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HERNDON TOWN COUNCIL
Tuesday
September 22, 2020

Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; 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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments, Mayor Merkel stated that the September 22, 2020 Herndon Town Council Public Hearing would be by electronic means. The meeting was broadcast and recorded through Cisco Webex and details for the meeting were made available to the public on Thursday, September 17, 2020. In attendance electronically were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Cesar del Aguila; Pradip Dhakal; Signe Friedrichs; and Bill McKenna. Councilmember Jennifer Baker was absent.

Staff present during the meeting were: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Elizabeth Gilleran, Director of Community Development; Jennie Tripoli, Director of Finance; Lauri Sigler, Deputy Town Attorney; John Irish, Deputy Director of Public Works; David Stromberg, Zoning Administrator; Dana Heiberg, Senior Planner; and Amanda M. Kertz, Deputy Town Clerk.

Announcements

Amanda M. Kertz, Deputy Town Clerk welcomed those listening to the September 22, 2020 Town Council public hearing and stated that night's regularly scheduled Herndon Town Council meeting was a virtual meeting, which was being conducted 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

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Town Council on September 8, 2020, which superseded previously adopted amendments.

- Proper notice of the electronic meeting was provided in accordance with the Code of Virginia;
- Agenda and meeting materials, along with information for viewing the meeting and submitting comments for the record are available on the town's website; and
- Electronic meetings will begin with a roll call to determine a quorum and all votes, including adjournment, will be by roll call vote.

CALL TO ORDER

1. Roll Call & Determination of Quorum

Mayor Merkel called the public hearing by electronic means to order at 7:00 p.m. and asked Ms. Kertz to call the roll for attendance. Mayor Merkel stated that Councilmember Baker would not be present that evening and asked each Councilmember to respond by clearly stating their name and indicating they were present.

Following the roll call for attendance, Mayor Merkel confirmed there was an electronic quorum present that evening. All members were present electronically, except Councilmember Baker, who was absent, with Mayor Merkel presiding. As Ms. Kertz had stated, the meeting that evening was being conducted pursuant to the appropriate laws associated with the COVID-19 pandemic disaster.

APPROVAL OF MINUTES

**Vote on September 1, 2020
Work Session Minutes**

On motion of Councilmember McKenna, seconded by Councilmember Friedrichs, and carried by a 6-0 roll call vote by electronic means, the minutes of the September 1, 2020 public hearing were approved. The vote was: Councilmembers Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.

**Vote on September 8, 2020
Public Hearing Minutes**

On motion of Vice Mayor Olem, seconded by Councilmember McKenna, and carried by a 6-0 roll call vote by electronic means, the minutes of the September 8, 2020 public hearing were approved. The vote was: Councilmembers Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.

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2. COMMENTS FROM THE TOWN MANAGER

Mayor Merkel recognized William H. Ashton II, Town Manager, for comments, followed by questions of Council.

Mr. Ashton stated that Fairfax County was still experiencing a low disease burden with low community transmission. However, the Northern Virginia Regional Commission (NVRC) dashboard still displayed some troubling statistics of Hispanics and African Americans being overrepresented in case counts. He stated the 20-29 and 30-39 age ranges seemed to be driving the numbers in the region. In contrast, he stated the 10-19 age range and elderly population were showing lower numbers.

In accordance with Virginia Occupational Safety and Health, Mr. Ashton stated a video was created that week that all town employees would have to watch about ways to protect themselves and other employees. He stated things like wearing masks away from desks and in vehicles with others would be more enforced.

Mr. Ashton reminded everyone to continue wearing masks, social distancing, washing hands, and both quarantining and seeking testing after being in contact with a positive case. He stated Northern Virginia has done relatively well with case numbers but could do better.

Questions from Council

In response to Councilmember del Aguila's queries about Halloween safety and wearing masks, Mr. Ashton stated the Fairfax County Health Department would be putting out guidance that he would provide to the town and Council once available. He stated it would become part of his regular briefing in October.

Vice Mayor Olem stated that her neighborhood decided not to have their Halloween event this year. She also asked if there were higher amounts of trash this year.

In response to Vice Mayor Olem, Mr. Ashton stated there had been greater water and sewer usage but he had seen no real change with refuse. He stated that the recycling amount, especially at the beginning of the pandemic, had been higher with the cardboard boxes and deliveries residents received.

3. COMMENTS FROM THE TOWN COUNCIL

Mayor Merkel reminded Council to unmute their microphones and state their name when she recognized them for comments.

Councilmember Friedrichs: Reminded those listening that September 15 to October 15 was Hispanic Heritage Month.

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Vice Mayor Olem: Reminded those listening that the town's Fall Cleanup was October 21 through October 23, 2020, on residents' trash day.

Councilmember del Aguila: Asked Town Attorney, Lesa Yeatts, to update the Council on his question from the work session regarding marijuana cases. Ms. Yeatts stated that she had included an update in her weekly dispatch.

Councilmember del Aguila asked if that information was for public disclosure and asked Ms. Yeatts to provide an update for the public. She stated in its 2020 regular session, the General Assembly passed legislation to make simple possession of marijuana a civil offense with a \$25 fine, effective on July 1, 2020. She stated any violation prior to July 1, 2020 were still a criminal offense. She stated that the town was not involved with prosecuting civil offenses that go directly before the judge.

In response to Councilmember del Aguila's further inquiries, Ms. Yeatts stated her statements were verifying that these cases after July 1, 2020 were no longer being prosecuted by the town.

Mayor Merkel: Shared that moms in the area formed an ad hoc group finding and providing desks to be used for virtual learning for families in the area. She asked anyone who had something to contribute or who could help deliver the desks to get in touch with her at mayor.lisa@herndon-va.gov or 571-449-7121.

4. COMMENTS FROM THE AUDIENCE

Mayor Merkel outlined the participation process for Webex. She stated that the Council would use a speakers list to call on those who have registered to provide "Comments from the Audience" to address Council on any matter that was not listed as a public hearing item on that night's agenda, which included the General or Consent agenda items. She would call on each person that signed up to speak and would also announce the name of the next speaker. She would then pause briefly while staff enabled the speaker's ability to address Council. Speakers would have up to three minutes and should state their name and address for the record. Comments from the Audience was limited to 45 minutes or approximately 15 speakers.

Mayor Merkel stated that a timer would appear on the WebEx screen and encouraged speakers to wrap up when there were 30 seconds left on the timer. She stated that if staff saw that someone was having trouble connecting, the Town Clerk's office would contact them to add their comments to the record and to see what assistance could be provided. She then called on the following individuals, who provided comments:

- Stevan Porter, 905 Vine Street, Herndon, provided comments on the Herndon Police Department (HPD) Annual Report and asked that a supplemental report including data about the Hispanic demographic be created and that information be included in all future reports. Mr. Porter also asked for more information on the Chief's Advisory

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Committee, which was mentioned on the HPD website. He thanked staff, HPD, and Chief DeBoard and stated he would provide these comments to the Town Clerk.

Mayor Merkel stated they would get answers to him after receiving his comments from the Town Clerk's office.

- Ken Wire was called upon and stated he might have signed up in error. He stated he would like to speak on the General item #10, Resolution 20-G-45, as a party to that application.

Mayor Merkel thanked Mr. Wire for registering and stated that they would call on him if there were questions for that item.

Mayor Merkel encouraged members of the public to register for the speakers list on the town's website, www.herndon-va.gov. She stated that the option to speak was included on the Webex registration form.

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Merkel opened that night's public hearings. She asked Amanda M. Kertz, Deputy Town Clerk, whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and the Deputy Town Clerk stated that she received comments on General item #10, Resolution 20-G-45, initiating consideration of an amendment to the 2030 Comprehensive Plan. She had not received any transactional disclosures for that evening's meeting.

PUBLIC HEARINGS

5. **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.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, September 4, and Friday, September 11, 2020 issues.

Mayor Merkel stated that she had opened the public hearing. She recognized the Lauri Sigler, Deputy Town Attorney, for the staff report and stated that John Irish, Deputy Director of Public Works, would also be available to provide input.

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Ms. Sigler presented the staff report and PowerPoint dated September 22, 2020, which are on file in the Town Clerk's office. The easement for this project was acquired by the town as part of the Van Buren Street Improvement Project between Spring Street and Herndon Parkway. The project would provide roadway, sidewalk, curb and gutter, and streetlight improvements, along with signalized crosswalks at Alabama Drive. Ms. Sigler stated that power utility easements were acquired from property owners by Certificates of Take to allow for the relocation and placement of new electrical facilities by Virginia Electric and Power Company, doing business in Virginia as Dominion Energy Virginia (Dominion). Staff recommends approval of the proposed ordinance, as presented.

There was brief discussion amongst Council and staff on this item.

Mayor Merkel reviewed the public comments process, which was similar to the process that Council followed during "Comments from the Audience." The Council would follow this same process for the remaining public hearings. She asked Amanda M. Kertz, Deputy Town Clerk, if there were any speakers registered for this item.

Ms. Kertz confirmed there were no speakers registered.

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

Vice Mayor Olem moved approval of Ordinance 20-O-51, as presented. Councilmember Friedrichs seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by a 6-0 roll call vote by electronic means. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.

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.

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

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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.

[Note: Attached for reference, at the end of the minutes, are the documents referenced in the ordinance.]

6. **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 #s: 0164-02-0002 and 0162-02-0150, for transportation facility improvements associated with the Van Buren Street Improvement project.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, September 4, and Friday, September 11, 2020 issues.

Mayor Merkel stated that she had opened the public hearing. She recognized Lauri Sigler, Deputy Town Attorney, for the staff report and stated that John Irish, Deputy Director of Public Works, would also be available to provide input.

Ms. Sigler presented the staff report and PowerPoint dated September 22, 2020 which are on file in the Town Clerk's office. She stated that Dominion had requested a 15-foot wide easement of approximately 7,235 square feet extending across the frontage of the

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town-owned Haley Smith Park at 320 and 324 Van Buren Street. As described in the previous staff report, the Van Buren Street Improvement Project would provide several street improvements, as well as signalized crosswalks at Alabama Drive. The easement was needed to install new street lighting and electrical facilities for the transportation improvements associated with the project. If approved, Dominion would have the right, privilege, and non-exclusive easement across the property for 40 years. The proposed agreement included standard provisions like granting Dominion the right of ingress and egress and Dominion's obligation to make repairs or other restoration improvements.

Ms. Sigler reviewed the changes to the proposed ordinance from last week's meeting which were related to square footage and location. The updated ordinance and plat were provided in the agenda. Staff recommends approval of the proposed ordinance, as presented.

Mayor Merkel asked Amanda M. Kertz, Deputy Town Clerk, if there were any speakers registered for this item.

Ms. Kertz confirmed there were no speakers.

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

On motion of Vice Mayor Olem, seconded by Councilmember McKenna, and carried by a 6-0 roll call vote by electronic means, Ordinance 20-O-52 was approved, as presented. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.

Ordinance 20-O-52, 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

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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 7,235 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 attached 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.

[Note: Attached for reference, at the end of the minutes, are the documents referenced in the ordinance.]

7. **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.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, September 4, and Friday, September 11, 2020 issues.

Mayor Merkel stated that she had opened the public hearing. She recognized Lauri Sigler, Deputy Town Attorney, for the staff report and stated that John Irish, Deputy Director of Public Works, would also be available to provide input.

Ms. Sigler presented the staff report and PowerPoint dated September 22, 2020 which are on file in the Town Clerk's office. She stated that Verizon Virginia, LLC (Verizon) had requested an approximate 468 square foot easement on the vacant town-owned property located in the southeast quadrant of the intersection. The easement was necessary to relocate the existing Verizon equipment cabinets and cabling to accommodate transportation improvements associated with the project. She discussed the Herndon Parkway and Van Buren Street intersection project that would widen the intersection and add turning lanes, pedestrian and traffic signals, an extended sidewalk, cycle track, and stormwater management system.

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Ms. Sigler stated that the town was not receiving monetary compensation for the easement and, in exchange, Verizon would not charge the relocation cost to the town. This easement also included standard provisions like granting Verizon the right of ingress and egress and their obligation to restore the property. If approved, Verizon would have the right, privilege, and non-exclusive easement across the property for 40 years. Staff recommends approval of the proposed ordinance and related Deed of Easement, as presented.

There was brief discussion amongst Council and staff on this item.

In response to Vice Mayor Olem's query about the cost of these improvements, for the public's benefit, Mr. Irish stated the overall cost estimate for this project was approximately \$5.6 million and the town was responsible for around 20 percent of that cost. Most of the cost would be paid for by Virginia Department of Transportation (VDOT), federal, and Northern Virginia Transit Authority (NVTA) funds.

Mayor Merkel asked Amanda M. Kertz, Deputy Town Clerk, if there were any speakers registered for this item.

Ms. Kertz confirmed there were no speakers.

Mayor Merkel closed the public hearing and moved to Council level for discussion and action.

Councilmember del Aguila moved approval of Ordinance 20-O-53, as presented. Vice Mayor Olem seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by a 6-0 roll call vote by electronic means. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.

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.

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

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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.

[Note: Attached, for reference, are the documents referenced in the ordinance.]

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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, VIRGINIA**, 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
WITNESSETH:

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 its 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.

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- (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]

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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:

Lesia J. Yeatts, Town Attorney

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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

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PLAT OF VERIZON VIRGINIA, LLC EASEMENT AND QUITCLAIMS
ON THE PROPERTY OF
THE TOWN OF HERNDON
HERNDON, VIRGINIA

[illegible][illegible]

CURVE TABLE						
CHW	ARC LENGTH	CHORD	CHORD BEARING	CHORD LENGTH	CHORD BEARING	
C1	130.00	130.00	0°00'00"	130.00	0°00'00"	
C2	70.16	100.00	0°00'00"	100.00	0°00'00"	
C3	40.14	40.00	0°00'00"	40.00	0°00'00"	
C4	20.00	50.00	0°00'00"	50.00	0°00'00"	
C5	10.00	100.00	0°00'00"	100.00	0°00'00"	

AREAS			
PARCEL #	OUTCLAIMED	VERIZON VIRGINIA LLC ESMT.	PERMANENT DRAINAGE ESMT
001	0000	000000	0000

GENERAL

8. Resolution 20-G-39, to accept the State of the Town Report, Fiscal Year 2020.

Mayor Merkel recognized the William H. Ashton II, Town Manager, and Jennie Tripoli, Director of Finance, for the staff report. She stated that Ms. Tripoli would provide an update on the FY 2020 and FY 2021 budgets.

Mr. Ashton presented the staff report and PowerPoint dated September 22, 2020, which are on file in the Town Clerk's office.

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Mr. Ashton provided an overview of the Pre-COVID-19 and Post-COVID-19 year the town experienced including the very different focuses and projects of these two parts of the year. He stated COVID-19 caused a shift to focus on core town functions, protecting the public and employees, and preparing for fiscal uncertainty.

Mr. Ashton outlined the projects, accolades, and events that were of focus prior to COVID-19, and he highlighted planning activities and important hires. Mr. Ashton also provided an update on the works of the Herndon Police Department and the Department of Public Works throughout the year.

Mr. Ashton stated that the seismic shift caused by COVID-19 began in the January to March 2020 timeframe, and he reviewed the various changes made to operations and the budget to adjust for the pandemic. He stated the town met its core functions while adapting and collaborating to meet the needs of town residents and businesses. Organizational and fiscal preparation helped the town remain successful in meeting the principles of core missions, protecting the workforce, and preparing the town for fiscal uncertainty. There were many challenges for the FY 2021 budget that required amendments and sequestering of funds, but FY 2020 closed with a surplus.

He stated technology and coordination with local resources had helped continue providing safe services and information for residents. Mr. Ashton also discussed the internal shifts with town staff to keep services online and adjustments made while complying with best practices and financial reviews. Every service brought back online was analyzed. He also reviewed the external work done to help streamline processes for restaurants in relation to items like outdoor seating.

Mr. Ashton stated that all the COVID-19 management used has been woven into the operational fabric and would continue to be present moving forward.

Mr. Ashton then asked Ms. Tripoli to take over the presentation to provide economic data.

Ms. Tripoli provided an overview of the town's financial data found in the PowerPoint dated September 22, 2020 which is on file in the Town Clerk's office. She stated that these were the preliminary, unaudited results from FY 2020.

Ms. Tripoli gave an overview of CARES Act spending and the FY 2021 budget assumptions. She also provided an overview of actions taken such as spending restrictions. She walked Council and those listening through the projections and spending that had happened along with preliminary, unaudited results. The town ended the year with a surplus driven by revenues and lowered expenditures.

Ms. Tripoli showed where items such as meals tax, transient occupancy tax, and sales tax landed, and she pointed out the previous rate increase for meals tax which, in the end, equated to a decrease in meals tax amounts. She also pointed out other amounts that decreased due to facility closures and event cancellations.

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With more data for FY 2021, Ms. Tripoli stated the town would need to adjust some prior revenue assumptions. She also provided information about enterprise funds, focusing on the water and sewer fund, and expenses that were yet to be taken out. She stated there were about 281 delinquent accounts at that time. Staff was trying to encourage payment plans, was working with those customers, and was not shutting off water during the pandemic.

Mr. Ashton then concluded staff's presentation by stating the report had 88 pages and none of this would have been possible without the work of town staff, management team, the Town Attorney, and Council.

Councilmember Dhakal thanked Mr. Ashton and Ms. Tripoli for the report and asked about continuing development and continuity of government. He provided comments about the adjustments made during the pandemic for restaurants and residents.

In response to Councilmember Dhakal, Mr. Ashton provided comments about several projects that continued during the pandemic. He stated the town moved forward with things like critical transportation projects that were grant funded and that General Fund items were pulled back on.

Councilmember del Aguila echoed Councilmember Dhakal's comments thanking staff and asked what they had learned from this.

Responding to Councilmember del Aguila, Ms. Tripoli stated she would like to think about her answer and that she would send an email.

Mr. Ashton stated that he immediately thought of the adage "every battle is won or lost before it's fought." He stated that preparation, skill sets, and ownership had all made an enormous difference.

There was a brief question and answer period between Councilmember Friedrichs, Ms. Tripoli, and Mr. Ashton

In response to queries from Councilmember Friedrichs about fiscal concerns, Ms. Tripoli stated that because town's data lagged and that items like real estate taxes and meals taxes were unknowns, that did worry her. Ms. Tripoli stated that staff would have some creative ideas to discuss going forward.

In response to queries from Councilmember Friedrichs about what would happen and how the town would respond if revenue was really low, Mr. Ashton said this would be a conversation approaching the FY 2022 budget and would require Council input about policy and services. The town organization would then need to be fashioned to meet those service demands. He stated staff was closely watching revenues and that,

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eventually, items like training and vehicle replacement would have to be put back into the budget. Mr. Ashton stated they would need to consider services going forward after they had a general sense about data from the first six months of the fiscal year.

Mayor Merkel moved approval of Resolution 20-G-39, as presented. Vice Mayor Olem seconded the motion.

Mayor Merkel complimented Mr. Ashton for his actions early in the pandemic and his leadership.

Vice Mayor Olem provided comments on the WinterMarkt and town staff working to make events happen. She also echoed Mayor Merkel's comments about Mr. Ashton's leadership and remarked on the town staff's professionalism.

Councilmember McKenna echoed his colleagues' thanks to Mr. Ashton and Ms. Tripoli for their work.

Councilmember Friedrichs echoed her colleagues' comments of thanking staff.

The question was called on the motion, which carried by a 6-0 roll call vote by electronic means. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.

Resolution 20-G-39, to accept the State of the Town Report, Fiscal Year 2020.

WHEREAS, pursuant to Sec. 4.2 (d) of the Town of Herndon Charter, the Town Manager is required to prepare for publication and to submit to the Town Council each September at a regular meeting in September a concise, comprehensive report of the financial transactions and administrative activities of the Town government during the immediately preceding fiscal year; and

WHEREAS, following the Town's annual audit, a Comprehensive Annual Financial Audit report of the Town is presented to the Town Council in December; and

WHEREAS, the Town Manager has prepared a report of the administrative activities of the Town government titled "*Town of Herndon Annual Report FY 2020*," including an Executive Summary; and

WHEREAS, a copy of the report is posted on the Town's Web site and is available to citizens at the Herndon Fortnightly Library and the Herndon Municipal Center.

**September 22, 2020
(public hearing)**

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby accepts the *"Town of Herndon Annual Report FY 2020."*

9. **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.**

Mayor Merkel recognized David Stromberg, Zoning Administrator, for the staff report. She stated that Lisa Gilleran, Director of Community Development, would also be available for input on this item.

Mr. Stromberg presented the staff report and PowerPoint dated September 22, 2020, which are on file in the Town Clerk's office. He discussed the intent of the proposed initiating resolution and associated draft ordinance, along with the background, process, and expected timeline of the project going forward. The process for changing the zoning ordinance began when the Council and several members of the public expressed interest in renaming the district after a joint Town Council and Heritage Preservation Review Board (HPRB) meeting in December 2019. The proposed ZOTA would rename the Heritage Preservation Overlay District (HPO) to the Historic District Overlay (HDO), which would more clearly identify the district and align it with the term that is most often used around the state and the country. It would also align the town with the state code language. The proposed change would rename the HPRB to the Historic District Review Board (HDRB) and would require multiple edits to Chapter 78 of the Town Code.

The proposed ZOTA would also authorize staff to issue certain Certificates of Appropriateness (COA) and clarify or simplify language throughout the chapter. Mr. Stromberg discussed the changes and provided some examples in the PowerPoint. Currently, the HPRB reviewed all COAs. The changes would allow staff to review minor improvements that required COAs. He also outlined the proposed change to distinguish standards based on scope of work and clarified the difference between "standards" and "considerations." Alterations greater than 49 percent, based on square foot calculations, might be required to meet standards for demolition or new construction. Additionally, most considerations would be moved to the Guidelines, which were being rewritten.

The proposed initiating resolution would refer ZOTA #20-01 to the Planning Commission for consideration and recommendation. Following the Commission's review, this text amendment would return to the Council for final action. Staff recommends approval of the proposed resolution, sending the item to the Planning Commission for further review.

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(public hearing)**

There was brief discussion amongst Council and staff on this item.

Responding to Councilmember del Aguila, Mr. Stromberg stated staff could update its presentations with a few before and after examples for wording and guidelines. He would include those examples for the Planning Commission.

There was a brief question and answer session between Councilmember Friedrichs and Mr. Stromberg about the Planning Commission's review process and about the existing language that would be updated. He stated they wanted to get the zoning text as close to the state code as possible.

There was a brief question and answer session between Councilmember Dhakal and Mr. Stromberg about the application and approval process. Mr. Stromberg stated Ms. Gilleran could provide some updates about the process and the guidelines. He discussed the application review process related to the proposed ordinance changes. Mr. Stromberg stated that staff wanted to get more information online about the historic district processes. He also stated that after staff reviews the application they would verify where the application would be sent for review.

In response to queries from Mayor Merkel, Mr. Stromberg confirmed that in order to enact some of the changes they want in the rewrite, the code needed to be changed.

Ms. Gilleran added that they would like to be able to amend over time because staff would want to expand the number of types of applications they could review, which was a reason to not have a definitive list. She also clarified that staff was working to finalize guidelines and that they expect to have this done in October. Staff was trying to simplify the process by allowing more applications to go to the staff rather than requiring public hearings.

Councilmember del Aguila moved approval of Resolution 20-G-44, as presented. Vice Mayor Olem seconded the motion.

There were brief comments from Council.

Councilmember del Aguila provided comments about changes and wording to make the process easier.

Vice Mayor Olem provided comments about the time taken to get to this point and the importance of the downtown and historic district.

Mayor Merkel concurred with the comments of her colleagues.

The question was called on the motion, which carried by a 6-0 roll call vote by electronic means. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.

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Resolution 20-G-44, 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

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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.

[Note: Attached for reference, at the end of the minutes, is the proposed draft Zoning Ordinance Text Amendment ZOTA #20-01.]

10. **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.**

Mayor Merkel recognized William H. Ashton II, Town Manager, for an introduction to this item.

Mr. Ashton introduced the item by stating this was an exciting project. He stated it would bring workforce housing units to the town and that Council needed to rezone the area for this to occur. He stated this was one of three such areas staff was working on in the town. Mr. Ashton then turned the discussion over to Dana Heiberg, Senior Planner, for the staff report.

Mr. Heiberg presented the staff report and PowerPoint dated September 22, 2020, which are on file in the Town Clerk's office. The proposed initiating resolution would begin the Comprehensive Plan Amendment process and refer the Residence Inn property on the east side of town to the Planning Commission for study and recommendation. Following the Commission's review, this item would return to the Council for final action. He discussed the location and the existing property, features, and zoning of the property, located at 315 Elden Street in the Business Corridor. The building floor area was approximately 168 units and the property was approximately 30 years old, with the original zoning approvals dating 1988-1990.

Mr. Heiberg then provided an overview of the catalysts for this project and stated that the owner, Elden Street Owner LLC, expressed interest in pursuing a multifamily use of about 164 units with a commitment to a portion of about 55 percent being workforce housing. The repurposing of the property could occur without major changes to the physical structures or site layout. The property was currently zoned as Commercial Services (CS), so to repurpose the existing hotel use, the Council would need to pass a Zoning Map Amendment (rezoning) for the property. Because the existing density of approximately 25.9 units per acre exceeded the density of the town's multifamily districts, staff recommends that the Council consider creating a variation of the Planned Development-Urban Residential district for adoption. He stated this would be changed

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(public hearing)**

to Adaptive Area/Residential. Staff recommends approval of the proposed resolution to initiate formal Comprehensive Plan Amendment and sending the item to the Planning Commission for further review.

There was brief discussion amongst Council and staff on this item.

Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel expressed support for the project.

There was a brief question and answer session between Councilmember Dhakal and Mr. Heiberg about the rezoning process and Mr. Heiberg confirmed this would be workforce housing.

Vice Mayor Olem asked about the difference between this property changing to housing from being a hotel and another property in town that was changing from being a business to housing. Mr. Heiberg stated it was a parallel, but the particulars were different. He stated in this case it was more of a repurposing than redevelopment.

There was a brief question and answer session between Councilmember Friedrichs, Mr. Ashton, and Ms. Gilleran about the project.

Responding to Councilmember Friedrichs, Mr. Ashton stated there was potential for some impact to transient occupancy tax revenue in losing the hotel use. He stated that the first thing looked at was the effects of having residential use in this area. The Council's desire for workforce housing was one of the main considerations.

Ms. Gilleran then provided information about land use and this area as a location for residential zoning. She stated the workforce housing element was what drew staff's attention to this unique development. She also stated this would be a very walkable, convenient location.

In response to queries from Councilmember Dhakal, Mr. Heiberg stated to make sure this property would remain affordable, workforce housing, they would need to have a long-term, 20 or 30-year commitment, enforceable through that agreement. Ms. Gilleran added that staff has been looking into this and has spoken with her counterparts in the region. She stated this would be an agreement through the re-zoning where the leasing agent would be keeping data that the town would receive as confirmation that income standards were met.

Mayor Merkel recognized Ken Wire, 1750 Tysons Boulevard, Tysons, for more information about the project.

- Mr. Wire provided comments on the project. He stated he was working with Peter Kleeblatt, Principal with the Pinkard Group in Washington, DC, who have done many of these types of projects. He clarified that this was not a Marriott project, the Pinkard Group was funding it, and that the details of the project would be further

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worked out during the rezoning. He stated that it was a unique situation in his experience to not be requesting any funding from the locality or another entity.

Responding to Vice Mayor Olem, Mr. Wire stated that he could provide a list of previous similar projects they had worked on to Ms. Gilleran. He had not attended the Metro Monday presentation about housing and asked Mr. Kleeblatt if he would like to provide comments.

- Mr. Kleeblatt discussed his background with affordable and workforce housing. He reviewed the purpose and intent for the project and how it would serve the community.

Councilmember Dhakal moved approval of Resolution 20-G-45, as presented. Councilmember del Aguila seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by a 6-0 roll call vote by electronic means. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.

Resolution 20-G-45, 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.

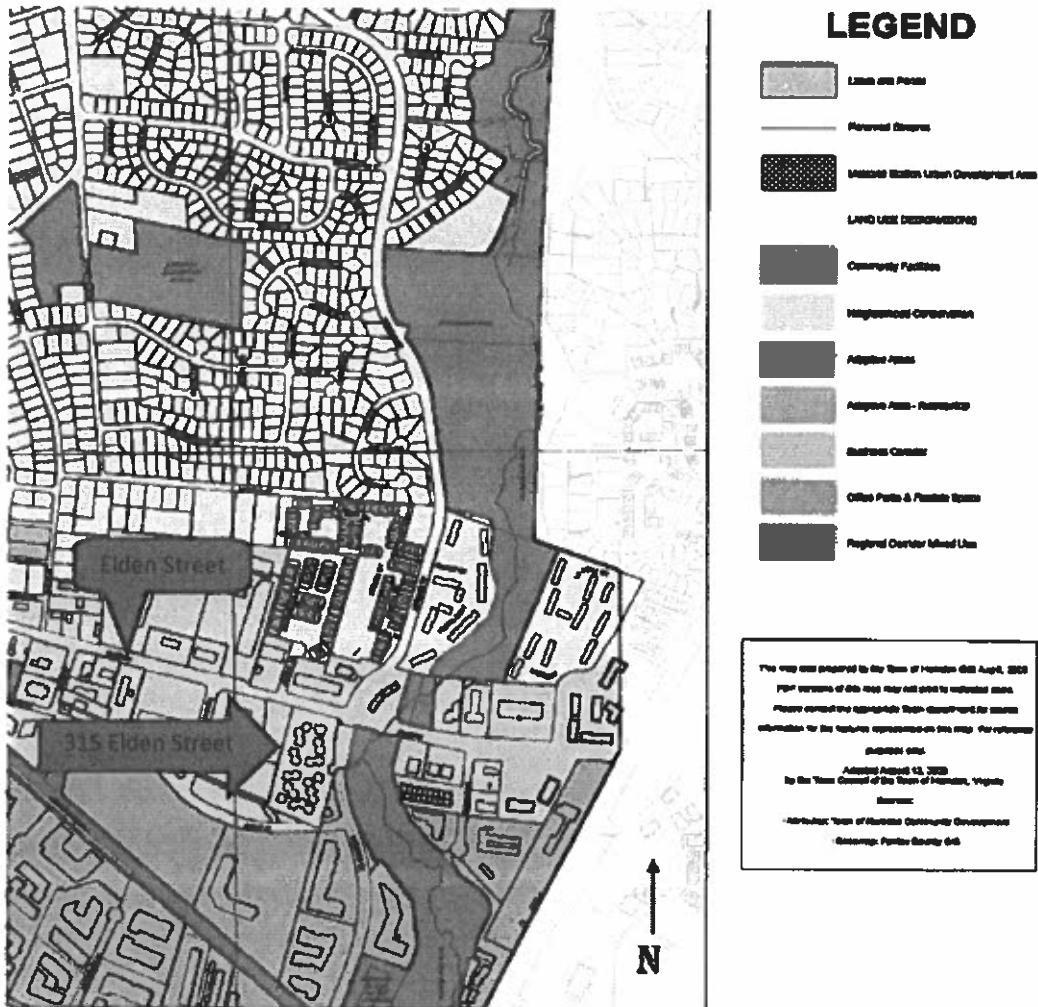
NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby:

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.

[Note: Attached for reference from the 2030 Land Use Plan map, as part of the Town of Herndon 2030 Comprehensive Plan adopted August 12, 2008 and as amended through February 26, 2019, are maps showing the subject property and an aerial view of the property.]

September 22, 2020
(public hearing)

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.

September 22, 2020
(public hearing)

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:



September 22, 2020
(public hearing)

CONSENT AGENDA

11. **Resolution 20-G-40, to change the meeting schedule for the Town Council Public Hearing to October 13, 2020.**
12. **Ordinance 20-O-54, to appoint members to serve on the Police Supplemental Plan Administrative Committee (PSPAC).**
13. **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.**
14. **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.**

On motion of Vice Mayor Olem, seconded by Councilmember Friedrichs, the following Consent agenda items were approved by a 6-0 roll call vote by electronic means, without comment. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.

Resolution 20-G-40, 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.

**September 22, 2020
(public hearing)**

Ordinance 20-O-54, 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.

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.

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.

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 the Fairfax County School Board for space in the Town's building at 397 Herndon Parkway in Herndon.

[Note: Attached for reference is the temporary emergency extension of lease b/n the town and the Fairfax County School Board dated August 31, 2020.]

September 22, 2020
(public hearing)

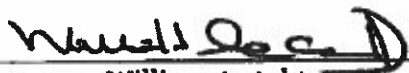
Temporary Emergency Extension of Lease Pursuant to Ordinance 20-O-23 Continuity of Governmental Operations due to State of Emergency, Pandemic Disaster Covid-19

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).

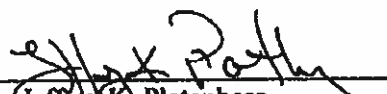
THEREFORE, for the consideration stated in the Lease, the parties agree as follows:

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

September 22, 2020
(public hearing)



APPROVED AS TO FORM:



Lesa J. Yeatts
Town Attorney

**September 22, 2020
(public hearing)**

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.

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.

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.

[Note: Attached for reference is the extension of license b/n the town and Nafis Peter Ahmed and Ruth Llabres Ahmed dated August 20, 2020.]

**September 22, 2020
(public hearing)**

**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).

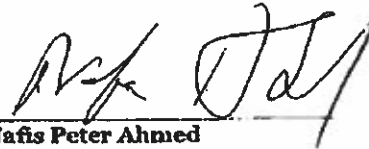
THEREFORE, for the consideration stated in the License and herein, the parties agree as follows:

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

September 22, 2020
(public hearing)

DocuSign Envelope ID: D657BA40-3E4B-420B-817A-7CCEA8831D31


Nafis Peter Ahmed

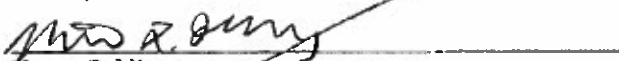
Designated by

Ruth Llabres Ahmed

COMMONWEALTH OF VIRGINIA

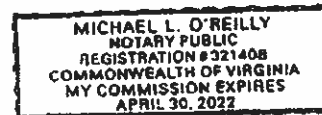
COUNTY OF Fairfax:

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. _____

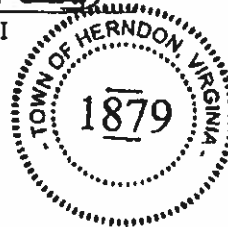
September 22, 2020
(public hearing)

TOWN OF HERNDON, VIRGINIA

ATTEST:

David J. Wellerhaus
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 Wellerhaus
Notary Public

My Commission Expires: 9-30-2022

My Notary Registration Number: #123614



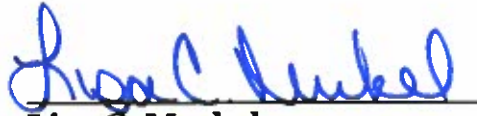
APPROVED AS TO FORM:

Lesa J. Yeatts
Town Attorney

September 22, 2020
(public hearing)

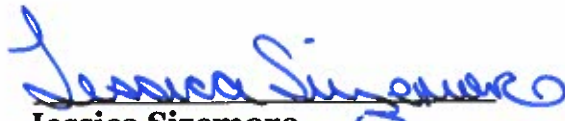
15. **ADJOURNMENT**

On motion of Vice Mayor Olem, seconded by Councilmember Dhakal, and carried by a 6-0 roll call vote by electronic means, the meeting of the September 22, 2020 public hearing adjourned at 9:58 p.m. The vote was: Councilmembers del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye." Councilmember Baker was absent.



Lisa C. Merkel
Mayor





Jessica Sizemore
Legislative Assistant

Minutes approved by Town Council: October 13, 2020.

TOWN OF HERNDON, VIRGINIA**ORDINANCE****SEPTEMBER 22, 2020**

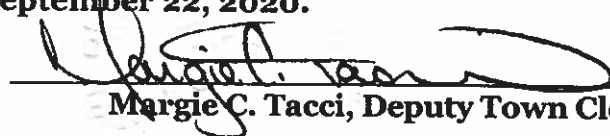
Ordinance- to approve the conveyance of a power utility easement by Quitclaim Deed to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, acquired by the Town of Herndon for transportation facility improvements for the Van 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.

This is certified to be a true and accurate copy of Ordinance 20-O-51 adopted at a legally convened meeting of the Town Council of the Town of Herndon on September 22, 2020.


Margie C. Tacci, Deputy Town Clerk



Attached are the documents referenced in the ordinance.

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").

WITNESSETH:

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:

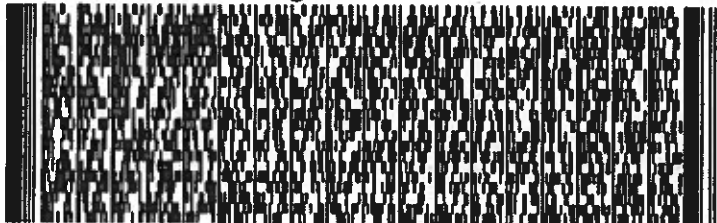
Lesa J. Yeatts, Town Attorney

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

018-2- -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.)

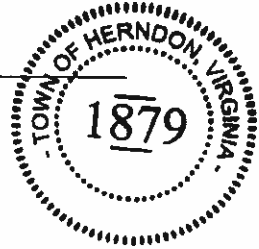
WITNESS the following signatures and seals:

ATTEST:

TOWN OF HERNDON, VIRGINIA

[Signature]
Town Clerk

By [Signature]
Lisa C. Merkel, Mayor



COMMONWEALTH OF VIRGINIA

COUNTY OF Fairfax, 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, 2020.

[Signature]
Notary Public

My Commission Expires: 8-31-2020

My Notary Registration Number: 295189

APPROVED AS TO FORM:

[Signature]
Lesa J. Yeatts, Town Attorney



[illegible]

TO ASPEN DR ↓ VAN BUREN ST ↓ PL 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	State VA
Electoral-Township-Borough Town of Herndon	County-City Fairfax Co	
Office NW REGION	Plot Number 40-19-0178	
Work Request Number 10221591	Old Number 00222	

PLAT TO ACCOMPANY
RIGHT-OF-WAY AGREEMENT
VIRGINIA ELECTRIC AND POWER COMPANY
doing business as
Dominion Energy Virginia

OH/UG

DATE _____ By Sebastian Gutierrez

OWNER INITIALS _____ Page 1 of 1

PLAT 2

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.

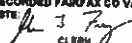
This is certified to be a true and accurate copy of Ordinance 20-0-09 adopted at a legally convened meeting of the Town Council of the Town of Herndon on January 28, 2020.


Jessica Sizemore, Legislative Assistant



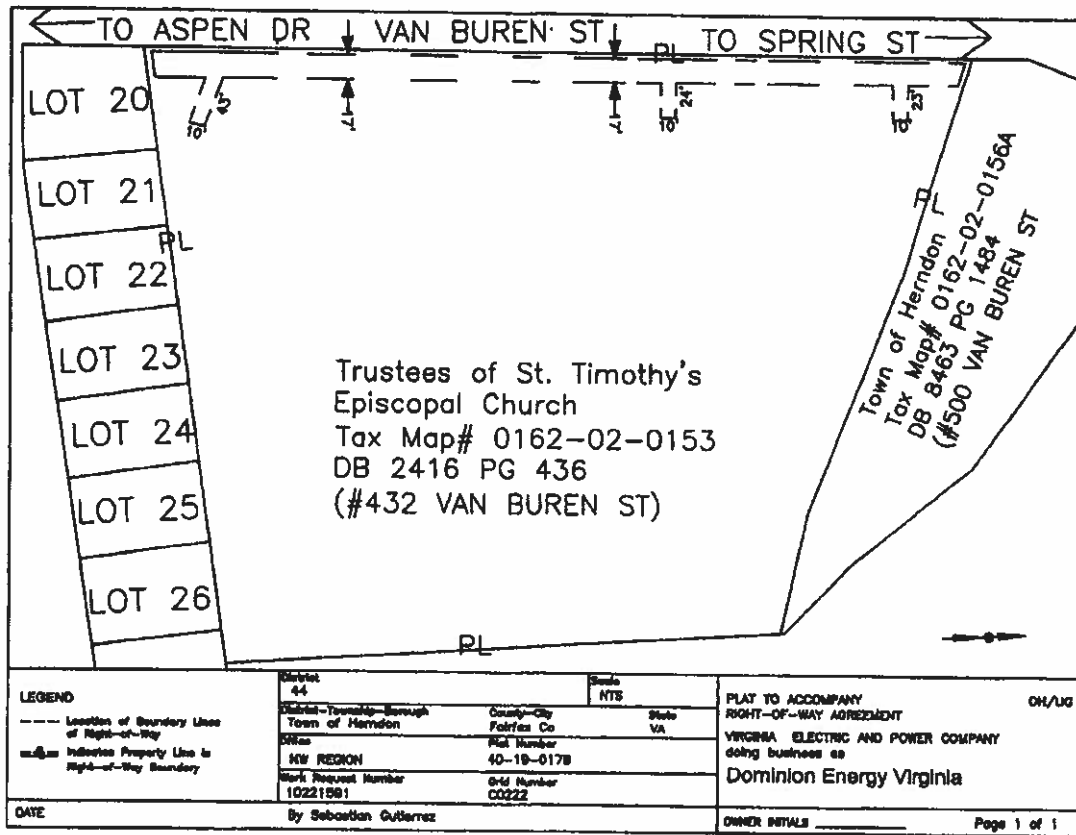
Attached for reference are Parcel 13 and Plat #9 of Job # RK1807.01, dated July 23, 2019 and revised through October 2, 2019, prepared by H&B Surveying and Mapping, LLC of Richmond, Virginia.

Plat Attached

02/20/2020
RECORDED IN PUBLIC VA
TESTE 
CLEAR

Attachment
20-O-51

Attachment
20-O-51



NOTE:

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TOWN OF HERNDON, VIRGINIA**ORDINANCE****SEPTEMBER 22, 2020**

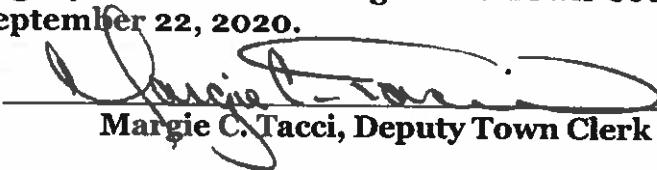
Ordinance- to approve the conveyance of a power utility easement by to Virginia Electric and Power Company, a Virginia public service corporation, doing business in Virginia as Dominion Energy Virginia, on Town-owned property located in the northeast quadrant of the intersection of Herndon Parkway and 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 7,235 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 attached 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.

This is certified to be a true and accurate copy of Ordinance 20-O-52 adopted at a legally convened meeting of the Town Council of the Town of Herndon on September 22, 2020.


Margie C. Tacci, Deputy Town Clerk



Attached are the documents referenced in the ordinance.



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 the 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 acknowledged, **GRANTOR** grants and conveys unto **GRANTEE**, its successors and assigns, the perpetual right, privilege and non-exclusive easement over, under, through, upon 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 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 conduit 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 variable (as shown on the attached plat) feet in width across the lands of **GRANTOR**.

Initials: _____

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

(Page 1 of 5 Pages)
VAROW No(s). 40-19-0198
Tax Map No.: 016-4-02-0002 & 016-2-02-0150

Right of Way Agreement

2. The easement granted herein shall extend across the lands of the **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 the said Plat(s), reference being made thereto for a more particular description thereof.

3. All facilities constructed hereunder shall remain the property of the **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 the **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, 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 the **GRANTEE** shall remain the property of the **GRANTOR**.

5. For the purposes 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 the **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 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: _____

Right of Way Agreement

7. **GRANTOR**, its successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights 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 the 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 easement 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 the terms and conditions contained herein 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 shall mean the plural and the plural the singular.

Initials: _____

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

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 the _____ day of _____, 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:

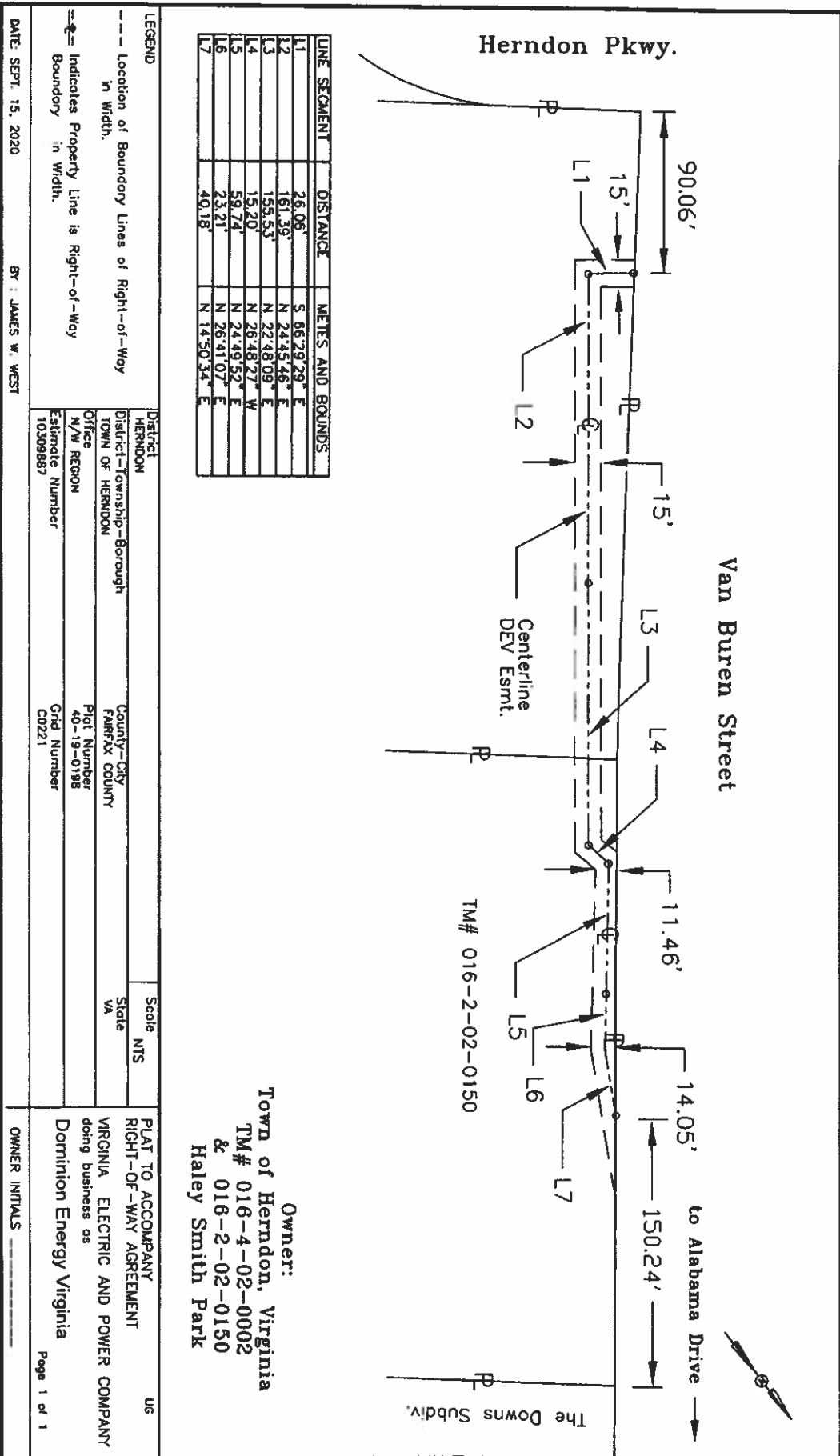
1. This Right of Way Agreement shall be limited in duration and shall remain in force for a term of forty (40) years. At the end of such term, this Right of Way Agreement shall automatically terminate unless GRANTOR agrees to renew this Right of Way Agreement for an additional term of years.
2. In the 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 GRANTEE will not be responsible for paying 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 in the location where such wires and facilities are located at the time of GRANTOR's sale or conveyance.

TOWN OF HERNDON, VIRGINIA
a municipal corporation

By: _____

Name: _____

Title: _____



TOWN OF HERNDON, VIRGINIA

DRAFT 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 HDO	Heritage Preservation Historic District 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 Historic District Overlay District (HPO) (HDO)	Heritage Preservation Historic District Overlay District (HPO) (HDO)
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 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 historic district overlay district~~ shall be subject to the approval of the ~~heritage preservation 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:

86 ***

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

92
 93 **Section 78-50.7 – PD-TD – Planned development traditional downtown district.**

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

96 ***

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

101 ***

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

103 ***

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

- 106 (a) *Purpose and intent.* The ~~heritage preservation~~ historic district overlay district (HP HDO
 107 district) is established pursuant to the authority granted to localities by Virginia Code §
 108 15.2-2306. It is intended to promote and protect the unique character of the town
 109 through the identification, preservation and enhancement of buildings, structures,
 110 settings, neighborhoods, places and features with historical architectural significance
 111 to the town. The HDO further intends to: ~~intended to provide for the establishment of~~
 112 ~~historic landmarks and preservation districts as a means of preserving the historical,~~
 113 ~~cultural, and architectural heritage of the town and protecting designated historic~~
 114 ~~resources and is adopted pursuant to the authority granted to localities by Virginia Code~~
 115 ~~§15.2-2306.~~

- 116 (1) *Ensure that additions, repairs, modifications, and new construction enhance*
 117 *rather than detract from the town's historic architectural settings.*

- 118 (2) *Preserve the architectural, artistic, and historic merit of individual structures.*

- 119 (3) *Protect historic resources from neglect and demolition.*

- 120 (4) *Retain important townscapes and viewsheds integral to the identity of*
 121 *Herndon.*
- 122 (b) *Applicability.* No building, structure, or sign located in the ~~HP~~ historic district overlay
 123 shall be erected, reconstructed, altered, demolished, moved, expanded or restored except
 124 in accordance with the provisions of 78-60.3(g), certificate of appropriateness in the
 125 ~~heritage preservation~~ historic district overlay. ~~district.~~
- 126 (c) *District boundaries and maps.* The boundaries of the ~~HP-district~~ historic district
 127 overlay shall be shown on the town's official zoning map and on the appropriate
 128 comprehensive plan maps after action by the planning commission and town council.
- 129 (d) *Revision of ~~HP-district~~ historic district overlay boundary and designation of*
 130 *landmarks.* The boundaries of the ~~HP-district~~ HDO may be amended or areas, sites,
 131 buildings, and structures may be designated as historic landmarks in compliance with
 132 the following:
- 133 (1) *Amendment procedures.* The procedures for amendment of the ~~HP-district~~ HDO
 134 boundaries or designation of historic landmarks shall be as provided for as an
 135 amendment to the official zoning map pursuant to section 78-155.1, zoning map
 136 amendment. In addition, the following procedures shall apply:
- 137 a. The planning commission shall conduct or delegate a survey of the town.
 138 The survey shall identify and inventory all landmarks, buildings, or
 139 structures, in areas being proposed within the proposed district
 140 boundaries. The planning commission shall also prepare reports
 141 recommended to be included in the ~~HP-district~~ HDO.
- 142 b. Prior to establishing or expanding the ~~HP-district~~ HDO the town council
 143 shall:
- 144 1. Provide for public input from the community and affected
 145 property owners in accordance with Code of Virginia, § 15.2-2204;
- 146 2. Follow the written criteria set out below to be used to determine
 147 which properties should be included within the ~~HP-district~~ HDO;
 148 and
- 149 3. Review the inventory and the criteria to determine which
 150 properties in the areas being considered for inclusion within the
 151 proposed district meet the criteria to be included in the ~~HP-district~~
 152 HDO.
- 153 c. Upon the inclusion of an area in the ~~HP-district~~ HDO, the owner of each
 154 property within the established district boundaries therein shall be given
 155 written notification, including a description of the factors justifying the
 156 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.

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

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

203 a. ~~Whether or not reasonable~~ Reasonable effort shall be ~~is~~ made to alter the
 204 site, building, ~~or~~ structure, and its environment to the minimal extent
 205 practicable.

206 b. ~~Whether or not alteration~~ Alteration of the original, distinguishing
 207 qualities or character of a site, building, ~~or~~ structure, and its environment
 208 and the removal or alteration of any historic material or distinctive
 209 architectural features shall be ~~is~~ avoided to the greatest extent practicable.

210 c. ~~Whether all sites, buildings and structures shall be recognized as products~~
 211 ~~of their own time, with alterations~~ Alterations and reconstruction to
 212 existing buildings, and structures, and sites ~~to be~~ are consistent with the
 213 original style of such buildings and structures.

214 d. ~~Whether or not distinctive~~ Distinctive stylistic features or examples of
 215 skilled craftsmanship that characterize a building, ~~or~~ structure, or site
 216 shall be retained and restored to the greatest extent practicable.

217 e. ~~Whether or not deteriorated~~ Deteriorated architectural features shall be
 218 repaired, rather than replaced, wherever reasonably possible, ~~and, if~~
 219 replacement is necessary, ~~whether or not~~ new materials shall match the
 220 material being replaced in composition, design, color, texture, and other
 221 visual qualities to the greatest extent practicable.

222 f. ~~Whether or not repair or replacement~~ Alteration of missing architectural
 223 features shall, to the greatest extent possible, be based on accurate
 224 duplications of the original features, substantiated by historic, physical, or
 225 pictorial evidence, rather than on conjectural designs or the availability of
 226 different architectural elements from other buildings or structures.

227 g. ~~Whether or not the surface cleaning~~ Cleaning of buildings and structures
 228 constituting historic landmarks shall be undertaken with the gentlest
 229 means practicable; provided, however, that sandblasting and other
 230 cleaning methods that may damage the existing building materials shall
 231 not be approved.

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

- 272 (3) *Moving or relocating a building.* A certificate of appropriateness to move or
 273 relocate a building or structure may be approved only after ~~considering the~~
 274 ~~following, as well as other appropriate matters~~ *meeting the following standards:*
- 275 a. ~~Whether or not the proposed relocation may~~ *The relocation shall not have*
 276 *a detrimental effect on the structural soundness of the building;*
- 277 b. ~~Whether or not the proposed relocation would have a negative or positive~~
 278 *The relocation shall not have a negative effect on other historic*
 279 *landmarks or on other sites, buildings, or structures located within the*
 280 ~~heritage preservation overlay district~~ *historic district overlay;*
- 281 c. ~~Whether or not the~~ *The proposed relocation would* ~~shall~~ *provide new*
 282 *surroundings that would be compatible with the architectural aspect of*
 283 *the building or structure;*
- 284 d. ~~Whether or not the~~ *The proposed relocation is the only practicable means*
 285 *of saving the structure from demolition; and*
- 286 e. ~~Whether or not the~~ *The building or structure will* ~~shall~~ *be relocated to*
 287 *another site within the corporate limits of the town or to another adjacent*
 288 *site that is subject to preservation control.*
- 289 (4) *Demolition.* A certificate of appropriateness to demolish a building or structure
 290 may be approved, only after ~~reviewing and considering the circumstances and~~
 291 ~~conditions of the structure or building or the part proposed for demolition, and~~
 292 ~~considering the following factors as well as all other appropriate matters~~ *meeting*
 293 *the following standards:*
- 294 a. ~~Whether or not the~~ *The building or structure is an historic landmark or is*
 295 ~~a building within the heritage preservation overlay district that~~ *does not*
 296 ~~contribute~~ *contributes to the character of the* ~~heritage preservation~~
 297 ~~overlay historic district;~~
- 298 b. ~~Whether or not the~~ *The building or structure is of such interest or*
 299 ~~significance that it would~~ *not* ~~qualify as a national or state landmark~~
 300 ~~building or structure listed on the National Register of Historic Places or~~
 301 ~~the Virginia Landmarks Register;~~
- 302 c. ~~Whether or not the building or structure is of such old or uncommon~~
 303 ~~design, texture or scarce material that it could not be reproduced or could~~
 304 ~~be reproduced only with great difficulty and expense;~~ *The building or*
 305 *structure has a common design that could reasonably be reproduced.*
- 306 d. ~~Whether or not historic events occurred in the building or structure;~~ *No*
 307 *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.~~
- e. ~~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 ~~HPRB~~ HDRB shall conduct a public hearing on the application. At the public hearing, the ~~HPRB~~ 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 ~~HPRB~~ 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 ~~HPRB~~ 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 ~~HPRB~~ 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 ~~HPRB~~ 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

500 *administrative approvals shall be stayed pending the decision by the*
 501 *HDRB.*

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

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

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

515 ***

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

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

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

536 (89) *Appeal of town council decision to circuit court.* The applicant, any person jointly
 537 or severally aggrieved with a property interest in land abutting or across the
 538 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 ~~HPRB~~ *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 ~~HPRB~~ *HDRB* shall consider and may grant one extension not to exceed one year upon a showing of good cause. In determining good cause, the ~~HPRB~~ *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 ~~HPRB~~ *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.

612 ***

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

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

620 ***

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

- 627 (1) *Within ~~heritage preservation overlay district~~ historic district overlay.* A
628 certificate of appropriateness may be required in the ~~heritage preservation~~
629 ~~overlay district~~ historic district overlay.

- 630 (2) *ARB review.* Approval by the architectural review board may be required for
631 multi-family and nonresidential properties outside of the ~~heritage preservation~~
632 ~~overlay district~~ historic district overlay.

633 ***

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

635 ***

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

641 ***

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

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

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

652 ***

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

655 ***

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

659 ***

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

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

668 ***

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

673 ***

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

681 ***

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-

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

718 ***

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

720 ***

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

728 ***

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

731 ***

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

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

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

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

746 (a) Chain link fencing used for recreational use within the
 747 ~~heritage preservation district~~ *historic district overlay* shall
 748 be coated with black or dark green vinyl and shall be
 749 screened from public rights-of-way and abutting properties
 750 by landscaping with a growth habit adequate to screen the
 751 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~~).

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

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

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

798 ***

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

800 ***

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

806 ***

807 **Section 78-150.1 – Town Council**

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

811 ***

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

813 ***

814 c. Final decisions of the ~~Heritage Preservation Review Board (HPRB)~~
 815 *historic district review board (HDRB)* on certificates of appropriateness
 816 (section 78-60.63(g));

817 ***

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

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

827 ***

828 **Section 78-150.2 – Planning Commission**

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

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

834 ***

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

837 ***

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

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

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

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

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

850 ***

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

- (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.

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

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

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

- (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.

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

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

(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)

PROCESS	ZONING ADMINISTRATOR	ARCHITECTURAL REVIEW BOARD (ARB)	HERITAGE PRESERVATION HISTORIC DISTRICT REVIEW BOARD (HPRB) (HDBR)	PLANNING COMMISSION	TOWN COUNCIL	BOARD OF ZONING APPEALS (BZA)	CIRCUIT COURT

OUTSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT HISTORIC DISTRICT OVERLAY:							

INSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT HISTORIC DISTRICT OVERLAY:							
ADMINISTRATIVE ELIGIBLE CERTIFICATE OF APPROPRIATENESS	D		A				

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	

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

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

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

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

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

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

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- (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.*

- 1026 (2) *Proffer review by ARB or ~~HPRB~~ HDRB prior to planning commission public*
 1027 *hearing (if applicable) . If an application for a zoning map amendment includes a*
 1028 *proffer or proffers dealing with a building's exterior appearance or materials, the*
 1029 *application and proffers shall be reviewed by the architectural review board, or*
 1030 *~~heritage preservation~~ historic district review board if in a ~~heritage preservation~~*
 1031 *~~overlay district~~ within the historic district overlay, as follows:*

1032 ***

1033 **Section 78-155.10 – Certificates of Appropriateness**

- 1034 (a) *Intent. The purpose of a certificate of appropriateness is to ensure proposed changes to*
 1035 *a building or site within the historic district overlay comply with the Historic District*
 1036 *Guidelines and this chapter.*
- 1037 (b) *Applicability. A certificate of appropriateness is required for any development within*
 1038 *the historic district overlay unless exempted pursuant to Section 78-60.3(g)(2).*
- 1039 (c) *Adjacent property owner notification. In addition to the submittal requirements in this*
 1040 *chapter, applications for administrative review eligible certificates of appropriateness*
 1041 *must include proof of notification to adjacent properties and properties across the*
 1042 *street. The contents of the notification shall include those specified in the Historic*
 1043 *District Procedure Guide.*

1044 **Section 78-160.1 – Generally**

1045 ***

- 1046 (c) *Adaptive reuse. The town council intends to allow the adaptive reuse and convenient*
 1047 *and efficient utilization of structures in the ~~heritage preservation districts~~ historic*
 1048 *district overlay and other older areas that may have been developed under different*
 1049 *standards, by allowing some flexibility in the treatment of nonconformities where the*
 1050 *specific nonconformity is not increased.*

1051 ***

1052 **Section 78-160.3 – Nonconforming Structures.**

1053 ***

- 1054 (e) *Specific provisions for changes to nonconforming structures. Permitted changes to*
 1055 *nonconforming structures shall be subject to the following specific provisions:*

1056 ***

- 1057 (4) *Restoration of a nonconforming structure damaged by casualty (excluding*
 1058 *"Acts of God" or natural disaster). A nonconforming structure damaged by*
 1059 *casualty (as distinguished from ordinary wear and tear) may be restored in*
 1060 *accordance with the following provisions:*

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1062

- (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:

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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.

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Section 170.3 – Types of violations.

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

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- (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.

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- (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:

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- (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

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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</i> <i>district overlay</i> without obtaining a current, valid Certificate of Appropriateness	200.00	500.00

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1112 **Section 78-180 – Definitions**

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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

1117 *Certificate of appropriateness.* A certificate issued by the ~~heritage-preservation zoning~~
 1118 *administrator, historic district review board, or on appeal by the town council,*
 1119 *indicating its approval of plans for alterations, new construction, removal or demolition*
 1120 *of a landmark or of a building or structure within a ~~preservation-district~~ the historic*
 1121 *district overlay.*

1122 ***

1123 *Construction, new.*

1124 (1) ~~For Heritage-preservation historic district overlay purposes:~~ Any construction of
 1125 *a building or structure within a ~~preservation-district~~ the historic district overlay*
 1126 *which is independent and exclusive of an existing building or structure, or part*
 1127 *thereof, in the ~~preservation-district~~ historic district overlay.*

1128 ***

1129 ~~Heritage-preservation-district~~ *Historic district overlay. ~~Preservation-districts~~ the historic*
 1130 *district overlay shall be designated by town council. ~~Preservation-district~~ bBoundaries*
 1131 *shall encompass and may include areas adjacent to historic landmarks.*

1132 ***

1133 *Sign related terms.* The following definitions pertain to signs and signage in all zoning districts:

1134 ***

1135 (8) *Design guidelines.* Design guidelines mean the guidelines found in either the
 1136 ~~Herndon Heritage Preservation Handbook~~ *Historic District Overlay Guidelines,*
 1137 *the Downtown Herndon Pattern Book or the Urban Design & Architectural*
 1138 *Guidelines for the Herndon Transit-Oriented Core.*

1139 ***

1140 (26) *Review board.* Review board means either the ~~Architectural R~~review ~~B~~board or
 1141 ~~the Heritage-Preservation historic district R~~review ~~B~~board.

1142 ***

1143 2. This ordinance shall be effective on and after the date of its adoption.

1144

NOTE:

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