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.

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(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).

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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.

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

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(2) *Submittal of revised application and time limit for resubmission.* The applicant shall have an opportunity to re-submit a revised application

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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.**

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

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(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.

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(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).~~

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

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(2) *Staff report availability.* The staff report shall be available to the applicant and the public **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~~

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~~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:

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(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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(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.

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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.~~

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.

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

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

b. Notice shall be mailed to:

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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

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zoning administrator at least five days prior to the first hearing.

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(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.

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~~.

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(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 **town clerk** ~~zoning administrator~~ information in the form required by the **town clerk** ~~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.

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(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:

(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.

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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:

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(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:

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(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.

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(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.~~

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~~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*.

(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.**

(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:

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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**.

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(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.~~

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

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