TOWN OF HERNDON, VIRGINIA

TOWN COUNCIL

ORDINANCE

_____, 2025

Ordinance- **to amend Chapter 70 (SUBDIVISION OF LAND), Article I. (Subdivisions Generally), by amending Table 70-102(b) (Subdivision Review Procedures); and Article II. (Subdivisions Generally), by amending Section 70-201 (General Review Process); and other articles and sections as deemed necessary and appropriate to update sections for conformance with the Code of Virginia; to clarify certain decision making authority and processes; to update cross references to other sections in the Herndon Town Code of Ordinances, Zoning Ordinance, and certain Town publications; and to 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 70 (SUBDIVISION OF LAND)

ARTICLE I. - SUBDIVISIONS GENERALLY

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Sec. 70-102. - Authority.

(a) The town council pursuant to the recommendation of the planning commission at public hearing held in accordance with Code of Virginia, § 15.2-2204 ~~of the~~ does hereby exercise the police power conferred by the Code of Virginia to assure the orderly subdivision of land and to implement the comprehensive plan of the town.

(1) The subdivision administrator shall administer and enforce this chapter and may establish such administrative rules and procedures as deemed necessary, under the general direction and guidance of the town manager.

(b) Table 70-102(b) summarizes the review and decision-making responsibility of the entities that have specific roles in the administration of the procedures set forth in this chapter.

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TABLE 70-102(b): SUBDIVISION REVIEW PROCEDURES

R = Review and Advise D = Final Decision ~~A = Appeal~~

	Subdivision Administrator	Planning Commission	Town Council
Appeal about compliance with provisions	D	~~A~~	
Waiver of requirements	D		
Preliminary subdivision plan	D	~~A~~	
Subdivision site plan	D	~~A~~	
Vacation of plat (other than right-of-way or other public land)	R		D
Vacation of right-of-way or other public land	R	R	D
Vacation of interests granted to the town as a condition of site plan approval	D	~~A~~	
Lot line adjustment	D	~~A~~	
Final subdivision plat and deed (including easement and right-of-way plats and Deed)	D	~~A~~	
~~Release of performance guarantee~~	~~D (town manager)~~		

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ARTICLE II. - SUBDIVISION REVIEW PROCEDURES AND REQUIREMENTS

Sec. 70-201. - General review process.

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(a) *Overview.* Review of a subdivision application shall occur in conformance with this chapter, ~~and~~ the provisions of the ~~zoning ordinance,~~ Herndon Town Code **Chapter 78 - ZONING** ~~Section 78-201, Review Procedures~~**, and Virginia Code §§ 15.2-2259 and 15.2-2260**.

(b) *Fees.* Submission of a subdivision application shall be accompanied by a fee, covering the costs to the town of review, as set forth in the ~~zoning ordinance,~~ Herndon Town Code Section **78-152.2(b)(3)** ~~78-201.2(c)~~. All outstanding review fees and other fees required by the zoning ordinance relating to subdivision development shall be paid prior to approval for recordation.

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(d) *Plan submittal requirements.* Preliminary subdivision plans and subdivision site plans shall be submitted with the requirements specified in the ~~zoning ordinance~~, Herndon Town Code **Section 78-155.6** ~~section 78-201.3, submittal requirements~~.

(e) *Waiver of requirements.*

(1) The subdivider may apply to the **subdivision administrator** ~~reviewing authority~~ to waive a requirement of the subdivision ordinance in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or hardship, except there shall be no waiver that would result in a reduction of the required frontage on a public street or would result in an increase in the number of lots.

(2) **Reserved.** ~~An application for a waiver shall be deemed to be an acceptance by the applicant that:~~

~~a. The time period within with the submitted preliminary subdivision plan must be acted upon will be prolonged by 30 days to allow proper evaluation and consideration of the waiver; and~~

~~b. The decision on the pending application for waiver shall be concurrent with the application for the preliminary subdivision plan.~~

(3) **Reserved.** ~~For subdivision applications that require a public hearing, the town council, upon the receipt and review of a report from the planning commission, may during a public hearing waive requirements of this chapter based on the criteria in section 70-201(e)(5). The waiver shall be described in materials related to the public notification requirements for the subdivision application.~~

(4) The **subdivision administrator** ~~reviewing authority~~ may require, as a condition of any such waiver, the dedication or construction of, or an agreement to dedicate or construct, such improvements related to the subdivision as may reasonably be required to ensure the attainment of the purposes of this chapter.

(5) A requested waiver shall be evaluated by the **subdivision administrator** ~~reviewing authority~~ based on whether or not:

a. The applicant is able to demonstrate there exists an unusual situation such that strict adherence to the general regulations would result in substantial injustice or hardship; and

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(f) **Reserved.** ~~*Appeals.* In the event of a disagreement between the subdivider and the subdivision administrator as to compliance with applicable ordinances and design standards, the subdivider may file an appeal with the subdivision administrator in writing. When filed at least 30 days prior to the next regularly scheduled work session of the planning commission, such appeal, along with a written staff report noting the alleged deficiencies, shall be heard and acted upon by the planning commission at its next regular public hearing. Such appeal shall be advertised in conformance with Code of Virginia, § 15.2-2204.~~

(g) *Performance guarantee.* The town shall require adequate financial assurance consisting of a performance guarantee agreement and a security, in a form and manner that is approved by the town attorney, for the construction of required public improvements, protection of existing public improvements, protection of trees, and required private improvements. The procedure for performance guarantees shall comply with the provisions of the Herndon Town Code Chapter 78, Article XII. ~~Section 78-204~~.

(h) **Reserved.** ~~*Registration to receive notice.* Beginning in July, 2006, any individual, business, or organization in the town may register with the department of community development to receive either written notice of applications pursuant to section 78-201.9 or notice by e-mail at approximately the same time that written notice as described in section 78-201.9 is placed in the United States Mail. To be eligible for registration, the applicant shall provide the Department of Community Development information in the form required by the department to ensure notification can be made to the requester, along with a fee to cover the costs of the written notification as shown in Table 78-201.2. To continue to receive notice, an individual, business or organization shall re-register every two years.~~

Sec. 70-202. - Preliminary subdivision plan.

(a) *Purpose*. A preliminary subdivision plan involving more than 50 lots is reviewed and approved prior to the subdivider's preparation of a final subdivision plat and subdivision site plan. The review process shall be governed by the provisions of the ~~zoning ordinance,~~ Herndon Town Code **Chapter 78, Article** XV ~~section 78-202.6(d), site plans that require a public hearing~~ **and Virginia Code § 15.2-2260**. A subdivision site plan for this purpose constitutes a subdivision plat, not a site plan. For subdivisions involving 50 or fewer lots, the subdivider at the subdivider's option may undergo the preliminary subdivision plat process required for subdivision of more than 50 lots. If the subdivider does not exercise this option, the subdivider shall proceed to the final subdivision plat process.

After approval of the preliminary subdivision plan ~~by the town council, if necessary (or if not necessary, in any event),~~ the applicant shall submit a final subdivision plat and subdivision site plan for review and consideration prior to site development. The subdivider may submit a final subdivision plat and a subdivision site plan as the preliminary subdivision plan.

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(c) *Standards.* A preliminary subdivision plan shall be approved upon a determination by the **subdivision administrator** ~~decision-making authority~~ that the development and uses proposed in the preliminary subdivision plan and its general layout and design comply with:

(1) The Herndon Town Code, as may be amended:

a. Those standards mentioned in section 1-16 (the town's Public Facilities Manual).

b. This chapter (Chapter 70).

c. Zoning ordinance, Chapter 78, ~~section 78-401, principal uses; categories and types~~.

d. **Reserved** ~~Zoning ordinance, Chapter 78, Article V: Development Standards~~.

e. All other applicable standards, provisions and regulations of the Town Code.

(2) **The Herndon Historic District Overlay Guidelines** ~~The Herndon Heritage Preservation Handbook~~, as may be amended.

(3) Riparian Buffers Modification and Mitigation Guidance Manual ~~approved by the Chesapeake Bay Local Assistance Board on September 14, 2003~~, as may be amended.

(4) Utility plan requirements of the Code of Virginia, § 15.2-2269, as may be amended.

(5) **Herndon Streetscape Manual** ~~The Herndon Guidelines for the Planning and Design of Town Streetscape Projects (dated November 25, 2008~~, as may be amended, ~~located in the Herndon Department of Community Development).~~

(6) Any other applicable federal, state or local laws or regulations.

(7) Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core, **as may be amended**. ~~dated August 23, 2013, by Urban Design Associates including the "List of Proposed Amendments" dated November 5, 2013, revised November 26, 2013.~~

(8) Downtown Herndon Pattern Book, as may be amended.

(d) *Validation of approved preliminary subdivision plan*. **Once approved** ~~Within 90 days of approval by the town council of a preliminary subdivision plan if necessary~~, the subdivider shall submit **three** ~~five~~ copies **and one digital copy** of the approved preliminary subdivision plan to the subdivision administrator for validation. The plan shall show all features as approved ~~and shall include a copy of the certified town council resolution approving the plan, if necessary~~. The subdivision administrator shall review the plan, if applicable, require corrections if necessary, and sign five copies of the correct plan. One signed copy shall be returned to the subdivider.

(e) Expiration and revocation. Once a preliminary subdivision plan is approved and validated, it shall be valid for five years from the date of the last recorded final plat, provided the subdivider:

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(2) Thereafter diligently pursues approval of the subdivision site plan if required and final subdivision plat. Diligent pursuit of approval means that the subdivider **has incurred extensive obligations or substantial expenses relating to the submitted final subdivision plat approval and** ~~responds within 90 calendar days after receipt of town review comments relating to the submitted subdivision site plan and final subdivision plat or modifications thereto. Upon~~ **upon** 90 days' written notice by certified mail to the subdivider, the **subdivision administrator** ~~town council~~ may revoke such approval upon a specific finding of facts that the subdivider has not diligently pursued approval of the subdivision site plan if required and final subdivision plat. A change in ownership of the property does not affect this time frame.

(f) *Extension of time.* Upon written application submitted by the applicant at least 30 days prior to the expiration of the validity period and upon a showing of good cause, the **subdivision administrator** ~~reviewing authority~~ that approved the preliminary subdivision plan may grant an extension not to exceed six months after the expiration of the validity period. The approval shall be deemed extended until the **subdivision administrator** ~~reviewing authority~~ has acted upon the request for extension.

Sec. 70-203. - Subdivision site plan.

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(b) *Submittal*.

(1) The subdivider shall, after receiving approval of a preliminary subdivision plan if necessary or a proffered generalized development plan, submit a subdivision site plan that conforms to the standards and requirements described in section 70-202(c). Submittal of the subdivision site plan shall include the items described in the ~~zoning ordinance,~~ Herndon Town Code **Section 78-152.2(c)**~~, section 78-201.3, submittal requirements~~.

(g) *House location survey*. Prior to issuance of a certificate of occupancy for any new or replacement single-family detached dwelling, duplex dwelling, or townhouse built in accordance with a subdivision site plan, the applicant shall submit for approval a house location survey on sheets of eight and one-half inches by 14 inches prepared in accordance with the rules and regulations adopted by the Commonwealth of Virginia, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (APELSLA) and shall also show the following:

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(4) Lot and site grading as required by the subdivision administrator.

(h) *As-built plan.* Upon completion **of any development regulated by this section**, an as-built plan shall be submitted, certified by a registered professional engineer or certified land surveyor. Such as-built plan shall certify the installation of all public and private improvements per the specifications and locations shown on the approved

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subdivision plan. The as-built plan shall be prepared and submitted in accordance with the zoning ordinance, Herndon Town Code section ~~78-202.6(n)~~ **78-155.6(p)**.

Sec. 70-204. - Subdivision plats.

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(b) *Submittal.* Every final subdivision plat, plat of vacation, lot line adjustment, and plat of easement which is intended for recording shall be submitted for review by the subdivision administrator and shall include:

(1) **Three hardcopies and one digital copy** ~~Nine copies~~ of the final subdivision plat accompanied by:

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(g) *Lots with required privately maintained stormwater facilities.* In accordance with ~~section 78-304.4(i)(12),~~ Herndon Town Code **Section 26-330**~~,~~ the landowner bears the maintenance responsibilities for stormwater management and best management practice facilities. For any lot on which a required privately maintained stormwater facility, bioretention facility or rain garden is located, the final plat shall include a note that contains the following information pertaining to any such lot: This lot contains a required, privately maintained stormwater facility, bioretention facility, or rain garden that shall be maintained by the owner in accordance with Town of Herndon zoning regulations and that shall be made accessible and available for periodic inspection by town officials upon proper notice.

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Sec. 70-206. - Lot line adjustment plat.

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(c) The subdivision administrator may require as a condition of approval of a lot line adjustment plat the dedication of public easements, rights-of-way, and utility easements as may be deemed necessary to comply with the minimum requirements set forth in Section 70-302. Otherwise, the applicant for a boundary line adjustment does not need to provide physical subdivision improvements or to comply with associated requirements, to support physical improvements such as street right-of-way and easement dedications. The reviewing authority may waive other requirements of this chapter **in accordance with Town Code Section 70-201(e).** ~~when this official finds in writing that the requirement is not necessary or convenient to the accurate depiction, location and recordation of the vacated, relocated or altered boundary line~~.

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ARTICLE III. - REQUIRED IMPROVEMENTS

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Sec. 70-302. - Public streets.

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(c) A street with a design that is alternative to that contained in the Herndon Public Facilities Manual may be proposed if it meets all of the following criteria:

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(2) The alternative design conforms with the standards in the ~~zoning ordinance,~~ Herndon Town Code **Section 78-100.10**~~Chapter 78, Section 78-501, circulation and traffic,~~ and is consistent with accepted planning practice;

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Sec. 70-303. – Open Space. ~~Public open space.~~

(a) Open space shall be provided as described for the particular use in the zoning ordinance, Herndon Town Code Chapter 78~~, for all uses other than those residential uses permitted in the R-10 and R-15 residential zoning districts.~~

~~(b) For subdivisions containing permitted residential uses in the R-10 and R-15 residential zoning districts:~~

~~(1) Onsite open space shall be provided:~~

~~a. For subdivisions resulting in ten or more single family detached homes;~~

~~b. In an amount equivalent to five percent of the net area used for individual single family lots; and~~

~~c. In parcels of appropriate size and location that meet (a) the definition of "open space" in section 78-701; (b) the standards for "open space" in section 78-504, and (c) the standards for "common area" in section 78-507.~~

~~(2) In accordance with the following procedures, in lieu of providing the on-site open space, the applicant shall, at the applicant's option, make a cash contribution equivalent in value to the cost of the land that would otherwise constitute the onsite open space:~~

~~a. After consultation with other town staff, the zoning administrator shall make the final determination about the value of the cash contribution using recognized standards and the land records of the Fairfax County Department of Tax Administration.~~

~~b. The cash contribution shall be used by the town for the purpose of parks and recreation improvements that serve residents of the development, or for the purpose of improving nearby open space, such as repair of stream bank erosion or removal of invasive species.~~

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Sec. 70-306. - Trees and landscaping.

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Subdivision development is governed by the requirements of the **Herndon Town Code Chapter 78, Article XI.** ~~zoning ordinance, chapter 78, section 78-502, protection of trees and vegetation on private property and during development, and section 78-503, site landscaping.~~

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Sec. 70-311. - Resource protection area.

All resource protection area boundaries shall be delineated on final subdivision plats with a note that states, "The Resource Protection Area is to remain an undisturbed and vegetated 100-foot wide buffer area unless approval is obtained as required, and comply with **Herndon Town Code Section 78-60.4**. ~~the zoning ordinance, Chapter 78, Section 78-304.4, Chesapeake Bay Preservation Area Overlay District."~~

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ARTICLE IV. - DEFINITIONS

Sec. 70-401. - Words and terms defined.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words, terms and phrases not shown in this section shall have the meanings ascribed to them elsewhere in the Herndon Town Code.

Term	Definition
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Design standards.	**All standards referenced in Herndon Town Code Section 1-16.** ~~The Town of Herndon Public Facilities Manual (2001).~~
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2. This ordinance shall be effective on and after the date of its adoption.

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