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~~

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

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

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

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

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

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

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

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

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

(a) *Initial staff review*. The zoning administrator shall refer the application to the appropriate staff and any other review agencies for comment and review of the application. After the review comments have been returned to the zoning administrator, the zoning administrator shall determine whether or not the application is suitable to be presented for consideration by the relevant reviewing board, council or commission.

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

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

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

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

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

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

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

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

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

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

(2) *Staff report availability.* The staff report shall be available to the applicant and the public **at the same time the agenda packet and all other materials are furnished to members of the public body** ~~a minimum of five days before the first scheduled work session~~ for applications to the **board of zoning appeals,** architectural review board, 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:

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

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

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

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

(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.

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

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

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

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

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

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

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

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

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

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

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

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

(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.

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

b. Notice shall be mailed to:

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

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

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

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

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

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

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(b) In cases where more than 25 parcels of land are subject to an application to amend the official zoning map, certification shall be made by furnishing an affidavit affirming that notice meeting the content requirements of section 78-153.2(h)(1), was mailed via first class 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.

6. The zoning administrator shall be responsible for providing written notice when the public hearing is before the board of zoning appeals, the 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.

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

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

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

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

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

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

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

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

(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 historic district review board.

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

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

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

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

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

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b. A request received by the zoning administrator for delay of a public hearing following public notification of the public hearing shall be considered as a request for a continuation, and may be granted by the advisory or decision-making body.

c. The new date of the continued public hearing shall be set at the time the continuation is granted.

d. If the applicant requests or concurs in the continuation, any time limits set forth in the Code of Virginia for acting on an application shall be reinstated on the date of the work session (if applicable) associated with the continued public hearing.

1. If no revised submittal is offered by the applicant, the time limits for review shall begin on the date of the work session (if applicable) associated with the continued public hearing;

2. If the applicant chooses to submit a revised application, the time limits for review shall begin upon submittal of the revision in accordance with section 78-152.3, application completeness.

e. Any time limits set forth in the Code of Virginia for acting on an application shall not be reinstated if the applicant concurs in the continuation for the specific purpose of addressing comments by the reviewing board, council or commission.

f. A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this section, provided that the continuation is set for a date within 45 days of the advertised public hearing, and the date and time of the continued hearing is announced at the time of the continuation.

g. Additional notice is required:

1. If the advisory or decision-making body considering an application for which notice is provided pursuant to this section has not made a decision on the application within 45 days of the public hearing for which the application is noticed, public notification shall be repeated consistent with the procedures and standards for its original notification before the review body considers and makes a decision on the application.

2. If the town council refers any matter to the planning commission, public notification shall be repeated in accordance with section 78-153.2(h), public notification.

(j) *Time in which to act on application*. Development applications subject to public hearing shall be acted upon in *accordance* with the following timing provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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application that might reasonably affect the town council's application of the relevant review standards to the development proposed in the application; or

2. New or additional information is available that was not available at the time of the review that might reasonably affect the town council's application of the relevant review standards to the development proposed; or

3. A new application is proposed to be submitted that is materially different from the prior application; or

4. The final decision on the application was based on a material mistake of fact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Following approval of an ordinance for a zoning map amendment with proffered conditions, the zoning administrator shall amend the official zoning map to show the new zoning district 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

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

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

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

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

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

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

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

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

(h) *Procedures for zoning map amendments*.

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

(2) *Proffer review by ARB or 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 historic district review board if within the historic district overlay, as follows:

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

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

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

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

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

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

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

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

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

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

(i) *Standards for official zoning map amendments*. The advisability of amending the official zoning map 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 as it evaluates proposed amendments.

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

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

a. Consistent with the comprehensive plan.

b. There are changed conditions that justify an amendment.

c. Addresses a demonstrated community need.

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

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

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

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

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

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

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

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

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

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