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HERNDON TOWN COUNCIL
Tuesday
November 17, 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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments, Mayor Merkel stated that the November 17, 2020 Herndon Town Council Public Hearing would be by electronic means.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, November 12, 2020. In attendance electronically were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Jennifer Baker; Cesar del Aguila; Pradip Dhakal; Signe Friedrichs; and Bill McKenna.

Staff present during the meeting were: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Lisa Gilleran, Director of Community Development; Bryce Perry, Deputy Director of Community Development; David Stromberg, Zoning Administrator; and Amanda M. Kertz, Chief Deputy Town Clerk.

Announcements

Amanda M. Kertz, Chief Deputy Town Clerk welcomed those listening to the November 17, 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

**November 17, 2020
(public hearing)**

- ❖ 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during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments.
- 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 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. All members were present electronically, 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 October 20, 2020
Work Session Minutes**

On motion of Councilmember McKenna, seconded by Councilmember Dhakal, and carried by unanimous roll call vote by electronic means, the minutes of the October 20, 2020 work session were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

**November 17, 2020
(public hearing)**

**Vote on October 27, 2020
Public Hearing Minutes**

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal, and carried by unanimous roll call vote by electronic means, the minutes of the October 27, 2020 public hearing were approved. The vote was: Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

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 the past week had seen an unfortunate series of events with COVID-19 cases rising statewide which prompted Governor Northam to issue a new Executive Order 67. The new order included additional restrictions and turned some restrictions back to what they had been in the summer. Those restrictions included no alcoholic beverage sales in restaurants or bars after 10:00 p.m., no gatherings indoor or outdoor exceeding 25 people, and other restrictions which could be found on the Governor's website.

Mr. Ashton also stated there were changes in COVID-19 testing with Fairfax County Health Department. They would now accommodate those with appointments or walk ins from other counties. Herndon has been one of the leaders in cases and both sites serve drive up and walk up clients. The current Herndon testing facility would move from the adult daycare to the senior center for greater space to accommodate additional clients. He also reminded everyone to wear their mask and stated there were now scientific studies showing their effectiveness.

In regard to calls from the Fairfax County Health Department, Mr. Ashton stated a key point that comes up with Dr. Gloria Addo-Ayensu was that answering the Fairfax County Health Department calls was important. The Health Department was not calling to scold but to make sure you have everything you need if you have been in contact with someone who has COVID-19. He also stated that testing is not a way out of quarantine. If you were quarantined and test negative you still should not leave the quarantine, and following these measures was very important. He stated part of the region's success was because Northern Virginia was taking these measures seriously as a region.

Mr. Ashton also encouraged everyone to get their flu shot to alleviate that problem for healthcare workers.

**November 17, 2020
(public hearing)**

Questions from Council

Responding to Councilmember Friedrichs who shared a resident's questions regarding the accounting of CARES Act funding, the Town Manager stated staff had that information available and could share it. He stated the majority of funds would go to personal protective equipment (PPE), enhanced protection measures, and first responder salaries. He stated CARES Act funds were being used with a conservative approach, and staff could get the accounting out of those funds out to the public.

3. COMMENTS FROM THE TOWN COUNCIL

Councilmember Friedrichs: Congratulated the Herndon Police Department (HPD) and Chief Maggie DeBoard on 34 years of voluntary compliance for Commission on Accreditation for Law Enforcement Agencies (CALEA) accreditation.

Councilmember Dhakal: Stated he was sad to see COVID-19 numbers going up and commented on how Executive Order 67 would affect restaurants. He encouraged everyone to please practice social distancing because the election was over, but COVID-19 was not.

Councilmember del Aguila: Shared that he had received two different messages about people unable to log into the meeting on their tablets and asked if this was a PC issue.

Mayor Merkel deferred to IT. Jessica Bynaker from the IT Department stated there had never been any changes to what devices could log into the meeting.

Councilmember Baker: Acknowledged her fellow councilmembers who ran and were re-elected and specifically thanked Mayor-Elect Olem. She also encouraged future Council to start having meetings in person again. She stated that with masks and being socially distanced in that space it was important for people to see and interact with their government leadership. She reiterated that this was important and encouraged her colleagues to look into it.

Vice Mayor Olem: Thanked Councilmember Baker for her kind words. She stated Metro Monday was an excellent meeting about affordable workforce housing on the silver line, and she stated the meeting could be streamed online. She stated Kim Hart explained what was involved in workforce affordable housing.

She also thanked Chief Maggie DeBoard for the HPD's 10-year CALEA certification which came on her birthday and told everyone "Happy Thanksgiving" and to wear masks and socially distance.

**November 17, 2020
(public hearing)**

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Merkel asked Amanda Kertz, Chief 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 she stated that she had received comments that were entered into the record on the following items: an email pertaining to CARES funds for the "Comments from the Audience" portion; for Resolution 20-G-55, the amendment to the Comprehensive Agreement between the Town and Comstock Herndon Venture, LC; for Ordinance 20-O-62, Zoning Map Amendment ZMA #19-02, Park Place Residential Development; for the Heritage Preservation District Guidelines; and for the Fairbrook Business Park items. All comments were provided to council.

Additionally: Mayor Merkel and Councilmembers Baker, del Aguila, Dhakal, and McKenna each provided signed statements for the record that they reside in the Heritage District, and they have indicated that they are able to participate in the discussion and action on the items fairly, objectively, and in the public interest. The appropriate disclosures were filed with the Town Clerk and Town Attorney.

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. 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 were 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 then called on the following individual, who provided comments:

- Tim Bonnett, 904 Elden Street, Herndon: Provided comments on Resolution 20-G-55 and thanked Council and staff for completing the HPRB Guidelines. He also provided fully supportive comments for the Downtown redevelopment.
- Ann Null and Donielle Scherff were both on the speakers list for the evening but were not on the Webex at the time of Comments from the Audience.

**November 17, 2020
(public hearing)**

GENERAL

5. **Resolution 20-G-55, to consider an amendment to the Comprehensive Agreement dated November 1, 2017 between the Town of Herndon and Comstock Herndon Venture, LC, to establish the closing date and closing conditions for both parties, establish commencement of construction and outside satisfaction dates, and provide licenses for the operation of public facilities in the interim.**

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said general item had been duly advertised in the Friday, November 6, 2020 issue.

Mayor Merkel recognized William H. Ashton II, Town Manager and Lesa Yeatts, Town Attorney for the staff report and PowerPoint dated November 17, 2020 which are on file in the Town Clerk's office. The Town Manager provided information about the history of Downtown Redevelopment in Herndon, procurement approaches, Virginia Public-Private Education Facilities and Infrastructure Act of 2002 ("PPEA") guidelines and implementation procedures, the PPEA two-step process, and the request for proposal (RFP) timeline.

Mr. Ashton then went over the town's financial obligations and the Downtown Parking Program. He also conveyed issues such as delays because of construction economic pressures, COVID-19, Council/citizen interest in re-energizing the effort, having no sunset date to the Comprehensive Agreement, and unaddressed risk scenarios.

He then turned the staff report over to Lesa Yeatts, Town Attorney who reviewed the proposed amendment which would include:

- Establishing the closing date on the property on or before December 15, 2020;
- Permitting the satisfaction of certain conditions precedent subsequent to the conveyance;
- Requiring town appropriation prior to closing;
- Adjusting the outside satisfaction date by which Comstock must have the project under construction to December 31, 2021;
- Extending certain rights of Comstock to pause the commencement of construction (up to 24 months) due to market conditions and other matters, including delays caused by the Covid-19 pandemic;

**November 17, 2020
(public hearing)**

- Increasing the Parent guarantee by an additional 5 million to 10 million to cover the Arts Center and the Parking;
- Providing for licenses to the Town to allow the continued use of the property owned by Comstock for Arts Space and Public shared parking; and
- Priority recordation of a parking easement on the site for a minimum of 162 spaces.

Mr. Ashton then resumed the staff report by presenting economic development incentives, investment returns, and additional arts district incentives. He also provided information about how the town currently receives no tax benefits on the site for as long as the town owns the property.

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

There was a brief question and answer session between Mayor Merkel and Mr. Ashton regarding tax revenue the town would receive on this property.

There was a question and answer session between Councilmember Friedrichs and Mr. Ashton further clarifying the property value, taxes, and the economic development incentive related to the property.

Mayor Merkel also provided comments about the property value.

Mr. Ashton further clarified the finances related to this property and where the money would come from including capital reserve accounts. He also provided information about a forthcoming companion resolution for Council review about other bonds. He stated the original agreement with Comstock still holds and the town would be paying in as the development was being built.

There was a brief question and answer session between Councilmember Dhakal, Mr. Ashton, and Ms. Yeatts about the 15 percent of floor space that must be used for the arts to apply for the incentive program, how much was already being used for that purpose, and the tax rebate which would apply as long as an arts use was there and Comstock continued to apply annually.

Vice Mayor Olem asked if the 10 years of tax deferral started when the project was complete or once it was being worked on. Responding to Vice Mayor Olem, Mr. Ashton stated that, while it was not directly part of this discussion, the business could apply for incentives once the space was complete and there were arts activities occurring.

Vice Mayor Olem provided comments about the influx of more residents, renters, and businesses. She also believed that the new vitality in the downtown would increase the

**November 17, 2020
(public hearing)**

tax base. Mr. Ashton stated that was a very good point, and that they could assume this would have a positive effect with a brand-new customer base. Vice Mayor Olem provided further comments about businesses in the town getting a revenue boost.

Councilmember del Aguila stated, for the record, that there were no guarantees and they were taking a leap of faith that would inject a needed vibrancy. He thanked everyone for support and patience. He stated he wanted the public to know they were trying make sure residents had all the information they need.

Mayor Merkel moved to Council level for discussion and action.

Mayor Merkel moved approval of Ordinance 20-G-55 as presented and Councilmember del Aguila seconded the motion.

Councilmember Friedrichs stated her support and excitement for this item and thanked staff. She also stated she wished Lester Zidel was there to see it.

Councilmember Dhakal shared his support and commented on the wait and work put in and thanked everyone.

Councilmember McKenna echoed the thanks of his colleagues and prior Councils. He was very proud of everyone's efforts including the Herndon Youth Advisory Council, and he dedicated his "yes" vote to former Councilmember Richard Downer, for his hard work on this item.

Councilmember Baker echoed the credit to previous Councils and to citizens. She stated this was a critical part of the downtown and she was excited to see it have new life and vibrancy. She also recognized the work by staff, the HPRB, and Comstock. She mentioned Tim Bonnett and Donielle Scherff as well as other citizens and thanked them for staying engaged. She shared the quote, "Perfection is the enemy of progress" from Winston Churchill and stated this, while not perfect, would be an improvement for the town.

Vice Mayor Olem commented on the time it took to bring the project this far and congratulated Lester Zidel who had been on the Planning Commission, along with many others who put in long hours. She also recognized Richard Downer and many other former Councilmembers. She said anything they did was a leap of faith and provided comments about prior projects and her support for this item.

Mayor Merkel concurred with her colleagues and expressed how exciting this vote was to her after moving to Herndon in 2002 because her family loved the downtown. She shared that so much had gone into this project and that the appeals process two years

**November 17, 2020
(public hearing)**

ago was upsetting in her role as Mayor. She stated she thought this was a better fit than if any other plans had passed, and this was a great moment for the town. She thought this was just the right project at the right time.

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

Resolution 20-G-55, to consider an amendment to the Comprehensive Agreement dated November 1, 2017 between the Town of Herndon and Comstock Herndon Venture, LC, to establish the closing date and closing conditions for both parties, establish commencement of construction and outside satisfaction dates, and provide licenses for the operation of public facilities in the interim.

WHEREAS, the Town of Herndon ("Town") currently owns certain land in historic downtown Herndon, Virginia, consisting of approximately 4.675 acres of land (the "Land"); and

WHEREAS, in 2016 the Town issued an RFP for award of a comprehensive agreement pursuant to the Virginia public private partnership act for the redevelopment of approximately 4.675 acres of Town owned land in downtown for a mixed-use town center project, Arts Center and associated parking; and

WHEREAS, on October 24, 2017, the Town Council approved a resolution authorizing a proposed Comprehensive Agreement between the Town of Herndon and Comstock Herndon Venture, LC, defining responsibilities of both parties for the redevelopment of the property; and

WHEREAS, a Comprehensive Agreement between Comstock Herndon Venture, LC and the Town of Herndon was signed by both parties on November 1, 2017; and

WHEREAS, recent delays in construction of this project are related to significant problems created by conditions in the Metropolitan DC construction market; and

WHEREAS, additionally the Covid-19 pandemic has played a significant role in substantial increases in material costs and workforce restrictions causing supply to constrict at the same time demand held steady; and

**November 17, 2020
(public hearing)**

WHEREAS, in the interest of the continued forward movement of the project the Town and Comstock now desire to amend the Comprehensive Agreement in order to better address the changes in the market, unforeseen effects of Covid-19 and to provide both parties maximum advantage.

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

1. ratifies and reaffirms its determinations and the actions reflected in the above recitals and approves the Comprehensive Agreement Amendment, including the Exhibits thereto;
2. authorizes the Mayor to sign on behalf of the Town the Comprehensive Agreement Amendment with Comstock Herndon Venture, LC, substantially in the form and with the material terms of that considered by the Town Council on November 17, 2020;
3. authorizes the Mayor to agree to changes to the Comprehensive Agreement Amendment, including the Exhibits thereto, that do not change the Town's financial obligations or materially change the terms, provided that the Town Attorney concurs with such changes; and
4. authorizes the Mayor to sign instruments approved by the Town Attorney necessary to effect the closing anticipated by the Comprehensive Agreement and this Amendment.

[Note: A copy of the Comprehensive Agreement Amendment, including the Exhibits, are on file in the office of the Town Clerk.]

PUBLIC HEARINGS

6. **Resolution 20-G-50, to consider adoption of Comprehensive Plan Amendment CPA #20-01, 315 Elden Street.**

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, October 30, and the Friday, November 6, 2020 issues.

Mayor Merkel recognized Lisa Gilleran, Director of Community Development for the staff report.

**November 17, 2020
(public hearing)**

Ms. Gilleran presented the staff report and PowerPoint, dated November 17, 2020, which are on file in the Town Clerk's office. She reviewed the tax map, location, 2030 Comprehensive Plan Land Use Map designation, reasons for rezoning, and the proposed amendment. She reviewed the catalysts for this rezoning amendment and the process to convert the property to multifamily residential following Council approval. Catalysts included Council's commitment to addressing affordable housing and the new owner's wishes to repurpose the hotel to residential with at least 55 percent of the units being workforce housing. Finally, she provided further information about the appropriateness of the site and units.

At its October 26, 2020 meeting, the Planning Commission recommended approval of the proposed resolution to Council, who had adopted the initiating resolution on September 22, 2020.

Ms. Gilleran stated the change to the Comprehensive Plan would allow for a rezoning and open the door for future rezoning changes. She stated that there were significant public facilities in place already to support the property, and he reviewed other facts related to the property including the impact on Fairfax County Public Schools. Staff recommended approval of this resolution, as presented.

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

Councilmember Dhakal stated, for the record, he wanted to make sure they were only considering the Comprehensive Plan Amendment to Adaptive Area Residential.

Responding to queries from Councilmember del Aguila, Ms. Gilleran confirmed there were no changes from the work session. Councilmember del Aguila encouraged the public to go back and watch the work session.

Mayor Merkel stated the applicant was on the Webex and would provide comments later in the meeting. She stated there would ultimately be a workforce housing component. Ms. Gilleran confirmed this was a voluntary item on the side of the applicant.

Councilmember Baker inquired about how workforce housing logistics would be calculated, and Mayor Merkel stated the applicant might not be ready to talk about those specifics since the Comprehensive Plan amendment was the first step toward the development. Lesa Yeatts, Town Attorney, said it would be premature and inappropriate to ask about those specifics at that point.

Councilmember Baker stated, for the record, that she was glad the applicant came forward with the workforce housing and that they were repurposing an existing building.

Mayor Merkel recognized Ken Wire, Wire/Gill LLP, applicant's agent, for comments.

**November 17, 2020
(public hearing)**

- Mr. Wire provided brief comments on the origins of this project and what would be discussed going forward.

There was a brief question and answer between Councilmember Friedrichs and Mr. Wire about alternate plans moving forward.

Vice Mayor Olem and Mr. Wire discussed the years of experience Mr. Pinkard (who was working with the applicant) had to highlight his knowledge and experience in affordable housing.

Mayor Merkel confirmed with Amanda M. Kertz, Chief Deputy Town Clerk, that there was one registered speaker for this item. Ms. Kertz stated that the registered speaker, Ann Null, was not on the Webex at that time, and was therefore unable to provide comments. Mayor Merkel confirmed with Ms. Kertz that there were no other speakers.

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

Councilmember Baker moved approval of Resolution 20-G-50, as presented and Councilmember Dhakal seconded the motion.

Councilmember Baker, Councilmember Dhakal, and Vice Mayor Olem provided further comments on this item.

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

Resolution 20-G-50, Adopting Comprehensive Plan Amendment CPA #20-01 to change the land use designation for 315 Elden Street to Adaptive Area - Residential.

WHEREAS, on September 22, 2020 the Town Council initiated consideration of a comprehensive plan amendment for 315 Elden Street, also known as the Residence Inn property located at the southwest quadrant of Elden Street and Herndon Parkway and just north of Grove Street, for consideration as a possible amendment to the Herndon 2030 Comprehensive Plan as adopted August 12, 2008 and as amended through February 26, 2019; and

**November 17, 2020
(public hearing)**

WHEREAS, on September 22, 2020, the Town Council approved Resolution 20-G-45 to formally authorize consideration of the plan amendment and refer the amendment to the Planning Commission for study and recommendation; and

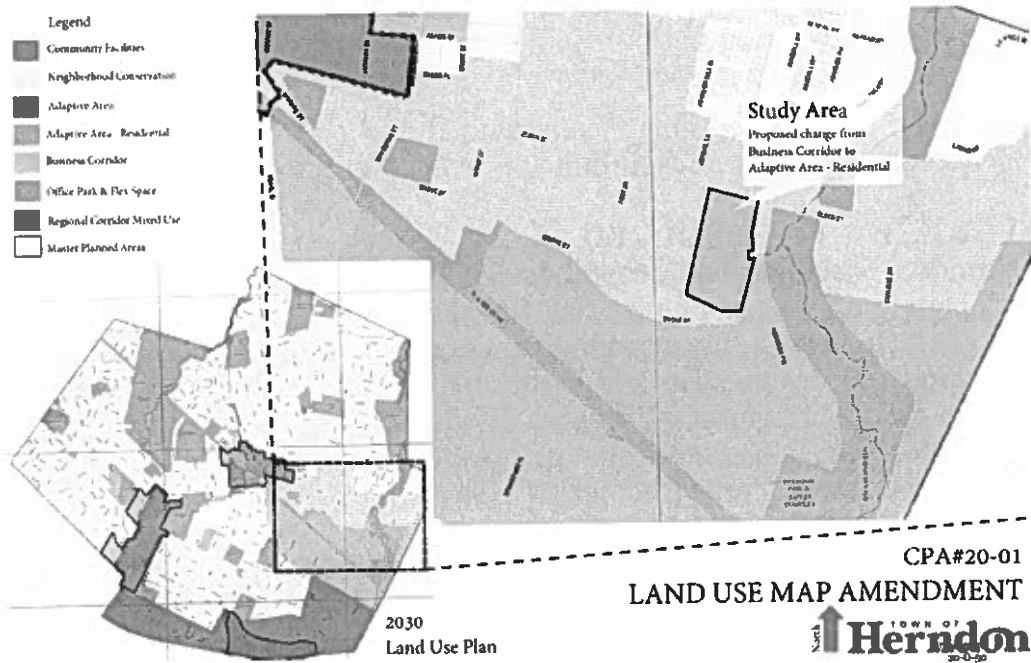
WHEREAS, the Planning Commission held a public hearing on October 26, 2020 with due notice as required under Section 15.2-2225 of the Code of Virginia; and

WHEREAS, the Planning Commission recommended and certified CPA #20-01 on October 26, 2020 by a resolution approved after public hearing.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia that Comprehensive Plan Amendment CPA #20-01 is adopted as an amendment to the Herndon 2030 Comprehensive Plan as adopted August 12, 2008 and as amended through February 26, 2019; the land use designation and associated policy for the property at 315 Elden Street, Herndon, Virginia, Fairfax County Tax Map Reference 0171-02-0007, is therefore changed from Business Corridor to Adaptive Area-Residential on the Chapter III 2030 Land Use Plan map.

[Note: Attached for reference is the 2030 Land Use Plan Map amendment of the Comprehensive Plan CPA #20-01.]

November 17, 2020
(public hearing)



**November 17, 2020
(public hearing)**

7. **Ordinance 20-O-62, to consider a zoning map amendment, ZMA #19-02, 1145 Herndon Parkway, Park Place Residential Development, to change the zoning from C-O, Commercial Office, to PD-UR, Planned Development-Urban Residential with proffered conditions allowing the redevelopment of the site with townhouses and multi-family residential uses.**

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, October 30, and the Friday, November 6, 2020 issues.

Mayor Merkel recognized Bryce Perry, Deputy Director of Community Development, for the staff report.

Mr. Perry presented the staff report and PowerPoint dated November 17, 2020, which are on file in the Town Clerk's office. He reviewed the case summary, site description, background, and review processes. He then went over the proposed zoning ordinance compliance, modifications, adherence to the Comprehensive Plan, transportation plan, design, fiscal impact, and proposed proffers.

At its October 26, 2020 meeting, the Planning Commission recommended approval of the proposed resolution. The Architectural Review Board (ARB) had also completed an informal review, with general support for the design and concept. The project would return to the ARB for its formal review. Additionally, staff recommended approval of this resolution.

Based on the conversation at the work session, Mr. Perry wanted to address noise levels. He stated the applicant would conduct a noise study that would not go above 45 decibels and he referenced the town's noise ordinance. The town's ordinances included limitations for loading and trash truck operation. Additionally, the development would be further away from the shopping center than other similar residences in town. He also discussed further noise mitigation and landscape buffers.

Another item from the work session Mr. Perry addressed was tax and land use changes from commercial to residential. He stated no specific numbers were crunched, but staff expected that most changes are either awash or positive using an existing, underutilized office complex. He clarified there would be a reduction of one-half percent of commercial land use for the town.

Responding to queries from Councilmember Friedrichs, Mr. Perry stated that evening, the Council was approving a rezoning of the property which would allow for the development as expressed in the proposed proffers. Once the zoning entitlement was granted, the architects and engineers would submit a site plan. After further queries from

**November 17, 2020
(public hearing)**

Councilmember Friedrichs, he clarified that ample streetscaping would improve walkability and the supplemental park would be functioning and include a small plaza area and lawn area.

Councilmember Dhakal asked about noise reduction and the applicant's sound study. Mr. Perry noted that 45 decibels was more restrictive than the town's noise ordinance. As Councilmember Dhakal requested, Mr. Perry went back to further clarify the changes the applicant agreed to.

Councilmember Dhakal requested further explanation about the change that the applicant agreed on. Mr. Perry stated the offsite connections will be made and the applicant supports them being made, but until the connections can be made offsite, they would not be built. He stated that the ask was to see if there was a way to get one or more of the connections made earlier. They agreed the sidewalk connection on the southeast of the site would be a valuable connection to make sooner because it would provide a convenient cut-through for the residents. It would also have less of a grade change and could be ADA compliant. The applicant was proposing to put that connection in all the way up to the property line and then the shopping center would need partner and agree to further that connection. Staff believes and supports that this would be an important connection. Mr. Perry further confirmed this would take place in Phase One.

Responding to further queries from Councilmember Dhakal, Mr. Perry confirmed this was only the Zoning Map Amendment and stated this was the only step of the project that needed to come before Council.

Vice Mayor Olem expressed concerns from residents about the vehicular cut-through. Mr. Perry stated that they try to create ample connections that make sense and abide by an overall trend plan and balance for the area. He stated these things were always considered, but without knowing the future of the shopping center development they could not plan with certainty at that time.

There was a brief question and answer session between Vice Mayor Olem and Mr. Perry about why the project would be done in two phases.

Mayor Merkel recognized Brian Winterhalter, applicant, for comments.

- Mr. Winterhalter provided brief comments on the application and proposed project.

Mayor Merkel asked Amanda M. Kertz, Chief Deputy Town Clerk, if there were any speakers registered for this item. Ms. Kertz confirmed there was one speaker registered.

Mayor Merkel reviewed the comments process briefly. She then called on the following individual, who provided comments:

**November 17, 2020
(public hearing)**

- Alexander Burke, 910 Jorrs Place Apt. 304, Herndon: Provided questions about reduced and low-income units in the development at Park Place. He provided a written copy of his comments which are on file in the Town Clerk's office.

Ms. Kertz confirmed there were no more speakers.

Mayor Merkel provided Mr. Winterhalter the opportunity for rebuttal, and he stated there were details in the proffers about the units and there was no specific affordable/workforce housing. Stanley Martin saw it as an opportunity to address the "missing middle" in housing with the intent to provide a variety of market points.

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

Councilmember Friedrichs moved approval of Ordinance 20-O-62, as presented, and Vice Mayor Olem seconded the motion.

Councilmember Friedrichs and Vice Mayor Olem provided comments about the plan.

Councilmember Baker specifically recognized Planning Commissioner, Sean Regan for his thorough review and to the applicant for complying. She stated connectivity was important for vehicles, bikes, and pedestrians. She supported adding middle housing and stated that Herndon has a variety of housing stock.

Councilmember del Aguila stated he was disappointed in the lack of discussion for workforce housing in the project. He thought that going forward, Council should make it clear that the town needed to commit to affordable, workforce units. It was his opinion that this was an example where that did not make it into planning stages and Council did not make it known.

Mayor Merkel concurred with her colleagues and stated she agreed with Councilmember del Aguila's comments about workforce housing.

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

**November 17, 2020
(public hearing)**

Ordinance 20-O-62, to approve Zoning Map Amendment #19-02, to change the zoning classification of the property located at 1145 Herndon Parkway and identified as Fairfax County Tax Map Reference Number 0161-02-0015G, from CO (Commercial Office) to PD-UR (Planned Development – Urban Residential) with zoning modifications and development proffers. The property's land use designation in the Comprehensive Plan is Adaptive Area Residential.

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

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

A. The zoning of the property described below, lying in the Town of Herndon, Fairfax County, Virginia, is amended to allow residential development with zoning ordinance modifications as proposed in the Park Place Stanley Martin Companies LLC/FMI Herndon Corporate Center LLC./Cooley, LLP/ VIKA Virginia LLC Generalized Development Plan dated October 19, 2020, and the Proffer Statement dated October 29, 2020 of ZMA #19-02, and in accordance with Sections 78-51.1 and 78-155.1 of the Town of Herndon Zoning Ordinance.

The Property is shown in the above referenced Generalized Development Plan and described in the land records of Fairfax County in Deed Book 15970 on page 2178. The total land area of the property is 8.817 acres.

B. This rezoning shall be governed by this ordinance, the Town of Herndon Zoning Ordinance, the above referenced Proffer Statement for ZMA #19-02, and the above referenced Generalized Development Plan for ZMA #19-02. The Proffer Statement is included as an attachment to this ordinance. This Zoning Map Amendment is consistent with the adopted 2030 Comprehensive Plan of the Town of Herndon.

C. The Town Council approves the following modifications to the zoning regulations, as allowed under Section 78-50.2(d):

- A modification to Section 78-51.1(g)(1) to allow ground-mounted mechanical equipment.
- A modification to Section 78-51.1(e) to allow the distance between building and public right-of-way to exceed the maximum distance.
- A modification to Section 78-51.1(e) to allow the distance between buildings and a side property line to be less than the required minimum distance.

**November 17, 2020
(public hearing)**

D. As to the modifications set out in item C. above, the Town Council finds that such modifications will afford equal or greater assurance of meeting the goals of the zoning ordinance, Town of Herndon, Virginia, as set out in the preamble of that ordinance.

E. This ordinance shall be effective on and after its adoption.

[Note: Incorporated and attached for reference, at the end of the minutes, is the signed proffer statement titled "Park Place Proffer Statement ZMA #19-02, August 25, 2020/October 29, 2020," Stanley Martin Companies LLC ("Stanley Martin").]

8. **Ordinance 20-O-61, to consider an amendment to the Town of Herndon Zoning Ordinance, ZOTA #20-01, to establish new, and clarify, revise and/or delete existing, regulations and definitions in order to change the name of the Heritage Preservation Overlay district to the Historic District Overlay, to allow for the administrative review of certain types of certificates of appropriateness and related measures. The proposed amendments under consideration include multiple sections of Chapter 78 (ZONING) and a new Section 78-155.10 (Certificates of Appropriateness).**

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, October 30, and the Friday, November 6, 2020 issues.

Mayor Merkel stated this item was a precursor to the following Historic Guidelines item on the agenda, and she recognized David Stromberg, Zoning Administrator for the staff report.

Mr. Stromberg presented the staff report and PowerPoint dated November 17, 2020, which are on file in the Town Clerk's office. Mr. Stromberg stated Council approved initiating resolution 20-G-44 on September 22, 2020 directing staff to bring this item before the Planning Commission for review and consideration.

This proposed ordinance would rename the Heritage Preservation Overlay District (HPO) to the Historic District Overlay (HDO). Changing the name to the Historic District Overlay District would allow for a clearer identification of the district and align the district with the typical term used throughout Virginia and the United States. The proposed change would require the Heritage Preservation Review Board (HPRB) to be renamed the Historic District Review Board (HDRB). The name change would require edits to multiple sections of the zoning ordinance in Chapter 78.

In addition, the proposed text amendment would authorize staff to issue certain Certificates of Appropriateness (COA), negating the need for public hearings on certain

**November 17, 2020
(public hearing)**

types of improvements. Furthermore, the amendment would clarify the intent of the district and establish a clear demarcation between an alteration to a structure and new construction or demolition. The amendment also provides for potential relief from the filing of a single lot development plan for certain residential additions. In several instances the amendment clarifies or simplifies language. At its October 26, 2020 meeting, the Planning Commission recommended approval of the proposed resolution. Staff also recommended approval of this resolution.

Vice Mayor Olem asked if applicants have been in asking for administrative approval. Mr. Stromberg stated they had and indicated that timeframes with contractors and having to appear before a public hearing were intimidating and this would help alleviate that stress. Councilmember Friedrichs stated she was in favor of these administrative options. She asked if painting the house was the same as siding or if that would go before board. Mr. Stromberg stated it would be administrative staff review.

Mayor Merkel clarified painting was currently administrative.

Councilmember Dhakal stated the Council had asked many questions in the work session and stated he wanted to ask, for the record, if there were any potential downsides to extending the expiration of the COA. Mr. Stromberg stated he did not foresee any and a shorter expiration timeline could be added in as a condition of approval.

Mayor Merkel inquired about the recourse available to residents given an answer they did not like for something they went to have approved administratively. Mr. Stromberg confirmed they could go before the board and then appeal further if compelled. She also asked if someone could opt to go to the board for something that was administrative, and Mr. Stromberg stated it would probably have to be denied first.

Mayor Merkel confirmed with Ms. Kertz that there were no registered speakers for this item.

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

Councilmember Friedrichs moved approval of Ordinance 20-O-61 and Vice Mayor Olem seconded the motion.

Lesa Yeatts, Town Attorney, clarified that the motion made was to approve Ordinance 20-O-61.

Councilmember Friedrichs and Vice Mayor Olem provided brief further comments, and Mayor Merkel provided comments about living in a contributing structure and the approval process.

**November 17, 2020
(public hearing)**

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

Ordinance 20-O-61, 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.

**November 17, 2020
(public hearing)**

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 *historically* 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

**November 17, 2020
(public hearing)**

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 <i>Historic District</i> Overlay District (HPO) (<i>HDO</i>)	Heritage-Preservation <i>Historic District</i> Overlay District (HPO) (<i>HDO</i>)
Chesapeake Bay Preservation Area Overlay District (CBPAO)	Chesapeake Bay Preservation Area Overlay District (CBPAO)

**November 17, 2020
(public hearing)**

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

**November 17, 2020
(public hearing)**

downtown. The flexibility of PD-D district regulations does not mean that an applicant is entitled to such a rezoning by meeting the minimum requirements of this division or that proposals approaching the maximum permitted density are entitled to a PD-D zoning map amendment.

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

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

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

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

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

**November 17, 2020
(public hearing)**

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

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

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

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

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

- (a) *Purpose and intent.* The ~~heritage preservation-historic district overlay district (HP HDO district)~~ is established pursuant to the authority granted to localities by Virginia Code § 15.2-2306. It is intended to promote and protect the unique character of the town through the identification, preservation and enhancement of buildings, structures, settings, neighborhoods, places and features with historical architectural significance to the town. The HDO further intends to: ~~intended to provide for the establishment of historic landmarks and preservation districts as a means of preserving the historical, cultural, and architectural heritage of the town and protecting designated historic resources and is adopted pursuant to the authority granted to localities by Virginia Code §15.2-2306.~~
- (1) *Ensure that additions, repairs, modifications, and new construction enhance rather than detract from the town's historic architectural settings.*
- (2) *Preserve the architectural, artistic, and historic merit of individual structures.*

**November 17, 2020
(public hearing)**

- (3) *Protect historic resources from neglect and demolition.*
- (4) *Retain important townscapes, streetscapes, and viewsheds integral to the identity of Herndon.*
- (b) *Applicability.* No building, structure, or sign located in the ~~HP~~ historic district overlay shall be erected, reconstructed, altered, demolished, moved, expanded or restored except in accordance with the provisions of 78-60.3(g), certificate of appropriateness in the ~~heritage preservation~~ historic district overlay. ~~district~~.
- (c) *District boundaries and maps.* The boundaries of the ~~HP-district~~ historic district overlay shall be shown on the town's official zoning map and on the appropriate comprehensive plan maps after action by the planning commission and town council.
- (d) *Revision of ~~HP-district~~ historic district overlay boundary and designation of landmarks.* The boundaries of the ~~HP-district~~ HDO may be amended or areas, sites, buildings, and structures may be designated as historic landmarks in compliance with the following:
 - (1) *Amendment procedures.* The procedures for amendment of the ~~HP-district~~ HDO boundaries or designation of historic landmarks shall be as provided for as an amendment to the official zoning map pursuant to section 78-155.1, zoning map amendment. In addition, the following procedures shall apply:
 - a. The planning commission shall conduct or delegate a survey of the town. The survey shall identify and inventory all landmarks, buildings, or structures, in areas being proposed within the proposed district boundaries. The planning commission shall also prepare reports recommended to be included in the ~~HP-district~~ HDO.
 - b. Prior to establishing or expanding the ~~HP-district~~ HDO the town council shall:
 - 1. Provide for public input from the community and affected property owners in accordance with Code of Virginia, § 15.2-2204;

**November 17, 2020
(public hearing)**

2. Follow the written criteria set out below to be used to determine which properties should be included within the ~~HP-district~~ *HDO*; and
 3. Review the inventory and the criteria to determine which properties in the areas being considered for inclusion within the proposed district meet the criteria to be included in the ~~HP-district~~ *HDO*.
- c. Upon the inclusion of an area in the ~~HP-district~~ *HDO*, the owner of each property within the established district boundaries therein shall be given written notification, including a description of the factors justifying the designation.
- (2) *Review of ~~HP-district~~ HDO boundary amendments.* The advisability of amending the ~~HP-district~~ *HDO* boundary is a matter committed to the legislative discretion of the town council and is not controlled by any one factor. The following shall be considered by the town council, and its advisory bodies as part of the deliberation process:
- a. In considering an amendment to ~~HP-district~~ *the HDO* boundary, the town council may adopt a change for only part of the area surveyed by the planning commission. The town council may amend the ~~HP-district~~ *HDO* boundary to include any area that has been considered by the planning commission.
 - b. The following criteria shall be used by the historic ~~preservation~~ *district* review board, planning commission, and town council in evaluating the potential expansion of the ~~HP-district~~ *HDO*. The historic ~~preservation~~ *district* review board and planning commission may recommend, and the town council may so ordain, a landmark, building, or structure, for designation as a ~~HP-district~~ *which within the HDO*, provided it meets one or more of the following criteria:
- ***
5. The property or properties are closely related to or contiguous with properties that meet criteria a-d as related to their visual character or historic pattern of development;

**November 17, 2020
(public hearing)**

or otherwise contribute to the historic and architectural context of the proposed or existing ~~HP-district~~ *HDO*.

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

- (e) *Reduction of setback.* In the ~~HP-district~~ *HDO*, the front setback for a single-family detached dwelling may be reduced from 35 feet to a lesser amount but not less than 20 feet, in instances where the ~~HPRB~~ *HDRB* makes a finding that such reduction shall cause the subject structure to be more compatible with nearby contributing structures.
- (f) *Development within the ~~heritage preservation~~ historic district overlay ~~district~~.* Development located within a ~~preservation-district~~ *the historic district overlay* shall be completed in accordance with the ~~Herndon Heritage Preservation Handbook~~ *Historic District Overlay Guidelines*, and the following standards:
 - (1) ~~Alteration, restoration or reconstruction.~~ *Standards for Alterations.* A certificate of appropriateness ~~for altering, restoring, or reconstruction of~~ to a building or structure shall be approved only after ~~considering the following standards, as well as other appropriate matters: meeting the following standards:~~
 - a. ~~Whether or not reasonable~~ *Reasonable* effort ~~shall be~~ is made to alter the site, building, ~~or~~ structure, and its environment to the minimal extent practicable.
 - b. ~~Whether or not alteration~~ *Alteration* of the original, distinguishing qualities or character of a site, building, ~~or~~ structure, and its

**November 17, 2020
(public hearing)**

environment and the removal or alteration of any historic material or distinctive architectural features ~~shall be~~ is avoided to the greatest extent practicable.

- c. ~~Whether all sites, buildings and structures shall be recognized as products of their own time, with alterations~~ *Alterations and reconstruction to existing buildings, and structures, and sites to be* are consistent with the original style of such buildings and structures.
- d. ~~Whether or not distinctive~~ *Distinctive* stylistic features or examples of skilled craftsmanship that characterize a building, ~~or~~ structure, or site shall be retained and restored to the greatest extent practicable.
- e. ~~Whether or not deteriorated~~ *Deteriorated* architectural features shall be repaired, rather than replaced, wherever reasonably possible, ~~and, if~~ *If* replacement is necessary, ~~whether or not~~ new materials shall match the material being replaced in composition, design, color, texture, and other visual qualities to the greatest extent practicable.
- f. ~~Whether or not repair or replacement~~ *Repair or replacement* of missing architectural features shall, to the greatest extent possible, be based on accurate duplications of the original features, substantiated by historic, physical, or pictorial evidence, rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- g. ~~Whether or not the surface cleaning~~ *Cleaning* of buildings and structures constituting historic landmarks shall be undertaken with the gentlest means practicable; provided, however, that sandblasting and other cleaning methods that may damage the existing building materials shall not be approved.
- h. *When more than 49 percent of the structural components or sheathing of the original or historic facades or roofs on the building or structure are removed, as determined by the zoning administrator, the provisions of Section 78-60.3(f)(2), New Construction, or Section 78-60.3(f)(4), Demolition, apply.*

**November 17, 2020
(public hearing)**

~~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 historic district; to the greatest extent practicable.~~
 - j. ~~Whether or not contemporary~~ *Contemporary* design for of alterations and additions to existing buildings and structures is *shall be* compatible with the size, scale, color, material *texture*, 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

**November 17, 2020
(public hearing)**

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 structural components or sheathing of the original or historic facades, or more than 49 percent of the roofs of on the building or structure, as determined by the zoning administrator, shall be considered new construction.*
- (3) *Moving or relocating a building.* A certificate of appropriateness to move or relocate a building or structure may be approved only after ~~considering the following, as well as other appropriate matters meeting the following standards:~~
- a. ~~Whether or not the proposed relocation may~~ *The relocation shall not have a detrimental effect on the structural soundness of the building;*
 - b. ~~Whether or not the proposed relocation would have a negative or positive~~ *The relocation shall not have a negative effect on other historic landmarks or on other sites, buildings, or structures located within the ~~heritage preservation overlay district~~ historic district overlay;*
 - c. ~~Whether or not the~~ *The proposed relocation would shall provide new surroundings that would be compatible with the architectural aspect of the building or structure;*
 - d. ~~Whether or not the~~ *The proposed relocation is the only practicable means of saving the structure from demolition; and.*
 - e. ~~Whether or not the~~ *The building or structure will shall be relocated to another site within the corporate limits of the town or to another adjacent site that is subject to ~~preservation control~~ protections enumerated in the district.*
- (4) *Demolition.* A certificate of appropriateness to demolish a building or structure may be approved, only after ~~reviewing and considering the circumstances and conditions of the structure or building or the part~~

**November 17, 2020
(public hearing)**

~~proposed for demolition, and considering the following factors as well as all other appropriate matters meeting the following standards:~~

- a. ~~Whether or not the~~ The building or structure is an historic landmark or is a building within the heritage preservation overlay district ~~that does not contribute~~ *contributes* to the character of the heritage preservation overlay historic district;
- b. ~~Whether or not the~~ The building or structure is of such interest or significance ~~that it would not~~ qualify as a national or state landmark building or structure listed on the National Register of Historic Places or the Virginia Landmarks Register;
- c. ~~Whether or not the building or structure is of such old or uncommon design, texture or scarce material that it could not be reproduced or could be reproduced only with great difficulty and expense;~~ *The building or structure has a common design that could reasonably be reproduced.*
- d. ~~Whether or not historic events occurred in the building or structure;~~ *No historic events occurred in the building or structure.*
- e. ~~Whether or not the building or structure is structurally unsound and to what extent;~~ *It is determined the building or structure has a degree of structural unsoundness.*
- f. ~~Whether or not a relocation of the building or structure or a portion thereof would be to any extent practicable as a preferable alternative to demolition;~~ *It is not practicable to relocate the building or structure, or portion thereof.*
- g. ~~Whether or not the~~ The proposed demolition ~~could potentially~~ *does* not adversely affect other historic landmarks located within a ~~preservation district the historic district overlay~~ or adversely affect the character of a ~~preservation district the historic district overlay~~;
- h. ~~If a building is damaged by a fire or other natural hazard, the building inspector shall determine if a building is structurally sound and is in imminent danger to public safety and should be demolished;~~

**November 17, 2020
(public hearing)**

- i.h. ~~The reason for demolishing the building or structure and whether or not any alternatives to demolition exist. Practicable alternatives to demolition do not exist.~~
 - j.i. ~~Whether or not there has been a professional, economic, and structural feasibility study for rehabilitating or reusing the structure and whether or not its findings support the proposed demolition. An economic and structural feasibility study prepared by a qualified professional is submitted that concludes rehabilitating or reusing the building or structure is not a practicable alternative.~~
- (g) ~~Certificate of appropriateness (COA) in the heritage preservation overlay district historic district overlay.~~ The purpose of this section is to establish the procedures and standards for the review of certificates of appropriateness in the ~~heritage preservation overlay district historic district overlay.~~
 - (1) *Applicability.* Unless exempted pursuant to section 78-60.3(g)(2), exemptions, a certificate of appropriateness must be approved prior to:
 - a. ~~Erecting, reconstructing, altering, or restoring~~ *New construction or alterations to any building or structure in the heritage preservation overlay district historic district overlay; or*
 - b. Demolishing, or moving any historic landmark, building, or structure located in the ~~heritage preservation district historic district overlay.~~
 - c. ~~Signs in the heritage preservation overlay district are reviewed pursuant to the applicable procedures in Article XIV, Signs. The installation of any 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 ~~building or sites within 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).~~

**November 17, 2020
(public hearing)**

- 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 sSection 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.*

**November 17, 2020
(public hearing)**

Relief from the submission of a single lot development plan shall be determined by the concurrence of the zoning administrator and town engineer.

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

- a. ~~Prior to submitting an application for a certificate of appropriateness, applicants are encouraged to seek advice from the HPRB during one or more work sessions. At the work session, the HPRB will review the proposed plan for development and provide the applicant comments about its general conformance with the requirements for a certificate of appropriateness. The comments are advisory and do not confer development rights on the applicant or bind the HPRB, town staff, or any other entity of the town providing comments.~~
- b. ~~The procedures and requirements for submittal and review of an application, scheduling the public hearing and public notification are established in Section 78-153.2.~~
- c. ~~All applications for a certificate of appropriateness shall include the items required in section 78-152.2, submittal requirements, as well as the following:~~
 - 1. ~~Architectural drawings or renderings drawn to scale (for new construction, rehabilitation or building alterations);~~
 - 2. ~~Site plan drawn to scale (including landscaping);~~
 - 3. ~~Samples of materials and colors to be used;~~
 - 4. ~~Written statements concerning the following:~~
 - (a) ~~Construction methods to be employed;~~
 - (b) ~~A description of proposed materials;~~

**November 17, 2020
(public hearing)**

- ~~(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.*

**November 17, 2020
(public hearing)**

4. *Applications may be forwarded to the HDRB if the zoning administrator determines the application does not meet the aforementioned criteria.*
- db. *After For those applications requiring HDRB review, following public notification and the scheduling of a public hearing, the ~~HRPB~~ HDRB shall conduct a public hearing on the application. At the public hearing, the ~~HRPB~~ HDRB shall consider the application, the relevant support materials, the staff report, and the public testimony and evidence given at the hearing. After the close of the public hearing, the ~~HRPB~~ HDRB shall either approve or disapprove the application based on the standards in section 78-60.3(gf), development within the ~~heritage preservation historic district~~ overlay district as follows and the following standards:*
1. *If the ~~HRPB~~ HDRB finds the application complies with the standards in section 78-60.3(gf); ~~development within the heritage preservation overlay district and the applicable guidelines found in the Herndon Heritage Preservation Handbook, and the Historic District Guidelines~~ the ~~HRPB~~ HDRB shall approve a certificate of appropriateness.*
 2. *If the ~~HRPB~~ HDRB determines the application fails to comply with the standards in section 78-60.3(gf), ~~development within the Heritage Preservation Overlay District, and the applicable guidelines found in the Herndon Heritage Preservation Handbook, and the Historic District Guidelines~~, it may either disapprove the application or continue the public hearing. In either case, it shall explain why the application fails to comply with the review standards. It shall recommend revisions to the plans and specifications that would bring the application into conformance with section 78-60.3(gf), ~~development within the heritage preservation overlay district and the applicable guidelines found in the Herndon Heritage Preservation Handbook~~ Historic District Guidelines. The applicant may request or agree to a continuation of the public hearing in accordance with section 78-152.6, deferral of application and section 78-153.2(i)(2), continuation of public hearing.*

**November 17, 2020
(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 COA administrative decision to the historic district review board.* The applicant may appeal the final decision of an administrative COA 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 administrative certificate of appropriateness is received by the zoning administrator then anything on the administrative COA application shall be stayed.*
- (78) *Appeal of COA decision to town council.* The applicant or any person aggrieved by the decision with a property interest in land abutting or across the street from property which is the subject of a final decision of the ~~HPRB~~ HDRB on a certificate of appropriateness, may appeal the decision to the town council, as follows.
 - (a) *An appeal shall be initiated by filing a written notice of appeal with the zoning administrator specifying the grounds for the appeal within 14 days of the final decision of the ~~HPRB~~ HDRB.*

**November 17, 2020
(public hearing)**

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

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

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

- (89) *Appeal of town council decision to circuit court.* The applicant, any person jointly or severally aggrieved with a property interest in land abutting or across the street from property which is the subject of a final decision of the town council pursuant to subsection (78) above, any person with a property interest in land in the ~~Heritage Preservation District~~ *historic district overlay*, who is aggrieved by a final decision of the town council,

**November 17, 2020
(public hearing)**

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~~ five years of the issuance of the certificate of appropriateness, *unless a shorter timeframe is included as a condition of approval on the certificate of appropriateness.* Failure to begin the activity within ~~one~~ five years, *or the timeframe conditioned on the approval,* shall render the certificate of appropriateness void.
- (1213) *Extension of approved certificate of appropriateness.* Upon written application submitted to the zoning administrator by the applicant at least 60 days prior to the expiration of the certificate, ~~the HRPB staff~~ shall consider and may grant one extension not to exceed ~~one~~ five years upon a showing of good cause. In determining good cause, ~~the HPRB staff~~ shall take into consideration the scope of the proposed work and the laws, ordinances, and regulations in effect at the time of the request for extension. ~~The approval shall be deemed extended until the HRPB has acted upon the request.~~ *An administrative decision to disapprove a certificate of appropriateness may be appealed to the HDRB by the applicant pursuant to section 78-60.3(g)(7).* Failure to apply for an

**November 17, 2020
(public hearing)**

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

**November 17, 2020
(public hearing)**

an administrative review-eligible project (AREP) as defined by the Code of Virginia § 15.2-2316.3. An AREP is subject to approval by the zoning administrator and shall comply with the following standards:

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

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

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

Section 78-80.3 – Accessory structure standards.

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

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

(c) *Accessory features (such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools) in all zoning districts*. Standards stated elsewhere in this

**November 17, 2020
(public hearing)**

chapter shall govern for specific accessory structures or uses. The following standards shall apply to features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers and screening enclosures:

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

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

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

- (2) *Large satellite dish antennae.* Satellite dish antennae measuring one meter or more are permitted accessory uses in nonresidential districts. Such dishes are subject to the standards set forth below to the maximum extent feasible, but only where there is no impairment of acceptable signal quality. These regulations are not intended to impose unreasonable delays or impose unreasonable costs on the installation, maintenance, or use of satellite dishes, and shall not be interpreted or enforced in any manner contrary to federal or state law.
 - (a) *Within the ~~heritage preservation overlay district~~ historic district overlay,* satellite dishes shall be screened or located so as to not be visible from any public streets.

**November 17, 2020
(public hearing)**

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

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

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

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

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

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

**November 17, 2020
(public hearing)**

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:

**November 17, 2020
(public hearing)**

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

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

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

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

- (6) *Fencing and wall materials. The following provisions shall apply to wall and fence materials:*
 - a. *Fences or walls shall be constructed of customary fencing or wall materials, including solid wood, masonry, stone, brick, wrought iron, decorative metal materials, or products designed to resemble these materials. Any fence or wall material may be further restricted*

**November 17, 2020
(public hearing)**

in the ~~heritage preservation district~~ *historic district overlay*. ~~by the heritage preservation review board.~~

- b. Chain link fencing is permitted only for the following purposes:
 - 1. To surround tennis courts, ball fields, playgrounds, other recreational facilities not located on a lot with a single-family detached or single-family attached dwelling, and schools not associated with a home-based child care business subject to the following:
 - (a) Chain link fencing used for recreational use within the ~~heritage preservation district~~ *historic district overlay* shall be coated with black or dark green vinyl and shall be screened from public rights-of-way and abutting properties by landscaping with a growth habit adequate to screen the fencing.
 - (b) Installation of the screening and fencing shall be dependent upon review and approval by the ~~heritage preservation~~ *historic district* review board.

Section 78-140.4 – Prohibited Signs.

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

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

Section 78-140.5 – Sign license required.

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

**November 17, 2020
(public hearing)**

- (1) *Administrative approvals.* Following approval by the ~~HPRB~~ HDRB or ARB, the zoning administrator or designee conducts final review of applications for all sign licenses other than those provided for in section 78-140.5(n). The following administratively approvable signs, not requiring review by the ~~HPRB~~ HDRB or ARB, are subject to review by the zoning administrator or designee, temporary sign licenses, master sign plan conformance licenses (after approval of a master sign plan license) and any sign which complies with uniform standards adopted by the ~~HPRB~~ HDRB and ARB for administratively approved signs. Signs for all arts businesses, as defined in section 7-2 of the Herndon Town Code and licensed to operate as a business in the Herndon Arts District may receive administrative approval of the sign license if the signs comply with the ~~HPRB~~ HDRB and ARB approved uniform design standards.
- (2) *Review Board Approvals.* The architectural review board or ~~Heritage Preservation Review Board~~ *historic district review board* also conducts final review of sign licenses that do not conform to the adopted uniform standards, as determined by the zoning administrator, within their respective overlay districts. (~~Architectural Control District for the ARB and Heritage Preservation Overlay District for the HPRB~~).

- (e) ~~Heritage District Overlay zoning district regulations.~~ Herndon overlay zoning districts may require overlay specific sign standards and regulations in addition to the general requirements and district specific standards detailed in this article. *Reserved.*
- (f) ~~Heritage Preservation District Historic district overlay.~~ Permanent signs installed within the ~~Heritage Preservation Districts~~ *historic district overlay* shall comply with the relevant design guidelines, as interpreted by the ~~HPRB~~ HDRB, and the uniform standards for administrative approval of signs as approved by the ~~HPRB~~ HDRB and interpreted by the zoning administrator, or adopted superseding documents.
- (g) ~~Arts district.~~ Permanent signs installed within the arts districts shall comply with the relevant design guidelines, as interpreted by the ~~HPRB~~ and ARB, and the uniform standards for administrative approval of signs as approved by the ~~HPRB~~

**November 17, 2020
(public hearing)**

~~and ARB and interpreted by the zoning administrator, or adopted superseding documents.~~*Reserved.*

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

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

Section 78-150.1 – Town Council

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

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

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

- (3) *Historic designation.* The town council shall review and decide whether or not to designate any site, building or structure as an historic landmark or an area as a ~~heritage preservation overlay district~~ *historic district overlay*.
- (4) *Implementation authority not otherwise delegated.* The town council shall have the authority to take any other action not delegated to the planning commission, board of zoning appeals, architectural review board,

**November 17, 2020
(public hearing)**

~~heritage preservation review board~~ *historic district review board*, town manager, town attorney, zoning administrator, or heads of town departments, as the town council may deem desirable and necessary to implement the provisions of this chapter.

Section 78-150.2 – Planning Commission

- (a) *Powers and duties.* The planning commission shall have the powers and duties specified in Code of Virginia ~~tit. Title~~ 15.2, ~~ch. Chapter~~ 22, as well as the powers and duties under this chapter.
- (1) *Application review.* The planning commission shall review and make recommendations to the town council to approve or disapprove applications for:

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

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

- (a) *Establishment.* There hereby is established a ~~heritage preservation~~ *historic district* review board (~~HPRB~~ *HDRB*).
- (b) *Powers and duties.* The ~~HPRB~~ *HDRB* shall have the following powers and duties under this chapter:
- (1) *Recommendations.* The ~~HPRB~~ *HDRB* shall provide recommendations to the planning commission and the town council on the establishment, expansion, reduction, or elimination of ~~heritage preservation overlay districts~~ *the historic district overlay*.
- (2) *Application review.* The ~~HPRB~~ *HDRB* shall review and decide applications for properties within the ~~heritage preservation overlay district~~ *historic district overlay* for:

**November 17, 2020
(public hearing)**

- (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.

**November 17, 2020
(public hearing)**

- (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.

**November 17, 2020
(public hearing)**

- (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.

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 <i>Historic District</i> REVIEW BOARD (HPRB) (HDRB)	PLANNING COMMISSION	TOWN COUNCIL	BOARD OF ZONING APPEALS (BZA)	CIRCUIT COURT

**November 17, 2020
(public hearing)**

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			

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

Section 78-152.2 – Pre-application procedures.

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

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

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

**November 17, 2020
(public hearing)**

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

HERITAGE PRESERVATION HISTORIC DISTRICT REVIEW BOARD	

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

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

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

**November 17, 2020
(public hearing)**

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

- (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.

- (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

**November 17, 2020
(public hearing)**

for applications other than those pertaining to the architectural review board or the ~~heritage preservation~~ *historic district* review board (which do not require placard notice) shall comply with the following requirements:

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

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

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

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

Section 78-155.10 – Certificates of Appropriateness

- (a) *Intent.* The purpose of a certificate of appropriateness is to ensure proposed changes to a building or site within the historic district overlay comply with the Historic District Guidelines and this chapter.
- (b) *Applicability.* A certificate of appropriateness is required for any development within the historic district overlay unless exempted pursuant to Section 78-60.3(g)(2).

November 17, 2020
(public hearing)

Section 78-160.1 – Generally

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

Section 78-160.3 – Nonconforming Structures.

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

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

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

2. If the nonconforming structure is within the ~~heritage preservation district~~ *historic district overlay*, or is designed and used as a single-family detached or single-family attached dwelling and such single-family detached or single-family attached use is allowed in the zoning district in which the nonconforming structure exists, restoration of such

**November 17, 2020
(public hearing)**

structures shall be permitted. The restoration shall begin within 12 months of the date of the casualty and shall be completed within 24 months of the casualty. The structure shall occupy the same space that it occupied prior to such casualty. In no instance shall any residential structure covered by this subsection 78-160.3(e)(4) be used to accommodate a greater number of dwelling units than such structure accommodated prior to any such work.

Section 170.3 – Types of violations.

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

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

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

- (7) *Failure to comply with terms of approval.* Fail to comply with any terms, conditions, or limitations placed by the town council, planning commission, board of zoning appeals, ~~heritage-preservation~~ *historic district* review board, or zoning administrator upon any development approval, including designation of a planned development (PD) zoning district classification and preliminary PD plan, special exception, variance, administrative adjustment, certificate of appropriateness, sign permit, temporary use permit, zoning inspection permit, zoning appropriateness permit, site plan, single lot development plan, building location plan, final PD plan, final plat for minor subdivision, preliminary plat for

**November 17, 2020
(public hearing)**

subdivision, final plat for subdivision, site grading permit, excavation permit, street name or name change, or other form of authorization.

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

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

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

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

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

Section 78-180 – Definitions

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

**November 17, 2020
(public hearing)**

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

Construction, new.

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

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

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

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

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

November 17, 2020
(public hearing)

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

9. **Resolution 20-G-51, to consider adoption of Revised Heritage Preservation District Guidelines for proposed work to be performed within the Herndon Preservation District.**

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, October 30, and the Friday, November 6, 2020 issues.

Mayor Merkel recognized Bryce Perry, Deputy Director of Community Development for the staff report.

Mr. Perry presented the staff report and PowerPoint dated November 17, 2020, which are on file in the Town Clerk's office. He provided information about the project's background and history, the process, the need for an update, and an overview of what would be included in the document. These items included explanation of resources, re-organized guidelines for treating resources, and an appendix. He also went over resource guide information, review process specifications, and design or maintenance requirements that would not be included.

In addition, Mr. Perry stated this document should be used as an educational tool for property owners, a basis of evaluation for staff and the review board, and as a source of guidance for property owners. Staff recommended approval of this item in accordance with the draft resolution, which included an allowance for administrative adjustments.

Councilmember Dhakal asked about what had changed since the work session. Mr. Perry stated the document itself had not changed but the presentation was changed to show more granular level comparison. Councilmember Dhakal provided further comments about the length of the document.

Councilmember Friedrichs mentioned being critical of the document at the work session but stated it actually had well-organized information. She asked if these Guidelines are still complying with the Secretary of the Interior's Guidelines. Mr. Perry stated it was staff and the consultant's opinions that they would still allow the town to qualify as a certified local government. He indicated that the best practices might have been stretched, but it was important to give the residents some latitude and flexibility. He emphasized staff as not concerned about it.

**November 17, 2020
(public hearing)**

Councilmember Baker asked about edits and mistakes and mentioned a resident who had pointed out some mistakes and grammar issues. She asked whether if, as a living document, it would continue to be edited.

Mr. Perry stated staff did not want it to be static and the resolution as proposed would allow them to make those type of edits. He stated if the physical document was adopted and transferred to the town, staff could make all the adjustments. Councilmember Baker stated she was a little uncomfortable approving a document that needed edits.

Councilmember Baker asked what types of edits would come back to Council to be approved. Mr. Perry responded and stated that substantive guideline edits would need to come back before Council for further adoption. Tweaking of dates, grammar errors, and clarity issues were the types of things staff could handle administratively. Councilmember Baker asked if those type of edits would be made if the item was continued.

Mayor Merkel had additional, similar questions. She added a question about the historic data and asked if the things they had to bring to Council for approval were things about materials and not things like historical data. Mr. Perry agreed that the guidelines were the important part and there could be mistakes and new information on those items, but those things were not the focus of staff to be changed at that time. Guideline chapters were the focus.

Ms. Baker reiterated her question about whether staff would make those edits between this meeting and the next public hearing in December. Mr. Perry stated the comments that had come in to-date were not specifically related to the guidelines section and, while they could spend time going through those updates, he was not sure that was a valuable effort between now and December. He stated it would make more sense to go in and change those things when guidelines chapters were being looked at.

Councilmember Baker asked what form this would be presented to residents in, and Mayor Merkel asked for clarification about her question. Mr. Perry stated at that time there was not a plan to print because the new document was meant to be interactive and web-based. They would need to have a few hard copies available.

Councilmember Baker added that she hoped the updates would come soon.

Councilmember del Aguila inquired about the meetings with owners and asked how many who attended the workshop were Historic District property owners. Mr. Perry stated he was unsure if the consultant collected that specific information. He stated there were about 50-60 members of the public in attendance, but he did not think specific information was available. Councilmember del Aguila stated he was told there

**November 17, 2020
(public hearing)**

were not large numbers of owners present at that meeting, and he reiterated that he wanted that information.

Councilmember del Aguila provided philosophical queries about how homes in the Historic District should be classified. Specifically, he asked if they should look at these homes as more “high-end homes with high-end maintenance.” Further, he stated that, going forward, future Council would have to grapple with this and asked again if they should they just consider this a “high-end area with high-end maintenance.”

Mayor Merkel stated that did not seem like a question Mr. Perry could answer.

Councilmember del Aguila stated they needed numbers on the stakeholders that were in the conversation, and he said it should be recorded or logged somewhere.

Mayor Merkel confirmed with Ms. Kertz that there were no registered speakers for this item.

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

Main Motion

(Approved)

Vice Mayor Olem moved approval of Resolution 20-G-51, as presented and was seconded by Councilmember Baker.

Vice Mayor Olem provided comments about the timeline of events for this item and further comments about home improvements and guidelines.

Councilmember Baker provided supportive comments about the guidelines and transparency with the public.

Councilmember McKenna concurred with the comments of his colleagues thus far and provided further comments about the importance of latitude for owners and moving forward.

Councilmember Dhakal stated he wished they had a questionnaire from the workshop to see what sample of the population information came from. He also stated that even if they were Town of Herndon residents, he wanted to know more specifics about how many lived in the Historic District and what type of structure they lived in. He stated they should do this right and that he has received comments and questions. He asked if they could give ample time for people to read the document.

**November 17, 2020
(public hearing)**

Substitute Motion

(Failed)

Councilmember Dhakal made a substitute motion to continue the public hearing on Resolution 20-G-51, to consider adoption of Revised Heritage Preservation District Guidelines for proposed work to be performed within the Herndon Preservation District to January 15, 2021. The secondary motion to continue the item to January 15 was seconded by Councilmember del Aguila.

Councilmember Dhakal provided further comments about allowing more time for resident review and feedback. He stated he did not see a need to approve it so quickly. He also said incoming Council ran with this as their agenda, and he would like to see their take on it.

Councilmember del Aguila concurred with Councilmember Dhakal and stated he thought it behooved Council to hear from the owners of the contributing structures and he that he did not think many of those owners were heard. He said he spoke to many people and there was a delineation between those who knew about the guidelines and those who did not. He said this was why he had philosophical questions. He said they needed to make sure Herndon was a "home for everyone." He stated most people he talked to said they were surprised Council was forcing these guidelines. He wanted to table the item.

Mayor Merkel clarified the motion was to continue and not to table. Councilmember del Aguila stated he supported continuing.

Councilmember Friedrichs stated she would support moving the item to December but not January. She said this Council was also elected and they had also spoken to people about this item.

The question was called on the substitute motion, which failed by a 2-5 roll call vote by electronic means. The vote was: Councilmembers del Aguila and Dhakal voting "Aye" and Councilmembers Baker, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "No."

Substitute Motion

(Failed)

Councilmember del Aguila made a substitute motion to continue the public hearing on Resolution 20-G-51 to December 8, 2020 and was seconded by Councilmember Dhakal.

Councilmember del Aguila and Councilmember Dhakal provided comments about providing more time and getting more feedback.

**November 17, 2020
(public hearing)**

Councilmember Baker stated she thought the participation at that night's public hearing showed that more residents did not want to speak on the item. She also said they all had people coming to them all of the time and the people she spoke to were in favor. She said this had plenty of time and that this felt like a bit of a political move.

The question was called on the motion, which failed by a 3-4 roll call vote by electronic means. The vote was: Councilmembers del Aguila, Dhakal, and Friedrichs voting "Aye" and Councilmembers Baker, McKenna, Vice Mayor Olem, and Mayor Merkel voting "No."

**Vote on the
Main Motion**

(Approved)

Mayor Merkel restated the Main Motion restated for clarity, which was to approve Resolution 20-G-51, as presented.

Vice Mayor Olem asked Mayor Merkel to call the question.

The question was called on the main motion, which carried by a 4-3 roll call vote by electronic means. The vote was: Councilmembers Baker, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye" and Councilmembers del Aguila, Dhakal, and Friedrichs voting "No."

Resolution 20-G-51, to adopt the Town of Herndon Historic District Overlay Guidelines to replace the Heritage Preservation Handbook.

WHEREAS, the Town of Herndon Zoning Ordinance Section 78-60.3 requires the use of guidelines to be used in the evaluation of certain changes proposed for properties within the Herndon Historic District zoning overlay; and

WHEREAS, the Historic District Overlay Guidelines would be adopted by reference in Section 78-60.3 of the Town of Herndon Zoning Ordinance in accordance with Section 15.2-2306 of the Virginia State code regarding the preservation of historical site and architectural areas; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan sets forth goals for the preservation and enhancement of the town's historic resources, the management of appropriate alterations to the town's historic district, and the promotion of appropriate infill development within the town's historic district; and

**November 17, 2020
(public hearing)**

WHEREAS, public meetings were held on October 19, 2018, October 20, 2018, December 2, 2019, and October 29, 2020 to present updates on the development of the guidelines and collect public comment; and

WHEREAS, a Town Council public hearing to review the proposed Town of Herndon Historic District Overlay Guidelines was held on November 17, 2020.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia that the Herndon Historic District Overlay Guidelines, dated October 29, 2020, are hereby adopted.

BE IT FURTHER RESOLVED by the Town Council of the Town of Herndon, Virginia that Town of Herndon staff is hereby authorized to make certain administrative adjustment to the Herndon Historic District Overlay Guidelines, dated October 29, 2020, as adopted, to improve clarity, correct clerical errors, update graphics and other visual exhibits, keep the document consistent with current processes, incorporate changes based on emerging best practices and modern materials, and other similar minor modifications.

[Note: A copy of the Herndon Historic District Overlay Guidelines, dated October 29, 2020, is on file in the Department of Community Development.]

10. Resolution 20-G-52, to consider a special exception SE #19-05 with conditions for 100, 150, 200 Fairbrook Drive, Fairbrook Business Park, to allow for development within the FPO, Floodplain Overlay district;
11. Resolution 20-G-53, to consider an exception to the Chesapeake Bay Protection Area, RPA #17-01, with conditions for 100, 150, 200 Fairbrook Drive, Fairbrook Business Park, to consider an exception to encroach into the RPA, Resource Protection Area, component of the CBPAO, Chesapeake Bay Preservation Area Overlay district with proposed mitigation; and
12. Resolution 20-G-54, to consider a special exception SE #17-03 with conditions for 100, 150, 200 Fairbrook Drive, Fairbrook Business Park, to allow the redevelopment/development of these parcels under the Landmark Business Alternative Option resulting in a maximum 1.25 FAR consisting of 4 buildings with 60 percent multifamily residential including retail and daycare and 40 percent office.

**November 17, 2020
(public hearing)**

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, October 30, and the Friday, November 6, 2020 issues.

Mayor Merkel stated that staff would present the staff reports on the next three public hearing items concurrently. She stated there would be three separate public hearings and actions. She recognized David Stromberg, Zoning Administrator and Bryce Perry, Deputy Director of Community Development for the concurrent staff reports.

Mr. Stromberg and Mr. Perry presented concurrently with separate PowerPoints.

Mr. Stromberg began the staff reports for the first two items and presented the staff report and PowerPoint dated November 17, 2020, which are on file in the Town Clerk's office. He stated that he would review the flood zone (Floodplain Overview District) and RPA aspects of the presentation before Mr. Perry would finish the presentation.

Mr. Stromberg stated that a Special Exception was required for any development in the Floodplain Overlay District (FPO). In addition to going through the special exception process they must submit technical data at both special exception and site plan application, demonstrate no decrease in flood carrying capacity, and demonstrate no increase in the elevation of the 100-year floodplain. He also went over the existing conditions, proposed alterations, and conditions summary. Staff recommended approval for Special Exception SE #19-05, as presented.

Mr. Stromberg then moved onto the next staff report and PowerPoint dated November 10, 2020, which are on file in the Town Clerk's office. He went over the Chesapeake Bay Preservation Overlay district. He described the components of the district including the Intensely Developed Area (IDA), Resource Protection Area (RPA), and Resource Management Area (RMA). Then he discussed RPA Encroachment versus imperviousness, including on and off-site mitigation areas.

Mr. Stromberg further reviewed staff's analysis, which included exempt activities in the RPA and the mitigation that was required per conditions. Staff recommended approval for RPA #17-01, as presented.

Mr. Stromberg then turned the staff reports over to Mr. Perry who presented the staff report and PowerPoint for SE #17-03 dated November 17, 2020, which are on file in the Town Clerk's office. The proposed application was allowed under the Landmark Business Alternative Option, which allows higher densities and increased building heights in certain locations. Unlike the previous ZMA, this item does not require a change in the base zoning and the properties would remain zoned Office and Light Industrial (O&LI). Another difference was that rather than a Generalized Development Plan and Proffers, this application required a Special Exception Plan.

**November 17, 2020
(public hearing)**

Mr. Perry reviewed the location, existing and proposed conditions, as provided in the PowerPoint, and the zoning allowed under the O&LI Landmark Business Alternate Option. He emphasized that the maximum height allowed in this district was 160 feet, or 275 within 500 feet of the Dulles Toll Road. All the required reviews and analysis were completed. Staff and the Planning Commission recommended approval of the proposed resolution.

There was brief discussion amongst Council and staff on the three items.

Councilmember Dhakal asked about RPA #17-01. Mr. Stromberg clarified that the total RPA stated the site was about 28 acres overall and, of that, about 17-18 acres are RPA and total encroachment was just about 6 acres. About one acre required an exception request. The regular developments in the RPA were the only exempt.

Mr. Stromberg clarified, in response to Councilmember Dhakal's queries about environmental impact, that the area was expected to be left in a better situation than it was currently. He stated there were stringent requirements for any development in a protection area. Then he reviewed the existing standard requirements such as stormwater management and state erosion requirements already in place. Mr. Stromberg further clarified the site was exempt from the additional requirements put in place for a regular development within the RPA. The existing banks of the streambeds are highly eroded and not functioning at a high-level for pollutant removal. The plan submitted shows that it would be a better solution.

There was a brief question and answer session between Councilmember Dhakal, Mr. Perry, and Mr. Stromberg about the Planning Commission vote on these items.

Councilmember Friedrichs provided brief comments about the number of dwelling units the Council might approve that night and stated she had questions for the consultant later in the meeting.

Councilmember Friedrichs asked, if this were approved and the road were built, if the funds offered would be put in a trust. She also asked if the town would maintain the road. Mr. Perry stated those funds/contributions would go in a specific town account for that specific use and it would be a public road the town would be responsible for. There was brief further discussion between Councilmember Friedrichs and Mr. Perry about traffic increases and other, planned street improvements.

There was further discussion between Councilmember Friedrichs and Mr. Perry about traffic signal projects and traffic changes. Councilmember Friedrichs asked about objections/comments they received. Mr. Perry stated there were no negative comments

**November 17, 2020
(public hearing)**

or concerns at the ARB and discussed the garages and architectural treatments. Mr. Perry also clarified that the transportation management plan was something the applicant would need to follow through on it was not something in which the town was operationally involved.

Mayor Merkel stated she had reviewed Planning Commission's meeting on the town's website, and these items passed 5-0 with two members absent. Mayor Merkel also stated the Council was considering so many units that evening because they had piled up over the past six months State of Emergency. She also stated the applicant's representatives were available.

Councilmember del Aguila provided comments about the number of units being approved that night and the number of those that would be workforce housing. He asked, from a process prospective, how Council could impress the importance of workforce housing. There was a brief question and answer session between Lesa Yeatts, Town Attorney, and Councilmember del Aguila, about the special exception process and proffer regulations as related to emphasizing workforce and affordable housing.

Ms. Yeatts stated that what goes into proffers and special exceptions are regulated by the Code of Virginia and both state and national Supreme Court law, and further, special exceptions and proffers are both voluntary. She stated staff has to follow the rules laid out in those documents and what they bring to Council is what was allowed by previous Councils in the town's policies or the Comprehensive Plan. She stated the town does not have anything that officially addresses affordable housing, but that could be changed. She stated Mr. Ashton, Town Manager, had indicated that he would move in that direction. Ms. Yeatts stated that was why staff did not make those overtures with applicants. Responding to Councilmember del Aguila's further inquiry, Ms. Yeatts stated the review boards would not address that matter and it would be somewhat inappropriate if they did.

Ms. Yeatts clarified that, while affordable housing and workforce housing were not the same thing they would be in the same category of discussion and the process would be similar. She also stated the new Council could address this with the Town Manager.

Responding to Councilmember del Aguila's further queries about whether this Council had not made it clear they wanted to address workforce housing, Mayor Merkel stated she thought that Ms. Yeatts was saying this item had been in progress for about 10 years and it was a little late in the process to include it in this item. Mayor Merkel stated she thought Council had been clear that affordable and workforce housing was a priority going forward and that Council could make this a policy statement for the development community at any time.

**November 17, 2020
(public hearing)**

Councilmember del Aguila asked for clarification as to whether this meant that they could not address “in-flight” items. Ms. Yeatts stated this was an appropriate discussion they could have outside of a land use application. She stated she was giving an explanation as to why staff had not approached it.

Vice Mayor Olem asked to discuss the proposed mitigation, the streambed plans, and how that would improve the area for public parks. Vice Mayor Olem said she was familiar with the consultants from their work in Reston.

Mayor Merkel recognized Mark Headly from Wetland Studies and Solutions Inc., one of the town’s consultants on these items, for comments.

- Mr. Headly provided brief comments on the Fairbrook items.

Responding to Vice Mayor Olem, Mr. Headly briefly reviewed the history of the RPA on the property. He stated that the building that existed in the wetland predates the RPA regulations and what was there currently was not an appropriate buffer. He discussed the benefits of a stream valley, restoring streams, and ways to fix some of the eroded areas. He said there were four areas identified where the stream would need to be fixed.

Responding to Vice Mayor Olem’s queries about runoff from the toll road and Fairfax County Parkway, Mr. Headly stated the fix would help the stream better cope with that runoff. He added that while they could not do anything about the existing water input they could make the stream channel better able to handle it.

Mayor Merkel then recognized Elizabeth Baker of Walsh Colucci Lubeley & Walsh, another one of the town’s consultants on these items, for comments.

- Ms. Baker gave an overview of the project and a brief history of the property. She presented a PowerPoint dated November 17, which is on file in the Town Clerk’s office, and provided a succinct and clarifying presentation.

Ms. Baker stated Mr. Perry had been thorough about the transportation piece and the heart of the project was bringing outdoors in and indoors out. She then discussed community benefits with transportation, bike facilities, stream restoration, and the possibility for a nature center.

Mayor Merkel thanked Ms. Baker for her helpful presentation, and she stated Ms. Yeatts was having an internet issue but would be back. Ms. Yeatts returned shortly to the WebEx meeting by telephone.

**November 17, 2020
(public hearing)**

Councilmember Friedrichs asked if the area would be completely natural. Ms. Baker said they want to embrace the fact that it is a natural area and generally keep it as natural as possible.

Following the discussion, Mayor Merkel stated there would be separate public hearings for each item.

Resolution 20-G-52, to consider a special exception SE #19-05

Mayor Merkel confirmed with Ms. Kertz that there were no registered speakers for this item.

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

Vice Mayor Olem moved approval of Resolution 20-G-52 and Councilmember Baker seconded the motion.

Vice Mayor Olem, Councilmember Baker, and Councilmember del Aguila provided brief comments.

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

Resolution 20-G-52, to approve with conditions Special Exception SE #19-05 for development in the Floodplain Overlay District to allow a mixed-use development.

WHEREAS, the applicant, Fairbrook Business Parks Associates and LP and Fairbrook Business Parks Associates II, LP, has submitted an associated application, special exception SE #17-03, to permit a mixed-use development consisting of residential, office and retail square footage not to exceed 1,515,000 total square feet or a maximum of 1.25 FAR, with a residential to office percentage not to exceed 60 percent residential at total build out on property located at 100, 150, 200 Fairbrook Drive, Fairbrook Business Park and identified as Fairfax County Tax Map Reference Numbers: 0164-10-0005A, 0164-25-H, 0164-25-O in accordance with the plan dated October 16, 2020; and

WHEREAS, any development within the floodplain requires a special exception to be approved by the town council; and

**November 17, 2020
(public hearing)**

WHEREAS, the applicant is proposing certain improvements and alterations to the grade within the floodplain; and

WHEREAS, the applicant has demonstrated through hydraulic and hydrologic modeling analysis that the proposed improvements and grade changes will not result in an increase in flood heights or an increase in the extent of the floodplain; and

WHEREAS the applicant will incorporate the most recently issued FEMA flood maps available and rerun the modeling analysis at the time of site plan final engineering; and

WHEREAS the Planning Commission has found that the special exception request, with the conditions dated October 26, 2020 meets the purpose and intent of the Zoning Ordinance, in particular Section 78-155.3 Special exception and Section 78-60.2 Floodplain Overlay district, including the allowances and criteria found therein; and

WHEREAS, the Town Council has reviewed this application and has held a public hearing on November 17, 2020 in accordance with the provisions of §15.2-2204 of the State Code; and

WHEREAS, the Town Council has found that the proposed development, with the conditions dated November 17, 2020, meets the purpose and intent of the Zoning Ordinance, in particular Section 78-155.3 Special exception and Section 78-60.2 Floodplain Overlay district, including the allowances and criteria found therein.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby approves Special Exception SE #19-05, in accordance with the conditions set forth below to achieve compliance with the standards found in Section 78-155.3 and Section 78-60.2.

1. **Substantial Conformance.** The development of the Special Exception use described in Condition 2 below shall be in substantial conformance with Sheets 01.01 through 12.02 of the plan entitled "Fairbrook Business Park Floodplain Study" sealed October 16, 2020 by Kyle M. O'Connor, prepared by VIKA Virginia, LLC (the "**Plan**"), incorporated by reference and the Town of Herndon Zoning Ordinance (the "**Zoning Ordinance**"). Approval of this application for the approximately 4.60-acre parcel identified as Fairfax County Tax Map Reference Number 0164-10-0005A, the 2.52-acre parcel identified as Fairfax County Tax Map Reference Number 0164-25-H, and the 20.44-

**November 17, 2020
(public hearing)**

acre parcel identified as Fairfax County Tax Map Reference Number 0164-25-O (the "**Property**") shall not relieve the applicant or the owners of the Property their successors or parties developing, establishing or operating the approved Special Exception use (the "**Applicant**") from the obligation to comply with and conform to an Zoning Ordinance, the Town of Herndon Codified Ordinance or regulatory Requirement.

2. Use Permitted. This Special Exception grants approval to permit development within the FPO, Floodplain Overlay district pursuant to Section 78-60.2 of the Zoning Ordinance.
3. Development. Development within the Floodplain on the Property includes constructing a portion of Fairbrook Drive, outdoor recreation facilities, and associated grading within the Floodplain Overlay district.
4. Sanitary Sewer Metering Station. The relocation of the town sanitary sewer meter station, and all support appurtenances and access to the meter for maintenance, as determined by the Department of Public Works, shall be incorporated into the modeling calculations and shall not result in an adverse impact to the extent or elevations of the floodplain.
5. Floodplain Easement. The Applicant shall dedicate to the Town from the Property, at no public cost, a restrictive floodplain easement. Said easement shall be submitted to the Town for review and approval, and the approved easement shall be recorded in the Fairfax County land records prior to the approval of a site plan for the Property.
6. Revised Flood Insurance Rate Maps (FIRMs). The applicant shall perform new hydraulic and hydrodynamic analysis using the most recent flood insurance rate map issued by FEMA. In the event the draft FIRM maps have not yet been finalized by FEMA and adopted by the town, the applicant shall use the draft FIRM maps.

Resolution 20-G-53, to consider an exception to the Chesapeake Bay Protection Area, RPA #17-01

Mayor Merkel confirmed with Ms. Kertz that there were no registered speakers for this item.

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

**November 17, 2020
(public hearing)**

Vice Mayor Olem moved to approve Resolution 20-G-53 and Councilmember Friedrichs seconded the motion.

Vice Mayor Olem, Councilmember Baker, and Councilmember Dhakal provided brief further comments.

Mayor Merkel provided further comments.

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

Resolution 20-G-53, to approve with conditions Resource Protection Area Exception request RPA #17-01, allowing an exception to the requirements of the Chesapeake Bay Preservation Overlay district to allow a mixed-use development.

WHEREAS, the applicant, Fairbrook Business Parks Associates and LP and Fairbrook Business Parks Associates II, LP, has submitted an associated application, special exception SE #17-03, to permit a mixed-use development consisting of residential, office and retail square footage not to exceed 1,515,000 total square feet or a maximum of 1.25 FAR, with a residential to office percentage not to exceed 60 percent residential at total build out on property located at 100, 150, 200 Fairbrook Drive, Fairbrook Business Park and identified as Fairfax County Tax Map Reference Numbers: 0164-10-0005A, 0164-25-H, 0164-25-O in accordance with the plan dated October 16, 2020; and

WHEREAS, the development at full build-out would result in 6.60 acres of total encroachment into the RPA; of which, 4.31 acres are exempted activity, 0.38 acres are permitted activity, 1.14 acres are previously approved, and 0.77 acres are subject to an exception; and

WHEREAS, the applicant has proposed a mitigation plan consisting of stream restoration and vegetative plantings that will ultimately improve the health of the buffer and quality of the water beyond pre-development conditions; and

WHEREAS a portion of the required mitigation is shown on the adjacent parcel identified as 0173-02-0004A1 and the applicant shall be required to seek a new RPA exception should they be unable to install the mitigation on adjacent parcel 0173-02-0004A1; and

**November 17, 2020
(public hearing)**

WHEREAS, the Planning Commission has found that the exception request, with the conditions dated October 26, 2020, meets the purpose and intent of the Zoning Ordinance, in particular Section 78-60.4 (Chesapeake Bay Preservation Area Overlay) including the allowances and criteria found therein; and

WHEREAS, the Town Council has reviewed this application and has held a public hearing on November 17, 2020 in accordance with the provisions of §15.2-2204 of the State Code; and

WHEREAS, the Town Council has found that the proposed development, with the conditions dated November 17, 2020, meets the purpose and intent of the Zoning Ordinance, in particular Section 78-60.4 (Chesapeake Bay Preservation Area Overlay) including the allowances and criteria found therein.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby approves Resource Protection Area Exception RPA #17-01, in accordance with the conditions set forth below to achieve compliance with the standards found in Section 78-60.4.

1. Substantial Conformance. The development of the Chesapeake Bay Resource Protection Area ("**RPA**") described in Conditions 2 and 3 below shall be in substantial conformance with Sheets 1-18 of the plan entitled "Fairbrook Water Quality Impact Assessment & Resource Protection Area Exception Request" sealed on November 2, 2020, prepared by Wetland Studies and Solutions, Inc. (the "**Plan**"), incorporated by reference and the Town of Herndon Zoning Ordinance (the "**Zoning Ordinance**"). Approval of this application for the approximately 4.60-acre parcel identified as Fairfax County Tax Map Reference Number 0164-10-0005A, the 2.52-acre parcel identified as Fairfax County Tax Map Reference Number 0164-25-H, and the 20.44-acre parcel identified as Fairfax County Tax Map Reference Number 0164-25-O. (the "**Property**") shall not relieve the applicant or the owners of the Property their successors or parties developing, establishing or operating the approved Special Exception use (the "**Applicant**") from the obligation to comply with and conform to an Zoning Ordinance, the Town of Herndon Codified Ordinance or regulatory Requirement.

**November 17, 2020
(public hearing)**

2. Use Permitted. This RPA Exception grants approval to permit development within the CBPAO, Chesapeake Bay Preservation Area Overlay district pursuant to Section 78-60.4 of the Zoning Ordinance.
3. Development. Development within the Resource Protection Area on the Property includes constructing a portion of Fairbrook Drive, outdoor recreation facilities, private streets and drive aisles, installing infrastructure, and associated grading within the RPA.
4. RPA Enhancement and Revegetation. Prior to the approval of any site plan for development on the Property that encroaches into the RPA, the applicant shall incorporate mitigation associated with the encroachment for each phase of development as shown on Sheets 4-5 of the Plan. If the amount of encroachment not otherwise exempt, permitted, or previously authorized, as shown on Sheet 5 of the plan, exceeds the amount of stream restoration and planting mitigation that can be accommodated on site, as shown on Sheets 10-11 of the plan, then no other site plans for new development shall be approved unless one of the following conditions (a or b) occurs:
 - a. The area on the property currently identified as Fairfax County Tax Map Reference Number 0173-02-0004A1 has been dedicated to the Town of Herndon pursuant to Proffer Condition Amendment PCA #15-101 and Ordinance 16-O-01, duly adopted by the Town Council of the Town of Herndon on January 12, 2016; and
 - i. The three areas of stream restoration are installed as shown on Sheet 11.A of the plan submission sealed on October 19, 2020; and
 - ii. A minimum of 30 mitigation units are installed in areas identified as Planting Area 4, 5, 6, and 7, as shown on Sheet 11.A of the plan submission sealed on October 19, 2020.
 - b. A revised exception for encroachment into the RPA proposing alternate mitigation is submitted to the town.

**November 17, 2020
(public hearing)**

Resolution 20-G-54, to consider a special exception SE #17-03

Mayor Merkel confirmed with Ms. Kertz that there were no registered speakers for this item.

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

Vice Mayor Olem moved to approve Resolution 20-G-54 and Councilmember Dhakal seconded the motion.

Vice Mayor Olem and Councilmember Dhakal provided brief comments.

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

Resolution 20-G-54, to approve with conditions Special Exception SE #17-03, allowing development under the Landmark Business Alternative Option on property zoned Office and Light Industrial (O&LI) district.

WHEREAS, the applicant, Fairbrook Business Parks Associates and LP and Fairbrook Business Parks Associates II, LP, has submitted a special exception to permit a mixed-use development consisting of residential, office and retail square footage not to exceed 1,515,000 total square feet or a maximum of 1.25 FAR, with a residential to office percentage not to exceed 60 percent residential at total build out on property located at 100, 150, 200 Fairbrook Drive, Fairbrook Business Park and identified as Fairfax County Tax Map Reference Numbers: 0164-10-0005A, 0164-25-H, 0164-25-O in accordance with the plan dated October 16, 2020; and

WHEREAS, mixed-use development with an FAR not to exceed 1.25, with a residential to office square footage ratio not to exceed 60 percent residential is permitted in this zoning district under the provisions of the Landmark Business Alternative Option subject to the approval of a special exception; and

WHEREAS, the Planning Commission has reviewed this application and has held a public hearing on October 26, 2020 in accordance with the provisions of §15.2-2204 of the State Code; and

**November 17, 2020
(public hearing)**

WHEREAS, the Planning Commission found that the proposed development, with the conditions dated October 26, 2020, meets the purpose and intent of the Zoning Ordinance, in particular Section 78-155.3 Special exception and Section 78-40.6(c) Landmark Business Alternative Option (O&LI only) including the allowances and criteria found therein; and

WHEREAS, the Town Council has reviewed this application and has held a public hearing on November 17, 2020 in accordance with the provisions of §15.2-2204 of the State Code; and

WHEREAS, the Town Council has found that the proposed development, with the conditions dated November 17, 2020, meets the purpose and intent of the Zoning Ordinance, in particular Section 78-155.3 Special exception and Section 78-40.6(c) Landmark Business Alternative Option (O&LI only) including the allowances and criteria found therein.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby approves Special Exception SE #17-03, in accordance with the conditions set forth below to achieve compliance with the standards found in Section 78-155.3 and Section 78-40.6(c).

1. Substantial Conformance. The development of the Special Exception use described in Condition b below shall be in substantial conformance with the plan entitled "Fairbrook Special Exception Plan # 17-13" dated June 19, 2017, and revised through October 16, 2020, prepared by VIKA Virginia, LLC (the "SE Plan"), incorporated by reference and the Town of Herndon Zoning Ordinance (the "Zoning Ordinance"). Approval of this application for the approximately 4.60-acre parcel identified as Fairfax County Tax Map Reference Number 0164-10-0005A, the 2.52- acre parcel identified as Fairfax County Tax Map Reference Number 0164-25-H, and the 20.44-acre parcel identified as Fairfax County Tax Map Reference Number 0164- 25-O, (the "Property") shall not relieve the applicant or the owners of the Property their successors or parties developing, establishing or operating the approved Special Exception use (the "Applicant") from the obligation to comply with and conform to an Zoning Ordinance, the Town of Herndon Codified Ordinance or regulatory requirement.
2. Uses Permitted. This Special Exception grants approval to permit a mixed-use development under the Landmark Business Alternative

**November 17, 2020
(public hearing)**

Option pursuant to Section 78-40.6(c) of the Zoning Ordinance to allow for the redevelopment of the Property with two office buildings, a residential building, and a mixed-use building.

- a. Retail uses on the Property may include eating establishments, which will meet the requirements of Section 78-71.6 (d) of the Zoning Ordinance. Outdoor eating areas are permitted as an accessory use to the eating establishments and will be delineated at the time of final site plan approval. The Applicant will work with Town staff during the site plan review to establish accommodations for designated parking, curbside pickup and delivery services including but not limited to storage and deployment of drone/robots and driverless vehicles.
- b. Daycare Center use on the Property will meet the requirements of Section 78-71.2 (d) (2) of the Zoning Ordinance. The designated parking and child drop-off and pickup areas are shown in concept on Sheet C-07 of the SE plan, and will be further detailed at the time of final site plan approval. The Applicant will work with Town staff during the site plan review to establish any further accommodations necessary to ensure the applicable Zoning Ordinance standards are met.
- c. The Applicant will work with Town staff during site plan review and Architectural Review Board review to ensure that trends in modern ways of living and doing business are identified and incorporated to an extent that is reflective of other development along the Metrorail Silver Line in the Herndon/Reston market, and where such advances, such as the inclusion of adequate spacing, storage and deployment areas for drone/robots and driverless vehicles, may impact public rights-of-way and pedestrian accessibility.
3. Development. Development on the Property will consist of four buildings, identified as Buildings 1 -4 and referred to as the "New Buildings" on the Plan and the total development will not exceed 1,515,000 square feet of gross floor area. The maximum square footage of residential uses will be 895,000 square feet of gross floor area (up to 900 multi-family dwelling units). A maximum of 600,000 square feet of gross floor area of office use will be constructed. Notwithstanding what is shown on the SE Plan, the specific location of retail and child-care uses within Building 3 is flexible to respond to specific retail tenant needs. Retail use on the Property will not be less than 5,000 square feet of gross floor area.

**November 17, 2020
(public hearing)**

4. Fairbrook Drive.

- a. The Applicant will construct Fairbrook Drive from its current terminus to the Property's northern boundary in phases as shown on the SE Plan. The Applicant will dedicate right-of-way to the Town for Fairbrook Drive as shown on the SE Plan.
- b. Prior to the issuance of first permanent certificate of occupancy for each building, the Applicant will provide to the Town \$1.50 per residential square foot and \$8.25 per office square foot towards the eventual construction of an extension of Fairbrook Drive from the Property's northern boundary to Spring Street to mitigate the impacts of site generated trips, and/or other off-site capacity improvements necessitated by the proposed development. In addition, the Applicant will provide to the Town copies of all design work and technical information regarding the extension of Fairbrook Drive, including any correspondence or other material received or sent to the Virginia Department of Transportation (VDOT) or Department of Environmental Quality related to the extension, to include but not limited to the Sugarland Run stream valley pre- and post-condition and interchange modifications.
- c. The Applicant will provide right-of-way and all necessary temporary and permanent easements, as determined by the Town, to enable the Town to connect the future Fairbrook Drive extension to the terminus of Fairbrook Drive on the Applicant's Property shown on the SE Plan upon request by the Town.
- d. Prior to site plan approval, the Applicant will verify in a manner approved by the Town of Herndon Department of Public Works and Town Attorney that any dry utility easements provided in the future Fairbrook Drive right-of-way will automatically terminate and utilities removed when the right-of-way is dedicated or be replaced by a Town of Herndon instrument of approval that would otherwise permit the utilities to remain.
- e. To achieve compliance with Sec. 78-40.6 (c)(1) j., which states: One hundred percent of the net increase in vehicle trips to be generated by the use for which the special exception was granted over the number of vehicle trips associated with the maximum density permitted in the underlying zoning district shall be accommodated through the provision of street capacity

**November 17, 2020
(public hearing)**

additional to improvements shown in the Herndon Metro Station Area Plan adopted February 28, 2012, a trip generation analysis will be submitted at site plan stage shall indicate whether or not the vehicle trip generation associated with the square footage proposed by that site plan, in conjunction with previously approved site plans meets or exceeds the number of vehicle trips associated with the maximum density permitted in the underlying zoning district, as shown on the Fairbrook Business Park Traffic Impact Statement by Wells & Associates, revised through June 4, 2020. Site plans that would result in a vehicle trip generation meeting or exceeding the number of vehicle trips associated with the maximum density permitted in the underlying zoning district shall not be approved until the necessary improvements are in place or fully funded.

5. Bus Stop. If requested by the Town at the time of site plan review for any New Building, the Applicant will provide a bus stop and bus shelter along Herndon Parkway, north of Fairbrook Drive. The bus stop and shelter will be installed prior to the issuance of a permanent certificate of occupancy for the applicable New Building. If installation of the bus shelter occurs in advance of the construction of Building 3, the bus stop and shelter will be installed in an interim location and will be relocated or replaced by a bus stop and bus shelter in its permanent location with the construction of Building 3. The area of the bus stop and shelter will be dedicated to the Town. The bus shelter will be the standard Town of Herndon bus shelter or a shelter of a different design acceptable to both the Town and the Applicant, along with trash/recycling receptacles and bicycle racks. The Applicant will work with the Town to develop a safe and effective design for the boarding and discharging of passengers in relation to the operability of the adjacent cycle track.
6. Transportation Demand Management. The Applicant will submit a Transportation Demand Management Plan (TDM Plan) for review and approval prior to site plan approval for each building. The Applicant will implement a TDM Plan upon the issuance of a permanent certificate of occupancy for a total of 200,000 square feet of new development on the Property. The purpose of the TDM Plan is to reduce the number of a.m. and p.m. peak hour vehicles generated by New Buildings. The goal will be to reduce a.m. and p.m. peak hour vehicles by ten percent prior to rail transit service availability at the Herndon - Monroe Transit Station, fifteen percent from the opening of the Herndon-Monroe rail station and

**November 17, 2020
(public hearing)**

twenty-five percent following the fourth anniversary of the introduction of rail availability at the Herndon - Monroe Transit Station. The reduction will be measured on the baseline trip generation calculations using ITE Trip Generation Manual, 10th Edition and without further adjustments as outlined in the Fairbrook Business Park Traffic Impact Statement, dated June 5, 2017, as prepared by Wells & Associates, amended June 4, 2020, and incorporated by reference. A TDM Work Plan designed to meet the trip reduction goals will be developed by the Applicant with input and approval by the Town of Herndon Department of Community Development. The TDM Work Plan will be adapted over time to respond to the changing transportation related circumstances of the Property, the surrounding community and the region, as well as to technological and other improvements. At the on-set, the TDM Work Plan for the Property will incorporate of the following elements:

- a. Designating a TDM Coordinator to manage the TDM program for the New Buildings.
- b. Encouraging progressive employee policies such alternative work schedules, including staggered work hours, variable work hours, flextime, compressed work weeks, telecommuting, and other programs to spread peak period travel.
- c. Maintaining a database in order to facilitate matching employees/residents with car/van pool options.
- d. Participating in a guaranteed ride home program.
- e. Providing convenient carpool and van pool parking spaces in each garage.
- f. Displaying and distributing to individual tenants and residents information regarding available public transportation facilities and services, including Metrobus, Fairfax Connector, Metrorail, and other transit options in the Town and on the Dulles Toll Road Corridor.
- g. Providing bike racks for employees/residents and visitors within the proposed parking garages.

**November 17, 2020
(public hearing)**

- h. Providing one-time contributions to partially subsidize Metro fare cards for new residents and new tenants.

7. Transportation.

- a. The Applicant will extend the existing left turning lane on southbound Herndon Parkway into the Property to a stacking length of 225 feet prior to the issuance of a permanent certificate of occupancy for the first New Building to be constructed.
- b. The Applicant will construct a right turn lane on northbound Herndon Parkway at Fairbrook Drive. The need for the right turn lane will be assessed with each site plan and will be installed prior to the issuance of a permanent certificate of occupancy of the New Building which generates the need for the turn lane.
- c. The Applicant will install a traffic signal for the full signalization of the Fairbrook Drive Herndon Parkway intersection. The traffic signal will include accessible pedestrian signals. The need for the traffic signal will be assessed with each site plan and will be installed prior to the issuance of a permanent certificate of occupancy for the New Building which generates the need for the signal.
- d. At the time of site plan approval for Buildings 3 or 4, whichever occurs first, the Applicant will record an inter-parcel access easement from the terminus of the Private Road A to the northern property line, to permit a future connection to serve adjacent property identified as Tax Map 16-4 ((2)) 15. The Applicant will provide at no cost, the requisite temporary construction easements to permit construction of the street extension by others.
- e. The Applicant will provide streetscape improvements along Herndon Parkway, Fairbrook Drive and Private Road A, as well as bicycle facilities along Herndon Parkway and Fairbrook Drive, in keeping with the sections shown on Sheet C-09 of the SE Plan and the Herndon Streetscape Manual.
- f. Prior to site plan approval for Building 3, the Applicant will request a design waiver from the Department of Public for the northern entrance along Herndon Parkway into the Building 3

**November 17, 2020
(public hearing)**

garage. If required as part of the approval of the design waiver, the Applicant will submit a traffic management plan for the Building 3 garage, to include bollards, wayfinding, and/or other devices that will limit the amount of traffic that can exit the Building 3 garage onto Herndon Parkway.

8. Architecture.

- a. The architectural treatment of all New Buildings within the proposed development will create a sense of identity and place, and will create human scale through the use of unifying elements such as materials, textures, color, window treatments, decorative details, lighting, and landscaping. Buildings will be designed with high quality architecture and building materials that, at the time a building plan is approved, are typically used on the exterior of Class A office buildings and residential buildings of a similar quality.
- b. The architecture and materials will be subject to approval by the Architectural Review Board and will be in general conformance with the character and quality provided in the Fairbrook Park - Architectural Review Board Materials for Preliminary Discussion dated August 5, 2020.
- c. In general, the office building materials will consist of a curved curtain wall window system with precast panels with a smooth limestone look. Additional or substitute architectural features will be permitted with approval by the Architectural Review Board.
- d. The parking structures for Buildings 1 and 2 will be concrete with landscape planters on the top deck, and a mix of stone, or faux stone, and precast panels to reduce the mass of the garage wall and complement the adjacent natural areas.
- e. The parking structures for Buildings 3 and 4 will be architecturally treated to harmonize with the architectural design of the residential buildings as conceptually shown on Sheet A-06 of the SE Plan.
- f. All loading, service, and trash areas will be screened with bay doors that remain closed unless in use and designed to complement the architecture of the buildings.

**November 17, 2020
(public hearing)**

9. Design Guidelines. While the Property is not located within the Herndon Transit Oriented Corridor (HTOC), the Applicant will endeavor to meet the spirit of the HTOC Urban Design and Architectural Guidelines in its architectural and streetscape designs.
10. Green Building Practices. The Applicant will include green building practices as follows:
 - a. Residential Buildings. The Applicant will design and construct each residential building to meet the standards of either LEED v4 New Construction or Multifamily Midrise from U.S. Green Building Council, Multifamily Building from Nation Green Building Standard (NGBS), EarthCraft Multifamily, or an equivalent green building program as determined by the Applicant and the Town.
 - b. Office Buildings. The Applicant will design and construct the office base building to meet the standards of either LEED v4 Core and Shell Development or New Construction Silver from U.S. Green Building Council, or an equivalent green building program as determined by the Applicant and the Town.
 - c. The Applicant will include, at the time of application for a building permit for each building, a list of specific credits or design elements incorporated into the building using the then current documentation of the selected green building program for each multifamily building and the office building.
 - d. The Applicant will meet with the Town following application for each site plan to coordinate green building strategies and priority credits, such priorities will include evaluating green infrastructure for stormwater management and potential bird-friendly design features, and the installation of at least two (2) electric vehicle charging stations per garage.
11. Publicly Accessible Parks.
 - a. The Applicant will construct and maintain publicly accessible park spaces within the Property, identified as Gateway Plaza, The Meander/Central Park, Park A - Sugarland Bridge Park, Park B - Sugarland Meadow Park, and Park C - Sugarland Connector Park, as shown on the SE Plan. Gateway Plaza, to be

**November 17, 2020
(public hearing)**

located at the corner of Herndon Parkway and Fairbrook Drive, will feature special accenting pavement, a focal element, and seating. The Meander/Central Park will include an open green space, seating and interactive elements. Parks A, B and C will include an interconnected multi-use trail, a variety of multi-generational exercise stations and art installations, and will be designed to complement the natural setting. The parks will be constructed in phases as shown on Sheets L-13 through L-15 of the SE Plan. The Applicant will retain the area(s) in fee simple and record public access easement(s) ensuring that the park spaces are open to the public for periods of time consistent with traditional public parks. The public easement(s) will be recorded prior to final approval of each site plan for the New Building(s) which requires the park phase as shown on Sheets L-13 through L-15 of the SE Plan.

- b. Trails. As a part of the trail system in Parks A, B, and C, the Applicant will build an eight (8) foot wide pervious paved trail along the western property line of the Property, connecting Buildings 1 and 2 to the Herndon Parkway sidewalk, and an eight (8) foot wide pervious paved trail from the southwest corner of the parking garage to the adjacent property line. The trails will be completed prior to the issuance of a permanent certificate of occupancy for Buildings 1 or 2, whichever occurs first.

12. Nature Center/Public Space.

- a. In addition to the publicly accessible recreational areas on the Property to be provided in accordance with Condition 13(b), the Applicant will provide to the Town of Herndon (the "Town") an option to lease (with an initial term of 10 years) 2,000 square feet of ground floor space in either Building 3 or Building 4 for a nature center, or other similar public/community use (the "Lease"). This 2,000 square feet of space will be leased to the Town rent free. Following conclusion of the initial 10-year lease, the Applicant will offer the Town two-5 year lease renewal options at fifty percent (50%) of the then prevailing market rate. The form of the Lease will be reviewed by the Town Attorney and will include commercially reasonable terms with the Town responsible for utilities, char and janitorial services, and a pro-rata share of the common area management.

**November 17, 2020
(public hearing)**

- b. The specific use of the space will be agreed upon mutually by the Town and the Applicant. The space may be considered part of the Retail uses set forth in the development tabulations on Sheet C-06 of the SE Plan, or may be in addition to such uses, provided that the overall development does not exceed 1,515,000 square feet of gross floor area.
- c. The Applicant will notify the Town in writing within 60 days of final site plan approval for the Building 3 or 4, whichever occurs first, and request confirmation of the Town's intent to lease and occupy the space. The Town will respond to the Applicant in writing within 60 days confirming its intent to lease and occupy the space or not to lease the space. In the event that the Town decides not to lease or occupy the space in the first building offered, the Applicant will notify the Town in writing within 60 days of final site plan approval for the second of Building 3 or 4, and request confirmation of the Town's intent to lease and occupy the space. The Town will respond to the Applicant in writing within 60 days confirming its intent to lease and occupy the space or not to lease the space. In the event that the Town decides not to lease or occupy the space, then this development condition automatically will expire.
- d. The Applicant will construct the space as a cold dark shell and the Town will have the responsibility for completing its own betterments and improvements within the shell. The shell will be completed and made available to the Town prior to the issuance of the first permanent occupancy permit for the building in which the public facility is located or as otherwise agreed to as part of the Lease.
- e. In the event, the Town fails to continuously operate the intended use for a period of three (3) consecutive months following initial occupancy, the space will revert to the Applicant, and the development condition automatically will expire.

13. Recreational Contributions.

- a. The Applicant will provide on-site recreational facilities for the future residents of the Property within the residential buildings, such as: private and public exterior recreational areas/courtyards with seating areas, walking paths, specialty landscaping, lawn areas, hardscape areas, and swimming pools;

**November 17, 2020
(public hearing)**

media entertainment areas; clubrooms; and fitness/exercise centers. The specific facilities and amenities to be provided for each individual residential building will be determined at the time of site plan approval for each residential building. Prior to the issuance for a permanent certificate of occupancy for each residential phase, the Applicant will demonstrate that the value of the residential recreational facilities/amenities are equivalent to a minimum of \$1900 per residential unit.

- b. Applicant will provide a \$900 contribution per residential unit for off-site recreational facilities to offset the capacity impacts to current Town of Herndon recreational facilities. Applicant expenditures toward the proposed publicly accessible recreational areas on the Property will be credited against this contribution, excepting the area set aside for the nature center/public space as provided for by Condition 12. Prior to first permanent occupancy permit for each building, the Applicant will provide evidence of expenditures made for publicly accessible recreational facilities on the Property. In the event that the expenditures are less than \$900 per residential unit, the balance of the expected contribution for the applicable building will be contributed to the Town of Herndon
14. Public Safety Contribution. The Applicant will make a contribution to the Town of Herndon for public safety equipment and facilities needs in the amount of \$25,000 for each of Buildings 3 and 4. The contribution will be made on a building-by-building basis prior to the issuance of the first permanent certificate of occupancy for each of the two buildings.
15. Public Schools Contribution. The Applicant will contribute \$12,262 per expected student (based on a ratio of 0.112 students per residential unit) to the Fairfax County Board of Supervisors for transfer to the Fairfax County School Board to be utilized for capital improvements to schools that serve the Town of Herndon. Such contribution will be made prior to the issuance of a building permit for each residential building and will be based on the actual number of dwelling units identified on the approved building plans for each building. Should prior to the Applicant's payment of this contribution, Fairfax County modifies the expected ratio of students per subject multi-family unit or the amount of the contribution per student, the amount of the contribution will be modified to reflect

**November 17, 2020
(public hearing)**

the then current ratio and/or contribution. The Applicant will notify the Fairfax County Public Schools whenever a site plan for new residential uses is filed for the Property.

16. Town Sanitary Metering Station. It is anticipated that the proposed development will require relocation of the Town of Herndon sanitary sewer metering station currently located on the Property. At the time of site plan review, the Applicant will coordinate with the Public Works Department on the relocation including the timing, location, size, security, maintenance access, and other related improvements. The Applicant will also take all necessary measures to maintain continuous operation of the meter vault during construction activity. If the relocation requires improvements that change environmental impact limits or building layouts, a revised Special Exception may be necessary as determined by the Zoning Administrator.
17. Trash and Recycling Service. The Property will utilize private trash and recycling services.
18. Invasive Species Mitigation Plan. Concurrent with each site plan submission, the Applicant will submit, and subsequently implement, an Invasive Species Mitigation Plan.
19. Resource Protection Area Enhancement and Revegetation. The Applicant will provide stream restoration or revegetation mitigation on a building per building basis as provided for in Resource Protection Area Exception (RPA) #17-01.
 - a. Prior to the approval of any site plan for development on the Property that encroaches into the Chesapeake Bay Resource Protection Area, the Applicant shall provide proof that all stream restoration or mitigation measures are being implemented pursuant to RPA #17-01. If stream restoration or mitigation measures cannot be accommodated on the Property, the Applicant must show that the area on the adjacent property currently identified as Fairfax County Tax Map Reference Number 0173-02-0004A1 has been dedicated to the Town of Herndon pursuant to Proffer Condition Amendment PCA #15-101 and Ordinance 16-O-01, duly adopted by the Town Council of the Town of Herndon on January 12, 2016; and

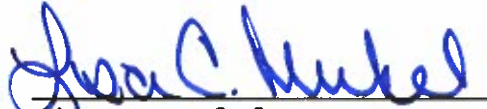
**November 17, 2020
(public hearing)**

- i. Any required mitigation measures are located among the three areas of stream restoration are installed as shown on Sheet 11b of the plan submission sealed on November 02, 2020; and
 - ii. Any required plantings are installed and located in the areas identified as Planting Area 4, 5, 6, and 7, consisting of 62,756 square feet, as shown on Sheet 11b of the plan submission sealed on November 02, 2020.
 - b. If Applicant is unable to meet the requirements in 3.a) for off-site stream restoration or mitigation, no further development on the Property that encroaches into the Chesapeake Bay Resource Protection Area can occur until a revised exception for encroachment into the RPA proposing alternate mitigation is submitted to the town and approved.
20. Bio-retention Tree Pits. The Applicant will perpetually maintain the bio-retention tree pits located within the public right-of-way along the Property's Herndon Parkway and Fairbrook Drive frontages. The Applicant will enter into the appropriate agreement, in a form approved by the Town Attorney, to permit the Applicant to perform such maintenance prior to dedication of the right-of-way.
21. Density Credit. Advanced density credit is reserved for all dedications as described in the Special Exception plan dated October 16, 2020.
22. Transferability. This special exception runs with the land identified as Fairfax County Tax Map 16-4-0010-5A 16-4-0025-H and 16-4-0025-O, and is not transferable to other properties.
23. Unified Commercial Subdivision. The development may be re-subdivided as a Unified Commercial Subdivision with specific provisions for shared operations dealing with items such as maintenance and parking and the timing and extent of site improvements and with the establishment of a property owners association.

November 17, 2020
(public hearing)

13. **ADJOURNMENT**

On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by unanimous roll call vote by electronic means, the meeting of the November 17, 2020 public hearing adjourned at 12:36 a.m. on Wednesday, November 18, 2020. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."



Lisa C. Merkel
Mayor





Jessica Sizemore
Legislative Assistant

Minutes approved by Town Council: December 8, 2020.

**PARK PLACE
PROFFER STATEMENT
ZMA #19-02**

**August 25, 2020
October 29, 2020**

Stanley Martin Companies, LLC ("Stanley Martin") is the contract purchaser of certain property described as Fairfax County Tax Map 161-02-0015G (the "Property"), that is located in the Town of Herndon (the "Town") and consists of approximately 8.81 acres. Stanley Martin, along with the Property's owner, FMI Herndon Corporate Center LLC (the "Owner") (collectively, the "Applicant") hereby voluntarily proffer, pursuant to Section 15.2-2303 of the Code of Virginia (1950), as amended, and Section 78-51.1 of the Zoning Ordinance of the Town of Herndon (the "Zoning Ordinance"), that in the event the Property is rezoned by the Herndon Town Council to the Planned Development –Urban Residential ("PD-UR") zoning district pursuant to zoning map amendment application ZMA #19-02 (the "Application"), the development of the Property will be in substantial conformance with the following proffered terms and conditions (the "Proffers"). Said proffered terms and conditions supersede any prior proffers that have been offered for any portion of the Property. Stanley Martin and the Owner, for themselves, their successors and assigns, agree that these proffers will be binding on the future development of the Property unless modified, waived, or rescinded in the future by the Herndon Town Council in accordance with applicable Town and State statutory procedures. In the event that the application is denied, these proffers will be immediately null and void and of no further force and effect.

1. **Generalized Development Plan.** Development of the Property will be in substantial conformance with the Generalized Development Plan dated October 2, 2019, and revised through October 19, 2020, prepared by VIKA Virginia LLC, and consisting of 40 sheets (the "GDP"). The GDP will control the use, layout, and configuration of the Property with reasonable allowances to be made for engineering and design alterations to meet applicable regulations and policies governing land development within the Town, unless modified by the language of this approval. Should there be any inconsistencies between the GDP and these Proffers, the Proffers shall govern.
2. **Minor Modifications.** Minor modifications to the GDP may be permitted without the need for an amendment to this Application when necessitated by sound engineering or final site design or engineering provided that the development is in substantial conformance with the GDP, and as approved by the Town of Herndon Architectural Review Board ("ARB"). Substantial conformity will be determined by the Zoning Administrator as provided in the Zoning Ordinance.
3. **Future Applications.** Any portion of the Property may be the subject of a Proffered Condition Amendment ("PCA"), Zoning Map Amendment ("ZMA"), Special Exception ("SE"), Master Sign Plan ("MSP"), Variance or other zoning action without the joinder and/or consent of the owners of the other land areas, provided that such application complies with Section 15.2-2302 of the Code of Virginia, as applicable. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property that are not the subject of such an application will remain in full force and effect.

4. Proposed Development. The Property will be developed in accordance with the PD-UR standards, unless modified pursuant to this Application, to permit up to 85 single family townhouse units (the "Townhouses") and up to 56 stacked townhouse units (the "Stacked Townhouses"), for a total of 141 residential units (collectively, the "Proposed Development").

5. Phasing of Development. The Property may be developed in phases such that the existing office building in the southwest corner of the Property identified as 1165 Herndon Parkway (the "Existing Building") may remain as an interim condition as described herein and shown on the GDP, as follows:

- A. Existing Building. The Existing Building, surface parking areas, driveways, sidewalks/trails, landscaping, and stormwater management facilities existing within the Property as of the date of the approval of this Application will collectively be referred to herein as the "Existing Development." The Existing Development is shown on Sheet C-03 of the GDP and may remain in operation in its existing condition. The Applicant may make minor modifications to the Existing Development in accordance with Article XV of the Zoning Ordinance without the need for a PCA or ZMA. Any modifications or improvements to the Existing Development, including but not limited to interior and exterior improvements, the securing of site plan approvals, the issuance of building permits, the issuance of occupancy permits, or any other land development approvals or permits will not trigger any monetary contributions, on-site improvements, or off-site improvements identified in these Proffers and will not require any physical changes to the Existing Development. Any exterior modifications to the Existing Development may be subject to the approval of the ARB, unless determined otherwise by the Zoning Administrator.
- B. Phase 1. The development proposed with Phase 1 under this Application consists of 55 Townhouses, identified as Units 1 – 55, and 56 Stacked Townhouses, identified as Units 56 – 111, as shown on Sheet C-07 of the GDP. The Existing Building and associated portions of the Existing Development shown on Sheets C-03 and C-07 of the GDP may remain in operation in their existing condition during Phase 1 in accordance with Proffer 5.A above, provided, however, that during Phase 1 the Applicant also will have the right to make modifications to the Existing Development within the Phase 2 area of the Property identified as "Interim Improvements in Phase 2 to be provided in Phase 1" as shown on Sheet C-07 of the GDP. The Applicant may develop any portion of Phase 1 at any time, provided, however, that prior to the development of Phase 2 the Applicant will provide the site improvements associated with the Existing Building, including access, parking, and landscaping, as shown on Sheet C-07 of the GDP and further described in the Proffers.
- C. Phase 2. The development proposed with Phase 2 under this Application consists of 30 Townhouses, identified as Units 112 – 141, as shown on Sheet C-07A of the GDP. The Applicant may develop any portion of Phase 2 at any time.

6. Building Design. The Proposed Development will be developed in substantial conformance with the architectural design shown on Sheets A-01 and A-02 of the GDP (the "Conceptual Elevations"). The Conceptual Elevations are conceptual and may be modified by the Applicant as part of final architectural engineering and building design, provided such modifications are in substantial conformance with the GDP and these Proffers as determined by the Zoning Administrator. Notwithstanding anything to the contrary contained in this Proffer 6, the Applicant will be permitted to develop the Proposed Development in conformance with any review and approval as may be required by the ARB without the need to secure a PCA or ZMA.

7. Right of Way Dedication Along Herndon Parkway. The Applicant will dedicate right-of-way along the Property's frontage, at no public cost, as depicted on Sheet C-03B of the GDP and labeled "R.O.W. Dedication (9,639 S.F.)." The Applicant also will grant any related easements, at no public cost, outside of such dedicated right-of-way necessary to accommodate the construction of the public road (such as slope maintenance, storm drainage, temporary construction, and utility relocation easements), provided the Applicant will have no obligation to grant any such easements that are reasonably expected to have a material adverse impact on the development or ongoing operation of the Proposed Development. The Applicant will dedicate the right-of-way and grant any required easements to the Town prior to or concurrent with the approval of the first record plat or site plan for the Proposed Development, whichever occurs first. The Applicant may reserve intensity/density credits as may be permitted by the provisions or regulations of the Zoning Ordinance for any eligible dedication as may be required by the Town, the Virginia Department of Transportation or any other public entity.

8. Herndon Parkway Streetscape and Cycle Track. Prior to the issuance of: (i) the first occupancy permit for Lots 1-8, Lots 27-34, or Stacked Townhouses 106-111, or (ii) the 30th occupancy permit for the Proposed Development, whichever occurs first, the Applicant will construct streetscape improvements along Herndon Parkway, consisting of a minimum 6-foot wide street tree zone with street trees, a 9-inch concrete band, an 8-foot wide asphalt cycle track, a 9-inch concrete band, and a minimum 6-foot wide concrete sidewalk (the "Streetscape"), as shown on Sheets C-03B, C-06 and L-02 of the GDP. Notwithstanding the foregoing, the Applicant will have the right, subject to site plan approval, to provide an interim construction access to the Property from Herndon Parkway through the Streetscape area during Phase 1 to facilitate the Applicant's construction of the Proposed Development.

9. Open Space and Recreational Amenities. The Applicant will provide a minimum of five open space areas with recreational features/amenities as shown on Sheets C-06, C-06A, C-06B, C-06C and L-03 of the GDP as follows:

- A. Open Space 1. The Applicant will install an approximately 9,000-square-foot park and open space area proximate to Herndon Parkway to serve as an entry feature and gathering area for the Property generally as depicted on Sheets C-06 and C-06A of the GDP ("Open Space 1"). Open Space 1 will include features for passive recreation including, but not limited to, lawn areas, hardscape, landscape areas, benches/seating areas, a bicycle amenity/repair station, and similar amenities as conceptually shown on Sheet C-06A of the GDP. The Applicant may adjust the type and location of vegetation, the design of the open space, and the features/amenities comprising Open Space 1, provided the character and quality of

Open Space 1 is consistent with Sheet C-06A of the GDP. The Applicant also may adjust the extent of Open Space 1, provided such open space is in substantial conformance with the Sheet C-06A of the GDP as determined by the Zoning Administrator. The Applicant will install Open Space 1 prior to the issuance of the first occupancy permit for Lots 27-34.

- B. Open Space 2. The Applicant will install an approximately 22,000-square-foot linear park and open space area along the western boundary of the Property generally as depicted on Sheets C-06 and C-06C of the GDP ("Open Space 2"). Open Space 2 will include features for active recreation including, but not limited to, a five-foot (5') wide trail, a minimum of six (6) exercise stations, lawn areas, landscape areas, and similar amenities as conceptually shown on Sheet C-06 of the GDP. The Applicant may adjust the type and location of vegetation, the design of the open space, and the features/amenities comprising Open Space 2, provided the character and quality of Open Space 2 is consistent with Sheet C-06 of the GDP. The Applicant also may adjust the extent of Open Space 2, provided such open space is in substantial conformance with the Sheets C-06 and C-06C of the GDP as determined by the Zoning Administrator. The Applicant will install Open Space 2 in phases, installing the portion within Phase 1 prior to the issuance of the eleventh (11th) occupancy permit for Lots 1 and 9-18, and install the portion within Phase 2 prior to the issuance of the eleventh (11th) occupancy permit for Lots 129-141.
- C. Open Space 3. The Applicant will install an approximately 2,600-square-foot park and open space area along the southern boundary of the Property generally as depicted on Sheets C-06 and C-06C of the GDP ("Open Space 3"). Open Space 3 will include features for passive and active recreation including, but not limited to, lawn areas, landscape areas, a children's play area (tot lot), and similar amenities as conceptually shown on Sheet C-06 of the GDP. The Applicant may adjust the type and location of vegetation, the design of the open space, and the features/amenities comprising Open Space 3, provided the character and quality of Open Space 3 is consistent with Sheet C-06 of the GDP. The Applicant also may adjust the extent of Open Space 3, provided such open space is in substantial conformance with the Sheets C-06 and C-06C of the GDP as determined by the Zoning Administrator. The Applicant will install Open Space 3 prior to the issuance of the first occupancy permit for Lots 56-71.
- D. Open Space 4. The Applicant will install an approximately 17,000-square-foot park and open space area in the center of the Property generally as depicted on Sheets C-06 and C-06B of the GDP ("Open Space 4"). Open Space 4 will include features for passive and active recreation including, but not limited to, lawn areas, hardscape/stamped concrete, landscape areas, benches/seating areas, and similar amenities as conceptually shown on Sheets C-06 and C-06B of the GDP. The Applicant may adjust the type and location of vegetation, the design of the open space, and the features/amenities comprising Open Space 4, provided the character and quality of Open Space 4 is consistent with Sheet C-06B of the GDP. The Applicant also may adjust the extent of Open Space 4, provided such open space is in substantial conformance with the Sheets C-06 and C-06B of the GDP as

determined by the Zoning Administrator. The Applicant will install Open Space 4 in phases, installing the portion within Phase 1 and the interim portion of Open Space 4 within the Phase 2 area identified as "Interim improvements in Phase 2 to be provided in Phase 1" as shown on Sheet C-07 of the GDP prior to the issuance of the first occupancy permit for Lots 43-46, and the ultimate portion of Open Space 4 within Phase 2 as shown on Sheet C-07A of the GDP prior to the issuance of the first occupancy permit for Lots 112-114.

- E. Open Space 5. The Applicant will install an approximately 5,000-square-foot open space area along the eastern boundary of the Property generally as depicted on Sheets C-06 and C-06C of the GDP ("Open Space 5"). Open Space 5 will include landscaping and hardscaping to invite residents outside, as conceptually shown on Sheets C-06 and C-06C of the GDP. The Applicant may adjust the type and location of vegetation, the design of the open space, and the features/amenities comprising Open Space 5, provided the character and quality of Open Space 5 is consistent with Sheets C-06 and C-06B of the GDP. The Applicant also may adjust the extent of Open Space 5, provided such open space is in substantial conformance with Sheet C-06 of the GDP as determined by the Zoning Administrator. The Applicant will install Open Space 5 prior to the issuance of the seventh occupancy permit for Lots 94-105.
- F. Remaining Open Space Areas. The Applicant will install the remainder of the open space areas and landscaping not designated as Open Spaces 1 – 5 above concurrently with the development of the Townhouses and/or Stacked Townhouses adjacent to or in the vicinity of such open space areas on a phased basis with the occupancy of each grouping of Townhouses or Stacked Townhouses as shown on Sheet L-03A of the GDP.
- G. Public Access. As part of site plan approval for the Proposed Development, the Applicant will grant a public access easement for Open Space 1 to the Town of Herndon as shown on Sheet C-03A of the GDP. The public access easement will provide that Open Space 1 will, at a minimum, be open to the general public from dawn to dusk, provided that the Applicant reserves the right to: (i) establish reasonable rules and regulations governing the use of Open Space 1, (ii) temporarily limit access to Open Space 1 for reasonable periods of time for purposes of construction and/or maintenance, and (iii) temporarily limit access to Open Space 1 as may be necessary to host programmed events for residents of the Proposed Development and/or the local community. Within ninety (90) days of a request by the Town of Herndon, the Applicant also will grant a public access easement for pedestrian and vehicular ingress and egress through the Property in the locations shown on Sheet C-03A of the GDP, provided that the Applicant reserves the right to: (i) establish reasonable rules and regulations governing the pedestrian and vehicular connections, (ii) temporarily limit access to the pedestrian and vehicular connections for reasonable periods of time for purposes of construction and/or maintenance, and (iii) include a condition in the easement that the right of access by the public will not commence until the establishment of the first pedestrian or vehicular connection identified as "Future Pedestrian Connection" and "Future

Road Connection” as shown on Sheet C-06 of the GDP in accordance with Proffer 13 below.

10. **Monetary Recreational Contribution.** Due to the increase in demand that the Townhouses and Stacked Townhouses will place of the Town of Herndon’s recreational facilities and services, the Applicant will contribute \$1,800 per residential unit to the Town of Herndon prior to the issuance of the occupancy permit for each such residential unit. The Applicant also will provide recreational facilities within the Property with a minimum expenditure of \$1,800 per residential unit for such on-site recreational facilities.

11. **Landscape Plan.** Landscaping and tree preservation will be provided on the Property as shown on Sheets L-02 and L-04 of the GDP. The Applicant may modify the landscaping design during site plan review to allow for final engineering and design considerations, provided that such modifications are in substantial conformance with the quality and quantity of plantings and materials as shown on the GDP. With the exception of open lawn areas consisting of turf, the Applicant will use principally native species, to be determined by the Applicant in consultation with the Town, for landscaping in Open Space 1, Open Space 2, Open Space 3, Open Space 4, and Open Space 5.

12. **Green Building Certification.** To promote energy conservation and green building techniques, all new dwelling units on the Property will be constructed to achieve the following program or an alternative third-party certification as approved by the Town’s Department of Community Development. Selection of one of the following certification methods, or an alternative, will be within the Applicant’s sole discretion at time of site plan submission:

- A. **Earth Craft.** Certification in accordance with the Earth Craft House Program as demonstrated through documentation provided to the Town prior to the issuance of the residential occupancy permit for each dwelling unit; or
- B. **National Green Building Standard.** Certification in accordance with the National Green Building Standard (NGBS) using the ENERGY STAR® Qualified Homes path for energy performance, as demonstrated through documentation submitted to the Town from a home energy rater certified through Home Innovation Research Labs that demonstrates that the dwelling unit has attained the certification prior to the issuance of the occupancy permit for each dwelling; or
- C. **Alternative Program.** Where the Applicant has provided evidence sufficient for the Town to find that an alternative green building program that is administered by an independent third party or a proprietary homebuilders certification program or set of building standards (including, but not limited to, the Stanley Martin Homes Green Living Program) has demonstrated equivalence to Earth Craft, NGBS, or another independent third party rating system and will ensure that equivalent environmental and energy efficiency will be achieved in the project, the Zoning Administrator may approve the use of such alternative program, subject to such conditions as may be reasonably necessary to ensure that the alternative program will achieve the goals of this proffer prior to the issuance of the first building permit.

13. Future Pedestrian and Vehicular Connections.

- A. Eastern Boundary. The Applicant will grant interparcel access easements and temporary construction and grading easements to the owner(s) of the property identified on the Fairfax County Tax Map as 16-1 ((2)) 15D and 15E (collectively, the "Shopping Center Property") in the general locations identified as "Future Pedestrian Connection" and "Future Road Connection" as shown on Sheet C-06 of the GDP within ninety (90) days of a request by the Town of Herndon, provided that such easements may include a condition that the owner(s) of the Shopping Center Property will not be permitted to install physical improvements to effectuate any pedestrian and/or vehicular connection(s) utilizing such temporary construction and grading easements or interparcel access easements prior to the owner(s) of the Shopping Center Property having obtained approval of a Zoning Map Amendment by the Town of Herndon that requires such interparcel access connection(s). Notwithstanding the general location of the interparcel access easements and temporary construction and grading easements identified on Sheet C-06 of the GDP, the final location of such easements may be adjusted as mutually agreed upon by the Applicant, the Town of Herndon, and the owner(s) of the Shopping Center Property. Notwithstanding the foregoing, the Applicant will construct the southernmost eastern pedestrian connection to the eastern boundary line of the Property and grant an interparcel access easement to the owner(s) of the Shopping Center Property prior to the issuance of the first occupancy permit for Lots 72 – 77, provided that the owner(s) of the Shopping Center Property concurrently grant an interparcel access easement for the benefit of the Property to access the Shopping Center Property.
- B. Western Boundary. The Applicant will grant an interparcel access easement and temporary construction and grading easement to the owner of the property identified on the Fairfax County Tax Map as 16-1 ((15)) C (the "Four Seasons Property") in the general location identified as "Future Pedestrian Connection" along the western boundary of the Property, as shown on Sheet C-06 of the GDP within ninety (90) days of a request by the Town of Herndon, provided that the granting of such easements will be subject to the approval of the owner of the Four Seasons Property. Notwithstanding the general location of the interparcel access easement and temporary construction and grading easement identified on Sheet C-06 of the GDP, the final location of such easements may be adjusted as mutually agreed upon by the Applicant, the Town of Herndon, and the owner of the Four Seasons Property.
- C. Southern Boundary. The Applicant will grant an interparcel access easement to the owner of the property identified on the Fairfax County Tax Map as 16-1 ((08)) B (the "Reflection Lake Townhouse Property") in the general location identified as "Future Pedestrian Connection" along the southern boundary of the Property, as shown on Sheet C-06 of the GDP and install a gate to allow access through the existing fence within ninety (90) days of a request by the Town of Herndon, provided that the granting of such easement and installation of the gate will be subject to the approval of the owner of the Reflection Lake Townhouse Property.

Notwithstanding the general location of the interparcel access easement and identified on Sheet C-06 of the GDP, the final location of such easement may be adjusted as mutually agreed upon by the Applicant, the Town of Herndon, and the owner of the Reflection Lake Townhouse Property.

14. Bicycle Racks. The Applicant will provide at least two bicycle racks to accommodate a minimum of eight total bicycles within the Property generally as shown on Sheet C-06A of the GDP. The Applicant will determine the final locations of the bicycle racks in consultation with Town of Herndon prior to site plan approval for the Proposed Development. The bicycle racks will be designated on the site plan and installed prior to the issuance of the first occupancy permit for the Proposed Development.

15. Property Owners Association.

- A. Purpose. All property owners at the Property will be a member of a Property Owners Association ("POA") established to provide standards for the construction, landscaping, and use of privately-owned land and structures within the Property. The Applicant intends to establish an overall, umbrella POA at the Property (referred to herein as the "POA").
- B. Responsibilities. The POA will provide landscaping and lawn maintenance for all common areas and snow removal on all private streets, and will contract for trash removal services. The POA will be responsible for the maintenance of all common recreational facilities and buildings, all stormwater management facilities, all private streets, and all sidewalks and trails, not otherwise maintained by the Town or VDOT.
- C. Establishment. Prior to the approval of the first site plan for the Proposed Development, the Applicant will submit draft documents for the establishment of the POA to the Town for review and approval. The POA will be established prior to recordation of the first record plat for the Proposed Development.

16. Public Schools Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Fairfax County Board of Supervisors on January 7, 2003, prior to the issuance of a building permit for each residential unit, the Applicant will contribute \$5,665 per Townhouse unit and \$4,034 per Stacked Townhouse unit (based on an assumed rate of 0.462 students per Townhouse unit and 0.329 students per Stacked Townhouse unit included in such building permit application multiplied by \$12,262.00 per new student generated) to the Town of Herndon for transfer to the Fairfax County School Board to be utilized for capital improvements and capacity enhancements to schools in the Herndon School Pyramid that serve the Property. The Applicant will provide documentation of the payment of such contributions to the Town of Herndon Zoning Administrator. The contributions will be based on the actual number of units constructed, so the total amount may vary. Following approval of this Application and prior to the first site plan approval for the Proposed Development, if Fairfax County should modify the ratio of students per Townhouse unit or Stacked Townhouse unit or the amount of contribution per student on a Countywide basis, the Applicant will pay the modified contribution amount to reflect the then-current ratio and/or contribution. Prior to the commencement of construction for the

Proposed Development, the Applicant will notify the Fairfax County Public Schools of the intended construction and anticipated completion date for the Townhouses and Stacked Townhouse on the Property.

17. Universal Design. The Applicant will offer the following Universal Design Options in all residential units on the Property:

- A. At the time of initial purchase, for units that have not yet been constructed, each purchaser will be offered the following Universal Design Options in all residential units on the Property at no additional cost to the purchaser:
 - 1. Blocking for reinforcement of fall grab bars;
 - 2. Front entrance doors that are a minimum of 36 inches wide;
 - 3. Electrical outlets that are a minimum of 18 inches high on the wall;
 - 4. Light switches and thermostats that are located a maximum of 48 inches high on the wall. Thermostats will be relocated to a maximum of 48 inches high on the wall at the request of the original home purchaser at the time of sale;
 - 5. Clear knee space under the kitchen sink; and
 - 6. Lever door handles instead of door knobs.
- B. In addition to the Universal Design Options offered pursuant to Proffer 17.A above, at the time of initial purchase, and prior to construction, each purchaser will be offered the following additional Universal Design options at the purchaser's sole cost, which will include, but not necessarily be limited to:
 - 1. A curb-less shower or a shower with a maximum two inch high curb;
 - 2. Step-less entry for ground floor residential units from the garage to the house, to the extent permitted by the then current edition of the Virginia Statewide Building Code;
 - 3. A turning radius of five feet near the first floor bathroom commode;
 - 4. ADA-compliant grab bars in the bathrooms; and
 - 5. A first floor bathroom console sink in lieu of a cabinet-style vanity.

18. Garage Use Restrictions. Any conversion or use of garages that precludes the parking of vehicles and the storage of trash and recycling containers within such garages is prohibited. Owners of the Townhouses and Stacked Townhouses will be required to store trash and recycling containers inside their garages, except on collection days. A covenant setting forth these restrictions will be recorded among the land records of Fairfax County in a form approved by the

Town Attorney, which may be part of any recorded HOA/COA declaration, prior to the sale of any Townhouses or Stacked Townhouses and will run to the benefit of the HOA/COA and the Town of Herndon. These restrictions will be included in the marketing materials for the initial sales of the units and disclosed in the HOA/COA documents. Prospective purchasers will be advised of these restrictions, in writing, prior to entering into a contract of sale for any unit.

19. Recreational Vehicle Restrictions. A covenant prohibiting the parking of recreational vehicles within the Property will be recorded among the land records of Fairfax County in a form approved by the Town Attorney, which may be part of any recorded HOA/COA declaration, prior to the sale of any Townhouse or Stacked Townhouse and will run to the benefit of the HOA/COA and the Town of Herndon. This restriction will be included in the marketing materials for the initial sales of the units and disclosed in the HOA/COA documents. Prospective purchasers will be advised of this restriction, in writing, prior to entering into a contract of sale for any unit.

20. Public Safety Contribution. Prior to the issuance of the 30th occupancy permit for the Proposed Development, the Applicant will contribute \$17,500 to the Town of Herndon toward the cost of the Town equipping a uniformed police officer.

21. Herndon Parkway Signage. Prior to the issuance of the 30th occupancy permit for the Proposed Development, the Applicant will install signage along Herndon Parkway, to be determined in consultation with the Town prior to site plan approval, to warn drivers on Herndon Parkway of turning vehicles exiting the Property.

22. Zoning Administrator Extensions. Notwithstanding the foregoing commitments in these Proffers, upon demonstration by the Applicant that, despite diligent efforts by the Applicant or due to factors beyond the Applicant's control, any improvements and/or contributions required under these Proffers have been delayed or will be delayed beyond the time frames specified for the completion of such improvements and/or contributions, the Zoning Administrator may extend the timeframes for completion to a later date as determined by the Zoning Administrator.

23. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to "Applicant" in this proffer statement will include within its meaning and will be binding upon Applicant's successor(s) in interest and/or developer(s) of the Property or any portion of the Property.

24. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed and delivered will be deemed an original, and all of which taken together will constitute but one and the same instrument.

25. Escalator. Unless otherwise specified in these Proffers, all cash contributions enumerated in these Proffers will be subject to an annual adjustment based on the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as published by the Bureau of Labor Statistics, U.S. Department of Labor, Washington-DC-MD-VA-WV with a base year of 2020, in accordance with Section 15.2-2303.3 of the Code of Virginia. This adjustment will take effect on January 1, 2021, and will be applied effective each January 1 thereafter.

[SIGNATURE PAGES TO FOLLOW]

The undersigned hereby warrant that all owners with any legal interest in the Property have signed this Proffer Statement, that no signature from any additional party is necessary for these proffers to be binding and enforceable in accordance with their terms, that they, together with any others signing this document, have full authority to bind the Property to these conditions, and that the Proffers are entered into voluntarily.

OWNER:

FMI HERNDON CORPORATE CENTER LLC

BY: _____

NAME: DAVID FINK

TITLE: MANAGER

STATE OF Maryland)

) to-wit:

COUNTY/CITY OF Montgomery

The foregoing Proffer Statement was acknowledged before me this 3rd day of November, 2020, by

[Signature]
Notary Public

My Commission Expires: June 15, 2021

SARAH E GRAHAM
Notary Public-Maryland
Montgomery County
My Commission Expires
June 15, 2021

APPLICANT:

STANLEY MARTIN COMPANIES, LLC

BY: *J. Truett Young*

NAME: J. Truett Young

TITLE: Vice President of Land

STATE OF Virginia)

) to-wit:

COUNTY/CITY OF Fairfax)

The foregoing Proffer Statement was acknowledged before me this 4th day of November, 2020, by

Bryan Steffen
Notary Public

My Commission Expires: January 31, 2024



NOTE:

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