and removal of both notices of violations. I assume the town will issue a letter removing the violation. If not I will be forced to go the prescribed routes to preserve my rights. The removal of the van from the premises does not alter my request for determination on a commercial vehicle, as depicted in the notice of violation. As stated previously, It is important for me to protect my property and future use, and I will not be held accountable for violations that are not in the town code or ordinances.

I do not agree with either violation.

Steve

November 20, 2023

Steven D Mitchell
1291 Monroe St
Herndon, VA 20170

RE:

Location: 801 2nd St
Case No.: ZE23-00100
TAX ID No.: 0104 0306 A

NOTICE OF VIOLATION

While performing duties as Community Inspector, the following was observed:

A driveway additions that do not meet the minimum setback standards and proper materials, at the property referenced above. The parcel is located in the R-15 (Residential Single-Family - 15) Zoning District.

Photographs depicting violations are maintained in our office for review and are included at the bottom of this notification for reference. Be advised that this action constitutes a violation of § 78-100.9 of the Zoning Ordinance, Herndon Town Code (2000), which states:

... §78-100.9

*No parking in required yards. No person shall park any motor vehicle, vehicle, trailer, or semi-trailer on the, side or rear yard of any lot, Improved with a single-family dwelling, zoned for residential use, except on a lawfully paved surface. For corner lots, the front yard for this purpose shall be the lot are bounded by streets, the side lot lines, and the dwelling facades that face the streets. In accordance with Article III, Residential Districts, the minimum distance between paved surface and the property line shall be **two feet**.*

Therefore, on behalf of the Town and as Deputy Zoning Administrator, I respectfully order that you abate this violation within fifteen days (15) or by December 5, 2023.

Steven D Mitchell
November 20, 2023

Compliance may be achieved by removing the non approved surface and creating a paved surface for the vehicles to be parked on through the use of clay-fired bricks, concrete recast paver units (including but not limited to grasscrete), poured concrete, blacktop, or other asphaltic or rubber mixture which may include sand or gravel as an ingredient and which creates a hard surface. **A graded surface or a surface covered with rolled stone or loose gravel is not a paved surface.** Also, by meeting the minimum required setback of **2'** from the adjacent property line. The R-10 Zoning District has a minimum of **2'** setback distance between paved surfaces and the property line. Through compliance, you will avoid further legal action, which may include monetary fines and other penalties.

Pursuant to Section 15.2-2311 of the Code of Virginia (1950), as amended, you have the right to appeal this decision to the Board of Zoning Appeals 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 completed application and \$100.00 fee to the Community Development Department at 777 Lynn Street Herndon, Virginia. If you have questions about the application or process please contact the Zoning Administrators staff at 777 Lynn Street Herndon, Virginia or you may call them at (703) 787-7380.

Should there be any questions, concerns, or a request to schedule an office visit regarding this case, please call (703) 787-7380 or send an email to james.gillie@herndon-va.gov. We appreciate your prompt response in resolving this matter.

Steven D Mitchell
November 20, 2023

Sincerely,



James Gillie, CZA
Community Inspector/Deputy Zoning Administrator
Cc: David Stromberg, Zoning Administrator

