



PLANNING COMMISSION WORK SESSION AGENDA

Town Council Chambers Building
765 Lynn Street, Herndon, VA 20170

Monday, September 8, 2025 | 7:00 PM

- 1. Call to Order**
- 2. Public Hearings**
 - a. ZOTA #25-04, to amend Chapter 78 (ZONING) to update sections for conformance with the Code of Virginia, to clarify certain processes, notice requirements, and make other housekeeping amendments as deemed necessary and appropriate.
- 3. Comments**
 - a. Comments from the Staff Members
 - b. Comments from the Commissioners
- 4. Adjournment**

Agenda Item: ZOTA #25-04, to amend Chapter 78 (ZONING) to update sections for conformance with the Code of Virginia, to clarify certain processes, notice requirements, and make other housekeeping amendments as deemed necessary and appropriate.

Meeting Date: September 8, 2025

Category: Public Hearings

Prepared by: David Stromberg, Zoning Administrator, Lauri Sigler, Deputy Town Attorney

Description:

This zoning ordinance text amendment will update sections for conformance with the Code of Virginia, will clarify certain processes, notice requirements, and make other housekeeping amendments. A summary of the changes are below.

1. Section 78-152.1. The Code of Virginia does not allow localities to require a pre-application meeting prior to applicant submission of a site plan or subdivision, so the requirement has been deleted. The language has been clarified to require a pre-application meeting for all discretionary development applications, such as special exceptions, rezonings, and HTOC development plans.
2. Section 78-152.5 and Section 78-153.1. The language has been clarified to eliminate internal inconsistencies and specify that an application may be deemed expired if a resubmission is not received within 90 days. Section 78-153.2. The language has been clarified regarding public notice requirements for mailing and posting signs.
3. Section 78-155.1. The language updates the number of hard copy submissions for rezoning applications and eliminates the language regarding expiration of planned development districts.

Background:

Staff initiated a review of the Herndon Zoning Ordinance after the passage of House Bill 2660 that amended and reenacted Sections 15.2-2259 and 15.2-2260 of the Code of Virginia, which shortened the time allowed for localities to review administrative site plans and subdivisions, that became effective July 1, 2025. While staff did not find that specific amendments were required for conformance with HB 2660, staff did find other sections in Article XV in need of amendment to bring the Herndon Zoning Ordinance into compliance with Code of Virginia, and to clarify and simplify administrative

processes in general.

The Herndon Town Council initiated this zoning ordinance text amendment at its August public hearing.

Fiscal Impact:

N/A

Staff Recommendation/Next Steps:

Staff will be recommending that the planning commission recommend approval of ZOTA #25-04 to the town council.

Attachments:

1. Ordinance (Proposed)

TOWN OF HERNDON, VIRGINIA
TOWN COUNCIL

ORDINANCE

_____, 2025

Ordinance- to adopt Zoning Ordinance Text Amendment ZOTA #25-04 to amend Chapter 78 (ZONING), Article XV (Decision-Making Authorities, Application Review and Permitting), by amending Section 78-152.1 (Pre-application Procedures); and Section 78-152.5 (Diligent Pursuit of Application); and Section 78-153.1 (Review Process for Applications Not Requiring a Public Hearing (Administrative Approval)); and Section 78-153.2 (Review Process for Application Requiring a Public Hearing (Approval by Decision Making Body)); and Section 78-155.1 (Zoning Map Amendment (ZMA)); and other sections as deemed necessary and appropriate to update sections for conformance with the Code of Virginia, to clarify certain processes, notice requirements, and make other housekeeping amendments as deemed necessary and appropriate.

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

1. The following sections or provisions of the Herndon Town Code (2000), as amended, are amended and re-ordained as follows:

CHAPTER 78 (ZONING)

Article XV. – Decision-Making Authorities, Application Review and Permitting

Sec. 78-152.1 – Pre-application review

(a) *Pre-application conference.* A pre-application meeting with staff is available to all applicants and required for certain types of applications as follows.

(1) *Purpose.* The purpose of a pre-application conference is to familiarize the applicant and the town staff with the applicable provisions of this chapter for the proposed development, to inform the applicant about the preparation of the application, and the application process.

(2) *Applicability.* A pre-application conference is mandatory prior to submittal of **a special exception and any application for an amendment to the official zoning map, including changes to the zoning classification, proffer condition amendments, PD-TOC and PD-TRG development plans, and generalized development plan (GDP) revisions.** ~~any application for an amendment to the official zoning map~~

YEAR-O-XX

46 ~~(section 78-155.1), special exception (section 78-155.3), single lot~~
47 ~~development plan (section 78-155.6(e)), site plans (major and minor)~~
48 ~~(section 78-155.6(e)(3)), and subdivision plans. A pre-application~~
49 conference is optional **but strongly encouraged** prior to submittal of any
50 other application for development approval under this chapter.

51 (3) *Non-binding*. The pre-application conference is intended to facilitate
52 the review of development applications **and identify potential**
53 **modification requests**. Discussions held pursuant to this section are not
54 binding on the town or applicant. Processing times for review of
55 development applications do not begin until a formal, complete application
56 is submitted and determined to be complete.

57 (4) *Procedure*. The procedure for the pre-application conference request
58 and meeting is as follows:

59 a. Any applicant subject to a mandatory pre-application
60 conference or any other applicant requesting a pre-application
61 conference shall **submit an application on a form approved by**
62 ~~request it in writing from~~ the zoning administrator. Along with the
63 request, the applicant shall provide ~~to the zoning administrator a~~
64 description of the character, location, and magnitude or scale of the
65 proposed development, and any other appropriate supporting
66 information and documents, such as a sketch or concept plan (if
67 appropriate).

68 b. Upon receipt of the request, the zoning administrator may waive
69 this pre-application requirement if it is determined that the nature and
70 magnitude of the project do not make it necessary for the applicant
71 to be familiar with the application provisions of this chapter, or for the
72 staff to be familiar with the project proposal prior to the application
73 submittal.

74 c. The zoning administrator shall schedule promptly a pre-
75 application conference after receipt of the request and the
76 appropriate submittal materials. The zoning administrator shall
77 review the materials and forward them to other members of the town
78 staff, and to any local, regional, state, and federal agency officials
79 the zoning administrator determines should participate in the pre-
80 application conference.

81 d. At the pre-application conference the applicant, the zoning
82 administrator, and any other town staff and local, regional, state, or
83 federal representatives the zoning administrator determines
84 appropriate, shall discuss the proposed development, and based
85 upon the information provided by the applicant, identify in general
86 what provisions apply to the proposed development. The zoning
87 administrator shall generally inform the applicant regarding
88 necessary application materials and provide estimates of the timing
89 of review.

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Sec. 78-152.5 – Diligent pursuit of application

Applications shall be diligently pursued by the applicant. If a period of 90 days elapses following the town's written request for additional information **or disapproval of an application for failure to comply with the relevant review standards, or following the town's** invitation to proceed to the next stage of review without a substantive response from the applicant, the zoning administrator may terminate the application. Termination shall occur by letter to the applicant.

Sec. 78-153.1 – Review process for applications not requiring a public hearing (administrative approval).

Review and decision of applications for development approval conducted by the zoning administrator shall comply with the following procedures.

(a) *General review.* After the application is deemed complete (section 78-152.3), the zoning administrator shall review the application and determine whether or not the application complies with the applicable review standards. The zoning administrator may refer any application to other members of the town staff for recommendations.

(b) *Approval.* If the zoning administrator determines the application complies with the applicable review standards, the application shall be approved or approved with conditions (if appropriate), and a notice of decision provided to the applicant.

(c) *Applications requiring revision prior to approval.*

(1) *Identification of deficiencies.* If the zoning administrator determines the application fails to comply with the applicable review standards, the zoning administrator shall identify why the application fails to comply, and provide this information to the applicant. At the applicant's request, the zoning administrator will schedule a meeting with the applicant to discuss the application.

(2) *Submittal of revised application and time limit for resubmission.* The applicant shall have an opportunity to re-submit a revised application **subject to**. ~~The application shall be considered withdrawn if a revised application is not resubmitted within 60 days from the date the applicant is notified the application fails to comply with relevant review standards.~~
Section 78-152.5 – Diligent pursuit of application.

(3) *Review of revised application.* A revised application shall be reviewed by the zoning administrator after its re-submittal and approved, approved with conditions, or disapproved, based on the applicable review standards.

132 (4) *Time limit for action.* Any time limits for action shall begin anew upon
133 the acceptance of the revised application.

134 **Sec. 78-153.2 – Review process for applications requiring a public hearing**
135 **(approval by decision making body).**
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138 (a) *Initial staff review.* The zoning administrator shall refer the application to the
139 appropriate staff and any other review agencies for comment and review of the
140 application. After the review comments have been returned to the zoning
141 administrator, the zoning administrator shall determine whether or not the
142 application is suitable to be presented for consideration by the relevant reviewing
143 board, council or commission.

144 (b) *Notification of deficiencies.* If the zoning administrator finds that the
145 application does not comply with applicable regulations, standards, or policies of
146 the comprehensive plan (where applicable), the applicant shall be notified of the
147 deficiencies, in writing.

148 (c) *Applicant response to staff comments/deficiencies.* After initial review of the
149 application, review of the development application shall proceed as determined by
150 the applicant and zoning administrator subject to the following provisions.

151 (1) *Submittal of revised application.* The applicant may correct the
152 deficiencies and resubmit the application for compliance review.

153 (2) *Continuation with original application.* The applicant may request in
154 writing that the application go forward without change to a public hearing
155 before the applicable board, commission or council.

156 (3) *Time limit for applicant response.* **The applicant shall have an**
157 **opportunity to re-submit a revised application subject to** ~~If the applicant~~
158 ~~fails to resubmit or to request that the application go forward within 60~~
159 ~~working days after notification of the deficiencies is mailed or delivered, the~~
160 ~~application shall be considered withdrawn. Withdrawn applications and~~
161 ~~associated application fees shall not be returned.~~ **Section 78-152.5 –**
162 **Diligent pursuit of application.**

163 (d) *Subsequent staff review.* If the applicant re-submits the application, the
164 zoning administrator shall refer the application to the appropriate staff and any
165 other review agencies for comment. After comments have been returned to the
166 zoning administrator, the zoning administrator shall determine whether or not the
167 application is suitable to be presented for consideration by the relevant reviewing
168 board, council or commission. ~~If the zoning administrator finds that the application~~
169 ~~does not comply with applicable regulations, standards or policies of the~~
170 ~~comprehensive plan (where applicable), then an additional round of submittal and~~
171 ~~review shall be recommended to the applicant subject to section 153.3.2(c).~~

172 (e) *Referral to decision making body public hearing.* If the zoning administrator
173 finds that the application is suitable to be presented for consideration by the
174 relevant reviewing body, or upon receipt of a request from the applicant to take the

175 application forward without further revision, the zoning administrator shall refer the
176 application to the appropriate reviewing body, schedule a public hearing, and notify
177 the applicant of the hearing date. The public hearing(s) on the application shall be
178 scheduled so there is sufficient time for preparation of the staff report and public
179 notification.

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

182 (1) *Staff report contents.* The staff report shall state whether or not the
183 application complies with appropriate standards of this chapter. The staff
184 report shall include a recommendation that the reviewing body approve,
185 approve with changes, approve with conditions (if approval with conditions
186 is applicable to the particular application), or disapprove the application. If
187 approval with conditions is applicable, the staff report may recommend that
188 conditions for approval be applied to mitigate adverse effects of the
189 development proposal. The staff report may also recommend changes to
190 the application that will result in compliance with the relevant review
191 standards and policies of the comprehensive plan (where applicable).

192 (2) *Staff report availability.* The staff report shall be available to the
193 applicant and the public **at the same time the agenda packet and all other**
194 **materials are furnished to members of the public body** ~~a minimum of~~
195 ~~five days before the first scheduled work session for applications to the~~
196 **board of zoning appeals**, architectural review board, historic district review
197 board, planning commission and town council. ~~For the board of zoning~~
198 ~~appeals, the staff report shall be available to the applicant and the public a~~
199 ~~minimum of five days before the first scheduled public hearing.~~

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

202 (1) *Zoning text amendment, zoning map amendment, PD District*
203 *classification, special exception, comprehensive plan amendment, and*
204 *proffer condition amendment.* The town shall conduct at least two public
205 hearings (one hearing at the planning commission level and one hearing at
206 the town council level) for applications for text amendments, amendments
207 to the official zoning map, planned development (PD) zoning district
208 classifications, special exceptions, comprehensive plan amendments, and
209 proffer condition amendments. When unusual circumstances warrant, the
210 public hearing of the planning commission and the public hearing of the
211 town council may be combined into a joint public hearing, at the direction of
212 the town council.

213 (2) *Certificate of appropriateness.* The historic district review board shall
214 conduct at least one public hearing for applications for certificates of
215 appropriateness **that are subject to historic district board review. A**
216 **public hearing is not required for certificates of appropriateness**
217 **administratively reviewed under the provisions of Section 78-**
218 **60.3(g)(4)(a).**

219 (3) *Variance and appeal of determination.* The board of zoning appeals
220 shall conduct at least one public hearing for applications for variances, and
221 appeals from determinations by of the zoning administrator.

222 (4) *Applications to the ARB (except sign permits).* The architectural
223 review board shall hold public hearings as provided in Chapter 58 of the
224 Herndon Town Code.

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

228 (1) *Public notice content.* All notices for public hearings, unless expressly
229 noted otherwise by this chapter, whether done by mail (written notice),
230 publication (publishing in a newspaper of general circulation in the town), or
231 posting shall:

232 a. Identify the application or application number, and the name of
233 the applicant or the applicant's agent (except posted notice).

234 b. Indicate the date, time and place of the public hearing(s).

235 c. Describe the land involved by its complete street address and
236 by county tax map reference number, nearest cross street, and land
237 area (except posted notice).

238 **(i) When a proposed amendment of the zoning ordinance**
239 **involves a change in the zoning map classification of**
240 **more than 25 parcels of land, or a change to the**
241 **applicable zoning ordinance text regulations that**
242 **decreases the allowed dwelling unit density of any parcel**
243 **of land, then, the written notice shall also include the**
244 **approximate acreage subject to the action.**

245 **(ii) When a proposed amendment of the zoning ordinance**
246 **involves a change in the zoning map classification of**
247 **more than 100 parcels of land, the advertisement may**
248 **instead include a description of the boundaries of the**
249 **area subject to the changes and a link to a map of the**
250 **subject area.**

251 d. Identify the current zoning district designation of the land subject
252 to the application.

253 e. **Applications need not be advertised in full, but may be**
254 **advertised by reference with a brief** ~~Provide a descriptive~~
255 ~~summary of the nature, scope, and purpose of the application or~~
256 ~~proposal. For an amendment to the official zoning map, describe the~~
257 ~~general usage and density range of the proposed amendment and~~
258 ~~the general usage and density range, if any, set forth in the~~
259 ~~applicable part of the comprehensive plan.~~

260 f. Describe in which department the public may inspect **examine**
261 the application, the staff report, and related materials, and state that
262 these materials are available for public inspection during normal
263 business hours.

264 g. Include a statement describing where interested members of the
265 public and adjoining property owners may submit written comments
266 or evidence prior to the public hearing(s).

267 h. Include a statement that interested members of the public and
268 adjoining property owners may appear at the public hearing, be
269 heard, and submit evidence and written comments with respect to
270 the application.

271 i. Identify the owner of the land involved and the name of the
272 applicant if different than the owner.

273 (2) *Written/mailed notice.* When the provisions of this chapter (see section
274 78-153.2(h)(5)) require that written or mailed notice be provided, the
275 preparation and transmittal of the written notice shall comply with this
276 section, unless expressly stated otherwise.

277 a. Notice shall be mailed at least 15 days prior to the associated
278 public hearing.

279 b. Notice shall be mailed to:

280 1. The owner of the property that is the subject of the
281 application (if different from the applicant) including:

282 (a) If any portion of the property in the case is within
283 a planned development, to the homeowner's
284 association.

285 (b) In the case of a condominium, written notice may
286 be mailed to the unit owner's association in lieu of each
287 individual unit owner.

288 2. The owners of abutting property, which shall mean
289 property (whether inside or outside the town) that touches the
290 property that is the subject of the application and any property
291 directly across the street or road and, in the case of a corner
292 lot, diagonally faces the property that is the subject of the
293 application, including:

294 (a) If any portion of the abutting property is within a
295 planned development, to the homeowner's
296 association.

297 (b) In the case of a condominium, written notice may
298 be mailed to the unit owner's association in lieu of each
299 individual unit owner.

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3. Owner, owners, or their agent of each parcel of land involved in cases where a zoning map amendment or text amendment to this chapter (in accordance with the Code of Virginia, § 15.2-2204):

(a) Involves a change in the zoning map classification of 25 or fewer parcels of land; or

(b) Involves a change in the zoning map classification of more than 25 parcels of land, except such written notice shall not be required if the subject lots are less than 11,500 square feet in size.

(c) Would decrease the allowed dwelling unit density of any parcel of land, except such written notice shall not be required if the subject lots are less than 11,500 square feet in size.

4. The chief administrative officer of adjacent jurisdictions within one-half mile of property subject to a proposed change in zoning map classification; or an application for special exception to increase the height or bulk of an existing structure by more than 50 percent.

5. The applicant shall be responsible for providing written notice when the public hearing is before the planning commission or town council. In identifying the persons to whom written notice is required to be provided pursuant to section 78-153.2(h)(5), the applicant shall use the records and maps maintained by the Fairfax County Department of Tax Administration, and reliance upon these records shall constitute sufficient compliance with the requirements of this section. The applicant shall certify, in a form prescribed by the zoning administrator, that notice meeting the requirements of section 78-153.2(h)(5), has been given pursuant to the requirements of this section.

(a) In cases where 25 or fewer parcels of land are subject to an application to amend the official zoning map, certification shall be made by furnishing the certified or registered mail receipts for persons to whom notice has been sent **if applicable**, along with an affidavit with affirmation that notice meeting the content requirements of section 78-153.2(h)(1), was mailed **either via first class mail, certified or registered mail**, pursuant to this section and a list of the persons, property identification numbers, and addresses, to which notice was sent, to the zoning administrator at least five days prior to the first hearing.

343 (b) In cases where more than 25 parcels of land are
344 subject to an application to amend the official zoning map,
345 certification shall be made by furnishing an affidavit
346 affirming that notice meeting the content requirements of
347 section 78-153.2(h)(1), was mailed via first class mail
348 pursuant to this section and a list of the persons, property
349 identification numbers, and addresses, to which notice
350 was sent, to the zoning administrator at least five days
351 prior to the first hearing.

352 6. The zoning administrator shall be responsible for
353 providing written notice when the public hearing is before the
354 board of zoning appeals, the historic district review board, or
355 the architectural review board. The zoning administrator shall
356 prepare a list of property owners and registrants to whom
357 notice was mailed via first class mail and an affidavit affirming
358 that notice meeting the content requirements of section 78-
359 153.2(h)(1) was mailed pursuant to this section. The affidavit
360 shall be conclusive that notice has been given pursuant to the
361 terms of this section. A copy of the mailed notice shall be
362 maintained in the office of the zoning administrator for public
363 inspection during normal business hours.

364 7. Notice shall be deemed mailed by its deposit in the
365 United States mail, first class, properly addressed, postage
366 paid, except for an amendment to the zoning map for an
367 application involving 25 or fewer parcels of land, for which
368 notice shall be made by certified or registered mail.

369 c. Any person entitled to notice may waive such right by submitting
370 a written waiver of notification filed with the zoning administrator prior
371 to the public hearing(s).

372 (3) *Published notice.* When the provisions of this chapter (see section 78-
373 153.2(h)(5)) require that notice be published, the preparation and form of
374 the notice shall be in accordance with this section, unless expressly noted
375 otherwise. The zoning administrator shall be responsible for preparing the
376 content of the notice and publishing the notice in a newspaper of general
377 circulation in the town. The content and form of the published notice shall
378 be consistent with the requirements of Code of Virginia, § 15.2-2204.

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

384 a. Notice shall be posted on sign(s) in a form established by the
385 zoning administrator.

386 b. The signs shall be placed by the zoning administrator on the
387 property that is subject to the application, along each street frontage
388 that abuts or runs through the property, ~~at intervals of not more than~~
389 ~~100 linear feet.~~

390 c. The zoning administrator shall prepare an affidavit certifying that
391 posted notice has been provided pursuant to the requirements of this
392 section. The affidavit shall be conclusive that notice has been given
393 in accordance with the terms of this section.

394 d. It shall be unlawful for any person to destroy, deface, or remove
395 posted notice. Any person taking such action shall be subject to the
396 penalties set forth in Article XVII, Enforcement, Penalties and
397 Remedies.

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

402 (6) *Registration to receive notice.* Any individual, business, or
403 organization in the town may register with the ~~zoning administrator~~ **town**
404 **clerk** to receive either written notice of applications pursuant to section 78-
405 153.2(h)(5), or notice by e-mail at approximately the same time that written
406 notice as described in section 78-153.2(h)(5), is placed in the United States
407 Mail. To be eligible for registration, the applicant shall provide the zoning
408 administrator information in the form required by the zoning administrator to
409 ensure notification can be made to the requester, along with a fee to cover
410 the costs of the written notification as shown in Town of Herndon User's
411 Guide 23, Fee Schedule. To continue to receive notice, an organization
412 shall re-register every two years.

413 (i) *Public hearing procedures.* All public hearings for applications held pursuant
414 to this chapter shall comply with the following procedures.

415 (1) *General procedures and findings at public hearing.* The body
416 conducting the hearing shall act in accord with any time limits established
417 in this chapter. Action shall be taken as promptly as possible in
418 consideration of the interests of the applicant, and the citizens of the town,
419 and shall include a statement of a recommendation or decision of approval,
420 approval with conditions, or disapproval (whichever is appropriate).

421 (2) *Continuation of public hearing.* A public hearing may be continued as
422 follows:

423 a. The body conducting the public hearing may, on its own motion
424 or at the request of any person, continue the public hearing to a fixed
425 date, time, and place. An applicant shall have the right to request and
426 be granted one continuation. However, subsequent continuations
427 shall be granted at the discretion of the body conducting the public
428 hearing.

- 429 b. A request received by the zoning administrator for delay of a
430 public hearing following public notification of the public hearing shall
431 be considered as a request for a continuation, and may be granted
432 by the advisory or decision-making body.
- 433 c. The new date of the continued public hearing shall be set at the
434 time the continuation is granted.
- 435 d. If the applicant requests or concurs in the continuation, any time
436 limits set forth in the Code of Virginia for acting on an application
437 shall be reinstated on the date of the work session (if applicable)
438 associated with the continued public hearing.
- 439 1. If no revised submittal is offered by the applicant, the time
440 limits for review shall begin on the date of the work session (if
441 applicable) associated with the continued public hearing;
- 442 2. If the applicant chooses to submit a revised application,
443 the time limits for review shall begin upon submittal of the
444 revision in accordance with section 78-152.3, application
445 completeness.
- 446 e. Any time limits set forth in the Code of Virginia for acting on an
447 application shall not be reinstated if the applicant concurs in the
448 continuation for the specific purpose of addressing comments by the
449 reviewing board, council or commission.
- 450 f. A public hearing for which proper notice was given may be
451 continued to a later date without again complying with the notice
452 requirements of this section, provided that the continuation is set for
453 a date within 45 days of the advertised public hearing, and the date
454 and time of the continued hearing is announced at the time of the
455 continuation.
- 456 g. Additional notice is required:
- 457 1. If the advisory or decision-making body considering an
458 application for which notice is provided pursuant to this section
459 has not made a decision on the application within 45 days of the
460 public hearing for which the application is noticed, public
461 notification shall be repeated consistent with the procedures and
462 standards for its original notification before the review body
463 considers and makes a decision on the application.
- 464 2. If the town council refers any matter to the planning
465 commission, public notification shall be repeated in accordance
466 with section 78-153.2(h), public notification.
- 467 (j) *Time in which to act on application.* Development applications subject to
468 public hearing shall be acted upon in *accordance* with the following timing
469 provisions:

470 (1) ~~**Reserved.** Preliminary subdivision plan, final subdivision plan, site~~
471 ~~plan.~~ The reviewing approving authority shall have 90 days in which to
472 approve or disapprove an application for a preliminary subdivision plan, final
473 subdivision plan plat or site plan following acceptance of the application.

474 (2) *Zoning map amendment, special exception.* The town council shall
475 have one year from the acceptance of the initial application to make a final
476 decision on a zoning map amendment or special exception application.

477 (3) *Revisions to applications.* Any change or revision to an application
478 submitted by the applicant in writing, or orally at a public hearing before the
479 planning commission or town council, shall constitute a new application with
480 respect to the time in which to act.

481 (4) *Extension of time by agreement of applicant.* For any of the above
482 time limits, the applicant may agree to additional time.

483 (k) *Limitations on resubmission of similar applications after disapproval.*

484 (1) *Zoning map amendment and special exception time limit.* Whenever
485 any application for a zoning map amendment or special exception is
486 disapproved, another application which is substantially the same for all or a
487 part of the same land shall not be considered for a period of one year after
488 the date of disapproval unless a waiver of time limit is approved by the town
489 council, pursuant to the requirements of this section.

490 (2) *Waiver of time limit for reapplication.* The procedure to for obtaining a
491 waiver of the time limit for reapplication of a substantially similar application
492 for a zoning map amendment or special exception shall be as follows:

493 a. The owner or the owner's authorized agent may initiate a
494 request by submitting a request for waiver of time limit to the zoning
495 administrator, along with a fee pursuant to section 78-152.2(b)(3),
496 fees.

497 b. After receipt of a request for waiver of time limit, the zoning
498 administrator shall prepare a staff report on the request (which
499 includes copies of the minutes and vote on the previous application)
500 and schedule the matter for the next regularly scheduled meeting of
501 the town council.

502 c. At the meeting for which the request for waiver of time limit is
503 scheduled, the town council shall consider the request, the staff
504 report (including the minutes and vote on the previous application),
505 other relevant support materials, statements made by the applicant
506 or the applicant's representative and the public.

507 d. The waiver of time limit may be approved upon a finding by two-
508 thirds of the membership of the town council that, based on
509 information submitted by the applicant:

510 1. There is a substantial change in circumstances relevant
511 to the issues or facts considered during review of the

- 512 application that might reasonably affect the town council's
513 application of the relevant review standards to the
514 development proposed in the application; or
- 515 2. New or additional information is available that was not
516 available at the time of the review that might reasonably affect
517 the town council's application of the relevant review standards
518 to the development proposed; or
- 519 3. A new application is proposed to be submitted that is
520 materially different from the prior application; or
- 521 4. The final decision on the application was based on a
522 material mistake of fact.

523
524 **Sec. 78-155.1 – Zoning map amendment (ZMA)**
525

526 (a) *Purpose and intent.* The purpose and intent of this section is to provide a
527 means for making an amendment to the official zoning map.

528 (b) *Authority.* The town council may adopt an ordinance amending the official
529 zoning map upon compliance with the provisions of this section.

530 (c) *Initiation.* An application to amend the official zoning map may be initiated as
531 follows, subject to the limitations defined herein:

532 (1) *Initiating action.* An amendment to the official zoning map may be
533 initiated by the town council by resolution, the planning commission by
534 motion, or a person or entity who may submit applications pursuant to
535 section 78-152.2(a), authority to file applications.

536 (2) *Public purpose.* If the town council or planning commission initiates
537 an amendment, the resolution or motion (whichever is appropriate) shall
538 state the statutory public purpose for the proposed amendment found in
539 Code of Virginia § 15.2-2286(A)(7) (as amended).

540 (3) ~~**Reserved. Limitations.** No application for a change of zoning on the~~
541 ~~same parcel of land shall be considered by the town council within a period~~
542 ~~of time of one year from its last consideration by the town council. This~~
543 ~~section, however, shall not impair the right of the town council to propose a~~
544 ~~change of zoning on its own motion.~~

545 (d) *Submittal requirements.* All applications for amendments to the official zoning
546 map shall include the items required in section 78-152.2(c), submittal
547 requirements, as well as the following:

548 (1) *Affidavit.* One copy of an affidavit by the applicant stating whether or
549 not any member of the planning commission or the town council or any
550 member of the immediate household of any member of the planning
551 commission or town council has any interest on the subject property, either
552 individually, by ownership of stock in a corporation or partnership;

553 (2) *Statement regarding proffered conditions.* All statements, plans,
554 profiles, elevations, and other demonstrative materials submitted with an
555 application for an amendment to the official zoning map shall include a
556 statement indicating whether or not such items are proffered as conditions
557 of the application. Items that are proffered shall utilize the following
558 statement: "The undersigned proffers that the development of the property
559 that is the subject of this application shall be in substantial conformity with
560 the conditions set forth in this submittal."

561 (3) *Copies of plan.* All zoning map amendments, **PD-TOC, and PD-TRG**
562 **development plans** shall include ~~ten~~ **three hard** copies **and electronic**
563 **file(s)** of a generalized development plan for the land subject to the
564 amendment and showing information as indicated in section 78-152.2(c)(7),
565 contents of plans.

566 (4) *Modification requests in PD districts.* In certain circumstances in
567 planned development districts, "modifications" as described in section 78-
568 50.2(d) may be sought by an applicant for a zoning map amendment. For
569 such a request to be properly considered, the application submittal shall
570 include a statement of modifications sought, the specific Code citations of
571 the sections from which modifications are sought, and the justification for
572 the modification.

573 (e) *Conditional and general amendments distinctions.* Applications to amend the
574 official zoning map may be either "general" applications, or may be "conditional"
575 applications subject to voluntary proffers proposed by the applicant requesting the
576 amendment. No review or decision-making body shall apply conditions of approval
577 on a general application to amend the official zoning map. Application for a planned
578 development (PD) district shall be a "conditional" application.

579 (f) *Conditional applications to amend the official zoning map.* Applications to
580 amend the official zoning map proposed by the applicant, a "conditional"
581 application and subject to voluntary proffers shall comply with the requirements in
582 this section.

583 (1) *Proffered conditions.* Proffered conditions, if offered by the applicant
584 as part of an amendment to the official zoning map, shall be subject to the
585 following requirements:

586 a. A statement of proposed proffers shall be submitted with the
587 application to amend the official zoning map.

588 b. The town council may accept proffered conditions provided such
589 conditions comply with Code of Virginia § 15.2-2303 (as amended),
590 and the following criteria:

591 1. The proposal to amend the official zoning map necessitates
592 the proposed conditions, and the proposed conditions are
593 reasonably related to the amendment request.

594 2. The proposed conditions are in addition to and are no less
595 stringent than the standards of the proposed zoning district or
596 existing overlay district.

597 3. The proposed conditions are consistent with the
598 comprehensive plan and any other applicable long-range
599 planning document.

600 (2) *Proffer revisions by the applicant.* Before town council approval, proffer
601 statements included with an application may be revised, deleted, or amended
602 with additional proffers during the review process, with these requirements:

603 a. All voluntary proffered conditions or substantially amended
604 proffers shall be submitted in writing to the zoning administrator by
605 5:00 p.m. on the Wednesday preceding the public hearing before the
606 town council.

607 b. The submittal of proffers or substantially amended proffers after
608 that deadline shall require, at the town council's discretion, either the
609 referral of the application to the planning commission for further
610 review, or the postponement of town council action on the application
611 until council's next public hearing on the application. The public
612 hearing on the application shall either be continued or rescheduled.

613 c. For the purpose of this chapter, a substantially amended proffer
614 includes one that expands the scope of the application or increases
615 the density, height, traffic, or other feature that affects the operation
616 of the development or its impact on the community. The town council
617 shall resolve whether or not a proffer amendment is substantial.

618 d. If the general nature of the substantially amended proffer was
619 not the subject of earlier consideration at the planning commission's
620 public hearing, as evidenced by information in the staff report,
621 testimony of the applicant or public or statements by planning
622 commission members, then the town council shall refer the
623 application to the planning commission for review and
624 recommendation following another public hearing, prior to
625 rescheduling its public hearing.

626 e. Any amendment to proffered conditions submitted by the
627 applicant shall cause the time limit for action by the planning
628 commission or town council to begin anew on the date on which the
629 amendment is submitted.

630 (3) *Procedures following approval of a "conditional" zoning map*
631 *amendment.* After approval of zoning map amendments with proffered
632 conditions the following provisions shall apply.

633 a. Following approval of an ordinance for a zoning map
634 amendment with proffered conditions, the zoning administrator shall
635 amend the official zoning map to show the new zoning district
636 classification with an annotation on the official zoning map to reflect

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that additional conditions apply to the subject land; and the property and conditions proffered shall be indexed and recorded in the office of the zoning administrator as required by law.

b. When a zoning map amendment is approved subject to the conditions proffered by the applicant, such conditions shall become a part of the zoning regulations applicable to the property in question unless subsequently changed by an amendment to the official zoning map. Such conditions shall be in addition to the specific regulations set forth in this chapter for the zoning district in question.

c. Any site plan, subdivision plat or development plan submitted for the development of the property in question shall be in substantial conformity with proffered statements, plans, profiles, elevations or other demonstrative materials.

d. For the purpose of this section, substantial conformity shall mean that conformity which leaves a reasonable margin for adjustment due to final engineering and site condition data and conforms to the general nature of the development, the specific uses, and the general layout depicted by the proffered plans, profiles, elevations and other demonstrative materials.

e. Once conditions have been approved, and there is cause for an amendment to the conditions due to proposed development that is not in substantial conformity with the conditions, then an application shall be filed for a zoning map amendment.

f. In order to ensure compliance with the requirements proffered by the applicant and owner under this section, the zoning administrator shall be vested with necessary authority on behalf of the town council to administer and enforce conditions attached to the zoning map amendment, including:

1. The ordering in writing of the remedy of noncompliance with such conditions.
2. The bringing of legal action to ensure compliance with such conditions including injunction, abatement or other appropriate action or proceeding.
3. The requirement of a guarantee satisfactory to the town council of a performance bond in the amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions or a contract for the construction of such improvements and the contractor's bond in like amount and so conditioned, which guarantee shall be reduced or released by the town council or zoning administrator upon submittal of satisfactory evidence that construction of such improvements has been completed. Failure to meet all conditions shall

679 constitute cause to deny issuance of any of the required use,
680 occupancy or zoning permits as may be appropriate.

681 4. Any zoning applicant or any other person who is aggrieved
682 by a decision of the zoning administrator made pursuant to the
683 provisions of this subsection 78-155.1(f)(3)f. may petition the
684 town council for review of the decision of the zoning
685 administrator. All petitions for review shall be filed with the zoning
686 administrator and with the town clerk within 30 days from the
687 date of the decision for which review is sought and shall specify
688 the grounds upon which the petitioner is aggrieved. A decision
689 by the town council on an appeal taken pursuant to this
690 subsection shall be binding upon the owner of the property which
691 is the subject of such appeal only if the owner of such property
692 has been provided written notice of the zoning violation, written
693 determination, or other appealable decision. An aggrieved party
694 may petition the county circuit court for review of the decision of
695 the town council on an appeal taken pursuant to this section. The
696 provisions of subsection F of Code of Virginia § 15.2-2285 shall
697 apply to such petitions to the circuit court, mutatis mutandis.

698 (g) **Reserved.** ~~Expiration of planned development zoning map amendments.~~
699 Approval of a "conditional" application for a zoning map amendment to a planned
700 development (PD) district shall be subject to time limitations:

701 ~~(1) Two year timeframe to file site plan.~~ The approval of the adopting
702 ordinance for a PD zoning district classification and the generalized
703 development plan shall be null and void unless a site plan is submitted for
704 at least the initial phase of the generalized development plan within two
705 years after the date of approval of the PD zoning district classification. Such
706 period shall not be extended with transfer of ownership. The date of
707 expiration will be two years after the date of approval of the PD zoning
708 district classification.

709 ~~(2) Extension request procedures.~~ Upon written request, the town council
710 may grant one extension of time to submit a site plan for a period not to
711 exceed one year for good cause shown subject to the following provisions:

712 a. No request for an extension shall be considered unless a written
713 request is submitted to the zoning administrator no later than 30 days
714 prior to the date the adopting ordinance and generalized
715 development plan is to expire.

716 b. The approval shall be deemed extended until the town council
717 has acted upon the request for extension.

718 c. Failure to submit an application for an extension within the time
719 limits established by this section shall render the adopting ordinance
720 for a PD zoning district classification void.

721 (h) Procedures for zoning map amendments.

722 (1) *Application submittal, review, public hearing schedule and notification.*
723 The procedures and requirements for submittal and review of an
724 application, public notification and scheduling the public hearings are
725 established in section 78-153, ~~review procedures.~~ – **Development**
726 **application review procedures.**

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

733 a. The review of proffers related to building materials or exterior
734 appearance shall be informal and shall take place at a regularly
735 scheduled work session of the appropriate board prior to the planning
736 commission's public hearing on the application.

737 b. The chairman of the reviewing board shall submit a written
738 report to the planning commission containing the board's preliminary
739 comments and recommendations on the application and the
740 applicable proffers.

741 (3) *Planning commission public hearing, review and action.* After public
742 notification and the scheduling of a public hearing, the planning commission
743 shall conduct a public hearing on the application and review the application
744 as follows:

745 a. At the public hearing, the planning commission shall consider
746 the application, the relevant support materials, the staff report, and
747 the public testimony and evidence given at the hearing.

748 b. After the close of the public hearing, the planning commission
749 shall recommend to the town council either to approve or disapprove
750 the application based on the standards in section 78-155.1(i),
751 standards for official zoning map amendments, or, if the applicant
752 proposes to proffer certain conditions as an amendment to the official
753 zoning map, either approve, or disapprove the application based on
754 the standards in section 78-155.1(i), standards for official zoning
755 map amendments.

756 c. The report of the planning commission's recommendations shall
757 be forwarded to the town council **no later than 100 days after the**
758 **application was referred to the planning commission, unless a**
759 **continuance is requested by the applicant.**

760 (4) *Town council public hearing and review.* After receipt of the
761 recommendation from the planning commission, public notification, and
762 scheduling a public hearing, the town council shall conduct a public hearing
763 on the application and review the application as follows:

764 a. At the public hearing, the town council shall consider the
765 application, the relevant support materials, the staff report, the direct
766 recommendation of the planning commission, and the public
767 testimony and evidence given at the hearing.

768 b. After the close of the public hearing, and based on section 78-
769 155.1(i), standards for official zoning map amendments, the town
770 council, by a majority vote of those present and voting, may adopt an
771 ordinance amending the official zoning map, or continue the public
772 hearing pursuant to section 78-153.2(j), time in which to act.
773 Otherwise, the application may be referred back to the planning
774 commission pursuant to section 78-152.6(a), deferred pursuant to
775 section 78-153.2(j), time in which to act, or disapproved.

776 (5) *Time limit for town council action.* The town council shall have one
777 year from the acceptance of the initial application to make a final decision
778 on a zoning map amendment. Any change or revision to an application
779 submitted by the applicant in writing, or orally at a public hearing before the
780 planning commission or town council, shall constitute a new application with
781 respect to the time in which to act. For any of the above time limits, the
782 applicant may agree to additional time.

783 (i) *Standards for official zoning map amendments.* The advisability of amending
784 the official zoning map is a matter committed to the legislative discretion of the
785 town council and is not controlled by any one factor. The following shall be
786 considered by the town council as it evaluates proposed amendments.

787 (1) ~~**Reserved.** Town council may consider lesser area or less intense~~
788 ~~*zoning district.* In considering an amendment to the official zoning map, the~~
789 ~~town council may adopt a change for a part of the area requested or for a~~
790 ~~less intense zoning district than requested by the applicant.~~

791 (2) *Review criteria.* In determining whether to adopt or disapprove the
792 proposed amendment, or, where appropriate, to accept proffered
793 conditions, the planning commission and the town council shall determine
794 whether and to what extent the proposed amendment satisfies the following
795 standards:

796 a. Consistent with the comprehensive plan.

797 b. There are changed conditions that justify an amendment.

798 c. Addresses a demonstrated community need.

799 d. Compatible with existing and proposed uses surrounding the
800 subject land, and is the appropriate zoning district for the land.

801 e. Results in a logical and orderly development pattern, or deviate
802 from logical and orderly development patterns. Accepted or
803 emerging planning practices may be considered.

804 f. Avoids the creation of an isolated zoning district unrelated to
805 adjacent and surrounding zoning districts.

806 g. Avoids adverse impact on the property values of surrounding
807 lands.

808 h. Avoids adverse impact on the natural environment, including but
809 not limited to water, air, noise, stormwater management, wildlife,
810 vegetation, wetlands, and the natural functioning of the environment.

811 i. Results in development that is adequately served by
812 transportation facilities, including whether or not a substantial
813 deterioration of the level of service on the town's transportation
814 network would occur.

815 j. Results in development that is adequately served by other public
816 facilities (potable water and sewage, schools, parks, police, and fire
817 and emergency medical facilities).

818 k. If considered infill and redevelopment, is consistent with the
819 redevelopment criteria and other applicable guidelines as stated in
820 the Herndon 2030 Comprehensive Plan (adopted August 12, 2008),
821 as amended.

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