

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON COUNCIL CHAMBERS BUILDING
765 LYNN STREET
SEPTEMBER 15, 2020
7:00 PM**

The meeting is being held electronically pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments. Public comments will be received through the town clerk at town.clerk@herndon-va.gov.

CALL TO ORDER

1. Roll Call & Determination of Quorum
2. Comments from the Town Manager

PUBLIC HEARINGS

3. Ordinance 20-O-51, to approve the conveyance of a power utility easement by Quitclaim Deed to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, acquired by the Town of Herndon for transportation facility improvements for the Van Buren Street Improvement Project on property owned by the Trustees of St. Timothy's Episcopal Church at 432 Van Buren Street, Herndon, Virginia, Fairfax County Tax Map #:0162-02-0153.
4. Ordinance 20-O-52, to approve the conveyance of a power utility easement to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia on Town-owned property located in the northeast quadrant of the intersection of Herndon Parkway and Van Buren Street, known as Haley M. Smith Park at 320 and 324 Van Buren Street, Herndon, Virginia, Fairfax County Tax Map #: 0164-02-0002 and 0162-02-0150, for transportation facility improvements associated with the Van Buren Street Improvement project.
5. Ordinance 20-O-53, to approve the conveyance of a communication system utility easement to Verizon Virginia, LLC on vacant Town-owned property located in the southeast quadrant of the intersection of Herndon Parkway and Van Buren Street, known as Fairfax County Tax Map #: 0164-10-0007N2, for transportation facility improvements associated with the Herndon Parkway and Van Buren Street intersection project.

GENERAL

6. Ordinance 20-O-54, to appoint members to serve on the Police Supplemental Plan Administrative Committee (PSPAC).
7. Resolution 20-G-39, to accept the State of the Town Report, Fiscal Year 2020
8. Resolution 20-G-41, to ratify a Temporary Emergency Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Fairfax County School Board.
9. Resolution 20-G-42, to ratify an Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.
10. Resolution 20-G-44, to initiate a zoning ordinance text amendment ZOTA #20-01, to change the term "heritage" to "historic" throughout the zoning ordinance, and additional amendments within Section 78-150.4 (Heritage Preservation Review Board) to permit issuance of Certificates of Appropriateness by staff and Section 78-60.3 (Heritage Preservation Overlay District) to broaden the ability of staff to review and issue Certificates of Appropriateness, and clarify procedures per Commonwealth of Virginia policy.
11. Resolution 20-G-45, initiating consideration of an amendment to the Town of Herndon 2030 Comprehensive Plan adopted August 12, 2008 and as amended through February 26, 2019, to change the 2030 Land Use Plan map for the Residence Inn property at 315 Elden Street from Business Corridor to Adaptive Area-Residential.

CONSENT AGENDA

12. Resolution 20-G-40, to change the meeting schedule for the Town Council Public Hearing to October 13, 2020.

DISCUSSION

13. Prohibition of firearms in public facilities.

ROUNDTABLE



STAFF REPORT

Town Council
September 15, 2020

Title:

Ordinance- to approve the conveyance of a power utility easement by Quitclaim Deed to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, acquired by the Town of Herndon for transportation facility improvements for the Van Buren Street Improvement Project, on property owned by Trustees of St. Timothy's Episcopal Church at 432 Van Buren Street, Herndon, Virginia, Fairfax Tax Map #: 0162-02-0153.

Staff Contacts:

John Irish, Deputy Director, Public Works
(703)435-6853
john.irish@herndon-va.gov

Lauri A.N. Sigler, Deputy Town Attorney
(703)787-7370
lauri.sigler@herndon-va.gov

Description:

The Van Buren Street Improvement Project is a long-standing CIP item (the "Project"). The completed public use project will provide widening of the roadway to accommodate a pedestrian bike lane in each direction, new sidewalks, curb and gutter, and improved storm drainage. The project provides for signalized pedestrian and bike crosswalks at Alabama Drive, as well as improved street lighting throughout.

Certain power utility easements were acquired from property owners to allow for the relocation and placement of new electrical facilities by Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia ("Dominion").

The Town acquired three temporary construction and grading easements totaling 18,859 square feet, a permanent storm drainage easement containing 918 square feet, a permanent storm drainage easement containing 8,020 square feet, and a permanent non-exclusive power utility easement containing 14,362 square feet for future conveyance to Dominion, by Certificate of Take recorded February 20, 2020, in Deed Book 26092, at page 0358, in the Fairfax County Land Records, on

property located at 432 Van Buren Street designated as Tax Map#:0162-02-0153, owned by the Trustees of St. Timothy's Episcopal Church.

The Town must now convey by quitclaim, all of the Town's interest in the permanent non-exclusive power utility easement to Dominion to allow for the relocation of and placement of new electrical facilities for the Project. Pursuant to Virginia Code §15.2-1800, the Town Council must hold a public hearing prior to conveying any interests in property owned by the Town.

The proposed Quitclaim Deed between the Town and Dominion and a draft ordinance approving the Quitclaim Deed are attached for Town Council's consideration.

Fiscal Impact:

None.

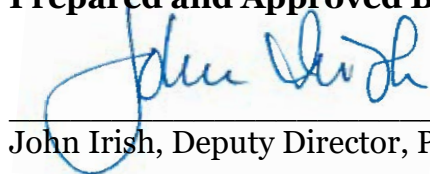
Recommendation:

Staff recommends that the Town Council approve the draft ordinance as proposed.

Attachments:

1. Draft Ordinance
2. Quitclaim Deed with recorded Certificate of Take attached

Prepared and Approved By:



John Irish, Deputy Director, Public Works



Lauri A.N. Sigler, Deputy Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

September 22, 2020

Ordinance-to approve the conveyance of a power utility easement by Quitclaim Deed to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, acquired by the Town of Herndon for transportation facility improvements for the Van Buren Street Improvement Project, on property owned by the Trustees of St. Timothy's Episcopal Church at 432 Van Buren Street, Herndon, Virginia, Fairfax County Tax Map #: 0162-02-0153.

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

1. The Town Council approves the conveyance of a permanent non-exclusive power utility easement by Quitclaim Deed from the Town to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia ("Dominion"), acquired by the Town of Herndon from the Trustees of St. Timothy's Episcopal Church, by that certain Certificate of Take recorded on February 20, 2020 in Deed Book 26092, Page 0358, in the Fairfax County land records ("Certificate of Take"). The power utility easement allows for the relocation of and placement of new electrical facilities which are necessary as part of the transportation facility improvements for the Van Buren Street Improvement Project.
2. This power utility easement contains approximately 14,362 square feet and is located on property owned by the Trustees known as Tax Map#: 0162-02-0153, as is more particularly described in the Certificate of Take and shown on Plat 40-19-0178 prepared by Dominion and attached to the recorded Certificate of Take as "PLAT 2".
3. The Mayor is authorized to sign and deliver a Quitclaim Deed and associated instruments necessary to evidence, effect, or correct this conveyance. This deed shall be on such form as approved by the Town Attorney.
4. This ordinance shall be effective on and after the date of its adoption.

OFFICE OF THE TOWN ATTORNEY

Prepared by:
Lauri A.N. Sigler, Deputy Town Attorney (VSB No. 39778)
Town of Herndon
777 Lynn Street
Herndon, Virginia 20170

Return to:
Dominion Energy Virginia
Attn: James W. West
3072 Centreville Road
Herndon, Virginia 20171

Tax Map No. 0162-02-0153

THIS QUITCLAIM DEED (the “**Deed**”) is made this ____ day of _____, 2020, by and between the **TOWN OF HERNDON, VIRGINIA**, a municipal corporation (hereinafter referred to as “**Town**”) and **VIRGINIA ELECTRIC AND POWER COMPANY**, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, (hereinafter referred to as “**Grantee**”).

W I T N E S S E T H :

WHEREAS, the Town is constructing public transportation improvements identified as the Van Buren Street Improvement Project (hereinafter referred to as the “Project”). The Project is further identified by the Town of Herndon Project Code Number (UPC) 107658; State Project Number EN15-235-112, P101, M501; and Federal Project Number TAP 5A01(730); and

WHEREAS, in accordance with Section 7.8 of the Charter of the Town of Herndon, Virginia, and Sections 15.2-1901 - 1904 and 25.1-300, *et al.* of the Code of Virginia (1950), as amended, the Town recorded a Certificate of Take with the Clerk of the Circuit Court of the County of Fairfax in Deed Book 26092, Page 0358 (the “Certificate”), to take from Jefferson Keith Sinclair, Jr., Dana K. Smith, and any other Duly Appointed Trustees of the St. Timothy’s Episcopal Church, the owner of certain real property located in the Town of Herndon, Virginia, at 432 Van Buren Street, Herndon, Virginia, and more particularly described as Tax Map No. 0162-02-0153 (the “Property”), certain interests in the Property required for construction of the aforementioned Project, a copy of the Certificate is attached hereto as Exhibit A; and

WHEREAS, one such interest taken for future conveyance to the Grantee is a permanent non-exclusive power utility easement containing 14,362 square feet, for the installation of facilities of Grantee, more particularly described in the Certificate and shown on Plat Number 40-

Exempted from recordation taxes and fees under Sections 58.1-811(C)(4) of the Code of Virginia 1950, as amended.

19-0178, entitled "PLAT TO ACCOMPANY RIGHT-OF-WAY AGREEMENT", prepared by Grantee, attached to the Certificate and identified as "PLAT 2"; and

WHEREAS, the Town desires to convey by quitclaim deed to Grantee, all of the Town's interest in the permanent non-exclusive power utility easement.

NOW THEREFORE, that in consideration of the premises, the Town in accordance with the provisions of Sections 15.2-1902 and 33.2-1014 of the Code of Virginia (1950), as amended, does hereby release, remise and quitclaim unto Grantee, its successors or assigns, a permanent non-exclusive power utility easement over, under, through, upon, above and across the Property containing 14,362 square feet, as more particularly described in the Certificate and shown on PLAT 2 attached hereto as Exhibit A.

It is understood and agreed by and between the parties hereto, that this conveyance is subject to any right, privilege, easement, condition or restriction encumbering the herein described easement, whether located above, upon, or under the surface, either presently in use or of record.

The Mayor is authorized to execute this Deed on behalf of the Town.

IN WITNESS WHEREOF, the parties hereto have caused this Deed to be executed, under seal.

FURTHER WITNESS the following signatures and seals.

[SIGNATURES FOLLOW ON NEXT PAGES]

ATTEST:

TOWN OF HERNDON, VIRGINIA

Town Clerk

By _____
Lisa C. Merkel, Mayor

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Lisa C. Merkel as Mayor of the Town of Herndon, Virginia, whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, _____.

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

APPROVED AS TO FORM:

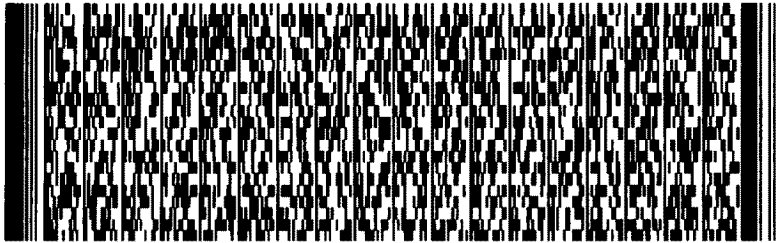
Lesa J. Yeatts, Town Attorney

2/19/2020

Display Barcodes - Fairfax Circuit Court

Fairfax Circuit Court Coversheet Generator

Cover Sheet Page 1 of 1



Consideration	\$0.00	Consideration/Actual Value %	100
Actual/Assessed	Tax Exemption	NC	Amount Not Taxed
Code Section	58.1-811, 58.1-3315, 25.1-418, 42.1-70, 17.1-266, AND 17.1-279		
DEM Number			
Original Book		Original Page	
Title Company	NONE	Title Case	
Property Descr.		Multiple Lots?	NO
Return To Party Name:	TOWN OF HERNDON, TOWN ATTORNEY	Address:	777 LYNN STREET, HERNDON VA 20170
No. of Certified Copies	0	No. of Non-certified Copies	0
		Page Range	

Document Type(s)

CERTIFICATE

Grantor(s)

JEFFERSON KEITH SINCLAIR, JR_I_T, DANA K SMITH_I_T

Grantee(s)

TOWN OF HERNDON, VIRGINIA_I_N

Tax Map Number

016-2- -02- -0153-

49

Exempted from recordation taxes
under Sections 58.1-811 (A) (3),
58.1-811(C)(5), 58.1-3315, 25.1-418, 42.1-70,
17.1-266, and 17.1-279(E)

2020_02896

Prepared by/Return to: Town of Herndon: 777 Lynn Street,
Herndon, VA 20172
Attn: Lesa Yeatts, Town Attorney
Tax Map No: 0162-02-0153

CERTIFICATE OF TAKE

WHEREAS, JEFFERSON KEITH SINCLAIR, JR., DANA K. SMITH, AND ANY OTHER DULY APPOINTED TRUSTEES OF THE ST. TIMOTHY'S EPISCOPAL CHURCH, are the owner of certain real property located in the Town of Herndon, Virginia, at 432 Van Buren Street, Herndon, Virginia , and more particularly described as Tax Map No. 0162-02-0153 (the "Property"), having acquired the Property by deed recorded in Deed Book 2416, at Page 436, among the land records of Fairfax County, Virginia; and

WHEREAS, the TOWN OF HERNDON, VIRGINIA, a Virginia municipal corporation, ("Town") is constructing transportation improvements identified as the Van Buren Street Improvement Project, "the Project." The Project is further identified by the Town of Herndon Project Code Number (UPC) 107658; State Project Number EN15-235-112, P101, M501; and Federal Project Number TAP-5A01 (730) (the "Project"). The Project plan sheets are on file with the Town. The Town has determined that it is necessary to acquire the easements on the Property in connection with the Project:

- A. three variable width temporary construction and grading easements containing 0.099 acre (4,322 square feet), 0.259 acre (11,290 square feet), and 0.075 acre (3,247 square feet) for the purpose of the necessary grading and construction through, upon and across the Property that shall become null and void at such time as grading and construction is complete and the work is accepted by the Town, as shown on Plat 1.
- B. a permanent storm drainage easement containing 0.021 acre (918 square feet) for the purpose of installing, constructing, operating, maintaining, inspecting, repairing, replacing, adding to, or altering a present or future public storm drainage system,

UPC 107658
Parcel 013

including pipes, culverts, ditches, lines, drainage ways, or other drainage structures and facilities, plus necessary inlet structures, manholes, slopes, slope stabilization structures and related improvements, and appurtenances for the collection of storm waters and its transmission together with the right of ingress and egress over and across the Property, as shown on Plat 1.

- C. a permanent storm drainage easement containing 0.184 acre (8,020 square feet) for the purpose of installing, constructing, operating, maintaining, inspecting, repairing, replacing, adding to, or altering a present or future storm water management facilities, including pipes, culverts, ditches, lines, drainage ways, or other drainage structures and facilities, plus necessary inlet structures, manholes, slopes, slope stabilization structures and related improvements, and appurtenances for the collection of storm waters and its transmission together with the right of ingress and egress over and across the Property, as shown on Plat 1.
- D. a non-exclusive power utility easement containing 0.33 acre (14,362 square feet), as shown on Plat 2, in accordance with the provision of Sections 15.2-1902 and 33.2-1014, Code of Virginia (1950), as amended, over, under, through, upon, above and across the Property, in order that the same may be assigned and conveyed to Virginia Electric and Power Company, doing business in Virginia as Dominion Energy Virginia (hereafter "Dominion"), its successors and assigns, for the purpose of granting the perpetual right, privilege and non-exclusive easement for transmitting and distributing electric power by one or more circuits; for Dominion's own internal telephone and other internal communication purposes; directly related to or incidental to the generation, distribution, and transmission of electricity, including the wires and facilities of any other public service company in aid of or to effectuate such

internal telephone or other internal communication purposes; and for lighting purposes; including but not limited to the right:

- 1.1. to lay, construct, operate, maintain, one or more lines of underground conduits and cables including, without limitation, one or more lighting supports and lighting fixtures as Dominion may from time to time determine, and all wires conduits, cables, transformers, transformer enclosures, concrete pads, manholes, handholes, connection boxes, accessories and appurtenances desirable in connection therewith.
- 1.2. to construct, operate and maintain a pole line, including without limitation, all wires, poles, attachments, ground connections, one or more lighting supports and lighting fixtures as Dominion may from time to time deem advisable, equipment, accessories and appurtenances desirable in connection therewith, including the right to increase or decrease the number of wires Property as more particularly bounded and described on the Plat as
2. All facilities constructed hereunder shall remain the property of Dominion. Dominion shall have the right to inspect, reconstruct, remove, repair, improve, relocate on and within the easement area, including but not limited to the airspace above the property controlled by Owner, and make such changes, alterations, substitutions, additions to or extensions of its facilities as Dominion may from time to time deem advisable.
3. Dominion shall have the right to keep the easement clear of all buildings, structures, trees, roots, undergrowth and other obstructions which would interfere with its exercise of the rights granted hereunder, including, without limitation, the right to trim, top, retrim, retop, cut and keep clear any trees or brush inside and outside the boundaries of the easement that may endanger

the safe and proper operation of its facilities. All trees and limbs cut by Dominion shall remain the property of Owner.

4. For the purpose of exercising the right granted herein, Dominion shall have the right of ingress to and egress from this easement over such private roads as may now or hereafter exist on the property of Owner. The right, however, is reserved to Owner to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement, Dominion shall have such right of ingress and egress over the lands of Owner adjacent to the easement. Dominion shall exercise such rights in such manner as shall occasion the least practicable damage and inconvenience to Owner.
5. Dominion shall repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement (subject, however, to Dominion's rights set forth in Paragraph 3 above) and (b) outside the boundaries of the easement and shall repair or pay Owner, at Dominion's option, for other damage done to Owner's property inside the boundaries of the easement (subject, however, to Dominion's rights set forth in Paragraph 3 above) and outside the boundaries of the easement caused by Dominion in the process of the construction, inspection, and maintenance of Dominion's facilities, or in the exercise of its right of ingress and egress; provided Owner gives written notice thereof to Dominion within sixty (60) days after such damage occurs.
6. Owner, its successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby granted, provided such use does not interfere with Dominion's exercise of any of its rights hereunder. Owner shall not have the right to construct any building, structure, or other above ground obstruction on the easement; provided, however, Owner may

construct on the easement fences, landscaping (subject, however, to Dominion's rights in Paragraph 3 above), paving, sidewalks, curbing, gutters, street signs, and below ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs, and below ground obstructions do not interfere with Dominion's exercise of any of its rights granted hereunder. In the event such use does interfere with Dominion's exercise of any of its rights granted hereunder, Dominion may, in its reasonable discretion, relocate such facilities as may be practicable to a new site designated by Owner and acceptable to Dominion. In the event any such facilities are so relocated, Owner shall reimburse Dominion for the cost thereof and convey to Dominion an equivalent easement at the new site.

7. Dominion's right to assign or transfer its rights, privileges and easements, as granted herein, shall be strictly limited to the assignment or transfer of such rights, privileges and easements to any business which lawfully assumes any or all of Dominion's obligations as a public service company or such other obligations as may be related to or incidental to Dominion's stated business purpose as a public service company; and any such business to which such rights, privileges and easements may be assigned shall be bound by all of the terms, conditions and restrictions set forth herein; and

WHEREAS, the land, or interest therein, taken lies in the Town of Herndon, and is more particularly bounded and described on:

- A. Plat #9 of Job # RK1807.01, dated July 23, 2019 and revised through October 2, 2019, for PARCEL 13 entitled "PLAT SHOWING A VARIABLE WIDTH STORM WATER MANAGEMENT (SWM) EASEMENT, A VARIABLE WIDTH PERMANENT DRAINAGE EASEMENT AND THREE VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENTS AND THE VACATION OF AN

EXISTING TRAIL EASEMENT BENEFITTING THE TOWN OF HERNDON” on the property of TRUSTEES OF ST. TIMOTHY’S EPISCOPAL CHURCH and prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia, (the “**Plat 1**”) which Plat is attached hereto, and

- B. Plat Number 40-19-0178 entitled “PLAT TO ACCOMPANY RIGHT-OF-WAY AGREEMENT”, prepared by Virginia Electric and Power Company doing business as Dominion Energy Virginia (the “**Plat 2**”), which Plat 2 is attached hereto; and

WHEREAS, the foregoing easements are more particularly described on Plan Sheet 6, dated January 10, 2020, and prepared by Rummel, Klepper, & Kahl, LLP located in Fairfax, Virginia (the "Plan Sheets"), which Plan Sheets are on file with the Town; and

WHEREAS, the Town Council of the Town, by ordinance enacted on January 28, 2020 (Ordinance No. 20-O-09), has authorized the acquisition by condemnation of the foregoing easements for the purposes set forth herein, and pursuant to Section 7.8 of the Charter of the Town of Herndon, further authorized the use of "quick take" condemnation procedures and the filing of this certificate of take, a copy of which is attached hereto.

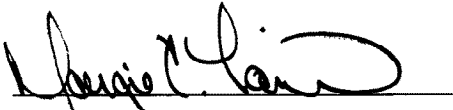
NOW, THEREFORE, the Town hereby issues this Certificate of Take in accordance with Section 7.8 of the Charter of the Town of Herndon, Virginia, and Sections 15.2-1901 - 1904 and 25.1-300, *et al.* of the Code of Virginia (1950), in the amount of Sixty-four Thousand Three Hundred Ten Dollars and No/100 (\$64,310.00), which sum is estimated by the Town of Herndon to be the fair value of the acquisition. The foregoing amount, or so much thereof as may be directed by the Court, shall be paid by the Town of Herndon pursuant to order of the Circuit Court of Fairfax County, Virginia.

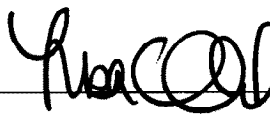
(Signatures are on the following page.)

WITNESS the following signatures and seals:

ATTEST:

TOWN OF HERNDON, VIRGINIA


Town Clerk

By 
Lisa C. Merkel, Mayor

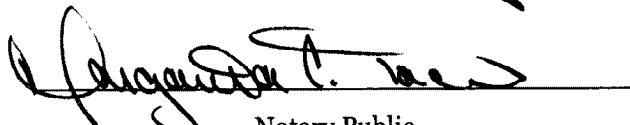


COMMONWEALTH OF VIRGINIA

COUNTY OF Stafford, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Lisa C. Merkel as Mayor of the Town of Herndon, Virginia, whose name is signed to the foregoing instrument, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

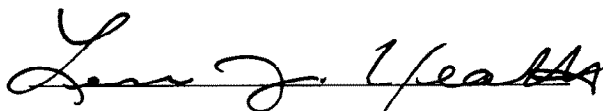
GIVEN under my hand and seal this 18th day of February, 202019.


Notary Public

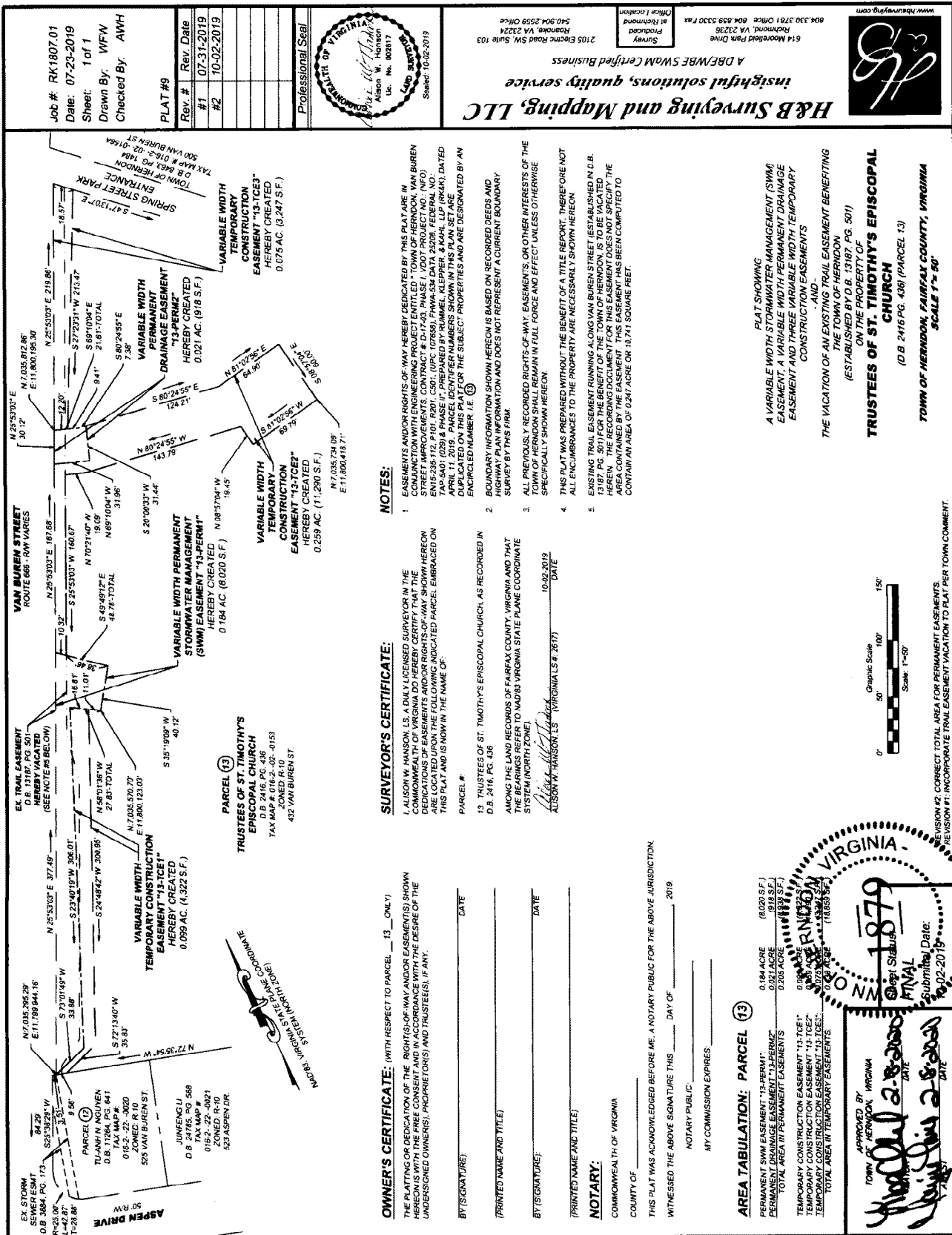
My Commission Expires: 8-31-2020

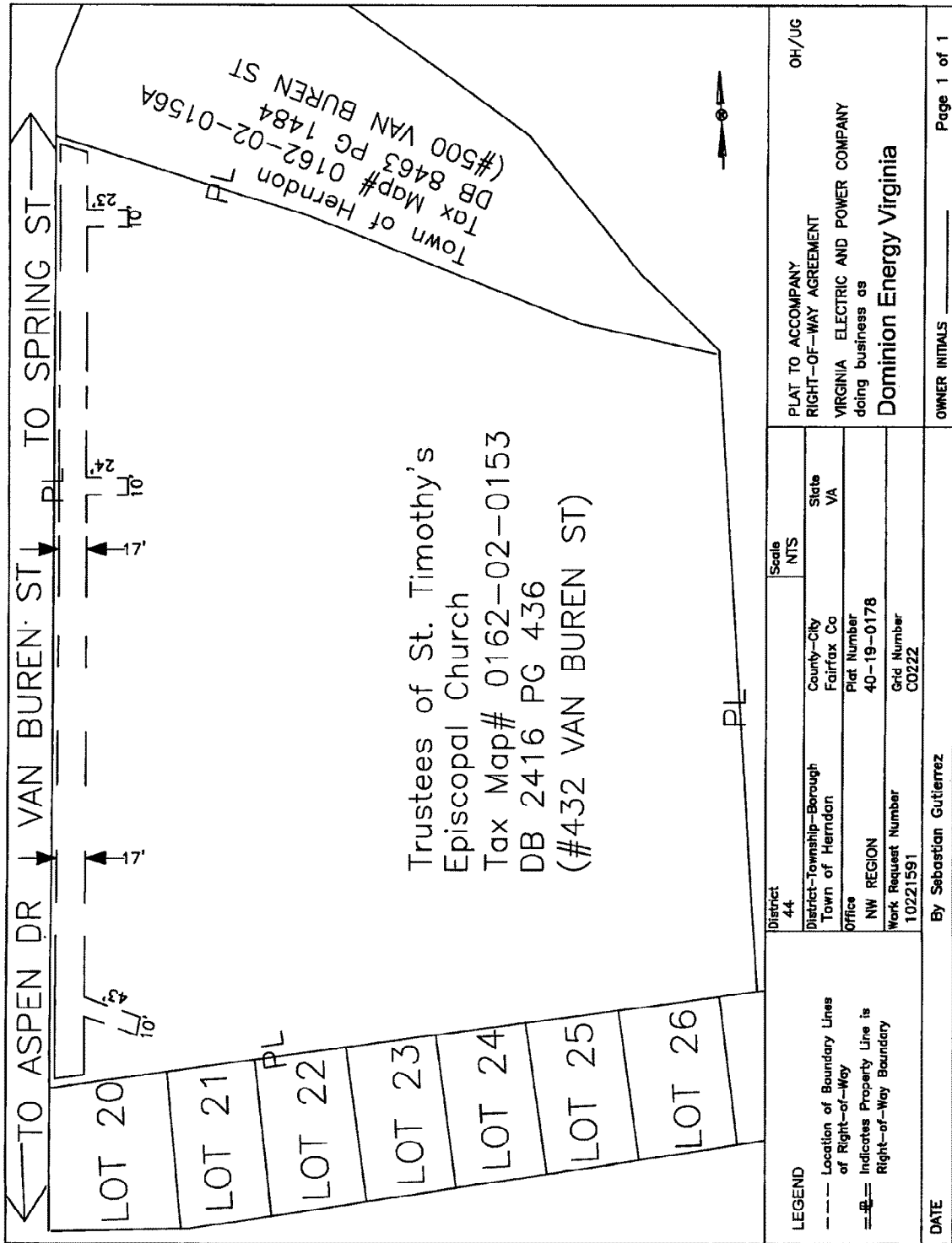
My Notary Registration Number: 295189

APPROVED AS TO FORM:


Lesa J. Yeatts, Town Attorney







TOWN OF HERNDON, VIRGINIA

ORDINANCE

JANUARY 28, 2020

Ordinance– Authorizing the use of eminent domain for the acquisition of temporary, permanent, and power utility easements on property owned by St. Timothy’s Church, Episcopal, Tax Map #: 0162-02-0153 for public use by condemnation for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway.

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

1. The Town of Herndon made a bona fide but ineffectual effort to acquire 18,859 square feet of temporary construction and grading easements, 8,938 square feet of storm drainage and stormwater management easements, and a 14,362 square foot permanent utility easement to be assigned to Virginia Electric and Power Company (“Dominion Energy”) from Trustees of the St. Timothy’s Episcopal Church for \$64,310 in connection with the Van Buren Streets Improvement Project. The landowner cannot convey valid title and negotiations are at an impasse. Therefore, the Town Attorney and outside counsel on behalf of the Town are authorized and directed to file a Certificate of Take and prosecute to completion a condemnation action against the land owned by St. Timothy’s Episcopal Church as well as St. Timothy’s Episcopal Church for the Town’s condemnation of these interests in property over real estate located at 432 Van Buren Street, Town of Herndon, Fairfax County, Virginia, designated as Tax Map #: 0162-02-0153 and shown as Parcel 13 and Plat #9 of Job # RK1807.01, dated July 23, 2019 and revised through October 2, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia, which said plat is attached hereto and incorporated herein.
2. The Town Council approves the following proposed public use for this acquisition: the construction, maintenance, or improvement of the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage, for the public safety and welfare of the Town.
3. The Town Council directs the Town Manager, Town Attorney, and their outside counsel to acquire the above described interests in property for public use by condemnation, purchase, or other means. The Town staff is hereby authorized to pay the compensation set

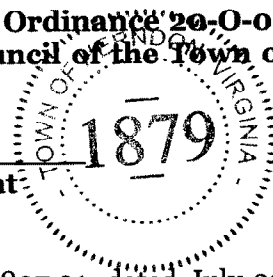
forth in paragraph 1 above into the Fairfax County Circuit Court contemporaneously with filing a Certificate of Take.

4. The property interests shall be used for the Van Buren Street Improvement Project. The property interests are necessary for the construction, maintenance, or improvement of, and access to, the public roadway, bike lanes, sidewalks, utility relocation, curb and gutter, and storm drainage.
5. This ordinance shall be effective on and after the date of its adoption.

This is certified to be a true and accurate copy of Ordinance 20-0-09 adopted at a legally convened meeting of the Town Council of the Town of Herndon on January 28, 2020.



Jessica Sizemore, Legislative Assistant



Attached for reference are Parcel 13 and Plat #9 of Job # RK1807.01, dated July 23, 2019 and revised through October 2, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia.

Job #: RK1807.01
Date: 07-23-2019
Sheet: 1 of 1
Drawn By: WFW
Checked By: AWH

PLAT #9

Rev. #	Rev. Date
#1	07-31-2019
#2	10-02-2019

Professional Seal



H&B Surveying and Mapping, LLC
insightful solutions, quality service
A DBE/WBE Swam Certified Business

614 Moorfield Park Drive
Richmond, VA 23226
804.859.5530 Fax 804.330.0781
www.hbsurveying.com

OWNER'S CERTIFICATE: (WITH RESPECT TO PARCEL 13 ONLY)
THE PLATTING OR DEDICATION OF THE (RIGHTS) OF-WAY AND/OR EASEMENT(S) SHOWN HEREON IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES, IF ANY.

BY (SIGNATURE): _____ DATE: _____

(PRINTED NAME AND TITLE)

NOTARY:
COMMONWEALTH OF VIRGINIA
COUNTY OF _____

THIS PLAT WAS ACKNOWLEDGED BEFORE ME, A NOTARY PUBLIC FOR THE ABOVE JURISDICTION, WITNESSED THE ABOVE SIGNATURE THIS _____ DAY OF _____, 2019.

NOTARY PUBLIC: _____

MY COMMISSION EXPIRES: _____

AREA TABULATION: PARCEL 13

PERMANENT SWM EASEMENT "13-PRM1"	0.04 ACRE (8,039 S.F.)
PERMANENT DRAINAGE EASEMENT "13-PRM2"	0.021 ACRE (916 S.F.)
TOTAL AREA IN PERMANENT EASEMENTS:	0.065 ACRE (8,955 S.F.)
TEMPORARY CONSTRUCTION EASEMENT "13-TC1"	0.099 ACRE (4,322 S.F.)
TEMPORARY CONSTRUCTION EASEMENT "13-TC2"	0.076 ACRE (3,242 S.F.)
TOTAL AREA IN TEMPORARY EASEMENTS:	0.433 ACRE (18,859 S.F.)

APPROVED BY:
TOWN OF HERNDON, VIRGINIA

MAYOR

ATTEST

Sheet Status:
FINAL

Submittal Date:
10-02-2019

DATE

DATE

DATE

OWNER'S CERTIFICATE: (WITH RESPECT TO PARCEL 13 ONLY)
THE PLATTING OR DEDICATION OF THE (RIGHTS) OF-WAY AND/OR EASEMENT(S) SHOWN HEREON IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES, IF ANY.

BY (SIGNATURE): _____ DATE: _____

(PRINTED NAME AND TITLE)

NOTARY:
COMMONWEALTH OF VIRGINIA
COUNTY OF _____

THIS PLAT WAS ACKNOWLEDGED BEFORE ME, A NOTARY PUBLIC FOR THE ABOVE JURISDICTION, WITNESSED THE ABOVE SIGNATURE THIS _____ DAY OF _____, 2019.

NOTARY PUBLIC: _____

MY COMMISSION EXPIRES: _____

AREA TABULATION: PARCEL 13

PERMANENT SWM EASEMENT "13-PRM1"	0.04 ACRE (8,039 S.F.)
PERMANENT DRAINAGE EASEMENT "13-PRM2"	0.021 ACRE (916 S.F.)
TOTAL AREA IN PERMANENT EASEMENTS:	0.065 ACRE (8,955 S.F.)
TEMPORARY CONSTRUCTION EASEMENT "13-TC1"	0.099 ACRE (4,322 S.F.)
TEMPORARY CONSTRUCTION EASEMENT "13-TC2"	0.076 ACRE (3,242 S.F.)
TOTAL AREA IN TEMPORARY EASEMENTS:	0.433 ACRE (18,859 S.F.)

APPROVED BY:
TOWN OF HERNDON, VIRGINIA

MAYOR

ATTEST

Sheet Status:
FINAL

Submittal Date:
10-02-2019

DATE

DATE

DATE

TO ASPEN DR VAN BUREN ST TO SPRING ST

LOT 20
LOT 21
LOT 22
LOT 23
LOT 24
LOT 25
LOT 26

Trustees of St. Timothy's
Episcopal Church
Tax Map# 0162-02-0153
DB 2416 PG 436
(#432 VAN BUREN ST)

Town of Herndon
Tax Map# 0162-02-0156A
DB 8463 PG 1484
(#500 VAN BUREN ST)

PL

LEGEND
--- Location of Boundary Lines of Right-of-Way
== Indicates Property Line is Right-of-Way Boundary

District 44	Scale NTS	PLAT TO ACCOMPANY RIGHT-OF-WAY AGREEMENT OH/UG
District-Township-Borough Town of Herndon	County-City Fairfax Co	State VA
Office NW REGION	Plot Number 40-19-0178	VIRGINIA ELECTRIC AND POWER COMPANY doing business as Dominion Energy Virginia
Work Request Number 10221591	Grid Number C0222	

DATE _____ By Sebastian Gutierrez

OWNER INITIALS _____ Page 1 of 1



STAFF REPORT

Town Council
September 15, 2020

Title:

Ordinance- to approve the conveyance of a power utility easement by to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, on Town-owned property located in the northeast quadrant of the intersection of Herndon Parkway and Van Buren Street, known as Haley M. Smith Park at 320 and 324 Van Buren Street, Herndon, Virginia, Fairfax County Tax Map #s: 0164-02-0002 and 0162-02-0150, for transportation facility improvements associated with the Van Buren Street Improvement project.

Staff Contacts:

John Irish, Deputy Director, Public Works
(703)435-6853
john.irish@herndon-va.gov

Lauri A.N. Sigler, Deputy Town Attorney
(703)787-7370
lauri.sigler@herndon-va.gov

Description:

The Van Buren Street Improvement Project is a long-standing CIP item (the "Project"). The completed public use project will provide widening of the roadway to accommodate a pedestrian bike lane in each direction, new sidewalks, curb and gutter, and improved storm drainage. The project provides for signalized pedestrian and bike crosswalks at Alabama Drive, as well as improved street lighting throughout.

Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia ("Dominion") is requesting a 15 foot wide easement containing approximately 7,800 square feet from the town extending across the frontage of the town-owned property known as Haley M. Smith Park at 320 and 324 Van Buren Street, Herndon, Virginia, Fairfax County Tax Map #s: 0164-02-0002 and 0162-02-0150 (the "Property") in the location more particularly described and shown on attached Right of Way Agreement and plat. The easement is necessary to install new street lighting and electrical facilities along the Property's frontage with Van Buren Street as part of the transportation facility improvements associated with the Project. The town is not receiving

monetary compensation for the easement as the Town requested these services and facilities from Dominion as a component of the Project.

If approved the Town of Herndon would grant to Dominion the right, privilege and non-exclusive easement across the Property shown on the plat attached to the agreement for a term of forty (40) years. This agreement also includes standard provisions such as granting Dominion the right of ingress and egress, and Dominion's obligation to repair damages, roads, fences, or make other restoration improvements. Pursuant to Virginia Code §15.2-1800, the Town Council must hold a public hearing prior to conveying any interests in property owned by the town. The related need for the easement on town-owned property and the easement plat has undergone review by Town of Herndon Departments of Public Works and the Town Attorney.

The proposed Right of Way Agreement between the Town and Dominion and a draft ordinance approving the Right of Way Agreement are attached for Town Council's consideration.

Fiscal Impact:

None.

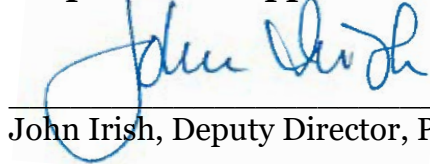
Recommendation:

Staff recommends that the Town Council approve the draft ordinance as proposed.

Attachments:

1. Draft Ordinance
2. Right of Way Agreement with plat attached

Prepared and Approved By:



John Irish, Deputy Director, Public Works



Lauri A.N. Sigler, Deputy Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

September 22, 2020

Ordinance-to approve the conveyance of a power utility easement by to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, on Town-owned property located in the northeast quadrant of the intersection of Herndon Parkway and Van Buren Street, known as Haley M. Smith Park at 320 and 324 Van Buren Street, Herndon, Virginia, Fairfax County Tax Map #s: 0164-02-0002 and 0162-02-0150, for transportation facility improvements associated with the Van Buren Street Improvement project.

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

1. The Town Council approves a Right of Way Agreement conveying for nominal consideration an easement across town-owned property to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia ("Dominion"). The easement allows for the installation of new street lighting and electrical facilities along the frontage of Van Buren Street as part of the transportation facility improvements associated with the Van Buren Street Improvement project.
2. This 15 foot wide easement contains approximately 7,800 square feet and is located on property owned by the Town of Herndon, known as Haley M. Smith Park at 320 and 324 Van Buren Street, Herndon, Virginia, Fairfax County Tax Map #s: 0164-02-0002 and 0162-02-0150 as is more particularly described and shown in the Right of Way Agreement and plat.
3. The Mayor is authorized to sign and deliver a Right of Way Agreement and associated instruments necessary to evidence, effect, or correct this conveyance. This Right of Way Agreement shall be on such form as approved by the Town Attorney.
4. This ordinance shall be effective on and after the date of its adoption.

OFFICE OF THE TOWN ATTORNEY



Right of Way Agreement

THIS RIGHT OF WAY AGREEMENT, is made and entered into as of this ____ day of _____, 20____, by and between

TOWN OF HERNDON, VIRGINIA, a municipal corporation

("GRANTOR") and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, with its principal office in Richmond, Virginia ("GRANTEE").

WITNESSETH:

1. That for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, **GRANTOR** grants and conveys unto **GRANTEE**, its successors and assigns, the perpetual right, privilege and non-exclusive easement over, under, through, upon, above and across the property described herein, for the purpose of transmitting and distributing electric power by one or more circuits; for its own internal telephone and other internal communication purposes directly related to or incidental to the generation, distribution, and transmission of electricity, including the wires and facilities of any other public service company in aid of or to effectuate such internal telephone or other internal communication purposes; and for lighting purposes; including but not limited to the right:

1.1 to lay, construct, operate and maintain one or more lines of underground conduits and cables including, without limitation, one or more lighting supports and lighting fixtures as **GRANTEE** may from time to time determine, and all wires, conduits, cables, transformers, transformer enclosures, concrete pads, manholes, handholes, connection boxes, accessories and appurtenances desirable in connection therewith; the width of said non-exclusive easement shall extend fifteen (15) feet in width across the lands of **GRANTOR**; and

Initials: _____

This Document Prepared by Virginia Electric and Power Company and should be returned to:
Dominion Energy Virginia, 3072 Centreville Rd, Herndon, VA 20171.

(Page 1 of 5 Pages)

VAROW No(s). 40-19-0198

Tax Map No. 016-2-02-0002 & 016-2-02-0150

Form No. 728493-1 (Apr 2019)

© 2019 Dominion Energy

Right of Way Agreement

2. The easement granted herein shall extend across the lands of **GRANTOR** situated in the Town of Herndon, Fairfax County, Virginia, as more fully described on Plat(s) Numbered 40-19-0198, attached to and made a part of this Right of Way Agreement; the location of the boundaries of said easement being shown in broken lines on said Plat(s), reference being made thereto for a more particular description thereof.

3. All facilities constructed hereunder shall remain the property of **GRANTEE**. **GRANTEE** shall have the right to inspect, reconstruct, remove, repair, improve, relocate on and within the easement area, including but not limited to the airspace above the property controlled by **GRANTOR**, and make such changes, alterations, substitutions, additions to or extensions of its facilities as **GRANTEE** may from time to time deem advisable.

4. **GRANTEE** shall have the right to keep the easement clear of all buildings, structures, trees, roots, undergrowth and other obstructions which would interfere with its exercise of the rights granted hereunder, including, without limitation, the right to trim, top, retrim, retop, cut and keep clear any trees or brush inside and outside the boundaries of the easement that may endanger the safe and proper operation of its facilities. All trees and limbs cut by **GRANTEE** shall remain the property of **GRANTOR**.

5. For the purpose of exercising the right granted herein, **GRANTEE** shall have the right of ingress to and egress from this easement over such private roads as may now or hereafter exist on the property of **GRANTOR**. The right, however, is reserved to **GRANTOR** to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement, **GRANTEE** shall have such right of ingress and egress over the lands of **GRANTOR** adjacent to the easement. **GRANTEE** shall exercise such rights in such manner as shall occasion the least practicable damage and inconvenience to **GRANTOR**.

6. **GRANTEE** shall repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement (subject, however, to **GRANTEE**'s rights set forth in Paragraph 4 of this Right of Way Agreement) and (b) outside the boundaries of the easement and shall repair or pay **GRANTOR**, at **GRANTEE**'s option, for other damage done to **GRANTOR**'s property inside the boundaries of the easement (subject, however, to **GRANTEE**'s rights set forth in Paragraph 4 of this Right of Way Agreement) and outside the boundaries of the easement caused by **GRANTEE** in the process of the construction, inspection, and maintenance of **GRANTEE**'s facilities, or in the exercise of its right of ingress and egress; provided **GRANTOR** gives written notice thereof to **GRANTEE** within sixty (60) days after such damage occurs.

Initials: _____

(Page 2 of 5 Pages)
VAROW No(s). 40-19-0198

Right of Way Agreement

7. **GRANTOR**, its successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby granted, provided such use does not interfere with **GRANTEE's** exercise of any of its rights hereunder. **GRANTOR** shall not have the right to construct any building, structure, or other above ground obstruction on the easement; provided, however, **GRANTOR** may construct on the easement fences, landscaping (subject, however, to **GRANTEE's** rights in Paragraph 4 of this Right of Way Agreement), paving, sidewalks, curbing, gutters, street signs, and below ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs, and below ground obstructions do not interfere with **GRANTEE's** exercise of any of its rights granted hereunder. In the event such use does interfere with **GRANTEE's** exercise of any of its rights granted hereunder, **GRANTEE** may, in its reasonable discretion, relocate such facilities as may be practicable to a new site designated by **GRANTOR** and acceptable to **GRANTEE**. In the event any such facilities are so relocated, **GRANTOR** shall reimburse **GRANTEE** for the cost thereof and convey to **GRANTEE** an equivalent easement at the new site.

8. **GRANTEE'S** right to assign or transfer its rights, privileges and easements, as granted herein, shall be strictly limited to the assignment or transfer of such rights, privileges and easements to any business which lawfully assumes any or all of **GRANTEE'S** obligations as a public service company or such other obligations as may be related to or incidental to **GRANTEE'S** stated business purpose as a public service company; and any such business to which such rights, privileges and easements may be assigned shall be bound by all of the terms, conditions and restrictions set forth herein.

9. If there is an Exhibit A attached hereto, then the easement granted hereby shall additionally be subject to all terms and conditions contained therein provided said Exhibit A is executed by **GRANTOR** contemporaneously herewith and is recorded with and as a part of this Right of Way Agreement.

10. Whenever the context of this Right of Way Agreement so requires, the singular number shall mean the plural and the plural the singular.

Initials: _____

(Page 3 of 5 Pages)
VAROW No(s). 40-19-0198

Right of Way Agreement

11. **GRANTOR** covenants that it is seized of and has the right to convey this easement and the rights and privileges granted hereunder; that **GRANTEE** shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement, right and privileges; and the **GRANTOR** shall execute such further assurances thereof as may be reasonably required.

12. The individual executing this Right of Way Agreement on behalf of the **GRANTOR** warrants that he or she has been duly authorized to execute this easement on behalf of the Town of Herndon, Virginia.

NOTICE TO LANDOWNER: You are conveying rights to a public service corporation. A public service corporation may have the right to obtain some or all of these rights through the exercise of eminent domain. To the extent that any of the rights being conveyed are not subject to eminent domain, you have the right to choose not to convey those rights and you could not be compelled to do so. You have the right to negotiate compensation for any rights that you are voluntarily conveying.

IN WITNESS WHEREOF, GRANTOR has caused its name to be signed hereto by its authorized officer or agent, described below, on the date first above written.

TOWN OF HERNDON, VIRGINIA
a municipal corporation

APPROVED AS TO FORM:

Name

Title

By: _____

Name: _____

Title: _____

State of _____

City/County of _____

The foregoing was acknowledged before me this _____ day of _____,
by _____, who is the _____ on behalf of the
(Name of Person Signing) (Title of Person Signing)
Town of Herndon, Virginia.

Notary Public (Name)

Notary Public (Signature)

My commission expires: _____.

Notary Registration Number: _____.



Right of Way Agreement

EXHIBIT A

This RIGHT OF WAY AGREEMENT dated _____, 20____, by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation ("**GRANTOR**") and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia ("**GRANTEE**") is hereby amended as follows:

1. This Right of Way Agreement shall be limited in duration and shall remain in force for a term of forty (40) years. At the end of such term, this Right of Way Agreement shall automatically terminate unless **GRANTOR** agrees to renew this Right of Way Agreement for an additional term of years.
2. In the event that this Right of Way Agreement is terminated, or if the removal of **GRANTEE's** facilities are otherwise desired by **GRANTOR**, then **GRANTOR** agrees that it will pay the cost of removing **GRANTEE's** cables and facilities, and, if appropriate, the cost of replacing **GRANTEE's** cables and facilities. Upon termination of this Right of Way Agreement, **GRANTOR** agrees to provide **GRANTEE**, if needed by **GRANTEE**, a suitable substitute easement subject to the same terms provided for herein for **GRANTEE's** cables and facilities. In the event that this Right of Way Agreement is revoked or terminated, all facilities constructed hereunder shall remain the property of **GRANTEE**.
3. **GRANTOR** covenants that in the event that **GRANTOR** sells or conveys the real property on which **GRANTEE's** cables and facilities are located by this Right of Way Agreement, **GRANTOR** will provide **GRANTEE** with a suitable permanent easement for **GRANTEE's** cables and facilities and, if necessary, pay the cost of relocating **GRANTEE's** cables and facilities to such permanent easement.

TOWN OF HERNDON, VIRGINIA
a municipal corporation

By: _____

Name: _____

Title: _____



LEGEND --- Location of Boundary Lines of Right-of-Way == Indicates Property Line is Right-of-Way Boundary		District Herndon	Scale NTS	PLAT TO ACCOMPANY RIGHT-OF-WAY AGREEMENT VIRGINIA ELECTRIC AND POWER COMPANY doing business as Dominion Energy Virginia		UG
		District-Township-Borough Town of Herndon	County-City Fairfax Co	State VA		
		Office NW Region	Plat Number 40-19-0198			
		Work Request Number 10309887	Grid Number C0221			
DATE 7/17/2020		BY Sebastian Gutierrez			OWNER INITIALS _____	Page 1 of 1



STAFF REPORT

Town Council
September 15, 2020

Title:

Ordinance- to approve the conveyance of a communication system utility easement to Verizon Virginia, LLC on vacant Town-owned property located in the southeast quadrant of the intersection of Herndon Parkway and Van Buren Street, known as Fairfax County Tax Map #: 0164-10-0007N2, for transportation facility improvements associated with the Herndon Parkway and Van Buren Street intersection project.

Staff Contacts:

John Irish, Deputy Director, Public Works
(703)435-6853
john.irish@herndon-va.gov

Lauri A.N. Sigler, Deputy Town Attorney
(703)787-7370
lauri.sigler@herndon-va.gov

Description:

The Herndon Parkway and Van Buren Street intersection is a long-standing CIP project (the "Project"). The Town of Herndon intends to construct certain public improvements to include widening the intersection to accommodate additional vehicle turn lanes, new traffic and pedestrian signals and island, an extended sidewalk and cycle track, and a redesigned stormwater management system.

Verizon Virginia, LLC, a Virginia corporation ("Verizon") is requesting an approximate 402 square foot easement from the town on the frontage of the vacant town-owned property located in the southeast quadrant of the intersection of Herndon Parkway and Van Buren Street, known as Fairfax County Tax Map #: 0164-10-0007N2 (the "Property") in the location more particularly described and shown on attached Deed of Easement and plat. The easement is necessary to relocate the existing Verizon equipment cabinets and cabling to accommodate the proposed cycle track and sidewalk improvements along the Southeast corner of the Project. There is no location within the current right-of-way which would allow for the relocation. The closest and most cost-effective location was determined to be on the Property within the proposed easement. The town is not receiving monetary compensation for the easement, and in exchange Verizon is not assessing the relocation cost of their facilities against the Town.

If approved the Town of Herndon would grant to Verizon the right, privilege and non-exclusive easement across the Property shown on the plat attached to the agreement for a term of forty (40) years. This easement also includes standard provisions such as granting Verizon the right of ingress and egress, and Verizon's obligation to restore the Property as nearly as reasonably practicable or make other improvements. Pursuant to Virginia Code §15.2-1800, the Town Council must hold a public hearing prior to conveying any interests in property owned by the Town. The related need for the easement on town-owned property and the easement plat has undergone review by Town of Herndon Departments of Public Works and the Town Attorney.

The proposed Deed of Easement between the town and Verizon and a draft ordinance approving the Deed of Easement are attached for Town Council's consideration.

Fiscal Impact:

None.

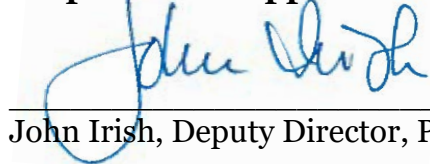
Recommendation:

Staff recommends that the Town Council approve the draft ordinance as proposed.

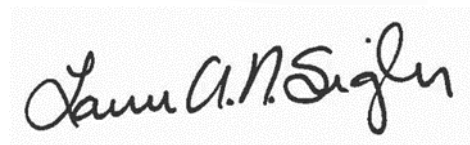
Attachments:

1. Draft Ordinance
2. Deed of Easement with plat attached

Prepared and Approved By:



John Irish, Deputy Director, Public Works



Lauri A.N. Sigler, Deputy Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

September 22, 2020

Ordinance- to approve the conveyance of a communication system utility easement to Verizon Virginia, LLC on vacant Town-owned property located in the southeast quadrant of the intersection of Herndon Parkway and Van Buren Street, known as Fairfax County Tax Map #: 0164-10-0007N2, for transportation facility improvements associated with the Herndon Parkway and Van Buren Street intersection project.

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

1. The Town Council approves the Deed of Easement conveying for nominal consideration an easement across town-owned property to Verizon Virginia, LLC ("Verizon"). The easement allows for the relocation of the existing Verizon equipment cabinets and cabling to accommodate the proposed cycle track and sidewalk improvements associated with the Herndon Parkway and Van Buren Street intersection project.
2. This power utility easement contains approximately 402 square feet and is located on property owned by the Town of Herndon, located in the southeast quadrant of the intersection of Herndon Parkway and Van Buren Street, known as Fairfax County Tax Map #: 0164-10-0007N2, as is more particularly described and shown in the Deed of Easement and plat
3. The Mayor is authorized to sign and deliver a Deed of Easement and associated instruments necessary to evidence, effect, or correct this conveyance. This deed shall be on such form as approved by the Town Attorney.
4. This ordinance shall be effective on and after the date of its adoption.

OFFICE OF THE TOWN ATTORNEY

Verizon W.O. No.:
VDOT Project No.: N/A

Tracking No.:
Parcel No.:

After Recording Mail To:
VERIZON VIRGINIA LLC .



Document Prepared By:
VERIZON VIRGINIA, LLC

TAX MAP NO: 0164-10-0007N2

:
DEED OF EASEMENT

THIS DEED OF EASEMENT made this____ day of_____, 2020, by **TOWN OF HERNDON, VIRINGIA**, a municipal corporation, herein after called Grantor of the "Town" and **VERIZON VIRGINIA, LLC**, a Virginia corporation, its successors, assigns lessees and agents, herein after called Grantee

W I T N E S S E T H:

For and in consideration of One Dollar (\$1.00) cash in hand paid unto Grantor and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys unto Grantee, its successors, assigns, lessees and agents, a perpetual non-exclusive easement and right of way (the "Easement") to install, construct, operate, maintain, inspect, improve, relocate, alter, replace and remove a communication system consisting of such poles, wires, crossarms, conduits, manholes, fixtures, marker poles, buried cables and other appurtenances (the "Facilities"), as Grantee may from time to time require, upon, under, across and over Grantor's real property being located in the Town of Herndon, County of Fairfax, Commonwealth of Virginia more particularly identified as that certain real estate acquired by the Town by deed dated August 10, 2017 and recorded in Deed Book 25177, page 1593 among the land records of Fairfax County, Virginia (the "Property") as shown and described on a plat identified as Exhibit "A", attached hereto and made a part hereof (the "Easement Area").

Said Easement is hereby granted and conveyed unto Grantee together with the following rights and covenants:

- (1) Grantee shall have the right of ingress and egress over, upon and across the Property, including Grantor's private roads, to and from the communications system and Easement, including the right to temporarily open and close fences, for the purposes of exercising the rights herein granted.
- (2) Grantee shall have the right to trim, cut and remove trees, shrubbery, undergrowth and other obstructions within the Easement Area which interfere with or threaten the efficient and safe operation, construction or maintenance of it facilities or impedes the access thereto.
- (3) The communications system constructed hereunder is and shall remain the property of the Grantee. Grantee shall have the right to inspect, rebuild, remove, repair, remove and relocate its communications system, or any part thereof, within the Easement Area, and may make such changes, alterations, substitutions, additions in and to or extensions of its facilities as it deems advisable without the prior consent of the Grantor.
- (4) During periods of actual construction, Grantee shall have the temporary right to use Grantor's property lying within an area_____in width adjacent to the Easement Area.
- (5) NOTICE TO LANDOWNER: You are conveying rights to a public service corporation. A public service corporation may have the right to obtain some or all of these rights through exercise of eminent domain. To the extent that any of the rights being conveyed are not subject to eminent domain, you have the right to choose not to convey those rights and you could not be compelled to do so. You have the right to negotiate compensation for any rights that you are voluntarily conveying.
- (6) If requested in writing by Grantor, Grantee, its successors and assigns agree to relocate Grantee's facilities, at Grantor's expense, to a new easement, suitable to Grantee and provided or obtained by Grantor at Grantor's expense, at the request of the Grantor; provided, however, that the new easement is provided or obtained and Grantor provides Grantee notification of required relocation, in writing, at least ninety (90) days prior to required completion of relocation.
- (7) The Grantee, after constructing, inspecting or maintaining its facilities, shall restore the property as nearly as reasonably practicable to the condition of the property existing immediately prior to the commencement of the work to construct, inspect or maintain its facilities. Grantee shall be liable for all physical damages resulting from its own exercise of the rights granted hereunder.

- (8) Grantor covenants that it is seized of the Property and has the right to convey the Easement, rights and privileges herein conveyed to Grantee and that Grantee shall have quiet and peaceable possession, use and enjoyment of the aforesaid Easement, rights and privileges hereby granted.
- (9) If there is an Exhibit A attached hereto, then the easement granted hereby shall additionally be subject to all terms and conditions contained therein provided said Exhibit A is executed by GRANTOR contemporaneously herewith and is recorded with and as a part of this Deed of Easement.

[Signature to Follow on Next Page]

DRAFT

IN WITNESS WHEREOF, the following signature(s) and seal(s):

ATTEST:

TOWN OF HERNDON, VIRGINIA, a municipal corporation

Town Clerk

By _____
Lisa C. Merkel, Mayor

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Lisa C. Merkel as Mayor of the Town of Herndon, Virginia, whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, _____.

Notary Public

My Commission Expires: _____
My Notary Registration Number: _____

APPROVED AS TO FORM:

Lesa J. Yeatts, Town Attorney

EXHIBIT A

This Deed of Easement dated _____, 20____, by and between the TOWN OF HERNDON, a Virginia municipal corporation, herein after called Grantor of the "Town" and VERIZON VIRGINIA, LLC, a Virginia corporation, its successors, assigns lessees and agents, herein after called Grantee is hereby amended as follows:

1. This Deed of Easement shall be limited in duration and shall remain in force for a term of forty (40) years. At the end of such term, this Easement shall automatically terminate unless GRANTOR agrees to renew this Easement for an additional term of years.

TOWN OF HERNDON, VIRGINIA, a municipal corporation

By: _____
Lisa C. Merkel, Mayor

DRAFT

REVISED	STATE	ROUTE	STATE	SHEET NO
		PROJECT		
	VA	606	0606-235-335	1
DRAWN BY: JTB			DATE: SEPTEMBER 8, 2020	

- 1.) ALL ADJOINING/DEPARTING BOUNDARY LINES SHOWN ARE COMPILED FROM VARIOUS SOURCES: FOUND PROPERTY MONUMENTATION, METES AND BOUNDS DESCRIPTIONS AND RECORDED PLATS. THE ADJOINING LINES DO NOT REPRESENT A FIELD RUN SURVEY OF ADJOINING PROPERTIES AND ARE A BEST FIT BASED ON COMPILED DATA.
- 2.) ALL OF THE PROPERTIES PHYSICAL IMPROVEMENTS ARE NOT SHOWN HEREON.
- 3.) THIS PLAT SHEET WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ALL EASEMENTS WHICH MAY AFFECT THE PROPERTY SHOWN HEREON.
- 4.) THIS SURVEY DATUM IS BASED ON VDOT PROJECT # 0606-235-335.



CURVE TABLE						
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH	TANGENT
C1	135.07'	282.00'	27°26'34"	N 09°16'12" E	133.78'	68.86'
C2	74.16'	123.00'	34°32'36"	N 40°15'47" E	73.04'	38.24'
C3	42.16'	48.00'	50°19'13"	N 82°41'42" E	40.81'	22.55'
C4	37.96'	94.00'	23°08'21"	S 60°34'31" E	37.70'	19.24'
C5	55.88'	344.00'	09°18'28"	S 44°21'07" E	55.82'	28.00'

AREAS			
PARCEL #	QUITCLAIMED	VERIZON VIRGINIA LLC. ESM'T.	PERMANENT DRAINAGE ESM'T.
007	NONE	468 SQ.FT.	NONE

PROJECT UPC - 89889	SHEET NO. 1
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STAFF REPORT

Town Council
September 22, 2020

Title:

Ordinance- to appoint members to serve on the Police Supplemental Plan Administrative Committee (PSPAC).

Staff Contacts:

Tanya Kendrick, Director of Human Resources
(703) 435-6817
tanya.kenrick@herndon-va.gov

Lesa J. Yeatts, Town Attorney
(703) 787-7370
lesa.yeatts@herndon-va.gov

Description:

The town's 401a police supplemental deferred compensation plan mandates that the council appoint, by ordinance, an Administrative Committee. The plan is administered by this committee which consists of a chairperson and at least two but not more than eight additional members. There is also an administrator of the plan on the committee, who is a non-voting member.

Some members of the Administrative Committee previously appointed by Council no longer work for the Town and therefore it is necessary to appoint new members to replace them. Additionally, staff is recommending appointment of an additional police member to ensure continuity. This will bring the number of committee members to six. Current members who were appointed by Ordinance #16-O-23 and will continue serving are Chief Maggie Deboard, Chair, Jerry Schulz, Deputy Finance Director and voting member and Tanya Kendrick, Director of Human Resources, non-voting member and plan administrator.

Staff recommends the following new members for appointment:

Captain Justin Dyer
Sgt. Chad Findley
Senior Police Officer Drew Stanley

Fiscal Impact:

None.

Staff Recommendation:

Town Council adoption of attached ordinance designating administrative committee members.

Attachments:

Ordinance

Prepared and Approved by:

Tanya Kendrick

Tanya Kendrick, Director of Human Resources

Lesa J. Yeatts

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

September 22, 2020

Ordinance- to appoint members to serve on the Police Supplemental Retirement Plan Administrative Committee (PSRPAC).

WHEREAS, the Police Supplemental Retirement Plan Administrative Committee (PSRPAC) is established by the Town Council to administer the plan and consists of a chairperson and at least two but no more than eight additional members.

BE IT ORDAINED that the Town Council of the Town of Herndon, Virginia, hereby appoints the following individuals to serve on the PSRPAC until further action by the Town Council:

- Captain Justin Dyer, as a member;
- Sgt. Chad Findley, as a member; and
- Senior Police Officer Drew Stanley, as a member



STAFF REPORT

Town Council - Work Session September 15, 2020

Title:

Resolution - to ratify a Temporary Emergency Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Fairfax County School Board.

Staff Contacts:

Lesa J. Yeatts, Town Attorney
(703)787-7370
lesa.yeatts@herndon-va.gov

Description:

The Fairfax County School Board currently leases 13,593 sq. ft of office space at 397 Herndon Parkway. This lease will expire on September 30, 2020. This Temporary Emergency Extension of Lease extends the current lease for three months so that it will expire on December 31, 2020 and allow time for negotiations of a new lease.

The Town Manager has signed the Temporary Emergency Extension of Lease pursuant to the Town's Continuity of Government ordinance. The Town Council must now consider ratification of the Temporary Emergency Extension of Lease to Fairfax County School Board in order to extend the expiration date to December 31, 2020 to finalize its approval:

Fiscal Impact:

None.

Recommendation:

I recommend that the Town Council approve the Resolution as proposed.

Attachments:

- Resolution
- Agreement Extension

Prepared and Approved By:

A handwritten signature in cursive script that reads "Lesa J. Yeatts". The signature is written in dark ink and is positioned above a horizontal line.

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 22, 2020

Resolution- to ratify a Temporary Emergency Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Fairfax County School Board.

WHEREAS, the parties entered into a Lease Agreement dated March 2, 2005, as amended on March 29, 2010, October 1, 2010 and October 1, 2015 for 13,593 sq. ft of office space in the Town's building at 397 Herndon Parkway, as well as use of the rear parking lot for overnight and weekend storage of its maintenance vehicles; and

WHEREAS, the Lease Agreement expires on September 30, 2020; and

WHEREAS, Town and Lessee desired to temporarily extend the term of the Agreement to expire on December 31, 2020; and

WHEREAS, The Temporary Emergency Extension of Lease Agreement was signed by the Town Manager and ratified by Town Council; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Temporary Emergency Extension of Lease dated August 31, 2020 and signed by the Town Manager between the Town of Herndon and Fairfax County School Board for space in the Town's building at 397 Herndon Parkway in Herndon.

Temporary Emergency Extension of Lease Pursuant to Ordinance 20-O-23 Continuity of Governmental Operations due to State of Emergency, Pandemic Disaster Covid-19

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-O-23, as amended, this Temporary Emergency Extension of Lease dated August 31, 2020 hereby extends the September 30, 2020 termination date of the existing Lease between the Town of Herndon, Virginia (Landlord) and Fairfax County School Board (Tenant), dated March 2, 2005, as amended on March 29, 2010, October 1, 2010 and October 1, 2015 (collectively, the Lease) for 13,593 square feet of space at 397 Herndon Parkway (the Premises), as set out in this Temporary Emergency Extension of Lease (Temporary Emergency Extension).

THEREFORE, for the consideration stated in the Lease, the parties agree as follows:

1. The Lease is incorporated by reference.
2. The Lease shall terminate on **December 31, 2020**.
3. In all other respects, the Lease is confirmed.

TOWN OF HERNDON, VIRGINIA

by: _____
William A. Ashton, II
Town Manager

FAIRFAX COUNTY SCHOOL BOARD

by:  _____
Jeffrey K. Platenberg
Assistant Superintendent

APPROVED AS TO FORM:

Lesa J. Yeatts

Lesa J. Yeatts
Town Attorney



STAFF REPORT

Town Council - Work Session September 15, 2020

Title:

Resolution - to ratify an Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

Staff Contacts:

Lesa J. Yeatts, Town Attorney
(703)787-7370
lesa.yeatts@herndon-va.gov

Description:

The License Agreement that has been operative for the past five years between the Town and Nafis Peter Ahmed and Ruth Llabres Ahmed for use of their lot at the corner of Lynn and Station Streets for public parking and other public purposes expired on September 1, 2020. On August 31, 2020 the Town Manager signed an Extension of License pursuant to his authority under the Town's Continuity of Government ordinance. This Extension of License extends the terms of the existing License so that it will expire on November 30, 2020 to allow time for negotiations of a new License Agreement.

Under the existing license the Town paid \$1,000 per calendar month for the lot space License. The Town will pay \$1250.00 per calendar month during the three month extension.

The Town Council must now consider ratification of an Extension of License in order to extend the expiration date of the current License Agreement to November 30, 2020 to finalize its approval:

Fiscal Impact:

None.

Recommendation:

We recommend that the Town Council approve the Resolution as proposed.

Attachments:

- Resolution
- Extension of License Agreement

Prepared and Approved By:

A handwritten signature in cursive script, reading "Lesa J. Yeatts".

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 22, 2020

Resolution- to ratify an Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

WHEREAS, the parties entered into a License Agreement dated June 25, 2015 for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes; and

WHEREAS, the License Agreement expired on September 1, 2020; and

WHEREAS, Town and Licensor desired to extend the term of the Agreement to expire on November 30, 2020; and

WHEREAS, The Extension of License was signed by the Town Manager and ratified by Town Council; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Extension of License dated August 20, 2020 and signed by the Town Manager between the Town of Herndon between the Town and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

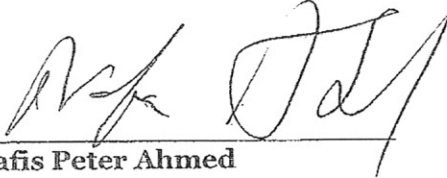
**Extension of License Pursuant to Ordinance 20-O-23 Continuity of
Governmental Operations due to State of Emergency,
Pandemic Disaster Covid-19**

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-O-23, as amended, this Extension of License dated August 20, 2020, hereby extends the September 1, 2020 termination date of the existing License between the TOWN OF HERNDON, VIRGINIA (Town) and NAFIS PETER AHMED AND RUTH LLABRES AHMED (Ahmed) dated June 25, 2015, for the use of the lot at the corner Lynn Street and Station Street (the License) for a period of three calendar months (the Extension).

THEREFORE, for the consideration stated in the License and herein, the parties agree as follows:

1. The License is incorporated by reference.
2. The License shall terminate on **November 30, 2020**.
3. Town will pay Ahmed \$1250.00 per calendar month during the Extension.
4. Town will provide Ahmed evidence of its insurance coverage for lot during the extension.
5. In all other respects, the License is confirmed.

Signatures on following pages


Nafis Peter Ahmed

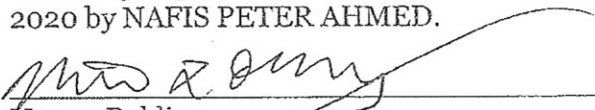
DocuSigned by:

Ruth Llabres Ahmed

COMMONWEALTH OF VIRGINIA

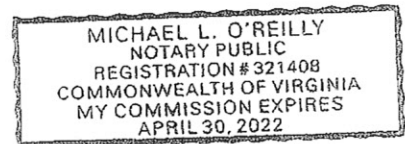
COUNTY OF Fairfax:

The foregoing instrument was acknowledged before me this 7th day of August, 2020 by NAFIS PETER AHMED.


Notary Public

My Commission Expires: 4/30/22

Registration No. 321408



COMMONWEALTH OF VIRGINIA

COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by RUTH LLABRES AHMED.

Notary Public

My Commission Expires: _____

Registration No. _____

TOWN OF HERNDON, VIRGINIA

ATTEST:

Victoria Lee Wellershaus
Town Clerk

William H. Ashton II
Town Manager



COMMONWEALTH OF VIRGINIA

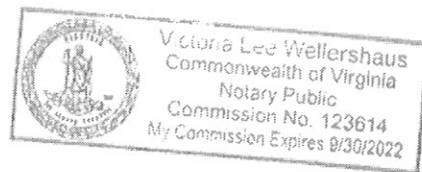
COUNTY OF Fairfax, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that William H. Ashton II as Town Manager of the Town of Herndon, Virginia, whose name is signed to the foregoing Extension of License, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 31st day of August, 2020.

Victoria Lee Wellershaus
Notary Public

My Commission Expires: 9-30-2022
My Notary Registration Number: #123614



APPROVED AS TO FORM:

Lesa J. Yeatts

Lesa J. Yeatts
Town Attorney



STAFF REPORT

Town Council

September 15, 2020

Title: Initiating Resolution - Zoning Ordinance Text Amendment – ZOTA #20-01 – Renaming Heritage Preservation Overlay district to Historic District Overlay

Staff Contact: David Stromberg, AICP, Zoning Administrator
david.stromberg@herndon-va.gov (703)787-7380

Bryce Perry, Deputy Director of Community Development
Bryce.perry@herndon-va.gov (703) 787-7380

Summary Information:

If approved, this initiating resolution will refer ZOTA #20-01 to the planning commission for consideration and recommendation. Following planning commission review, this text amendment would return to the council for final action.

This zoning ordinance text amendment will rename the heritage preservation overlay district (HPO) to the historic district overlay (HDO). Changing the name to the historic district overlay will allow for a clearer identification of the district and align the district with the typical term used throughout Virginia and the United States.

The proposed change will require the heritage preservation review board (HPRB) to be renamed the historic district review board (HDRB). The name change requires edits to multiple sections of chapter 78.

In addition, the proposed text amendment authorizes the staff to issue certain Certificates of Appropriateness (COA), negating the need for public hearings on those matters. Furthermore, the amendment clarifies the intent of the district and establishes a clear demarcation between an alteration to a structure and new construction or demolition. The amendment also provides for potential relief from the filing of a single lot development plan for certain residential additions. In several instances the amendment clarifies or simplifies language.

Background:

The town council expressed interest in renaming the heritage preservation overlay district after a joint meeting in December of the council and heritage preservation review board regarding the draft update to the guidelines. In addition, statements by members of the council, as well as public comment, have indicated a desire for some reviews and decisions to become administrative.

While staff, the consultants and the Department of Historic Resources worked to resolve several fundamental issues relative to the revision of the guidelines, it became apparent that to allow administrative approvals for particular types of applications, staff would have to be authorized to issue a COA. Currently, the zoning ordinance restricts the issuance of COAs to the review board. The proposed text amendment institutes this change of procedure. In addition, staff has identified areas of the ordinance that lack clarity and has taken this opportunity to clarify the language of Section 78-60.3, as well as permit certain residential additions an exemption from the requirement to file a single lot development plan. The need for clarification, and flexibility regarding single lot development plans comes from staff's own experience with the ordinance language and feedback from applicants and applicant agents.

Staff Analysis:

As currently named, the heritage preservation overlay district causes confusion. Staff frequently receives questions asking what the difference is between the heritage district and the historic district. Other questions include asking why Herndon has a heritage district, while other places have a historic district. Renaming the district to the historic district overlay should reduce this confusion.

In Virginia and nationwide, "historic district" is the typical term used for locally designated zoning overlay areas that are designed to allow the establishment of additional regulation directed towards the architectural and historical preservation of areas with historic and architectural value. The Virginia State Historic Preservation Office and Department of Historic Resources strictly uses the term "historic district" for these types of locally designated overlay districts. Staff and the consultants working on the new guidelines are unaware of any other similar districts in Virginia that use the term "heritage preservation" in the district name.

The legal authority for localities to regulate historic landmarks, buildings, and other structures through zoning is granted by Virginia Code §15.2-2306. State code does not mandate the name of the district or review board, however the legislation uses the term "historic district".

The proposed name change is meant to more accurately reflect the type of district as enabled by state code and allow for a clearer recognition and identification of the district as akin to other historic districts in Virginia.

The amendment to permit staff to issue COAs for specific types of applications is being instituted to provide for an easier and less time-consuming process. The consultants heard from several members of the community that the public hearing process and the time involved was undesirable. The town council requested that the process be altered to allow

applications to be decided at the staff level, to shorten the process and reduce the number of applicants required to appear at public hearing. The proposed amendment provides the necessary authorization to permit this change. At this time, it is anticipated that the majority of administratively approved COAs will be for material changes or significant like-for-like repairs and replacements, but the amendment has been drafted to allow the administrative COA process to expand without the need for future text amendment. The amendment also stipulates that any appeal of a staff COA decision would go to the review board for consideration.

Language is being retained to allow the review board to adopt specific standards for certain types of applications and allow staff review and approval of applications that meet the stated criteria. This process is already in place for paint and fences, and the board and staff have been working to expand the allowance to cover additional types of applications.

The amendment includes new language stating that when more than 49% of the original or historic facades or roofs are removed, then new construction or demolition sections of the ordinance or guidelines apply. This provides needed delineation between types of applications and the applicable ordinance sections and guidelines. Such clarification helps to decrease time lost due to misunderstanding or miscommunication.

The proposed language stating that certain residential additions may be excused from submitting a single lot development plan has the potential to save applicants tens of thousands of dollars. A building location survey would still be required. Building location surveys require less engineering and are considerably less expensive to obtain. Per the proposed language, the request to be excused from the single lot development requirement would require approval from the zoning administrator and town engineer. This requirement ensures against any adverse impacts on abutting public or private property and compliance with the Chesapeake Bay requirements. Applicants have indicated that under the current ordinance, they have designed additions in a manner as to avoid submittal of a single lot development plan. By designing to avoid the submittal of a single lot development plan, the applicants have arrived at designs that are not appropriate per the guidelines and are not the applicant's preferred choice.

As indicated above, several of the amendments are proposed to clarify ordinance language. These changes incorporate more direct sentence structure and clarity of thought and intent.

Town Council Alternatives:

The following alternatives are available to the town council for its decision on Zoning Ordinance Text Amendment ZOTA #19-02:

1. Approve Initiating Resolution

2. Deny Initiating Resolution

Staff Recommendation:

Staff recommends the town council approve the initiating resolution for ZOTA #20-01 in accordance with **alternative 1**.

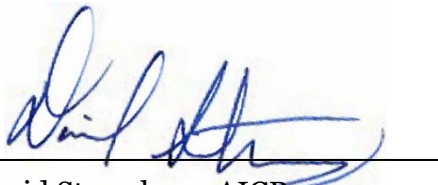
If the town council approves the initiating resolution, then staff will schedule this item with the planning commission. The item will then return to the town council for a public hearing and vote.

Attachments:

1. Initiating Resolution
2. Draft Language



Bryce Perry
Deputy Director of Community Development



David Stromberg, AICP
Zoning Administrator

TOWN OF HERNDON, VIRGINIA

ORDINANCE

_____, 2020

Ordinance – to amend Chapter 78 (ZONING), Article I (Introductory Provisions), Section 78-10.3 (Purpose and Intent), Article II (Zoning Districts), Section 78-20.2 (Establishment of Overlay Zoning Districts), Section 78-20.3 (Relationship of Base Districts to Overlay Zoning Districts), Section 78-20.5 (Transition to New Zoning Districts), Article V (Planned Development Districts), Section 78-50.2 (Standards for all Planned Development Districts), Section 78-50.6 (PD-D, Planned Development-Downtown), Section 78-50.7 (PD-TD, Planned Development-Traditional Downtown), Article VI (Overlay Districts), Section 78-60.2 (Floodplain Overlay District (FPO)), Section 78-60.3 (Heritage Preservation Overlay District (HP District)), Section 78-60.4 (Chesapeake Bay Preservation Area Overlay District (CBPAO)), Article VII (Use Regulations), Section 78-71.13 (Commercial Utilities Use Category), Article VIII (Accessory Uses), Section 78-80.3 (Accessory Structure Standards), Section 78-80.4 (Standards for Specific Accessory Uses and Structures by Use Type), Article XI (Development Standards), Section 78-110.3 (Site Landscaping (Not Contained in Perimeter Buffer Strips and Vehicular Use Areas)), Section 78-114.1 (Additional Screening Requirements), Section 78-115.1 (Retaining Walls), Section 78-115.2 (Fencing, Walls (Except Retaining Walls) and Hedges, Article XIV (Signs), Section 78-140.4 (Prohibited Signs), Section 78-140.5 (Sign License Required), Section 78-141.6 (Sign Standards for Downtown and Mixed-Use Districts), Article XV (Decision-Making Authorities, Application Review and Permitting), Section 78-150.1 (Town Council), Section 78-150.2 (Planning Commission), Section 78-150.4 (Heritage Preservation Review Board), Section 78-150.5 (Architectural Review Board), Section 78-150.6 (Zoning Administrator) Section 78-151. (Summary Table of Development Review Responsibilities), Section 78-152.2 (Application Submission, Requirements and Acceptance), Section 78-153.2 (Review Process for Applications Requiring a Public Hearing (Approval by Decision Making Body)), Section 78-155.1 (Zoning Map Amendment (ZMA)), Article XVI (Nonconformities), Section 78-160.1 (Generally), Section 78-160.3 (Nonconforming Structures), Article XVII (Enforcement, Violations and Remedies), Section 78-170.3 (Types of Violations), Section 78-170.4 (Penalties, Fines and Remedies for Violations), Article XVIII (Definitions), Section 78-180. (Definitions), and adding a new Section 78-155.10 (Certificates of Appropriateness) to change the name of the Heritage Preservation Overlay district to the Historic District Overlay and to allow for the administrative review of certain types of certificates of appropriateness.

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

1. Chapter 78 (ZONING) of the Herndon Town Code is amended and reenacted as follows.

Section 78-10.3 – Purpose and Intent.

(b) Intent. *This chapter is intended to:*

(5) Protect against destruction of or encroachment upon historic ~~and heritage~~ areas.

(19) Enhance the unique characteristics of historic ~~and heritage~~ resources and ensure a built environment that is a worthy heritage for future generations.

Section 78-20.2 – Establishment of overlay zoning districts.

The overlay zoning districts established in this chapter are shown in Table 78-20.2: Overlay Zoning Districts.

TABLE 78-20.2: OVERLAY ZONING DISTRICTS	
Abbreviations	District Name
FPO	Floodplain Overlay District
HPO <i>HDO</i>	Heritage Preservation <i>Historic District</i> Overlay District
CBPAO	Chesapeake Bay Preservation Area Overlay District

Section 78-20.3 – Relationship of base districts to overlay zoning districts.

Three overlay districts are established in addition to the base zoning districts: The Floodplain Overlay (FPO) ~~District~~, the ~~Heritage Preservation~~ *Historic District* Overlay (~~HPO~~) (*HDO*) ~~District~~, and the Chesapeake Bay Preservation Area *Overlay* (CBPAO) ~~district~~. Where land is classified into an overlay district as well as a base zoning district, the regulations governing the development in the overlay district shall apply in addition to the regulations governing the development in the underlying base zoning district. In the event of an express conflict, as determined by the zoning administrator, between the standards governing an underlying base zoning district and those governing an overlay district, the standards governing the overlay district shall control.

Section 78-20.5 – Transition to new zoning districts.

Upon adoption of this chapter, land that was zoned within a zoning district classification existing prior to July 1, 2006, shall be classified within one of the zoning district classifications set forth in Article II, Zoning Districts, and as shown in Table 78-20.5, Transition to New Zoning Districts. The following table summarizes the transition from former zoning ordinance districts to new districts set forth in this chapter.

TABLE 78-20.5: TRANSITION TO NEW ZONING DISTRICTS	
Overlay Districts:	
Floodplain Overlay District (FPO)	Floodplain Overlay District (FPO)
Heritage Preservation District (HPO) <i>Historic District Overlay District (HDO)</i>	Heritage Preservation District (HPO) <i>Historic District Overlay District (HDO)</i>
Chesapeake Bay Preservation Area Overlay District (CBPAO)	Chesapeake Bay Preservation Area Overlay District (CBPAO)

Section 78-50.2 – Standards for all planned development districts.

- (b) *Review board approval for PD development.* Development located within a planned development district and outside of the ~~heritage preservation district~~ *historic district* overlay district, other than single-family detached units, shall be subject to the approval of the architectural review board. Development within a planned development district in the ~~heritage preservation district~~ *historic district* overlay district shall be subject to the approval of the ~~heritage preservation district~~ *historic district* review board.

Section 78-50.6 – Planned development downtown district.

- (a) *Purpose and intent.* The intent of the PD-D district is to encourage revitalization and creative design for residential and commercial lands located in the Downtown Overlay of the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended, and to provide flexibility in land planning for residential and commercial development located in the downtown area.

- (1) *Objectives.* Objectives of the PD-D district include:

- e. Adhering to the standards and guidelines of the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended, and the Herndon ~~Heritage Preservation Handbook, revised July 1990, as may be amended from time to time (the Heritage Preservation Handbook).~~ *Historic District Overlay Guidelines, as amended.*

- (2) *Additional considerations to ensure purpose and intent are met.* Decisions on PD-D zoning map amendments shall involve consideration of the existence or provision of an adequate road network and parking facilities, provision of public facilities and amenities, the use or mix of uses offered in proposed development plans, the merit of proposed site design in achieving the goals of the comprehensive plan and the ~~heritage preservation handbook~~ *Historic District Overlay Guidelines*, and the contribution of the proposed development to revitalization of the downtown. The flexibility of PD-D district regulations does not mean that an applicant is entitled to such a rezoning by meeting the minimum requirements of this division or that proposals approaching the maximum permitted density are entitled to a PD-D zoning map amendment.

- (f) *Dimensional Standards.* The PD-D district shall be subject to the following dimensional standards:

- (2) *Increases in intensity.* The floor area ratio of development shall not exceed 0.5 in the Downtown Overlay in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended, except as allowed in section 78-50.6(f)(2), increases in intensity. The town council may, as part of the review of the PD-D district, increase the floor area ratio (i) up to 2.50 in sectors 1, 2 and 6 or (ii) up to 0.7 in sectors 3 and 4 of the Downtown Overlay, if the PD-D development meets three or more of the following criteria.

- (d.) Building façade design that excels at meeting the objectives and guidelines contained in the ~~Herndon Heritage Preservation Handbook~~ *Historic District Overlay Guidelines*, subject to preliminary review by the ~~heritage preservation~~ *historic district* review board as provided in section 78-155.1(i)(a).

- (h) *Site planning and building design in PD-D.* Sites and buildings within the PD-D district shall meet the following standards:

- (6) ~~HPRB~~ **HDRB** review required for increased FAR. Site and building design shall comply with guidelines in the ~~Herndon Heritage Preservation Handbook~~ **Historic District Overlay Guidelines** as determined by the ~~HPRB~~ **HDRB** prior to the planning commission public hearing when the increased floor area ratio is considered.

Section 78-50.7 – PD-TD – Planned development traditional downtown district.

- (h) *Site planning and building design in PD-TD.* Sites and buildings within the PD-TD district shall meet the following standards:

- (5) ~~HPRB~~ **HDRB** review required. Site and building design shall comply with guidelines in the ~~Herndon Heritage Preservation Handbook~~ **Historic District Overlay Guidelines** as determined by the ~~HPRB~~ **HDRB** prior to the planning commission public hearing in accordance with section 78-155.1(h)(2).

Section 78-60.2 – Floodplain overlay district (FPO).

Section 78-60.3 – ~~Heritage Preservation~~ **Historic District Overlay ~~district~~ (HP **HDO** ~~district~~).**

- (a) *Purpose and intent.* The ~~heritage preservation~~ **historic district** overlay ~~district~~ (HP **HDO** ~~district~~) is *established pursuant to the authority granted to localities by Virginia Code § 15.2-2306. It is intended to promote and protect the unique character of the town through the identification, preservation and enhancement of buildings, structures, settings, neighborhoods, places and features with historical architectural significance to the town. The HDO further intends to:* ~~intended to provide for the establishment of historic landmarks and preservation districts as a means of preserving the historical, cultural, and architectural heritage of the town and protecting designated historic resources and is adopted pursuant to the authority granted to localities by Virginia Code §15.2-2306.~~

- (1) *Ensure that additions, repairs, modifications, and new construction enhance rather than detract from the town's historic architectural settings.*
- (2) *Preserve the architectural, artistic, and historic merit of individual structures.*
- (3) *Protect historic resources from neglect and demolition.*

(4) *Retain important townscapes and viewsheds integral to the identity of Herndon.*

(b) *Applicability.* No building, structure, or sign located in the ~~HP historic~~ district *overlay* shall be erected, reconstructed, altered, demolished, moved, expanded or restored except in accordance with the provisions of 78-60.3(g), certificate of appropriateness in the ~~heritage preservation~~ *historic district* overlay. ~~district.~~

(c) *District boundaries and maps.* The boundaries of the ~~HP-district~~ *historic district overlay* shall be shown on the town's official zoning map and on the appropriate comprehensive plan maps after action by the planning commission and town council.

(d) *Revision of ~~HP-district~~ historic district overlay boundary and designation of landmarks.* The boundaries of the ~~HP-district~~ *HDO* may be amended or areas, sites, buildings, and structures may be designated as historic landmarks in compliance with the following:

(1) *Amendment procedures.* The procedures for amendment of the ~~HP-district~~ *HDO* boundaries or designation of historic landmarks shall be as provided for as an amendment to the official zoning map pursuant to section 78-155.1, zoning map amendment. In addition, the following procedures shall apply:

a. The planning commission shall conduct or delegate a survey of the town. The survey shall identify and inventory all landmarks, buildings, or structures, in areas being proposed within the proposed district boundaries. The planning commission shall also prepare reports recommended to be included in the ~~HP-district~~ *HDO*.

b. Prior to establishing or expanding the ~~HP-district~~ *HDO* the town council shall:

1. Provide for public input from the community and affected property owners in accordance with Code of Virginia, § 15.2-2204;

2. Follow the written criteria set out below to be used to determine which properties should be included within the ~~HP-district~~ *HDO*; and

3. Review the inventory and the criteria to determine which properties in the areas being considered for inclusion within the proposed district meet the criteria to be included in the ~~HP-district~~ *HDO*.

c. Upon the inclusion of an area in the ~~HP-district~~ *HDO*, the owner of each property within the established district boundaries therein shall be given written notification, including a description of the factors justifying the designation.

(2) *Review of ~~HP-district~~ **HDO** boundary amendments.* The advisability of amending the ~~HP-district~~ **HDO** boundary is a matter committed to the legislative discretion of the town council and is not controlled by any one factor. The following shall be considered by the town council, and its advisory bodies as part of the deliberation process:

- a. In considering an amendment to ~~HP-district~~ **the HDO** boundary, the town council may adopt a change for only part of the area surveyed by the planning commission. The town council may amend the ~~HP-district~~ **HDO** boundary to include any area that has been considered by the planning commission.
- b. The following criteria shall be used by the historic ~~preservation~~ **district** review board, planning commission, and town council in evaluating the potential expansion of the ~~HP-district~~ **HDO**. The historic ~~preservation~~ **district** review board and planning commission may recommend, and the town council may so ordain, a landmark, building, or structure, for designation as a ~~HP-district~~ **which within the HDO, provided it** meets one or more of the following criteria:

- 5. The property or properties are closely related to or contiguous with properties that meet criteria a-d as related to their visual character or historic pattern of development; or otherwise contribute to the historic and architectural context of the proposed or existing ~~HP-district~~ **HDO**.

- c. Such ~~HP-district~~ **HDO** boundaries may be adjusted to exclude properties along the perimeter that do not meet the criteria. The town council shall include only the geographical areas in the ~~HP-district~~ **HDO** where a majority of the properties meet the criteria established below by the town in accordance with this section. However, parcels of land contiguous to arterial streets or highways found by the town council to be significant routes of tourist access to the town or to be designated historic landmarks, buildings, structures, or districts therein, or in a contiguous locality, may be included in the ~~HP-district~~ **HDO** notwithstanding the provisions of this subsection.

- (e) *Reduction of setback.* In the ~~HP-district~~ **HDO**, the front setback for a single-family detached dwelling may be reduced from 35 feet to a lesser amount but not less than 20 feet, in instances where the ~~HPRB~~ **HDRB** makes a finding that such reduction shall cause the subject structure to be more compatible with nearby contributing structures.

(f) ~~Development within the heritage preservation historic district overlay district.~~
 Development located within a ~~preservation district~~ *the historic district overlay* shall be
 completed in accordance with the ~~Herndon Heritage Preservation Handbook~~ *Historic
 District Overlay Guidelines*, and the following standards:

(1) ~~Alteration, restoration or reconstruction.~~ *Standards for Alterations.* A certificate
 of appropriateness ~~for altering, restoring, or reconstruction of~~ *to* a building or structure
 shall be approved only after ~~considering the following standards, as well as other~~
~~appropriate matters:~~ *meeting the following standards:*

- a. ~~Whether or not reasonable~~ *Reasonable* effort shall be *is* made to alter the
 site, building, ~~or~~ structure, and its environment to the minimal extent
 practicable.
- b. ~~Whether or not alteration~~ *Alteration* of the original, distinguishing
 qualities or character of a site, building, ~~or~~ structure, and its environment
 and the removal or alteration of any historic material or distinctive
 architectural features shall be *is* avoided to the greatest extent practicable.
- c. ~~Whether all sites, buildings and structures shall be recognized as products~~
~~of their own time, with alterations~~ *Alterations* ~~and reconstruction to~~
 existing buildings, ~~and structures, and sites to be~~ *are* consistent with the
 original style of such buildings and structures.
- d. ~~Whether or not distinctive~~ *Distinctive* stylistic features or examples of
 skilled craftsmanship that characterize a building, ~~or~~ structure, or site
 shall be retained and restored to the greatest extent practicable.
- e. ~~Whether or not deteriorated~~ *Deteriorated* architectural features shall be
 repaired, rather than replaced, wherever reasonably possible, ~~and, if~~ *If*
 replacement is necessary, ~~whether or not~~ new materials shall match the
 material being replaced in composition, design, color, texture, and other
 visual qualities to the greatest extent practicable.
- f. ~~Whether or not repair or replacement~~ *Alteration* of missing architectural
 features shall, to the greatest extent possible, be based on accurate
 duplications of the original features, substantiated by historic, physical, or
 pictorial evidence, rather than on conjectural designs or the availability of
 different architectural elements from other buildings or structures.
- g. ~~Whether or not the surface cleaning~~ *Cleaning* of buildings and structures
 constituting historic landmarks shall be undertaken with the gentlest
 means practicable; provided, however, that sandblasting and other
 cleaning methods that may damage the existing building materials shall
 not be approved.

- 232 h. *When more than 49 percent of the original or historic facades or roofs*
 233 *on the structure are removed, the provisions of Section 78-60.3(f)(2),*
 234 *New Construction, or Section 78-60.3(f)(4), Demolition, apply. Whether*
 235 ~~or not partial demolition of buildings or structures within preservation~~
 236 ~~districts may be approved when one or more of the existing facades are~~
 237 ~~retained for the purpose of integrating new construction into existing~~
 238 ~~historic buildings or structures when such is appropriate and in~~
 239 ~~accordance with the intent of this article. The town does not advocate this~~
 240 ~~procedure, as it goes against the Secretary of the Interior's guidelines for~~
 241 ~~rehabilitation and credits would not be allowed in such projects.~~
- 242 i. ~~Whether or not, to the greatest extent practicable, every~~ *Every* effort shall
 243 be made to protect and preserve archeological resources within or
 244 adjacent to the heritage preservation overlay district. *To the greatest*
 245 *extent practicable.*
- 246 j. ~~Whether or not contemporary~~ *Contemporary* design for alterations and
 247 ~~additions to existing buildings and structures is~~ *shall be* compatible with
 248 the size, scale, color, material, and character of the building and
 249 structures within preservation districts, ~~and whether or not such~~ *Such*
 250 ~~alterations and additions would~~ *shall not* destroy *or negatively impact*
 251 significant historical, architectural, or cultural material.
- 252 k. ~~Whether or not the proposed additions or alterations~~ *Alterations* to
 253 existing buildings and structures shall be done in such a manner that, if
 254 such additions or alterations were to be removed in the future, the
 255 essential form and integrity of the *original* building or structure would be
 256 unimpaired. ~~Whenever possible, new additions or alterations to existing~~
 257 ~~buildings and structures shall be done in such a manner that, if such~~
 258 ~~additions or alterations were to be removed in the future, the essential~~
 259 ~~form and integrity of the building or structure would be unimpaired.~~
- 260 (2) *New Construction.* A certificate of appropriateness for new construction of a
 261 building or structure may be approved only after considering *meeting* the
 262 following standards, ~~as well as other appropriate matters:~~
- 263 a. ~~Whether or not the design will~~ *The design shall* be architecturally
 264 compatible with the historic landmarks, buildings, and structures in the
 265 heritage preservation *historic district* overlay district in terms of size,
 266 scale, color, material, and character.
- 267 b. No specific architectural style shall be adopted or imposed on the
 268 administration of this section.
- 269 c. *Alterations of more than 49 percent of the original or historic facades, or*
 270 *more than 49 percent of the roof of the structure, as determined by the*
 271 *zoning administrator, shall be considered new construction.*

- (3) *Moving or relocating a building.* A certificate of appropriateness to move or relocate a building or structure may be approved only after ~~considering the following, as well as other appropriate matters~~ *meeting the following standards:*
- a. ~~Whether or not the proposed relocation may~~ *The relocation shall not* have a detrimental effect on the structural soundness of the building;.
 - b. ~~Whether or not the proposed relocation would have a negative or positive~~ *The relocation shall not have a negative* effect on other historic landmarks or on other sites, buildings, or structures located within the ~~heritage preservation overlay district~~ *historic district overlay*;
 - c. ~~Whether or not the~~ *The* proposed relocation ~~would~~ *shall* provide new surroundings that would be compatible with the architectural aspect of the building or structure;.
 - d. ~~Whether or not the~~ *The* proposed relocation is the only practicable means of saving the structure from demolition; ~~and~~.
 - e. ~~Whether or not the~~ *The* building or structure ~~will~~ *shall* be relocated to another site within the corporate limits of the town or to another adjacent site that is subject to preservation control.
- (4) *Demolition.* A certificate of appropriateness to demolish a building or structure may be approved, only after ~~reviewing and considering the circumstances and conditions of the structure or building or the part proposed for demolition, and considering the following factors as well as all other appropriate matters~~ *meeting the following standards:*
- a. ~~Whether or not the~~ *The* building or structure ~~is an historic landmark or is a building within the heritage preservation overlay district that~~ *does not contribute* contributes to the character of the ~~heritage preservation overlay~~ *historic district*;
 - b. ~~Whether or not the~~ *The* building or structure ~~is of such interest or significance that it would~~ *not* qualify as a national or state landmark building or structure listed on the National Register of Historic Places or the Virginia Landmarks Register;.
 - c. ~~Whether or not the building or structure is of such old or uncommon design, texture or scarce material that it could not be reproduced or could be reproduced only with great difficulty and expense;~~ *The building or structure has a common design that could reasonably be reproduced.*
 - d. ~~Whether or not historic events occurred in the building or structure;~~ *No historic events occurred in the building or structure.*

- 308 e. Whether or not the building or structure is structurally unsound and to
 309 what extent; *It is determined the building or structure has a degree of*
 310 *structural unsoundness.*
- 311 f. Whether or not a relocation of the building or structure or a portion
 312 thereof would be to any extent practicable as a preferable alternative to
 313 demolition; *It is not practicable to relocate the building or structure, or*
 314 *portion thereof.*
- 315 g. ~~Whether or not the~~ *The* proposed demolition ~~could potentially~~ *does not*
 316 adversely affect other historic landmarks located within a ~~preservation~~
 317 ~~district~~ *the historic district overlay* or adversely affect the character of a
 318 ~~preservation district~~ *the historic district overlay*;
- 319 h. ~~If a building is damaged by a fire or other natural hazard, the building~~
 320 ~~inspector shall determine if a building is structurally sound and is in~~
 321 ~~imminent danger to public safety and should be demolished;~~
- 322 i.h. ~~The reason for demolishing the building or structure and whether or not~~
 323 ~~any alternatives to demolition exist.~~ *Practicable alternatives to*
 324 *demolition do not exist.*
- 325 j.i. ~~Whether or not there has been a professional, economic, and structural~~
 326 ~~feasibility study for rehabilitating or reusing the structure and whether or~~
 327 ~~not its findings support the proposed demolition.~~ *An economic and*
 328 *structural feasibility study prepared by a qualified professional is*
 329 *submitted that concludes rehabilitating or reusing the building or*
 330 *structure is not a practicable alternative.*
- 331 (g) *Certificate of appropriateness (COA) in the* ~~heritage preservation overlay district~~
 332 *historic district overlay.* The purpose of this section is to establish the procedures and
 333 standards for the review of certificates of appropriateness in the ~~heritage preservation~~
 334 ~~overlay district~~ *historic district overlay.*
- 335 (1) *Applicability.* Unless exempted pursuant to section 78-60.3(g)(2), exemptions, a
 336 certificate of appropriateness must be approved prior to:
- 337 a. ~~Erecting, reconstructing, altering, or restoring~~ *New construction or*
 338 *alterations to* any building or structure in the ~~heritage preservation~~
 339 ~~overlay district~~ *historic district overlay*; or
- 340 b. Demolishing, or moving any historic landmark, building, or structure
 341 located in the ~~heritage preservation district~~ *historic district overlay.*
- 342 c. ~~Signs in the heritage preservation overlay district are reviewed pursuant~~
 343 ~~to the applicable procedures in Article XIV, Signs.~~ *The installation of any*
 344 *sign not subject to Section 78-140.5(f).*

- (2) *Exemptions from COA.* The following minor development, which has been determined not to have permanent effects on the character of the ~~heritage preservation district~~ *historic district overlay*, is exempted from the requirements of this section. In the event the scope or nature of the development changes during the improvement process, ~~the zoning administrator shall have the authority to order all work to be stopped and that an appropriate application for a certificate of appropriateness be filed.~~ *a violation may be issued pursuant to Article XVII (Enforcement, Violations, and Remedies).*

- c. Landscaping, grading, walks, swimming pools and related mechanical equipment, retaining walls of less than 12 inches in height, or temporary fencing in place for one year or less, when it does not significantly affect the character of the ~~heritage preservation overlay district~~ *historic district overlay* or an historic landmark and its surroundings.

- (3) *Relationship of certificate of appropriateness to site administrative plan review.*

- a. An application for a certificate of appropriateness in the ~~heritage preservation overlay district~~ *historic district overlay* for a development that requires site plan, *subdivision site plan*, single lot development plan, *or building location survey* approval pursuant to ~~s~~Section 78-155.6, site plan (*Site Plans, Subdivision Plans, Single Lot Development Plans, and Building Location Surveys*) shall not be reviewed formally by the ~~heritage preservation historic district~~ review board (~~HPRB HDRB~~) until the site plan, *subdivision site plan*, ~~or~~ single lot development plan, *or building location survey* is approved. ~~However, applicants~~ *Applicants* may meet informally with the ~~HPRB HDRB~~ prior to site *administrative* plan approval.
- b. ~~In instances where development requires site plan or single lot development plan approval (section 78-155.6), upon recommendation of the zoning administrator or the town council, an applicant may present the substance of the plan for development for which a certificate of appropriateness is required at a work session of the HPRB prior or concurrent with the review of the site plan or single lot development plan.~~ *On properties zoned and used for single family residential within the historic district overlay, additions that comply with the applicable standards in Section 78-60.3(f), and with a footprint between 750 square feet and 1,250 square feet, and disturb less than 2,500 square feet of land, may not be required to submit a single lot development plan. Relief from the submission of a single lot development plan shall be determined by the concurrence of the zoning administrator and town engineer.*

(4) Certificate of appropriateness review procedure. The approval of a certificate of appropriateness shall be subject to the *Historic District Procedure Guide, Section 78-153.2 (Review Process for Applications Requiring a Public Hearing (Approval by a Decision Making Body))*, and the following:

a. ~~Prior to submitting an application for a certificate of appropriateness, applicants are encouraged to seek advice from the HPRB during one or more work sessions. At the work session, the HPRB will review the proposed plan for development and provide the applicant comments about its general conformance with the requirements for a certificate of appropriateness. The comments are advisory and do not confer development rights on the applicant or bind the HPRB, town staff, or any other entity of the town providing comments.~~

b. ~~The procedures and requirements for submittal and review of an application, scheduling the public hearing and public notification are established in Section 78-153.2.~~

c. ~~All applications for a certificate of appropriateness shall include the items required in section 78-152.2, submittal requirements, as well as the following:~~

1. ~~Architectural drawings or renderings drawn to scale (for new construction, rehabilitation or building alterations);~~

2. ~~Site plan drawn to scale (including landscaping);~~

3. ~~Samples of materials and colors to be used;~~

4. ~~Written statements concerning the following:~~

(a) ~~Construction methods to be employed;~~

(b) ~~A description of proposed materials;~~

(c) ~~Any proposed signs, with appropriate details;~~

(d) ~~Any proposed exterior lighting arrangements;~~

(e) ~~Elevations of all portions of structures and their relationships to public view;~~

(f) ~~Design of doors and windows;~~

(g) ~~The colors to be utilized and their relationships to adjacent structures;~~

(h) ~~All other exhibits and reports deemed necessary by the board for a full review of the application; and~~

(i) ~~If an application for demolition is submitted for a building or structure and is defined as a contributing building in the heritage preservation district, the interior and exterior of the building must be thoroughly documented with black and white photographs and measured drawings including floor plans and elevations following the standards of the Historic American Buildings Survey.~~

a. *Certain certificates of appropriateness may be reviewed and approved, approved with conditions, or denied administratively. Review of such certificates of appropriateness shall be based upon the Herndon Historic Preservation Guidelines, the standards in Section 78-60.3(f), and the standards listed below:*

1. *A list of improvements that may receive administrative review of a certificate of appropriateness shall be established by the zoning administrator maintained in the Office of Community Development.*
2. *Improvements eligible for an administrative review shall be of a common and recurring nature.*
3. *Improvements eligible for administrative review shall have only a minor impact on the design, character, or historic fabric of building, structure, or site.*
4. *Applications may be forwarded to the HDRB if the zoning administrator determines the application does not meet the aforementioned criteria.*

db. ~~After~~ *For those applications requiring HDRB review, following public notification and the scheduling of a public hearing, the ~~HRPB~~ HDRB shall conduct a public hearing on the application. At the public hearing, the ~~HRPB~~ HDRB shall consider the application, the relevant support materials, the staff report, and the public testimony and evidence given at the hearing. After the close of the public hearing, the ~~HRPB~~ HDRB shall either approve or disapprove the application based on the standards in section 78-60.3(gf), development within the heritage preservation historic district overlay district as follows and the following standards:*

1. *If the ~~HRPB~~ HDRB finds the application complies with the standards in section 78-60.3(gf), development within the heritage preservation overlay district and the applicable guidelines found in the Herndon Heritage Preservation Handbook, and the Historic District Guidelines the ~~HRPB~~ HDRB shall approve a certificate of appropriateness.*

2. If the ~~HRPB~~ **HDRB** determines the application fails to comply with the standards in section 78-60.3(gf), ~~development within the Heritage Preservation Overlay District, and the applicable guidelines found in the Herndon Heritage Preservation Handbook,~~ and the **Historic District Guidelines**, it may either disapprove the application or continue the public hearing. In either case, it shall explain why the application fails to comply with the review standards. It shall recommend revisions to the plans and specifications that would bring the application into conformance with section 78-60.3(gf), ~~development within the heritage preservation overlay district and the applicable guidelines found in the Herndon Heritage Preservation Handbook~~ **Historic District Guidelines**. The applicant may request or agree to a continuation of the public hearing in accordance with section 78-152.6, deferral of application and section 78-153.2(i)(2), continuation of public hearing.
- (5) *Certificate of appropriateness for minor improvements.* At its discretion, the ~~HRPB~~ **HDRB** may adopt a certificate of appropriateness providing design guidance for certain minor improvements such as changes in color of materials or fences, dumpster enclosures, and similar screening. The staff may review applications for eligible minor improvements addressed in the certificate of appropriateness for compliance with the certificate of appropriateness. The staff shall then notify the applicant in writing whether or not the application successfully complies with the certificate of appropriateness and the improvements shall be authorized under that certificate of appropriateness, without a public hearing before the ~~HRPB~~ **HDRB**.
- (6) *Certificate of appropriateness review standards.* Development located within a ~~preservation district~~ **the historic district overlay** shall be completed in accordance with the ~~Herndon Heritage Preservation Handbook~~ **Historic District Overlay Guidelines** and the standards set forth in section 78-60.3(f), ~~development within the heritage preservation overlay district~~ **historic district overlay**.
- (7) *Appeal of administrative COA decision to the historic district review board. The applicant or any person aggrieved by the decision with a property interest in land abutting or across the street from the property which is the subject of a final decision of the zoning administrator to the HDRB.*
- (a) *An appeal shall be initiated by filing a written notice of appeal with the zoning administrator specifying the grounds for the appeal within 30 days of the final decision.*
- (b) *If a written notice of appeal on an administratively approved certificate of appropriateness is received by the zoning administrator then other*

administrative approvals shall be stayed pending the decision by the HDRB.

(78) *Appeal of COA decision to town council.* The applicant or any person aggrieved by the decision with a property interest in land abutting or across the street from property which is the subject of a final decision of the ~~HPRB~~ HDRB on a certificate of appropriateness, may appeal the decision to the town council, as follows.

(a) An appeal shall be initiated by filing a written notice of appeal with the zoning administrator specifying the grounds for the appeal within 14 days of the final decision of the ~~HPRB~~ HDRB.

(b) No action shall be taken until 15 days after the final decision of the ~~HPRB~~ HDRB on a certificate of appropriateness. If a written notice of appeal on a certificate of appropriateness is initiated pursuant to this section, action on the certificate of appropriateness shall be stayed pending the final decision by town council.

(e) After the conclusion of the hearing, the town council may affirm, modify, or reverse the decision of the ~~HPRB~~ HDRB, in whole or in part, or may remand the case to the ~~HPRB~~ HDRB. The decision shall be based on the standards in section 78-60.3(f), development within the ~~Historic Preservation Overlay District~~ historic district overlay. The town council decision shall be subject to the following standards:

(1.) A decision shall not be reversed or modified unless there is evidence in the record that the decision of the ~~HPRB~~ HDRB is not correct, based on the review standards for a certificate of appropriateness.

(2.) In determining whether or not to remand a case to the ~~HPRB~~ HDRB, the town council shall be guided by the following factors: the completeness of the record; the appropriateness of further review by the ~~HPRB~~ HDRB of certain points or facts; and any amendments to the application after the decision of the ~~HPRB~~ HDRB. Town council recognizes that revisions to an application for the purpose of clarifying issues, or addressing concerns raised during the public hearing are positive and will not necessarily result in a remand, except that significant and substantive revisions to the application may serve as a basis for remand.

(89) *Appeal of town council decision to circuit court.* The applicant, any person jointly or severally aggrieved with a property interest in land abutting or across the street from property which is the subject of a final decision of the town council

pursuant to subsection (78) above, any person with a property interest in land in the ~~Heritage Preservation District~~ *historic district overlay*, who is aggrieved by a final decision of the town council, pursuant to subsection (78) above, or the town, may appeal the decision to the Circuit Court of Fairfax County pursuant to Code of Virginia § 15.2-2306. If appealed, a petition at law shall be filed setting forth the alleged illegality of the action by the town council, provided that such petition shall be filed within 30 days after the final decision is rendered by the town council. The filing of the petition shall stay the decision of the town council pending the outcome of the appeal to the court, except that the filing of the petition shall not stay a decision of the town council denying the right to raze or demolish a historic landmark, building or structure.

(910) *Submittal of new COA application after disapproval.* If the ~~HRPB~~ *HDRB* disapproves a certificate of appropriateness, the applicant may, at any time, submit a new application with new information addressing the written reasons for disapproval.

(1011) *Transfer of certificate of appropriateness.* A certificate of appropriateness shall be transferable to subsequent owners of the property for which the certificate is issued.

(1112) *Expiration of certificate of appropriateness.* Development activity or demolition approved pursuant to a certificate of appropriateness must begin within one year of the issuance of the certificate. Failure to begin the activity within one year shall render the certificate of appropriateness void.

(1213) *Extension of approved certificate of appropriateness.* Upon written application submitted to the zoning administrator by the applicant at least 60 days prior to the expiration of the certificate, the ~~HRPB~~ *HDRB* shall consider and may grant one extension not to exceed one year upon a showing of good cause. In determining good cause, the ~~HRPB~~ *HDRB* shall take into consideration the scope of the proposed work and the laws, ordinances, and regulations in effect at the time of the request for extension. The approval shall be deemed extended until the ~~HRPB~~ *HDRB* has acted upon the request. Failure to apply for an extension within the time limits established by this section shall render the certificate of appropriateness void.

(h) *Demolition, relocation and alteration of structures in the ~~heritage preservation overlay district~~ *historic district overlay*.* As provided in the Code of Virginia § 15.2-2306, in addition to the right of appeal outlined in this section, the owner of any building or structure shall be permitted to demolish, alter or relocate a building, structure or historic landmark in the ~~heritage preservation overlay district~~ *historic district overlay* provided that:

- (5) *Hazardous properties.* A contributing landmark, building or structure, or historic landmarks, shall not be razed, demolished or moved until the razing, demolition or moving thereof is approved by the ~~heritage preservation review board (HPRB)~~ *historic district review board (HDRB)* or, on appeal, by the town council after consultation with the ~~HPRB~~ *HDRB*, unless the building official consistent with the Uniform Statewide Building Code, Part III Maintenance, determines that the contributing structure constitutes such a hazard that it shall be razed, demolished or moved.

Section 78-60.4 – Chesapeake Bay Preservation Area Overlay ~~district~~ (CBPAO).

Section 78-71.13 – Commercial utilities use category.

- (d) *Commercial utilities category specific use standards.* In addition to the applicable requirements in this chapter, the following standards apply:

- (3) *Small cell facilities on a new utility distribution or transmission pole less than 50 feet.* Any new utility distribution or transmission pole of less than 50 feet in height above grade and designed to support small cell facilities is an administrative review-eligible project (AREP) as defined by the Code of Virginia § 15.2-2316.3. An AREP is subject to approval by the zoning administrator and shall comply with the following standards:

- (a.) ~~*Heritage preservation*~~ *Historic district overlay* review. Small cell facilities in the ~~heritage preservation overlay~~ *historic district overlay* are subject to the following:

- (1.) *Certificate of appropriateness.* A certificate of appropriateness must be obtained from the ~~heritage preservation~~ *historic district* review board unless all of the following conditions are met.

- (b.) *Architectural review.* Small cell facilities outside of the ~~heritage preservation~~ *historic district* overlay must receive approval by the architectural review board unless the following conditions are met:

Section 78-80.3 – Accessory structure standards.

- (b) *Accessory structures in multi-family and nonresidential districts.* Accessory structures in multi-family and nonresidential districts shall meet the following standards:

- (1) *General requirements.* Structures accessory to multi-family and nonresidential uses shall be subject to the approval of a site plan and approved through the site plan review process, section 78-155.6. and shall be subject to approval by the architectural review board under Chapter 58 of the Code of Ordinances or the ~~heritage preservation~~ *historic district* review board under section 78-155-760.3.

- (c) *Accessory features (such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools) in all zoning districts.* Standards stated elsewhere in this chapter shall govern for specific accessory structures or uses. The following standards shall apply to features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers and screening enclosures:

- (1) *Within ~~heritage preservation overlay district~~ *historic district overlay*.* A certificate of appropriateness may be required in the ~~heritage preservation overlay district~~ *historic district overlay*.
- (2) *ARB review.* Approval by the architectural review board may be required for multi-family and nonresidential properties outside of the ~~heritage preservation overlay district~~ *historic district overlay*.

Section 78-80.4 – Standards for specific accessory uses and structures by type.

- (c) *Antenna of all kinds, except commercial communication towers, freestanding.* The following standards are adopted to comply with applicable state and federal law, including the Federal Telecommunications Act of 1996 and the "Spectrum Act", and to control the location and screening of antennae to mitigate impact on surrounding properties.

- (2) *Large satellite dish antennae.* Satellite dish antennae measuring one meter or more are permitted accessory uses in nonresidential districts. Such dishes are subject to the standards set forth below to the maximum extent feasible, but only where there is no impairment of acceptable signal quality. These regulations are not intended to impose unreasonable delays or impose unreasonable costs on the

installation, maintenance, or use of satellite dishes, and shall not be interpreted or enforced in any manner contrary to federal or state law.

- (a) Within the ~~heritage preservation overlay district~~ *historic district overlay*, satellite dishes shall be screened or located so as to not be visible from any public streets.

- (3) *Commercial antennae.* Antennae may be located on existing structures provided the following standards are met:

- (c) Must receive a certificate of appropriateness when located within the ~~heritage preservation overlay~~ *historic district overlay* and visible from a public right-of-way.

- (d) *Bed and breakfast establishment.* Bed and breakfast establishments are permitted by special exception in accordance with the provisions of section 78-155.3, special exceptions and Article VIII, Accessory Use Regulations, as follows:

- (1) *Limited to certain housing types and zoning districts .* Bed and breakfast establishments may be established in owner- or operator-occupied single-family detached homes, including normal residential accessory structures existing as of March 1, 2007, in the R-15 and R-10 zoning districts; and in the ~~heritage preservation overlay district~~ *historic district overlay*.

- (n) *Outdoor serving areas accessory to an enclosed use providing food or beverage for sale or tasting.* Outdoor serving areas providing or allowing outdoor consumption of food or beverage accessory to an established enclosed use food or beverages for sale or tasting shall comply with the following standards:

- (10) *Limit on outdoor kitchen/bar equipment.* No exterior kitchen or bar service equipment shall be permitted abutting a public right-of-way unless permitted in association with, and for the duration of, a permitted temporary use permit. If such equipment, when not associated with a permitted temporary use permit, is visible from the adjacent right-of-way, landscaping or other screening as approved by either the ~~HPRB~~ *HDRB* or ARB, shall be installed to screen the equipment from the right-of-way.

Section 78-110.3 – Site landscaping (not contained in perimeter buffer strips and vehicular use areas).

- (c) *Certain exemptions for downtown.* Properties zoned PD-D and PD-TD shall be exempt from section 78-110.4(c) except as follows:

- (3) *Nonresidential development and mixed-use residential development located in the PD-D and PD-TD.* Nonresidential development and mixed-use residential development located in the PD-D and PD-TD shall provide:

- a. Commercial grade planting containers designed to complement (as determined by the ~~heritage preservation review board~~ *historic district review board* using recognized standards) the architecture of the building, or planting beds, planted and maintained with evergreen shrubs or live plants affording seasonal color. Such containers or planting beds shall not extend into the required 12-foot public streetscape.

Section 78-114.1 – Additional screening requirements.

- (b) *Review* . In addition to review as part of a site plan or subdivision plan application, all screening structures shall be subject to review and decision by the architectural review board or ~~heritage review board~~ *historic district review board*, as appropriate.

Section 78-115.1 – Retaining walls.

- (c) *Review and approval of retaining walls.* Retaining walls shall be reviewed and approved, if they are approved, in accordance with the following provisions, as applicable:

- (1) *Properties within the* ~~heritage preservation overlay district~~ *historic district overlay*. The ~~heritage preservation~~ *historic district* review board shall be the reviewing authority for retaining walls on any property within the ~~heritage preservation overlay district~~ *historic district overlay*.
- (2) *Townhouse, multifamily or commercial uses outside the* ~~heritage preservation overlay district~~ *historic district overlay*. The architectural review board shall be the reviewing authority for walls on property developed with townhouses, multi-

family uses, or commercial uses outside of the ~~heritage preservation overlay district~~ *historic district overlay*.

Section 78-115.2 – Fencing, walls (except retaining walls) and hedges.

- (c) *Approvals.* A certificate of appropriateness may be required for fencing or walls in the ~~heritage preservation overlay district~~ *historic district overlay*. ~~(see "certificate of appropriateness in the heritage preservation overlay district" in Article II, Administration).~~ Approval may be required from the architectural review board for fencing, walls or hedges associated with all uses under the purview of the architectural review board ~~(see Chapter 58 of the Herndon Town Code, section 58-62, approval of construction, reconstructions and alterations in architectural control districts required).~~

- (e) *Fencing, wall and hedge standards.* The following standards shall apply within all zoning districts throughout the town unless otherwise stated.

- (6) *Fencing and wall materials.* The following provisions shall apply to wall and fence materials:

- a. Fences or walls shall be constructed of customary fencing or wall materials, including solid wood, masonry, stone, brick, wrought iron, decorative metal materials, or products designed to resemble these materials. Any fence or wall material may be further restricted in the ~~heritage preservation district~~ *historic district overlay*. ~~by the heritage preservation review board.~~

- b. Chain link fencing is permitted only for the following purposes:

1. To surround tennis courts, ball fields, playgrounds, other recreational facilities not located on a lot with a single-family detached or single-family attached dwelling, and schools not associated with a home-based child care business subject to the following:

- (a) Chain link fencing used for recreational use within the ~~heritage preservation district~~ *historic district overlay* shall be coated with black or dark green vinyl and shall be screened from public rights-of-way and abutting properties by landscaping with a growth habit adequate to screen the fencing.

- (b) Installation of the screening and fencing shall be dependent upon review and approval by the ~~heritage preservation~~ *historic district* review board.

Section 78-140.4 – Prohibited Signs.

- (a) *General prohibitions.* In addition to signs prohibited elsewhere in this Code or by applicable state or federal law, the following signs are prohibited:

- (7) Signs painted directly on a building, except in the ~~Heritage Preservation Districts~~ *historic district overlay* when approved by the ~~HPRB~~ *HDRB*.

Section 78-140.5 – Sign license required.

- (b) *License types and approving authorities.* Sign licenses shall be approved by either the zoning administrator or the appropriate review board as follows:

- (1) *Administrative approvals.* Following approval by the ~~HPRB~~ *HDRB* or ARB, the zoning administrator or designee conducts final review of applications for all sign licenses other than those provided for in section 78-140.5(n). The following administratively approvable signs, not requiring review by the ~~HPRB~~ *HDRB* or ARB, are subject to review by the zoning administrator or designee, temporary sign licenses, master sign plan conformance licenses (after approval of a master sign plan license) and any sign which complies with uniform standards adopted by the ~~HPRB~~ *HDRB* and ARB for administratively approved signs. Signs for all arts businesses, as defined in section 7-2 of the Herndon Town Code and licensed to operate as a business in the Herndon Arts District may receive administrative approval of the sign license if the signs comply with the ~~HPRB~~ *HDRB* and ARB approved uniform design standards.

- (2) *Review Board Approvals.* The architectural review board or ~~Heritage Preservation Review Board~~ *historic district review board* also conducts final review of sign licenses that do not conform to the adopted uniform standards, as determined by the zoning administrator, within their respective overlay districts. (~~Architectural Control District for the ARB and Heritage Preservation Overlay District for the HPRB~~).

(e) ~~Heritage District Overlay zoning district regulations.~~ Herndon overlay zoning districts may require overlay specific sign standards and regulations in addition to the general requirements and district specific standards detailed in this article. *Reserved.*

(f) ~~Heritage Preservation District~~ *Historic district overlay*. Permanent signs installed within the ~~Heritage Preservation Districts~~ *historic district overlay* shall comply with the relevant design guidelines, as interpreted by the ~~HPRB~~ *HDRB*, and the uniform standards for administrative approval of signs as approved by the ~~HPRB~~ *HDRB* and interpreted by the zoning administrator, or adopted superseding documents.

(g) ~~Arts district.~~ Permanent signs installed within the arts districts shall comply with the relevant design guidelines, as interpreted by the ~~HPRB~~ and ~~ARB~~, and the uniform standards for administrative approval of signs as approved by the ~~HPRB~~ and ~~ARB~~ and interpreted by the zoning administrator, or adopted superseding documents. *Reserved.*

Section 78-141.6 – Sign standards for downtown mixed-use districts.

(c) *Compliance with design guidelines.* Signs installed within the central commercial (CC), planned development-downtown (PD-D), planned development-traditional downtown (PD-TD) zoning districts shall comply with the relevant design guidelines of the ~~Herndon Heritage Preservation Handbook~~ *Historic District Overlay Guidelines* and Downtown Herndon Pattern Book, or adopted superseding documents.

Section 78-150.1 – Town Council

(a) *Powers and duties.* The town council shall have the powers and duties specified in Code of Virginia ~~tit. Title~~ *Title* 15.2, ~~ch. Chapter~~ *Chapter* 22 and the Town Charter, as well as the following powers and duties under this chapter

(2) Appeals. The town council shall review and decide appeals from:

c. Final decisions of the ~~Heritage Preservation Review Board (HPRB)~~ *historic district review board (HDRB)* on certificates of appropriateness (section 78-60. ~~G3(g)~~);

(3) *Historic designation.* The town council shall review and decide whether or not to designate any site, building or structure as an historic landmark or an area as a ~~heritage preservation overlay district.~~ *historic district overlay.*

(4) *Implementation authority not otherwise delegated.* The town council shall have the authority to take any other action not delegated to the planning commission, board of zoning appeals, architectural review board, ~~heritage preservation review board~~ *historic district review board*, town manager, town attorney, zoning administrator, or heads of town departments, as the town council may deem desirable and necessary to implement the provisions of this chapter.

Section 78-150.2 – Planning Commission

(a) *Powers and duties.* The planning commission shall have the powers and duties specified in Code of Virginia ~~tit. Title~~ 15.2, ~~ch. Chapter~~ 22, as well as the powers and duties under this chapter.

(1) *Application review.* The planning commission shall review and make recommendations to the town council to approve or disapprove applications for:

f. Designation of any site, building or structure as an historic landmark or an area as a ~~heritage preservation overlay district~~ *historic district overlay.*

Section 78-150.4 – ~~Heritage preservation~~ *Historic district* review board.

(a) *Establishment.* There hereby is established a ~~heritage preservation~~ *historic district* review board (~~HPRB~~ *HDRB*).

(b) *Powers and duties.* The ~~HPRB~~ *HDRB* shall have the following powers and duties under this chapter:

(1) *Recommendations.* The ~~HPRB~~ *HDRB* shall provide recommendations to the planning commission and the town council on the establishment, expansion, reduction, or elimination of ~~heritage preservation overlay districts~~ *the historic district overlay.*

(2) *Application review.* The ~~HPRB~~ *HDRB* shall review and decide applications for properties within the ~~heritage preservation overlay district~~ *historic district overlay* for:

(e) *Appeals of administratively approved certificates of appropriateness.*

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- (3) *Special knowledge and expertise.* The ~~HPRB~~ *HDRB* shall make its special knowledge and expertise available upon its own initiative or upon request by the town council or any official, department, board, commission or agency of the town.

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- 857 (c) *Membership.* The membership of the ~~HPRB~~ *HDRB* shall be established as follows:

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- (1) *Number.* The ~~HPRB~~ *HDRB* shall consist of seven members. It shall be comprised of the five members of the town's architectural review board (ARB), along with two additional members.

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- (2) *Qualifications.* The two additional members of the ~~HPRB~~ *HDRB* who are not on the ARB shall meet the following minimum qualifications:

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- (3) *Residency.* No more than two of the members on the combined ARB/~~HPRB~~ *HDRB* with the required professional qualifications for an architect or an architectural historian may be nonresidents of the town. The other members on the combined ARB/~~HPRB~~ *HDRB* shall be town residents.

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- (4) *Appointment.* The ARB members serving on the ~~HPRB~~ *HDRB* shall be appointed pursuant to Part I, Charter, of the Code of Ordinances, section 7.4:1(b). The two additional members shall be appointed by a majority of the town council.

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- (5) *Term.* The term of office of the ARB members serving on the ~~HPRB~~ *HDRB* shall be concurrent with their membership on the ARB. The terms of the two additional ~~HPRB~~ *HDRB* members shall be three years.

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- (6) *Removal.* Any member of the ~~HPRB~~ *HDRB* may be removed from office by the town council for malfeasance, misfeasance or nonfeasance in office.

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- (9) *Training.* Newly appointed members of the ~~HPRB~~ *HDRB* shall be offered training ~~and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed~~ *by the Virginia Department of Historic Resources* within two years of appointment.

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- 881 (d) *Officers.* Officers of the ~~HPRB~~ *HDRB* shall be established as follows:

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- (1) *Chair and vice-chair.* The ~~HPRB~~ *HDRB* shall elect from its members a chair and a vice-chair.

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884

(3) *General duties of officers.* The duties of the chair and vice-chair of the ~~HPRB~~ **HDRB** shall be as follows:

- a. The chair shall preside at meetings of the ~~HPRB~~ **HDRB**, decide points of order on procedure, and take such action as shall be necessary to preserve the order and integrity of proceedings before the ~~HPRB~~ **HDRB**.

- c. In the absence of the chair and vice-chair, the most senior ~~HPRB~~ **HDRB** member shall act as chair and shall have powers of the chair.

(e) *Staff.* The zoning administrator or the zoning administrator's designee shall serve as the professional staff to the ~~HPRB~~ **HDRB** and provide it with administrative support.

(f) *Meetings, hearings and procedures.* Meetings of the ~~HPRB~~ **HDRB** ordinarily shall be held monthly and at such other times as a quorum of the ~~HPRB~~ **HDRB** may determine subject to the following:

(1) *Open meetings.* All meetings of the ~~HPRB~~ **HDRB** shall be open to the public.

(2) *Quorum and necessary vote.* Four members of the ~~HPRB~~ **HDRB** shall constitute a quorum, and no action of the ~~HPRB~~ **HDRB** shall be valid unless authorized by a majority vote of those present and voting.

(3) *Rules and records of proceedings.* The ~~HPRB~~ **HDRB** shall document proceedings as follows:

a. The ~~HPRB~~ **HDRB** shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or abstaining from a vote, indicating that fact.

b. The ~~HPRB~~ **HDRB** shall keep records of its official actions, which shall be immediately filed in the office of the zoning administrator and shall be a public record.

c. The ~~HPRB~~ **HDRB** may, by a majority vote of the entire membership, draft and approve such additional bylaws governing its procedure as it may deem necessary or advisable.

Section 78-150.5 – Architectural review board.

(b) *Powers and duties.* The ARB shall have the following powers and duties under this chapter:

(1) *Review and approval.* Generally, the ARB is empowered by the Town Charter and the town council to review and approve structures, buildings, signs, major

landscape features and other improvements for development excluding: (i) the ~~heritage preservation overlay district~~ *historic district overlay*, (ii) single-family detached residences in the R-15 and R-10 zoning districts, and (iii) single-family detached residences in planned development districts after initial construction.

Section 78-150.6 – Zoning Administrator.

(b) *Powers and duties.* The zoning administrator or an appropriate designee acting as zoning administrator shall have the following jurisdiction, powers, and duties under this chapter:

(1) *Application review.* The zoning administrator shall review and decide applications for:

d. Administrative sign conformance permit for signs that are part of an approved master sign plan or that conform to the adopted requirements of the ARB or ~~HPRB~~ *HDRB*, whichever applies (section 78-140.5(b)).

j. *Administrative certificates of appropriateness pursuant to Section 78-60.3(3)(g).*

(3) *Application.* The zoning administrator shall establish application requirements and schedules for review of applications and appeals, to review and make recommendations to the town council, planning commission, ~~HPRB~~ *HDRB*, and ARB on applications for development permits and approvals, and take any other action necessary to administer the provisions of this chapter.

(6) *Expertise and technical assistance.* The zoning administrator shall provide expertise and technical assistance to the town council, planning commission, BZA, ~~HPRB~~ *HDRB*, and ARB, upon request.

Section 78-151 – Summary table of development review responsibilities.

TABLE 78-151: DEVELOPMENT PERMIT REVIEW PROCEDURES (S = Staff Review, R = Review and Advise, D = Final Decision, A = Appeal)
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PROCESS	ZONING ADMINISTRATOR	ARCHITECTURAL REVIEW BOARD (ARB)	HERITAGE PRESERVATION <i>Historic District</i> REVIEW BOARD (HPRB) (<i>HDRB</i>)	PLANNING COMMISSION	TOWN COUNCIL	BOARD OF ZONING APPEALS (BZA)	CIRCUIT COURT

OUTSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT <i>HISTORIC DISTRICT OVERLAY</i>:							

INSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT <i>HISTORIC DISTRICT OVERLAY</i>:							
<i>ADMINISTRATIVE ELIGIBLE CERTIFICATE OF APPROPRIATENESS</i>	<i>D</i>		<i>A</i>				

949

950 ¹ Appeals are limited to technical determinations. Appeals to the uniform standards shall be
951 heard by the ~~HPRB~~ *HDRB*/ARB.

952 **Section 78-152.2 – Pre-application procedures.**

953 ***

954 (b) *Neighborhood meeting.* A neighborhood meeting is strongly encouraged prior to filing
955 certain types of development applications, as follows.

956 ***

957 (3) *Timing of meeting for other applications requiring public hearings.*
958 Neighborhood meetings generally are encouraged prior to, or shortly after,
959 submittal of other applications requiring a public hearing. The town council,
960 planning commission, architectural review board or ~~heritage-preservation~~
961 *historic district* review board may encourage an applicant to conduct a
962 neighborhood meeting on an application if, in the determination of the review
963 board, the proposed development could affect neighboring properties

964 ***

965 **Section 78-152.2 – Application submission, requirements and acceptance.**

966 ***

TABLE 78-152.2(b)(3): FEES FOR DEVELOPMENT APPLICATIONS	
TYPE OF FEE	AMOUNT

HERITAGE PRESERVATION HISTORIC DISTRICT REVIEW BOARD	

967

968

969 **Section 78-153.2 – Review process for applications requiring a public hearing**
970 **(approval by decision making body).**

971

972 (f) *Staff report.* The staff shall prepare a report for the reviewing body or bodies as follows:

973

974 (2) *Staff report availability.* The staff report shall be available to the applicant and
975 the public a minimum of five days before the first scheduled work session for
976 applications to the architectural review board, ~~heritage preservation~~ **historic**
977 **district** review board, planning commission and town council. For the board of
978 zoning appeals, the staff report shall be available to the applicant and the public a
979 minimum of five days before the first scheduled public hearing.

980 (g) *Public hearing requirements.* The appropriate decision-making authority shall hold a
981 minimum of one public hearing for a development application as follows:

982

983 (2) *Certificate of appropriateness.* The ~~heritage preservation~~ **historic district** review
984 board shall conduct at least one public hearing for applications for certificates of
985 appropriateness.

986

987 (h) *Public hearing notification.* All applications requiring public hearing(s), in addition to
988 major site plans and subdivision plans, shall comply with the Code of Virginia and the
989 other provisions of this section with regard to public notification.

990

- (2) *Written/mailed notice.* When the provisions of this chapter (see section 78-153.2(h)(5)) require that written or mailed notice be provided, the preparation and transmittal of the written notice shall comply with this section, unless expressly stated otherwise.

- b. Notice shall be mailed to:

6. The zoning administrator shall be responsible for providing written notice when the public hearing is before the board of zoning appeals, the ~~heritage preservation~~ *historic district* review board, or the architectural review board. The zoning administrator shall prepare a list of property owners and registrants to whom notice was mailed via first class mail and an affidavit affirming that notice meeting the content requirements of section 78-153.2(h)(1) was mailed pursuant to this section. The affidavit shall be conclusive that notice has been given pursuant to the terms of this section. A copy of the mailed notice shall be maintained in the office of the zoning administrator for public inspection during normal business hours.

- (4) *Posted/placard notice.* When the provisions of section 78-153.2(h)(5), require that notice be posted on the land subject to the application, notice for applications other than those pertaining to the architectural review board or the ~~heritage preservation~~ *historic district* review board (which do not require placard notice) shall comply with the following requirements:

- (5) *Required notice and timing.* Notice shall be provided as required in the Code of Virginia, § 15.2-2204. Such notice shall not be required for sign permit applications before the architectural review board or ~~heritage preservation~~ *historic district* review board.

Section 78-155.1 – Zoning map amendment (ZMA).

- (h) *Procedures for zoning map amendments.*

- (2) *Proffer review by ARB or ~~HPRB~~ HDRB prior to planning commission public hearing (if applicable) . If an application for a zoning map amendment includes a proffer or proffers dealing with a building's exterior appearance or materials, the application and proffers shall be reviewed by the architectural review board, or ~~heritage preservation~~ historic district review board if in a ~~heritage preservation overlay district~~ within the historic district overlay, as follows:*

Section 78-155.10 – Certificates of Appropriateness

- (a) *Intent. The purpose of a certificate of appropriateness is to ensure proposed changes to a building or site within the historic district overlay comply with the Historic District Guidelines and this chapter.*
- (b) *Applicability. A certificate of appropriateness is required for any development within the historic district overlay unless exempted pursuant to Section 78-60.3(g)(2).*
- (c) *Adjacent property owner notification. In addition to the submittal requirements in this chapter, applications for administrative review eligible certificates of appropriateness must include proof of notification to adjacent properties and properties across the street. The contents of the notification shall include those specified in the Historic District Procedure Guide.*

Section 78-160.1 – Generally

- (c) *Adaptive reuse. The town council intends to allow the adaptive reuse and convenient and efficient utilization of structures in the ~~heritage preservation districts~~ historic district overlay and other older areas that may have been developed under different standards, by allowing some flexibility in the treatment of nonconformities where the specific nonconformity is not increased.*

Section 78-160.3 – Nonconforming Structures.

- (e) *Specific provisions for changes to nonconforming structures. Permitted changes to nonconforming structures shall be subject to the following specific provisions:*

- (4) *Restoration of a nonconforming structure damaged by casualty (excluding "Acts of God" or natural disaster). A nonconforming structure damaged by casualty (as distinguished from ordinary wear and tear) may be restored in accordance with the following provisions:*

- (c) A nonconforming structure that is damaged by any casualty to an extent more than 50 percent of its assessed value (exclusive of foundations) at the time of the casualty according to the records maintained by the county department of tax administration shall not be restored except as follows:

2. If the nonconforming structure is within the ~~heritage preservation district~~ *historic district overlay*, or is designed and used as a single-family detached or single-family attached dwelling and such single-family detached or single-family attached use is allowed in the zoning district in which the nonconforming structure exists, restoration of such structures shall be permitted. The restoration shall begin within 12 months of the date of the casualty and shall be completed within 24 months of the casualty. The structure shall occupy the same space that it occupied prior to such casualty. In no instance shall any residential structure covered by this subsection 78-160.3(e)(4) be used to accommodate a greater number of dwelling units than such structure accommodated prior to any such work.

Section 170.3 – Types of violations.

- (a) *Violations, generally.* The following constitute general violations of this chapter.

- (2) *Noncompliance with permit.* Permits issued on the basis of plans and applications approved by the town council, planning commission, board of zoning appeals, ~~heritage preservation~~ *historic district* review board, zoning administrator, or other officials or agencies where additional approval is required, authorize the use, arrangement, alteration, location, and construction set forth in such permits and development approvals, and no other use, arrangement, alteration, location, or construction.

- (b) *Specific violations.* In addition to the offenses listed in Table 78-170.4(a)(5), it shall be a violation of this chapter to do any of the following:

- (7) *Failure to comply with terms of approval.* Fail to comply with any terms, conditions, or limitations placed by the town council, planning commission, board of zoning appeals, ~~heritage preservation~~ *historic district* review board, or zoning administrator upon any development approval, including designation of a

1098 planned development (PD) zoning district classification and preliminary PD plan,
 1099 special exception, variance, administrative adjustment, certificate of
 1100 appropriateness, sign permit, temporary use permit, zoning inspection permit,
 1101 zoning appropriateness permit, site plan, single lot development plan, building
 1102 location plan, final PD plan, final plat for minor subdivision, preliminary plat for
 1103 subdivision, final plat for subdivision, site grading permit, excavation permit,
 1104 street name or name change, or other form of authorization.

1105 ***

1106 **Section 78-170.4 – Penalties, fines and remedies for violations.**

1107 (a) *Penalties, fines and remedies for civil violations.*

1108 ***

1109 (5) *Summary table of common violations and fines.*

TABLE 78-170.4(a)(5): SUMMARY OF COMMON CIVIL VIOLATIONS AND PENALTIES		
OFFENSE	Penalty for Initial Summons (in \$)	Penalty for Each Additional Summons (in \$)

Erecting, reconstructing, demolishing, altering or restoring a building or structure in a Heritage Preservation District <i>historic district overlay</i> without obtaining a current, valid Certificate of Appropriateness	200.00	500.00

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1111 ***

1112 **Section 78-180 – Definitions**

1113 ***

1114 *Board.* May refer to the board of zoning appeals, the architectural review board, or the ~~heritage~~
 1115 ~~preservation~~ *historic district* review board of the town, where the context so indicates.

1116 ***

Certificate of appropriateness. A certificate issued by the ~~heritage-preservation zoning administrator, historic district~~ review board, or on appeal by the town council, indicating its approval of plans for alterations, *new* construction, removal or demolition of a landmark or of a building or structure within a ~~preservation district~~ *the historic district overlay*.

Construction, new.

- (1) For ~~Heritage-preservation historic district overlay~~ purposes: Any construction *of a building or structure* within a ~~preservation district~~ *the historic district overlay* which is independent and exclusive of an existing building or structure, or part thereof, in the ~~preservation district~~ *historic district overlay*.

~~Heritage-preservation district~~ *Historic district overlay*. ~~Preservation districts~~ *the historic district overlay* shall be designated by town council. ~~Preservation district~~ *Boundaries* shall encompass and may include areas adjacent to historic landmarks.

Sign related terms. The following definitions pertain to signs and signage in all zoning districts:

- (8) *Design guidelines.* Design guidelines mean the guidelines found in either the ~~Herndon Heritage Preservation Handbook~~ *Historic District Overlay Guidelines*, the Downtown Herndon Pattern Book or the Urban Design & Architectural Guidelines for the Herndon Transit-Oriented Core.

- (26) *Review board.* Review board means either the ~~Aarchitectural Rreview Bboard~~ or the ~~Heritage Preservation historic district Rreview Bboard~~.

2. This ordinance shall be effective on and after the date of its adoption.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 22, 2020

Resolution – to initiate consideration of a zoning ordinance text amendment ZOTA #20-01 to amend Chapter 78 (ZONING), Article I (Introductory Provisions), Section 78-10.3 (Purpose and Intent), Article II (Zoning Districts), Section 78-20.2 (Establishment of Overlay Zoning Districts), Section 78-20.3 (Relationship of Base Districts to Overlay Zoning Districts), Section 78-20.5 (Transition to New Zoning Districts), Article V (Planned Development Districts), Section 78-50.2 (Standards for all Planned Development Districts), Section 78-50.6 (PD-D, Planned Development-Downtown), Section 78-50.7 (PD-TD, Planned Development-Traditional Downtown), Article VI (Overlay Districts), Section 78-60.2 (Floodplain Overlay District (FPO)), Section 78-60.3 (Heritage Preservation Overlay District (HP District), Section 78-60.4 (Chesapeake Bay Preservation Area Overlay District (CBPAO)), Article VII (Use Regulations), Section 78-71.13 (Commercial Utilities Use Category), Article VIII (Accessory Uses), Section 78-80.3 (Accessory Structure Standards), Section 78-80.4 (Standards for Specific Accessory Uses and Structures by Use Type), Article XI (Development Standards), Section 78-110.3 (Site Landscaping (Not Contained in Perimeter Buffer Strips and Vehicular Use Areas)), Section 78-114.1 (Additional Screening Requirements), Section 78-115.1 (Retaining Walls), Section 78-115.2 (Fencing, Walls (Except Retaining Walls) and Hedges, Article XIV (Signs), Section 78-140.4 (Prohibited Signs), Section 78-140.5 (Sign License Required), Section 78-141.6 (Sign Standards for Downtown and Mixed-Use Districts), Article XV (Decision-Making Authorities, Application Review and Permitting), Section 78-150.1 (Town Council), Section 78-150.2 (Planning Commission), Section 78-150.4 (Heritage Preservation Review Board), Section 78-150.5 (Architectural Review Board), Section 78-150.6 (Zoning Administrator) Section 78-151. (Summary Table of Development Review Responsibilities), Section 78-152.2 (Application Submission, Requirements and Acceptance), Section 78-153.2 (Review Process for Applications Requiring a Public Hearing (Approval by Decision Making Body)), Section 78-155.1 (Zoning Map Amendment (ZMA)), Article XVI (Nonconformities), Section 78-160.1 (Generally), Section 78-160.3 (Nonconforming Structures), Article XVII (Enforcement, Violations and Remedies), Section 78-170.3 (Types of Violations), Section 78-170.4 (Penalties, Fines and Remedies for Violations), Article

XVIII (Definitions), Section 78-180. (Definitions), and adding a new Section 78-155.10 (Certificates of Appropriateness) to change the name of the Heritage Preservation Overlay district to the Historic District Overlay and to allow for the administrative review of certain types of certificates of appropriateness.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby:

1. Initiates consideration of an amendment to Chapter 78 (ZONING) of the Herndon Town Code to change the name of the heritage preservation district overlay to the historic district overlay throughout the zoning ordinance and to allow for administrative review of certain types of certificates of appropriateness.
2. Requires out of public necessity, convenience, general welfare, or good planning practice, requires the Town Council's consideration of this proposed amendment.



STAFF REPORT

Town Council
September 15, 2020

Title:

Resolution initiating consideration of an amendment to the Town of Herndon 2030 Comprehensive Plan adopted August 12, 2008 and as amended through February 26, 2019, to change the 2030 Land Use Plan map for the Residence Inn property at 315 Elden Street from Business Corridor to Adaptive Area-Residential. The property is also identified as Tax Map 0171-02-0007, consisting of approximately 6.48 acres.

Staff Contact:

Dana E. Heiberg, Senior Planner
(703) 787-7380
dana.heiberg@herndon-va.gov

Description:

This is a proposal to refer the Residence Inn property on the east side of town to the Planning Commission for study and recommendation. Specifically, to direct the commission to recommend to the Town Council the long-term comprehensive plan designation for the property. The property features 168 hotel units on a site that is 282,465 square feet in land area. The current configuration, scale and the presence of exterior on-site recreational amenities is similar to a quality multifamily property. The building floor area is listed in county records as 118,965 square feet and the owner is Elden Street Owner LLC. The property as developed is approximately 30 years old with the original zoning approvals dating to the late 1980s.

The owner has expressed interest in pursuing a multifamily use to include a commitment to workforce housing for a portion of the units. The repurposing of the property would occur without major changes to the physical structures or site layout. Change in comprehensive plan designation could make the property eligible for traditional multifamily residential use; this would typically be under single ownership with rental of the units; condominium ownership of the units would also be compatible with the proposed plan designation of Adaptive Area-Residential, which is designated on the Land Use Plan with the color orange.

Designation of the subject property by the Town Council for multifamily use on the comprehensive plan would not be fully sufficient to allow the property to convert from the existing hotel land use. The property is currently zoned CS – Commercial Services. Therefore, the property would need a Zoning Map Amendment (“rezoning”). Since the existing density at approximately 25.9 units per acre exceeds the density of the existing multifamily districts as provided for in the Zoning Ordinance, staff has contemplated that a new variation of the Planned Development-Urban Residential district adopted July 9, 2019 could be created and considered for adoption, if the council so directs.

Fiscal Impact:

The referral to the Planning Commission has no direct fiscal impact. If recommended by the commission and if approved by the Town Council, the eventual change in land use designation could have positive property tax benefits considering that the property has been experiencing very high vacancy due to the coronavirus pandemic and related economic downturn. If eventually converted to residential use, the town and county would experience typical costs and revenues associated with multifamily properties. The cessation of the hotel occupancy tax on the property would be significant compared to pre-pandemic conditions. The property is outside of the Dulles Rail Phase 2 Transportation Improvement District, so there would not be impact in terms of Metrorail funding.

Alternatives:

1. Approve the resolution referring the potential comprehensive plan amendment to the Planning Commission for study and recommendation. If approved for referral to the commission, the plan amendment would be identified as CPA 20-01.
2. Continue this item to a date certain, providing further direction to staff.

Staff Recommendation:

Approve the attached resolution at the public hearing of September 8, 2020.

Attachments:

1. Town Council Resolution for September 22, 2020
2. Maps: 2030 Land Use Plan from the adopted 2030 Comprehensive Plan showing the subject property and aerial view of the property.

Staff:

Dana E. Heiberg

Dana E. Heiberg, Senior Planner

Elizabeth M. Gilleran

Elizabeth M. Gilleran, AICP
Dir. of Community Development

TOWN OF HERNDON, VIRGINIA

RESOLUTION

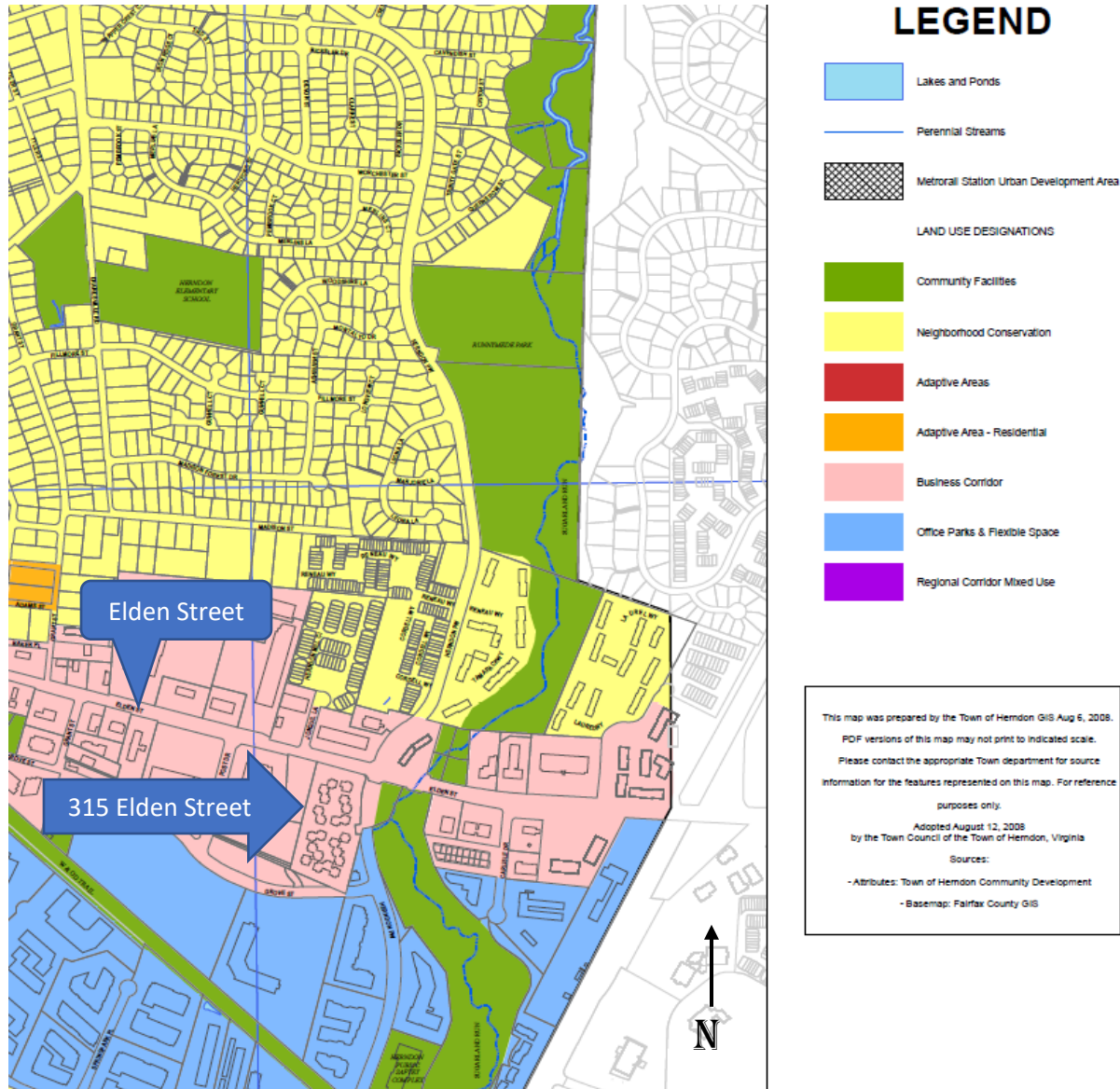
SEPTEMBER 22, 2020

Resolution- to initiate consideration of an amendment to the Town of Herndon 2030 Comprehensive Plan adopted August 12, 2008, as amended through February 26, 2019, to change the land use plan map for the Residence Inn property at 315 Elden Street (Tax Parcel 0171-02-0007, approximately 6.48 acres) from Business Corridor to Adaptive Area-Residential.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby:

1. Initiates consideration of this comprehensive plan amendment in accord with Article XV, Section 78-150.2 of the Town of Herndon Zoning Ordinance.
2. Requests the review of the Planning Commission and refers the proposed amendment to the Planning Commission for recommendation in accord with Code of Virginia § 15.2-2229. Amendments.
3. Finds that public necessity, convenience, general welfare, or good zoning practice requires the Town Council's consideration of this proposed measure.

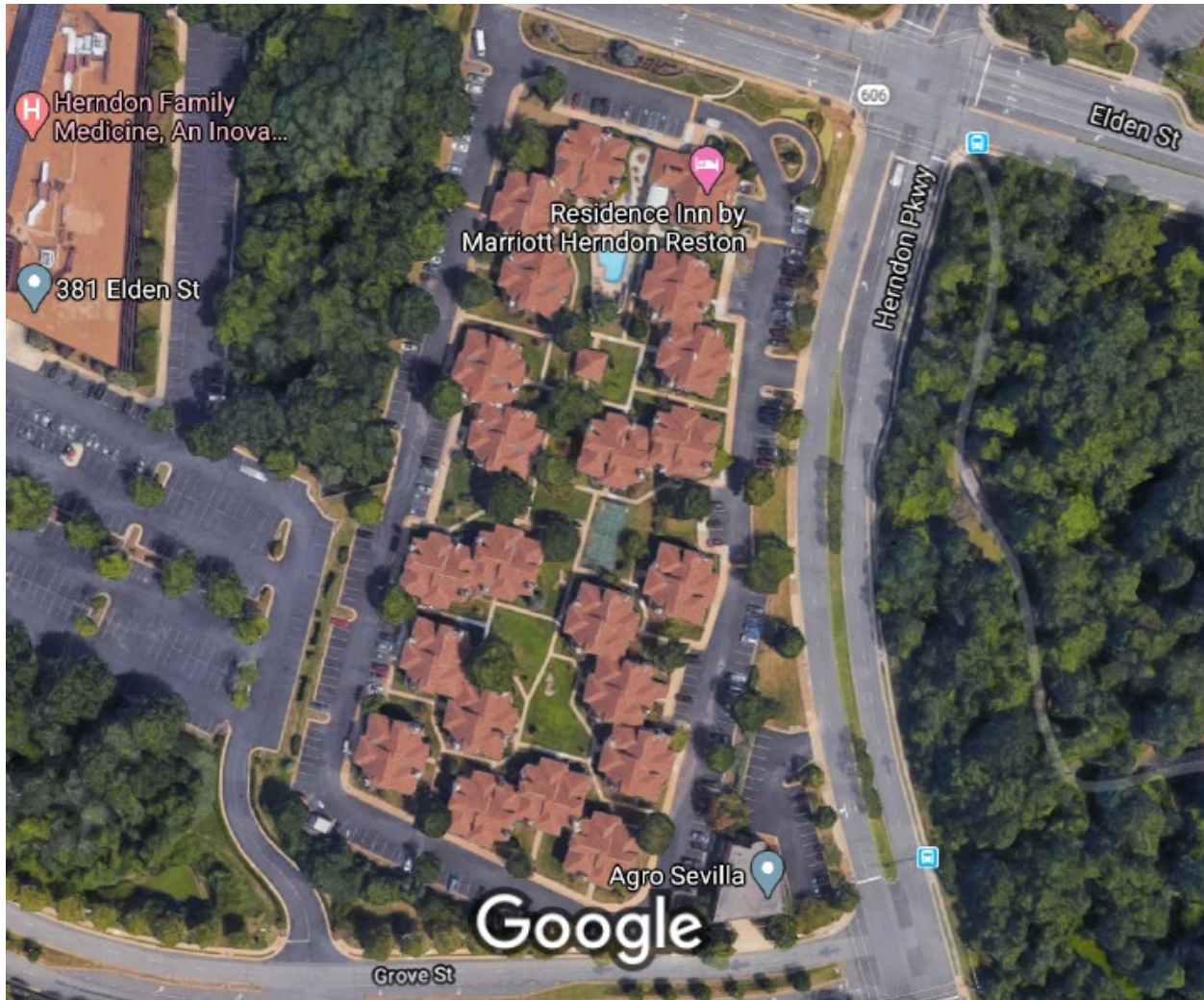
Town Council Initiating Resolution for a Comprehensive Plan Amendment for 315 Elden Street, September 22, 2020



From the 2030 Land Use Plan map, part of the Town of Herndon 2030 Comprehensive Plan adopted August 12, 2008 and as amended through February 26, 2019.

Town Council Initiating Resolution for a Comprehensive Plan Amendment for 315 Elden Street, September 22, 2020

Aerial view of Residence Inn property at 315 Elden Street:



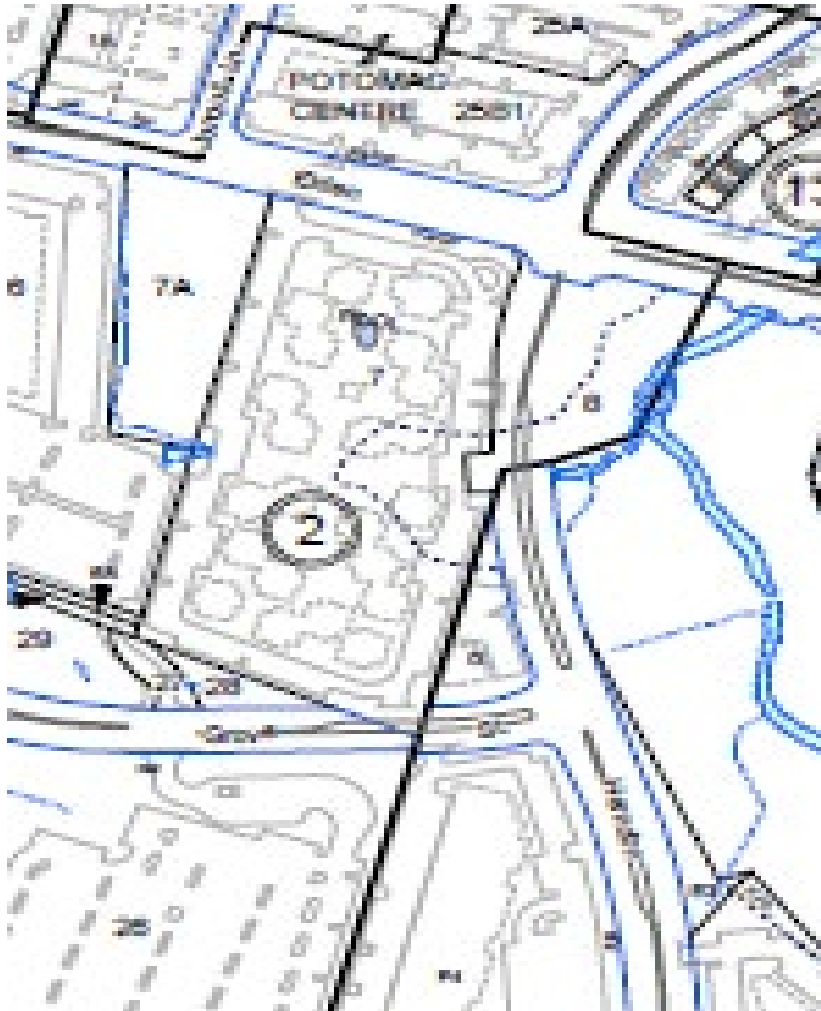


Initiating Resolution for CPA 20-01 Residence Inn Property 315 Elden Street

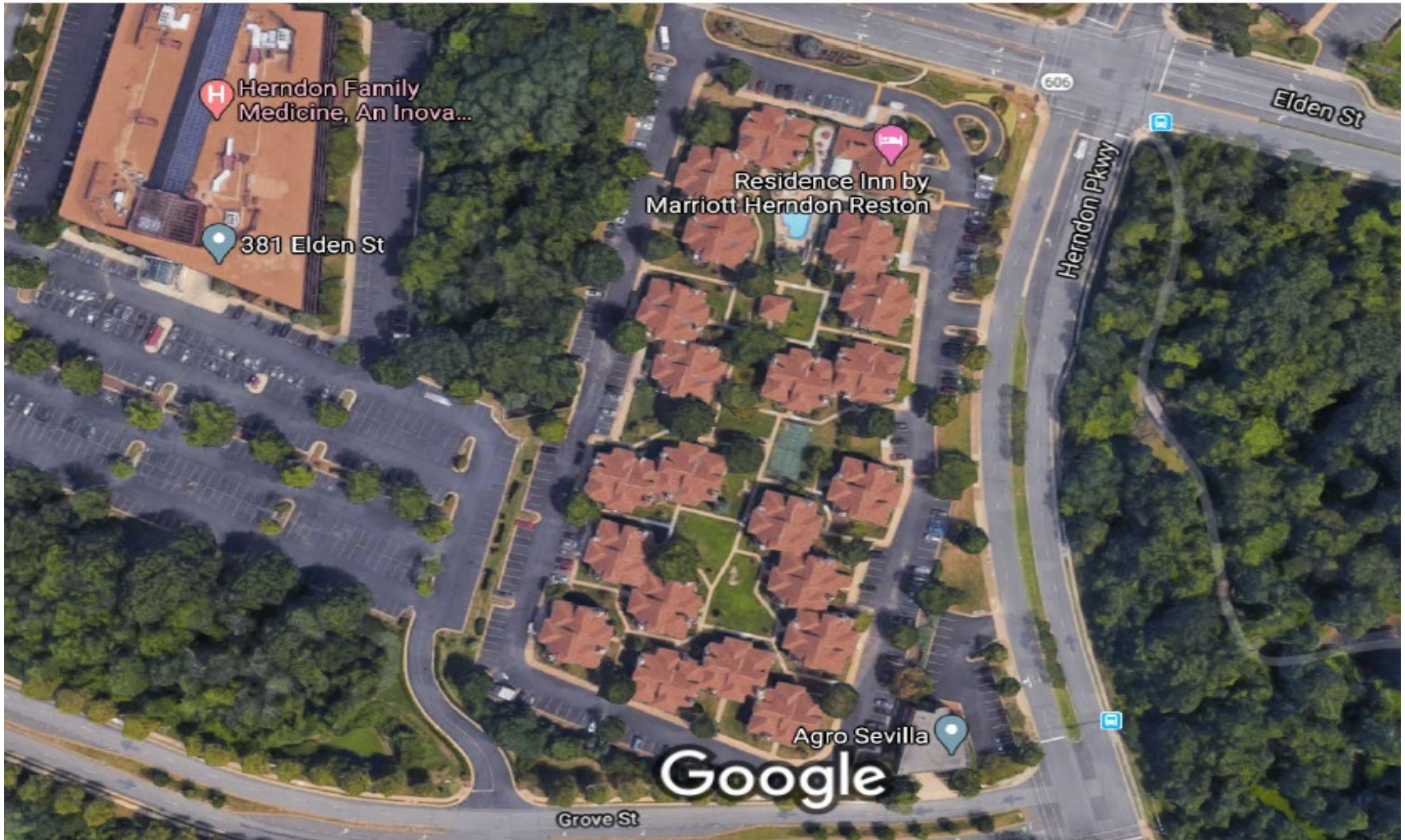
Town of Herndon Town Council Work Session

Department of Community Development
September 15, 2020

Tax Map of 315 Elden Street

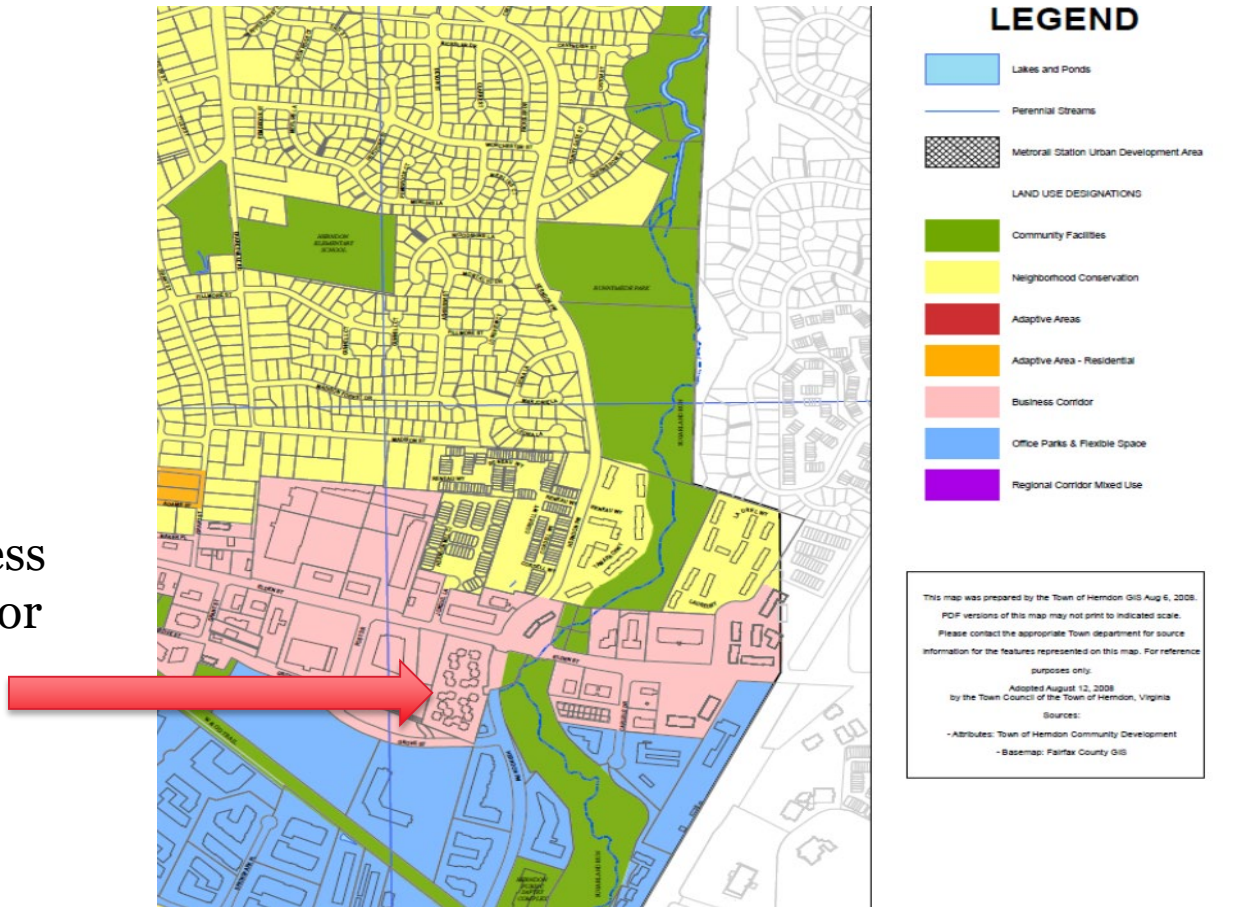


Aerial View of 315 Elden Street



2030 Comprehensive Plan – Land Use Plan

Business
Corridor



Resolution:

- Initiates formal Comprehensive Plan Amendment process
- Refers the item to the Planning Commission for study and recommendation
- Planning Commission to prepare plan amendment and submit to public hearing within 60 days per Va. Code 15.2-2229

Process to convert the property to multifamily if CPA eventually approved

- Amend the Zoning Ordinance by creating a new variation of the PD-UR zoning district
- Zoning Map Amendment (“rezoning”) for the property, changing the zoning from CS – Commercial Services to the new district
- Construction permits for physical changes to interior of structures
- If there are changes to building footprint or other site features, a site plan amendment would need to precede construction permits

Alternatives

- **Approve the resolution as drafted, referring the item to the Planning Commission**
- **Continue this item, deferring action and providing further direction to staff and to the property owner**

The staff recommendation for the public hearing is to approve the resolution initiating what would become Comprehensive Plan Amendment 20-01.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 22, 2020

Resolution- to change the meeting schedule for the Town Council Public Hearing to October 13, 2020.

WHEREAS, the Herndon Town Council's October 2020 meeting schedule was adjusted to accommodate the participation of the elected officials in the annual Virginia Municipal League conference; and

WHEREAS, as a result of COVID-19, the annual conference will be virtual.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Herndon, Virginia, hereby changes its public hearing previously scheduled on Wednesday, October 14, 2020 **TO Tuesday, October 13, 2020, at 7:00 pm.**

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby request the town clerk to work in coordination with the Chief Communications Officer to ensure the change in schedule is widely publicized.