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ARTICLE I - INTRODUCTORY PROVISIONS

Sec. 78-10 Introductory Provisions

The following sections contain introductory provisions.

Sec. 78-10.1 Title

These regulations shall be known officially as the "Herndon Zoning Ordinance" and may be referred to as the "zoning ordinance" or "this chapter."

Sec. 78-10.2 Authority

- A. Authorization.** The Herndon Town Council is authorized to adopt this chapter pursuant to the enabling authority contained in the Code of Virginia generally including without limitation Title 15.2, Chapter 22 of the Code of Virginia, the Town of Herndon Charter, and all other relevant laws of the Commonwealth of Virginia.
- B. Virginia Code Amendments.** Whenever any provision of this chapter refers to or cites a section of the Code of Virginia and that section is later amended or superseded, this Chapter shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

Sec. 78-10.3 Purpose and Intent

- A. Purpose.** The town council, for the purpose of promoting the health, safety, or general welfare of the public and of further accomplishing the objectives of Title 15.2, Chapter 22 of the Code of Virginia, authorizes that this chapter is adopted as the zoning ordinance of the town, together with the accompanying official zoning map that is on file in the zoning administrator's office.
- B. Intent.** This chapter is intended to:
1. Provide for adequate light, air, convenience of access, and safety from fire, flood, crime, pollution and other dangers;
 2. Reduce or prevent congestion in the public and private streets and driveways;
 3. Facilitate the creation of a convenient, attractive, and harmonious community;
 4. Facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, surface drainage, and other public requirements and amenities;
 5. Protect against destruction of or encroachment upon historic and heritage areas;

6. Protect against overcrowding of land, undue density of population in relation to housing resources and community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic, or other dangers;
7. Encourage economic development activities that provide desirable employment and enlarge the tax base;
8. Protect surface water and ground water;
9. Provide reasonable opportunities for the use of property;
10. Conserve properties and their values and encourage the most appropriate use of land;
11. Ensure a balance between the natural and built environments, and between residential and non-residential uses;
12. Ensure a minimum quality in the design and site planning of development, particularly for uses of higher than average density or intensity;
13. Prevent overcrowding in residential neighborhoods;
14. Provide for adequate transitions between land uses of different intensities and impacts and for compatibility of new development, especially for neighborhoods, the downtown, and nearby transitional areas;
15. Ensure a minimum quality in the design and function of the public streetscape, its elements, and adjacent areas such as: sidewalks, street trees, building facades, and connections between streets;
16. Protect and enhance trees and vegetation;
17. Ensure a minimum provision of usable and accessible open space, with active and passive recreational amenities;
18. Facilitate a variety of modes of transportation and movement;
19. Enhance the unique characteristics of historic and heritage resources and ensure a built environment that is a worthy heritage for future generations;
20. Establish a pleasing identity that distinguishes the town from surrounding urban and suburban areas; and
21. Implement the town's comprehensive plan policies.

Sec. 78-10.4 Applicability and Jurisdiction

- A. **Applicability.** The provisions of this chapter shall apply to all development within the corporate limits of the Town of Herndon, unless expressly exempted by the terms of this chapter.
- B. **Development.** No development shall occur in the town without the appropriate permit for that purpose.
- C. **Municipal Land, Uses and Structures.** Except as stated by the terms of this chapter, the provisions of this chapter shall apply to all land, all development, and the use of all structures and land owned or held in tenancy by the town or its agencies or departments, by Loudoun or Fairfax Counties or their agencies or departments, by utilities, school districts, and any special districts located within the incorporated areas of the town.
- D. **Compliance with Other Regulations.** No development shall occur within the corporate limits of the town without full compliance with the provisions of this chapter and all other applicable town, state, and federal regulations.

Sec. 78-10.5 Relationship to other Ordinances, Laws, Agreements and Plans

- A. **Inconsistent Provisions.** If the provisions of this chapter are inconsistent with one another or if the provisions of this chapter conflict with provisions found in other adopted codes, ordinances, or regulations of the town, the more restrictive provision shall govern unless the terms of the provisions specify otherwise.
- B. **Private Agreements.** The town shall not be responsible for monitoring or enforcing private easements, covenants, restrictions, or homeowner associations and their documents, although the town may inquire as to whether or not land is subject to easements, covenants, and restrictions during the review of development applications.
- C. **Comprehensive Plan.** The comprehensive plan for the town shall serve as the basic policy guide for the administration of this chapter. The policies of the comprehensive plan may be amended from time to time to meet the changing requirements of the town.
- D. **Town Code Compliance.** Other chapters of the Herndon Town Code contain additional standards regarding development within the town. It is the intent of the town to administer this chapter in accordance with these other chapters.

Sec. 78-10.6 Rules for Interpretation

The following rules shall apply for construing or interpreting the terms and provisions of this chapter.

- A. Meanings and Intent.** All provisions, terms, phrases, and expressions contained in this chapter shall be construed according to the general purposes set forth in section 78-10.3, Purpose and Intent and the specific purpose statements set forth throughout this chapter. When a specific section of this chapter gives a different meaning than the general definition provided in Article XVIII - Definitions, the specific section's meaning and application of the term shall control.
- B. Instances of Inconsistency.** In the event of a conflict or inconsistency between the text of this chapter and any caption, figure, illustration, table, or map, the text shall control.
- C. Lists and Examples.** Unless otherwise specifically indicated, lists of items or examples that use terms such as "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.
- D. Computation of Time.** The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the town, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the town. References to days are calendar days unless otherwise stated.
- E. References to Other Regulations/Publications.** Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.
- F. Technical and Non-Technical Terms.** Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
- G. Public Officials and Agencies.** All public officials, bodies, and agencies to which references are made are those of the Town of Herndon, unless otherwise indicated.
- H. Mandatory and Discretionary Terms.** The words "shall," and "must" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.
- I. Conjunctions.** Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:
- 1. And.** "And" indicates that all connected items, conditions, provisions or events apply; and

2. **Or.** "Or" indicates that one or more of the connected items, conditions, provisions or events apply.

J. Tenses, Plurals, and Gender. Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

Sec. 78-10.7 Severability

It is the legislative intent of the town council in adopting this chapter that all provisions be liberally construed to protect and preserve the public health, safety, and welfare of the property owners and residents of the town. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The town council declares that it would have passed this chapter and any section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Sec. 78-10.8 Effective Date and Transitional Rules

A. Effective Date. The effective date of this chapter is July 1, 2006. This chapter shall apply to applications submitted and accepted under this chapter on or after this date. This chapter shall not affect any complete application that has been submitted and accepted for review but for which no final action has been taken by the appropriate decision-making body prior to the effective date of this chapter. Such application shall be considered processed and acted on under the law in effect prior to the effective date of this chapter.

B. Transitional Rules. When a development plan has been commenced or approved under a previous version of this chapter, it may be completed only in accordance with the provisions below.

1. Development Approved before July 1, 2006. A development for which approval is granted by the town prior to July 1, 2006 that is deemed to be a significant affirmative governmental act allowing development of a specific project pursuant to § 15.2-2307, Code of Virginia may be completed in accordance with the development approval or permit. The development approvals and permit subject to this provision shall include:

- a. An official zoning map amendment, subject to proffers, to the extent that the proffers or generalized development plan conflict with this chapter;
- b. An official zoning map amendment for a specific use or density;

- c. A conditional use permit, to the extent that the permitted uses or generalized development plan conflict with this chapter;
- d. A variance;
- e. A certificate of appropriateness;
- f. A site plan approval;
- g. Preliminary plans, engineering plans and record plats for subdivision;
- h. Building permits; and
- i. Any other permit or approval vested by § 15.2-2307, Code of Virginia.

2. Site Plan, Subdivision Plan, Building Permit Approved before July 1, 2006.

If development for which a site plan, a preliminary plan for subdivision, a record plat for subdivision, or a building permit was granted prior to July 1, 2006 fails to comply with any time frames in effect for development applications at the time of approval, the final approval shall expire and future development shall be subject to the requirements of this chapter.

- C. Violations.** Any violation of the previous zoning ordinance (Chapter 78, Zoning) of the town shall continue to be a violation under this chapter and shall be subject to the penalties and enforcement set forth in Article XVII - Enforcement, Remedies and Violations, unless the use, development, construction, or other activity complies with the express terms of this chapter.

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ARTICLE II – ZONING DISTRICTS

Sec. 78-20 Zoning Districts

The following sections provide general provisions for zoning districts and the zoning map.

Sec. 78-20.1 Establishment of Base Zoning Districts

The base zoning districts established in this chapter are shown in Table 78-20.1: Base Zoning Districts.

TABLE 78-20.1: BASE ZONING DISTRICTS	
Abbreviation	District Name
Residential Districts	
R-15 District	Residential Single-Family - 15 District
R-10 District	Residential Single-Family - 10 District
RTC District	Residential Townhouse Cluster District
RM	Residential Multi-Family
Business Districts	
CC District	Central Commercial District
CS District	Commercial Services District
CO District	Commercial Office District
O & LI District	Office and Light Industrial District
Planned Development Districts	
PD-R	Planned Development - Residential
PD-B	Planned Development - Business
PD-W	Planned Development - Worldgate
PD-D	Planned Development - Downtown
PD-TD	Planned Development - Traditional Downtown
PD-TOC	Planned Development – Transit Oriented Core

Sec. 78-20.2 Establishment of Overlay Zoning Districts

The overlay zoning districts established in this chapter are shown in Table 78-20.2: Overlay Zoning Districts

TABLE 78-20.2: OVERLAY ZONING DISTRICTS	
Abbreviations	District Name
FPO	Floodplain Overlay District
HPO	Heritage Preservation Overlay District
CBPAOD	Chesapeake Bay Preservation Area Overlay District

Sec. 78-20.3 Relationship of Base Districts to Overlay Zoning Districts

Three overlay districts are established in addition to the base zoning districts: the Floodplain Overlay (FPO) District; the Heritage Preservation Overlay (HPO) District; and the Chesapeake Bay Preservation Area Overlay (CBPAO) District. Where land is classified into an overlay district as well as a base zoning district, the regulations governing development in the overlay district shall apply in addition to the regulations governing development in the underlying base zoning district. In the event of an express conflict, as determined by the zoning administrator, between the standards governing an underlying base zoning district and those governing an overlay district, the standards governing the overlay district shall control.

Sec. 78-20.4 Official Zoning Map

- A. District Boundaries.** The official zoning map designates the location and boundaries of the various zoning districts established in this chapter within the town. The official zoning map shall be kept on file in the zoning administrator's office and shall be available for public inspection during normal business hours.
- B. Incorporated by Reference.** The official zoning map and all the notations on it are, by this provision, incorporated by reference and made part of this chapter.
- C. Boundary Lines.** Unless otherwise specified, zoning district boundary lines are lot lines or the centerlines of streets, alleys, or such lines extended, fixed by dimensions, or otherwise clearly shown or described. The zoning administrator shall interpret zoning district boundaries pursuant to section 78-155.6.E., Determination Requests. In any case in which a street serves as the boundary between an area zoned for residential use and an area zoned for another use, then the centerline of that street shall be considered as the boundary between the area zoned for residential use and the area zoned for another use.

D. Changes to Boundaries. Changes made in zoning district boundaries or other matters portrayed on the official zoning map shall be made in accordance with the provisions of this chapter, including section 78-155.1, Zoning Map Amendment. The zoning administrator shall enter changes approved by the town council on the official zoning map at least annually.

Sec. 78-20.5 Transition to New Zoning Districts

Upon adoption of this chapter, land that was zoned within a zoning district classification existing prior to July 1, 2006, shall be classified within one of the zoning district classifications set forth in Article II - Zoning Districts and as shown in Table 78-20.5, Transition to New Zoning Districts. The following table summarizes the transition from former zoning ordinance districts to new districts set forth in this chapter.

TABLE 78- 20.5 TRANSITION TO NEW ZONING DISTRICTS	
Old Zoning Districts	New Zoning Districts
Residential:	
Residential (RE-0.5)	Residential (R-15)
Residential (R-15)	
Residential (R-10)	Residential (R-10)
Townhouse Cluster Residential (RTC-10)	Residential Townhouse Cluster (RTC)
Townhouse Cluster Residential (RTC-5)	
Garden Court Dwelling (R-GC)	[combined with PD-R]
Multiple-Family Residential District (RM-1)	Residential Multi-Family (RM)
Multiple-Family Residential District (RM-2)	
Commercial and Industrial:	
Neighborhood Commercial (C1)	Commercial Service (CS)
Highway Commercial Corridor (C2)	
Commercial Service (C3)	
Central Commercial (CC)	Central Commercial (CC)
Commercial Offices (CO)	Commercial Offices (CO)
Industrial Office (IO)	Office and Light Industry (O&LI)
Industrial Park (IP)	
Industrial Medium (IM)	
Industrial General (IG)	
Planned Development:	
Residential Planned Community (RPC)	Planned Development - Residential (PD-R)
Planned Development Housing (PD-H)	

TABLE 78- 20.5 TRANSITION TO NEW ZONING DISTRICTS	
Old Zoning Districts	New Zoning Districts
Planned Development - Shopping Centers (PD-SC)	Planned Development - Business (PD-B)
Planned Development - Industrial Park(PD-IP)	
Planned Development - Commercial (PD-C)	Planned Development - Worldgate (PD-W)
Planned Development Mixed Use (PD-MU)	Planned Development - Downtown (PD-D)
Overlay Districts:	
Floodplain Overlay District (FOD)	Floodplain Overlay District (FOD)
Historic Landmarks and Heritage Preservation Overlay District (HPOD)	Heritage Preservation Overlay District (HPD)
Chesapeake Bay Preservation Area Overlay District (CBPAOD)	Chesapeake Bay Preservation Area Overlay District (CBPAOD)

Sec. 78-20.6 Annexed Land

Any area annexed by the town after the effective date of this chapter shall immediately upon the effective date of such annexation be, and remain until further legislative act of the town council under authority of this section and of this chapter, classified as its former county zoning district including any proffered conditions, special exceptions, variances, or other zoning attributes or zoning elements. The planning commission shall prepare and present to the town council a zoning plan of the annexed area within one year after the effective date of the annexation.

Sec. 78-21 General Provisions For All Zoning Districts

A. Uses. Principal Permitted and Allowed Uses for all parcels are listed in individual zoning district regulations in Article III - Residential Districts, Article IV - Business Districts and Article V - Planned Development Districts and summarized in Section 78-70.2.D: Table of Principal Permitted and Allowed Uses.

B. Dimensional Standards. Any land that is developed, used, or occupied shall meet the minimum lot area, width, coverage, setback, yard, structure height and other requirements set forth in Article III - Residential Districts, Article IV - Business Districts and Article V - Planned Development Districts for the zoning district in which it is located, except as otherwise established in this chapter for particular uses.

C. Lot Requirements. The following provisions apply in all lots in all zoning districts:

- 1. Number of Principal Structures.** There shall be no more than one primary or principal structure, plus permitted accessory structures, per lot or tract of land, except in the multi-family, planned development or business districts subject to the provisions of this chapter. To qualify as part of a single primary structure, a structure must be structurally linked to the rest of the primary structure.

2. Double Frontage Lots. On double frontage lots, the front setback requirement shall be met on all street frontages of the property.

3. Corner Lots. On corner lots, the front setback requirement shall be met on all street frontages. Side and rear yard requirements shall be determined by the zoning administrator based upon both the orientation of the lot and upon the orientation of structures built or to be built on the lot. On any corner lot planting, structures, fences, retaining walls, or other features more than three feet higher than the curb level are subject to the provisions of section 78-21.E., Visibility Clearance.

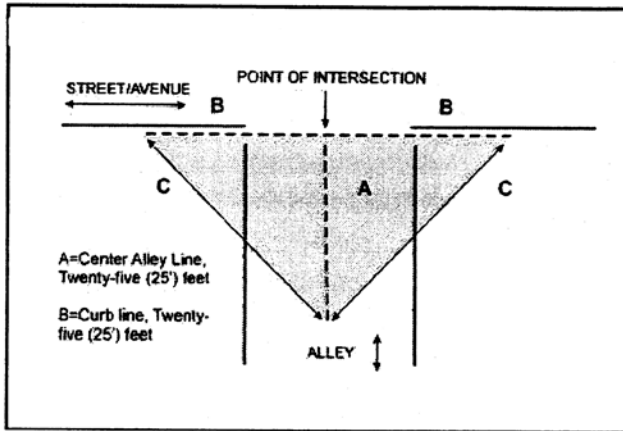
D. Common Areas. Common areas shall be established and maintained as described in Article XI - Development Standards. Common area not contained in lots and streets shall not be denuded, defaced or otherwise disturbed in any manner other than for maintenance except in accordance with the approved site plan or subdivision plan for the site.

E. Visibility Clearance. The following visibility standards apply in all districts.

1. Fences, Walls and Shrubs of Three Feet or More. Fences, walls, trees, shrubs, or other visual barriers over three feet in height above grade shall be placed in such a manner as to enable and ensure the ongoing the view of pedestrians on the sidewalk and traffic vision at intersections.

2. Intersecting Streets. For intersecting streets, the Public Works Director shall determine the visibility clearance requirement based upon accepted engineering standards for requiring adequate sight distance.

3. Driveways or Alleys. For a driveway or alley intersecting a street, no visual obstruction over three feet in height above grade shall be permitted within the 25 foot sight distance triangle created at the intersection of an alley and street. The triangle is measured from a point where the curb line and the center line of the alley meet. The distance from this point shall be 25 feet along the street curb line ("B") and 25 feet along the alley center line ("A"). The third side of the triangle ("C") connects these two sides, creating the sight distance triangle. Similarly, no visual obstruction over three feet in height above grade shall be permitted within the six foot sight distance triangle created at the intersection of a garage entrance and alley. The following diagram illustrates the site distance triangle.



Site Distance Triangle Illustration

F. Accessory Features and Structures Allowed Within Required Setbacks and Yards in All Districts. The buildings or structures on a lot shall not be located in whole or in part within a required setback or yard in any zoning district, except in the case of certain features appurtenant to a principal structure or use. Table 78-21.F: Features Allowed within Required Setbacks and Yards, lists features that may be located within any required setbacks or yards, subject to specific limitations, which may include zoning district specific provisions, noted within the table and the following:

1. **Public Safety and Circulation.** Any features allowed within required setbacks and yards shall not interfere with safe use of the public street or sidewalk or otherwise interfere with public safety and circulation.
2. **Landscaping.** Landscape features (such as trees, walls, shrubs, fences, flowers, or other plants) shall not produce a hedge effect higher than four feet in any front setback or higher than seven feet in a required rear or side yard.
3. **Table.** Table 78-21.F: Features Allowed within Required Setbacks and Yards, lists features that may be located within any required setbacks or yards, subject to specific limitations, which may include zoning district specific provisions. *[Formerly Sec. 78-300.4(b)(3)]*

TABLE 78-21.F.: FEATURES ALLOWED WITHIN REQUIRED SETBACKS AND YARDS	
FEATURES THAT MAY ENCROACH INTO SETBACK OR YARD (subject to applicable Building Code requirements)	LIMITATION
Trees, Shrubs, Flowers, Hedges, and Other Landscape Features	May be planted within a required setback or yard.

TABLE 78-21.F.: FEATURES ALLOWED WITHIN REQUIRED SETBACKS AND YARDS

FEATURES THAT MAY ENCROACH INTO SETBACK OR YARD-(subject to applicable Building Code requirements)	LIMITATION
Driveways and Parking Areas	See "Parking in Residential Districts" in Section 78-100.9 B.
Chimney, Eaves, Trim, Fascia Boards, Sills, Cornices, Bay Windows	May extend up to two feet into any required setback or yard as long as the total area of the bay window extending into the required setback or yard does not exceed 25 percent of the total length of the affected setback or yard.
Stoops, Uncovered Porches, Uncovered Steps or Stairs, Balconies on Second Stories or above and Similar Architectural Features of the Principal Structure	<ul style="list-style-type: none"> • May extend up to 4 feet into a required setback or yard, as long as no portion of the feature is located within 5 feet of any property line for such features attached to a single-family detached structure. • No portion of the projection may be closer than one foot to any side lot line for such features attached to a dwelling other than a single-family detached dwelling.
Decks (including associated steps and appurtenant features located more than two feet above grade)	<ul style="list-style-type: none"> • May extend up to 12 feet into any required rear yard, provided no portion of the projection, including stairs, is located closer to the rear lot line than ½ the distance measured from the rear lot line to the closest point of the dwelling. • Shall not have a floor higher than 12 feet above grade where it connects to the dwelling. • No portion of the deck, including stairs, is located closer than 10 feet to any side lot line when attached or adjacent to a single-family detached structure or closer than one foot to any side lot line when attached or adjacent to any dwelling other than a single-family detached structure. • The deck shall not have a roof
Patios, Retaining Walls, Terraces, and Similar Features (other than decks located more than two feet above grade)	May extend into a required side or rear yard, as long as no portion of the feature is located within two feet of any property line. Retaining walls are subject to the provisions of section 78-115.1: Retaining Walls.
Fences or Walls (up to and including 4 feet in height)	May be located within a required setback or yard, subject to the provisions of section 78-115.2: Fencing, Walls and Hedges.
Fences or walls over 4 feet and not more than 7 feet in height	<ul style="list-style-type: none"> • May be located within a required rear or side yard but shall not extend forward of the architectural front of the principal structure or be located between any portion of the architectural front of the principal structure and the required front setback except as permitted by section 78-115.2.J, Perimeter Fences and Walls for Residential Development. • May be located in any secondary front setback on a residential lot that has frontage on more than one street with the granting of an

TABLE 78-21.F.: FEATURES ALLOWED WITHIN REQUIRED SETBACKS AND YARDS	
FEATURES THAT MAY ENCROACH INTO SETBACK OR YARD (subject to applicable Building Code requirements)	LIMITATION
	administrative adjustment subject to the provisions of section 78-115.2: Fencing, Walls and Hedges, and section 78-115.5: Administrative Adjustments.
Open mesh (including chain link) Fences up to and in excess of four feet in eight Enclosing Recreational Facility School Uses, or On-going Construction.	May be located within a required setback or yard, and subject to the provisions of section .78-115.2: Fencing, Walls and Hedges
Accessory Structures for Residential Uses in any Residential Zoning District.	May be located in a required rear yard as long as it is not closer than five feet to any alley line or two feet to any side or rear lot line. See also section 78-80.3.A..
Accessory Structures for Nonresidential Uses in any Residential Zoning District.	Shall be located no less than ten feet from the side or rear property line.
Additions Including Associated Steps or Appurtenant Features on any Single Family Detached Dwelling	<ul style="list-style-type: none"> • May extend up to 12 feet into a required rear yard in the R-10 and R-15 district on having a rear yard 25 or more feet in depth. • May extend up to 12 feet into a required rear yard in the PD-R district on lots having a rear yard 25 or more feet in depth. • The length of such rear addition shall not in any case exceed 1/3 of the horizontal linear measurement across the entire rear facade of the principal dwelling unit or 15 feet in length, whichever is more. • Such rear addition shall not in any case exceed 14 feet in height measured from .the floor of the main living level featuring kitchen, dining, and living room areas. • Such rear addition shall not in any case extend into a rear yard without meeting these standards as applicable.

TABLE 78-21.F.: FEATURES ALLOWED WITHIN REQUIRED SETBACKS AND YARDS	
FEATURES THAT MAY ENCROACH INTO SETBACK OR YARD-(subject to applicable Building Code requirements)	LIMITATION
	<ul style="list-style-type: none"> • May extend up to eight feet into a front setback in the R-10 and R-15 district on lots having a front yard of 35 feet or more in depth. Uncovered steps may extend for an additional four feet into a front setback. • May extend up to eight feet into a front setback in the PD-R district on lots having a front yard of 35 or more feet in depth. Uncovered steps may extend for an additional four feet into a front setback • Such front addition shall not have any portion of its structure extend above the eave of the primary roof of the existing structure. • Such front addition shall not in any case exceed 10 feet in length. • Such front addition shall not in any case extend into a required side yard. • No property shall have more than one addition approved under this provision • Open porch additions only may extend the full length of the front elevation. Such open porch additions shall be no closer to any adjacent side lot line than a distance equal to the minimum required rear side yard for the residential zoning district in which it is located.
Wheelchair Ramps	A wheelchair ramp may extend into any minimum required yard when it is a retrofit for an existing principal dwelling; and necessary for a person with a disability/special need.
Residential Community Perimeter (fences up to and including 6 feet in height)	May be located on residential common area within 20 feet of the public right-of-way subject to the provisions of section 78-115.2: Fencing, Walls and Hedges.

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ARTICLE III – RESIDENTIAL DISTRICTS

Sec. 78-30 Residential Districts

The following sections contain provisions pertaining to Residential Zoning Districts.

Sec. 78-30.1 R-15 Residential Single-Family District

- A. Purpose and Intent.** The R-15 district is a zoning district in which (a) the principal use of land is single-family detached residential development. The regulations of this district are meant to encourage uses that would substantially complement the development of single-family detached dwellings and that would contribute to the quiet residential nature of the district. The intent of the district is to perpetuate R-15 zoning districts existing prior to the effective date of this chapter and to discourage their redevelopment at higher densities when those districts are located on lands designated as neighborhood conservation in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended.
- B. Density.** The maximum permitted density in the R-15 district is 2.9 dwelling units per acre.
- C. Principal Uses.** Table 70-30.1.C.3, lists uses permitted and allowed in the R-15 district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the R-15 district. It is the applicant's responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other uses not listed on the following table are not allowed in the R-15 district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.
1. **“P” Permitted.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in R-15 District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article XII - Use Regulations.
 2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in R-15 District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article XII - Use Regulations.

3. Table of Principal Permitted and Allowed Uses in the R-15 District.

Table 78-30.1.C.3 – Principal Permitted and Allowed Uses R-15			
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	R-15	See Supplemental Regulations
Residential	Single-Family Detached Dwelling	P	§78-30.6
	Group Home	P	§78-71.1
Education	Childcare Center, Daycare Center or Preschool	S	§78-71.2
	School, Public or Private (K-12)	S	§78-71.2
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	S	§78-71.3
Institutional and Community Service Uses	Cemetery	S	§78-71.4
	Community Centers	S	§78-71.4
	Library	S	§78-71.4
	Religious Institution (with a capacity of 300 or fewer persons) gathered for religious observance in, with or without any accessory schools, daycare centers, or recreational facilities	S	§78-71.4
	Religious Institution (with a capacity of more than 300 persons) gathered for religious observance, with or without accessory schools, daycare centers, or recreational facilities	S	§78-71.4
	Senior Center	S	§78-71.4
Entertainment, Outdoor	Private Swimming Pools and Tennis Courts	S	§78-71.9
Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.18

D. Accessory Uses and Structures. Table 78-30.1.D.3, lists uses permitted and allowed in the R-15 district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the R-15 district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the R-15 district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

- 1. “P” Permitted.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Accessory Uses in R-15 District, if any. Permitted uses are subject to all other applicable regulations of this chapter,

including those set forth in Article XI, Development Standards and Article VIII Accessory Use Regulations.

2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Accessory Uses in R-15 District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VIII, Accessory Use Regulations.

3. **Table of Permitted and Allowed Accessory Uses in the R-15 District**

Table 78-30.1.D.3 – Permitted and Allowed Accessory Uses R-15		
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	R- 15	Supplemental Use Regulations
Accessory Dwelling Unit	S	§78-80.4.A
Accessory Food Preparation Area – Secondary Kitchen	S	§78-80.4.B
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	P	§78-80.4.C
Bed and Breakfast Establishment	S	§78-80.4.D
Commercial Communication Towers, Freestanding	S	§78-71.13.D.2
Home-Based Business, Including Daycare or Childcare	P	§78-80.5
Minor Utilities	P	§78-80.4.M
Recreational Vehicle Parking and Storage of Individually-Owned Vehicles	P	§78-80.4.Q
School Uses in conjunction with, and on the same site as, Religious Institute	S	§78-80.4.R
Social Service and Similar Community Service Uses	S	§78-80.4.S
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools	P	§78-80.4.3C §78-21.F

4. **Accessory Structures in the R-15 District.** Accessory Structures within the R-15 district shall conform to the standards of Article VIII, Accessory Uses and Structures.

E. **Temporary Uses and Structures.** Temporary uses or structures shall be permitted and governed per Article IX, Temporary Uses and Structures.

F. **Restricted and Prohibited Uses.** Additional use limitations apply to certain uses in the R-15 district as follows:

1. **Keeping of Livestock, Vietnamese Pot-Bellied Pigs, Chickens.** The keeping of livestock in the R-15 district is prohibited except that the keeping of Vietnamese Pot-Bellied Pigs and Chickens may be permitted in accordance with Section 78-80.4.L.
2. **Parking of Recreational and Commercial Vehicles.** The parking of recreational vehicles in the R-15 district shall be subject to the provisions of Section 78-80.4.Q and the parking of commercial vehicles in the R-15 District shall be subject to Section 78-100.9.B.
3. **Vehicular Repair and Sales.** Vehicle repair, including engine, body, or other repair or repainting of vehicles owned by a person not residing at the address is prohibited in the R-15 district. The commercial display and sale of vehicles is prohibited but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.1.G.
4. **Portable Storage Units.** Portable storage units may not be established as an accessory structure on a residential site in the R-15 district. For provisions about use of portable storage units as a temporary use, see Section 78-90.4.A.4.

G. Dimensional Standards. Structures in the R-15 residential zoning district are subject to the dimensional standards set forth in Table 78-30.1.G: R-15 Table of Dimensional Standards. These standards may be further limited or modified by other applicable sections of this chapter. Accessory structures are subject further to the standards in Article VIII. Definitions for terms in this section may be found in Article XVIII - Definitions.

TABLE 78-30-1.G. R-15 DIMENSIONAL STANDARDS		
STANDARD	RESIDENTIAL USES	NONRESIDENTIAL SPECIAL EXCEPTION USES
Density, Maximum Gross	2.9 dwellings/acre	N/A ^a
Lot Area, Minimum	15,000 sq. ft.	15,000; sq. ft. 8,500 for open space lots ¹
Lot Width, Minimum at Setback Line		
<i>Interior Lot</i>	90 sq. ft.	90 sq. ft.
<i>Corner Lot</i>	100 sq. ft.	100 sq. ft.
Setback, Minimum (feet)	45', ² may be reduced in HP overlay district 35' on pipestem lot ³	35' from edge of ROW ^b , 60' from centerline, or building height ^c , <i>whichever is greater</i>
Side Yard, Minimum (feet)	15'	<i>Adjacent to a residential district^d: 10', or equal to building height^c, whichever is greater</i> <i>All other: 10'</i>
Rear Yard, Minimum (feet)	25'	<i>Adjacent to a residential district^d: 25', or equal to building height^c, whichever is greater</i>

TABLE 78-30-1.G. R-15 DIMENSIONAL STANDARDS		
STANDARD	RESIDENTIAL USES	NONRESIDENTIAL SPECIAL EXCEPTION USES
		<i>All other: 25'</i>
Height, Maximum (feet)	35'	45'
Open Space, Minimum (%)	See footnote ⁴	30%
Lot Coverage ⁵ , Maximum (%)	25%	25%
Impervious Surface Area, Maximum, (including buildings (%)	50%	50%
Paved parking Area, Maximum ⁶ (%)	35% of the front yard of any single family detached or duplex dwelling	N/A ^a
Distance between Paved Surfaces and Property Line, Minimum (feet)	2'	Subject to buffer requirements for nonresidential uses in Article XI - Development Standards.

Abbreviations
^a N/A: Indicates that the standard does not apply to this type of use in this zoning district.
^b ROW: "Right of Way" can pertain to either a public or private street and excludes private access easements that do not meet the definition of a private street.
^c Building Height: Indicates that the required setback or yard is equal to the height of the tallest building on the site where the setback or yard is required.
^d Adjacent to a Residential District: Indicates that a special side or rear yard requirement (identified in the table) applies for every lot line abutting existing single family detached development or undeveloped land in a single family detached zoning district.

Footnotes
¹ Those lots dedicated solely to public park land or open space.
² See § 78-60.3.E, reduction of setback in the HP district.
³ See § 78- 30.5.B, for pipestem lots
⁴ For single family detached dwellings on lots in subdivisions after January 1, 2007, see Subdivision Ordinance, Chapter 70, Town Code
⁵ Building footprint as total share of total lot area.
⁶ Counts toward maximum impervious surface.

H. Open Space. Development in the R-15 district shall be subject to the general Open Space Standards in Article XI. In addition, for single family detached dwellings on lots in subdivisions created after January 1, 2007 see the Subdivision Ordinance, Chapter 70, Town Code. .

I. Development Standards. Development in the R-15 zoning district shall be subject to all applicable standards of Article XI, Development Standards and specific standards as follows:

- 1. Landscaping, Buffering and Screening.** Development in the R-15 district shall conform to the landscaping, buffer and screening standards in Article XI, Development Standards and Perimeter Buffer Strip Requirements for Residential Districts in Tables 78-110.3.E.4.a and 78-110.3.E.4.b.
- 2. Exterior Lighting.** Development in the R-15 district shall conform to the exterior lighting standards for Residential Districts in Section 78-130.9

- 3. Fences and Walls.** Development in the R-15 district shall conform to the applicable standards for Residential Districts in Section 78-115.2 and 78-115.2.1, specifically.
- J. Noise, Vibration, etc.** Development in the R-15 district shall conform to the applicable performance standards of Article XII, Performance Standards.
- K. Parking & Circulation.** Development in the R-15 district shall be subject to all applicable standards of Article X, Parking, Loading, and Circulation and Sec. 78-100.9.B., specifically.
- L. Signs.** Signs in the R-15 district shall be subject to the provisions of Article XIV.
- M. Nonconformities.** Nonconforming uses and structures in the R-15 district s shall be subject to the provisions of Article XVI.
- N. Application Requirements and Application Review Process.** Applications for development in the R-15 district shall be subject to Article XV.

Sec. 78-30.2 R-10 Residential Single-Family District

- A. Purpose and Intent.** The R-10 district is a zoning district in which the principal use of land is single-family detached residential. The regulations of this district are meant to encourage uses that would substantially complement the development of single-family detached dwellings and that would contribute to the quiet residential nature of the district. The intent of the district is to perpetuate R-10 zoning districts existing prior to the effective date of this chapter and to discourage their consolidation and redevelopment at higher densities when those districts are located on lands designated as Neighborhood Conservation in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended.
- B. Density.** The maximum permitted density in the R-10 district is 4.4 dwelling units per acre.
- C. Principal Uses.** Table 70-30.2.C.3., lists uses permitted and allowed in the R-10 district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the R-10 district. It is the applicant's responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other uses not listed on the following table are not allowed in the R-10 district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.
- 1. "P" Permitted.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the

use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in R-10 District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VII, Use Regulations.

2. “S” Special Exception Uses. An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in R-10 District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VII, Use Regulations.

3. Table of Principal Permitted and Allowed Uses in the R-10 District.

Table 78-30.2.C.3 – Principal Permitted and Allowed Uses R-10			
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	R-10	See Supplemental Regulations
Residential	Single-Family Detached Dwelling	P	§78-30.6
	Group Home	P	§78-71.1
Education	Childcare Center, Daycare Center or Preschool	S	§78-71.2
	School, Public or Private (K-12)	S	§78-71.2
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	S	§78-71.3
Institutional and Community Service Uses	Cemetery	S	§78-71.4
	Community Centers	S	§78-71.4
	Library	S	§78-71.4
	Religious Institution (with a capacity of 300 or fewer persons) gathered for religious observance in, with or without any accessory schools, daycare centers, or recreational facilities	S	§78-71.4
	Religious Institution (with a capacity of more than 300 persons) gathered for religious observance, with or without accessory schools, daycare centers, or recreational facilities	S	§78-71.4
	Senior Center	S	§78-71.4
Entertainment, Outdoor	Private Swimming Pools and Tennis Courts	S	§78-71.9
Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.18

D. Accessory Uses and Structures. Table 78-30.2.D.3, lists uses permitted and allowed in the R-10 district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the R-10 district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application

submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the R-10 district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

1. **“P” Permitted.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in R-10 District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VIII, Accessory Use Regulations.
2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Permitted and Allowed Accessory Uses in R-10 District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VIII, Accessory Use Regulations.

3. Table of Permitted and Allowed Accessory Uses in the R-10 District

Table 78-30.2.D.3 – Permitted and Allowed Accessory Uses R-10		
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	R- 10	Supplemental Use Regulations
Accessory Dwelling Unit	S	§78-80.4.A
Accessory Food Preparation Area – Secondary Kitchen	S	§78-80.4.B
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	P	§78-80.4.C
Bed and Breakfast Establishment	S	§78-80.4.D
Commercial Communication Towers, Freestanding	S	§78-71.13.D.2
Home-Based Business, Including Daycare or Childcare	P	§78-80.5
Minor Utilities	P	§78-80.4.M
Recreational Vehicle Parking and Storage of Individually-Owned Vehicles	P	§78-80.4.Q
School Uses in Conjunction with, and on the same site as, Religious Institution	S	§78-80.4.R
Social Service and Similar Community Service Uses	S	§78-80.4.S
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools	P	§78-80.4.3C §78-21.F

- 4. **Accessory Structures in the R-10 District.** Accessory Structures within the R-10 district shall conform to the standards of Article VIII - Accessory Uses and Structures.
- E. **Temporary Uses and Structures.** Temporary uses or structures shall be permitted and governed per Article IX- Temporary Uses and Structures.
- F. **Restricted and Prohibited Uses.** Additional use limitations apply to certain uses in the R-10 district as follows:
 - 1. **Keeping of Livestock, Vietnamese Pot-Bellied Pigs, Chickens.** The keeping of livestock in the R-10 district is prohibited except that the keeping of Vietnamese Pot-Bellied Pigs and Chickens may be permitted in accordance with Section 78-80.4.L.
 - 2. **Parking of Recreational and Commercial Vehicles.** The parking of recreational vehicles in the R-10 district shall be subject to the provisions of Section 78-80.4.Q and the parking of commercial vehicles in the R-10 District shall be subject to the Section 78-100.9.B.
 - 3. **Vehicular Repair and Sales.** Vehicle repair, including engine, body, or other repair or repainting of vehicles owned by a person not residing at the address is prohibited in the R-10 district. The commercial display and sale of vehicles is prohibited but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.1.G .
 - 4. **Portable Storage Units.** Portable storage units may not be established as an accessory structure on a residential site in the R-10 district. For provisions about use of portable storage units as a temporary use, See section 78-90.4.A.4.
- G. **Dimensional Standards.** Structures in the R-10 residential zoning district are subject to the dimensional standards set forth in Table 78-30.2.: R-10 Table of Dimensional Standards. These standards may be further limited or modified by other applicable sections of this chapter. Accessory structures are subject further to the standards in Article XIII. Definitions for terms in this section may be found in Article XVIII, Definitions.

TABLE 78-30-2.G. R-10 DIMENSIONAL STANDARDS		
STANDARD	RESIDENTIAL USES	NONRESIDENTIAL SPECIAL EXCEPTION USES
Density, Maximum Gross	4.4 dwellings/acre	N/A ^a
Lot Area, Minimum	10,000 sq. ft.	15,000; sq. ft. 8,500 for open space lots ¹
Lot Width, Minimum at Setback Line		
<i>Interior Lot</i>	75 sq. ft.	90 sq. ft.

TABLE 78-30-2.G. R-10 DIMENSIONAL STANDARDS		
STANDARD	RESIDENTIAL USES	NONRESIDENTIAL SPECIAL EXCEPTION USES
<i>Corner Lot</i>	100 sq. ft.	100 sq. ft.
Setback, Minimum (feet)	35', ² may be reduced in HP overlay district 25' on pipestem lot ³	35' from edge of ROW ^b , 60' from centerline, or building height ^c , <i>whichever is greater</i>
Side Yard, Minimum (feet)	10'	<i>Adjacent to a residential district^d</i> : 10', or equal to building height ^c , <i>whichever is greater</i> <i>All other</i> : 10'
Rear Yard, Minimum (feet)	25'	<i>Adjacent to a residential district^d</i> : 25', or equal to building height ^c , <i>whichever is greater</i> <i>All other</i> : 25'
Height, Maximum (feet)	35'	45'
Open Space, Minimum (%)	See footnote ⁴	30%
Lot Coverage ⁵ , Maximum (%)	25%	25%
Impervious Surface Area, Maximum, (including buildings) (%)	50%	50%
Paved parking Area, Maximum ⁶ (%)	35% of the front yard of any single family detached or duplex dwelling	N/A ^a
Distance between Paved Surfaces and Property Line, Minimum (feet)	2'	Subject to buffer requirements for nonresidential uses in Article XI - Development Standards.
<p>Abbreviations</p> <p>^a N/A: Indicates that the standard does not apply to this type of use in this zoning district.</p> <p>^b ROW: "Right of Way" can pertain to either a public or private street and excludes private access easements that do not meet the definition of a private street.</p> <p>^c Building Height: Indicates that the required setback or yard is equal to the height of the tallest building on the site where the setback or yard is required.</p> <p>^d Adjacent to a Residential District: Indicates that a special side or rear yard requirement (identified in the table) applies for every lot line abutting existing single family detached development or undeveloped land in a single family detached zoning district.</p> <p>Footnotes</p> <p>¹ Those lots dedicated solely to public park land or open space.</p> <p>² See § 78-60.3.E, reduction of setback in the HP district.</p> <p>³ See § 78- 30.5.B, for pipestem lots</p> <p>⁴ For single family detached dwellings on lots in subdivisions after January 1, 2007, see Subdivision Ordinance, Chapter 70, Town Code</p> <p>⁵ Building footprint as total share of total lot area.</p> <p>⁶ Counts toward maximum impervious surface.</p>		

H. Open Space. Development in the R-10 district shall be subject to the general Open Space Standards in Article XI. In addition, for single family detached dwellings on lots in subdivisions created after January 1, 2007 see the Subdivision Ordinance, Chapter 70, Town Code.

I. Development Standards. Development in the R-10 zoning district shall be subject to all applicable standards of Article XI, Development Standards and specific standards as follows:

- a. **Landscaping, Buffering and Screening.** Development in the R-10 district shall conform to the landscaping, buffer and screening standards in Article XI, Development Standards and Perimeter Buffer Strip Requirements for Residential Districts in Tables 78-110.3.E.4.a and 78-110.3.E.4.b.
- b. **Exterior Lighting.** Development in the R-10 district shall conform to the exterior lighting standards for Residential Districts in Section 78-130.9
- c. **Fences and Walls.** Development in the R-10 district shall conform to the applicable standards for Residential Districts in Section 78-115.2 and 78-115.2.I, specifically.
- J. **Noise, Vibration, etc.** Development in the R-10 district shall conform to the applicable performance standards of Article XII, Performance Standards.
- K. **Parking & Circulation.** Development in the R-10 district shall be subject to all applicable standards of Article X, Parking, Loading, and Circulation and Sec. 78-100.9.B., specifically.
- L. **Signs.** Signs in the R-10 district shall be subject to the provisions of Article XIV.
- M. **Nonconformities.** Nonconforming uses and structures in the R-10 district s shall be subject to the provisions of Article XVI.
- N. **Application Requirements and Application Review Process.** Applications for development in the R-10 district shall be subject to Article XV.

Sec. 78-30.3 RTC - Residential Townhouse Cluster District

- A. **Purpose and Intent.** The RTC district is a zoning district in which the principal use of land is for townhouse cluster development. The intent of the district is to provide for low to moderate density attached single-family dwellings along with preserving open space and accommodating community uses to serve the residents of the associated dwellings. Zoning map amendments for RTC districts shall be confined to those lands designated as adaptive area in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended.
- B. **Density.** The maximum permitted density in the RTC district is 10 dwelling units per acre.
- C. **Principal Uses.** Table 70-30.C.3 lists uses permitted and allowed in the RTC district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the RTC district. It is the applicant’s responsibility to ensure that all published rules, regulations and

standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article - XVIII. Other uses not listed on the following table are not allowed in the RTC district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

1. **“P” Permitted.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in RTC District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article XII Use Regulations.
2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in RTC District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article XII - Use Regulations.

3. Table of Principal Permitted and Allowed Uses in the RTC District.

Table 78-30.3.C.3 – Principal Permitted and Allowed Uses RTC			
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	RTC	See Supplemental Regulations
Residential	Duplex Dwelling	P	§78-30.6
	Townhouse Dwelling	P	§78-30.6
	Townhouse, Rental Residential Development	P	§78-30.6
	Group Home	P	§78-71.1
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	S	§78-71.3
Institutional and Community Service Uses	Community Centers	S	§78-71.4
Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.13

D. Accessory Uses and Structures. Table 78-70.3.D.3, lists uses permitted and allowed in the RTC district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the RTC district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section

may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the RTC district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

1. **“P” Permitted.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in RTC District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII - Accessory Use Regulations.

2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Permitted and Allowed Accessory Uses in RTC District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII - Accessory Use Regulations.

Table of Permitted and Allowed Accessory Uses in the RTC District

Table 78-30.3.D.3 – Permitted and Allowed Accessory Uses RTC KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	RTC	Supplemental Use Regulations
Accessory Dwelling Unit	S	§78-80.4.A
Accessory Food Preparation Area – Secondary Kitchen	S	§78-80.4.B
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	P	§78-80.4.C
Commercial Communication Towers, Freestanding	S	§78-80.4.D.2
Home-Based Business, Including Daycare or Childcare	P	§78-80.5
Minor Utilities	P	§78-80.4.M
Recreational Vehicle Parking and Storage of Individually-Owned Vehicles	P	§78-80.4.Q
Social Service and Similar Community Service Uses	S	§78-80.4.S
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools	P	§78-80.3.C §78-21.F

4. **Accessory Structures in the RTC District.** Accessory Structures within the RTC district shall conform to the standards of Article VIII - Accessory Uses.

E. Temporary Uses and Structures. Temporary uses or structures shall be permitted and governed per Article IX, Temporary Uses and Structures.

F. Restricted and Prohibited Uses. Additional use limitations apply to certain uses in the RTC district as follows:

- 1. Parking of Recreational and Commercial Vehicles.** The parking of recreational vehicles in the RTC district shall be subject to the provisions of Section 78-80.4.Q and the parking of commercial vehicles in the R-10 District shall be subject to the Section 78-100.9.B.
- 2. Vehicular Repair and Sales.** Vehicle repair, including engine, body, or other repair or repainting of vehicles owned by a person not residing at the address is prohibited in the RTC district. The commercial display and sale of vehicles is prohibited but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.1.G. .
- 3. Portable Storage Units.** Portable storage units may not be established as an accessory structure on a residential site in the RTC district. For provisions about use of portable storage units as a temporary use, see Section 78-90.4.A.4.

G. Dimensional Standards. Structures in the RTC residential zoning district are subject to the dimensional standards set forth in Table 78-30.2.: RTC Table of Dimensional Standards. These standards may be further limited or modified by other applicable sections of this chapter. Accessory structures are subject further to the standards in Article XIII. Definitions for terms in this section may be found in Article XVIII, Definitions.

Table 78-30.3.G. - RTC DIMENSIONAL STANDARDS		
STANDARD	PERMITTED USES	SPECIAL EXCEPTION USES
Density, Maximum Gross	10 dwellings/acre	N/A ^a
Dwelling Unit Size, Minimum	1,800 sq. ft. for duplexes and townhouses	N/A ^a
Lot Area, Minimum	None	8,500 sq. ft.
Lot Width, Minimum at setback line		
<i>Individual Interior Townhouse</i>	2' ^{1,2}	
<i>End Unit Townhouse</i>	34' ^{2,3}	
<i>Interior Lot</i>		90'
<i>Corner Lot</i>		100'
Setback, Minimum	10' from front lot line or as specified	35' from edge of ROW ^b ,

Table 78-30.3.G. - RTC DIMENSIONAL STANDARDS		
STANDARD	PERMITTED USES	SPECIAL EXCEPTION USES
	in buffer classification in Section 78-110.4.E.3.a and Section 78-110.4.E.3.b. ² , <i>whichever is greater</i>	60' from centerline, or building height ^c , <i>whichever is greater</i>
Side Yard, Minimum	10' for end units only ²	<i>Adjacent to a residential district^d: 10', or equal to building height^c, whichever is greater</i> <i>All other: 10'</i>
Rear Yard, Minimum	20', within each lot ²	<i>Adjacent to a residential district^d: 25', or equal to building height^c, whichever is greater</i> <i>All other: 25'</i>
Height, Maximum	35'	45'
Open Space, Minimum	30% ⁴	30%
Lot Coverage, Maximum⁵	N/A ^a	25%
Impervious Surface Area, Maximum, (including buildings)	75%	50%
Impervious Surface Area, Maximum⁶	75%	50%
Distance between Paved Surfaces and any Property Line, Minimum	2' on each townhouse lot and improvements outside of lots except as provided for in landscape requirements Article XI, development standards	Subject to buffer requirements for nonresidential uses in Article XI, development standards.
Distance between buildings on individual lot, Minimum	30' between building groups; 10' between townhouse and accessory structures on the same lot	Subject to buffer requirements for nonresidential uses in Article XI, development standards.
Distance between accessory structure and property line, Minimum	2'	Subject to buffer requirements for nonresidential uses in Article XI, development standards.
Abbreviations		
^a <u>N/A</u> : Indicates that the standard does not apply to this type of use in this zoning district. ^b <u>ROW</u> : "Right of Way" can pertain to either a public or private street and excludes private access easements that do not meet the definition of a private street. ^c <u>Building Height</u> : Indicates that the required setback or yard is equal to the height of the tallest building on the site where the setback or yard is required. ^d <u>Adjacent to a Residential District</u> : Indicates that a special side or rear yard requirement (identified in the table) applies for every lot line abutting existing single family detached development or undeveloped land in a single family detached zoning district.		
Footnotes		

Table 78-30.3.G. - RTC DIMENSIONAL STANDARDS		
STANDARD	PERMITTED USES	SPECIAL EXCEPTION USES
<p>¹ Excludes side yard of building groups. ² May also be affected by § 78-30,6,B developments containing multi-family, townhouse, rental townhouse residential, quadraplex and duplex dwellings. ³ Based on minimum end unit width of 24 feet with a ten foot side yard ⁴ As a share of development site and exclusive of permeable land in individual lots. ⁵ Maximum building coverage on individual lot. ⁶ Counts toward maximum impervious surface.</p> <p>1. As a share of site, including buildings.</p>		

H. Open Space. A minimum of 30% of the development site shall be designated as open space exclusive of permeable land in individual lots. .

I. Development Standards. Development in the RTC zoning district shall be subject to all applicable standards of Article XI, Development Standards and specific standards as follows:

- a. Landscaping, Buffering and Screening.** Development in the RTC district shall conform to the landscaping, buffer and screening standards in Article XI, Development Standards and Perimeter Buffer Strip Requirements for Residential Districts in Tables 78-110.3.E.4.a and 78-110.3.E.4.b.
- b. Exterior Lighting.** Development in the RTC district shall conform to the exterior lighting standards for Residential Districts in Section 78-130.9
- c. Fences and Walls.** Development in the RTC district shall conform to the applicable standards for Residential Districts in Section 78-115.2 and 78-115.2.I, specifically.

J. Noise, Vibration, etc. Development in the RTC district shall conform to the applicable performance standards of Article XII, Performance Standards.

K. Parking & Circulation. Development in the RTC district shall be subject to all applicable standards of Article X, Parking, Loading, and Circulation and Sec. 78-100.9.B., specifically.

L. Signs. Signs in the RTC district shall be subject to the provisions of Article XIV.

M. Nonconformities. Nonconforming uses and structures in the RTC district s shall be subject to the provisions of Article XVI.

N. Application Requirements and Application Review Process. Applications for development in the RTC district shall be subject to Article XV.

Sec. 78-30.4 RM – Residential Multi-Family District

- A. Purpose and Intent.** The RM District is a zoning district in which the principal use of land is for multi-family dwellings. The intent of the district is to provide for medium density multi-family uses in locations that are harmonious with nearby lower density residential uses. This district should be located so as to ensure that adequate community uses, open space and recreational facilities are located nearby, or within the district itself, to serve the needs of the persons who would be living in the district. Zoning map amendments for RM districts shall be confined to those lands designated as Adaptive Area in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended.
- B. Density.** The maximum density allowed in the RM district is 15 dwelling units per acre.
- C. Principal Uses.** Table 30.4.C.4 lists uses permitted and allowed in the RM district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the RM district. It is the applicant's responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other uses not listed on the following table are not allowed in the RM district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.
1. **“P” Permitted.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in RM District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI -Development Standards and Article VII - Use Regulations.
 2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in RM District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VII - Use Regulations.

3. Table of Principal Permitted and Allowed Uses in the RM District.

Table 78-30.4.C.4 – Principal Permitted and Allowed Uses RM			
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	RM	See Supplemental Regulations
Residential	Townhouse Dwelling	P	§78-30.6
	Townhouse, Rental Residential Development	P	§78-30.6
	Quadraplex Dwelling	P	§78-30.6
	Multi-Family Dwelling (including residential rental townhouses)	P	§78-30.6
	Housing for the Elderly	P	§78-71.1
	Assisted Living for Elderly and Persons with Disabilities	P	§78-71.1
	Group Home	P	§78-71.1
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	S	§78-71.3
Institutional and Community Service Uses	Community Centers	S	§78-71.4
Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.13

D. Accessory Uses and Structures. Table 78-30.4.D.3__ lists uses permitted and allowed in the RM district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the RM district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the RM district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

- 1. “P” Permitted.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in RM District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article XIII - Accessory Use Regulations.
- 2. “S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Permitted and Allowed Accessory Uses in RM District, if any. Allowed uses are

subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article XIII - Accessory Use Regulations.

3. Table of Permitted and Allowed Accessory Uses in the RM District

Table 78-30.4.D.3 – Permitted and Allowed Accessory Uses RM		
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	RM	Supplemental Use Regulations
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	P	§78-80.4.C
Commercial Communication Towers, Freestanding	S	§78-71.13.D.2
Home-Based Business, Including Daycare or Childcare	P	§78-80.5
Minor Utilities	P	§78-80.4.M
Parapets, Penthouses for Equipment and Other Roof Structures	P	§78-80.3.D
Recreational Vehicle Parking and Storage of Individually-Owned Vehicles	P	§78-80.4.Q
Social Service and Similar Community Service Uses	S	§78-80.4.S
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools	P	§78-80.3.C §78-21.F

4. Accessory Structures in the RM District. Accessory Structures within the RM district shall conform to the standards of Article VIII - Accessory Uses.

E. Temporary Uses and Structures. Temporary uses or structures shall be permitted and governed per Article IX - Temporary Uses and Structures.

F. Restricted and Prohibited Uses. Additional use limitations apply to certain uses in the RM district as follows:

- 1. Parking of Recreational and Commercial Vehicles.** The parking of recreational vehicles in the RM district shall be subject to the provisions of Section 78-80.4.Q and the parking of commercial vehicles in the R-10 District shall be subject to the Section 78-100.9.B.
- 2. Vehicular Repair and Sales.** Vehicle repair, including engine, body, or other repair or repainting of vehicles owned by a person not residing at the address is prohibited is prohibited in the RM district. The commercial display and sale of vehicles is prohibited but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.1.G. .
- 3. Portable Storage Units.** Portable storage units may not be established as an accessory structure on a residential site in the RM district. For provisions

about use of portable storage units as a temporary use, see Section 78-90.4.A.4.

G. Dimensional Standards. Structures in the RM residential zoning district are subject to the dimensional standards set forth in Table 78-30.-4.G.: RM Table of Dimensional Standards. These standards may be further limited or modified by other applicable sections of this chapter. Accessory structures are subject further to the standards in Article VIII. Definitions for terms in this section may be found in Article XVIII - Definitions.

TABLE 78-30-4.G - RM DIMENSIONAL STANDARDS		
STANDARD	PERMITTED USES	SPECIAL EXCEPTION USES
Density, Maximum		N/A ^a
<i>Townhouses</i>	10 dwelling units per acre	
<i>All other permitted dwelling unit types</i>	15 dwelling units per acre	
<i>Multi-Family Units (above 15 units per acre only with Special Exception approval)</i>	22 ¹ dwelling units per acre	
Dwelling Unit Size, Minimum	1,800 sq. ft. for townhouses	N/A ^a
Lot Area, Minimum	8,500 sq. ft.	8,500 sq, ft,
Lot Width, Minimum at setback line (feet)		
<i>Townhouse/Duplex</i>	22' ^{2,3}	
<i>End Unit Townhouse</i>	34' ^{3,4}	
<i>Multi-Family Interior Lot</i>	80'	
<i>Multi-Family Corner Lot</i>	100'	
<i>Interior Lot</i>		90'
<i>Corner Lot</i>		100'
Setback, Minimum (feet)	50' from property lines along street bounding development or as specified in buffer classification in Section 78-110.4.E.3.a and Section 78-110.4.E.3.b. ³ , <i>whichever is greater</i>	35' from edge of ROW ^b , 60' from centerline, or building height ^c , <i>whichever is greater</i>
Side Yard, Minimum (feet)	10', end units only ³	<i>Adjacent to a residential district^d: 10, or equal to building height^c, whichever is greater</i> <i>All other: 10'</i>
Rear Yard, Minimum (feet)	20', within each lot ³	<i>Adjacent to a residential district^d: 25', or equal to building height^c, whichever is greater</i> <i>All other: 25</i>
Height, Maximum (feet)	45'	45'
Open space, Minimum (%)	30% ⁵	30%
Lot coverage, Maximum ⁶ (%)	30% for multi-family	25%
Impervious surface area, Maximum, (including buildings) (%)	75%	50%
Impervious Surface Area, Maximum (%). ⁷	75%	50%

TABLE 78-30-4.G - RM DIMENSIONAL STANDARDS		
STANDARD	PERMITTED USES	SPECIAL EXCEPTION USES
Distance between paved surfaces and any property line, Minimum (feet)	2' except as provided for in landscape requirements Article XI, development standards	Subject to buffer requirements for nonresidential uses in Article XI, development standards.
Distance between buildings on individual lot, Minimum (feet)	30' between building groups; 10' between principal structures and accessory structures on the same lot	Subject to buffer requirements for nonresidential uses in Article XI, development standards.
Distance between accessory structure and property line, Minimum (feet)	Subject to buffer requirements for nonresidential uses in Article XI, development standards.	Subject to buffer requirements for nonresidential uses in Article XI, development standards.
<p style="text-align: center;">Abbreviations</p> <p>^a <u>N/A</u>: Indicates that the standard does not apply to this type of use in this zoning district.</p> <p>^b <u>ROW</u>: "Right of Way" can pertain to either a public or private street and excludes private access easements that do not meet the definition of a private street.</p> <p>^c <u>Building Height</u>: Indicates that the required setback or yard is equal to the height of the tallest building on the site where the setback or yard is required.</p> <p>^d <u>Adjacent to a Residential District</u>: Indicates that a special side or rear yard requirement (identified in the table) applies for every lot line abutting existing single family detached development or undeveloped land in a single family detached zoning district.</p> <p style="text-align: center;">Footnotes</p> <p>¹ Multifamily dwellings are permitted by-right up to a density of 15 dwellings per acre. Special Exception approval per Section 78- 155.3, is required for any multifamily dwelling exceeding 15 dwelling units per acre and up to the maximum permissible gross density of 22 units per acre.</p> <p>² Excludes side yard of building groups.</p> <p>³ May also be affected by § 78-30,6,B, developments containing multi-family, townhouse, rental townhouse residential, quadraplex and duplex dwellings.</p> <p>⁴ Based on minimum end unit width of 24 feet with a ten foot side yard</p> <p>⁵ As share of development site and exclusive of permeable land in individual lots.</p> <p>⁶ Maximum building coverage on individual lot. As a share of site, including buildings</p>		

H. Open Space. A minimum of 30% of the development site shall be designated as open space exclusive of permeable land in individual lots. .

I. Development Standards. Development in the RM zoning district shall be subject to all applicable standards of Article XI, Development Standards and specific standards as follows:

- a. **Landscaping, Buffering and Screening.** Development in the RM district shall conform to the landscaping, buffer and screening standards in Article XI, Development Standards and Perimeter Buffer Strip Requirements for Residential Districts in Tables 78-110.3.E.4.a and 78-110.3.E.4.b.
- b. **Exterior Lighting.** Development in the RM district shall conform to the exterior lighting standards for Residential Districts in Section 78-130.9
- c. **Fences and Walls.** Development in the RM district shall conform to the applicable standards for Residential Districts in Section 78-115.2 and 78-115.2.I, specifically.

J. Noise, Vibration, etc. Development in the RM district shall conform to the applicable performance standards of Article XIII, Performance Standards.

- K. Parking & Circulation.** Development in the RM district shall be subject to all applicable standards of Article X, Parking, Loading, and Circulation and Sec. 78-100.9.B., specifically.
- L. Signs.** Signs in the RM district shall be subject to the provisions of Article XIV.
- M. Nonconformities.** Nonconforming uses and structures in the RM district s shall be subject to the provisions of Article XVI.
- N. Application Requirements and Application Review Process.** Applications for development in the RM district shall be subject to Article XV.

Sec. 78-30.5 Additional Standards for Residential Districts

- A. Frontage.** All lots shall have frontage on a public street, except as may be noted in in Section, 78-70-71.1.
- B. Pipestem Lot Standards.** Pipestem lots may permitted in Residential Districts as follows:
- 1. Rationale.** A pipestem lot shall be allowed in a residential district only when-it:
 - a. The pipestem lot significantly improves the location, shape, size, or utility or public land or facilities required to be dedicated or constructed in conjunction with the subdivision of the property;
 - b. The pipestem lot significantly improves the location, shape or size of open space in common areas in the subdivision of the property; or
 - c. The pipestem lot contributes to the conservation and preservation of the natural features of the property being subdivided.
 - 2. Limit on Number.** Pipestem lots shall represent no more than ten percent of the total number of lots shown on any single plat of subdivision.
 - 3. Limit on Contiguous Lots.** No more than two pipestem lots shall be contiguous. Such lots shall be contiguous only when used in conjunction to provide a single common driveway.
 - 4. Ingress and Egress.** Adequate ingress and egress easements shall be provided when more than one lot is to use a common driveway.
 - 5. Driveways.** Pipestem lot driveways shall meet all design and construction standards adopted by the town or the equivalent of such standards, subject to the approval of the town council.

- 6. Front Setback.** No structure in an R-15 that is approved for development on a pipestem lot shall be located closer than 35 feet to any front lot line. No structure in an R-10 district that is approved for development on a pipestem lot shall be located closer than 25 feet to any front lot line.
- 7. Yard Requirements for Pipestem Lots.** Required yards shall be located such that:
- a. When two pipestem lots form a T configuration and are served by a single common driveway, the location of the front yard shall be that area abutting the pipestem.
 - b. When two pipestem lots form a flag-shaped configuration, the location of the front yard shall be that area abutting the pipestem.
 - c. Front yards for all other pipestem lots shall be determined to be that area adjacent to any lot lines which would be intersected by a line drawn perpendicular from the architectural front of the main structure at any and all points along the front surface. .
 - d. The location of all other yards shall be determined by the relationship to the front yard and shall be subject to final approval by the town council. All subsequent revisions to the approved plan shall require further approval by the town council.

Sec. 78-30.6 Specific Use Standards for Residential Districts

All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply, unless, in the judgment of the reviewing authority, exceptional circumstances warrant adjustment:

- A. Single-Family Detached Dwellings.** All single-family detached dwellings shall be subject to the following standards:
- 1. Frontage Requirements.** All lots shall have frontage on a public street except in planned development-downtown and planned development traditional downtown, where private streets may be used to add flexibility for site design in urban conditions.
 - 2. Single Lot Development.** Single Lot Development shall be subject to additional standards in section 78-155.6.
 - 3. Infill.** For infill development on an existing block with detached dwellings on each adjacent lot along the street, the required setback shall be equivalent to the average of the existing building setback lines of the detached dwellings along the street and in the same block.

B. Multi-Family, Townhouse, Rental Townhouse Residential Development, Quadruplex and Duplex Dwellings. The following standards shall apply to developments containing multi-family, townhouses, quadruplex and duplex dwellings.

1. Lot Frontage and Access Standards. The following lot frontage and access standards shall be met for the specified residential use types:

- a. Each multi-family development shall have frontage on a public street. Each multi-family development may have privately maintained driveways for internal circulation among the multi-family dwellings and between those buildings and the public street.
- b. Each townhouse and duplex lot shall have frontage on a dedicated public street or on a 30-foot minimum width privately maintained public access easement which shall provide adequate vehicular and pedestrian access to the lot from a public street, as determined by the town using the standards in the Public Facilities Manual.
- c. No more than 30 townhouse or duplex dwelling units shall be provided access to a public street by a single privately maintained roadway.

2. Dimensional Limitations and Requirements. The following dimensional standards shall be met for the specified residential use types:

- a. The height of buildings located within 100 feet of existing single-family detached development or undeveloped land in a single-family detached zoning district shall not exceed the maximum height permitted in the adjacent single-family detached district.
- b. Lot areas for townhouses shall not exceed 50 percent of the gross site acreage of the townhouse development.
- c. Townhouses and duplexes shall have a minimum area of 1,800 square feet of living space. Townhouses constructed or approved for construction prior to October 12, 1982 which are in conformance with all other regulations, shall not be deemed nonconforming if they have less than 1,800 square feet of gross area.
- d. End unit townhouses shall have a minimum width of 24 feet. .
- e. Townhouses that are not end units shall have a minimum width of 22 feet.

- f. No two abutting townhouses or duplexes shall have the same distance between the rear or side building facade and the rear or side property line, respectively, and the distance shall vary by a minimum of two feet. .
- g. For infill development on an existing block with detached dwellings on each adjacent lot along the street, the required setback shall be equivalent to the average of the existing building setback lines of the detached dwellings on the adjacent lots. .

3. Design Standards. The following design standards shall be met for the specified residential use types:

- a. No more than eight townhouses shall be included in one structure.
- b. Primary building entrances shall be on the front facade of the building, except that townhouse end units shall have primary entrances on the sides.
- c. Buildings which are 50 feet in length or greater shall incorporate wall offsets, a minimum of three feet in depth, a minimum of every 35 feet.
- d. At least 20 percent of the facade facing a street shall consist of glazing (window surfaces, excluding doors and storm doors).
- e. The development shall be designed to be pedestrian-friendly and shall comply with the standards for pedestrian movement in section 78-100.10.

4. Parking, Garages and Driveways. The following standards shall apply to parking, garages and driveways for the specified residential use types:

- a. For multi-family dwellings, a maximum of 50 percent of off-street parking shall be provided within the setback.
- b. Garages for multi-family dwellings shall be designed where appropriate such that:
 - (1) Garages shall be side- or rear-entry, and located to the side or rear of the buildings.
- c. No side-entry garage door shall face any adjacent single-family detached residential development.
 - (1) Driveways for individual units are a minimum length of 20 feet.

- (2) Driveways for individual units are accessed from internal streets or common driveways, and do not have direct access to a public street.
- (3) Individual garage doors facing a public street shall not exceed ten feet in width per door, and a maximum of two doors facing the street per dwelling unit, with a minimum separation of two feet between the doors.
- (4) Structured parking in the RTC District is prohibited, other than garages attached to or incorporated in individual units.
- (5) Attached garages with doors facing a public street:
 - i. Shall be recessed at least two feet behind the front facade of the ground floor living area; or
 - ii. Shall not extend beyond the facade line of the living area of the unit if the garage is at least three feet behind a porch; or
 - iii. Shall not extend beyond the facade line of the living area of the unit if an upper story overhangs the ground floor living area facade by at least two feet.

5. Privacy Screening. For townhouse and duplex dwellings not containing a rear yard driveway, both sides of rear yards shall be screened with a privacy fence or wall of six feet minimum height and extending not less than ten feet from the rear building wall. For such dwellings containing a rear yard driveway, the developer may or may not provide a privacy fence or wall of a height or location that does not adversely affect visibility clearance at the driveway's interface with the abutting public or private street.

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ARTICLE IV - BUSINESS DISTRICTS

Sec. 78-40 Business Districts

The following sections contain provisions pertaining to Business Zoning Districts.

Sec. 78-40.1 CC Central Commercial District

A. Purpose and Intent. The CC has historical and cultural significance to the town because it includes Herndon's original downtown commercial area, with some structures predating the incorporation of the town in 1879. The CC preserves the original downtown commercial lands as the town's center, at a scale, form, and intensity of use compatible with the original development of the district. The intent of the district is to allow for a mix of office, service commercial, retail commercial, entertainment, cultural, government, and civic uses. Zoning map amendments for CC zoning shall be confined to those lands designated as Sectors 1 and 2 in the Downtown Overlay as shown in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended.

B. Intensity. The maximum Floor Area Ratio permitted in the CC district is .5.

C. Principal Uses. Table 78-40.1.C.3 lists uses permitted and allowed in the CC district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the CC district. It is the applicant's responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other uses not listed on the following table are not allowed in the CC district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

1. **“P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in CC District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VII - Use Regulations.
2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in the CC District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII - Use Regulations.

3. Table of Principal Permitted and Allowed Uses in the CC District.

Table 78-40.1.C.3 – Principal Permitted and Allowed Uses CC <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column</i>			
USE CATEGORY	USE TYPE	CC	See Supplemental Regulations
Residential	Multi-Family Dwelling within a Mixed Use Building	P	In the CC District, this use is only above the first floor and is limited to a maximum of two such dwellings per building
	Housing for the Elderly	P	§78-71.1
Education	Childcare Center, Daycare Center or Preschool	S	§78-71.2
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	S	§78-71.3
Institutional and Community Services Uses	Community Centers	S	§78-71.4
	Library	P	§78-71.4
	Museum, Fine Arts Center	P	§78-71.4
	Senior Center	P	§78-71.4
Alcohol Production Facilities, Small	Craft Breweries, Micro-Distilleries, Micro-Cideries, Micro wineries (without on-site vineyard)	P	§78-71.5
	Brewpubs (eating establishment where food is prepared and served but also to produce alcoholic beverages on a small scale.)	P	§78-71.5
Eating Establishments	Restaurant	P	§78-71.6
Entertainment , Indoor	Commercial Recreation/ Entertainment, Indoor	S	§78-71.8
Offices	All Office Uses (excluding any medical or health related services - see "health care facility")	P	§78-71.7
Personal Services and Retail Sales	Artist's Studio or Gallery	P	§78-71.10
	Dry-Cleaning/Laundry, Laundromats	S	§78-71.10
	Financial Institution	P	§78-71.10
	Funeral Home	P	§78-71.10
	Health Care Facility	P	§78-71.10
	Health Care Laboratory	P	§78-71.10
	Mailing and Packing Service	S	§78-71.10
	Personal Services, General	P	§78-71.10
	Pharmacy	P	§78-71.10

Table 78-40.1.C.3 – Principal Permitted and Allowed Uses CC <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column</i>			
USE CATEGORY	USE TYPE	CC	See Supplemental Regulations
	Product Repair and Services	P	§78-71.10
	Retail Sales	P	§78-71.10
	School of Special Instruction	S	§78-71.10
	Other Personal Services and Retail Sales Uses	P	§78-71.10
Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.13
Transportation and Parking	Parking Facility, Commercial or Public, Permanent	S	§78-71.17

D. Accessory Uses and Structures. Table 78-40.1.D.3 lists uses permitted and allowed in the CC district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the CC district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the CC district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

- 1. “P” Permitted.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in CC District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII - Accessory Use Regulations.
- 2. “S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Permitted and Allowed Accessory Uses in CC District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII - Accessory Use Regulations.

3. Table of Permitted and Allowed Accessory Uses in the CC District

Table 78-40.1.D.3 – Permitted and Allowed Accessory Uses CC		
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	CC	Supplemental Use Regulations
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	P	§78-80.4.C
Commercial Communication Towers, Freestanding	S	§78-.71.13.D.2
Daycare Center, Childcare Center or Pre-School	S	§78-80.4.I
Financial Institutions, Accessory	P	§78-80.4.K
Minor Utilities	P	§78-80.4.M
Mobile Food Unit Preparer, Full Service	P	§78-80.4.T
Outdoor Restaurant Seating	P	§78-80.4.N
Outdoor Display of Products for Sale	P	§78-80.4.O
Parapets, Penthouses for Equipment and Other Roof Structures	P	§78-80.4.D
School Uses in Conjunction with and on the same site as, Religious Institution	S	§78-80.4.R
Social Service and Similar Community Services Uses	S	§78-80.4.S
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, swimming pools	P	§78-80.3.C §78-21.F

4. Accessory Structures in the CC District. Accessory Structures within the CC district shall conform to the standards of Article VIII.

E. Temporary Uses and Structures. Temporary uses or structures shall be permitted and governed per Article IX, Temporary Uses and Structures.

F. Restricted and Prohibited Uses. Additional use limitations apply to certain uses in the CC district as follows:

1. **Outdoor Display and Sale of Products.** The outdoor display of products for sale shall comply with Section 80.4.P.
2. **Vehicular Sales.** The commercial display and sale of vehicles is generally prohibited but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.1.G.a.

G. Dimensional Standards. All primary and accessory structures in the CC zoning district are subject to the dimensional standards set forth in Table 78-40.1.G CC Table of Dimensional Standards. These standards may be further limited or modified by other applicable sections of this chapter. Accessory structures are subject further

to the standards in Article VIII - Definitions for terms in this section may be found in Article XVIII - Definitions.

TABLE 78-40.1.G – CC DIMENSIONAL STANDARDS	
STANDARD	ALL USES
Lot Area, Minimum (sq. ft.)	None
Lot Width, Minimum at setback line (feet)	None
Setback, Minimum (feet)	Refer to Section § 78-40.6, Downtown
Side Yard, Minimum (feet)	Adjacent to Residential District: ¹ Greater of 25’ or building height ² ; Not Adjacent to Residential District: None See also section 110.4.E.3.a and Section 78-110.4.E.3.b.,
Rear Yard, Minimum (feet)	Adjacent to Residential District: ¹ Greater of 25’ or building height ² ; Not Adjacent to Residential District: None See also Section 110.4.E.3.a and Section 78-110.4.E.3.b
Height, Maximum (feet)	40’
Height, Minimum	20’
Floor Area Ratio, Maximum	.5
Open Space, Minimum	15%
Notes:	
¹ Adjacent to Residential District: indicates that a special side or rear yard requirement applies for every lot line abutting a parcel zoned for residential use when the parcel is used for residential purposes or is undeveloped. The special yard requirement is as indicated above. ² Building Height: indicates that the required setback or yard is equal to the height of the tallest building on the site where the setback or yard is required.	

H. **Open Space.** A minimum of 15% of the development site shall be designated as open space and shall be subject to the general Open Space Standards in Article XI, section 78-113.

I. **Development Standards.** Development in the CC zoning district shall be subject to all applicable standards of Article XI, Development Standards and specific standards as follows:

1. **Landscaping, Buffering and Screening.** Development in the CC district shall conform to the landscaping, buffer and screening standards in Article XI and Development Standards, Perimeter Buffer Strip Requirements in Section 78-110.3 and Table 78-110.3.E.4.b.
2. **Exterior Lighting.** Development in the CC district shall conform to the exterior lighting standards for in Section 78-130.9
3. **Fences and Walls.** Development in the CC district shall conform to the exterior lighting standards in Section 78-115.2 and 78-115.2.H, specifically.

- J. **Noise, Vibration, etc.** Development in the CC district shall conform to the applicable performance standards of Article XIII, Performance Standards.
- K. **Parking & Circulation.** Development in the CC district shall be subject to all applicable standards of Article X, Parking, Loading, and Circulation.
- L. **Signs.** Signs in the CC zoning district shall be subject to the provisions of Article XIV.
- M. **Nonconformities.** Nonconforming uses and structures in the CC district s shall be subject to the provisions of Article XVI
- N. **Application Requirements and Application Review Process.** Applications for development in the CC district shall be subject to Article XV.

Sec. 78-40.2 CS Commercial Services District

- A. **Purpose and Intent.** The CS district provides development opportunities for retail, service commercial, and related uses, as well as to manage commercial development design and vehicular access along major transportation corridors within the town. Recognizing that the zoning map designates two major vehicular gateways into the town as CS districts, CS regulations are intended to help ensure a level and character of quality construction and architecture that impress citizens and visitors with creative design and that promote organizational purpose in the commercial service district. More specifically, the regulations strive to: enhance the appearance and character of development on CS district lands, and ensure its compatibility with surrounding development; coordinate the pedestrian and traffic circulation systems of development on CS district lands with the pedestrian and traffic circulation patterns of surrounding lands; facilitate access between development on CS lands and adjacent lands; and limit the number and control the location of ingress and egress points to CS district lands to encourage and ensure automotive and pedestrian safety and convenience. Zoning map amendments for CS districts requested after the effective date of this chapter shall be confined to those lands designated as CS, or those lands designated as Adaptive Area on the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended.
- B. **Intensity.** The maximum Floor Area Ratio permitted in the CS district is .3.
- C. **Principal Uses.** Table 78-40.2.C.3 lists uses permitted and allowed in the CS district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the CS district. It is the applicant's responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII Other uses not listed on the following table are not allowed in the CS district unless

determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

1. **“P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in CS District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI Development Standards and Article VII - Use Regulations.

2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Permitted and Allowed Accessory Uses in CS District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VII Use Regulations.

3. **Table of Principal Permitted and Allowed Uses in the CS District.**

Table 78-40.2.C.3 – Principal Permitted and Allowed Uses CS			
<i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i>			
Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	CS	Supplemental Use Regulations
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	S	§78-71.3
Institutional and Community Service Uses	Hospital	S	§78-71.4
	Library	P	§78-71.4
Alcohol Production Facilities, Small	Craft Breweries, Micro-Distilleries, Micro-Cideries, Micro wineries (without on-site vineyard)	P	§78-71.5
	Brewpubs (eating establishment where food is prepared and served but also to produce alcoholic beverages on a small scale.)	P	§78-71.5
Eating Establishments	Restaurant	P	§78-71.6
	Drive-In Restaurant [not drive-through window service] ¹	S	§78-71.6
Entertainment , Indoor	Commercial Recreation/ Entertainment, Indoor	P	§78-71.8
Lodging Businesses	Conference Center, Hotel, Motel, Inn Boarding House, Rooming House	S	§78-71.12
Offices	All Office Uses (excluding any medical or health related services - see "health	P	§78-71.7

Table 78-40.2.C.3 – Principal Permitted and Allowed Uses CS
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;
 Uses may be subject to use specific standards as noted in the last column

USE CATEGORY	USE TYPE	CS	Supplemental Use Regulations
	care facility")		
Personal Services and Retail Sales	Animal Hospital, Kennel, Pet Daycare, Animal Shelter, and Veterinary Clinic	P	§78-71.10
	Artist's Studio or Gallery	P	§78-71.10
	Dry-Cleaning/Laundry, Laundromats	P	§78-71.10
	Durable Goods Sales	P	§78-71.10
	Financial Institution	P	§78-71.10
	Health Care Facility	P	§78-71.10
	Health Care Laboratory	P	§78-71.10
	Mailing and Packing Service	P	§78-71.10
	Personal Services, General	P	§78-71.10
	Pharmacy	P	§78-71.10
	Product Repair and Services	P	§78-71.10
	Retail Sales	P	§78-71.10
	School of Special Instruction	P	§78-71.10
	Other Personal Services and Retail Sales Uses	P	§78-71.10
Vehicle Sales and Services	Vehicle Sales (new)	S	§78-71.11
	Vehicle Repair; Transmission and Muffler Shops, Sales of Vehicle Parts and Tires	S	§78-71.11
	Recreational Vehicle Rental and Sales	S	§78-71.11
	Vehicle Fuel Sales (with or without convenience store)	S	§78-71.11
Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.13
	Electrical Substation	S	§78-71.13
	Telecommunication Switching Station	S	§78-71.13
	Utility-Related Maintenance and Storage Yards	S	§78-71.13
Industrial Service	Dry Cleaning or Laundry Plants	S	§78-71.14
Transportation and Parking	Parking Facility, Commercial or Public, Permanent	S	§78-71.17
Warehousing	Electronic Warehousing	S	§78-71.18

¹ See also Article VIII - Definitions. Drive-in (not drive-through) window service is a term used to describe an establishment designed to be operated to serve a patron

Table 78-40.2.C.3 – Principal Permitted and Allowed Uses CS			
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	CS	Supplemental Use Regulations
while seated in an automobile parked in an off-street parking space.			

D. Accessory Uses and Structures. Table, 78-40.2.D.3 lists uses permitted and allowed in the CS district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the CS district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the CS district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

- 1. “P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in CS District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VIII Accessory Use Regulations.
- 2. “S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Permitted and Allowed Accessory Uses in CS District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI- Development Standards and Article VIII - Accessory Use Regulations.

3. Table of Permitted and Allowed Accessory Uses in the CS District

Table 78-40.2.D.3 – Permitted and Allowed Accessory Uses CS		
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	CS	See Supplemental Regulations
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	P	§78-80.4.C
Car/Vehicle Rental	S	§78-80.4.E

Table 78-40.2.D.3 – Permitted and Allowed Accessory Uses CS		
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	CS	See Supplemental Regulations
Car/Vehicle Wash (accessory to other automotive uses)	P	§78-80.4.F
Caretaker or Security Guard's Residence	P	§78-80.4.H
Commercial Communication Towers, Freestanding	S	§78-80.13.D.2
Daycare Center, Childcare Center or Pre-School	S	§78-80.4.I
Drive-Through Service	S	§78-80.4.J
Financial Institutions, Accessory	P	§78-80.4.K
Minor Utilities	P	§78-80.4.M
Mobile Food Unit Preparer, Full Service	P	§78-80.4.T
Outdoor Restaurant Seating	P	§78-80.4.N
Outdoor Storage (as an accessory use)	P	§78-80.4.O
Outdoor Display of Products for Sale	P	§78-80.4.P
Parapets, Penthouses for Equipment and Other Roof Structures	P	§78-80.3.D
Social Service and Similar Community Service Uses	S	§78-80.4.S
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, swimming pools	P	§78-80.3.C §78-21.F

- 4. Accessory Structures in the CS District. Accessory Structures within the CS district shall conform to the Standards of Section VIII.
- E. **Temporary Uses and Structures.** Temporary uses or structures shall be permitted and governed per Article IX - Temporary Uses and Structures.
- F. **Restricted and Prohibited Uses.** Additional use limitations apply to certain uses in the CS district as follows:
 - 1. **Outdoor Display and Sale of Products.** The outdoor display of products for sale shall comply with Section 78.80-4.G.A..
 - 2. **Vehicular Sales.** The commercial display and sale of vehicles is generally prohibited but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.4.P.
- G. **Dimensional Standards.** All primary and accessory structures in the CS zoning district are subject to the dimensional standards set forth in Table 78-40.2.G: CS Table of Dimensional Standards. These standards may be further limited or modified by other applicable sections of this chapter. Accessory structures are subject further to the standards in Section VIII. Definitions for terms in this section may be found in Article XVIII - Definitions.

TABLE 78-40.2.G: CS DIMENSIONAL STANDARDS	
STANDARD	ALL USES
Lot Area, Minimum (sq. ft.)	None
Lot Width, Minimum at setback line (feet)	None
Setback, Minimum (feet)	Greater of: 50', or as specified in the buffer classification in See also Section 110.4.E.3.a and Section 78-110.4.E.3.b.,
Setback, Maximum (feet)	100'
Side Yard, Minimum (feet)	Adjacent to Residential District: ¹ Greater of 25' or building height ² ; or as specified in the buffer classification in See also Section 110.4.E.3.a and Section 78-110.4.E.3.b. Not Adjacent to Residential District: 7.5', or as specified in the buffer classification in Section 110.4.E.3.a and Section 78-110.4.E.3.b.,
Rear Yard, Minimum (feet)	Adjacent to Residential District: ¹ Greater of 25' or building height ² ; , or as specified in the buffer classification in See also Section 110.4.E.3.a and Section 78-110.4.E.3.b., Not Adjacent to Residential District: 7.5', or as specified in the buffer classification in Section 110.4.E.3.a and Section 78-110.4.E.3.b.,
Height, Maximum (feet)	45' (See also Sec. 78-40.6 Downtown for CS Property Located with Sector 3 of the Downtown)
Floor Area Ratio, Maximum	.3
Open Space, Minimum	25%
Notes:	
¹ Adjacent to Residential District: indicates that a special side or rear yard requirement applies for every lot line abutting a parcel zoned for residential use when the parcel is used for residential purposes or is undeveloped. The special yard requirement is as indicated above. ² Building Height: indicates that the required setback or yard is equal to the height of the tallest building on the site where the setback or yard is required.	

H. Open Space. A minimum of 25% of the development site shall be designated as open space and shall be subject to the general Open Space Standards in Article XI, Section 78-113.

I. Development Standards. Development in the CS zoning district shall be subject to all applicable standards of Article XI, Development Standards and specific standards as follows:

- 1. Landscaping, Buffering and Screening.** Development in the CS district shall conform to the landscaping, buffer and screening standards in Article XI and Development Standards, Perimeter Buffer Strip Requirements in Section 78-110.3 and Table 78-110.3.E.4.b.
- 2. Exterior Lighting.** Development in the CS district shall conform to the exterior lighting standards for in Section 78-130.9.
- 3. Fences and Walls.** Development in the CS district shall conform to the exterior lighting standards in Section 78-115.2 and 78-115.2.H, specifically.

- J. **Noise, Vibration, etc.** Development in the CS district shall conform to the applicable performance standards of Article XIII, Performance Standards.
- K. **Parking & Circulation.** Development in the CS district shall be subject to all applicable standards of Article X - Parking, Loading, Circulation and Visibility.
- L. **Signs.** Signs in the CS zoning district shall be subject to the provisions of Article XIV
- M. **Non-Conformities.** Non- conforming uses and structures in the CS district shall be subject to the provisions of Article .
- N. **Application Requirements and Application Review Process.** Applications for development in the CS district shall be subject to Article XV.

Sec. 78-40.3 CO Commercial Office District

A. **Purpose and Intent.** The intent of the CO District is to provide development opportunities for office uses that are principally used during daylight hours and that may serve as a transition between residential and retail commercial and service commercial uses. The district regulations promote pedestrian-oriented development as well as connectivity between residential and office uses. This district requires strict development controls in instances where it is adjacent to residential districts. Zoning map amendments for CO districts requested after the effective date of this chapter shall be confined to those lands designated as adaptive area or Services and Industries in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended.

B. **Intensity.** The maximum Floor Area Ratio permitted in the CO district is .5.

C. **Principal Uses.** Table 78-40.3.C.3 lists uses permitted and allowed in the CO district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the CO district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other uses not listed on the following table are not allowed in the CO district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F

- 1. **“P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in CO District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VII Use Regulations.

2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in CO District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VII - Use Regulations.

3. **Table of Principal Permitted and Allowed Uses in the CO District.**

Table 78-40.3.C.3 – Principal Permitted and Allowed Uses CO KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	CO	See Supplemental Regulations
Education	Childcare Center, Daycare Center or Preschool	S	§78-71.2
	Post Secondary Education and Career Schools	S	§78-71.2
	School, Public or Private (K-12)	S	§78-71.2
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	S	§78-71.3
	Community Centers	S	§78-71.4
	Convalescent Home	S	§78-71.4
	Hospital	S	§78-71.4
	Museum, Fine Arts Center	S	§78-71.4
	Religious Institution (with a capacity of 300 or fewer persons) gathered for religious observance in, with or without any accessory schools, daycare centers, or recreational facilities	S	§78-71.4
Eating Establishments	Restaurant	S	§78-71.6
Offices	All Office Uses (excluding any medical or health related services - see "health care facility")	P	§78-71.7
Personal Services and Retail Sales	Animal Hospital, Kennel, Pet Daycare, Animal Shelter, and Veterinary Clinic	S	§78-71.10
	Artist's Studio or Gallery	P	§78-71.10
	Dry-Cleaning/Laundry, Laundromats	S	§78-71.10
	Financial Institution	P	§78-71.10
	Health Care Facility	P	§78-71.10

Table 78-40.3.C.3 – Principal Permitted and Allowed Uses CO			
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	CO	See Supplemental Regulations
	Health Care Laboratory	P	§78-71.10
	Mailing and Packing Service	S	§78-71.10
	Personal Services, General	S	§78-71.10
	Pharmacy	P	§78-71.10
	Product Repair and Services	S	§78-71.10
	Retail Sales	S	§78-71.10
	School of Special Instruction	S	§78-71.10
	Other Personal Services and Retail Sales Uses	S	§78-71.10
Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.13
Transportation and Parking	Parking Facility, Commercial or Public, Permanent	S	§78-71.17

D. Accessory Uses and Structures. Table 78-40.3.C.3 lists uses permitted and allowed in the CO district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the CO district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the CO district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

- 1. “P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in CO District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII - Accessory Use Regulations.
- 2. “S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Permitted and Allowed Accessory Uses in CO District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI Development Standards and Article VIII - Accessory Use Regulations.

3. Table of Permitted and Allowed Accessory Uses in the CO District

Table 78-40.3.D.3 – Permitted and Allowed Accessory Uses CO		
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	CO	Supplemental Use Regulations
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	P	§78-80.4.C
Commercial Communication Towers, Freestanding	S	§78-71.13.D.2
Daycare Center, Childcare Center or Pre-School	S	§78-80.4.I
Financial Institutions, Accessory	P	§78-80.4.K
Minor Utilities	P	§78-80.4.M
Mobile Food Unit Preparer, Full Service	P	§78-80.4.T
Outdoor Restaurant Seating	P	§78-80.4.N
Parapets, Penthouses for Equipment and Other Roof Structures	P	§78-80.3.D
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, swimming pools	P	§78-80.3.C §78-21.F

4. Accessory Structures in the CO District. Accessory Structures within the CO district shall conform to the Standards of Article VIII.

E. Temporary Uses and Structures. Temporary uses or structures shall be permitted and governed per Article IX, Temporary Uses and Structures.

F. Restricted and Prohibited Uses. Additional use limitations apply to certain uses in the CO district as follows:

- 1. **Outdoor Display and Sale of Products.** The outdoor display of products for sale shall comply with Section 78-80.4.G.A
- 2. **Vehicular Sales.** The commercial display and sale of vehicles is generally prohibited but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.4.P.

G. Dimensional Standards. All primary and accessory structures in the CO zoning district are subject to the dimensional standards set forth in Table 78-70-40.3.G: CO Table of Dimensional Standards. These standards may be further limited or modified by other applicable sections of this chapter. Accessory structures are subject further to the standards in Article VIII. Definitions for terms in this section may be found in Article XVIII, Definitions.

TABLE 78-403.G – CO DIMENSIONAL STANDARDS	
STANDARD	ALL USES
Lot Area, Minimum (sq. ft.)	10,000
Lot Width, Minimum at setback line (feet)	Interior Lots: 60' Corner Lots: 100'
Setback, Minimum (feet)	Greater of: 25', or Building Height, or as specified in the buffer classification in section 78-110.4.E.3.a and Section 78-110.4.E.3.b.,
Side Yard, Minimum (feet)	Adjacent to Residential District: ¹ Greater of 25' or building height ² ; or as specified in the buffer classification Section 110.4.E.3.a and Section 78-110.4.E.3.b., Not Adjacent to Residential District: 10', or as specified in the buffer classification in Section 110.4.E.3.a and Section 78-110.4.E.3.b.,
Rear Yard, Minimum (feet)	Adjacent to Residential District: ¹ Greater of 25' or building height ² ; or as specified in the buffer classification in Section 110.4.E.3.a and Section 78-110.4.E.3.b., Not Adjacent to Residential District: 10', or as specified in the buffer classification in Section 110.4.E.3.a and Section 78-110.4.E.3.b.,
Height, Maximum (feet)	60'
Floor Area Ratio, Maximum	.5
Open Space, Minimum	25%
Notes:	
¹ Adjacent to Residential District: indicates that a special side or rear yard requirement applies for every lot line abutting a parcel zoned for residential use when the parcel is used for residential purposes or is undeveloped. The special yard requirement is as indicated above. ² Building Height: indicates that the required setback or yard is equal to the height of the tallest building on the site where the setback or yard is required.	

H. Open Space. A minimum of 25% of the development site shall be designated as open space and shall be subject to the general Open Space Standards in Article XI, Section 78-113.2.

I. Development Standards. Development in the CO zoning district shall be subject to all applicable standards of Article XI, Development Standards and specific standards as follows:

- a. **Landscaping, Buffering and Screening.** Development in the CO district shall conform to the landscaping, buffer and screening standards in Article XI and Development Standards, Perimeter Buffer Strip Requirements in Section 78-110.3 and Table 78-110.3.E.4.b.
- b. **Exterior Lighting.** Development in the CO district shall conform to the exterior lighting standards for in Section 78-130.9
- c. **Fences and Walls.** Development in the CO district shall conform to the exterior lighting standards in Section 78-115.2 and 78-115.2.H, specifically.

- J. **Noise, Vibration, etc.** Development in the CO district shall conform to the applicable performance standards of Article XIII, Performance Standards.
- K. **Parking & Circulation.** Development in the CO district shall be subject to all applicable standards of Article X, Parking, Loading, and Circulation.
- L. **Signs.** Signs in the CO zoning district shall be subject to the provisions of Article XIV.
- M. **Nonconformities.** Nonconforming uses and structures in the CO district s shall be subject to the provisions of Article XVI
- N. **Application Requirements and Application Review Process.** Applications for development in the CO district shall be subject to Article XV.

Sec. 78-40.4 – O&LI Office and Light Industrial District

- A. **Purpose and Intent.** The intent of the O&LI district is to provide development opportunities for high quality office uses, high technology and communications industry uses, uses for scientific research, development and training, uses for the assembly of technology products, and limited retail and services uses intended to serve primarily the employees within the other uses. To ensure high quality development, this district requires strict development controls. Development in the O&LI District should excel in architecture and site design, with uses located in high profile, landmark buildings in settings with high quality design. The standards of this district are designed to ensure uses are developed in a manner that is compatible with the use and enjoyment of nearby lands, and to minimize damage to the environment. Zoning map amendments for O&LI districts shall be confined to those lands designated as Services and Industries.
- B. **Intensity.** The maximum Floor Area Ratio permitted in the O&LI district is .7.
- C. **Principal Uses.** Table 78-40.4.C.3, lists uses permitted and allowed in the O&LI district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the O&LI district. It is the applicant's responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted development approval. Definitions for uses and terms in this section may be found in Article XVIII, Other uses not listed on the following table are not allowed in the O&LI district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.
 - 1. **"P" Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in O&LI District, if any. Permitted uses are subject to

all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article XVIII -Use Regulations.

2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in O&LI District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VII Use Regulations.

3. Table of Principal Permitted and Allowed Uses in the O&LI District.

Table 78-40.4.C.3 – Principal Permitted and Allowed Uses O&LI			
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	O&LI	Supplemental Use Regulations
Education	Childcare Center, Daycare Center or Preschool	S	§78-71.2
	Post Secondary Education and Career Schools	S	§78-71.2
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	S	§78-71.3
Institutional and Community Service Uses	Hospital	S	§78-71.4
	Museum, Fine Arts Center	S	§78-71.4
	Religious Institution (with a capacity of 300 or fewer persons) gathered for religious observance in, with or without any accessory schools, daycare centers, or recreational facilities	S	§78-71.4
Alcohol Production Facilities, Small	Craft Breweries, Micro-Distilleries, Micro-Cideries, Micro wineries (without on-site vineyard)	S	§78-71.5
	Brewpubs (eating establishment where food is prepared and served but also to produce alcoholic beverages on a small scale.)	S	§78-71.5
Eating Establishments	Restaurant	S	§78-71.6
Entertainment , Indoor	Commercial Recreation/ Entertainment, Indoor	S	§78-71.8
Entertainment, Outdoor	Commercial Recreation/Entertainment, Outdoor	S	§78-71.9
Lodging	Conference Center, Hotel, Motel, Inn	S	§78-71.12

Table 78-40.4.C.3 – Principal Permitted and Allowed Uses O&LI
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column

USE CATEGORY	USE TYPE	O&LI	Supplemental Use Regulations
Businesses	Boarding House, Rooming House		
Offices	All Office Uses (excluding any medical or health related services - see "health care facility")	P	§78-71.7
Personal Services and Retail Sales	Animal Hospital, Kennel, Pet Daycare, Animal Shelter, and Veterinary Clinic	S	§78-71.10
	Artist's Studio or Gallery	P	§78-71.10
	Dry-Cleaning/Laundry, Laundromats	P	§78-71.10
	Durable Goods Sales	S	§78-71.10
	Financial Institution	P	§78-71.10
	Health Care Facility	P	§78-71.10
	Health Care Laboratory	P	§78-71.10
	Mailing and Packing Service	P	§78-71.10
	Product Repair and Services	P	§78-71.10
	School of Special Instruction	P	§78-71.10
Vehicle Sales and Services	Vehicle Sales (new)	S	§78-71.11
	Vehicle Repair; Transmission and Muffler Shops, Sales of Vehicle Parts and Tires	S	§78-71.11
	Recreational Vehicle Rental and Sales	S	§78-71.11
	Vehicle Fuel Sales (with or without convenience store)	S	§78-71.11
Commercial Utilities	Commercial Communication Tower, Freestanding	S	§78-71.13
	Electrical Substation	S	§78-71.14
	Telecommunication Switching Station	S	§78-71.14
	Utility-Related Maintenance and Storage Yards	S	§78-71.14
Industrial Service	Dry Cleaning or Laundry Plants	S	§78-71.14
	Scientific Research and Scientific Development	P	§78-71.14
	All other Industrial Service Uses	S	§78-71.14
Light Manufacturing	Uses involving Freight Delivery, Storage, Mass Production and Transporting of Finished Products	S	§78-71.15
	All other Light Manufacturing Uses	P	§78-71.15
Self-Service Storage	Self-Service Storage Uses	S	§78-71.16

Table 78-40.4.C.3 – Principal Permitted and Allowed Uses O&LI <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column</i>			
USE CATEGORY	USE TYPE	O&LI	Supplemental Use Regulations
Transportation and Parking	Bus Maintenance Facility for Public Bus Service	S	§78-71.17
	Parking Facility, Commercial or Public, Permanent	S	§78-71.17
Warehousing	Electronic Warehousing	P	§78-71.18
	Warehouse (storage)	S	§78-71.18
Wholesale Sales	Contractor's Materials	S	§78-71.19
	Wholesale Establishment	S	§78-71.19

D. Accessory Uses and Structures. Table 78-40.4.D.3 lists uses permitted and allowed in the O&LI district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the O&LI district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the O&LI district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

1. **“P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in O&LI District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII -Accessory Use Regulations.

2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Permitted and Allowed Accessory Uses in O&LI District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII - Accessory Use Regulations.

3. Table of Permitted and Allowed Accessory Uses in the O&LI District

Table 78-40.4.D.3 – Permitted and Allowed Accessory Uses O&LI KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	O&LI	Supplemental Use Regulations
Accessory Food Preparation – Wet Bar	P	§78-80.4.A
Antennae of all kinds (except commercial communication towers, freestanding)	P	§78-80.4.C
Car/Vehicle Rental	S	§78-80.4.E
Car/Vehicle Used Sales	S	§78-80.4.G
Car/Vehicle Wash (accessory to other automotive uses)	S	§78-80.4.F
Caretaker or Security Guard's Residence	P	§78-80.4.H
Commercial Communication Towers, Freestanding	S	§78-71.13.D.2.
Daycare Center, Childcare Center or Pre-School	S	§78-80.4.I
Drive-Through Service	S	§78-80.4.J
Financial Institutions, Accessory	P	§78-80.4.K
Minor Utilities	P	§78-80.4.M
Mobile Food Unit Preparer, Full Service	P	§78-80.4.T
Outdoor Restaurant Seating	P	§78-80.4.N
Outdoor Storage (as an accessory use)	P	§78-80.4.O
Parapets, Penthouses for Equipment and Other Roof Structures	P	§78-80.3.D
School Uses in conjunction with, and on the same site as, Religious Institution	S	§78-80.4.R
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, swimming pools	P	§78-80.3.C §78-21.F

4. Accessory Structures in the O&LI District. Accessory Structures within the O&LI district shall conform to the Standards of Article VIII.

E. Temporary Uses and Structures. Temporary uses or structures shall be permitted and governed per Article IX -Temporary Uses and Structures.

F. Restricted and Prohibited Uses. Additional use limitations apply to certain uses in the O&LI district as follows:

1. **Outdoor Display and Sale of Products.** The outdoor display of products for sale shall comply with Section 78-80.4.P
2. **Vehicular Sales.** The commercial display and sale of vehicles is generally prohibited but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.4.G

G. Dimensional Standards. All primary and accessory structures in the O&LI zoning district are subject to the dimensional standards set forth in Table 78-40.4.G. O&LI Table of Dimensional Standards. These standards may be further limited or modified by other applicable sections of this chapter. Accessory structures are subject further to the standards in Article VIII. Definitions for terms in this section may be found in Article XVIII - Definitions. .

TABLE 78-40.4.G – O&LI DIMENSIONAL STANDARDS	
STANDARD	ALL USES
Lot Area, Minimum (sq. ft.)	None
Lot Width, Minimum at setback line (feet)	None
Setback, Minimum (feet)	<p>For Buildings Erected Before After Effective Date of Zoning Ordinance: Greater of: 35', or Building Height, or as specified in the buffer classification in Section 110.4.E.3.a and Section 78-110.4.E.3.b.</p> <p>For Buildings Erected Before Effective Date of Zoning Ordinance: 35'</p>
Side Yard, Minimum (feet)	<p>Adjacent to Residential District:¹ Greater of 100' with no parking within 60' of the residential district or; as specified in the buffer classification in Section 110.4.E.3.a and Section 78-110.4.E.3.b.</p> <p>Not Adjacent to Residential District: 30', or as specified in the buffer classification in section Section 110.4.E.3.a and Section 78-110.4.E.3.b.</p>
Rear Yard, Minimum (feet)	<p>Adjacent to Residential District:¹ Greater of 100' with no parking within 60' of the residential district or; as specified in the buffer classification in section Section 110.4.E.3.a and Section 78-110.4.E.3.b</p> <p>Not Adjacent to Residential District: 30', or as specified in the buffer classification in Section 110.4.E.3.a and Section 78-110.4.E.3.b.</p>
Height, Maximum (feet)	Lesser of 5 stories or 75'; for an increase in height, see Section 78-40.6 and Landmark Business
Floor Area Ratio, Maximum	.7
Open Space, Minimum	20%
Notes:	
<p>¹ Adjacent to Residential District: indicates that a special side or rear yard requirement applies for every lot line abutting a parcel zoned for residential use when the parcel is used for residential purposes or is undeveloped. The special yard requirement is as indicated above.</p> <p>² Building Height: indicates that the required setback or yard is equal to the height of the tallest building on the site where the setback or yard is required.</p>	

H. Open Space. A minimum of 20% of the development site shall be designated as open space and shall be subject to the general Open Space Standards in Article XI, Section 78.111.3.

- I. **Development Standards.** Development in the O&LI zoning district shall be subject to all applicable standards of Article XI, Development Standards and specific standards as follows:
1. **Landscaping, Buffering and Screening.** Development in the O&LI district shall conform to the landscaping, buffer and screening standards in Article XI, and Development Standards, Perimeter Buffer Strip Requirements in Section 78-110.3 and Table 78-110.3.E.4.b.
 2. **Exterior Lighting.** Development in the O&LI district shall conform to the exterior lighting standards for in Section 78-130.9.
 3. **Fences and Walls.** Development in the O&LI district shall conform to the exterior lighting standards in Section 78-115.2 and 78-115.2.H, specifically.
- J. **Noise, Vibration, etc.** Development in the O&LI district shall conform to the applicable performance standards of Article XIII, Performance Standards.
- K. **Parking & Circulation.** Development in the O&LI zoning district shall be subject to all applicable standards of Article X, Parking, Loading, and Circulation.
- L. **Signs.** Signs in the O&LI zoning district shall be subject to the provisions of Article XIV.
- M. **Nonconformities.** Nonconforming uses and structures in the O&LI district s shall be subject to the provisions of Article XVI.
- N. **Application Requirements and Application Review Process.** Applications for development in the O&LI district shall be subject to Article XV.

Sec. 78-40.5 – Additional Standards for Business Zoning Districts

- A. **Frontage.** All lots shall have frontage on a public street.
- B. **Business Activities to be Enclosed.** Except as may be specified in Article VII, Use Regulations, all business, service, storage and display of goods shall be conducted within a completely enclosed building. The storage and display of goods may be conducted in the exterior rear of the facility if enclosed by a masonry wall sufficient in height to completely screen such storage and display of goods but not less than six feet in height. This section does not apply to service stations or to approved outdoor eating facilities.
- C. **Refuse to be Enclosed.** All refuse shall be contained in an approved dumpster screened in accordance with Article XI - Development Standards.

D. Unified Commercial Subdivision. The town council may approve the subdivision of a nonresidential property which was or is proposed to be developed in accordance with a site plan encompassing the entirety of the proposed subdivision as a unified whole. The land use regulations of the town shall be applied to such unified commercial subdivision as a whole, so that it shall not be necessary for each lot within such subdivision to meet each regulation within the boundaries of the lot, but such regulation shall be deemed satisfied when the subdivision, considered as a whole, satisfies the land use regulations of the town. The following standards shall be met for a Unified Commercial Subdivision:

1. **Subdivision and Site Plan Submission Requirements.** The subdivision and the site plan submission shall include a declaration of covenants, conditions and restrictions and deeds of easements and cross-easements or other measures which require the subdivision to be developed, maintained and utilized as a unified whole.
2. **FAR Limitations.** The total floor area contained within the boundary lines of the unified commercial subdivision shall not exceed the maximum FAR for the zoning district, which shall be determined using the land area for the entire subdivision as if it were one lot. The applicable preliminary plan and site plan shall note the allocation of FAR among all lots. (2)

Sec. 78-40.6 – Additional Development Provisions and Development Options for Specified Business District Areas

A. Downtown Development and Design. The following Downtown shall apply in sectors 1, 2, 3, and a small part of sector 6 consisting of five townhouses on center Street comprising part of Fortnightly Square (the Downtown) of the Herndon Downtown Overlay (Map C Downtown Sectors Map and Downtown Master Plan, adopted February 22, 2011) as described in the "Herndon 2030 Comprehensive Plan" (August 12, 2008), as may be amended, for any development in any such zoning district. Where there is conflict between this section and other provisions of this chapter, the provisions of this shall prevail.

1. **Downtown Streetscape.** All sites shall be developed in accord with the "Downtown Streetscape" provisions of 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) as referenced in section 1-16, Herndon Town Code (2000) as amended. Downtown streetscape improvements that are made by an applicant as part of an approved development application may be counted toward the open space requirement for the lot.
2. **Height.** Building facades shall not be less than 20 feet in height as measured from the finished grade of the abutting public sidewalk to the top of the parapet

on flat-roofed buildings or to the eave of pitched roof buildings. See Article IV business districts for additional height provisions.

3. **Setback.** The following setback standards shall apply in the Downtown:
 - a. Setback shall be sufficient to provide for a sidewalk or other streetscape improvements of a minimum of 12 feet in width.
 - b. The 12-foot sidewalk or other streetscape improvements shall be provided and shall be located within the public right-of-way or on private property with a public street easement or within a combination of both.
 - c. Landscaping and lighting structures are permitted in the setback area, if it is determined by the zoning administrator they are safe, do not impede pedestrian access and convenience, and are consistent with the Herndon Downtown Pattern Book adopted January 29, 2013, as amended, incorporated by reference. Off-street parking and loading areas are prohibited in the setback area.
 - d. When a nonresidential streetscape abuts a residential streetscape or a sidewalk outside of the Downtown, a smooth transition shall be provided between the two different types of sidewalks.
 - e. Buildings shall abut the public sidewalk or other streetscape improvements, or a pedestrian plaza or landscaped area open to the public, located between the sidewalk and the building.
 - f. Drive-aisles shall not be permitted between the sidewalk and the building.
 - g. Parking is not permitted within ten feet of any street right-of-way, (including sidewalks), unless it is located directly behind the rear facade of the primary building. When parking is not located behind the rear facade of the building, the parking shall be screened from the adjacent street by a four-foot high solid, wall and by landscaping.
4. **Pedestrian Travel.** The primary mode of transportation in the downtown is intended to be pedestrian travel. To facilitate safe and convenient pedestrian traffic within the downtown, pedestrian ways, alleys, convenience areas and rest areas shall be provided as needed, to provide connecting pedestrian ways. Not more than 10 percent of the lot area may be required for this purpose.
5. **Solid Waste Receptacles.** Solid waste receptacles shall be provided in accordance with the provisions of Section 78-114.2.C, standards for refuse collection and solid waste receptacles.

6. Transitional Sites. Where a side or rear yard of a commercial use abuts residential zoned property, a six-foot high masonry wall shall be provided to act as an effective barrier between the commercial and residential district.

B. Landmark Business Option (CO and O&LI). As an option, the Landmark Business provisions shall apply to any development within 1,500 feet of the northern boundary of the Dulles Toll Road or the western boundary of the Fairfax County Parkway when the development is located within the Commercial-Office District (CO), the Office and Light Industrial District (O&LI). These provisions are established to allow development that provides a regional presence and convenient access on major thoroughfares as long as associated impact is mitigated as noted. The following standards shall apply to Landmark Business developments:

1. **Increase in Height and Floor Area.** An increase in height over the height and floor area ratio allowed in the Table of Dimensional Standards in the applicable Business Zoning District (CO or O&LI), may be permitted by a special exception in accordance with section 78-155.3 special exception, provided that:
 - a. The resulting floor area ratio on the site does not exceed 1.0;
 - b. The height of the building does not exceed 100 feet;
 - c. The setback of the building is at least equivalent to the height of the building as provided in the Table of Dimensional Standards in the applicable Business Zoning District;
 - d. A minimum of 50 percent of the site that is the subject of the special exception is open space;
 - e. Floodplain areas on the subject property may be dedicated to the town and count toward the required open space and green space if meeting applicable standards;
 - f. No part of the structure or building on the site is located less than 500 feet from residential development or undeveloped land within a residential zoning district;
 - g. No part of a building on the site is located more than 1,500 feet from the northern boundary of the Dulles Toll Road or from the western boundary of the Fairfax County Parkway;
 - h. Transportation demand management techniques are used to reduce the traffic impact of the increase in building floor area; and
 - i. At least 50 percent of the parking spaces for the structure or building are located inside a structure or building.

C. Landmark Business Alternate Option (O&LI only). As an option, the Landmark Business Alternate provisions shall apply to any development within 1,100 feet of the northern boundary of the Dulles Toll Road when the development is located within the Office and Light Industrial District (O&LI). These provisions are established to allow development that provides a regional presence and convenient access on major thoroughfares and Metrorail as long as associated impact is mitigated as noted. The following standards shall apply to Landmark Business Alternate developments:

1. Increase in Height and Floor Area. An increase in height or floor area ratio over the height and floor area ratio allowed in Table of Dimensional Standards in the O&LI zoning district, may be permitted by a special exception in accordance with Section 78-155.3, special exception, provided that:

- a. The resulting floor area ratio on the parcel does not exceed 1.25.
- b. The height of the building does not exceed 160 feet or 275 feet when located within 500 feet of the Dulles Toll Road.
- c. The following setbacks and yards shall apply to all development subject to a special exception. The required streetscape improvements shall be provided and shall be located within the public right-of-way or on private property with a public street easement or within a combination of both. Buildings shall not be located further than 15 feet from the adjacent edge of the public streetscape. Between the edge of streetscape and the adjacent building the following uses may be permitted: restaurant seating with or without table service; bicycle racks and storage including but not limited to bicycles for bicycle sharing enterprises; streetscape furnishings; awnings; entrance features to include covered and uncovered steps, porticos, planters and landscaping; public art; vendor carts associated with existing on-site uses or under lease agreement with the owner of the property. Other than formal residential and hotel arrival areas such as a porte-cochere, drive-aisles shall not be permitted between the sidewalk and the building. Off-street parking and loading areas are prohibited in the setback area.

(1) Setback or yard abutting the Herndon Parkway. The setback or yard shall be sufficient to provide for the applicable streetscape improvements as described in the adopted comprehensive plan, Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core.

(2) Setback or yard abutting public streets other than Herndon Parkway or the Dulles Toll Road. The setback or yard shall be sufficient to provide for the applicable streetscape improvements as described in the

adopted comprehensive plan and the Herndon Guidelines for the planning and design of town streetscapes as appropriate.

- (3) Setback or yard abutting the Dulles Toll Road. For land abutting the future location of the Sugarland Run Trail, no structure shall be within 40 feet of the Dulles Toll Road right-of-way. Properties abutting the Dulles Toll Road right-of-way and the future Sugarland Run Trail shall incorporate provisions found in the town comprehensive plan and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core for the Sugarland Run Trail. Where the Sugarland Run Trail does not abut the Dulles Toll Road right-of-way, no structure shall be within 20 feet of the Dulles Toll Road right-of-way.
 - (4) Internal yards. Building placement and relationship shall be as described within the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core.
- d. To ensure adequate air, light, and privacy, building tower separation shall be as follows:
 - (1) A minimum horizontal separation of 65 feet between residential building towers above 80 feet.
 - (2) A minimum horizontal separation of 50 feet between nonresidential building towers above 80 feet.
 - e. To facilitate safe and convenient pedestrian traffic near the Herndon Metro Station, pedestrian ways, alleys, convenience areas and rest areas shall be provided as needed.
 - f. A minimum of 50 percent of the site that is the subject of the special exception is open space.
 - g. Floodplain areas on the subject property may be dedicated to the town and count toward the required open space, green space and density calculation if meeting applicable standards.
 - h. No part of the structure or building on the site is located less than 500 feet from single-family detached or attached residential development or undeveloped land within the R-10, RTC, or PD-R zoning districts.
 - i. No part of a building on the site is located more than 1,100 feet from the northern boundary of the Dulles Toll Road or less than 1,000 feet from the southern boundary of the Spring Street right-of-way.

- j. One hundred percent of the net increase in vehicle trips to be generated by the use for which the special exception was granted over the number of vehicle trips associated with the maximum density permitted in the underlying zoning district shall be accommodated through the provision of street capacity additional to improvements shown in the Herndon Metro Station Area Plan adopted February 28, 2012.
- k. A transportation demand management program that includes typical transportation demand management techniques is used to reduce the traffic impact of the site by at least 25 percent.
- l. At least 50 percent of the parking spaces for the structure or building are located inside a structure or building.
- m. Mixed Use. Inclusion of multi-family dwellings as part of a larger mixed use project may be permitted by special exception provided:
 - (1) The application shall include an illustrative plan of development showing the larger mixed use project, including the residential component and its outdoor recreational areas, and shall comply with Town of Herndon submittal requirements for a generalized development plan.
 - (2) Gross Floor Area of multi-family uses shall comprise no more than 60 percent of the gross floor area of the larger mixed use project overall (excluding parking structures).

D. Gateway Business Option (O&LI only). As an option, these provisions shall apply to parcels zoned O&LI, located further than 500 feet from property zoned RTC or R-10, and located within 2,000 feet of the western boundary of the Fairfax County Parkway, and within 1,100 feet southward of the southern boundary of Spring Street.

- 1. **Purpose and Intent.** These provisions are established to encourage and provide:
 - a. Consolidation of smaller parcels and a decrease in the number of curb cuts and associated turning movements along Spring Street and the Herndon Parkway;
 - b. Convenient access on major thoroughfares provided that associated traffic impacts are mitigated;
 - c. Development of Class A offices, and research and technology facilities;

- d. Creation of a regional presence, serving as an attractive gateway to the town's office & light industrial district and the Herndon Transit-Oriented Core;
 - e. Necessary public infrastructure and improvements to promote orderly development within the O&LI district, as well as the future transit-related growth area, while mitigating potential adverse impacts;
 - f. A transition from a suburban development form to a transit oriented form of development; and
 - g. Creation of a sustainable development pattern providing for the conservation or recycling of natural resources decreases in heat islands and state of the art stormwater management.
- 2. Increase in Height and Floor Area.** An increase in height over the height and floor area ratio allowed in Table 78-40.4.G table of dimensional standards in the O&LI zoning district, may be permitted by a special exception in accordance with Section 78-155.3, Special Exception, provided that:
- a. The parcel or parcels that are the subject of the special exception are not less than 200,000 square feet;
 - b. When subject sites are comprised of multiple parcels, an application for a unified commercial subdivision or for parcel consolidation shall be submitted concurrent with the application for special exception;
 - c. The resulting floor area ratio on sites does not exceed a floor area ratio of 1:25;
 - d. The height of the building, inclusive of parking levels, does not exceed 110 feet, not including structures permitted above the height limit as provided by section 78-80.3.D;
 - e. The height of parking structures does not exceed 100 feet exclusive of parapets;
 - f. Unobstructed views of surface and structured parking areas shall be minimized through building placement, landscaping, and generally locating large parking facilities away from the most visible portions of the site. The majority of parking spaces shall be located within structured parking facilities;
 - g. A minimum of 35 percent of the site is open space to include public streetscapes, public open spaces, private plazas combining pervious and impervious surfaces, landscaping, and green roofs;

- h. No part of any structure or building shall be within 500 feet of any property zoned R-10 or RTC;
- i. One hundred percent of the net increase in vehicle trips over the number of vehicle trips associated with the maximum density permitted in the underlying zoning district shall be mitigated through a combination of roadway capacity improvements additional to improvements shown in the Herndon Metro Station Area Plan adopted February 28, 2012 and Transportation Demand Management techniques (TDMs) which are provided and committed to by the applicant and designated to run with the land as a part of the special exception application. Proposed TDMs may include: a.m. and p.m. peak hour shuttles to the closest operational Metrorail station and mid-day service to shopping and dining establishments; covered bicycle racks, an organized bicycle sharing program for employees; and flexible working hours. Additional TDMs may be proposed;
- j. All new curb cuts along Spring Street and the Herndon Parkway shall be strategically located to minimize conflict with the operations of the Spring Street and Herndon Parkway intersection while meeting roadway design standards;
- k. No more than one full movement curb cut per development shall be permitted along the frontage of the Herndon Parkway;
- l. No more than one full movement curb cut per development shall be permitted along Spring Street;
- m. When an alternative roadway can provide access in addition to Spring Street or the Herndon Parkway, the alternative roadway shall be used; and
- n. When adjacent to a public right-of-way or right-of-way reservation, easement, or dedication, parking garage facades shall be designed to appear as habitable office space and shall be faced to with materials to match on-site principal structures.

3. Setbacks and Required Yards Setbacks and required yards shall be as follows:

- a. Along public rights-of-way the building and structure setback shall be adequate to provide a minimum public streetscape of 13 feet, consisting of an eight foot sidewalk and five foot wide street tree planting strip.
- b. Frontages along the south and east side of Herndon Parkway shall include an 11 foot wide two-way cycle track in addition to those features described above.

- c.** Between external property lines, other than street rights-of-way, proposed building or structure setbacks or yards shall be a minimum distance of ten feet, unless a future right-of-way or shared access drive located between properties is proposed under which circumstance no minimum setback is required.
- d.** When surface parking is proposed along street frontages, a screen consisting of a masonry wall not less than three and one-half feet in height or an evergreen hedge of at least two and one-half feet in height at planting shall be provided. The width of the planting area for any required hedge shall not be less than seven feet in width.

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ARTICLE V – PLANNED DEVELOPMENT DISTRICTS

Sec. 78-50 Planned Development Zoning Districts

The following sections contain provisions pertaining to planned development districts.

Sec. 78-50.1 General Provisions for Planned Development Districts

A. Transition to New Planned Development Zoning Districts. It is the legislative intent of the town council in adopting this chapter to make a constructive transition from zoning provisions existing prior to its adoption to the provisions contained in this chapter, as explained in Article - Introductory Provisions and in accordance with the following specific provisions.

- 1. Former PD Districts Reclassified to Newer Districts.** All lands zoned planned development (residential planned community, planned development housing, planned development shopping center, planned development industrial park, planned development commercial, and planned development mixed use) shall be reclassified according to the town's official zoning map accompanying this chapter.
- 2. Residential PD District Reclassification.** Lands zoned residential planned community and planned development housing districts shall be reclassified to planned development—residential upon adoption of the town's official zoning map accompanying this chapter.
- 3. Non-Residential PD District Reclassification.** Lands zoned planned development industrial park and planned development shopping center shall be reclassified to planned development—business district upon adoption of the town's official zoning Map accompanying this chapter. The reclassification of those lands shall be based on the terms of town council approval (including original or amended proffered conditions and plan(s) of development) for the respective planned development case.
- 4. Uses Allowed As Proffered.** The allowed uses in Planned Development Districts shall be controlled by proffered conditions and uses permitted in the zoning ordinance at the time of adoption of the specific zoning map amendment. In cases where the zoning administrator determines there is a conflict between the proffered conditions and the uses permitted in the zoning ordinance at the time of adoption of the specific zoning map amendment, the proffered conditions shall prevail.
- 5. Additional Zoning Provisions.** All other zoning provisions of this chapter shall apply to the reclassified lands except in instances where the zoning administrator determines there is a conflict between this chapter and the terms of town council approval.

6. Alteration. Any alteration to the terms of the ordinance of rezoning that approved a planned development prior to the effective date of this chapter shall cause the alterations, and the planned development where the alterations are located, to be considered as a subject of a zoning map amendment under the provisions of this chapter.

B. General Intent of Planned Development District. The planned development (PD) districts are a type of planned unit development district intended to encourage innovative development and redevelopment options. Flexibility of standards enables superior design when planning and site design concepts that conform to community quality of life benchmarks and that achieve high quality development, environmental sensitivity, energy efficiency, and other town goals are used. Flexible standards are intended to allow: more choice in providing access, light, open space, and development amenities; more choice in providing a mix of land uses in the same development, including a mix of housing types, lot sizes, and densities; and more ability in taking advantage of special site characteristics and thereby promoting quality development and environmentally sensitive development.

C. Nature of Planned Development Zoning. Planned development zoning may constitute conditional zoning, as authorized by Code of Virginia, § 15.2-2303, involving the proffer of a predetermined plan of development, in return for more flexible development regulations in certain instances. The application, generalized development plan, associated narrative and other statements submitted by the zoning applicant, if accepted by the town council, shall serve as proffered conditions attached to the conditional rezoning. Planned development rezonings generally involve a change to the official zoning map, which change shall be noted on the zoning map. In the case of the Planned Development Transit-Oriented Core District (PD-TOC, there exists a by-right and special exception element of this zoning classification supplemented by the conditional rezoning elements of the planned district. In the case of the by-right element of the PD-TOC, no further legislative approval is necessary to so utilize this district.

D. Procedures for Establishing Planned Development Zoning Districts. Procedures to establish a planned development zoning district classification on the official zoning map shall comply with the provisions of Article XV - Administration.

E. Relation of Planned Development Zoning District Regulations to General Zoning, Subdivision or Other Regulations. The provisions that follow shall apply as may be necessary generally to the initiation, regulation and amendment of the following planned development districts: planned development-business; planned development-commercial; planned development-downtown; planned development-residential; and planned development transit-oriented core if necessary. Where there may be conflicts between the planned development provisions and general zoning, subdivision or other regulations, or requirements, the regulations of this division shall apply in planned development districts unless the town council shall find, in the particular case, that provisions of this section do not serve public purposes to a

degree at least equivalent to such general zoning, subdivision, or other regulations or requirements.

Sec. 78-50.2 Standards for All Planned Development Districts

- A. **General.** Planned development districts shall comply with the general standards in section 78-50.1, General Provisions, Section 78-50.2 additional development standards for planned development districts, development standards in Article V, development standards, and all other applicable standards in this chapter and other chapters of this Code. By-right, special exception and development plan based planned development transit-oriented core projects must meet the standards set out in Article VIII of this chapter.

- B. **Review Board Approval for PD Development.** Development located within a planned development district and outside of the Heritage Preservation Overlay District, other than single family detached units, shall be subject to the approval of the Architectural Review Board. Development within a planned development district inside the Heritage Preservation Overlay District shall be subject to the approval of the Heritage Preservation Review Board.

- C. **Development Objectives.** It is the intent of the town council in approving a planned development district that the resulting development meets the following objectives:
 - 1. **Compact Design.** The proposed development is clustered and compact, interrelated and linked by pedestrian ways, bikeways (where appropriate), and other transportation systems;
 - 2. **Efficient Transportation.** The proposed development promotes and expands opportunities for public transportation and an efficient compact network of streets;
 - 3. **Scenic and Natural Resources.** The proposed development preserves and protects scenic assets and natural features such as trees, streams and topographic features;
 - 4. **Design.** The proposed development exhibits harmonious design, incorporating a variety of building types and variations in buildings styles;
 - 5. **Compatible Character.** The proposed development is compatible with the character of surrounding land uses; and
 - 6. **Enhance Value.** The proposed development is designed to maintain and enhance the value of surrounding properties.

- D. **Modification of Requirements.** In adopting a planned development classification, the town council may modify the requirements of this chapter, the subdivision

chapter (chapter 70 of the Herndon Town Code), and ancillary ordinances of the town where the town council finds that such modifications would afford equal or greater assurance of meeting the goals of the zoning chapter, as set out in the preamble, and the goals of the statement of intent of the relevant division. In considering any such modification, the planning commission and town council shall be guided by the following standards:

1. **Public Purpose Met.** The public purposes of planned development or general regulations would be met to at least an equivalent degree by the modifications;
2. **Consistent with Law.** The proposed modification is consistent with general law of this Commonwealth;
3. **Consistent with Good Zoning Practices.** The proposed modification is consistent with good zoning practices and would result in a better development; and
4. **Unified Development Control.** The town council and planning commission should consider whether or not the planned development initially involves development of land under unified control, planned and developed as a whole in a single operation or in planned phases. Planned developments shall be developed according to detailed plans for streets, utilities, lot layout, building sites, site plans, floor plans and the like. Buildings in a planned development are intended to relate functionally to one another and be used, operated and maintained under a common program.

E. Modification of Off-Street Parking Requirements Off-street parking and loading shall comply with the standards of Article X – Parking, Loading and Circulation, except that modifications from these standards may be permitted if a comprehensive parking and loading plan for the planned development is submitted that is determined to meet the following standards:

1. **Sufficiency.** The proposed parking and loading plan is suitable for the uses of the planned development in accordance with recognized planning and engineering standards; and
2. **Consistent with Intent.** The proposed parking and loading plan is generally consistent with the intent and purpose of the off-street parking and loading standards of Article X - Parking, Loading and Circulation

F. Temporary Uses and Structures. Temporary uses or structures in PD zoning districts shall be permitted and governed per Article IX -Temporary Uses and Structures.

G. Development Standards. Development in PD zoning district shall be subject to all applicable standards of Article XI, Development Standards and specific standards as follows:

- H. **Landscaping, Buffering and Screening.** Development in PD zoning districts shall conform to the landscaping, buffer and screening standards in Article XI Development Standards, Perimeter Buffer Strip Requirements in Section 78-110.4 and Table 78-110.4.E.4.b.
- I. **Exterior Lighting.** Development in PD districts shall conform to the exterior lighting standards in Section 78-130.9
- J. **Fences and Walls.** Development in PD districts shall conform to the exterior lighting standards in Section 78-115.2 .
- K. **Noise, Vibration, etc.** Development in PD districts shall conform to the applicable performance standards of Article X III, Performance Standards.
- L. **Parking & Circulation.** Development in PD districts shall be subject to all applicable standards of Article X, Parking, Loading, and Circulation.
- M. **Signs.** Signs in PD districts shall be subject to the provisions of Article XIV.
- N. **Nonconformities.** Non- conforming uses and structures in PD districts shall be subject to the provisions of Article XVI.
- O. **Application Requirements and Application Review Process.** Applications for development in PD districts shall be subject to Article XV.

Sec. 78-50.3 – Additional Development Provisions and Development Options for Specified Planned Development District Areas

- A. **Downtown.** The following Downtown Requirements ~~in~~ shall apply in sectors 1, 2, 3, and a small part of sector 6 consisting of five townhouses on Center Street comprising part of Fortnightly Square (the Downtown) of the Herndon Downtown Overlay (Map C Downtown Sectors Map and Downtown Master Plan, adopted February 22, 2011) as described in the "Herndon 2030 Comprehensive Plan" (August 12, 2008), as may be amended, for any development in any such zoning district. Where there is conflict between this section and other provisions of this chapter, the provisions of this section.
 - 1. **Downtown Streetscape.** All sites shall be developed in accord with the "Downtown Streetscape" provisions of 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) as referenced in section 1-16, Herndon Town Code (2000) as amended. Downtown streetscape improvements that are made by an applicant as part of an approved development application may be counted toward the open space requirement for the lot.

2. **Height.** Building facades shall not be less than 20 feet in height as measured from the finished grade of the abutting public sidewalk to the top of the parapet on flat-roofed buildings or to the eave of pitched roof buildings. See Article IV-Business Districts for additional height provisions.
3. **Setback.** The following setback standards shall apply in the Downtown:
 - a. Setback shall be sufficient to provide for a sidewalk or other streetscape improvements of a minimum of 12 feet in width.
 - b. The 12-foot sidewalk or other streetscape improvements shall be provided and shall be located within the public right-of-way or on private property with a public street easement or within a combination of both.
 - c. Landscaping and lighting structures are permitted in the setback area, if it is determined by the zoning administrator they are safe, do not impede pedestrian access and convenience, and are consistent with the Herndon Downtown Pattern Book adopted January 29, 2013, as amended, incorporated by reference. Off-street parking and loading areas are prohibited in the setback area.
 - d. When a nonresidential streetscape abuts a residential streetscape or a sidewalk outside of the Downtown, a smooth transition shall be provided between the two different types of sidewalks.
 - e. Buildings shall abut the public sidewalk or other streetscape improvements, or a pedestrian plaza or landscaped area open to the public, located between the sidewalk and the building.
 - f. Drive-aisles shall not be permitted between the sidewalk and the building.
 - g. Parking is not permitted within ten feet of any street right-of-way, (including sidewalks), unless it is located directly behind the rear facade of the primary building. When parking is not located behind the rear facade of the building, the parking shall be screened from the adjacent street by a four-foot high solid, wall and by landscaping.
4. **Pedestrian Travel.** The primary mode of transportation in the downtown is intended to be pedestrian travel. To facilitate safe and convenient pedestrian traffic within the downtown, pedestrian ways, alleys, convenience areas and rest areas shall be provided as needed, to provide connecting pedestrian ways. Not more than 10 percent of the lot area may be required for this purpose.

5. **Solid Waste Receptacles.** Solid waste receptacles shall be provided in accordance with the provisions of section 78-114.2.C standards for refuse collection and solid waste receptacles.
6. **Transitional Sites.** Where a side or rear yard of a commercial use abuts residential zoned property, a six-foot high masonry wall shall be provided to act as an effective barrier between the commercial and residential district.

B. Landmark Business Option (PD-B Only). As an option, the Landmark Business provisions shall apply to any development within 1,500 feet of the northern boundary of the Dulles Toll Road or the western boundary of the Fairfax County Parkway when the development is located within the Planned Development— Business District. These provisions are established to allow development that provides a regional presence and convenient access on major thoroughfares as long as associated impact is mitigated as noted. The following standards shall apply to Landmark Business developments:

1. **Increase in Height and Floor Area.** An increase in height over the height and floor area ratio allowed in Table 78-302.2 Table of Dimensional Standards in the Business Zoning Districts, may be permitted by a special exception in accordance with section 78-202.3, special exception, provided that:
 - a. The resulting floor area ratio on the site does not exceed 1.0;
 - b. The height of the building does not exceed 100 feet;
 - c. The setback of the building is at least equivalent to the height of the building as provided in Section 78-50.4.G Standards in the PD-B District;
 - d. A minimum of 50 percent of the site that is the subject of the special exception is open space;
 - e. Floodplain areas on the subject property may be dedicated to the town and count toward the required open space and green space if meeting applicable standards;
 - f. No part of the structure or building on the site is located less than 500 feet from residential development or undeveloped land within a residential zoning district;
 - g. No part of a building on the site is located more than 1,500 feet from the northern boundary of the Dulles Toll Road or from the western boundary of the Fairfax County Parkway;
 - h. Transportation demand management techniques are used to reduce the traffic impact of the increase in building floor area; and

- i. At least 50 percent of the parking spaces for the structure or building are located inside a structure or building.

C. Unified Commercial Subdivision. Unified commercial subdivisions, as provided for in section 78-40.D., unified commercial subdivision, may be approved in any planned development district.

Sec. 78-50.4 PD-R Planned Development Residential District

A. Purpose and Intent. The intent of the PD-R district is to provide for a mix of residential uses and dwelling unit types using innovative and creative design elements, while at the same time providing an efficient use of open space and environmental consideration. Community uses may be considered within the PD-R district to serve the needs of the residents of the PD-R development.

B. Locations Permitted. A PD-R district may only be established by rezoning of lands that are zoned PDH or RPC as of the adoption date of this chapter, or designated adaptive area, or community facilities on the comprehensive plan land use map.

C. Principal Uses. Table 78-50.4.C.4, lists uses permitted and allowed in the PD-R district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the PD-R district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVII Other uses not listed on the following table are not allowed in the PD-R district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-71.1.F.

1. **“P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in PD-R District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VII Use Regulations.
2. **“S” Special Exception Uses.** An in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in PD-R District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VIII Use Regulations.

3. **“Z” Allowed Uses.** A “Z” in a cell indicates that a use type is an allowed use in the respective planned development district, subject to approval as a zoning map amendment for a planned development district.(See Section 78-155.1)

4. **Table of Principal Permitted and Allowed Uses in the PD-R District.**

Table 78-50.4.C.4 – Principal Permitted and Allowed Uses PD-R <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i> <i>Z = Use Allowed Subject to Zoning Map Amendment Approval</i> Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	PD-R	See Supplemental Regulations
Residential	Single-Family Detached Dwelling	Z	§78-30.6
	Duplex Dwelling	Z	§78-30.6
	Townhouse Dwelling	Z	§78-30.6
	Townhouse Rental Residential Development	Z	§78-30.6
	Quadruplex Dwelling	Z	§78-30.6
	Multi-Family Dwelling (including residential rental townhouses)	Z	§78-30.6
	Housing for the Elderly	Z	§78-71.1
	Assisted Living for the Elderly and Persons with Disabilities	Z	§78-71.1
	Group Home	Z	§78-71.1
Education	Childcare Center, Daycare Center or Preschool	Z	§78-71.2
	School, Public or Private (K-12)	Z	§78-71.2
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	Z	§78-71.3
Institutional and Community Service Uses	Community Centers	Z	§78-71.4
	Library	Z	§78-71.4
	Religious Institution (with a capacity of 300 or fewer persons) gathered for religious observance in, with or without any accessory schools, daycare centers, or recreational facilities	Z	§78-71.4
	Religious Institution (with a capacity of more than 300 persons) gathered for religious observance, with or without accessory schools, daycare centers, or recreational facilities	Z	§78-71.4

Table 78-50.4.C.4 – Principal Permitted and Allowed Uses PD-R <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i> <i>Z = Use Allowed Subject to Zoning Map Amendment Approval</i> Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	PD-R	See Supplemental Regulations
	Senior Center	Z	§78-71.4
Offices	All Office Uses (excluding any medical or health related services - see "health care facility")	Z	§78-71.7
Personal Services and Retail Sales	Animal Hospital, Kennel, Pet Daycare, Animal Shelter, and Veterinary Clinic	Z	§78-71.10
	Artist's Studio or Gallery	Z	§78-71.10
	Dry-Cleaning/Laundry, Laundromats	Z	§78-71.10
	Health Care Facility	Z	§78-71.10
	Personal Services, General	Z	§78-71.10
	School of Special Instruction	Z	§78-71.10
Commercial Utilities	Commercial Communication Tower, Freestanding	Z	§78-71.13

D. Accessory Uses and Structures. Table 78-50.4.D.4 lists uses permitted and allowed in the PD-R district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the PD-R district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article VIII. Other accessory uses not listed on the following table are not allowed in the PD-R district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

1. **“P” Permitted Uses.** A "P" in a cell indicates that an accessory use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in PD-R District, if any. Permitted accessory uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VIII Accessory Use Regulations.

2. **“S” Special Exception Uses.** An “S” in a cell indicates that an accessory use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column of the Table of Permitted and Allowed Accessory Uses in PD-R District, if any. Allowed accessory uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article XIII - Accessory Use Regulations.

3. **“Z” Allowed Uses.** A “Z” in a cell indicates that an Accessory Use type is an allowed use in the respective planned development district, subject to approval as a zoning map amendment (See Section 78-155.1).

4. **Table of Permitted and Allowed Accessory Uses in the PD-R District**

Table 78-50.4.D.4 – Permitted and Allowed Accessory Uses PD-R KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z = Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-R	See Supplemental Regulations
Accessory Dwelling Unit	Z	§78-80.4.A
Accessory Food Preparation Area – Secondary Kitchen	S	§78-80.4.B
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	Z	§78-80.4.C
Commercial Communication Towers, Freestanding	Z	§78-71.13.D.2
Daycare Center, Childcare Center or Pre-School	Z	§78-80.4.I
Home-Based Business, Including Daycare or Childcare	Z	§78-80.5
Minor Utilities	Z	§78-80.4.M
Outdoor Restaurant Seating	Z	§78-80.4.N
Recreational Vehicle Parking and Storage of Individually-Owned Vehicles	Z	§78-80.4.Q
School Uses in Conjunction with, and on the same site as, Religious Institutions	Z	§78-80.4.R
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools	Z	§78-80.3.C §78-21.F

5. **Accessory Structures in the PD-R District.** Accessory Structures within the PD-R district shall conform to the standards of Article VIII.

E. **Prohibited and Restricted Uses.** Additional use limitations apply to certain uses in the PD-R district as follows:

1. **Vehicular Sales.** The commercial display and sale of vehicles is generally prohibited but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.4.P.
2. **Restrictions on Commercial Uses in PD-R.** All commercial uses allowed as part of a PD-R shall be secondary uses designed to serve only the needs of the residents of the PD-R development, and shall be located and developed to maintain and protect the residential character of the PD-R development and

surrounding uses. To accomplish these purposes, commercial uses shall conform to these standards:

- a. Commercial uses in the PD-R district shall occur only in pedestrian-oriented development. Examples of pedestrian-oriented design include:
 - (1) Business facades are of a design and scale appealing to pedestrian passers-by and the visual impact of the facades is aimed at visitors who are not in passing motor vehicles.
 - (2) Standards listed in Section 78-100.10.C.2, pedestrian movement, are incorporated in the design of the commercial uses and their interface with surrounding uses.
 - (3) Developed recreation space, open space, schools, residences and other uses are connected to commercial uses by an integrated pedestrian way system that minimizes the number of street crossings or that gives more dominance to pedestrians than to motor vehicles at the street crossings.
- b. When located within the same building as residential uses, commercial and office uses are limited to the lowest two floors.
- c. All commercial uses are conducted entirely within an enclosed building, with no outside display of merchandise (with the exception of growing plants).
- d. The maximum total land area, including all at-grade off-street parking and loading areas in connection therewith, devoted to commercial and office uses, is 400 square feet per dwelling unit in the planned development. The town council may allow an increase in the commercial land area with a generalized development plan that shows the layout, uses and intensity of the commercial land area. In such instances, the land area devoted to commercial use does not exceed 600 square feet per dwelling unit in the planned development.

F. Dimensional Standards. The PD-R district shall be subject to the following dimensional standards:

- 1. **Minimum Area.** A PD-R district may only be applied to lands that comprise a minimum of three contiguous acres.
- 2. **Density.** The maximum gross density of the PD-R district shall be five dwellings per acre. The town council may, as part of the review of the PD-R district, increase the density of the residential dwelling units by up to 50 percent, if the PD-R development includes two or more of the following:

1. **Additional Open Space.** Additional open space (common or dedicated) above that required by section 78-50.4.G, open space and community/recreation uses, in proportion to the requested increase in dwelling unit density.
2. **Additional Recreation Space.** Additional common recreation space (developed) above that required by section 78-113.3, privately provided recreation areas, in proportion to the requested increase in dwelling unit density.
3. **Unique Design and Amenities.** The provision of unique design features and amenities in the PD-R district that require unusually high development costs and which achieve an especially attractive and stable development, such as, but not limited to, terraces, sculpture, reflecting pools and fountains.
4. **Parking Facilities.** The provision of structured or underground parking facilities to better enable the provision of open space, recreation areas, design features, or preservation of historic features.
5. **Historic or Natural Features.** Preservation and restoration of buildings, structures, premises or natural features having historic or architectural significance.
6. **Floodplain Dedication.** Floodplain areas on the subject property may be dedicated to the town and count toward the required open space and green space if meeting applicable standards.
7. **Maximum Building Height.** The height of structures in the PD-R district shall not exceed 45 feet.

G. Open Space and Community Recreation Uses. The development proposed for the PD-R district shall comply with the following standards for open space and recreational space:

1. **Minimum 25% Common Open Space.** A minimum of 25 percent of the gross land area shall be set-aside as common open space. Land within individual residential lots shall not be counted when determining common open space.
2. **Minimum 10% Common Recreation Area.** A minimum of ten percent of the gross land area of the PD-R shall be set-aside as common recreation space. Parking areas, street right-of-way and minimum yard setbacks shall not be counted when determining common recreation space.
3. **Phasing of Open Space with Development.** If the PD-R development is proposed to be developed in phases, the amount of common open space and common recreation space for each phase of the development shall, to the

maximum extent feasible, be similar in proportion to the total amount of open space and common recreation space that is to be provided for the entire PD-R development.

- 4. **Recreation Facilities to be Phased with Development Schedule.** All common recreation facilities in the common recreation space shall be constructed and fully improved according to the development schedule established for each phase of the PD-R. To ensure all common recreation space identified for the PD-R is used as common recreation space, restrictions and covenants shall be placed in each deed to ensure their maintenance and to prohibit the partition of any common recreation space.
- 5. **Compliance with Common Area Provisions Required.** The development shall comply with the definition of "common area" described in Article VIII, Definitions.
- 6. **Open Space and Recreation Areas Indicated on Record Plat.** Record plat files for land located in a PD-R development shall include a statement indicating that the land is a portion of a PD-R development, that subdivision or re-subdivision is not permitted, and that development of the land is permitted only in accordance with the land uses indicated on the record plat.

Sec. 78-50.5 PD-B Planned Development Business District

- A. **Purpose and Intent.** The intent of the PD-B district is to provide opportunities for retail, offices, high tech, research and development and other light industrial uses. All commercial and industrial planned development districts existing at the time of adoption of this chapter are eligible for rezoning to PD-B. It is intended that lands in any PD-B district be designed and located in a way that is consistent with and complements surrounding uses.
- B. **Locations Permitted.** A PD-B district may only be established on lands with any commercial or industrial zoning designation except those lands in the Downtown Overlay of the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended. .
- C. **Principal Uses.** Table 78-55.C.4 lists uses permitted and allowed in the PD-B district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the PD-B district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII Other uses not listed on the following table are not allowed in the PD-B district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

1. **“P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in PD-B District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI- Development Standards and Article VII - Use Regulations.
2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in PD-B District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VII -Use Regulations.
3. **“Z” Allowed Uses.** A “Z” in a cell indicates that a use type is an allowed use in the respective planned development district, subject to approval part of a zoning map amendment for a planned development district (See Section 78-155.1)
4. **Table of Principal Permitted and Allowed Uses in the PD-B District.**

Table 78-50.5.C.4 – Principal Permitted and Allowed Uses PD-B KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z = Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	PD-B	See Supplemental Regulations
Education	Childcare Center, Daycare Center or Preschool	Z	§78-71.2
	Post Secondary Education and Career Schools	Z	§78-71.2
	School, Public or Private (K-12)	Z	§78-71.2
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	Z	§78-71.3
Institutional and Community Service Uses	Community Centers	Z	§78-71.4
	Convalescent Home	Z	§78-71.4
	Hospital	Z	§78-71.4
	Library	Z	§78-71.4
	Museum, Fine Arts Center	Z	§78-71.4
	Religious Institution (with a capacity of 300 or fewer persons) gathered for religious observance in, with or without any accessory schools, daycare centers, or recreational facilities	Z	§78-71.4
	Religious Institution (with a capacity of more than 300 persons) gathered for religious observance, with or without accessory schools, daycare centers, or recreational facilities	Z	§78-71.4

Table 78-50.5.C.4 – Principal Permitted and Allowed Uses PD-B <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i> <i>Z = Use Allowed Subject to Zoning Map Amendment Approval</i> Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	PD-B	See Supplemental Regulations
	Senior Center	Z	§78-71.4
Alcohol Production Facilities, Small	Craft Breweries, Micro-Distilleries, Micro-Cideries, Micro wineries (without on-site vineyard)	P	§78-71.5
	Brewpubs (eating establishment where food is prepared and served but also to produce alcoholic beverages on a small scale.)	P	§78-71.5
Eating Establishments	Restaurant	Z	§78-71.5
Entertainment , Indoor	Commercial Recreation/ Entertainment, Indoor	Z	§78-71.5
Entertainment , Outdoor	Commercial Recreation/ Entertainment, Indoor	Z	§78-71.9
Lodging Businesses	Conference center, hotel, motel, inn, boarding house, rooming house	Z	§78-71.2
Offices	All Office Uses (excluding any medical or health related services - see "health care facility")	Z	§78-71.7
Personal Services and Retail Sales	Animal Hospital, Kennel, Pet Daycare, Animal Shelter, and Veterinary Clinic	Z	§78-71.10
	Artist's Studio or Gallery	Z	§78-71.10
	Dry-Cleaning/Laundry, Laundromats	Z	§78-71.10
	Durable Goods Sales	Z	§78-71.10
	Financial Institution	Z	§78-71.10
	Health Care Facility	Z	§78-71.10
	Health Care Laboratory	Z	§78-71.10
	Mailing and Packing Service	Z	§78-71.10
	Personal Services, General	Z	§78-71.10
	Pharmacy	Z	§78-71.10
	Product Repair and Services	Z	§78-71.10
	Retail Sales	Z	§78-71.10
	School of Special Instruction	Z	§78-71.10
Other Personal Services and Retail Sales Uses	Z	§78-71.10	
Commercial Utilities	Commercial Communication Tower, Freestanding	Z	§78-71.13
	Electrical Substation	Z	§78-71.13
	Telecommunication Switching Station	Z	§78-71.13
Industrial Service	Scientific Research and Scientific Development	Z	§78-71.14
	All other Industrial Service Uses	Z	§78-71.14

Table 78-50.5.C.4 – Principal Permitted and Allowed Uses PD-B <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i> <i>Z = Use Allowed Subject to Zoning Map Amendment Approval</i> Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	PD-B	See Supplemental Regulations
Light Manufacturing	All other Light Manufacturing Uses	Z	§78-71.15
Self-Service Storage	Self-Service Storage Uses	Z	§78-71.16
Transportation and Parking	Parking Facility, Commercial or Public, Permanent	Z	§78-71.17
Warehousing	Electronic Warehouse	Z	§78-71.18
Wholesale Sales	Contractor's Materials	Z	§78-71.19
	Wholesale Establishment	Z	§78-71.19

*See also section VIII, Definitions. Drive-in (not drive-through) window service is a term used to describe an establishment designed to be operated to serve a patron while seated in an automobile parked in an off-street parking space.

D. Accessory Uses and Structures. Table 78-50.5.D.4 lists uses permitted and allowed in the PD-B district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the PD-B district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the PD-B district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F.

- 1. “P” Permitted Uses.** A "P" in a cell indicates that an accessory use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in PD-B District, if any. Permitted accessory uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VIII Accessory Use Regulations.
- 2. “S” Special Exception Uses.** An “S” in a cell indicates that an accessory use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column of the Table of Permitted and Allowed Accessory Uses in PD-B District, if any. Allowed accessory uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII - Accessory Use Regulations.

3. **“Z” Allowed Uses.** A “Z” in a cell indicates that an Accessory Use type is an allowed use in the respective planned development district, subject to approval as part of a zoning map amendment (section 78-155.1).

4. **Table of Permitted and Allowed Accessory Uses in the PD-B District**

Table 78-50.5.D.4 – Permitted and Allowed Accessory Uses PD-B KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z = Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-B	See Supplemental Regulations
Accessory Food Preparation – Wet Bar	P	§78-80.4.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	Z	§78-80.4.4.C
Car/Vehicle Rental	S	§78-80.4.4.F
Commercial Communication Towers, Freestanding	Z	§78-71.13.D.2
Daycare Center, Childcare Center or Pre-School	Z	§78-80.4.4.I
Drive-Through Service	Z	§78-80.4.4.J
Financial Institutions, Accessory	Z	§78-80.4.4.K
Minor Utilities	Z	§78-80.4.4.M
Mobile Food Unit Preparer, Full Service	P	§78-80.4.4.T
Outdoor Restaurant Seating	Z	§78-80.4.4.N
Parapets, Penthouses for Equipment and Other Roof Structures	Z	§78-80.4.3.D
School Uses in Conjunction with, and on the same site as, Religious Institutions	Z	§78-80.4.4.R
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools	Z	§78-80.3.C §78-21.F

5. **Accessory Structures in the PD-B District.** Accessory Structures within the PD-B district shall conform to Article VIII.

E. **Prohibited and Restricted Uses.** The commercial display and sale of vehicles is generally prohibited in the PD-B District but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.4.P.

F. **Dimensional Standards.** The PD-B district shall be subject to the following dimensional standards:

1. **Minimum Area.** PD-B district may only be applied to lands that comprise a minimum of two acres.

- 2. Density and Height.** Lots in the PD-B district shall have a maximum floor area ratio of 0.4. The height of structures in the PD-B district shall not exceed 45 feet. The town council may, as part of the review of the PD-B district, permit an increase the height of structures by up to 50 percent, and the floor area ratio by up to 100 percent, if the PD-B development includes all of the following:
- a. Additional open space (common or dedicated) above that required by section 78-50.5.G, open space and community/recreation uses, in proportion to the requested increase in dwelling unit density.
 - b. Special attention to enhancing both the site perimeter buffer and landscape features on the interior of the site.
 - c. The provision of unique features and amenities such as, but not limited to, terraces, sculpture, reflecting pools and fountains.
 - d. The provision of structured or underground parking facilities to better enable the provision of open space, efficient transportation, and design features.
 - e. Provision of transportation demand management techniques such as commitments for on-site employees to van pool, subsidies for employees to use public transit, options for telecommuting and flexible work hours that avoid peak traffic periods.
 - f. Exceptional exterior building design that includes pedestrian-friendly features; attention to architectural details such as molding, pitched roofs or decorative window and door treatments; varied color, design and texture of siding; and high quality materials to be used on all facades of the building.
 - g. Floodplain areas on the subject property may be dedicated to the town and count toward the required open space and green space if meeting applicable standards.
- 3. Additional Building Height Limitations.** The height of structures in the PD-B district shall not exceed 45 feet unless the town council has approved a building height increase in accordance with Section 78-50.7 .F.2. The following additional height standards shall apply to all structures even when a height increase has been approved by the town council:
- a. No structure shall exceed 30 feet at the right-of way line, and the height of the structure shall increase no more than one foot of additional height for each foot of horizontal distance from the ROW line, or the height of the structure shall not exceed the distance between the structure and any abutting land that is in a single-family detached zoning district.

- b. The height of buildings located within 100 feet of existing residential development or undeveloped land in a residential zoning district shall not exceed the maximum height permitted for residential structures in the adjacent residential zoning district.

4. Lot Area. There is no minimum lot area in the PD-B district. The lot area shall be such that development meets standards in Article V, Development Standards, and all other applicable standards in this chapter and other chapters of the Herndon Town Code.

- a. There is no setback requirement in the PD-B district.
- b. No off-street parking or loading area shall be closer than 60 feet from any residential zoning district boundary.
- c. Adjacent to residential uses, the width of the side and rear yard shall be equivalent to the height of the building, as measured from its highest point.
- d. Adjacent to nonresidential uses, the width of the side and rear yard shall be equivalent to the buffer and screening requirements specified in Article XI - Development Standards.

G. Open Space and Community Recreation Uses. Development within the PD-B district shall comply with the following standards for open space and recreational space:

- 1. Minimum 20% Open Space.** A minimum of 20 percent of the gross land area of the PD-B District shall be set-aside as open space.
- 2. Open Space As Streetscape.** Up to 25 percent of the required open space may occur within the street right-of-way when developed with streetscape design shown on the generalized development plan and including:
 - a. A minimum streetscape width of 25 feet, measured from the back of the curb, including public and private property.
 - b. Sidewalk and trail improvements as indicated in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended; :
 - c. Landscaping features designed in coordination with the required sidewalk or trail improvement and including street trees, planting beds, walls and shrubbery to screen parking areas;
 - d. Bus stop shelter if the location is deemed appropriate by the zoning administrator in consultation with local bus service providers; and:

e. Placement of all overhead utility wires underground.

3. Landscaping Required. Any part of the project area not used for buildings or other structures, parking, loading or access ways shall be landscaped with grass, trees and/or shrubs. Landscaping shall be used to break up and screen interior elements of the planned development and create a more pleasing environment.

H. Site Planning and Design (external relationships). Site planning within the PD-B district shall provide for protection of individual lots from adverse surrounding influences, and for protection of surrounding areas from adverse influences existing within the PD-B district. In particular:

1. Vehicular Access Points. Principal vehicular access points shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular or pedestrian traffic. Left-hand storage, right-hand turn lanes, and raised medians shall be required where existing or anticipated heavy flows indicate need. In general, local streets and minor collector streets (as described in the 2015 Transportation Plan, adopted April 8, 1997, as amended) shall not be connected to the PD-B district in such a way as to encourage the use of such local or minor collector streets by substantial amounts of through traffic.

2. Screening. Yards, fences, walls and/or vegetative screening shall be provided where needed to protect residential districts or public streets from undesirable views, lighting, noise or other off-site influences. In particular, outdoor storage, extensive off-street parking areas and service areas for loading and unloading vehicles and for storage and collection of refuse and garbage shall be effectively screened.

Sec. 78-50.6 PD-D Planned Development Downtown District

A. Purpose and Intent. The intent of the PD-D district is to encourage revitalization and creative design for residential and commercial lands located in the Downtown Overlay of the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended, and to provide flexibility in land planning for residential and commercial development located in the downtown area.

1. Objectives. Objectives of the PD-D district include:

- a. Promoting harmony in the development of land uses, public spaces and amenities;
- b. Facilitating mixed use developments and joint development efforts by providing flexibility in determining floor area ratios, height, parking, setbacks and other traditional zoning requirements;

- c. Encouraging retention and rehabilitation of historical and architecturally significant buildings and structures;
- d. Promoting a distinctive urban design for the downtown area; and
- e. Adhering to the standards and guidelines of the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended, and the Herndon Heritage Preservation Handbook, revised July 1990, as may be amended from time to time (the heritage preservation handbook).

2. Additional Considerations to Ensure Purpose and Intent are Met. Decisions on PD-D zoning map amendments shall involve consideration of the existence or provision of an adequate road network and parking facilities, provision of public facilities and amenities, the use or mix of uses offered in proposed development plans, the merit of proposed site design in achieving the goals of the comprehensive plan and the heritage preservation handbook, and the contribution of the proposed development to revitalization of the downtown. The flexibility of PD-D district regulations does not mean that an applicant is entitled to such a rezoning by meeting the minimum requirements of this division or that proposals approaching the maximum permitted density are entitled to a PD-D zoning map amendment.

B. Locations Permitted. A PD-D district may only be established by rezoning of lands in the Downtown Overlay in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended. For the area that comprises the downtown as described in section 78-50.3.A this zoning district is only available for zoning map amendment applications received on or before January 8, 2013.

C. Principal Uses. Table 78-50.6.C.4 lists uses permitted and allowed in the PD-D district as principal uses. Single-family detached dwelling units shall be allowed in sectors 3 and 4 of the Downtown Overlay in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the PD-D district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other uses not listed on the following table are not allowed in the PD-D district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-70.1.F

1. “P” Permitted Uses. A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in PD-D District, if any. Permitted uses are subject

to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VII, Use Regulations.

- 2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in PD-D District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI- Development Standards and Article VII Use Regulations.
- 3. **“Z” Allowed Uses.** A “Z” in a cell indicates that a use type is an allowed use in the respective planned development district, subject to approval as a planned development district through a zoning map amendment (section 78-155.1).
- 4. **Table of Principal Permitted and Allowed Uses in the PD-D District.**

Table 78-50.6.C.4 – Principal Permitted and Allowed Uses PD-D <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i> <i>Z = Use Allowed Subject to Zoning Map Amendment Approval</i> Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	PD-D	See Supplemental Regulations
Residential	Single-Family Detached Dwelling	Z	§78-71.1
	Duplex Dwelling	Z	§78-71.1
	Townhouse Dwelling	Z	§78-71.1
	Quadruplex Dwelling	Z	§78-71.1
	Multi-Family Dwelling within a Mixed Use Building	P	§78-71.1
	Multi-Family Dwelling (including residential rental townhouses)	Z	§78-71.1
	Housing for the Elderly	Z	§78-71.1
	Assisted Living for the Elderly and Persons with Disabilities	Z	§78-71.1
	Group Home	Z	§78-71.1
Education	Childcare Center, Daycare Center or Preschool	Z	§78-71.2
	Post Secondary Education and Career Schools	Z	§78-71.2
	School, Public or Private (K-12)	Z	§78-71.2
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	Z	§78-71.3
Institutional and Community	Community Centers	Z	§78-71.4
	Library	Z	§78-71.4

Table 78-50.6.C.4 – Principal Permitted and Allowed Uses PD-D <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i> <i>Z = Use Allowed Subject to Zoning Map Amendment Approval</i> Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	PD-D	See Supplemental Regulations
Service Uses	Museum, Fine Arts Center	Z	§78-71.4
	Senior Center	Z	§78-71.4
Alcohol Production Facilities, Small	Craft Breweries, Micro-Distilleries, Micro-Cideries, Micro wineries (without on-site vineyard)	P	§78-71.5
	Brewpubs (eating establishment where food is prepared and served but also to produce alcoholic beverages on a small scale.)	P	§78-71.5
Eating Establishments	Restaurant	Z	§78-71.6
Entertainment , Indoor	Commercial Recreation/ Entertainment, Indoor	Z	§78-71.8
Lodging Businesses	Conference Center, Hotel, Motel, Inn Boarding House, Rooming House	Z	§78-71.12
Offices	All Office Uses (excluding any medical or health related services - see "health care facility")	Z	§78-71.7
Personal Services and Retail Sales	Artist's Studio or Gallery	Z	§78-71.10
	Dry-Cleaning/Laundry, Laundromats	Z	§78-71.10
	Financial Institution	Z	§78-71.10
	Health Care Facility	Z	§78-71.10
	Mailing and Packing Service	Z	§78-71.10
	Personal Services, General	Z	§78-71.10
	Pharmacy	Z	§78-71.10
	Product Repair and Services	Z	§78-71.10
	Retail Sales	Z	§78-71.10
	School of Special Instruction	Z	§78-71.10
Other Personal Services and Retail Sales Uses	Z	§78-71.10	
Commercial Utilities	Commercial Communication Tower, Freestanding	Z	§78-71.13
Parking and Transportation	Parking Facility, Commercial or Public, Permanent	Z	§78-71.17

D. Accessory Uses and Structures. Table 78-50.6.D.4 lists uses permitted and allowed in the PD-D district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the PD-D district. It is the applicant’s responsibility to ensure that

all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other uses not listed on the following table are not allowed in the PD-D district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78-701.F

1. **“P” Permitted Uses.** A "P" in a cell indicates that an accessory use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in PD-D District, if any. Permitted accessory uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII - Accessory Use Regulations.
2. **“S” Special Exception Uses.** An “S” in a cell indicates that an accessory use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column of the Table of Permitted and Allowed Accessory Uses in PD-D District, if any. Allowed accessory uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards and Article VIII Accessory Use Regulations.
3. **“Z” Allowed Uses.** A “Z” in a cell indicates that an Accessory Use type is an allowed use in the respective planned development district, subject to approval as a zoning map amendment (section 78-155.1).

4. Table of Permitted and Allowed Accessory Uses in the PD-D District

Table 78-50.6.D.4 – Permitted and Allowed Accessory Uses PD-D KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z = Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-D	See Supplemental Regulations
Accessory Food Preparation Area – Secondary Kitchen	S	§78-80.4.B
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	Z	§78-80.4.C
Bed and Breakfast Establishment	S	§78-80.4.D
Car/Vehicle Rental	S	§78-80.4.E
Commercial Communication Towers, Freestanding	Z	§78-71.13.D.2
Daycare Center, Childcare Center or Pre-School	Z	§78-80.4.J
Financial Institutions, Accessory	Z	§78-80.4.K
Home-Based Business, Including Daycare or Childcare	Z	§78-80.5

Table 78-50.6.D.4 – Permitted and Allowed Accessory Uses PD-D <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i> <i>Z = Use Allowed Subject to Zoning Map Amendment Approval</i> Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-D	See Supplemental Regulations
Minor Utilities	Z	§78-80.4.M
Mobile Food Unit Preparer, Full Service	P	§78-80.4.T
Outdoor Restaurant Seating	Z	§78-80.4.N
Outdoor Display of Products for Sale	Z	§78-80.4.O
Parapets, Penthouses for Equipment and Other Roof Structures	Z	§78-80.3.D
School Uses in Conjunction with, and on the same site as, Religious Institutions	Z	§78-80.4.K
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools	Z	§78-80.3.C §78-21.F

5. Accessory Structures in the PD-D District. Accessory Structures within the PD-D district shall conform to the Standards Article VIII.

E. Prohibited and Restricted Uses. The commercial display and sale of vehicles is generally prohibited in the PD-D District but the sale of individually owned vehicles may be permitted pursuant to Section

F. Dimensional Standards. The PD-D district shall be subject to the following dimensional standards:

- 1. Minimum Area.** There is no minimum area standard for a PD-D district.
- 2. Increases in Intensity.** The floor area ratio of development shall not exceed 0.5 in the Downtown Overlay in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended, except as allowed in section 78-50.6.F.2, increases in intensity. The town council may, as part of the review of the PD-D district, increase the floor area ratio (i) up to 2.50 in Sectors 1, 2 and 6 or (ii) up to 0.7 in Sectors 3 and 4 of the Downtown Overlay, if the PD-D development meets three or more of the following criteria.
 - a. On-site, a pedestrian-oriented frontage in the form of a landscaped plaza, landscaped courtyard, landscaped entrance court, sculpture garden, window display area that serves as an art gallery or other like display space (excluding the display of merchandise for sale) or other civic-like space accessible to pedestrians;

- b. On-site or off-site, the provision of unique features such as, but not limited to, terraces, sculpture, reflecting pools, fountains or preservation of historic features in the Herndon Downtown;
- c. Pedestrian-friendly walkways and alleys on-site linking parking areas to the downtown sidewalk system;
- d. Building facade design that excels at meeting the objectives and guidelines contained in the Herndon Heritage Preservation Handbook, subject to preliminary review by the Heritage Preservation Review Board as provided in section 78-155.1.I.a.
- e. Refuse facilities that are completely enclosed within the principal building;
- f. Enclosed loading and unloading areas;
- g. Provision of parking demand management techniques for employees such as commitments for on-site employees to van pool, subsidies for employees to use public transit, options for telecommuting and flexible work hours, or other arrangements that help avoid peak parking periods.
- h. Floodplain areas on the subject property may be dedicated to the town and count toward the required open space and green space if meeting applicable standards in Article V, Development Standards.

3. Maximum Building Height. The height of a structure in the PD-D district shall not exceed the strictest limitation set out as follows:

- a. Structures shall not exceed 50 feet in height;
- b. At the right-of-way line, no structure shall exceed 30 feet in height, and the height of the structure shall increase no more than one foot of additional height for each foot of horizontal distance from the ROW line;
- c. The height of the structure shall not exceed the distance between the structure and any abutting land that is in a single-family detached zoning district.
- d. In accord with section 78-50.3.A, downtown, building facades shall not be less than 20 feet in height as measured from the finished grade of the abutting public sidewalk to the top of the parapet on flat-roofed buildings or to the eave of pitched roof buildings.

4. Lot Area. The lot area shall be such that development meets standards in Article V, Development Standards, and all other applicable standards in this chapter and other chapters of the Herndon Town Code.

- 5. Setbacks and Yard Requirements in PD-D Districts.** The setback shall be provided as described in Section 78-50.3.A.3, downtown, setback. In addition, where a PD-D District abuts land in a single-family detached zoning district, the minimum side yard shall be ten feet and the minimum rear yard shall be 20 feet.

G. Open Space and Community Recreation Uses. Development within the PD-D district shall comply with the following standards for open space and recreational space:

- 1. Minimum 30% Open Space for Residential Component.** For any portion of PD-D property developed for townhouse or multiple-family dwelling use, including structures containing 50 percent or more residential use, the portion of land set aside for that use shall contain a minimum of 30 percent open space.
- 2. Minimum 15% Open Space for Non-Residential Component.** For any portion of PD-D property developed for non-residential uses, including structures containing less than 50 percent residential use, the portion of land set aside that use shall contain a minimum of 15 percent open space.
- 3. Off Site in Lieu of On-Site Open Space.** The town council may allow, at the request of the property owner, off-site open space enhancement in excess of the downtown streetscape improvements as required in accordance with section 78-50.3.A, Downtown, to be provided in place of the on-site open space. In making this determination, the town council shall consider the size of the parcel to be developed, the physical feasibility of providing open space, other open space elements in the vicinity, and the accessibility of the open space. Preservation of historic features that are off-site and within the Herndon Downtown may also be considered.
- 4. Open Space Features.** On-site or off-site, open space may include the provision of unique features such as, but not limited to, terraces, sculpture, reflecting pools, fountains.

H. Site Planning and Building Design in PD-D. Sites and buildings within the PD-D district shall meet the following standards:

- 1. Downtown Design Standards.** Sites shall meet the standards of section 78-50.3.A, Downtown.
- 2. Arrangement of Buildings and Open Space.** Buildings and open space in the PD-D district shall be arranged to serve the needs of coordinated downtown development.
- 3. Design of Commercial Uses.** Commercial uses and structures shall be oriented toward the street. Service areas such as loading areas, refuse

containers, and utility structures shall be screened and buffered to mitigate the adverse effects of noise, odor, and unsightliness from adjacent residential zoning districts.

- 4. **Non-Residential Buildings Adjacent to Residential Uses.** Buildings otherwise proposed as nonresidential and located on sites abutting land that is in a single-family detached zoning district are encouraged to provide residential uses in the upper floors to help create a harmonious transition between the single-family detached zoning district and the proposed PD-D district.
- 5. **Waste Receptacles.** Solid waste receptacles shall be provided in accordance with the provisions of the zoning ordinance, Herndon Town Code section 78-114.2.C.
- 6. **HPRB Review Required for Increased FAR.** Site and building design shall comply with guidelines in the Herndon Heritage Preservation Handbook as determined by the HPRB prior to the planning commission public hearing when the increased floor area ratio is considered.
- 7. **Buildings and Sites to Comply with Comprehensive Plan.** Site and building design shall comply with the redevelopment criteria and other applicable guidelines as stated in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as amended.

Sec. 78-50.7 – PD-TD Planned Development Traditional Downtown District

A. Purpose and Intent. The intent of the PD-TD district is to encourage harmonious and creative new development, adaptive use and revitalization using a traditional downtown form. Development is to be integrated with public streetscapes, spaces and facilities based on the relationship of the form including the height and massing of proposed development to the forms in the illustrated Downtown Master Plan. Comprehensive Plan Amendment #10-01, Downtown Master Plan, adopted February 22, 2011, as amended incorporated by reference shall apply as a general guide to the review of any such development. This area for which this zone may be used corresponds to the Downtown as described in section 78-50.3.A..

- 1. **Compliance with Downtown Master Plan.** This mixed district is flexible as to the type of land use on a parcel and the exact physical layout of a development; however, proposals must follow the general form of the Downtown Master Plan and the guidelines of the Downtown Pattern Book dated January 29, 2013 by Urban Design Associates, as amended, incorporated by reference. The zoning administrator may make minor and incidental changes or corrections conforming the Downtown Pattern Book to insure full consistency of the Downtown Pattern Book with this chapter. Page 11 of the Downtown Pattern Book is hereby changed to show structures number 8 in the C-3 preservation priority category.

2. **Additional Objectives.** Other objectives of the PD-TD district are to facilitate mixed use developments and joint development efforts by providing flexibility in determining floor area ratios, height, parking, setbacks and other traditional zoning requirements; to encourage adaptive use of historical and architecturally significant buildings and structures as designated in the historic analysis summary of the Downtown Pattern Book; and to promote a distinctive urban design for the downtown area.
3. **Additional Considerations to Ensure Purpose and Intent are Met.** Decisions on PD-TD zoning map amendments shall involve consideration of whether the proposal is fully consistent with the Downtown Master Plan and Downtown Pattern Book and the extent to which provisions are made for adequate public facilities to include enhanced streetscapes, crosswalks, plazas, streets, parking and placement of overhead utilities under the ground.

B. Locations Permitted. A PD-TD district may only be established by rezoning of lands in the Downtown, as described in section 78-50.3.A

C. Principal Uses. Table 78-50.7.C.4 lists uses permitted and allowed in the PD- TD district as principal uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific principal uses in the PD-TD district. It is the applicant's responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII Other uses not listed on the following table are not allowed in the PD-D district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78.70.1.F

1. **“P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses in PD-TD District, if any. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article Development Standards and Article VII -Use Regulations.
2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, of the Table of Principal Permitted and Allowed Uses in PD-TD District, if any. Allowed uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VII, Use Regulations.
3. **“Z” Allowed Uses.** A “Z” in a cell indicates that a use type is an allowed use in the respective planned development district, subject to approval as a planned development district (Section

4. Table of Principal Permitted and Allowed Uses in the PD-TD District.

Table 78-50.7.C.4 – Principal Permitted and Allowed Uses PD-TD <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i> <i>Z = Use Allowed Subject to Zoning Map Amendment Approval</i> Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	PD-TD	See Supplemental Regulations
Residential	Single Family-Detached Dwelling	Z	§78-71.1
	Duplex Dwelling	Z	§78-71.1
	Townhouse Dwelling	Z	§78-71.1
	Quadruplex Dwelling	Z	§78-71.1
	Multi-Family Dwelling within a Mixed Use Building	P	§78-71.1
	Multi-Family Dwelling (including residential rental townhouses)	Z	§78-71.1
	Housing for the Elderly	Z	§78-71.1
	Assisted Living for the Elderly and Persons with Disabilities	Z	§78-71.1
	Group Home	Z	§78-71.1
Education	Childcare Center, Daycare Center or Preschool	Z	§78-71.2
	Post Secondary Education and Career Schools	Z	§78-71.2
	School, Public or Private (K-12)	Z	§78-71.2
Government Facilities	Government Buildings, Facilities and Uses not Otherwise Categorized	Z	§78-71.3
Institutional and Community Service Uses	Community Centers	Z	§78-71.4
	Library	Z	§78-71.4
	Museum, Fine Arts Center	Z	§78-71.4
	Senior Center	Z	§78-71.4
Alcohol Production Facilities, Small	Craft Breweries, Micro-Distilleries, Micro-Cideries, Micro wineries (without on-site vineyard)	P	§78-71.5
	Brewpubs (eating establishment where food is prepared and served but also to produce alcoholic beverages on a small scale.)	P	§78-71.5
Eating Establishments	Restaurant	Z	§78-71.6
Entertainment , Indoor	Commercial Recreation/ Entertainment, Indoor	Z	§78-71.8
Lodging	Conference Center, Hotel, Motel, Inn Boarding House, Rooming House	Z	§78-71.12

Table 78-50.7.C.4 – Principal Permitted and Allowed Uses PD-TD <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;</i> <i>Z = Use Allowed Subject to Zoning Map Amendment Approval</i> Uses may be subject to use specific standards as noted in the last column			
USE CATEGORY	USE TYPE	PD-TD	See Supplemental Regulations
Businesses			
Offices	All Office Uses (excluding any medical or health related services - see "health care facility")	Z	§78-71.7
Personal Services and Retail Sales	Artist's Studio or Gallery	Z	§78-71.10
	Dry-Cleaning/Laundry, Laundromats	Z	§78-71.10
	Financial Institution	Z	§78-71.10
	Health Care Facility	Z	§78-71.10
	Mailing and Packing Service	Z	§78-71.10
	Personal Services, General	Z	§78-71.10
	Pharmacy	Z	§78-71.10
	Product Repair and Services	Z	§78-71.10
	Retail Sales	Z	§78-71.10
	School of Special Instruction	Z	§78-71.10
	Other Personal Services and Retail Sales Uses	Z	§78-71.10
Commercial Utilities	Commercial Communication Tower, Freestanding	Z	§78-71.13
Parking and Transportation	Parking Facility, Commercial or Public, Permanent	Z	§78-71.17

D. Accessory Uses and Structures. Table 78-50.7.D.4 lists uses permitted and allowed in the PD-TD district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the PD-TD district. It is the applicant's responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Definitions for uses and terms in this section may be found in Article XVIII. Other accessory uses not listed on the following table are not allowed in the PD-TD district unless determined by the Zoning Administrator to be similar to a permitted use in accordance with provisions for Unlisted Uses, Section 78.70.1.I.

- 1. "P" Permitted Uses.** A "P" in a cell indicates that an accessory use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses in PD-TD District, if any. Permitted accessory uses are subject to all other applicable regulations of this

chapter, including those set forth in Article XI, Development Standards and Article XVIII - Accessory Use Regulations.

- 2. **“S” Special Exception Uses.** An “S” in a cell indicates that an accessory use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column of the Table of Permitted and Allowed Accessory Uses in PD-TD District, if any. Allowed accessory uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI, Development Standards and Article VIII, Accessory Use Regulations.
- 3. **“Z” Allowed Uses.** An “Z” in a cell indicates that an Accessory Use type is an allowed use in the respective planned development district, subject to approval as a zoning map amendment (section 78-155.1).
- 4. **Table of Permitted and Allowed Accessory Uses in the PD-TD District**

Table 78-50.7.D.4 – Permitted and Allowed Accessory Uses PD-TD KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z = Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-TD	See Supplemental Regulations
Accessory Food Preparation Area – Secondary Kitchen	S	§78-80.4.B
Accessory Food Preparation – Wet Bar	P	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	Z	§78-80.4.C
Bed and Breakfast Establishment	S	§78-80.4.D
Car/Vehicle Rental	S	§78-80.4.E
Commercial Communication Towers, Freestanding	Z	§78-71.13.D.2
Daycare Center, Childcare Center or Pre-School	Z	§78-80.4.J
Financial Institutions, Accessory	Z	§78-80.4.K
Home-Based Business, Including Daycare or Childcare	Z	§78-80.5
Minor Utilities	Z	§78-80.4.M
Mobile Food Unit Preparer, Full Service	P	§78-80.4.T
Outdoor Restaurant Seating	Z	§78-80.4.N
Outdoor Display of Products for Sale	Z	§78-80.4.O
Parapets, Penthouses for Equipment and Other Roof Structures	Z	§78-80.3.D
School Uses in Conjunction with, and on the same site as, Religious Institutions	Z	§78-80.4.K
Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools	Z	§78-80.3.C §78-21.F

5. Accessory Structures in the PD-TD District. Accessory Structures within the PD-TD district shall conform to the Standards of Article XIII.

E. Prohibited and Restricted Uses. The commercial display and sale of vehicles is generally prohibited in the PD-TD District but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.4.P.

F. Dimensional Standards. The PD-TD district shall be subject to the following dimensional standards:

1. Minimum Area. There is no minimum area standard for a PD-TD district.

2. Density. The floor area ratio of development is not prescribed, although the form of development will be as generally depicted on the Downtown Master Plan, which includes commercial structures up to three stories in height and residential structures up to four stories in height, with buildings generally placed at or near the edge of the streetscape and parking located in surface lots or in parking structures. Density that may be achieved will depend on the parking solution for a given lot, the amount of public street frontage, the public streetscape to be provided, and other physical factors.

3. Building Height. The height of a structure in the PD-TD district shall meet the following standards:

a. The height of a structure shall generally follow the form of the Downtown Master Plan element of the 2030 Comprehensive Plan, as amended, incorporated by reference, and shall not exceed 50 feet from the finished grade except for architectural features such as parapet walls, elevator structures, heating, ventilation and air conditioning equipment and associated screening. These latter, excepted structures shall not exceed 64 feet in height from the finished grade. Further, these excepted structures shall not exceed 14 feet in additional height from the top of the highest story of the building at the main roof deck level or at the point on a sloped roof that is at the top of the highest floor of the building. No portion of a gable end peak, parapet wall or other structure shall exceed 64 feet from finished grade. Along a sloped street the finished grade shall be the average grade along the street frontage. Finished grade shall be determined per the definition of grade in Article XVII, Definitions, of this chapter. These features are further described in section 78-80.3.

b. In accord with section 78-50.60.H Downtown, building facades shall not be less than 20 feet in height as measured from the finished grade of the abutting public sidewalk to the top of the parapet on flat-roofed buildings or to the eave of pitched roof buildings. Single-family detached structures

including accessory uses in the Downtown Master Plan area are excepted from this requirement.

4. **Lot Area.** The lot area shall be such that development meets standards in Article XI Development Standards, and all other applicable standards in this chapter.
 5. **Setbacks Requirements in PD-TD Districts.** Limited setbacks to provide for streetscape within the public right-of-way, on private property, or within a combination of both shall be provided as described in section 78-50.3.A, Downtown.
 6. **Yard Requirements in PD-TD Districts** Where a PD-TD district abuts land in a single family detached zoning district, the yard immediately abutting the R-10 property shall be as follows: minimum 20 feet if it is a rear yard, minimum ten feet if it is a side yard. All other yards of the PD-TD parcel shall be as governed by the Downtown Pattern Book.
- G. Open Space in PD-TD.** Open space shall be provided generally as depicted on the Downtown Master Plan element of the 2030 Comprehensive Plan, as amended, with flexibility allowed for physical configuration to vary if proposed plans meet or exceed what is illustrated in the Downtown Master Plan in terms of open space areas. On-site or off-site, open space may include the provision of unique features such as, but not limited to, terraces, sculpture, reflecting pools or fountains. Any off-site open space provided in general accord with the Downtown Master Plan shall be provided within the geographic limits of the Downtown Master Plan area as adopted February 22, 2011 or as may be amended.
- H. Site Planning and Building Design in PD-TD.** Sites and buildings within the PD-TD district shall meet the following standards:
1. **Downtown Design Standards.** Sites shall meet the standards of section 78-50.3.A., Downtown.
 2. **Arrangement of Buildings and Open Space.** Buildings and open space in the PD-TD district shall be arranged to serve the needs of coordinated downtown development.
 3. **Design of Commercial Uses.** Commercial uses and structures shall be oriented toward the street. Service areas such as loading areas, refuse containers, and utility structures shall be screened and buffered to mitigate the adverse effects of noise, odor, and unsightliness from adjacent residential zoning districts.

4. **Waste Receptacles.** Solid waste receptacles shall be provided in accordance with the provisions of the zoning ordinance, Herndon Town Code section 78-114.C.
5. **HPRB Review Required for Increased FAR.** Site and building design shall comply with guidelines in the Herndon Heritage Preservation Handbook as determined by the HPRB prior to the planning commission public hearing when the increased floor area ratio is considered.
6. **Buildings and Sites to Comply with Comprehensive Plan.** Site and building design shall comply with the redevelopment criteria and other applicable guidelines as stated in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as amended, incorporated by reference. Site and building shall comply generally with the lot and building guidelines of the Herndon Downtown Pattern Book, incorporated by reference.
7. **Buildings and Sites to Comply with Downtown Pattern Book.** The Downtown Pattern Book dated January 29, 2013 by Urban Design Associates, as amended, is incorporated by reference, as may be amended by zoning ordinance is adopted and incorporated by reference into this chapter. Site and building design shall comply with guidelines in the Herndon Downtown Pattern Book, including Section B Regulatory Plans, incorporated by reference.. The zoning administrator may make minor and incidental changes or corrections conforming the Downtown Pattern Book to insure full consistency of the Downtown Pattern Book with this chapter.

Sec. 78-50.8 – PD-TOC Planned Development Transit-Oriented Core District

The following sections contain provisions pertaining to development within the area designated as the Metrorail Station Urban Development Area, also referred to as the Herndon Transit-Oriented Core, within the town comprehensive plan and accompanying documents referenced therein. Where there may be conflicts between this article and general zoning, subdivision or other regulations, or requirements, the regulations of this article shall apply. The zoning administrator shall determine questions of whether or not other sections of this chapter apply. All future development of properties within the Herndon Transit-Oriented Core shall conform to the standards contained in this article.

- A. **Purpose and Intent.** The purpose and intent of the Metrorail Station Urban Development Area is to create a distinctive employment center and residential neighborhood characterized by concentrated development that is vibrant, mixed use, transit-oriented and pedestrian friendly. Emerging development is interwoven with and strengthens the town's cultural fabric and sense of identity. The scale of development provides maximum benefit for the fiscal health of the town by supporting long-term economic sustainability. The PD-TOC is established for the Herndon Transit-Oriented Core, as defined in the adopted comprehensive plan, to implement through phased redevelopment the mix of uses, densities and intensities as set forth in the adopted comprehensive plan. The PD-TOC district regulations are

designed to provide the necessary flexibility to transform the suburban office park development that currently exist in the Herndon Transit-Oriented Core into a transit-oriented activity center as envisioned by the adopted comprehensive plan, the Herndon Metro Station area study and Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core. The PD-TOC district regulations have been developed to create a 38-acre transit-oriented core comprised of environmentally sustainable development, a vibrant mix of uses, premier architectural, landscape architectural, and urban design, robust pedestrian and bicycle accommodations, and necessary infrastructure improvements.

B. Locations Permitted. The PD-TOC district is established for development within the area designated as the Metrorail Station Urban Development Area, also referred to as the Herndon Transit-Oriented Core, within the town comprehensive plan and accompanying documents referenced therein.

C. Principal Uses. Table 78-50.8.D, lists uses and their definitions that shall apply within the PD-TOC District as principal uses. There may be additional regulations in this chapter and the Herndon Town Code that apply to specific principal uses in the PD-TOC district. Other uses not listed are not allowed, unless determined by the zoning administrator to be similar to a permitted use subject to the provisions of Section 78.70.1.F.

D. Table of Permitted and Allowed Uses PD-TOC.

TABLE 78-50.8.D. Table of Permitted and Allowed Uses – PD-TOC	
Residential Uses	Description of Use
Stacked Townhouses	Rental, Condominium or Fee Simple
Multi-Family	Rental or Condominium
Housing for the Elderly and Assisted Living	Rental or Condominium
Office Uses	Description of Use
Office	Commercial, professional, and healthcare offices providing standard or alternative healthcare services - patient care shall be limited to outpatient care only
Commercial Uses	Description of Use
Alcohol Production Facilities, Small Scale	Facility for the small scale production and packaging of alcoholic beverages for retail or wholesale distribution and for on-going premises or off-premises consumption
Brewpub	Facility that prepares and serves food and alcoholic beverages for on-premises consumption and which also produces alcoholic beverages such as beer, ale, or other fermented malt beverages, liquor, cider, and wine
Financial Services	Banking and Investment Services
Retail	Display and sale of consumer goods including but not limited to take-away prepared foods and beverages in establishments with fewer than eight tables
Restaurant	Sale of food and beverages for off-site or on-site consumption in establishments with eight or more tables and customary accessory uses including accessory entertainment and dancing

TABLE 78-50.8.D. Table of Permitted and Allowed Uses – PD-TOC	
Personal Service	Establishments for personal care such as day spas, tanning, salons, barber shops as well as the care of personal items such as dry-cleaning drop off/pick-up (without on-site cleaning), tailoring, and shoe repair
Commercial Services	Establishments for printing, mailing, packaging, and travel assistance
Creative Services	Establishments combining artistic production with sales and services such as photography and artist studios
Animal Service	Services provided for companion animals to include veterinary offices, animal daycare, indoor kennels, and pet grooming
Recreational	Private and for fee health clubs with customary accessory uses and interior sporting facilities
Theater	Live, electronic and film presentations, with or without food and beverage service
Educational and Institutional Uses	Description of Use
Early Grade, Kindergarten and Preschool	A facility giving regular instruction at least five days a week, except holidays, for a school year of not less than seven months for preschoolers, kindergarteners and grades 1 and 2
Daycare	A facility where one or more children receive care, protection and supervision on a regular basis during only part of a twenty-four hour day unattended by parent or legal guardian
Career School or School of Special Instruction	Business or institution devoted to giving instruction, which may lead to a career-based certificate or other qualifications or a facility dedicated to providing classes such as classes for recreation, art, drama music, dance, self-improvement, adult education leading to a GED, faith-based subjects, language or other special subjects but which are not part of a two year, four year or post-graduate degree program
College or University	A not for profit or for profit institution granting 2, 4, or post-graduate degrees with or without student residences
Places of Worship for fewer than 300	Places of worship accommodating fewer than 300 individuals at one time and which may provide accessory uses such as study of the faith, and childcare or recreational services for attendees of faith events
Museums and Art Galleries	An institution for the acquisition, preservation, study and exhibition of works of artistic, historical or scientific value
Hospitality Uses	Description of Use
Hotels and Conference Centers	An establishment containing separate and distinct sleeping rooms or suites that contain at least one private bath, are offered to the general public for rental, and are occupied by persons on primarily transient basis such that most occupants stay in the building for no longer than one week at a time, which may or may not have meeting and banquet facilities
Transportation Uses	Description of Use
Transit Facilities	Commercial and public commuter and transit information services, structures and facilities for the accessing of public transit services
Parking Garages	Private parking garages as accessory to all permitted uses; such garages may provide limited access and pay for parking options for tenants, residents, customers, and others
Car Sharing Enterprises	Facilities and vehicle storage for car sharing enterprises with storage as referenced in section 78-50.8.G.1
Bicycle Sharing Enterprises	Facilities and bicycle storage for bicycle sharing enterprises with storage as referenced in section 78-50.8.G.1
Government*	Description of Use
Police Substation	Facility providing office space, meeting rooms, and outreach programs for public law enforcement

TABLE 78-50.8.D. Table of Permitted and Allowed Uses – PD-TOC	
Library	Facility providing books and electronic media for loan, reading and computer rooms and general meeting space
Other	Description of Use
Interior Recreation	Public or private facility providing various forms of recreation including sports, art, drama music, dance, self-improvement, yoga and similar activities
Exterior Recreation	Public or private parks, pocket parks, plazas, playgrounds, athletic fields and similar facilities for active or passive relaxation
*For government offices, see "office uses."	

E. Accessory Uses and Structures. Table 78-50.8.F lists uses permitted and allowed in the PD-TOC district as accessory uses. There may be additional regulations in this chapter and in the Herndon Town Code that apply to specific accessory uses and structures in the PD-TOC district. It is the applicant’s responsibility to ensure that all published rules, regulations and standards have been addressed in any application submitted for development approval. Other accessory uses not listed are not allowed, unless determined by the zoning administrator to be similar to a permitted use subject to the provisions of Article VIII.

F. Table of Accessory Uses PD-TOC

TABLE 78-50.8.F – Accessory Use Table PD-TOC	
Uses Accessory to Residential	Description of Use
Home-Based Businesses	Per section 78-80.5 home-based businesses including daycare and childcare
Accessory Structures	Per approved development plan or site plan
Recreational Uses	As described within the comprehensive plan

G. Prohibited or Restricted Uses. The following uses shall be restricted as follows:

1. **Outdoor and Garage Display and Storage.** Outdoor and garage storage of items displayed for sale or lease is not permitted with the following exceptions:
 - a. Display of produce, flowers, handcrafted items and seasonal horticultural products located within the building zone and within stands or other containers.
 - b. Storage of ten or fewer passenger vehicles for rent associated with a hotel use is permitted within a garage or other designated area on an approved development plan.

c. Storage of passenger vehicles and motorcycles associated with a car sharing enterprise is permitted in private parking areas or along private streets as shown on an approved site plan.

d. Storage of bicycles in association with a bicycle sharing enterprise is permitted on private property.

2. Sale of Vehicles. The commercial display and sale of vehicles is generally prohibited in the PD-TD District but the sale of individually owned vehicles may be permitted pursuant to Section 78-80.4.P.

3. Sales of Products on Town Property and Along Herndon Promenade. The sale of products on town controlled property, on town rights-of-way and along the Herndon Promenade shall be allowed only as permitted by the town.

H. Density. The maximum floor area ratio of development within the PD-TOC District shall be subject to the following standards:

1. Maximum Density through Site Plan Approval. Properties within the PD-TOC shall be permitted to develop up to a maximum intensity of 0.70 FAR, provided a site plan is reviewed and approved pursuant to Section 78-50.8.O.3, Site plan review, and shall follow the processes set forth in Article XV of this chapter.

2. Maximum Density through Special Exception Approval. Properties within the PD-TOC, may submit a special exception application for additional density greater than 0.70 FAR, but not to exceed an additional 0.50 FAR. Such applications shall follow the relevant processes set forth in Article II of this chapter. In addition to the general special exception submittal requirements, special exception applications for additional density in the PD-TOC shall be subject to the following:

a. The applicant shall submit a statement indicating the anticipated duration of the use and structure and whether or not it is anticipated to serve as the first phase of future development or an interim condition that will be removed when future development occurs.

b. In addition to the standards set forth in section 78-155.3 of this chapter, a special exception for additional density within the PD-TOC may be approved upon a determination by the planning commission and town council, respectively, as to whether and the extent to which the proposed plan and use(s) meet the following standards:

(1) Reflects the intent of the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core.

- (2) Allows and encourages future development of the remainder of the site and abutting properties.
 - (3) Enhances areas within the subject property not to be developed under the proposed special exception.
 - (4) Incorporates and screens service areas, structured and nonstructured parking areas and mechanical equipment, dumpsters and other utility apparatus and uses.
- c. Any site plan associated with an approved special exception for additional density in the PD-TOC district shall be subject to Section 78-50.8.O.3 Site Plan Review.

3. Maximum Density through Development Plan Approval. Pursuant to Section 78-50.8.O.1 Development plan application procedures, properties within the PD-TOC may develop at intensities up to 4.3 FAR, as more particularly set forth in the adopted comprehensive plan, following approval of a development plan by zoning ordinance by the town council demonstrating conformance with the elements in Section 78-50.8.O.2 Standards for Development Plan Applications within the PD-TOC. No parcel within the PD-TOC shall be developed at a density greater than 1.2 FAR without the approval of a development plan by the town council. In connection with an approval of a development plan under section 78-803, the town council may accept proffered conditions offered by an applicant under Code of Virginia, § 15.2-2303, which conditions shall supplement the standards and requirements of this PD-TOC district and be noted on the official zoning map of the town.

I. Dimensional Standards. The PD-TOC district shall be subject to the following dimensional standards:

- 1. Minimum Lot Size.** There is no minimum lot size within the PD-TOC.
- 2. Building Heights.** The height of any structure shall not exceed the strictest limitation set out as follows:
 - a. The height of any structure within the PD-TOC district shall not exceed 275 feet inclusive of parking levels. Structures permitted to exceed the maximum height limitation within the PD-TOC include parapet walls and nonhabitable space such as but not limited to mechanical equipment and mechanical penthouses, atrium roofs, landscaping, swimming pools, and exterior recreational facilities and associated fencing and antennas. Such structures shall not exceed 35 feet in height. Building height relative to adjacent existing or proposed buildings, public streets and the promenade shall be as governed by the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core.

b. Within the PD-TOC, height shall be measured from finished grade at the nearest property line abutting a public right-of-way to the top of the highest roof membrane on a flat roof or the top of the highest ridgeline on a sloped or mansard roof.

3. Tower Separation for Buildings over 80 Feet. To ensure adequate air, light, and privacy, building tower separation shall be as follows:

a. A minimum horizontal separation of 65 feet between residential building towers above 80 feet in height.

b. A minimum horizontal separation of 50 feet between nonresidential building towers above 80 feet in height.

J. Setbacks and Yards. The following setbacks and yards shall apply to all development within the PD-TOC:

1. Setbacks abutting the Herndon Parkway, Van Buren Street and Worldgate Connector. The setback shall be sufficient to provide for the applicable streetscape improvements as described in the adopted comprehensive plan, Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core and the Herndon Guidelines for the Planning and Design of Town Streetscapes as appropriate. The required streetscape improvements shall be provided and shall be located within the public right-of-way or on private property with a public street easement or within a combination of both. Buildings shall not be located further than 15 feet from the adjacent edge of the public streetscape. Between the edge of streetscape and the adjacent building the following uses may be permitted: restaurant seating with or without table service; bicycle racks and storage including but not limited to bicycles for bicycle sharing enterprises; streetscape furnishings; awnings; entrance features to include covered and uncovered steps, porticos, planters and landscaping; public art; vendor carts associated with existing on-site uses or under lease agreement with the owner of the property.

2. Setbacks abutting the Herndon Station Promenade. The setback shall be sufficient to provide for the applicable improvements as described in the adopted comprehensive plan and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core. The required improvements shall be provided on private property with a dedicated public access easement or within public property or a combination of both. No building shall be located further than 15 feet from the adjacent edge of the promenade. The development shall incorporate provisions found in the town comprehensive plan and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core for the layout and design of the promenade as part of an application for development.

- 3. **Setbacks abutting the Dulles Toll Road.** Abutting the future location of the Sugarland Run Trail, no structure shall be within 40 feet of the Dulles Toll Road right-of-way. Properties abutting the Dulles Toll Road right-of-way and the future Sugarland Run Trail shall incorporate provisions found in the town comprehensive plan and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core for the Sugarland Run Trail. Where the Sugarland Run Trail does not abut the Dulles Toll Road right-of-way, no structure shall be within 20 feet of the Dulles Toll Road right-of-way.
 - 4. **Internal Yards.** Building placement and relationship shall be as described within the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core and as further defined by section 78-50.8.1.3, Tower separation.
- K. **Open Space.** Within the PD-TOC, there is no minimum open space requirement. All development within the PD-TOC is responsible for contributing to the creation of a high-quality, pedestrian centric development to achieve excellence in the areas of urban design, landscape architecture, architecture, and recreation management which shall be demonstrated and assessed as follows:
- 1. **Variety of Exterior Amenities.** Development plans shall incorporate a variety of exterior amenities consisting of a number of features such as courtyards, public and semi-public access drives, pedestrian and bicycle connections, lawns, gardens, and passive and active recreational environments.
 - 2. **Design of Exterior Amenities.** Exterior amenities shall be designed with the high quality materials, extensive landscaping as appropriate, creatively designed surfaces and superior functionality designed for the comfort and need of pedestrians to ensure physical and visual relief for the residents, visitors and workforce within the PD-TOC.
 - 3. **Required and Preferred Features.** Ground level plazas and parks are a required feature within the PD-TOC. Interior civic space, such as space dedicated to museum uses or interior recreation space including that dedicated to public use and operated by the town, is highly encouraged, as is private interior recreation space for the enjoyment of residents and those employed within the PD-TOC. Green rooftops offering a variety of passive and active recreational amenities are encouraged in appropriate settings and circumstances.
 - 4. **Consideration of Amenities and Features.** The quality, size and number of exterior rooftop, at grade and elevated courtyards, parks, recreation areas, pedestrian plazas, and pedestrian, vehicular and bicycle connections shall be considered in the review of development plans as well as the quality, size, number and accessibility of interior and exterior public and private recreation and civic uses.

5. Reviewing Authority to Determine Compliance. For development in the PD-TOC which is being developed per the provisions of section 78-50.8.H, density, and has not been the subject of an approved development plan, the reviewing authority shall determine whether the plan meets the above standards.

L. Landscaping, Buffers and Screening. Landscaping, buffers and screening shall be provided for in the town guidelines for the planning and design of streetscapes, the town comprehensive plan and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core. The following additional standards shall also apply:

- 1. Surface Parking Requirements for Development with Site Plan but not subject to a Development Plan.** For development of a property under a by-right site plan or site plan following the approval of a special exception for additional density and which has not been the subject of an approved development plan, uncovered surface parking areas shall provide landscaping within the interior of the parking area. Within parking areas each tree shall be afforded a minimum of 120 square feet of root zone. There shall be a minimum of one shade tree per every 12 parking spaces. Screening shall be provided between parking lots and public right(s)-of-way and the Herndon Metro promenade.
- 2. Screening of Mechanical Features.** For all development within the PD-TOC, mechanical equipment, utility boxes, dumpsters, antennas, tanks, generators, similar apparatus and storage structures shall be located underground, within primary structures or screened within parking garages.

M. Stormwater Management. Stormwater management within the PD-TOC shall meet all applicable requirements of the town's adopted public facilities manual and the adopted Chesapeake Bay Preservation overlay district. Toward this end, within the PD-TOC district the following practices shall be among the implemented stormwater management practices if supported by general law: sustainable streets and access drives, green roofs, porous pavement (where appropriate), rainwater harvesting and other green infrastructure techniques to retain, infiltrate, evapotranspire, and reuse rainwater

N. Nonconformities. With respect to non-conformities, the following provisions shall apply to existing structures within the PD-TOC District:

- 1. Generally.** Any structure or use existing within the PD-TOC district upon the enactment of this article may continue in effect pursuant to Article XVII of this chapter.
- 2. Specific Non-Conformity Provisions for Uses and Structures within the PD-TOC District that were Formerly Zoned O&LI.** Structures or uses within the PD-TOC zoning district as of the date of the adoption of the ordinance from which this article derives (November 26, 2103), shall not be deemed

nonconforming structures or uses notwithstanding their possible inconsistency with yard, height, lot coverage, parking, use, or other development regulations contained in this article and shall be subject to the following:

- a. Such structures or uses are conformed to the regulations of this article and such structures or uses existing within the PD-TOC district upon the enactment of Article VIII at time of enactment) may continue and may be repaired, renovated, or enlarged under the standards of either the O & LI district or under the PD-TOC standards, up to the maximum floor area ratio of 0.7 if the O & LI standards are applied, provided that such uses or structures complied with the density provisions set out herein prior to the enactment of this article.
- b. If the repair, renovation, or enlargement occurs under the PD-TOC standards, the provisions of this Article VIII, among others, shall apply.
- c. The owner or applicant may choose which set of standards (the O & LI or the PD-TOC) shall apply to the repair, renovation, or enlargement.
- d. Nothing in these provisions affects the status of any structure or use in the PD-TOC zoning district that is a nonconforming structure or nonconforming use by virtue of a factor other than the adoption of the ordinance from which this article derives.

O. Application Requirements and Application Review Process.

1. **Development Plan Application Procedures.** The purpose of a development plan is to provide flexibility for property owners to secure approval of a phased development that adheres to the adopted comprehensive plan and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core and section 78-50.8.O.3, Standards for development plan applications within the PD-TOC. For the purposes of this article, and notwithstanding section 78-152.2, Submittal requirements, the following application procedures and submittal requirements shall apply for applications submitted to the town council for properties located within the PD-TOC that propose development in excess of 0.70 FAR, development greater than the density approved through a special exception as described in section 78-50.8.I, Density, or to amend a previously approved PD-TOC development plan. The submission of applications shall comply with the following:
 - a. Applications for development plan applications and associated modifications shall include:
 - (1) A completed application form provided by the town and signed by the owner(s) or owner's agent(s). Applications shall be submitted to the zoning administrator by the land owner or contract purchaser of the land upon

which the development is proposed, an authorized agent, or any other person authorized by state law. If the applicant is an agent of the owner or a contract purchaser of the land, a letter signed by the owner consenting to the submittal of the application shall be submitted. If the applicant is not the sole owner of the land, the other owners or an entity representing the owners shall sign and submit a letter indicating their consent for the application and their role in the application.

- (2) 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.
 - (3) Payment of the required fee(s) as prescribed in Table 78-152.2.B..3.c of this chapter.
 - (4) A statement indicating the date and time that a pre-application conference was held with the zoning administrator or designee, as well as a list of participants in the conference. Notwithstanding section 78-152.1.B, at least one neighborhood meeting is required. The purpose of the neighborhood meeting is to educate neighbors about the proposed development and application, receive neighborhood comments, address concerns about the development proposal, and resolve conflicts and outstanding issues, where possible. Neighborhood meetings are opportunities for informal communication between landowners, applicants, and residents who may be affected by development proposals.
 - (5) A receipt or other documentation indicating that any delinquent taxes owed on lands subject to the application have been paid.
- b. A plan, at a scale of not less than one inch equals 50 feet, showing:
- (1) A vicinity map at a scale of not less than one inch equals 2,000 feet.
 - (2) Existing topography and a statement indicating whether it is air survey or field run, with a maximum contour interval of two feet; except where existing ground is on a slope of less than two percent, then either one foot contours or spot elevations shall be provided where necessary, but not more than 50 feet apart in both directions.
 - (3) Scale and north arrow, with north, to the extent feasible, oriented to the top of all drawings.
 - (4) The approximate location and arrangement of all proposed structures and uses, including the proposed build-to lines, the distances of all structures

from the development boundaries and streets, the streetscape and landscape treatments to be provided and the maximum and minimum height in feet of all structures and penthouses.

- (5) A massing diagram of all proposed structures employing proposed maximum heights and stating minimum heights if a height range is proposed.
- (6) The on-site vehicular and pedestrian circulation system, including the location, width, and appearance of all access drives, entrances to parking areas, parking structures and loading areas, dimensions and screening of loading areas, walkways, bicycle paths, and all trails and streetscapes recommended by the adopted comprehensive plan and Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core, and connections with off-site streets and trails that are existing or are recommended by the adopted comprehensive plan, including private access drives.
- (7) All proposed open space areas, recreational features and the approximate location of all exterior and interior proposed community and public facilities.
- (8) A statement in tabular form setting forth the maximum and minimum gross floor area for all uses and the resulting FAR for the property.
- (9) All proposed improvements to the public right(s)-of-way, including dimensions from the existing centerline to the edge of the pavement and to the edge of the right-of-way.
- (10) Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey.
- (11) In accordance with the provisions of section 78-60.4, Chesapeake Bay preservation area overlay district (CBPAOD), the delineation of any resource protection area, and the minimum distance of any existing and proposed structures from the floodplain, or resource protection area.
- (12) A delineation of existing vegetation, to include existing vegetation to be preserved.
- (13) Approximate location and estimated size of all proposed stormwater management facilities and a statement as to the type of facility proposed.
- (14) The location of all existing utility easements having a width of 25 feet or more, and all major underground utility easements regardless of width.

- (15) Approximate delineation of any grave, object or structure marking a place of burial if known, and a statement indicating how the proposed development will impact the burial site.
 - (16) A visual presentation, including plans and sections, of how abutting and adjacent properties shall be protected from any adverse effects prompted by the proposed development, to include vehicular access plans, proposed measures of screening, and dimensions of all peripheral yards that will be provided.
 - (17) A delineation of all existing structures, and an indication of their date of construction if known, and whether they will be retained or demolished.
 - (18) A statement in tabular form setting forth the minimum and maximum number of dwelling units proposed by type and indicating the projected range in unit square footage and number of bedrooms and conversion to the corresponding FAR.
 - (19) A statement in tabular form of the open space calculations by type. A listing of the proposed special amenities within the planned development, including but not limited to interior and exterior recreational space, and the approximate size and purpose of each such facility, along with an analysis explaining the relationship of the planned development to the adopted comprehensive plan.
 - (20) A statement that the proposed development conforms to the provisions of all applicable ordinances, regulations and adopted standards, or, if any modification is sought by the applicant, such shall be specifically noted with a justification for such modification.
- c. Five copies of a map identifying classification of soil types at a scale of not less than one inch equals 500 feet, based upon information available on the County of Fairfax Soils Identification Maps.
 - d. A listing, if known, of all hazardous or toxic substances as set forth in Title 40, Code of Federal Regulations Parts 116.4, 302.4, and 355; all hazardous waste as set forth in Virginia Department of Environmental Quality Hazardous Waste Management Regulations; or petroleum products as defined in Title 40, Code of Federal Regulations Part 280, to be generated, utilized, stored, treated, or disposed of on-site and the size and contents of any existing or proposed storage tanks or containers.
 - e. A plan delineating the property and its proximity to the Herndon Metrorail pavilion entrance using one-eighth, one-quarter, one-third and one-half mile distances.

- f. A phasing plan, if applicable, that identifies conceptually each phase and the anticipated order of phasing for the proposed development. Such plan shall at a minimum specify for each phase of the development, the location and the anticipated mix of uses; the conceptual streetscape and landscape treatments to be provided; the amount and location of all parking and loading spaces; and a statement as to how each phase of development will contribute toward the provision of public and private infrastructure, necessary to achieve the objectives set forth in the adopted comprehensive plan, Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core and section 78-50.8.O.2, Standards for development plan applications within the PD-TOC.
- g. A parking plan, identifying the applicable parking rates as set forth in Section 100.2.C. Parking, and including the number and general location of all off-street parking, loading, and (as applicable) stacking spaces, as well as the general location of all ingress/egress points to all parking facilities. Transportation demand management goals, affecting parking requirements, shall be set forth and justification provided. Where parking is to be provided in phases in accordance with a phased development proposal, the parking plan shall provide the information set forth above for each proposed phase. The council may reduce the minimum off-street parking requirements when it is demonstrated by the applicant and determined by the council that such reduction is in furtherance of the goals of the comprehensive plan and the Herndon Metro Station area study.
- h. A shadow analysis demonstrating how projected shadows from the proposed development will affect adjacent buildings and properties in terms of the loss of received sunlight.
- i. Graphics and/or photo simulations that depict the proposed structures as viewed from adjacent sidewalks, streets, properties and other sensitive viewing areas.
- j. A statement and graphic depiction of the types, minimum sizes and general locations of the urban design amenities to be provided within the PD-TOC district including pedestrian linkages, plazas, courtyards, bicycle trails, outdoor recreation facilities, and public and private parks, interior civic space, and outdoor activity zones, such as outdoor dining areas.
- k. A landscape plan showing the limits of clearing, location and design of all screening measures both interim and long-term, indicating the type and height of such screening, and a delineation of existing vegetation, to include existing vegetation to be preserved, and when there is 2,500 square feet or more of land disturbing activity, an existing vegetation map.
- l. A statement in narrative or tabular form describing exterior architectural materials to be used within the development.

- m. Open space areas, specifying the proposed treatment or improvement of all such areas and delineating those areas proposed for specific types of developed recreational facilities.
- n. Proffer procedures shall be per section 78-155.1.E. Conditional Amendments to the Zoning Map.
- o. A traffic impact study per section 78-156.1.

2. Standards for Development Applications within the PD-TOC. For development plan applications within the PD-TOC district, the applicant shall demonstrate that the proposed development furthers the purpose and intent of the PD-TOC district and the vision of the adopted comprehensive plan, documents referenced therein and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core by addressing and achieving at a minimum the following objectives:

- a. Contribute to a tiered intensity of development, with the highest intensities located closest to the Herndon Metro Station pavilion, and the Herndon Station promenade, with a mix of residential, office, retail and hotel uses and public spaces necessary to achieve a vibrant, mixed-use urban environment.
- b. Contribute to a logical networks of open space and urban parks designed as described in the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core and Chapter 6 of the Herndon Metro Station area study to include but not be limited to the Herndon Station promenade, Herndon Parkway streetscape and cycle track, the extension of the Folly Lick Trail as an urban streetscape with multi-modal accommodations, the Metrorail Station urban development area portion of the Sugarland Run Stream Valley Trail pocket parks, common greens, civic plazas and recreational amenities for the district's residents and workforce, which reflect exemplary design in the fields of landscape architecture, urban design and public art.
- c. Voluntarily address impacts to public facilities that result from the proposed development plan application, to include police protection, park and recreation services, public utilities and Fairfax County services to include fire and rescue, libraries, and schools.
- d. Voluntarily contribute a fair share of the necessary infrastructure improvements identified in the Herndon Metro Station area study including but not limited to the creation of the Worldgate Connector, the redesign of the Herndon Parkway, and water and sewer improvements.

- e. Create and provide exemplary pedestrian, bicycle, passenger vehicle and service vehicle access. .
 - f. Reduce the number of single occupant vehicle trips by implementing various Transportation Demand Management strategies, such as voluntary transit subsidies, carpool and vanpool services, employee shuttles, car sharing programs and bicycle accommodations, limiting the amount of provided parking, encouraging shared parking arrangements among appropriate uses, and permitting the inclusion of managed tandem parking space. .
 - g. Apply the adopted Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core. .
 - h. Demonstrate how the development plan application contributes to a cohesive PD-TOC district and will permit development of adjacent parcels or landbays that are not included within the development plan application. .
 - i. Reduce energy consumption and enhance the physical environment through specified stormwater management and sustainable building techniques.
- 3. Site Plan Review.** Site plans for all developments within the PD-TOC shall follow the relevant processes set forth in Article XV of this chapter in addition to the following specific requirements:
- a. Requirements for Properties for which no development plan has been approved under section 78-50.8 .I Density:
 - (1) The applicant shall provide a note on the site plan stating whether or not the development shown on the site plan is anticipated to be the first phase of future development under a future development plan or interim development likely to be removed under a future development plan.
 - (2) Streetscape elements along public and private streets or access drives shall be provided in accordance with the standards of the adopted comprehensive plan, the Herndon Guidelines for the Planning and Design of Town Streetscapes and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core as appropriate.
 - (3) Streetscape, trail and promenade easements or dedication shall be provided when the proposed site plan incorporates land designated for such in the adopted comprehensive plan.
 - (4) Streets and private access drives to and from existing public rights-of-way shall be constructed to provide safe and convenient means of

ingress and egress for motor vehicles and pedestrians, with the locations of proposed buildings or structures oriented to accommodate such connections.

(5) The zoning administrator shall provide written determination that the site plan conforms to pertinent sections of the comprehensive plan, Guidelines for the Planning and Design of Town Streetscapes and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core within 45 days of the first submission of the site plan being accepted by the town and prior to the return of the first submission of the site plan to the applicant or applicant's agent. If the zoning administrator finds that the site plan does not conform to the comprehensive plan, Guidelines for the Planning and Design of Town Streetscapes and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core, the zoning administrator shall provide to the applicant an explanation concerning how the plan fails to conform and possible measures for bringing the site plan into conformance with the above referenced documents. The applicant may appeal the decision of the zoning administrator to the circuit court per standard site plan appeal procedures.

(6) Site plans submitted for properties that are the subject of an approved special exception allowing density greater than 0.70 FAR shall include a copy of the approved special exception plan and any approved conditions. Site plans must be in substantial conformity with the approved special exception. For the purposes 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 approved special exception including plans and other demonstrative materials. No site plan shall be approved unless the approving authority finds that the plan is in substantial conformity with the approved special exception.

b. Properties for which a development plan has been approved under section 78-50.8.1, Density shall be subject to the following:

(1) The site plan shall include a copy of the approved development plan and a copy of the signed proffer statement if applicable.

(2) The site plan shall include a copy of the approved phasing plan clearly indicating the phase or phases contained within the current site plan submittal as well as all phases with previous site plan approval at the time of initial submission of the site plan application.

- (3) The site plan shall include a statement in tabular form that sets forth the amount of gross floor area, FAR and the number of dwelling units (if applicable) approved for the landbay subject to the development plan and the amount of gross floor area, FAR and the number of dwelling units (if applicable) constructed or approved under a separate site plan as of the date of the submission of the site plan, if applicable.
- (4) No site plan shall be approved unless the reviewing authority finds that it is in substantial conformity with the approved development plan.

4. Architectural Review Board Application and Review. Following approval of any site plan for development in the PD-TOC the town architectural review board shall review the proposed development per section 78-150.5, Architectural Review Board, and shall apply the guidelines found in the adopted Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core. Applications for development within the PD-TOC, for review by the town architectural review board, shall be augmented by the following:

- a. Plans for all exterior ground level or elevated courtyards, plazas, streetscapes and other open spaces with proposed elements such as but not limited to pavement materials and designs, benches, tables, landscape structures and features, fountains, free-standing and building mounted lights and poles, litter and recycling receptacles.
- b. Colors, cut-sheets, detail drawings, and samples shall be provided as appropriate to the element being depicted.

Sec. 78-50.9 PD-W Planned Development Worldgate District

A. Purpose and Intent. The intent of the PD-W district is to accept the Worldgate development as approved by Fairfax County into the town, including all uses and features approved by Fairfax County up to January 2, 2005. The district regulations are designed to encourage the innovative and creative design of commercial development; to accommodate preferred high density land uses which could produce detrimental effects on neighboring properties if not strictly controlled as to location and design; and to insure high standards in the lay-out, design and construction of commercial developments. To these ends, rezoning to and development under this district shall be permitted only in accordance with a general development plan prepared and approved in accordance with this division. However, development under Fairfax County zoning approved prior to January 2, 2005 shall be permitted in accordance with the final development plan, and proffers approved by the Fairfax County Board of Supervisors. *{Formerly Sec. 78-303.1(f)(4)}*

B. Locations Permitted. This district applies exclusively to the Worldgate development as approved by the Fairfax County Board of Supervisors and accepted under the town's zoning and planning authority on January 2, 2005.

Where conflict may arise between the provisions of this section and other provisions of this chapter, the provisions of this section shall govern.

C. Principal Uses Permitted. The following principal uses shall be permitted subject to the approval of a final development plan prepared in accordance with the provisions of Article 16 of the Fairfax County Zoning Ordinance prior to January 2, 2005 or subject to a town general development plan if amended subsequent to that date and subject to the use limitations set forth in section 78-50.9.E, below.

- 1. Business service and supply service establishments.
- 2. Eating establishments.
- 3. Establishments for scientific research, development and training where assembly, integration and testing of products in a completely enclosed building is incidental to the principal use of scientific research, development and training.
- 4. Exposition halls and facilities to house cultural or civic events or conventions of political, industrial, fraternal or similar associations, with a minimum gross floor area of 100,000 square feet.
- 5. Financial institutions.
- 6. Garment cleaning establishments.
- 7. Hotels, motels.
- 8. Offices.
- 9. Personal service establishments.
- 10. Public uses.
- 11. Repair service establishments.
- 12. Retail sales establishments.
- 13. Theatres.

D. Secondary Uses Permitted. The following secondary uses shall be permitted only in a PD-W district which contains one or more principal uses; only when such uses are presented on an approved Fairfax County final development plan prepared in accordance with the provisions of Article 16 of the Fairfax County Zoning Ordinance if developed prior to January 2, 2005, or on an approved town general development plan if developed after January 2, 2005, and subject to the use limitations set forth in section 78-50-90.E. below.

1. Accessory uses, accessory service uses and home occupations as permitted by Article 10 of the Fairfax County Zoning Ordinance if approved prior to January 2, 2005 and by this chapter if approved on or after January 2, 2005.
2. Affordable dwelling unit developments.
3. Bank teller machines, unmanned, located within a multiple family dwelling.
4. Commercial and industrial uses of special impact (Category 5 of the Fairfax County Zoning Ordinance), limited to:
 - a. Amusement arcades.
 - b. Automobile-oriented uses.
 - c. Car washes.
 - d. Drive-in banks.
 - e. Drive-through pharmacies.
 - f. Fast food restaurants.
 - g. Golf courses, country clubs.
 - h. Golf driving ranges.
 - i. Marinas, docks and boating facilities, commercial.
 - j. Quick-service food stores.
 - k. Service stations.
 - l. Service station/mini-marts.
 - m. Vehicle light service establishments.
 - n. Vehicle sale, rental and ancillary service establishments, limited by the following provisions:
 - (1) Outdoor storage, parking and display areas shall be permitted only on the same lot with and ancillary to a sales room, rental office or service facility, which shall be entirely enclosed on all sides.
 - (2) The outdoor area devoted to storage, loading, parking and display of goods shall be limited to that area so designated on an approved special exception plat or conditional use permit. Such areas shall not be used for the storage or display of vehicles that are not in operating condition.

- (3) Notwithstanding the bulk regulations of the zoning district in which located, any such outdoor area that is located on the ground and is open to the sky may be located in any required yard but not nearer to any front lot line than ten feet, except as may be qualified by the provisions of Article 13, Fairfax County Zoning Ordinance.
 - (4) All structures shall be subject to the bulk regulations of the Fairfax County zoning district in which located as of January 2, 2005, except structures which are completely underground may be located in any required yard, but not closer than one foot to any lot line. All such uses shall be provided with safe and convenient access to a street. If any outdoor area is located contiguous to a street, the street side thereof shall be curbed, and ingress and egress shall be provided only through driveway openings through the curb of such dimension, location and construction as may be approved by the zoning administrator in accordance with the Town of Herndon Public Facilities Manual.
 - (5) All outdoor areas, including aisles and driveways, shall be constructed and maintained with an approved surface in accordance with Par. 11 of section 11-102, Fairfax County Zoning Ordinance, and shall be improved in accordance with the construction standards presented in the Town of Herndon Public Facilities Manual.
 - (6) All lighting fixtures used to illuminate such outdoor areas shall be designed to comply with the performance standards as to glare of the Fairfax County zoning district in which such facility is located as of January 2, 2005.
 - (7) Such facilities shall not be lighted at any time other than during the same hours that the facility is open for business, except for necessary security lighting.
5. Commercial recreation uses (Group 5 from the Fairfax County Zoning Ordinance), limited to:
- a. Billiard and pool halls.
 - b. Bowling alleys.
 - c. Commercial swimming pools, tennis courts and similar courts.
 - d. Health clubs.
 - e. Indoor firing ranges, archery ranges, fencing and other similar indoor recreational uses.
 - f. Miniature golf courses.

- g. Skating facilities.
- h. Any other similar commercial recreation use.
- 6. Community uses (Group 4 from the Fairfax County Zoning Ordinance).
- 7. Dwellings.
- 8. Institutional uses (Group 3 from the Fairfax County Zoning Ordinance).
- 9. Kennels, limited by the provisions of section 78-303.2(d)(5) below.
- 10. Light public utility uses (Category 1 from the Fairfax County Zoning Ordinance).
- 11. New vehicle storage, limited by the provisions of section 78-303.2(d)(5) below.
- 12. Parking, commercial off-street, as a principal use.
- 13. Quasi-public uses (Category 3 from the Fairfax County Zoning Ordinance) limited to:
 - a. Alternate uses of public facilities.
 - b. Child care centers and nursery schools.
 - c. Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school of general or special education.
 - d. Colleges, universities.
 - e. Conference centers and retreat houses, operated by a religious or nonprofit organization.
 - f. Congregate living facilities.
 - g. Cultural centers, museums and similar facilities.
 - h. Dormitories, fraternity/sorority houses, rooming/boarding houses, or other residence halls.
 - i. Independent living facilities.
 - j. Medical care facilities.
 - k. Private clubs and public benefit associations.
 - l. Private schools of general education.

- m. Private schools of special education.
- n. Quasi-public parks, playgrounds, athletic fields and related facilities.
- n. Transportation facilities (Category 4 from the Fairfax County Zoning Ordinance), limited to:
 - 1. Bus or railroad stations.
 - 2. Heliports.
 - 3. Helistops.
 - 4. WMATA facilities.
- o. Vehicle transportation service establishments.
- p. Veterinary hospitals.

E. Special Exceptions Uses. Certain uses may be permitted by special exception in the PD-W district approval as follows:

- 1. Uses Permitted by Special Exception.** Subject to the use limitations presented in section 78-50.9.F below, any use presented in section 78-50.9.E and section 78-50.9.C, above as a group or category use may be permitted with the approval of a special exception when such use is not specifically designated on an approved Fairfax County final development plan approved prior to January 2, 2005 or a town generalized development plan approved on or after January 2, 2005.
- 2. Additional Uses Permitted with a Special Exception:**
 - a. Commercial off-street parking in Metro Station areas as a temporary use.
 - b. Fast food restaurant

F. Use Limitations.

- 1. Compliance with Development Standards.** All uses shall comply with the standards set forth in Article V, Development Standards.
- 2. Review Standards.** When a use presented in section in section 78-50.9.C and section 78-59.9.D above as a group or category use is being considered for approval:
 - a. On a generalized development plan, the standards set forth in section 78-155.1 zoning map amendments, shall be used as a guide.

- b. As a special exception use, pursuant to section 78-50.9.E. above, the use shall be subject to the provisions of section 78-155.3 special exceptions, of this chapter, if applicable. Provided that such use is in substantial conformance with the approved Fairfax County conceptual development plan or the town generalized development plan and any imposed development conditions or proffered conditions and is not specifically precluded by the approved Fairfax County final development plan or the town approved generalized development plan, no final development plan or generalized development plan shall be required.
- 3. Compliance with Approved Development Plan.** All uses permitted pursuant to the approval of a Fairfax County final development plan (before January 1, 2005) or a town generalized development plan (after January 1, 2005) shall be in substantial conformance with the approved final or generalized development plan as provided for in this chapter.
- 4. Floor Area Limitations and Calculations for Secondary Uses.** Secondary uses shall be permitted only in a PD-W district which contains one or more principal uses. Unless modified by the town council in conjunction with the approval of a generalized development plan for further implementation of the adopted comprehensive plan, the gross floor area devoted to dwellings as a secondary use shall not exceed 50 percent of the gross floor area of all principal uses in the development, except that the floor area for affordable and market rate dwelling units which comprise the increased density pursuant to part 8 of Article 2 of the Fairfax County Zoning Ordinance shall be excluded from this limitation. The gross floor area of all other secondary uses shall not exceed 25 percent of the gross floor area of all principal uses in the development. The floor area for the dwellings shall be determined in accordance with the gross floor area definition except the following features shall not be deemed gross floor area: balconies, porches, decks, breezeways, stoops and stairs which may be roofed but which have at least one open side; or breezeways which may be roofed but which have two open ends. An open side or open end shall have no more than 50 percent of the total area between the side(s), roof and floor enclosed with railings, walls, or architectural features.
- 5. Design of Secondary Uses.** Secondary uses shall be designed so as to maintain and protect the character of adjacent properties, and shall be conducted entirely within an enclosed building, with no outside display, except those uses which by their nature must be conducted outside a building.
- 6. Service Stations, Mini-Marts, Vehicle Light Service Establishments.** Service stations, service station/mini-marts and vehicle light service establishments shall be permitted only under the following conditions:
- a. Located in a commercial center consisting of not less than three commercial establishments, such commercial establishments to be other than automobile-related.

- b. There shall be no vehicle or tool rental and no outdoor storage or display of goods offered for sale, except for the outdoor storage or display of goods permitted at a service station or service station/mini-mart. In addition, no more than two vehicles that are wrecked, inoperable or abandoned may be temporarily stored outdoors for a period in excess of 72 hours, and in no event shall any one such vehicle be stored outdoors for a period exceeding 72 hours.

7. Sign Regulations in PD-W (including multi-tenant mixed used development). Signs shall be permitted only in accordance with the provisions of Article XIV. Signs existing on January 2, 2005, and developed in accord with the provisions of Article 12 and Article 11 of the Fairfax County Zoning Ordinance shall be deemed legal and conforming with respect to this chapter.

8. Off-street Parking, Loading and Private Streets. Off-street parking and loading facilities and private streets shall be provided in conformance with the provisions of section 78-500, off street parking and loading, and other applicable sections of this chapter. Such facilities existing on January 2, 2005 and developed in accord with the provisions of Article 12 and Article 11 of the Fairfax County Zoning Ordinance shall be deemed legal and conforming with respect to this chapter.

9. Housing for the Elderly. Notwithstanding the provisions of paragraphs 4. and 5. above, housing for the elderly as a secondary use need not be designed to serve primarily the needs of the residents and occupants of the planned development in which located but shall be designed so as to maintain and protect the character of adjacent properties. The gross floor area devoted to housing for the elderly as a secondary use shall not exceed 50 percent of the gross floor area of all uses in the development.

10. Fast Food Restaurants. Fast food restaurants shall be permitted only in accordance with the following:

- a. Fast food restaurants may be permitted as a secondary use when shown on an approved Fairfax County final development plan or an approved town generalized development plan (after January 2, 2005), and provided such use is located in a nonresidential structure containing at least one other permitted principal or secondary use, in accordance with the following:
 - (1) Such fast food restaurants shall be oriented to cater primarily to occupants and/or employees in the structure in which located, or of that structure and adjacent structures in the same building complex which are accessible via a clearly designated pedestrian circulation system; and
 - (2) Such use(s) shall comprise not more than 15 percent of the gross floor area of the structure.

b. Fast food restaurants not permitted under the provisions of paragraph a(1) above, may be permitted as a secondary use by special exception, in accordance with the following:

- (1) The structure containing the fast food restaurant shall be designed as an integral component of a building complex, and shall be reviewed for compatibility with the approved PD-W development; and
- (2) The fast food restaurant shall be safely and conveniently accessible from surrounding uses via a clearly defined pedestrian circulation system with minimizes points of conflict between vehicular and pedestrian traffic. Pedestrian ways shall be prominently identified through design features such as, but not limited to, the use of special pavement treatments for walkways and crosswalks, and/or the use of consistent and distinctive landscaping. Vehicular access to the use shall be provided via the internal circulation system of the building complex, and no separate entrance to the use shall be permitted from any thoroughfare intended to carry through traffic.

11. Kennels and Veterinary Hospitals. Kennels and veterinary hospitals shall be located within a completely enclosed building which is adequately soundproofed and constructed so that there is no emission of odor or noise detrimental to other property in the area. In addition, the health department shall approve the construction and operation of all veterinary hospitals prior to issuance of any building permit or non-residential use permit.

12. Drive-Through Pharmacies. Drive-through pharmacies shall be permitted only by special exception and only on a lot which is designed to minimize the potential for turning movement conflicts and to facilitate safe and efficient on-site circulation and parking. Adequate parking and stacking spaces for the use shall be provided and located in such a manner as to facilitate safe and convenient vehicle and pedestrian access to all uses on the lot. In addition, signs shall be required to be posted in the vicinity of the stacking area stating the limitation on the use of the window service and/or drive-through lane. Such signs shall not exceed two square feet in area or be located closer than five feet to any lot line.

13. Vehicle Transportation Service Establishments. Vehicle transportation service establishments shall be permitted in accordance with the following:

- a. The total number of company vehicles permitted on site at any given time shall not exceed five.
- b. There shall be no maintenance or refueling of vehicles on site.
- c. Notwithstanding the provisions of paragraph 15 of the Transitional Screening and Barrier Matrix, the use shall be subject to the provisions of paragraph 9 of the matrix, of the Fairfax County Zoning Ordinance.

14. New Vehicle Storage. New vehicle storage shall be permitted by right in accordance with the following:

- a. When located within a parking structure that is accessory to another uses(s), and provided that the spaces devoted to new vehicle storage are in excess of the minimum number of off-street parking spaces required in accordance with section 78-500, off street parking and loading, for the use(s) to which the structure is accessory. The owner shall submit a parking tabulation that demonstrates that such excess parking spaces are available for new vehicle storage.
- b. The layout of the new vehicle storage shall not hinder the internal vehicle circulation within the parking structure, and there shall be no mechanical parking lift devices or fencing associated with the new vehicle storage.
- c. There shall be no signs identifying the use and/or the associated vehicle, sale, rental and ancillary service establishment.

G. Dimensional Standards. The following standards shall be met in the PD-W District:

1. Lot Size Requirements. Development within the PD-W District shall conform to the following:

- a. Minimum district size: No land shall be classified in the PD-W district unless the town council finds that the proposed development meets at least one of the following conditions:
 - (1) The proposed development yields a minimum of 100,000 square feet of gross floor area.
 - (2) The proposed development is a logical extension of an existing Fairfax County or Town of Herndon planned development (PD) district, in which case it must yield a minimum of 40,000 square feet of gross floor area.
 - (3) The generalized development plan shall specify the uses and gross floor area for the proposed development and shall provide site and building designs that complement existing and planned development by incorporating high standards of urban design, to include provision for any specific urban design plans for the area and for pedestrian movement and access.
- b. Minimum lot area: No requirement for each use or building, provided that a privacy yard, having a minimum area of 200 square feet, shall be provided on each single-family attached dwelling unit lot, unless waived by the town council in conjunction with the approval of a site plan.
- c. Minimum lot width: No requirement for each use or building.

2. Bulk Regulations. Development within the PD-W District shall conform to the following:

- a. Maximum building height: Controlled by the standards set forth in part 1 of Article 16 of the Fairfax County Zoning Ordinance or, if application is made after January 2, 2005, by this chapter.
- b. Minimum yard requirements: Controlled by the standards set forth in part 1 of Article 16 of the Fairfax County Zoning Ordinance or, if application is made after January 2, 2005, by this chapter.
- c. Maximum floor area ratio: 1.5, which may be increased by the town council in its sole discretion, up to a maximum of 2.5 in accordance with and when the generalized development plans include one or more of the following:
 - (1) More open space than the minimum required by section 78-78-50.9.G, open space, below, up to an amount that is equivalent to a two percent increase in floor area for each additional one percent of the gross area provided in open space.
 - (2) Unique design features and amenities within the planned development which require unusually high development costs and which achieve an especially attractive and desirable development, such as, but not limited to terraces, sculpture, reflecting pools and fountains: as determined by the town council in each instance, but not to exceed 35 percent.
 - (3) Below-surface off-street parking facilities up to an amount that is equivalent to a five percent increase in floor area for each 20 percent of the required number of parking spaces to be provided in a below-surface off-street parking facility.
 - (4) Above-surface off-street parking facilities within an enclosed building or structure up to an amount that is equivalent to a three percent increase in floor area for each 20 percent of the required number of parking spaces to be provided in an above-surface off-street parking facility.

H. Open Space. The following provisions shall apply in the PD-W District:

1. **15% Open Space Required.** Fifteen percent of the gross area shall be open space.
2. **Open Space Requirements for Dwelling Units as a Secondary Use.** In a PD-W development where dwelling units are proposed as a secondary use, as part of the open space to be provided in accordance with the provisions of section 78-50.9.G, above, there should be recreational facilities for the enjoyment of the residents of the dwelling units.

- a. The facilities shall be provided on-site by the developer in substantial conformance with the approved final development plan. In the administration of this provision, credit shall be considered where there is a plan to provide common recreational facilities for the residents of the dwelling units and the occupants of the principal uses; and/or
 - b. The town council may approve the provision of the facilities located on property which is not part of the subject PD-W district.
 - c. For dwelling units in existence on January 2, 2005, the open space requirement shall be deemed to have been satisfied.
- I. **Administration, Application Requirements and Application Review Process.**
Refer to section 78-155.1 zoning map amendments (ZMA), of this chapter for standards and development plan requirements for all planned developments. Refer to Article XV, Decision-Making Authorities, Application Review and Permitting, of this chapter for provisions which may qualify or supplement the regulations presented above.

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Article VI –OVERLAY DISTRICTS

Sec. 78-60 Overlay Districts

The following sections contain provisions pertaining to overlay districts.

Sec. 78-60.1 Relationship of Standard Districts to Overlay Districts

Lands within the town may be classified into one of the zoning districts set forth in Article III - Residential Districts, Article IV - Business Districts, or Article VI – Planned Development Districts and also one or more of the overlay districts set forth in this article, Article VI - Overlay Districts. Where land is classified into an overlay district as well as a standard zoning district, the regulations governing development in the overlay district(s) shall serve as supplement to the underlying zoning district provisions. In the event of an express conflict between the standards governing an underlying zoning district and those of one or more overlay districts, the provisions that are more restrictive in protecting the public health and safety shall apply.

Sec. 78-60.2 Floodplain Overlay District (FPO)

A. Purpose and Intent. This section is adopted pursuant to the authority granted to localities by Virginia Code Section 15.2-2280. The town welcomes the dedication of floodplain to the town wherever possible for preservation of the floodplain and its use as green space. The floodplain overlay district (FPO) is intended to:

1. Provide for safety from flood and other dangers;
2. Protect against loss of life, health, or property from flood or other dangers;
3. Prevent disruption of commerce and government services, the unnecessary expenditure of public funds for flood protection and relief;
4. Preserve and protect floodplains in as natural a state as possible for the preservation of wildlife habitats, for the maintenance of the natural integrity and function of the streams, for the protection of water quality, and for the promotion of a zone for ground water recharge; and
5. Prevent the impairment of the tax base by:
 - a. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;
 - b. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;

- c. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; and
- d. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

B. Applicability. The provisions of this section shall apply to all lands within the town identified as flood-prone, as follows:

- 1. Flood-prone Land.** Flood-prone land shall not be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered on flood-prone land except in full compliance with the terms and provisions of this section and all other relevant chapters and regulations which apply to the development of the land, such as the Virginia Uniform Statewide Building Code, the town subdivision regulations, and applicable state and federal laws. Records of actions associated with administering this section shall be kept on file and maintained by the zoning administrator or designee.
- 2. 100-year Flood.** The FPO shall include all lands subject to inundation by waters of the 100-year flood. The basis for the delineation of the FPO shall be the flood insurance study for the town prepared by the U.S. Department of Housing and Urban Development, Federal Insurance Administration, dated February 1979, as may be amended subsequently. The basis for the outermost boundary of the FPO shall be the 100-year flood elevations contained in the flood profiles of the flood insurance study as shown as zone A1—A30 on the accompanying flood insurance rate map, dated April 1, 1979, as amended. Areas designated as either zone A1—A30 or AE shall be that floodplain area for which base flood elevations have been provided in the FIS and FIRM but for which no floodway has been delineated. The delineation of any FPO lands may be revised by the town council where natural or manmade changes have occurred or more detailed studies are conducted or undertaken by the U.S. Army Corps of Engineers, another qualified public agency, or qualified individual professionals demonstrating the advisability of such change. Prior to town council's approval of such a change, approval shall be obtained from the Federal Insurance Administration.
- 3. Validity.** If any provision of the FPO is declared inapplicable as a result of any legislative or administrative action or judicial discretion, base underlying floodplain overlay district provisions shall remain applicable.

C. Definitions. See Article XVIII - Definitions, for explanations of words, terms and phrases used in this section.

D. Overlay Concept. The floodplain districts described above shall be overlay to the existing underlying zoning districts as shown on the official zoning ordinance map, and as such, the provisions for the floodplain districts shall serve as a supplement

to the underlying district provisions. If there is any conflict between the provisions or requirements of the floodplain district and those of any underlying zoning district, the more restrictive provisions and/or those pertaining to the floodplain district shall apply. In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying zoning provisions shall remain applicable.

E. District Boundaries and Delineation. The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the flood insurance study (FIS) and the flood insurance rate maps (FIRM) for Fairfax County and the Town of Herndon prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 17, 2010, and any subsequent revisions or amendments thereto, and as described below:

1. **Special Floodplain Area District (AE Zone).** The special floodplain area district shall be those areas identified as an AE zone on the maps accompanying the flood insurance study for which 100-year flood elevations have been provided.
2. **Approximated Floodplain District (A Zone).** The approximated floodplain district shall be those areas identified as an A Zone on the maps accompanying the flood insurance study. In these zones, no detailed flood profiles or elevations are provided, but the 100-year floodplain boundary has been approximated.
3. **Shallow Flooding District (AO or AH Zone).** The shallow flooding district shall be those areas identified as Zone AO or AH on the maps accompanying the flood insurance study.

F. Official Map. The boundaries of the special flood hazard and floodplain districts are established as on the flood boundary and floodway map and/or flood insurance rate map which is declared to be a part of this section and which shall be kept on file at the town offices.

G. Administration. The provisions of this section shall be administered as follows:

1. **District Boundary Modifications.** The delineation of any of the floodplain districts may be revised by the town where natural or man-made changes have occurred and/or where detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for modification. However, prior to any such modification, approval must be obtained from the Federal Insurance Administration.
2. **Interpretation of the Floodplain Districts.** Interpretations of the boundaries of the floodplain district shall be made by the zoning administrator. Any individual

or group disputing a floodplain district boundary interpretation shall have the right to appeal such interpretation to the board of zoning appeals.

3. **Submission of Technical Data.** A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the town shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.
4. **Permit Requirement.** All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a building permit subject to the following provisions.
 - a. Such development shall be undertaken only in strict compliance with the provisions of this section and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the town's subdivision regulations.
 - b. Prior to the issuance of any such permit, the zoning administrator shall require all applications to include compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding.
 - c. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
5. **Site Plan and Permit Applications.** All site plan applications for development within the FPO any floodplain district and all building permits issued for the floodplain shall include the following:
 - a. An elevation of the base flood at the site;
 - b. An elevation of the lowest floor, including the basement;
 - c. Nonresidential only structures to be flood-proofed shall include the elevation to which the structure will be flood-proofed; and
 - d. Topographic information showing existing and proposed ground elevations.

H. **District Standard Regulations.** Development in the district shall meet the following standards:

1. **Building Requirements.** New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.
2. **Manufactured Homes.** Manufactured homes shall be prohibited in accordance with the regulations of this chapter.
3. **Materials.** New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
4. **Minimize Flood Damage.** New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
5. **Utilities.** Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
6. **Water Supply.** New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
7. **Sanitary Sewage Systems.** New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
8. **On-site Waste Disposal.** On-site waste disposal systems, if permitted, shall be located and constructed to avoid impairment to them or contamination from them during flooding.
9. **Alterations, Improvements, Repairs and Reconstruction.** Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this chapter shall meet the requirements of "new construction" as contained in this chapter. Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this section, shall be undertaken only if the nonconformity is not furthered, extended, or replaced.
10. **Additional Regulations for Special Flood Hazard Areas.** In addition to the above regulations, the following shall apply to all special flood hazard areas:
 - a. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and

Recreation (Division of Dam Safety and Floodplain Management) and the Federal Insurance Administrator.

- b. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

I. District Specific Regulations. Development in the district shall meet the following specific standards:

1. **Site Plan and Special Exception Requirement.** Uses, activities, and development occurring within the FPO shall be undertaken only upon the issuance of approval of a site plan and special exception pursuant to this section, other than restoration or replacement of single-family detached dwellings after casualty damage.
2. **Uses.** Those uses that are allowed by right in the underlying zoning district are allowed upon the approval of a special exception pursuant to Section 78-155.3, special exception, and Section 78-155.3.E.2, Special Review Standards for the Floodplain Overlay District. Any special exceptions that are issued shall be noted in the annual report submitted to the federal insurance administrator.
3. **Notification Requirements.** In addition to the notification requirements described in Article XV, further notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Virginia Department of Conservation and Recreation (Floodplain Management Program) and the Federal Insurance Administration.
4. **No Change in Carrying Capacity/Volume/Velocity:** Under no circumstances shall any use, activity or development decrease the carrying capacity of, or increase the volume or velocity of inflow to, the channels of floodways of any watercourse, drainage ditch or any other drainage facility or system.
5. **No Increase in Elevation of 100-year flood.** No new construction, or development shall be permitted within the floodplain overlay district unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, does not increase the elevation of the 100-year flood at any one point.
6. **Alteration and Relocation Channels/Watercourse.** Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within the town, a permit from the U.S. Army Corps of Engineers and certification from the Virginia State Water Control Board may be necessary. A joint permit application is available from one of these organizations. Further notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Floodplain Management Program) and the Federal Insurance Administration.

- 7. Submission Requirements.** All applications for development in the floodplain overlay district issued for the floodplain shall comply with the submittal requirements described in Section 78-155.3.
- 8. New Construction.** The proposed building site must be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall meet the following standards:
- a. be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
 - b. be constructed with materials resistant to flood damage,
 - c. be constructed by methods and practices that minimize flood damages, and
 - d. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 9. Construction Standards for Enclosed Areas Below Flood Elevation.** New construction and substantial improvements with fully enclosed areas below the regulatory flood protection level that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding.
 - c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
 - d. The bottom of all openings shall be no higher than one foot above grade.
 - e. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

- f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

10. Elevation Standards for Residential Structures. New construction and substantial improvements of residential structures within Zones A1—30, AE and AH zones on the flood insurance rate map shall have the lowest floor (including basement) elevated no lower than 18 inches above the base flood level.

11. Elevation Standards and Floodproofing Standards for Non Residential Structures. New construction and substantial improvements of nonresidential structures within Zones A1—30, AE and AH zones on the flood insurance rate map shall have the lowest floor (including basement) elevated no lower than 18 inches above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one foot the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the zoning administrator.

12. Design Criteria for Utilities and Facilities. The following criteria shall apply in the district:

- a. Utilities. All utilities and facilities, such as sewer, gas, electrical, telecommunication, and water systems being placed in flood-prone areas should be located, elevated (where possible), and constructed to minimize or eliminate flood damages.
- b. Drainage facilities. All drainage facilities shall be designed to convey the flow of stormwater runoff in a safe and efficient manner. The system shall ensure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties. The town council may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less-frequent floods. Drainage plans shall be consistent with local and regional drainage plans.
- c. Water facilities. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and be located and constructed to minimize or eliminate flood damage and impairment.

- d. Sanitary facilities. All new and replacement sanitary sewage systems, private package sewage treatment plants, and onsite wastewater treatment systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
- e. Streets and sidewalks. Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings may be required to sufficiently discharge flood flows without unduly increasing flood heights.

13. Modification, Alterations, Repairs and Reconstruction of Existing Structures. The following standards shall apply in the district:

- a. Existing structures in the floodplain area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.
- b. In the floodplain overlay district, the modification, alteration, repair, reconstruction or improvement that amounts to less than 50 percent of its market value shall conform to the VA USBC.
- c. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with this chapter and shall require the entire structure to conform to the VA USBC.
- d. If the structure in the floodplain overlay district is designed and used as a single-family detached dwelling that is a permitted use in the zoning district pursuant to Table 78-70.2.D: Table of Principal Permitted and Allowed Uses, it may be restored in its location prior to casualty so long as:
 - (1) The restoration is begun within 12 months and completed within 24 months of the casualty;
 - (2) The modification, alteration, repair, reconstruction or improvement is elevated or flood proofed or both to the greatest extent possible;
 - (3) The structure occupies the same space it occupied prior to the casualty; and
 - (4) No dwelling units are added.

14. Recreational Vehicles. Recreational vehicles may be placed on sites for fewer than 180 consecutive days and must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices.

J. Special Floodplain District Regulations and Map Revisions. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A and AE on the flood insurance rate map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the town. Development activities in Zones A, AE, and AH, on the town's flood insurance rate map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies with the town's endorsement for a conditional flood insurance rate map revision, and receives the approval of the Federal Emergency Management Agency.

K. Approximated Floodplain Regulations. The approximated floodplain district shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a 100-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the flood insurance study. For these areas, the 100-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. It is recommended that the applicant refer to FEMA 265, "Managing Floodplain Development in Approximate Zone A Areas, A Guide for Obtaining and Developing Base (100-Year) Flood Elevations." Where the specific 100-year flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., an applicant for a proposed use, development and/or activity greater than 50 lots or five acres, whichever is lesser, shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the zoning administrator.

L. Shallow Flooding District Regulations. The following standards shall apply in shallow flooding districts.

- a. All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above the flood depth specified on the flood insurance rate map, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood

depth number is specified, the lowest floor, including basement, shall be elevated no less than two feet above the highest adjacent grade.

- b. All new construction and substantial improvements of nonresidential structures shall:
 - (1) Have the lowest floor, including basement, elevated to or above the flood depth specified on the flood insurance rate map, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or
 - (2) Together with attendant utility and sanitary facilities be completely flood-proofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c. Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.

M. Subdivision Applications Regulations. All subdivision applications within the district shall:

- 1. **Minimize Damage.** All subdivision proposals shall be consistent with the need to minimize flood damage;
- 2. **Utilities.** All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- 3. **Drainage.** All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- 4. **Flood Elevation.** Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.

N. Violations. Violation of district regulations shall be addressed as follows:

- 1. **Penalty for Violations.** Any person who fails to comply with any of the requirements or provisions of this section or directions of the zoning administrator or any authorized designee of the town pursuant to this section shall be guilty of a civil violation and subject to the penalties in accordance with Section 78-170.4.A of this chapter.

- 2. Correction of Violations.** In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the town to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.
- O. Variances.** See section 78-155.4.D.2, Variances in the Floodplain Overlay District, for regulations governing variances in floodplains.
- P. Nonconformities.** See Article XVI, Nonconformities, for regulations governing nonconformities in floodplains.
- Q. Municipal Liability.**
- 1. Limitations.** The degree of flood protection sought by the provisions of this Section 78-60.2, Floodplain Overlay District (FPO), is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur. Flood heights may be increased by manmade or natural causes, such as ice jams and the restriction of bridge openings by debris. This Section does not imply that areas outside the FPO, or that land uses permitted within those districts, will be free from flooding or flood damages.
 - 2. Personal Liability.** This section shall not create liability on the part of the town or any officer or employee of the town for any flood damages that result from reliance on this section or any administrative decision lawfully made under this section.
- R. Conflict with Other Regulations.** In cases where the requirements of this section conflict with any other provisions of the Herndon Town Code, or state code regulations, the restrictions of this section shall apply in flood-prone districts.
- S. Severability.** The subsections, paragraphs, sentences, clauses and phrases of this section are severable, and if any phrase, clause, sentence, paragraph or subsection of this section shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionally or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or subsections of this section. The remaining portions shall remain in full force and effect.

Sec. 78-60.3 Heritage Preservation Overlay District (HP District)

- A. Purpose and Intent.** The Heritage Preservation Overlay District (HP district) is intended to provide for the establishment of historic landmarks and preservation districts as a means of preserving the historical, cultural, and architectural heritage of the town and protecting designated historic resources and is adopted pursuant to the authority granted to localities by Virginia Code Section § 15.2-2306.
- B. Applicability.** No building, structure, or sign located in the HP district shall be erected, reconstructed, altered, demolished, moved, expanded or restored except in accordance with the provisions of Section 78-60.3.G, Certificate of Appropriateness in the Heritage Preservation Overlay District.
- C. District Boundaries and Maps.** The boundaries of the HP district shall be shown on the town's official zoning map and on the appropriate comprehensive plan maps after action by the planning commission and town council.
- D. Revision of HP District Boundary and Designation of Landmarks.** The boundaries of the HP district may be amended or areas, sites, buildings, and structures may be designated as historic landmarks in compliance with the following:
- 1. Amendment Procedures.** The procedures for amendment of the HP district boundaries or designation of historic landmarks shall be as provided for as an amendment to the official zoning map pursuant to Section 78-155.1, Zoning map amendment. In addition, the following procedures shall apply:
 - a. The planning commission shall conduct or delegate a survey of the town. The survey shall identify and inventory all landmarks, buildings, or structures, in areas being proposed within the proposed district boundaries. The planning commission shall also prepare reports recommended to be included in the HP district.
 - b. Prior to establishing or expanding the HP district the town council shall:
 - (1) Provide for public input from the community and affected property owners in accordance with Code of Virginia, § 15.2-2204;
 - (2) Follow the written criteria set out below to be used to determine which properties should be included within the HP district; and
 - (3) Review the inventory and the criteria to determine which properties in the areas being considered for inclusion within the proposed district meet the criteria to be included in the HP district.

- c. Upon the inclusion of an area in the HP district, the owner of each property within the established district boundaries therein shall be given written notification, including a description of the factors justifying the designation.

2. Review of HP District Boundary Amendments. The advisability of amending the HP district boundary is a matter committed to the legislative discretion of the town council and is not controlled by any one factor. The following shall be considered by the town council, and its advisory bodies as part of the deliberation process:

- a. In considering an amendment to HP district boundary, the town council may adopt a change for only part of the area surveyed by the planning commission. The town council may amend the HP district boundary to include any area that has been considered by the planning commission.
- b. The following criteria shall be used by the historic preservation review board, planning commission, and town council in evaluating the potential expansion of the HP district. The historic preservation review board and planning commission may recommend, and the town council may so ordain, a landmark, building, or structure, for designation as a HP district which meets one or more of the following criteria:
 - (1) The property or properties exemplifies or reflects the architectural, cultural, or social heritage of the town, is a reminder of the town's past, and enhances the town's attractiveness to visitors.
 - (2) The property or properties are associated with persons of national, state, or local historical significance.
 - (3) The property or properties exemplify local or regional architectural design, local craftsmanship or the work of an architect or builder of local, regional, or national prominence.
 - (4) The property or properties contain qualities, materials, and other physical characteristics that contribute to the study and understanding of historic periods, styles, or methods of construction.
 - (5) The property or properties are closely related to or contiguous with properties that meet criteria a-d as related to their visual character or historic pattern of development; or otherwise contribute to the historic and architectural context of the proposed or existing HP district.
- c. Such HP district boundaries may be adjusted to exclude properties along the perimeter that do not meet the criteria. The town council shall include only the geographical areas in the HP district where a majority of the properties meet the criteria established below by the town in accordance with this section. However, parcels of land contiguous to arterial streets or highways

found by the town council to be significant routes of tourist access to the town or to be designated historic landmarks, buildings, structures, or districts therein, or in a contiguous locality, may be included in the HP district notwithstanding the provisions of this subsection.

- 3. Review of Historic Landmark Designations.** The advisability of designating historic landmarks is a matter committed to the legislative discretion of the town council and is not controlled by any one factor. The following shall be considered by the town council and its advisory bodies as part of the deliberation process:
- a. In considering whether or not to designate an historic landmark, the town council may designate less than all of the possible landmarks considered by the planning commission.
 - b. The town council may designate any area, site, building, or structure as an historic landmark that has been considered by the planning commission. The designated landmarks shall meet at least two of the following standards:
 - (1) The area, building or structure appears on the National Register of Historic Places pursuant to the Historic Preservation Act of 1966, as amended;
 - (2) The area, building or structure is entered upon the Virginia Landmarks Register pursuant to Code of Virginia, § 10.1-138;
 - (3) The area, building or structure has been documented as having historic value by the state department of historic resources or another recognized historic or archaeological organization;
 - (4) The area, building or structure exemplifies or reflects the architectural, cultural or social heritage of the town, is a reminder of the town's past and enhances the town's attractiveness to visitors;
 - (5) The area, building or structure is associated with persons of national, state or local historical significance;
 - (6) The area, building or structure is a good example of local or regional architectural design or exemplifies local craftsmanship, making it valuable for study of period, style or method of construction; or making it valuable for study of period, style or method of construction; or
 - (7) The building or structure is a work of a nationally recognized architect or is attributed to an architect or builder of local prominence.

- E. Reduction of Setback.** In the HP district, the front setback for a single-family detached dwelling may be reduced from 35 feet to a lesser amount but not less than 20 feet, in instances where the HPRB makes a finding that such reduction shall cause the subject structure to be more compatible with nearby contributing structures.
- F. Development Within the Heritage Preservation Overlay District.** Development located within a preservation district shall be completed in accordance with the Herndon Heritage Preservation Handbook, and the following standards:
- 1. Alteration, Restoration or Reconstruction.** A certificate of appropriateness for altering, restoring, or reconstruction of a building or structure shall be approved only after considering the following standards, as well as other appropriate matters:
 - a. Whether or not reasonable effort shall be made to alter the site, building, or structure, and its environment to the minimal extent practicable.
 - b. Whether or not alteration of the original distinguishing qualities or character of a site, building, or structure and its environment and the removal or alteration of any historic material or distinctive architectural features shall be avoided to the greatest extent practicable.
 - c. Whether or not all sites, buildings and structures shall be recognized as products of their own time, with alterations and reconstruction to existing buildings and structures to be consistent with the original style of such buildings and structures. .
 - d. Whether or not distinctive stylistic features or examples of skilled craftsmanship that characterize a building or structure or site shall be retained and restored to the greatest extent practicable.
 - e. Whether or not deteriorated architectural features shall be repaired, rather than replaced, wherever reasonably possible, and, if replacement is necessary, whether or not new materials shall match the material being replaced in composition, design, color, texture and other visual qualities to the greatest extent practicable.
 - f. Whether or not repair or replacement of missing architectural features shall, to the greatest extent possible, be based on accurate duplications of the original features, substantiated by historic, physical, or pictorial evidence, rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
 - g. Whether or not the surface cleaning of buildings and structures constituting historic landmarks shall be undertaken with the gentlest means practicable;

provided, however, that sandblasting and other cleaning methods that may damage the existing building materials shall not be approved.

- h. Whether or not partial demolition of buildings or structures within preservation districts may be approved when one or more of the existing facades are retained for the purpose of integrating new construction into existing historic buildings or structures when such is appropriate and in accordance with the intent of this article. The town does not advocate this procedure, as it goes against the Secretary of the Interior's guidelines for rehabilitation and credits would not be allowed in such projects.
- i. Whether or not, to the greatest extent practicable, every effort shall be made to protect and preserve archeological resources within or adjacent to the heritage preservation overlay district.
- j. Whether or not contemporary design for alterations and additions to existing buildings and structures is compatible with the size, scale, color, material, and character of the building and structures within preservation districts, and whether or not such alterations and additions would destroy significant historical, architectural, or cultural material.
- k. Whether or not the proposed additions or alterations to existing buildings and structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the building or structure would be unimpaired. Whenever possible, new additions or alterations to existing buildings and structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the building or structure would be unimpaired.

2. New Construction. A certificate of appropriateness for new construction of a building or structure may be approved only after considering the following standards, as well as other appropriate matters:

- a. Whether or not the design will be architecturally compatible with the historic landmarks, buildings, and structures in the heritage preservation overlay district in terms of size, scale, color, material, and character.
- b. No specific architectural style shall be adopted or imposed in the administration of this section.

3. Moving or Relocating a Building. A certificate of appropriateness to move or relocate a building or structure may be approved only after considering the following, as well as other appropriate matters:

- a. Whether or not the proposed relocation may have a detrimental effect on the structural soundness of the building or structure;

- b. Whether or not the proposed relocation would have a negative or positive effect on other historic landmarks or on other sites, buildings or structures located within the heritage preservation overlay district;
- c. Whether or not the proposed relocation would provide new surroundings that would be compatible with the architectural aspect of the building or structure;
- d. Whether or not the proposed relocation is the only practicable means of saving the structure from demolition; and
- e. Whether or not the building or structure will be relocated to another site within the corporate limits of the town or to another adjacent site that is subject to preservation control.

4. Demolition. A certificate of appropriateness to demolish a building or structure may be approved, only after reviewing and considering the circumstances and conditions of the structure or building or the part proposed for demolition, and considering the following factors as well as all other appropriate matters:

- a. Whether or not the building or structure is an historic landmark or is a building within the heritage preservation overlay district that contributes to the character of the heritage preservation overlay district;
- b. Whether or not the building or structure is of such interest or significance that it would qualify as a national or state landmark building or structure listed on the National Register of Historic Places or the Virginia Landmarks Register;
- c. Whether or not the building or structure is of such old or uncommon design, texture or scarce material that it could not be reproduced or could be reproduced only with great difficulty and expense;
- d. Whether or not historic events occurred in the building or structure;
- e. Whether or not the building or structure is structurally unsound and to what extent;
- f. Whether or not a relocation of the building or structure or a portion thereof would be to any extent practicable as a preferable alternative to demolition;
- g. Whether or not the proposed demolition could potentially adversely affect other historic landmarks located within a preservation district or adversely affect the character of a preservation district;
- h. If a building is damaged by a fire or other natural hazard, the building inspector shall determine if a building is structurally sound and is in imminent danger to public safety and should be demolished;

- i. The reason for demolishing the building or structure and whether or not any alternatives to demolition exist;
- j. Whether or not there has been a professional, economic, and structural feasibility study for rehabilitating or reusing the structure and whether or not its findings support the proposed demolition.

G. Certificate of Appropriateness (COA) in the Heritage Preservation Overlay District.

The purpose of this section is to establish the procedures and standards for the review of certificates of appropriateness in the heritage preservation overlay district.

1. **Applicability.** Unless exempted pursuant to Section 78-60.3.G. Exemptions, a certificate of appropriateness must be approved prior to:
 - a. Erecting, reconstructing, altering, or restoring any building or structure in the heritage preservation overlay district; or
 - b. Demolishing, or moving any historic landmark, building, or structure located in the heritage preservation district.
 - c. Signs in the heritage preservation overlay district are reviewed pursuant to the applicable procedures in Article XIV, Signs.
2. **Exemptions from COA.** The following minor development, which has been determined not to have permanent effects on the character of the heritage preservation district, is exempted from the requirements of this section. In the event the scope or nature of the development changes during the improvement process, the zoning administrator shall have the authority to order all work to be stopped and that an appropriate application for a certificate of appropriateness be filed.
 - a. Additions or deletions of storm doors, storm windows, window boxes, or similar appurtenances, or portable air conditioners in windows.
 - b. The addition or deletion of television or radio antennas, skylights or solar collectors in locations not visible from a public street, an addition or deletion of television or radio antennas, skylights or solar collectors.
 - c. Landscaping, grading, walks, swimming pools and related mechanical equipment, retaining walls of less than 12 inches in height, or temporary fencing in place for one year or less, when it does not significantly affect the character of the heritage preservation overlay district or an historic landmark and its surroundings.
 - d. Minor additions or deletions to an existing building or structure that is not visible from a public street and do not significantly change the architectural character of the building or structure.

- e. Alterations that do not affect the exterior appearance of a site, building, or structure (repainting to a different color or painting unpainted surfaces affects the exterior appearance of the building or structure).
- f. In cemeteries, memorialization on community and private mausoleums, columbaria, family estates, individual and family sites, and memorialization such as headstones and monuments, cremation benches, crypts, vase units, vesper lights, trees, shrubs, flowers, borders (including brick or ornamental fences) and the like, and the words, figures, and graphics on existing or future buildings or structures. Creation of new buildings or structures (not described in the previous sentence), new community burial units, new cenotaphs, new ossuaries, and similar development are not exempt.
- g. Similar development determined by the zoning administrator not to have permanent effects on the character of the HPD.

3. Relationship of Certificate of Appropriateness to Site Plan.

- a. An application for a certificate of appropriateness in the heritage preservation overlay district for a development that requires site plan or single lot development plan approval pursuant to Section 78-155.6, site plan, shall not be reviewed formally by the heritage preservation review board (HPRB) until the site plan or single lot development plan is approved. However, applicants may meet informally with the HPRB prior to site plan approval.
- b. In instances where development requires site plan or single lot development plan approval (section 78-155.6), upon recommendation of the zoning administrator or the town council, an applicant may present the substance of the plan for development for which a certificate of appropriateness is required at a work session of the HPRB prior or concurrent with the review of the site plan or single lot development plan.

4. Certificate of Appropriateness Review Procedure. The approval of a Certificate of Appropriateness shall be subject to the following:

- a. Prior to submitting an application for a certificate of appropriateness, applicants are encouraged to seek advice from the HPRB during one or more work sessions. At the work session, the HPRB will review the proposed plan for development and provide the applicant comments about its general conformance with the requirements for a certificate of appropriateness. The comments are advisory and do not confer development rights on the applicant or bind the HPRB, town staff, or any other entity of the town providing comments.
- b. The procedures and requirements for submittal and review of an application, scheduling the public hearing and public notification are established in Section 78-153.2, review procedures.
- c. All applications for a certificate of appropriateness shall include the items required in Section 78-152.2.2, submittal requirements, as well as the following:

- (1) Architectural drawings or renderings drawn to scale (for new construction, rehabilitation or building alterations);
 - (2) Site plan drawn to scale (including landscaping);
 - (3) Samples of materials and colors to be used;
 - (4) Written statements concerning the following:
 - (a) Construction methods to be employed;
 - (b) A description of proposed materials;
 - (c) Any proposed signs, with appropriate details;
 - (d) Any proposed exterior lighting arrangements;
 - (e) Elevations of all portions of structures and their relationships to public view;
 - (f) Design of doors and windows;
 - (g) The colors to be utilized and their relationships to adjacent structures;
 - (h) All other exhibits and reports deemed necessary by the board for a full review of the application; and
 - (i) If an application for demolition is submitted for a building or structure and is defined as a contributing building in the heritage preservation district, the interior and exterior of the building must be thoroughly documented with black and white photographs and measured drawings including floor plans and elevations following the standards of the Historic American Buildings Survey.
- d. After public notification and the scheduling of a public hearing, the HPRB shall conduct a public hearing on the application. At the public hearing, the HPRB shall consider the application, the relevant support materials, the staff report, and the public testimony and evidence given at the hearing. After the close of the public hearing, the HRPB shall either approve or disapprove the application based on the standards in Section 78-60.3.G, Development within the Heritage Preservation Overlay District as follows:
- (1) If the HRPB finds the application complies with the standards in Section 78-60.3.G, Development within the Heritage Preservation Overlay District and the applicable guidelines found in the Herndon Heritage Preservation Handbook, the HRPB shall approve a certificate of appropriateness.
 - (2) If the HRPB determines the application fails to comply with the standards in Section 78-60.3.G, Development within the Heritage Preservation Overlay District, and the applicable guidelines found in the Herndon Heritage Preservation Handbook, it may either disapprove the application or continue the public hearing. In either case, it shall explain why the application fails to comply with the review standards. It shall recommend revisions to the plans and specifications that would bring the application

into conformance with Section 78-60.3.G, Development within the Heritage Preservation Overlay District and the applicable guidelines found in the Herndon Heritage Preservation Handbook. The applicant may request or agree to a continuation of the public hearing in accordance with Section 78-152.6, Deferral of Application and Section 78-153.2.I.2. Continuation of Public Hearing.

5. **Certificate of Appropriateness for Minor Improvements.** At its discretion, the HPRB may adopt a certificate of appropriateness providing design guidance for certain minor improvements such as changes in color of materials or fences, dumpster enclosures, and similar screening. The staff may review applications for eligible minor improvements addressed in the certificate of appropriateness for compliance with the certificate of appropriateness. The staff shall then notify the applicant in writing whether or not the application successfully complies with the certificate of appropriateness and the improvements shall be authorized under that certificate of appropriateness, without a public hearing before the HPRB.
6. **Certificate of Appropriateness Review Standards.** Development located within a preservation district shall be completed in accordance with the Herndon Heritage Preservation Handbook and the standards set forth in Section 78-60.3.F, Development within the Heritage Preservation Overlay District.
7. **Appeal of COA Decision to Town Council.** The applicant or any person aggrieved by the decision with a property interest in land abutting or across the street from property which is the subject of a final decision of the HPRB on a certificate of appropriateness, may appeal the decision to the town council, as follows.
 - a. An appeal shall be initiated by filing a written notice of appeal with the zoning administrator specifying the grounds for the appeal within 14 days of the final decision of the HPRB.
 - b. No action shall be taken until 15 days after the final decision of the HPRB on a certificate of appropriateness. If a written notice of appeal on a certificate of appropriateness is initiated pursuant to this section, any related certificate of appropriateness issued by the HPRB shall be rendered void.
 - c. The zoning administrator shall schedule a hearing on the matter at the earliest feasible town council meeting by which time notice can be provided consistent with the requirements of Section 78-153.2.H, Public Notification.
 - d. At the hearing on the appeal, the appellant or the appellant's agent shall state the grounds for the appeal and identify any materials or evidence from the record to support the appeal. Town staff shall be given an opportunity to respond, as shall any other person(s) the council deems necessary and appropriate.
 - e. After the conclusion of the hearing, the town council may affirm, modify, or reverse the decision of the HPRB, in whole or in part, or may remand the

case to the HPRB. The decision shall be based on the standards in Section 78-60.F., Development Within the Historic Preservation Overlay District. The town council decision shall be subject to the following standards:

- (1) A decision shall not be reversed or modified unless there is evidence in the record that the decision of the HPRB is not correct, based on the review standards for a certificate of appropriateness.
 - (2) In determining whether or not to remand a case to the HPRB, the town council shall be guided by the following factors: the completeness of the record; the appropriateness of further review by the HPRB of certain points or facts; and any amendments to the application after the decision of the HPRB. Town council recognizes that revisions to an application for the purpose of clarifying issues, or addressing concerns raised during the public hearing are positive and will not necessarily result in a remand, except that significant and substantive revisions to the application may serve as a basis for remand.
- 8. Appeal of Town Council Decision to Circuit Court.** Any person jointly or severally aggrieved by a final decision of the town council pursuant to this section, or any taxpayer or any officer, department, board, or the town, may appeal the decision to the Circuit Court of Fairfax County pursuant to § 15.2-2306, Code of Virginia. If appealed, a petition at law shall be filed setting forth the alleged illegality of the action by the town council, provided that such petition shall be filed within 30 days after the final decision is rendered by the town council.
 - 9. Submittal of New COA Application after Disapproval.** If the HPRB disapproves a certificate of appropriateness, the applicant may, at any time, submit a new application with new information addressing the written reasons for disapproval.
 - 10. Transfer of Certificate of Appropriateness.** A certificate of appropriateness shall be transferable to subsequent owners of the property for which the certificate is issued.
 - 11. Expiration of Certificate of Appropriateness.** Development activity or demolition approved pursuant to a certificate of appropriateness must begin within one year of the issuance of the certificate. Failure to begin the activity within one year shall render the certificate of appropriateness void.
 - 12. Extension of Approved Certificate of Appropriateness.** Upon written application submitted to the zoning administrator by the applicant at least 60 days prior to the expiration of the certificate, the HRPB shall consider and may grant one extension not to exceed one year upon a showing of good cause. In determining good cause, the HPRB shall take into consideration the scope of the proposed work and the laws, ordinances, and regulations in effect at the time of the request for extension. The approval shall be deemed extended until the HRPB has acted upon the request. Failure to submit an application for an

extension within the time limits established by this section shall render the certificate of appropriateness void.

13. Amendment of Certificate of Appropriateness. A certificate of appropriateness may be amended, extended, or modified in accordance with the procedures and standards established for its original approval.

H. Demolition, Relocation and Alteration of Structures in the Heritage Preservation Overlay District. As provided in the Code of Virginia § 15.2-2306, in addition to the right of appeal outlined in this section, the owner of any building or structure shall be permitted to demolish, alter or relocate a building, structure or historic landmark in the heritage preservation overlay district provided that:

1. **Application Required.** Application is made by the owner to the town council for the right to demolish the building or structure, or the right to alter, or the right to relocate a building or structure;
2. **Demonstration of Offer to Sell.** The owner demonstrates that for a period of time set forth in the schedule in Section 78-60.3.H.3. and at a price reasonably related to its fair market value, the owner has made a bona fide offer to sell the historic landmark, building or structure, and the land pertaining thereto, to the Town or Fairfax County, or to any person, firm, corporation, government, agency or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the historic landmark, building or structure and the land pertaining thereto. Evidence of a bona fide offer to sell must be demonstrated by a listing through a multiple listing service for the period of time established in Section 78-60.3.H.3. at a price reasonably related to the fair market value of the property.
3. **Offering Price and Schedule Requirements.** The schedule for offers to sell shall be as follows:
 - a. Three months when the offering price is less than \$25,000.00;
 - b. Four months when the offering price is \$25,000.00 or more but less than \$40,000.00;
 - c. Five months when the offering price is \$40,000.00 or more but less than \$55,000.00;
 - d. Six months when the offering price is \$55,000.00 or more but less than \$75,000.00;
 - e. Seven months when the offering price is \$75,000.00 or more but less than \$90,000.00; and
 - f. Twelve months when the offering price is \$90,000.00 or more.
4. **Bona Fide Contract of Sale Limitations.** No bona fide contract binding upon all parties involved shall have been executed for the sale for any such historic landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable period set forth in the schedule in Section 78-60.3.H.3.

5. **Hazardous Properties.** A contributing landmark, building or structure, or historic landmarks, shall not be razed, demolished or moved until the razing, demolition or moving thereof is approved by the heritage preservation review board (HPRB) or, on appeal, by the town council after consultation with the HPRB, unless the building official consistent with the Uniform Statewide Building Code, Part III Maintenance, determines that the contributing structure constitutes such a hazard that it shall be razed, demolished or moved.
6. **Appeal not Affected.** Any appeal which may be taken to the circuit court of Fairfax County from the decision of the town council, whether instituted by the owner or by any other proper party, notwithstanding the provisions of this section relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to in this section. No offer to sell shall be made more than one year after a final decision by the town council, but thereafter the owner may renew the request to the town council to approve the demolition of the historic landmark, building, or structure.

Sec. 78-60.4 Chesapeake Bay Preservation Area Overlay District (CBPAOD District)

- A. **Purpose and Intent.** The Chesapeake Bay Preservation Area (CBPA) overlay district is established under the authority provided in Code of Virginia, § 15.2-2280, and following, and to implement the requirements of Code of Virginia, § 62.1-44.15:67 et seq., and to:
 1. Implement the objectives for the environment described in the comprehensive plan;
 2. Protect existing high quality state waters and protect surface groundwater;
 3. Restore all other state waters to a condition or quality that will permits all reasonable public uses and supports the propagation and growth of all aquatic life within a balanced ecosystem;
 4. Safeguard the clean waters of the commonwealth from pollution;
 5. Prevent increase of nonpoint pollution;
 6. Reduce existing nonpoint source pollution; and
 7. Promote water resource conservation to provide for the health, safety and welfare of the present and future residents of the town.
- B. **Findings.** The following statements describe the significance of the Chesapeake Bay to the town:
 1. The Chesapeake Bay, with its tributaries, is one of the most important and productive estuarine systems in the country, providing economic and social benefits to the citizens of the town.
 2. The Chesapeake Bay waters have been degraded significantly by many sources of pollution including nonpoint source pollution from land uses and development.

The lands within the town are valuable in assisting the preservation of the bay. Some display intrinsic water quality value due to the ecological processes they perform and also display ecological benefits by providing water quality maintenance and flood and erosion control. Only with proper management can development and use occur without damage to Chesapeake Bay waters.

3. The lands designated by the town council as Chesapeake Bay preservation areas are those lands which, due to the degradation of bay waters and the passage of the Chesapeake Bay Preservation Act, need to be protected from destruction and damage through improper development and use practices to protect the quality of bay waters.
- C. Applicability.** The Chesapeake Bay Preservation Area overlay district shall apply to all land in Chesapeake Bay Preservation Areas (CBPAs,) which shall include land that meets the designation criteria in section 70-60.4.F and shall therefore be subject to the provisions of Section 78-60.4.
- D. Definitions.** Words, terms and phrases used in this article shall have the meanings ascribed to them in Article XVIII, Definitions.
- E. Overlay Concept.** These CBPA district regulations shall apply in addition to all other underlying zoning districts. Any parcel of land subject to the Chesapeake Bay Preservation Area overlay district (CPBAOD) shall also be subject to the provisions of one or more of the other zoning districts established by this chapter. Unless otherwise provided, the approval procedures in this chapter and the Town Code shall be utilized in the review of applications governed by this section.
- F. Designation of Chesapeake Bay Preservation Areas.** CBPAs are divided into resource protection areas (RPAs), resource management areas (RMAs), as well as intensely developed areas (IDAs) and they are subject to the use restrictions and regulations in this chapter.
1. **Resource Protection Area (RPA).** RPAs shall consist of sensitive lands adjacent to water bodies with perennial flow that have either an intrinsic water quality value due to the ecological or biological process they perform or that are sensitive to land uses or activities such that the use may result in significant degradation to state waters. In their natural condition, these lands provide for the removal, reduction or assimilation of nonpoint source pollution entering the bay and its tributaries. The RPA shall consist of:
 - a. Nontidal wetlands connected by surface flow and contiguous to water bodies with perennial flow; and
 - b. A buffer area not less than 100 feet in width that is (i) along each side of any water body with perennial flow and (ii) located adjacent to and landward of nontidal wetlands as described in a. above;
 - c. The full buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with Sections 78-60-4., 78-60.4.L and 78-60.4.M; and

- d. The buffer is to be measured from the top of bank or ordinary high water mark landward 100 feet.
2. **Resource Management Area (RMA).** The RMA shall consist of all land located in the Town of Herndon that is not included in the RPA or in the IDA. Resource management areas protect the quality of state waters, are deemed to be lands of significance for the protection of the environment, and incorporate, but are not limited to, floodplains, highly erodible soils, steep slopes of 15 degrees or greater and nontidal wetlands not connected by surface flow to water bodies with perennial flow.
 3. **Intensely Developed Area (IDA).** The intensely developed area (IDA) delineates development and infill sites as of October 23, 1990 (the date of original adoption of regulations for Chesapeake Bay Preservation Areas) where development was concentrated and little of the natural environment remains. The IDA shall comply with under section 78-60.4.L.7.
- G. District Boundaries and Map.** The boundaries of the Chesapeake Preservation Area Overlay District are mapped and incorporated by reference into the zoning ordinance as follows:
1. **Mapped Areas (General).** The designations identified in Section 78-60.4.F.1.,2., and 3. are delineated on the "Chesapeake Bay Preservation Areas" map, adopted by the town council on February 10, 2004, as amended, incorporated by reference. Data from the perennial stream mapping project conducted by the Fairfax County Department of Public Works and Environmental Services and completed November 2003 was used to determine Herndon's perennial streams and the associated 100-foot RPA buffer.
 2. **Detailed Mapping.** The Chesapeake Bay Preservation Areas map shows only the general location of CBPAs. Persons contemplating land development within the Town of Herndon should consult this map prior to these activities. The specific location of RPAs on a lot or parcel shall be delineated on each site or parcel as required under section 78-60.4.H site-specific delineation for RPAs or through the review and approval of a water quality impact assessment, as provided for in section 78-60.4.N.
- H. Site-Specific Delineation for Resource Protection Areas.** As part of any land disturbance, development or redevelopment on a parcel that contains RPA, a site-specific RPA delineation shall be required. The "Chesapeake Bay Preservation Areas" map, adopted by the town council on February 10, 2004, as amended, may be used as a guide to identify the general location of resource protection areas.
1. **Land Disturbance of Less than 5,000 Square Feet in RPA.** For land disturbance in the RPA that is no more than 5,000 square feet, the site-specific RPA delineation shall include a scaled property drawing that is prepared by the owner or the owner's agent and verified by the community forester and that:
 - a. Delineates nontidal wetlands connected by surface flow and contiguous to water bodies with perennial flow;

- b. Delineates a 100-foot buffer area that is show (i) along each side of any water body with perennial flow and (ii) adjacent to and landward of nontidal wetlands as described in a. above; and
- c. Identifies other sensitive environmental features, as determined by the zoning administrator.

2. Land Disturbance of More than 5,000 Square Feet in RPA. For land disturbance in the RPA that exceeds 5,000 square feet, the following requirements shall be met:

- a. RPA boundary delineation studies shall be sealed by a professional engineer, land surveyor, landscape architect, soil scientist or wetland delineator certified or licensed to practice in the Commonwealth of Virginia. Any work performed by other firms or individuals not under the responsible charge of the licensed professional sealing the study shall be identified and sealed by that individual, as appropriate;
- b. Wetland determinations used in the RPA delineation shall be performed using methods specified by the U.S. Army Corps of Engineers (USACE), and a copy of the USACE's Jurisdictional Determination approving the wetlands delineation shall be provided;
- c. RPA boundary delineation studies shall be submitted on standard-size sheets of 243x 363at a scale of 13= 502or larger; and
- d. Site-specific RPA delineation shall include the following:
 - (1) Cover sheet with project name, town plan identification number, vicinity map, tax map reference number and fee computation;
 - (2) A narrative describing how the proposed RPA boundary was established, including a discussion of which components determine this RPA boundary, and any wetlands shown on the plan(s) that were determined not to be a component of the RPA;
 - (3) Plan sheet(s) with two-foot contour interval topography showing each individual component of the RPA overlain to create the final RPA boundary, the RPA boundary from the adopted Chesapeake Bay Preservation Area map, locations of the horizontal and vertical control points, and locations of points and transects used in the wetland determination. Topography shall be correlated to a USGS or Town benchmark(s), based on NGVD29, which shall be referenced in the plan. Plan sheets shall include a north arrow.
 - (4) Standard USACE data forms used in the wetland determination and the issued jurisdictional determination for the subject site.
 - (5) A description of the methodology used and data collected, including standard data sheets, used to identify water bodies with perennial flow.
- e. In determining the site-specific RPA boundary, the zoning administrator may adjust the applicant's submittal utilizing the "Federal Manual for

Identifying and Delineating Jurisdictional Wetlands," 1987, for determining wetlands location. In the event the applicant contests the adjusted boundary, the applicant may appeal the zoning administrator's decision, under Section 78-150.6.F., Appeal of Zoning Administrator decision or Determinations by the zoning administrator.

- I. Subdivision Plat.** Each subdivision plat shall note the existence of any RMA or RPA areas on the land shown on such plat. The existence of RMA or RPA on a lot created prior to the adoption of this article shall not be the basis for the granting of a CBPA exception.
- J. Permitted Uses in Chesapeake Bay Preservation Areas.** The following provisions shall apply to uses within the Chesapeake Bay Preservation Areas:
- 1. RMA Uses.** A use shall be permitted within the RMA provided it is permitted in the underlying zoning district regulations and it complies with the performance criteria set forth in section 78-60.4.L general performance criteria for land disturbance in Chesapeake Bay protection areas.
 - 2. RPA Uses.** A use shall be permitted within an RPA, provided it is permitted in the underlying zoning district, complies with section 78-60.4.L section 78-60.4.M, and is one or more of the following:
 - a. Water-dependent, provided it meets the criteria set forth in Section 78-60.4.M.3.
 - b. Constitutes any redevelopment in accordance with section 78-60.4.J.3:
 - c. Constitutes development or redevelopment within a designated IDA;
 - d. A new use established pursuant to section 78-60.4. M.1.C;
 - e. A road or driveway crossing satisfying the conditions set forth in section 78-60.4.M.; or
 - f. A flood control or stormwater management facility satisfying the conditions set forth in section 78-60.4.M.5.
 - 3. Redevelopment Outside IDA.** Redevelopment outside the IDA shall be permitted in the RPA only if there is no increase in the amount of impervious surface and no further encroachment within the RPA. Additionally, this redevelopment shall conform to applicable erosion and sediment control and stormwater management criteria set forth in section 78-60.4.L.1.b as well as all applicable stormwater management requirements of other Virginia and federal agencies.
- K. Exempted Uses in Chesapeake Bay Preservation Areas.** Certain uses may be exempt from the CBPAOD regulations subject to the following provisions:
- 1. Criteria for Specific Exempt Activities and Facilities.** Water wells, historic preservation activities, archaeological activities, and passive recreation facilities such as boardwalks, paved trails, unpaved trails and pathways are exempt from

the CBPAOD regulations, including the need to conduct a water quality impact assessment under section 78-60-4.N provided they meet the following criteria:

- a. All required local, state and federal permits have been issued;
- b. Sufficient and reasonable proof is submitted that the intended use does not deteriorate water quality;
- c. The intended use does not conflict with nearby planned or approved uses; and
- d. There is compliance with Article III, chapter 26 (erosion and sediment control) and Article VIII, chapter 26 (stormwater management) of the Town of Herndon Code if the land disturbance exceeds an area of 2,500 square feet.

2. Criteria for Exempt Utilities and Transportation Facilities. Construction, installation, operation and maintenance of electric, natural gas, fiber optic, water, sewer, underground telecommunications, cable television and telephone transmission lines, railroads and public roads and their appurtenant structures are exempt from the CBPAOD regulations, including the need to conduct a water quality impact assessment under section 78-60-4.N provided they meet all of the following criteria:

- a. Such activities are permitted by the town's zoning ordinance.
- b. Such activities are not prohibited by any other ordinances or laws.
- c. To the extent possible, the location of such utilities and facilities are outside the RPA.
- d. No more land is disturbed than necessary to provide for the proposed utility installation;
- e. All such construction, installation and maintenance of such utilities and facilities comply with all applicable town, Virginia and federal permits and are designed and conducted in a manner that protects water quality through:
 - (1) The Erosion and Sediment Control Law (Code of Virginia, § 62.1-44.15:51 et seq.), Article III, chapter 26 of this Code (erosion and sediment control) and the Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.);
 - (2) An erosion and sediment control plan and a stormwater management plan approved by the town; or
 - (3) Local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this article.
- f. If such activity is the construction of a public road, the road alignment and design shall be optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the RPA and to minimize the adverse effects on water quality.

L. General Performance Criteria for Land Disturbance in Chesapeake Bay Preservation Areas. To attain the water quality objectives set forth in the statement of intent, uses, development, and redevelopment of land in CBPAs, (RMAs and RPAs) shall meet and maintain the performance criteria set the performance criteria set forth in this section.

1. **Land Disturbance Exceeding 2,500 sq. ft.** All development and redevelopment within RMAs and RPAs that exceed 2,500 square feet of land disturbance shall:
 - a. be subject to approval by the reviewing authority through the submission of a site plan, a single lot development plan, or a subdivision plan. The reviewing authority may approve these submissions only if the regulated activity is in accordance with this article and the applicant has demonstrated that the proposed development meets or exceeds the criteria in this section.
 - b. shall comply with chapter 26, Article III (erosion and sediment control) and chapter 26, Article VIII (stormwater management) of the Herndon Town Code, construction of single family homes included.
2. **Compliance with Approved Plan or Water Quality Impact Assessment Required.** Land disturbance shall be in accordance with an approved plan or water quality impact assessment and shall be clearly shown on the plan and physically marked on the development site. No more land shall be disturbed than is necessary to provide for the proposed use or development.
3. **Indigenous Vegetation.** Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the proposed use(s) or development. To preserve indigenous vegetation to the maximum extent practicable consistent with the proposed use(s) or development, all trees located outside the area of land disturbance with a DBH of four inches or more shall be preserved. Clearing within the area of land disturbance shall be limited to that necessary to provide for the intended use of the property and all appurtenances, a single access during construction, positive site drainage, water quality BMPs, and the installation of utilities. Such clearing limits shall be subject to review and approval by the reviewing authority.
4. **Impervious Surface.** Development shall minimize impervious surface consistent with the proposed use or development. To minimize impervious surface and promote infiltration of stormwater in the ground consistent with proposed uses and development, grid and modular pavements shall be considered for any required parking area, alley or other low traffic driveway, unless otherwise approved by the zoning administrator. .
5. **Water Quality Impact Assessment Required.** A water quality impact assessment, pursuant to section 78-60-4.N, shall be required for the following: .

- a. Any proposed land disturbance, development or redevelopment activity within a RPA, including the expansion of nonconforming structures and uses, as identified in section 78-60.4.O; or
- b. Any development within the RMA, as deemed necessary by the zoning administrator, based upon the unique characteristics of the site or intensity of the proposed use(s) or development.

6. Evidence of Required Permits. The developer shall provide evidence to the town, prior to commencing grading or other on-site land disturbing activities, that any wetlands or similar permit required by federal, Virginia or local laws or regulations have been properly obtained.

7. Development in IDA. If the development is located within the IDA:

- a. Vegetation shall be provided to the extent possible to assist in re-establishing vegetation within a 100-foot wide buffer area along any streams on the site or adjacent to the site in order to maximize water quality protection, pollutant removal and water resource conservation.
- b. The zoning administrator may waive the requirement for the re-establishment of vegetation within the RPA buffer within the IDA, in accordance with section 78-60.4.P, administrative waivers of requirements for CBPAs (RMAs and RPAs).

M. Additional Development Criteria for Resource Protection Areas. The following additional criteria shall apply to development in the RPA.

1. 100-foot Buffer. Establishment of a 100-foot buffer area is required, and it shall be the landward component of the RPA as set forth in section 78-60.4.F.1. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot buffer shall not be reduced in width. In addition, the following criteria apply:

- a. To minimize the adverse effects of human activities on the other components of the RPA, state waters and aquatic life, this 100-foot wide buffer that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present, established where it does not exist, and adequately maintained thereafter. This 100-foot wide buffer is the same one referred to in 1 above; and
- b. The 100-foot buffer area, as described in 1 above, shall be deemed to achieve a 75 percent reduction in sediments and 40 percent reduction in nutrients.
- c. The 100-foot RPA buffer may be encroached upon under the following circumstances:
 - (1) If the requirements result in the loss of a buildable area for new homes or new principal structures on lots recorded before October 1, 1989, the zoning administrator may grant encroachments into the buffer area provided that:

- (a) The applicant submits an administrative waiver application, in accord with section 78-60.4. P.1. and the required water quality impact assessment (WQIA), receives zoning administrator approval;
 - (b) The encroachment into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - (c) Where practical, a vegetated area that maximizes water quality protection, mitigates the effects of the buffer encroachment, and equals the area of the buffer encroachment shall be established elsewhere on the lot; and
 - (d) The encroachment may not extend into the buffer area that is 50 feet closest to the water body with perennial flow and/or its associated wetlands.
- (2) If the requirements result in the loss of a buildable area for new homes or new principal structures on lots recorded between October 1, 1989, and February 10, 2004, the zoning administrator may grant an encroachment into the buffer area provided that:
- (a) The lot or parcel was created as a result of a process conducted in conformity with chapter 70, Subdivision of Land, of the Town of Herndon Code;
 - (b) Conditions or mitigation measures imposed through a previously approved exception shall be met;
 - (c) If the use of a best management practice was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
 - (d) The criteria in section 78-60.4.M.1.c(1) shall be met.

2. Buffer Area Management. To maintain the functional value of the buffer area, indigenous vegetation may be removed, if approved by the zoning administrator, to provide for reasonable sight lines, access paths, general woodlot management, and BMPs, including BMPs that prevent upland erosion and concentrated flows of stormwater, as follows:

- a. Trees may be pruned or removed only as necessary to provide for sight lines and vistas, provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and filtering nonpoint source pollution from runoff;
- b. Any path shall be constructed and surfaced to control erosion effectively;
- c. Dead, diseased or dying trees or shrubbery and noxious weeds may be removed and thinning of trees may be allowed pursuant to sound horticulture practice as prescribed by the town's community forester; and

- d. For stream restoration projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the stream in accordance with the best available technical advice and applicable permit conditions or requirements.
 - e. Use of fertilizers, herbicides or pesticides shall be minimized in the buffer area.
- 3. Water Dependent Development.** For new or expanded water-dependent development, the applicant shall demonstrate that the regulated activity meets or exceeds the following standards:
- a. All performance criteria set forth in this article;
 - b. Any non-water dependent component is located outside of the RPA;
 - c. Access is provided with the minimum disturbance necessary and where possible, with a single point of access; and
 - d. The development does not conflict with the comprehensive plan.
- 4. Roads and Driveways.** Roads and driveways not exempt under section 78-60-4.K and which, therefore, must comply with the provisions of this article, may be constructed in or across RPAs if each of the following conditions is met:
- a. The zoning administrator makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the RPA;
 - b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the RPA and (ii) adverse effects on water quality;
 - c. The design and construction of the road or driveway satisfy all applicable criteria of this article including the submission and approval of a water quality impact assessment, as provided for in section 78-60.4.N and
 - d. The zoning administrator reviews the plan for the road or driveway proposed in or across the RPA in coordination with the review process for a site plan or subdivision.
- 5. Flood Control and Stormwater Management.** Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in RPAs, provided that:
- a. The Town of Herndon has established that the location of the facility within the RPA is the optimal location;
 - b. The size of the facility is the minimum necessary to provide necessary flood control, stormwater management, or both;
 - c. The facility must be consistent with those permitted in chapter 26, Article VIII (stormwater management) of the Herndon Town Code;

- d. All applicable permits for construction in Virginia or federal waters must be obtained from the appropriate Virginia and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission;
- e. Approval prior to construction must be received from the town;
- f. Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed; and
- g. It is not the intent of this section to allow a stormwater management or BMP facility that serves a single development, an individual lot, or some portion of the lot to be located within a RPA. To locate such a facility in the RPA, the town council must grant an exception, as provided for in section 78-60.4.P.

N. Water Quality Impact Assessment Requirements. A Water Quality Impact Assessment shall be required and submitted for any proposed land disturbance, development or redevelopment activity within the RPA as follows.

- 1. Requirement Standards.** A water quality impact assessment shall be required for the following:
 - a. Any proposed land disturbance, development or redevelopment activity within a RPA, as permitted and consistent with sections 78-60.4.J and 78-60.4.L;
 - b. Any proposed development in the RMA that, in the judgment of the zoning administrator, warrants such an assessment because of the unique characteristics of the site or intensity of the proposed use, or development; and
 - c. As a part of an application for a rezoning, a special exception, a site plan, a preliminary plan or a single lot development plan that meets the criteria in items a. and b. above. The zoning administrator has the authority to approve or deny a water quality impact assessment.
- 2. Purpose.** The purpose of the water quality impact assessment is to:
 - a. Identify the impacts of the proposed land disturbance, development or redevelopment on water quality and lands within the RPAs and other environmentally sensitive lands;
 - b. Ensure that, where land disturbance, development or redevelopment takes place within RPAs and other sensitive lands, it is located on those portions of a site and in a manner that is least disruptive to the natural functions of RPAs and other sensitive lands;
 - c. Protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high groundwater, erosion, vulnerability to flood and storm damage; and
 - d. Specify mitigation that addresses water quality protection.

- 3. Minor Water Quality Impact Assessments.** A minor water quality impact assessment pertains only to any land disturbance, development or redevelopment in the RPA which (i) causes up to 5,000 square feet of land disturbance, or (ii) is located in the RMA and is determined by the zoning administrator to warrant such assessment under section 78-60.4.L.6. A minor water quality impact assessment shall meet the following standards.
- a. A minor assessment must demonstrate that the undisturbed buffer area, together with the enhanced vegetative plantings and any required BMP, retards runoff, prevents erosion, and filters non-point source pollution to the equivalent of the full undisturbed 100-foot buffer area, which shall be deemed to achieve a 75 percent reduction in sediments and a 40 percent reduction in nutrients.
 - b. A minor assessment shall include a drawing to scale that shows the following:
 - (1) Location of the components of the CBPA including the 100-foot buffer area component of the RPA;
 - (2) Location and nature of the proposed encroachment into the buffer area including type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious surfaces; and existing private water supply systems or sewage disposal systems to include reserve drain field sites;
 - (3) Type and location of proposed BMPs, if necessary, to mitigate the proposed encroachment;
 - (4) Location of existing, on-site vegetation, including the number and type of trees and other vegetation, to be removed in the buffer to accommodate the encroachment or alteration; and
 - (5) Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal as well as erosion and runoff control, in accordance with the Riparian Buffers Modification and Mitigation Guidance Manual, approved by Chesapeake Bay Local Assistance Board on September 15, 2003.
- 4. Major Water Quality Impact Assessments.** A major water quality impact assessment shall be required for any land disturbance, development or redevelopment in the RPA which (i) exceeds 5,000 square feet of land disturbance or (ii) is located in an RMA and is determined by the zoning administrator to warrant a water quality impact assessment under section 78-60.4.L.6. A major water quality impact assessment shall meet the following standards.
- a. The information for this assessment shall be considered a minimum, unless the zoning administrator determines that some of the elements are

unnecessary due to the scope and nature of the proposed use(s) and land development.

- b. The following elements shall be included in the preparation and submission of a major water quality assessment:
 - (1) All of the information required in a minor water quality impact assessment, as specified in paragraph Section 78-60.4.N.3a. of this section.
 - (2) A hydrogeological component that:
 - (a) Describes the existing topography, soils, hydrology and geology of the site and adjacent lands;
 - (b) Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands; and
 - (c) Indicates the following:
 - i. Disturbance or destruction of wetlands and justification for such action;
 - ii. Disruptions to existing hydrology including wetland and stream circulation patterns;
 - iii. Description and source location of proposed fill material;
 - iv. Estimation of predevelopment and post-development pollutant loads in runoff;
 - v. Estimation of percent increase in the on-site impervious surface and types of surfacing materials used;
 - vi. Percent of site to be cleared for the project;
 - vii. Anticipated duration and phasing schedule or construction project; and
 - viii. Acquisition of all requisite permits from all applicable agencies necessary to develop the project.
 - (3) Describes the proposed mitigation measures for the potential hydro geological impacts. Potential mitigation measures include:
 - (a) Proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
 - (b) Proposed stormwater management system;
 - (c) Creation of wetlands to replace those lost; and
 - (d) Minimizing cut and fill.

- (4) Identification of the existing characteristics and conditions of sensitive lands included as components of Chesapeake Bay preservation areas, as defined in this article.
- (5) Identification of the natural processes and ecological relationships inherent in the portion of the CBPA located on the site and an assessment on the impact of the proposed use and development on these processes and relationships.

5. Water Quality Impact Assessment Submission and Review Requirements.

The submission and review requirements shall meet the following standards:

- a. Four copies of all site drawings and other applicable information as required by items 78-60.N.3.a. and 3.b. of this section shall be submitted to the zoning administrator for review; :
- b. For a major water quality impact assessment, all information required in this section shall be certified by a professional engineer or land surveyor as complete and accurate. Such certification is not required for a minor water quality impact assessment; and :
- c. As part of any major water quality impact assessment submittal, the zoning administrator may require the State Water Control Board (SWCB) to review the assessment and respond with written comments. Upon receipt of a major water quality impact assessment, the zoning administrator will determine if a SWCB review is warranted to assure compliance with this article. The zoning administrator may incorporate any comments from SWCB received within 90 days of the request into the final review. :

6. Water Quality Impact Assessment Evaluation Procedure. The evaluation procedure shall be as follows:

- a. Upon the completed review of a minor water quality impact assessment, the zoning administrator shall determine if any proposed alteration or reduction to the buffer area is consistent with the provisions of this article and make a finding based upon the following criteria:
 - (1) The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - (2) Impervious surface is minimized;
 - (3) Proposed best management practices, where required, to achieve the requisite reductions in pollutant loadings;
 - (4) The development, as proposed, meets the purpose and intent of this article; and
 - (5) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, shall not result in a significant degradation of water quality.

- b. Upon the completed review of a major water impact assessment, the zoning administrator shall determine if the proposed development is consistent with the purpose and intent of this article and shall make findings based upon the following criteria:
- (1) The proposed development is a permitted use;
 - (2) The disturbance of wetlands is minimized;
 - (3) The development does not result in significant disruption of the hydrology of the portion of CBPA on the site;
 - (4) The development does not result in significant degradation to aquatic vegetation of life in the portion of CBPA on the site;
 - (5) The development does not result in unnecessary destruction of plant materials in the portion of CBPA on the site;
 - (6) Proposed erosion and sediment control concepts are adequate to achieve the required reductions in runoff and prevent off-site sedimentation;
 - (7) Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required standard for pollutant control;
 - (8) Proposed re-vegetation of disturbed areas provides required erosion and sediment control benefits;
 - (9) The development, as proposed, is consistent with the purpose and intent of the CBPA overlay district; and
 - (10) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, shall not result in a significant degradation of water quality.
- c. The zoning administrator shall require additional mitigation when potential impacts have not been adequately addressed. Evaluation of mitigation measures is made by the zoning administrator based on the criteria listed in 78-60.N.6.a and 6.b of this section.
- d. The zoning administrator must find the proposal to be inconsistent with the purpose and intent of this article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts shall be made by the zoning administrator based on the criteria listed in section 78-60.N.6a and 6b of this section.

O. Request for an Exception to the CBPAs. To be relieved from the requirements of sections 78-60.4.J.2 through J.3 permitted uses in the Chesapeake Bay preservation areas, and section 78-60.4.M additional development criteria for resource protection areas, the applicant must be granted an exception to the Chesapeake Bay preservation areas (CBPA) by the town council. An application for

a CBPA exception must be submitted to the town council through the department of community development and shall be subject to the following application and review standards.

1. **Application Required.** The application shall include a written statement that identifies the impacts of the proposed exception on water quality and on lands within the resource protection area, through the submission of a WQIA, as required under section 78-60.4.N.
2. **Notice and Public Hearing Required.** No such CBPA exception shall be authorized except after notice and hearing, as required by Code of Virginia § 15.2-2204, (2000), as amended, except only one hearing shall be required and the applicant may notify affected property owners by first-class mail.
3. **Review and Approval Notice and Public Hearing Required.** The town council shall review the request for a CBPA exception as well as the WQIA and may grant it with such conditions and safeguards as deemed necessary to further the purpose and intent of this article if the council finds:
 - a. The requested CBPA exception is the minimum necessary to afford relief;
 - b. Granting the CBPA exception does not confer upon the applicant any special privileges that are denied by sections 78-60.4., 78-60.4.L ,and 78-60.4.M to other property owners who are similarly situated;
 - c. The request is in harmony with the purpose and intent of sections 78-60.4.J, 78-60.4.L and 78-60.4.M and is not of substantial detriment to water quality;
 - d. The request is not based upon conditions or circumstances that are self-created or self-imposed;
 - e. Reasonable and appropriate conditions are imposed, as warranted, that prevent the allowed activity from causing a degradation of water quality; and
 - f. Other findings, as appropriate and required by the town are met.

P. Administrative Waivers of Requirements for CBPAs (RMAs and RPAs).An administrative waiver process for requirements in CBPAs (RMAs and RPAs) is established to address the zoning administrator review for sections 78-60.4.K (exempted uses), section 78-60.4.K (general performance criteria), section 78-60.4.M.1.c (additional development criteria for certain lots), and section 78-60.4.N (water quality impact assessment). Such requests must be made in writing to the zoning administrator, who has the authority to grant or deny the waiver.

1. **Waiver Process.** To commence the administrative waiver process, an application shall be submitted to the zoning administrator and include the following information:
 - a. Name and address of applicant and property owner;
 - b. Legal description of the property;

- c. Location map; and
- d. A WQIA, as required under section 78-60.4.N which needs to be approved by the zoning administrator.

2. Waivers of Specific Provisions. The zoning administrator may consider waivers of the following provisions of this section as follows:

- a. The zoning administrator may grant waiver requests for section 78-60.4.K, provided:
 - (1) The request is the minimum necessary to afford relief;
 - (2) Granting the request does not confer upon the applicant any special privileges denied by this article to other property owners in the Chesapeake Bay Preservation overlay district;
 - (3) The request is in harmony with the purpose and intent of this article and is not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality;
 - (4) The request is not based upon conditions or circumstances that are self-created or self-imposed;
 - (5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and
 - (6) The request meets the requirements for granting an exception in section 26-329 of the Herndon Town Code.
- b. The zoning administrator may grant a waiver requests for sections 78-60.4.K (exempted uses), section 78-60.4.K (general performance criteria), section 78-60.4.M.1.c(additional development criteria for certain lots), and section 78-60.4.N(water quality impact assessment), provided:
 - (1) The request is the minimum necessary to afford relief; and
 - (2) The zoning administrator has the authority to place reasonable and appropriate conditions upon any waiver, as necessary, so that the purpose and intent of this article is preserved.
- c. The administrative waiver process for principal structures is identified in section 78-60.4.P. Buffer encroachments may be administratively waived under section 78--60.4.M.1.c.

3. Exceptions. Nothing in this section shall affect the ability to seek a CBPA exception. Use of the administrative procedure is not a prerequisite to use of the appeal or exception process.

Q. Conflict with Other Regulations. In cases where the requirements of this section conflict with any other provisions of the Herndon Town Code, or state code regulations, the more stringent restrictions shall apply.

R. **Severability**. The sections, paragraphs, sentences, clauses and phrases of this article are severable, and if any phrase, clause, sentence, paragraph or section of this article shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this article.

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ARTICLE VII – USE REGULATIONS

Sec. 78-70 Principal Permitted and Allowed Uses

The following sections contain provisions pertaining to principal uses.

Sec. 78-70.1 Principal Permitted and Allowed Uses, Generally

- A. Purpose and Intent.** Land uses are organized into groups called "use categories" which list specific "use types." Use categories are described in Section 78-71. Standards are provided in this article for both "use categories" and "use types". Additional standards throughout this chapter may apply, such as in Article II - Zoning Districts, Article V - Development Standards or Article XIII-Performance Standards.
- B. Additional Use Specific Standards.** Regardless of whether a use category is permitted by right, permitted as a special exception, or allowed in a planned development, there may be additional regulations that are applicable to a specific use. Within this article is Section 78-71, Use Categories: Principal Use Categories, Characteristics and Types, and Section 78-21, which applies to all zoning districts unless otherwise specified. Other standards appear elsewhere in Article VIII for Accessory Uses, Article IX- Temporary Uses and Structures, in Article XV for procedures for application approval, the dimensional standards for each zoning district and, Article XI Development Standards, and perhaps other sections of the Herndon Town Code. It is the applicant's responsibility to ensure that all published rules, regulations, and standards have been captured in any application submitted for approval.
- C. Developments with Multiple Principal Uses.** When all principal uses of a development fall within one use category, the entire development is assigned to that use category. A development that contains a coffee shop, bookstore, and bakery, for example, would be in the category of personal services and retail sales category because all of the development's principal uses are in that category. When the principal uses of a development fall within different use categories, each principal use is classified in the applicable category and each use is subject to applicable regulations within that category. Developments with multiple principal uses, such as shopping centers, shall incorporate only those uses permitted in the underlying zoning district.
- D. Number of Primary or Principal Structures Per Lot.** There shall be no more than one primary or principal structure, plus permitted accessory structures, per lot or tract of land, except in the multi-family, planned development or business districts subject to the provisions of this chapter. To qualify as part of a single primary structure, a structure must be structurally linked to the rest of the primary structure.
- E. Prohibited Uses.** Certain uses shall be prohibited as follows:

1. **Uses Not Specifically Allowed.** A use not specifically allowed in this chapter is prohibited, except in accord with Section 78-70.1.F, Unlisted Uses.
2. **Donation Drop-Off Boxes.** Donation drop-off boxes exist informally in the town on July 1, 2013 and later. These donation drop-off boxes constitute buildings and uses and are subject to zoning regulation under Code of Virginia, § 15.2-2280. The town has not approved the location and existence of any donation drop-off box in the town; and so these donations drop-off boxes constitute zoning violations. The town council ordains that donation drop-off boxes are not buildings or uses that the town council through legislation, or the zoning administrator through administrative order or determination, has, does, or will allow. The town council orders the town manager or zoning administrator, or both, to cause the existing donation drop-off boxes to be removed from the town on and after July 1, 2014, except where such course be prohibited by law of the United States of America. To this end, these officials may employ the powers and remedies set forth in under Code of Virginia, § 15.2-2286, and section 78-200.6 of this chapter.

F. Unlisted Uses. Where a particular use type is not specifically listed in a zoning district or in Table 78-70.2.D, Table of Principal Permitted and Allowed Uses, and not otherwise prohibited, the zoning administrator will evaluate the unlisted in accordance this section.

1. **Request Treated as Interpretation.** The request to review an unlisted use shall be treated as an interpretation pursuant to Section 78-150.6.E., Determination Requests.
2. **Review.** The zoning administrator shall give due consideration to the intent of this chapter concerning the zoning district(s) involved, the character of the uses specifically identified, and the character of the use(s) in question and may permit the use type upon finding the standards of Section 78-70.1.F.5, Standards for approving Unlisted Uses, are met. Based on these considerations, the zoning administrator may alternatively find that the proposed use is not permitted in any district.
3. **Listed Uses May Not Be Permitted in Another District by Interpretation.** Where a particular use is specifically listed in the text of at least one zoning district and indicated as a permitted or allowed use in Table 78-70.2.D, Table of Principal Permitted and Allowed Uses, and the use is not otherwise prohibited, but is not listed in the text of any other zoning district or indicated as a permitted or allowed use in any other district on Table 78-70.2.D, the use is considered specifically prohibited in the other district(s), and the zoning administrator may not permit the use.
4. **Effect of Determination by the Zoning Administrator.** In making a determination whether or not to approve an unlisted use, the zoning

administrator's determination shall be binding on all officers, employees and departments of the town.

- 5. Standards for Approving Unlisted Uses.** To determine that the proposed use(s) has an impact that is similar in nature, function, and duration to the other listed use types permitted in a specific zoning district, the zoning administrator shall assess all relevant characteristics of the proposed use, including but not limited to the following:
- a. Sales Type.** The volume and type of sales, retail, wholesale; size and type of items sold and nature of inventory on the premises;
 - b. Processing.** Any processing done on the premises, including assembly, manufacturing, warehousing, shipping, distribution; any dangerous, hazardous, toxic, or explosive materials used in the processing;
 - c. Storage and Display.** The nature and location of storage and outdoor display of merchandise; enclosed, open, inside, or outside the principal building; and predominant types of items stored (such as business vehicles, work-in-process, inventory, and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders);
 - d. Similar Uses.** The type, size, and nature of buildings and structures normally occupied by the use or by similar uses;
 - e. Employees and Customers.** The number and density of employees and customers per unit area of site in relation to business hours and employment shifts;
 - f. Transportation Requirements.** Transportation requirements, including the modal split for autos and freight, by volume type and characteristic of traffic generation to and from the site, trip purposes and whether trip purposes can be shared by other use types on the site;
 - g. Parking Requirements.** Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other use types;
 - h. Noise, Smoke, etc.** The amount and nature of any effects generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation, and fumes;
 - i. Utilities.** Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water output, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities;

- j. **Adjacent Properties.** The impact on adjacent properties created by the proposed use in relation to other uses in the zoning district;
- k. **Other Sources.** Other sources deemed appropriate by the zoning administrator, such as commonly accepted periodicals, publications by the American Planning Association, and other planning reference books;
- l. **Notice of Violation.** When the question of the unlisted use arises as a result of a violation, the notice of violation shall be construed to be the zoning administrator's determination that the use is not approved.

G. Standards for Any Non-Residential Use Adjacent to Residential Uses (Residential Protection Standards). As a condition of the approval of any nonresidential use located adjacent to residential uses, conditions may be applied to reduce or minimize any potential adverse impacts on residential property. Such conditions may include but are not limited to:

1. **Hours.** Hours of operation and deliveries;
2. **Noise and Glare.** Location on a site of activities that generate potential adverse impacts on adjacent uses such as noise and glare;
3. **Loading and Delivery Areas.** Location of loading and delivery areas;
4. **Lighting.** Lighting location, intensity, and hours of illumination;
5. **Outdoor Activities and Services.** Placement and illumination of outdoor vending machines, telephones, or similar outdoor services and activities;
6. **Landscaping and Buffering.** Additional landscaping and buffering to mitigate adverse impacts;
7. **Height Limitations.** Height restrictions to preserve light and privacy and views of significant features from public property and rights of way;
8. **Access to Natural Light.** Preservation of natural lighting and solar access; and
9. **Odors and Fumes.** Ventilation and control of odors and fumes.

Sec. 78-70.2 Table of Permitted and Allowed Uses

A. Purpose. Table 78-70.2.D, Table of Principal Permitted and Allowed Uses, sets forth a summary of the uses permitted within the base zoning districts and indicates whether they are permitted “by right,” allowed by special exception or through approval of a zoning map amendment for a planned development district. The Use

Table also includes references to supplemental requirements or regulations applicable to the specific use.

B. Organization of Uses and Use Table. The Table of Principal Permitted and Allowed Uses, Table 78-70.2.D, organizes the uses by principal uses, categories and types and shows the zoning district classifications where various uses are permitted or allowed.

1. **Use Categories.** The use categories describe the major types of uses, based on common characteristics. The common characteristics of each use category are identified in Section 78-71, Use Regulations: Principal Uses Categories, Characteristics and Types.
2. **Use Types.** The use categories are divided into specific use types that identify the principal uses considered to fall within characteristics identified in the use category. Use types are defined in more detail in Article XVIII - Definitions.

C. Use Table Format. The symbols listed in the Use Table have the following meanings:

1. **“P” Permitted Uses.** A "P" in a cell indicates that a use category or use type is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Principal Permitted and Allowed Uses. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in Article XI - Development Standards.
2. **“S” Special Exception Uses.** An “S” in a cell indicates that a use type is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in the final column, if applicable, of Table 78-70.2.D, Table of Principal Permitted and Allowed Uses, and approval of a special exception (Section 78-155.3). It shall be unlawful to conduct a use requiring a special exception without proper approval of a special exception application.
3. **“Z” Allowed Uses.** A “Z” in a cell indicates that a use type is an allowed use in the respective planned development district, subject to approval as a planned development district (Section 78-155.1).
4. **Uses Not Allowed.** A blank cell indicates that the use type is prohibited in the zoning district.

D. Table of Permitted and Allowed Uses. Table 78-70.2.D, Table of Principal Permitted and Allowed Uses, sets forth the uses permitted within the base zoning districts. See also Table 78-80.2, Accessory Use Table and Table 78-90.1.B Temporary Uses and Structures.

Table 78-70.2.D TABLE OF PERMITTED AND ALLOWED USES
 KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;
 Z = Use Allowed Subject to Zoning Map Amendment Approval

General Notes:

1. A blank cell means the use is prohibited in the district.
2. Uses may be subject to use specific standards as noted in the last column.
3. Any principal use allowed or permitted by right in this table is permitted by special exception in the Floodplain Overlay District, subject to section 78-60.2.

District Specific Notes:

*Uses in the PD-TD and PD-D districts are subject to specific comprehensive plan policies, design objectives and/or site standards. See additional regulations in Section 78-50.5 for the PD-D District and Section 78-50.6 for the PD-TD District.

**For Permitted Uses in PD-TOC see Section 78-50.7; For Permitted and Allowed Uses in PD-W see Section 78-50.8.

		Residential Districts				Business Districts				Planned Development District				Suppl Req's	
USE CATEGORY	USE TYPE	R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-TOC PD-W	See Section	
Residential	Single-Family Detached Dwelling	P	P							Z		Z*	**	§78-30.6, R-15.R-10,PD-R Only	
	Duplex Dwelling			P						Z		Z*	**	§78-30.6, R-15.R-10,PD-R Only	
	Stacked Townhouse												**		
	Townhouse Dwelling			P	P					Z		Z*	**	§78-30.6, R-15.R-10,PD-R Only	
	Townhouse Rental Residential Development			P	P					Z			**	§78-30.6, R-15.R-10,PD-R Only	
	Quadruplex Dwelling				P					Z		Z*	**	§78-30.6, R-15.R-10,PD-R Only	
	Multi-Family Dwelling within a Mixed Use Building					P						P*	**	In CC, above 1 st floor only, limit 2 per building	
	Multi-Family Dwelling (including residential rental townhouses)				P					Z		Z*	**	§78-30.6, R-15.R-10,PD-R Only	
	Housing for the Elderly				P	P					Z		Z*	**	§78-71.1
	Assisted Living for the Elderly and				P						Z		Z*	**	§78-71.1

Table 78-70.2.D TABLE OF PERMITTED AND ALLOWED USES
KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;
Z = Use Allowed Subject to Zoning Map Amendment Approval

General Notes:

1. A blank cell means the use is prohibited in the district.
2. Uses may be subject to use specific standards as noted in the last column.
3. Any principal use allowed or permitted by right in this table is permitted by special exception in the Floodplain Overlay District, subject to section 78-60.2.

District Specific Notes:

*Uses in the PD-TD and PD-D districts are subject to specific comprehensive plan policies, design objectives and/or site standards. See additional regulations in Section 78-50.5 for the PD-D District and Section 78-50.6 for the PD-TD District.

**For Permitted Uses in PD-TOC see Section 78-50.7; For Permitted and Allowed Uses in PD-W see Section 78-50.8.

USE CATEGORY	USE TYPE	Residential Districts				Business Districts				Planned Development District				Suppl Req
		R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-TOC PD-W	See Section
	Persons with Disabilities													
	Group Home	P	P	P	P					Z		Z*	**	§78-71.1
	Childcare Center, Daycare Center or Preschool	S	S			S		S	S	Z	Z	Z*	**	§78-71.2
Education	Post Secondary Education and Career Schools							S	S		Z	Z*	**	§78-71.2
	School, Public or Private (K-12)	S	S					S		Z	Z	Z*	**	§78-71.2
	Government Buildings, Facilities and Uses not Otherwise Categorized	S	S	S	S	S	S	S	S	Z	Z	Z*	**	§78-71.3
Government Facilities	Police Substation												**	§78-71.3
	Cemetery	S	S										**	§78-71.4
Institutional and Community Service Uses	Community Centers	S	S	S	S	S		S		Z	Z	Z*	**	§78-71.4
	Convalescent Home							S			Z		**	§78-71.4
	Hospital							S	S	S		Z	**	§78-71.4
	Library	S	S			P	P			Z	Z	Z*	**	§78-71.4
	Museum, Fine Arts Center					P		S	S		Z	Z*	**	§78-71.4
	Religious Institution (with a capacity of 300 or fewer persons) gathered for religious observance in, with or without any accessory schools, daycare centers, or recreational facilities	S	S					S	S	Z	Z		**	§78-71.4
	Religious Institution (with a capacity of more than 300 persons) gathered for religious observance, with or without accessory schools, daycare centers, or recreational facilities	S	S							Z	Z		**	§78-71.4

Table 78-70.2.D TABLE OF PERMITTED AND ALLOWED USES
 KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;
 Z = Use Allowed Subject to Zoning Map Amendment Approval

General Notes:

1. A blank cell means the use is prohibited in the district.
2. Uses may be subject to use specific standards as noted in the last column.
3. Any principal use allowed or permitted by right in this table is permitted by special exception in the Floodplain Overlay District, subject to section 78-60.2.

District Specific Notes:

*Uses in the PD-TD and PD-D districts are subject to specific comprehensive plan policies, design objectives and/or site standards. See additional regulations in Section 78-50.5 for the PD-D District and Section 78-50.6 for the PD-TD District.

** For Permitted Uses in PD-TOC see Section 78-50.7; For Permitted and Allowed Uses in PD-W see Section 78-50.8.

USE CATEGORY	USE TYPE	Residential Districts				Business Districts				Planned Development District				Suppl Reqs
		R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-TOC PD-W	
	Senior Center	S	S			P				Z	Z	Z*	**	§78-71.4
Alcohol Production Facilities, Small	Craft Breweries, Micro-Distilleries, Micro-Cideries, Micro wineries (without on-site vineyard)					P	P		S		P	P*	**	§78-71.5
	Brewpubs (eating establishment where food is prepared and served but also to produce alcoholic beverages on a small scale.)					P	P		S		P	P*	**	§78-71.5
Eating Establishments	Restaurant					P	P	S	S		Z	Z*	**	§78-71.6
	Drive-In Restaurant							S					**	§78-71.6
Entertainment, Indoor	Commercial Recreation/ Entertainment, Indoor					S	P		S		Z	Z*	**	§78-71.8
	Theater												**	§78-71.8
Entertainment, Outdoor	Commercial Recreation/Entertainment, Outdoor								S		Z		**	§78-71.9
	Private Swimming Pools and Tennis Courts	S	S										**	§78-71.9
Lodging Businesses	Conference Center, Hotel, Motel, Inn Boarding House, Rooming House						S		S		Z	Z*	**	§78-71.12
Offices	All Office Uses (excluding any medical or health related services - see "health care facility")					P	P	P	P	Z	Z	Z*	**	§78-71.7
Personal Services and Retail Sales	Animal Hospital, Kennel, Pet Daycare, Animal Shelter, and Veterinary Clinic						P	S	S	Z	Z		**	§78-71.10
	Artist's Studio or Gallery					P	P	P	P	Z	Z	Z*	**	§78-71.10
	Dry-Cleaning/Laundry, Laundromats					S	P	S	P	Z	Z	Z*	**	§78-71.10
	Durable Goods Sales						P		S		Z		**	§78-71.10
	Financial Institution					P	P	P	P		Z	Z*	**	§78-71.10

Table 78-70.2.D TABLE OF PERMITTED AND ALLOWED USES
 KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;
 Z = Use Allowed Subject to Zoning Map Amendment Approval

General Notes:

1. A blank cell means the use is prohibited in the district.
2. Uses may be subject to use specific standards as noted in the last column.
3. Any principal use allowed or permitted by right in this table is permitted by special exception in the Floodplain Overlay District, subject to section 78-60.2.

District Specific Notes:

*Uses in the PD-TD and PD-D districts are subject to specific comprehensive plan policies, design objectives and/or site standards. See additional regulations in Section 78-50.5 for the PD-D District and Section 78-50.6 for the PD-TD District.

** For Permitted Uses in PD-TOC see Section 78-50.7; For Permitted and Allowed Uses in PD-W see Section 78-50.8.

USE CATEGORY	USE TYPE	Residential Districts				Business Districts				Planned Development District				Suppl Reqs
		R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-TOC PD-W	
	Funeral Home					P							**	\$78-71.10
	Health Care Facility					P	P	P	P	Z	Z	Z*	**	\$78-71.10
	Health Care Laboratory					P	P	P	P		Z		**	\$78-71.10
	Mailing and Packing Service					S	P	S	P		Z	Z*	**	\$78-71.10
	Personal Services, General					P	P	S		Z	Z	Z*	**	\$78-71.10
	Pharmacy					P	P	P			Z	Z*	**	\$78-71.10
	Product Repair and Services					P	P	S	P		Z	Z*	**	\$78-71.10
	Retail Sales					P	P	S			Z	Z*	**	\$78-71.10
	School of Special Instruction					S	P	S	P	Z	Z	Z*	**	\$78-71.10
	Other Personal Services and Retail Sales Uses					P	P	S			Z	Z*	**	\$78-71.10
Vehicle Sales and Services	Vehicle Sales (new)						S		S				**	\$78-71.11
	Vehicle Repair; Transmission and Muffler Shops, Sales of Vehicle Parts and Tires						S		S				**	\$78-71.11
	Recreational Vehicle Rental and Sales						S		S				**	\$78-71.11
	Vehicle Fuel Sales (with or without convenience store)						S		S				**	\$78-71.11
Commercial Utilities	Commercial Communication Tower, Freestanding	S	S	S	S	S	S	S	S	Z	Z	Z*	**	\$78-71.13
	Electrical Substation						S		S		Z		**	\$78-71.13
	Telecommunication Switching Station						S		S		Z		**	\$78-71.13
	Utility-Related Maintenance and Storage Yards						S		S				**	\$78-71.13
Industrial	Dry Cleaning or Laundry Plants						S		S				**	\$78-71.14

Table 78-70.2.D TABLE OF PERMITTED AND ALLOWED USES
 KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval;
 Z = Use Allowed Subject to Zoning Map Amendment Approval

General Notes:

1. A blank cell means the use is prohibited in the district.
2. Uses may be subject to use specific standards as noted in the last column.
3. Any principal use allowed or permitted by right in this table is permitted by special exception in the Floodplain Overlay District, subject to section 78-60.2.

District Specific Notes:

*Uses in the PD-TD and PD-D districts are subject to specific comprehensive plan policies, design objectives and/or site standards. See additional regulations in Section 78-50.5 for the PD-D District and Section 78-50.6 for the PD-TD District.

**For Permitted Uses in PD-TOC see Section 78-50.7; For Permitted and Allowed Uses in PD-W see Section 78-50.8.

USE CATEGORY	USE TYPE	Residential Districts				Business Districts				Planned Development District				Suppl Req	
		R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-TOC PD-W	See Section	
Service	Scientific Research and Scientific Development								P		Z		**	§78-71.14	
	All other Industrial Service Uses								S		Z		**	§78-71.14	
Light Manufacturing	Uses involving Freight Delivery, Storage, Mass Production and Transporting of Finished Products								S				**	§78-71.15	
	All other Light Manufacturing Uses								P		Z		**	§78-71.15	
Self-Service Storage	Self-Service Storage Uses								S		Z		**	§78-71.16	
Transportation and Parking	Bicycle Sharing Enterprises												**	§78-71.17	
	Car Sharing Enterprises												**	§78-71.17	
	Bus Maintenance Facility for Public Bus Service								S				**	§78-71.17	
	Parking Facility, Commercial or Public, Permanent							S	S	S	S	Z	Z*	**	§78-71.17
	Transit Facilities												**	§78-71.17	
Warehousing	Electronic Warehousing							S		P		Z	**	§78-71.18	
	Warehouse (storage)									S			**	§78-71.18	
Wholesale Sales	Contractor's Materials									S		Z	**	§78-71.19	
	Wholesale Establishment									S		Z	**	§78-71.19	

Sec. 78-71 Use Regulations: Principal Use Categories, Characteristics and Types

A. Purpose. As described above in section 78-70.2.D, the Table of Principal Permitted and Allowed Uses organizes land uses into groups called "use categories" and lists specific "use types." The following sections contain provisions pertaining to principal uses by use category and use type.

B. Structure of These Sections. These sections (78-71.1 through 78-71.19) describe each use category in the Table of Principal Permitted and Allowed Uses (Table 78-70.2.D.) as follows:

1. **Characteristics.** Within each use category, the "Characteristics" section describes characteristics of the category. Principal uses are assigned to the category that most closely describes the nature of the principal use. Also listed are examples of accessory uses, which, unless otherwise stated in this chapter, are permitted in conjunction with a principal use and are subject to the same regulations as the principal use.
2. **Examples.** The "Examples" section under each use category lists examples of uses included in the respective use category. The examples are based on common terms and not on what a specific use may call itself. For example, a use that calls itself "Wholesale Sales," but sells mostly to consumers, is included in the personal services and Retail Sales category rather than the wholesale sales category. This is because the activity on the site matches the characteristics of the personal services and retail sales category.
3. **Use Types and Specific Use Standards.** Definitions for use types are found in Article XVIII -Definitions. The "Specific Use Standards;" provides standards for use types are found in Sections 78-71.1 through 78-71.19.

C. Relationship to Other Regulations and Standards. Standards are provided in this section for both "use categories" which are defined and described in detail in Sections 78-71.1 through 78-71.19 and "use types." Definitions for use types are found in Article XVIII - Definitions. Additional standards throughout this chapter may also apply to use categories and types, such as in Article II- Zoning Districts, or Article XI - Development Standards.

Sec. 78-71.1 Residential Use Category

- A. **Characteristics.** The residential use category is characterized by the residential occupancy of a dwelling or residential facility by an individual or a household meeting the definition of a family. Tenancy is arranged on a month-to-month or longer basis.
- B. **Examples.** Example Use types include single-family detached dwellings, duplex dwellings, multi-family dwellings, assisted living for the elderly or persons with disabilities, or townhouse dwellings. Group homes are also included as described in the Code of Virginia, § 15.2-2291.

C. Similar Use Types, Accessory Uses and Prohibited Use Types.

1. **Transient Lodging.** Transient lodging is not permitted in the residential use category. Transient lodging, including, hotels, motels, inns, conference centers, boarding houses and lodging houses, are in the lodging businesses category.
2. **Convalescent Home.** Convalescent home is in the institutional and community services use category.
3. **Home-Based Businesses.** Home-based businesses, including childcare in the home, are permitted as accessory uses that are subject to additional standards (See Section 78-80.5).
4. **Bed and Breakfast.** Bed and breakfast establishments are permitted as accessory uses subject to additional standards in 78-80.4.D, Bed and Breakfast Establishment.
5. **Accessory Dwelling.** Accessory Dwelling Units are permitted as accessory uses subject to additional standards. See Article VIII-Accessory Uses and Structures.

D. Residential Use Category Specific Use Standards All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply, unless, in the judgment of the reviewing authority, exceptional circumstances warrant adjustment:

1. **Housing for the Elderly. Housing for the elderly shall meet the following standards:**
 - a. **Age Requirements.** All residents shall be adults, of which at least one resident in each unit is 62 years of age, or older. (Units occupied by persons employed by the housing management are not subject to this restriction)All lots shall have frontage on a public street.
 - b. **Location.** Such housing shall be located so that shopping, health care, and recreational facilities are readily accessible, and adequate transportation to such facilities is available.
 - c. **Accessory Uses.** Accessory uses such as legal and health care offices, dental clinics, pharmacies, post offices, restaurants, cafeterias, hair salons, and other similar uses that serve residents are permitted.
2. **Occupancy of Vehicles or Accessory Structures as Residential Units Prohibited.** Residential occupancy shall not be allowed in any accessory structure except under the provisions of Section 78-80.4.A, Standards for Specific Accessory Uses and Structures, Accessory Dwelling Unit. Under no circumstances is residential occupancy permitted in any shed, boat, tent, portable storage unit, recreational vehicle, or similar device.

3. Establishment of Unauthorized Dwelling Units Prohibited. Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is prohibited and subject to the following:

a. Change in Use or Special Exception. Establishment of an unauthorized dwelling unit in any building or division of a dwelling unit is not permitted except in accordance with procedures for a change in use as authorized by the town or unless an accessory dwelling unit has been approved through a special exception.

b. Conditions Constituting an Unauthorized Dwelling Unit. An unauthorized dwelling unit within a building shall be presumed to have been created when contiguous areas for living, sleeping, eating, cooking, and sanitation are designed in such a manner as to establish a distinct, separate, and self-contained living or housekeeping unit. The existence of any one of the following conditions shall be considered to be an unauthorized dwelling unit.

(1) A secured internal access/connection is maintained that prevents full access to all of the common living areas (exclusive of private bedroom/bath areas) to all occupants of the dwelling unit.

(2) More than one assigned address or more than one electric, water or gas meter serving the building.

(3) Use of part of a previously approved dwelling unit for an additional dwelling unit providing complete, independent living facilities for a single-family dwelling including provisions for living, sleeping, eating, or sanitation.

c. Additional Procedures. The building official and the zoning administrator may request additional administrative steps, such as the recording of a "declaration of use", when such steps are determined to be warranted by specific conditions, such as a separate exterior entry. The creation of a dwelling unit shall comply with all rules, regulations, ordinances and other requirements of the town of Herndon. Building permits, inspections, and approvals are required for all building, electrical, mechanical, or plumbing work performed. Where a conflict arises between these standards and other requirements, the most restrictive shall govern.

4. Residential Condominiums, Condominium and Cooperative Conversions. Residential condominiums, condominium and cooperative conversions may occur in accordance with this section, condominium and cooperative conversions, and Section 78-155.3.E.4, Special Review Standards for Condominium Conversions of Nonconforming Properties. In addition the following standards shall be met:

- a. Compliance with Density and Zoning District Provisions.** Condominiums and cooperative conversion developments shall comply with the maximum density and other provisions of the zoning district in which located.
- b. Lot Requirements.** Notwithstanding the specific minimum lot size requirements and minimum yard requirements specified for a given zoning district, a single-family detached or attached dwelling condominium development may be permitted under the condominium laws of Virginia subject to the following provisions in single-family attached dwelling developments:
- (1) The minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed.
 - (2) The minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed, and all dwelling units shall be subject to the same requirement to have access to a dedicated public street as single-family dwelling units located on lots which result from a subdivision of land, except as provided for by the provisions of the Herndon Town Code, Chapter 70, the Subdivision Ordinance.
- c. Yard Requirements for Community Facilities.** The location of any community structure, such as a clubhouse or swimming pool, shall be governed by the minimum yard requirements presented for all other structures in the zoning district in which located.
- d. Accessory Structures.** Accessory structures shall be permitted in general accordance with the provisions of Article VIII - Accessory Uses and Structures, as determined by the zoning administrator.
- e. Sales Office.** A temporary sales office occupying one of the residential condominium units may be permitted in accordance with the provisions of Article IX, Temporary Uses and Structures.
- f. Management Office.** An on-site management office shall be permitted in general accordance with the provisions of Article VIII - Accessory Uses and Structures.
- g. Special Leasing Provisions for Elderly or Disabled Tenants.** Elderly or disabled tenants occupying as their residence, apartments or units in a conversion condominium, shall be offered leases or extensions of leases on the apartments or units they occupy, or on other apartments or units of at least equal size and overall quality, at the time of issuance of formal notice to each of the tenants of the building or buildings which the declarant has

submitted or intends to submit to the condominium conversion provisions under the Code of Virginia.

h. Application Procedures for Condominium and Cooperative

Conversions. *[Formerly Sec. 78-202.13]* Any existing structure and its related lot may be converted to condominium or cooperative in accordance with this subsection:

- (1) Prior to conversion, proposed condominium and cooperative conversions which are nonconforming shall be subject to the approval of a special exception in accordance with the provisions of section 78-155.3.E.4 special review standards for condominium conversions of nonconforming properties.
- (2) Review of condominium and cooperative conversions shall be conducted for the purpose of ascertaining the conformance of associated plats and plans to the zoning ordinance and the subdivision ordinance, where applicable. In lieu of conformance with the applicable condominium conversion provisions of the town's public facilities manual, the regulations of this section, Section 78-71.1.D.4, Condominium and Cooperative Conversions shall apply.
- (3) Copies of plats and plans shall be reviewed by the zoning administrator as a preliminary plat and the review shall assess the conformance of the proposal to the requirements of the zoning ordinance, the requirements of the subdivision ordinance, and any other applicable regulations, ordinances or laws. Accordingly, the declarant of a condominium conversion shall file with the zoning administrator:
 - i. One copy of all the information required by the Virginia Real Estate Commission pursuant to Virginia Code § 55-79.89, as amended.
 - ii. A copy of the formal notice required by Virginia Code Section 55-79.94, as amended. This filing shall be simultaneous with the filing required by the commission.
 - iii. Two copies of any plats and plans submitted to the Virginia Real Estate Commission under the provisions of Virginia Code Section 55-79.58, as amended, for review by the zoning administrator as a preliminary plat.
- (4) For additional provisions regarding residential units, see Section 78-155.3.E.4., Special Review Standards for Residential Condominiums, Condominium and Cooperative Conversions.

Sec. 78-71.2 Education Use Category

- A. Characteristics.** The education use category is characterized by use types that include daycare, childcare, preschool, public and private schools at the elementary, middle, and high school level that provide state-mandated basic education. This use category also includes post secondary education and career schools that offer courses of general or specialized study leading to a degree. Accessory uses at schools include play areas, cafeterias, recreational and sport facilities, auditoriums, before- or after-school daycare, offices, food service, laboratories, health and sports facilities, theaters, meeting areas, parking, and maintenance facilities. See also Article VIII - Accessory Uses and Structures.
- B. Examples.** Example use types include public and private daytime schools that provide state-mandated education, colleges, universities, community colleges, nursing and medical schools not accessory to a hospital, seminaries, vocational schools, and business or trade schools.
- C. Similar Use Types, Accessory Uses and Prohibited Use Types.**
- 1. Schools of Special Instruction.** Schools of special instruction are classified in the personal services and retail sales use category.
 - 2. Childcare, Daycare or Preschool.** Childcare centers, daycare centers or preschools operated in connection with an employment use, shopping center, or other principal use where children are cared for while parents or guardians are occupied on the premises or in the immediate vicinity constitute an accessory use subject to the standards of this section or Section 78-80.4.I.
 - 3. Home Based Daycare or Childcare.** In-home daycare or childcare constitutes an accessory use subject to the standards of Section 78-80.5 Home-based Businesses including daycare or childcare.
- D. Educational Use Category Specific Use Standards.** All uses shall comply with all applicable standards in this chapter. In addition, the following specific use standards shall apply.
- 1. Height Limitation for All Education Category Uses.** The height of buildings located within 100 feet of existing residential development or undeveloped land in a residential zoning district shall not exceed the maximum height permitted for residential structures in the adjacent residential zoning district.
 - 2. Daycare Centers, Childcare Centers and Preschools as Principal Uses.** The following shall apply to daycare centers, childcare centers and preschools as a principal use in any zoning district. Childcare centers, daycare centers or preschools operated in connection with an employment use, shopping center, or other principal use where children are cared for while parents or guardians are occupied on the premises or in the immediate vicinity and in-home daycare or

childcare or childcare are considered accessory uses and are subject to the standards in Section 78-80.4.1 (for daycare centers, childcare and preschools accessory to a principal use) or Section 78-80.5 (for in-home childcare), and therefore, are not subject to the standards of this section.

- a. Location.** If not located in a stand-alone building, daycare centers, childcare centers and preschools shall be located on the first floor of a principal structure, and be separated (including the restrooms) by a physical barrier from the remaining portion of the building in which it is located.

- b. Recreation Areas.** Daycare centers, childcare centers and preschools shall include an outdoor recreation area with a minimum of 100 square feet for each child permitted, meeting the following standards:

- c. Fencing.** Be enclosed by a fence which allows air and light to penetrate it and be capable of containing each child using the area;
 - (1) Not be within a required building setback;
 - (2) Not be closer than 15 feet to the edge of any public right-of-way; and
 - (3) Not be within a parking area.

- d. Parking and Circulation.** Daycare centers, childcare centers and preschools shall design parking areas and vehicular circulation patterns to:
 - (1) Enhance the safety of children as they arrive at and leave the facility;
 - (2) Include a designated pickup and delivery area, providing at a minimum one stacking space per 20 children; and
 - (3) Include parking spaces at a rate of one per employee plus one space per five children located adjacent to the childcare structure in such a way that visitors may avoid walking across vehicular travel ways to enter or exit the center.
 - (4) Ensure that all stacking lanes are located at least ten feet from the principal building with either an on-site turnaround or separate points for ingress and egress.

- e. Outdoor Play Activity Hours.** Daycare centers, childcare centers and preschools shall not conduct outdoor play activities before 8:00 a.m. or after 8:00 p.m.

- f. **Required Permits.** Daycare centers, childcare centers and preschools shall obtain all required approvals from the Fairfax County Health Department and the Fairfax County Fire Marshal.
 - g. **Licensing.** Daycare centers, childcare centers and preschools shall be licensed with the state commissioner of social services in accordance with Code of Virginia, Section 631-196, and comply with 22-VAC 15-30 and all other relevant state laws.
3. **Schools.** Schools of special instruction are classified in the personal services and retail sales use category. School uses as accessory to other uses, such as institutions, shall be subject to Article VIII - Accessory Uses and Structures.

Sec. 78-71.3 Government Facilities Use Category

- A. **Characteristics.** The government facilities use category is characterized by facilities owned and operated, by an agency of local, regional, state or federal government, including park-and-ride lots or structures, or public parking lots or public shared parking lots as principal uses. Accessory uses include but are not limited to maintenance, storage, and fueling facilities; and parking areas associated with a principal use.
- B. **Examples.** Example use types include any government building, facility, park, golf course, cemetery, public works yard, playground, parking facility, or use other than office uses.
- C. **Similar Use Types, Accessory Uses and Prohibited Use Types.**
 - 1. **Offices.** Offices for the conduct of government business are in the category of offices.
 - 2. **Utilities.** Regulated, privately-owned public utilities as well as gas, electric, communications and other infrastructure services, are in the category of commercial utilities.
- D. **Government Facilities Category Specific Use Standards.** All uses within the Government Facilities Use Category shall comply with all applicable standards in this chapter.

Sec. 78-71.4 Institutional and Community Service Use Category

- A. **Characteristics.** The institutions institutional and community service use category is characterized by use types that provide a variety of facilities, including those of a nonprofit or charitable nature providing a local service to people of the community. Generally, this category provides the service on-site or have employees at the site on a regular basis. The service is ongoing, and not merely for special events. The category includes community uses or facilities that have membership provisions that

are open to the general public to join at any time (for instance, any senior citizen could join a senior center). The service is provided by a public benefit association or non-profit organization. The use may provide special counseling, education, recreation or training. The use includes buildings that primarily provide meeting areas for religious activities; auditoriums; cemeteries, cultural centers and facilities; hospitals, museums; care for the temporarily disabled; and in-patient treatment programs. Accessory uses include offices, school facilities, meeting rooms, food preparation and parking.

B. Examples. Example use types include churches, temples, synagogues, and mosques; libraries, cultural facilities, senior centers, community centers, youth club facilities, and social service facilities; nursing or convalescent facilities; hospices; rehabilitation centers; residential programs for drug and alcohol treatment; and alternative or post incarceration facilities.

C. Similar Use Types, Accessory Uses and Prohibited Use Types.

1. **Group and Residential Homes.** Group home facilities or residential programs where individual units meet the definition of a dwelling unit in Article XVIII, Definitions, are in the category of residential uses.
2. **Recreation Services.** Recreation services are in the categories of indoor or outdoor entertainment.
3. **Health Clubs.** Health clubs are in the category of personal services and retail sales.
4. **Parks.** Parks are in the category of parks and open space.

D. Institutional and Community Category Specific Use Standards. All uses shall comply with all applicable standards in this chapter. In addition, the following specific use standards shall apply.

1. **Height Limitation for All Institutional and Community Service Use Category Uses.** The height of buildings located within 100 feet of existing single-family detached development or undeveloped land in a single-family detached zoning district shall not exceed the maximum height permitted in the adjacent single-family detached district.
2. **Hospitals.** Hospitals shall be located on an urban minor arterial street or higher street classification
3. **Religious Institutions.** The following shall apply to religious institutions in any zoning district.

- a. **Associated Child Daycare Centers.** Any child daycare center associated with the religious institution is considered an accessory use and shall comply with the standards of Section 78-80.4.I.
- b. **Associated Public or Private School.** Any school (public or private) associated with the religious institution is considered an accessory use and shall comply with the standards of section 78-80.4.R, School Uses in Conjunction with Religious Institutions.
- c. **Landscaped Buffer.** The religious institution shall provide a landscaped buffer a minimum of 15 feet in width along the yard(s) adjacent to lands on which there is existing single-family detached development and adjacent to undeveloped land in single-family attached and detached residential districts.
- d. **Waiver of Standard(s).** The town council shall have the authority to grant waivers to any of the standards listed in this Section to respond to an applicant's justifiable claim that the standards pose a substantial burden on religious exercise as guaranteed by the federal Religious Land Use and Institutionalized Persons Act of 2000 (42 USC § 2000), as amended. In granting such a waiver, the town council may require conditions consistent with the federal act that will secure substantially the objectives of the standard and that will substantially mitigate any potential adverse impact on the environment or surrounding land uses.

Sec. 78-71.5 Small Scale Alcohol Production Facilities Use Category

- A. **Characteristics.** The small scale alcohol production facilities use category includes uses involved in the production and packaging of alcoholic beverage for retail or wholesale distribution and for on-premises or off-premises consumption.
- B. **Examples.** Uses within this category include craft breweries, micro distilleries, micro-cideries, micro-wineries (without on-site vineyards), and brewpubs. The intent of craft breweries, micro-distilleries, micro-cideries, and micro-wineries is to produce alcoholic beverages in small quantities on an annual basis. The intent of a brewpub is to function as an eating establishment where food is prepared and served, but also to produce, on a small scale, alcoholic beverages for on-premises or off-premises consumption. Uses within this category shall meet all applicable laws and regulations required by the Virginia Alcoholic Beverages Control Act and shall maintain all licenses as required.
- C. **Similar Use Types, Accessory Uses and Prohibited Use Types.** Accessory uses within this category may include retail sales, entertainment and tasting rooms.
- D. **Small Scale Alcohol Production Facilities Category Specific Use Standards.** All uses shall comply with all applicable standards in this chapter. In addition, the following specific use standards shall apply.

1. **Licensing.** A valid license issued by the Virginia Alcoholic Beverage Control Board shall be held by the establishment at all times.
2. **Not Permitted as Home-Based Business.** Small scale alcohol production facilities shall not be permitted as a home-based business.
3. **Limits on Production.** Craft breweries, micro-cideries, and brewpubs shall produce not more than 5,000 barrels per year. Micro-distilleries shall produce small batch quantities only and shall not exceed 5,000 gallons per year. Micro-wineries (without on-site vineyards) shall produce no more than 5,000 cases per year.
4. **Ingredient Storage.** All ingredients used in the brewing, fermenting, and distilling processes shall be stored in doors, in sealed container, off the floor, and accordance with all applicable Health Department regulations.
5. **Disposal of Spent Ingredients.** Any spent ingredients used in the brewing, fermenting, and distilling processes shall be properly disposed to prevent discharge of odor and rodent infiltration. Any dumpster or receptacle where spent ingredients or other by-product of the brewing, fermenting, and distilling processes are disposed of shall be secured so as to prevent the discharge of any odors or gases and to prevent rodent infiltration.
6. **Exhaust Venting.** Any exhaust created from the brewing, fermenting, and distilling processes shall be collected in a non-venting stack condenser-type system and shall not be vented into the atmosphere.
7. **Outdoor Storage Prohibited.** Any type of outdoor storage of ingredients, products, or equipment used in the brewing, fermenting, and distilling processes shall not be permitted.

Sec. 78-71.6 Eating Establishments Use Category

- A. Characteristics.** The eating establishments use category is characterized by establishments that sell prepared food for on- or off-premise consumption. Outdoor eating areas are permitted in accordance with Section 78-80.4.N, Outdoor Seating Area of 25 seats or fewer, accessory to an enclosed restaurant with indoor seating. Drive through lanes associated with the eating establishment are permitted in accordance with Section 78-80.4.J, Drive-through Service accessory to a retail pharmacy, financial institution, laundry, eating establishment or other principal commercial use. See also Article XVIII - Definitions. Drive-in (not drive-through) window service is a term used to describe an establishment designed or operated to serve a patron while seated in an automobile parked in an off-street parking space. Drive-in window service is permitted with a special exception in this use category.

B. Examples. Examples include restaurants, cafeterias, delicatessens, yogurt or ice cream shops, and coffee shops.

C. Similar Use Types, Accessory Uses and Prohibited Use Types.

1. **Eating Establishment in Private Club.** Eating establishments in private clubs are in the category of indoor entertainment as accessory uses when the eating establishment is not the principal use.
2. **Restaurants as Part of Lodging Business.** Restaurants that are accessory to hotels, motels, and institutions are in the category of lodging businesses as accessory uses.
3. **Work Site Cafeterias.** Cafeterias on the site of a principal use in the category of light manufacturing, industrial service or office are considered accessory uses.

D. Eating Establishments Use Category Specific Standards. All uses shall comply with all applicable standards in this chapter. In addition, the following specific use standards shall apply :

1. **Noise and Odor.** Eating establishments shall be sufficiently insulated so no unreasonable noise or odor can be detected off-premises.
2. **Landscape Buffer.** Notwithstanding the provisions of Table 78-, Landscape Buffer Classifications, if an eating establishment is adjacent to existing single-family detached development, it shall provide a transitional landscape screen, a minimum of 20 feet in width along the property line which the single-family detached development abuts.
3. **Outdoor Eating Areas and Drive Throughs.** Outdoor eating areas are permitted as an accessory to an eating establishment in accordance with section 78-80.4.N, Outdoor Seating Area of 25 seats or Fewer, accessory to an enclosed restaurant with indoor seating. Drive through lanes associated with the eating establishment are permitted as an accessory use in accordance with section 78-80.4.J.
4. **Drive In Window Service by Special Exception.** Drive-in window service is permitted with a special exception in this use category in the Commercial Service District.

Sec. 78-71.7 Office Use Category

A. Characteristics. The office use category includes activities that are conducted in an office setting and that generally focus on business, government, financial or other professional services. Accessory uses may include cafeterias, parking, or other amenities primarily for the use of employees in the firm or building.

B. Examples. Example use types include business services establishments; professional service establishments such as lawyers, engineers, or architects; financial businesses such as accountants, brokerage houses, or real estate agents; data processing; sales offices; government and public utility offices; and broadcasting studios without on-site antennae.

C. Similar Use Types, Accessory Uses and Prohibited Use Types.

1. **Financial Institutions.** Financial businesses that operate from financial institutions such as banks and credit unions are in the category of personal services and retail sales.
2. **Offices.** Offices that are part of and located with a principal use in another use category are considered accessory to the firm's primary activities. Headquarters offices, when in conjunction with or adjacent to a principal use in another use category, are considered part of the other use category.
3. **Contractor Related Uses.** Contractors and others who perform services off-site are included in the office category if equipment and materials are not stored outside and fabrication, services, or similar work is not carried on at the site. Contractors' offices that include storage yards, fabrication or services on-site are in the category of warehousing.
4. **Medical Offices, Clinics and Labs.** Medical and dental offices or clinics, medical and dental labs, and blood-collection facilities are in the category of personal services and retail sales in use type "health care facility" or "health care laboratory."
5. **Communications Towers.** Communications towers associated with broadcasting studios are in the category of commercial utilities.
6. **Data Warehouses.** Data warehouses are in the category of warehousing.

D. Office Category Specific Use Standards. All office uses shall comply with all applicable standards in this chapter.

Sec. 78-71.8 Indoor Entertainment Use Category

- A. Characteristics.** This indoor entertainment use category is characterized by commercial uses that provide recreation or entertainment activities in an enclosed structure or structures. Accessory uses may include concessions, snack bars, restaurants, parking, and maintenance facilities.
- B. Examples.** Example use types include private clubs, amusement arcades, billiards parlors, bowling alleys, dance floors, indoor skating rinks, commercial swimming pools (indoor), enclosed skating rinks, racquet and tennis club facilities (indoor), health clubs, auditoriums and theaters for live performances or pre-recorded performances.

C. Similar Use Types, Accessory Uses and Prohibited Use Types.

1. **Private Clubs.** A private club in which the principal use is a restaurant is in the category of eating establishment.
2. **Restricted Facilities.** Indoor recreational facilities that are reserved for use by residents of particular residential developments and their guests are accessory to those residential use types.

D. Indoor Entertainment Category Specific Use Standards All indoor entertainment uses shall comply with all applicable standards in this chapter and the following specific standards:

1. **Indoor Entertainment Uses in the Herndon Downtown.** Indoor Entertainment Uses in the Herndon Downtown (designated in the downtown overlay as shown in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended) shall be of a scale and impact harmonious with existing development and planning policy for the Herndon Downtown. Factors to be considered include traffic impact, parking availability, pedestrian access, peak period visitation for the proposed use and positive economic multipliers for existing downtown businesses.

Sec. 78-71.9 Outdoor Entertainment Use Category

A. Characteristics. The outdoor entertainment use category is characterized by commercial uses that provide continuous recreation or entertainment-oriented activities. They primarily take place outdoors. They may take place in a number of structures that are arranged together in an outdoor setting. Accessory uses may include restaurants, bars, concessions, parking, and maintenance facilities.

B. Examples. Examples include commercially owned and operated facilities such as archery ranges, ball fields, baseball hitting facilities, basketball courts, swimming pools, golf driving ranges, miniature golf facilities, or tennis facilities.

C. Similar Use Types, Accessory Uses and Prohibited Use Types.

1. **Banquet Halls.** Banquet halls that are part of hotels or restaurants are accessory to those uses, which are included in the lodging businesses or personal services and retail sales categories, respectively.
2. **Public Facilities.** Publicly owned facilities are in the category of government facilities.
3. **Indoor Recreational Facilities.** Indoor continuous entertainment activities such as movie theaters, bowling alleys, game arcades, pool halls, dance halls, or indoor firing ranges are in the category of "indoor entertainment."

4. Restricted Facilities. Outdoor recreational facilities that are reserved for use by residents of particular residential developments and their guests are accessory to those residential uses.

5. Temporary Facilities/Events. Temporary outdoor events are addressed in Article IX - Temporary Uses and Structures.

D. Outdoor Entertainment Use Category Specific Standards. All outdoor entertainment uses shall comply with all applicable standards in this chapter.

Sec. 78-71.10 Personal Services and Retail Sales Use Category

A. Characteristics. The personal services and retail sales use category is characterized by firms involved in providing personal services or the sale, lease, or rent of new or used products to the general public. They may also provide product repair or services for consumer and business goods. Accessory uses may include offices, storage of goods, or repackaging of goods for on-site sale and parking.

B. Examples. Example use types include the following seven groups:

1. Retail Sales. Stores selling, leasing, or renting consumer, home, or business goods including art, art supplies, bicycles, clothing, convenience stores, decorator supplies, dry goods, electronic equipment, fabric,, home gardening supplies, gifts, groceries, hardware, home improvements, household products, jewelry sales and repair, pets, pet food, pharmaceuticals, plants, printer material, stationery, and videos; or food sales.

2. Durable Goods Sales. Stores selling, leasing, or renting retail durable goods including major household appliances; furniture; electrical, heating, cooling, plumbing supply, and lumber (other than contractor's materials); carpet and floor covering; office equipment and supply; and medical equipment and supply.

3. Personal Services. Laundromats; laundry and dry-cleaning drop-off establishments without any on-site cleaning; mailing and packing services; pharmacies; photo developing; photographic studios; artist's studios or art galleries; photocopy and blueprint services; hair, tanning and personal care services; psychics and mediums; tailors and dressmakers; schools of special instruction in disciplines such as recreation, self-improvement, adult education leading to a GED, arts of all kinds, faith-based subjects, language or other special subjects, and not including nursery schools, day care centers or preschools.

4. Health Care Services and Facilities; Health Care Laboratory. Emergency medical care facilities, medical and dental offices and clinics, medical and dental labs, blood-collection facilities and alternative treatments or therapy facilities, including chiropractic, acupuncture and massage therapy, among others. These facilities provide outpatient care only and on-site activities may include offices,

laboratories, teaching facilities, meeting areas, cafeterias, parking and maintenance.

5. **Product Repair and Services.** Repair of small home appliances, bicycles, clocks, watches, shoes, televisions, guns, canvas products, personal computers, and office equipment; locksmith; and upholstering shop.
6. **Mailing and Packing Service.** Mailing and packing business uses.
7. **Other Personal Services and Retail Sales.** Animal services (pet daycare, kennel, veterinary hospital or clinic) financial institutions (banks, credit unions, and investment or brokerage services); funeral home; and temporary seasonal stands for the sale of produce.

C. Similar Use Types, Accessory Uses and Prohibited Use Types.

1. **Laundry Services.** An establishment for the cleaning of garments, articles or goods of fabric, or a linen or diaper cleaning service establishment is considered a laundry or dry-cleaning plant and is in the category of industrial service.
2. **Lumberyard and Building Material Sales.** Lumberyards and other building material sales that sell primarily to contractors and do not have a retail orientation are in the category of Wholesale Sales.
3. **Vehicle Repair and Service.** Repair and service of motor vehicles, motorcycles, and light and medium trucks is in the category of vehicle sales and service.
4. **Commercial Printing.** Although walk-in and self-service photocopy, faxing, and photo developing businesses are permitted, publishing, lithography and bulk **production** of printed materials distributed by commercial vehicles are permitted under the industrial service use category.

D. Personal Services and Retail Sales Category Specific Use Standards. All personal services and retail sales uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply:

1. **All Uses.** No retail sales and service establishment shall display merchandise or conduct business between the storefront and the public street, except pursuant to Section 78-80.4.P, Outdoor Display of Products for Sale, or Section 78-155.2, Temporary Use Site Plans.
2. **Animal Hospitals, Commercial Kennels, Pet Daycare, Animal Shelters and Veterinary Clinics.** Animal hospitals, commercial kennels, pet daycare, animal shelters and veterinary clinics shall comply with the following standards:

- a. **Virginia Code Compliance.** Animal hospitals and veterinary clinics shall comply with the regulations of 18 VAC 150-20-200, Standards for veterinary establishments.
 - b. **No Outdoor Kennels.** Animal hospitals, commercial kennels, pet daycare, animal shelters and veterinary clinics shall not maintain kennels outside the principal building.
 - c. **Noise and Odor.** Animal hospitals, commercial kennels, pet daycare, animal shelters and veterinary clinics shall be sufficiently insulated so no unreasonable noise or odor can be detected off-premises.
 - d. **Waste.** Animal hospitals, commercial kennels, pet daycare, animal shelters and veterinary clinics shall properly control animal waste.
 - e. **Height Limitations.** If an animal hospital, commercial kennel, pet daycare, animal shelter or veterinary clinic is adjacent to existing single-family attached or detached development, or undeveloped land zoned for single-family attached or detached development the height of buildings shall not exceed the maximum height permitted in the adjoining zoning district.
 - f. **Landscaping Screen.** If an animal hospital, commercial kennel, pet daycare, animal shelter or veterinary clinic is adjacent to existing single-family detached or attached development, there shall be a transitional landscaped screen, a minimum of 20 feet in width along the property line which the single-family detached development abuts.
 - g. **Accessory Uses.** Uses accessory to an animal hospital, commercial kennel, pet daycare, animal shelter or veterinary clinic may include:
 - (1) Pet-related food or other retail materials related to the animal service, grooming services, as long as the accessory uses do not include more than 25 percent of the total gross floor area.
 - (2) Boarding of sick or well animals at animal hospitals and veterinary clinics.
3. **Pharmacy (Freestanding).** A significant portion of the parking areas shall be situated to the side and preferably to the rear of the primary building.
 4. **Financial Institutions.** Prior to obtaining a zoning appropriateness permit, the applicant shall provide to the zoning administrator a written statement from the Herndon Police stating that the Herndon Police Department has been notified of the proposed use and its proposed location.
 5. **Mailing and Packing Services.** Mailing and packing business uses in the CO, commercial office, and the Herndon Downtown (designated in the Downtown

Overlay as shown in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended) shall be of a scale and impact harmonious with existing development and planning policy for the Herndon Downtown. Factors to be considered include traffic impact, especially that of delivery vehicles serving the facility. Sites that warrant large areas on-site for truck loading, unloading, and circulation are discouraged in the CO district and in the Downtown.

Sec. 78-71.11 Vehicles Sales and Service Use Category

- A. Characteristics.** The vehicle sales and service use category is characterized by the direct sales of and services of passenger vehicles, light and medium trucks, and other consumer motor vehicles such as motorcycles. Accessory uses may include offices, sales of parts, and vehicle storage.
- B. Examples.** Examples include sales of automobiles or recreational vehicles; auto repair; auto servicing; auto wash and detail shops; full-service, mini-service, and self-service gas stations; vehicle full service washes; transmission or muffler shops; towing service; tire sales and mounting; taxicab service; or towing service.
- C. Similar Use Types, Accessory Uses and Prohibited Use Types.**
1. **Vehicle Sales and Rental.** Vehicle rentals and used vehicle sales are permitted as accessory uses; see Article VIII - Accessory Uses and Structures.
 2. **Fuel Facilities.** Refueling facilities for vehicles that belong to a specific use (fleet vehicles) are considered accessory uses if they are located on the site of the principal use.
 3. **Salvage of Vehicles.** Dismantling, wrecking, or sale of abandoned, wrecked, or inoperable vehicles or parts thereof is prohibited.
 4. **Exterior Storage of Vehicles and Parts.** Exterior storage of vehicles that are not for sale or rental, such as for a towing service or for vehicle repair, is prohibited. Exterior storage of vehicle parts is prohibited.
 5. **Wash Facilities.** An automatic vehicle wash shall be considered an accessory use to a gasoline sales use or other automotive use when it is located on the same lot. The automatic vehicle wash shall be governed by the use and dimensional standards applicable to the principal automotive use. Self-service vehicle washes when not associated with a vehicle full-service wash and detailing use or with a related automatic vehicle wash, are prohibited.
- D. Vehicle Sales and Service Category Specific Use Standards.** All vehicle sales and service uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply:
1. **Vehicle Sales.** Vehicle sales shall comply with the following standards:

- a. **Used Vehicles Sales Limited.** The sale of used vehicles as a principal use is prohibited. Vehicle rentals and used vehicle sales are permitted as accessory uses; see Article VIII - Accessory Uses and Structures.
 - b. **Outside Storage or Display.** There shall be no outside vehicle display or storage.
 - c. **No Vehicles on Rooftops.** There shall be no vehicle display on top of a building.
 - d. **Display Location.** There shall be no display of other materials for sale between the principal structure and the street.
 - e. **Test Drives.** Vehicles shall not be tested on residential streets.
2. **Vehicle Repair, Transmission and Muffler Shops, Sales of Vehicle Parts and Tires.** Vehicle Repair, Transmission and Muffler Shops, Sales of Vehicle Parts and Tires shall comply with the following standards:
- a. **General Location Limitations.** Such uses shall be located at least 250 feet from schools, daycare centers, residential uses, or undeveloped land in residential zoning districts.
 - b. **Location of Vehicles.** All vehicles shall be repaired and stored within an enclosed building. Temporary vehicle storage may be allowed in an outdoor storage area that shall be no larger than 25 percent of the total lot area. Such areas shall be located to the rear of the principal structure and be screened from offsite views. The height of materials and equipment stored shall not exceed the height of the screening fence or wall.
 - c. **Architectural Features.** Buildings shall have the same architectural features on all sides; further, any garage door openings shall be located to the side or rear of the building and shall be screened so as not to be visible from the street frontage of the property, and shall be architecturally compatible with the building group or neighborhood with which it is associated.
 - d. **Noise.** Such uses shall have no outdoor speaker or public address system which is audible off-site.
 - e. **Test Drives.** Vehicles shall not be tested on residential streets.
 - f. **Parking and Storage.** No vehicle shall be parked or stored as a source of parts, or park or store a vehicle for the purpose of sale or lease/rent. No vehicle shall be parked or stored that has been repaired and is awaiting removal for more than 15 consecutive days.

- g. Loaner Vehicles and Overnight Storage.** Vehicles offered by the business for use by customers of the business while customer vehicles are being repaired on the site may be stored on the site. Otherwise, no more than five vehicles shall be stored outdoors anywhere on the site overnight.
 - h. Screening.** All vehicle parts, dismantled vehicles, and similar materials shall be stored within an enclosed building or totally screened from view by a solid privacy fence.
 - i. Accessory Uses and Sales.** Accessory uses shall not include vehicle or tool rental and shall be limited to the servicing and retail sales of products used primarily by passenger vehicles.
 - j. Limitation on Abandoned, Wrecked and Inoperable Vehicles.** No more than two abandoned, wrecked, or inoperable vehicles shall be parked on the site for a continuous period of 72 hours.
- 3. Vehicle Full-Service Wash and Detailing.** Vehicle Full-Service Wash and Detailing shall comply with the following standards:
- a. Equipment and Activities to be Enclosed.** All equipment, supplies, and activities whether manual or automated, associated with this use shall be in a building(s) enclosed by walls, windows, and doors which may be open while the facility is in operation. Minor vehicle wash preparation, such as the hosing of vehicles prior to entering the wash bay, shall be permitted outside of a building provided that the activity is hidden from view from adjacent properties and rights-of-way by walls or evergreen landscaping located on the parcel in question. There may be outdoor seating areas and patios for the use of customers waiting for their vehicles.
 - b. Circulation and Access.** The operation and layout of the facility and the on-site traffic circulation shall be designed to prevent traffic congestion on abutting public streets.
 - c. Required Stacking Spaces.** A minimum of fourteen stacking spaces per wet wash bay shall be provided outside the building on the site for vehicles waiting to enter the facility.
 - d. Noise.** If the facility is abutting property zoned for or used for residential use at the time of site plan review, the application must include a report by an acoustical engineer confirming that the facility has been designed to meet the requirements of Section 78-130.2 of this chapter.
 - e. Waste Water.** At least 85 percent of the waste water generated by the facility must be reclaimed, and all of the waste water generated by the facility

must be collected on the site and disposed of or discharged in a manner which meets the requirements of all applicable federal, state, and local laws.

- f. **Overnight Storage.** Vehicles may not be stored on-site overnight unless they are stored within the building or buildings.
 - g. **Accessory Uses.** Accessory uses normally permitted within the applicable zoning district, including but not limited to coffee shops, shall be permitted as accessory uses to the facility.
 - h. **Self-Service Areas to be Enclosed.** A portion of the facility may be designed to allow customers to clean their own vehicles provided that all activity occurs within an enclosed building.
4. **Fuel Sales, with or without a Convenience Store.** Fuel Sales, with or without a Convenience Store shall comply with the following standards:
- a. **Limitations on Canopies.** Gasoline pumps and permanent canopies over gasoline pump islands that have supports located on the pump islands shall be set back a minimum of 25 feet from all property lines. No canopy shall extend over any required buffer or screening areas.
 - b. **Canopy Lighting.** Lighting for canopies for service stations and other similar uses shall not exceed an average of 12 foot-candles as measured at ground level at the inside of the outside edge of the canopy.
 - c. **Additional Standards.** The use must conform to all other standards and provisions of the Herndon Town Code, including Article XIV - Signs, and Section 78-130.9, Exterior Lighting Standards.
 - d. **Limitations of Repairs.** The enterprise shall not be used for the performance of major repairs, dismantling, wrecking or sale of vehicles and shall not include any outdoor storage of vehicles.
 - e. **Outdoor Storage and Display.** There shall be no outside storage or display of goods offered for sale.

Sec. 78-71.12 Lodging Businesses Use Category

- A. **Characteristics.** The lodging businesses use category includes rooms and dwelling units arranged for rent, lease, or interval occupancy, generally for stays of less than 30 days. Accessory uses may include pools and other recreational facilities, limited storage, restaurants, bars, meeting facilities, and offices.

- B. Examples.** Examples include hotels, inns, motels, conference centers, rooming houses and boarding houses.
- C. Personal Services and Retail Sales Use Category Specific Standards.** All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply:
1. **Hotel, Inn, Motels.** Hotels, inns and motels shall provide principal access to each guest room within the motel, inn or hotel from a hallway that is entirely enclosed within the structure of the hotel or motel building.

Sec. 78-71.13 Commercial Utilities Use Category

- A. Characteristics.** The commercial utilities use category includes major utilities, which are infrastructure services providing regional or community-wide service. Communication towers also are a type of utility. Utility uses generally do not regularly have employees at the site. Services may be publicly or privately provided. Accessory uses may include parking and control, monitoring, or transmission equipment.
- B. Examples.** Types of major utilities include water towers, waste treatment facilities; electrical substations; and maintenance/storage yards. Examples of communication infrastructure include facilities for transmitting wireless phones and pager services, and television and radio broadcasting equipment.
- C. Similar Use Types, Accessory Uses and Prohibited Use Types.** All uses shall comply with all applicable standards in this chapter, including Article XIII - Performance Standards. In addition, the following standards shall apply:
1. **Offices.** Utility offices are in the category of offices.
 2. **Support Facilities.** Ordinary on-site poles, lines, pipes, transformers, rights-of-way, and stormwater retention and detention facilities necessary to meet the needs of uses on the site are considered accessory uses.
 3. **Government Facilities and Utilities.** Government facilities and government-owned or maintained utilities are in the category of government facilities.
 4. **Minor Utilities.** Minor utilities such as water and sewage pump stations; stormwater retention and detention facilities; roof-mounted communications towers, poles, or antennae not exceeding 15 feet above the rooftop and related ground facilities erected on water tanks or water tank sites; and telephone exchanges are considered accessory uses. See Article VIII – Accessory Uses and Structures.
- D. Commercial Utilities Category Specific Use Standards.** All uses shall comply with all applicable standards in this chapter, including Article XIII - Performance Standards. In addition, the following standards shall apply:

1. **Electrical Power Facility, Substation, and Transmission Stations.** The zoning administrator may require that an electrical power facility, substation, or transmission station shall comply with the following standards:
 - a. **Proximity.** The electrical power facility, substation, or transmission station shall be within reasonable proximity of the area to be served by the facility.
 - b. **Setback, Screening and Buffering.** The electrical power facility, substation, or transmission station shall provide additional setbacks, screening and buffering around the perimeter of the proposed use if it is deemed necessary by the zoning administrator to ensure land use compatibility with surrounding uses.

2. **Communication Towers, Monopoles other Telecommunication Facilities.** Communication towers, monopoles, and other mobile or land-based telecommunication facilities including non-staffed equipment cabinets or structures shall meet the following standards: .
 - a. **Material and Color.** Except for antennas completely enclosed within a structure, all antennas and their supporting mounts shall be of a material or color that closely matches and blends with the structure on which it is mounted.
 - b. **Advertising.** No commercial advertising or signs shall be allowed on any monopole, tower, antenna, antenna support structure, or related equipment cabinet or structure.
 - c. **Additions, Changes and Modifications.** If any additions, changes or modifications are to be made to monopoles or towers, the building official shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change, or modifications conforms to structural wind load and all other requirements of the Virginia Uniform Statewide Building Code.
 - d. **Lighting, Signals and Illumination.** No signals, lights or illumination shall be permitted on an antenna unless required by the Federal Communications Commission, the Federal Aviation Administration or the town, provided, however, that on all antenna structures which exceed 100 feet in height, a steady red marker light shall be installed and operated at all times, unless the zoning administrator waives the red marker light requirement upon a determination by the Fairfax County Police Department that such marker light is not necessary for flight safety requirements for police and emergency helicopter operations. All such lights shall be shielded to prevent the downward transmission of light.

- e. **Location on Existing Structures as Accessory Use.** Antennas may be located on existing buildings or structures, to include existing towers and poles, as an accessory use. See Section 78-80.4.C.
- f. **Removal.** All antennas and related equipment cabinets or structures shall be removed within 120 days after such antennas or related equipment cabinets or structures are no longer in use.
- g. **Special Exception Required for Freestanding Facilities.** Freestanding communication towers, monopoles, and other structures designed to hold telecommunication antennae or microwave dishes (or both) shall be permitted in conjunction with non-staffed equipment cabinets or structures by special exception within all zoning districts and within planned developments when approved initially or by amendment when the land on which such facility is located is owned or operated by a public entity or governmental authority. Such land includes, but would not be limited to, public parks, public schools, fire stations, police stations, government office and service buildings, public recreational facilities, and cemeteries. Any such use shall comply with the following standards:
 - (1) Towers, monopoles, and other supporting structures with attached antennae or dishes may exceed the maximum permitted building height, but shall not exceed a maximum overall height of 125 feet over grade;
 - (2) Panel style antennas attached to towers, monopoles, or other supporting structures shall not exceed 108 inches in height and 24 inches in width.
 - (3) Dish style antennas attached to towers, monopoles, and other supporting structures shall not exceed three feet in diameter.
 - (4) Related non-staffed equipment cabinets or structures for each telecommunications provider shall not exceed 12 feet in height or a total of 500 square feet in gross floor area per telecommunications provider. Such structures shall be in accordance with the dimensional standards of the zoning district in which they are located.
 - (5) All equipment shall be screened with an opaque constructed solid fence or wall. Such fence or wall shall be in accordance with the standards of this chapter and shall be further screened by an evergreen hedge with a minimum height of no less than 48 inches over grade.
 - (6) Where reasonably practicable and appropriate, as determined by the zoning administrator using recognized standards, antennas attached to towers, monopoles, and other supporting structures shall be constructed in a manner as to reduce their visual impact. This goal shall be achieved through screening or applied stealthing or camouflaging methods.

- (7) Existing light poles and stanchions may be replaced to allow for collocation of antennas and such replacement structures may be increased in height up to an overall height not to exceed 125 feet over grade.
- (8) Within all residential zoning districts, towers, monopoles, and other supporting structures with attached antennae or dishes shall be located on parcels of no less than 50,000 square feet in total area. Such structures shall be placed at a distance of no less than one foot for every foot of height from abutting lot lines in residential zoning districts.

Sec. 78-71.14 Industrial Service Use Category

A. Characteristics. The industrial service use category is characterized by businesses that are engaged in the repair or servicing of industrial, business, or consumer machinery, equipment, products, or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers come to the site. Accessory activities may include retail sales, offices, parking, or storage. Where applicable such uses must meet the performance standards in Article XIII.

B. Examples. Example use types include: establishments for the mechanical cleaning of garments, articles or goods of fabric; linen or diaper cleaning service establishment; contractors of building, heating, plumbing, electrical services; document production, printing, engraving, commercial publishing and lithography; janitorial and building maintenance services; repair of electronic parts, electronic equipment, electric motors, communication equipment, or scientific or professional instruments; bulk and direct mail insertion and sealing; pest control (exterminators); photo-finishing laboratories; scientific research and scientific development without mass production; tool repair; and machining and welding repair shops.

C. Similar Use Types, Accessory Uses and Prohibited Use Types.

1. **Contractor Related Uses.** Contractors and others who perform services off-site are included in the offices use category, if major equipment and materials are not stored at the site and fabrication or similar work is not carried out at the site. If major equipment and materials are stored at the site, or fabrication or similar work is carried out on the site, then such Use types are classified in the warehouse use category.
2. **Prohibited Uses.** Prohibited uses include dry cleaning plants utilizing perchloroethylene; heavy equipment sales, rental, repair, or storage (except as an accessory use); heavy truck servicing and repair; truck stops; fuel oil distributors; and fuel yards.

D. Industrial Service Category Specific Use Standards. All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply:

- 1. Standards for All Uses.** Industrial service uses shall be subject to the following:
 - a. Location.** Structures, storage yards, and associated on-site activities other than required parking and landscaping shall be located at least 250 feet from lot lines shared with schools, daycare centers, residential uses, or undeveloped land in residential zoning districts.
 - b. Machines to be Enclosed.** Repair and store all machines within an enclosed building.
 - c. Fleet Storage.** Fleet storage shall be located within a masonry wall and gate providing 100 percent visual screen. The area for fleet storage shall be additional to the standard parking requirement for the use, and be no larger than 25 percent of the total lot area. Such area shall be located to the rear of the principal structure. The height of vehicles stored shall not exceed the height of the screening wall.

- 2. Scientific Research and Scientific Development.** Scientific research and scientific development uses shall meet the following standards:
 - a. Application and Information Required.** The scientific research and development activities to be performed shall be described in writing by the applicant and approval of an application for a zoning map amendment for this purpose, a zoning inspection permit, or a zoning appropriateness permit for this use shall be based upon the nature, purpose and scope of the research and development and its effect upon the general welfare of the community.
 - b. Landscaping and Screening.** In addition to the landscape and screening requirements in Article XI, additional landscaping and screening may be required as deemed appropriate by the zoning administrator to afford maximum protection to adjoining property and strict adherence to the required landscaping shall be required.

- 3. Dry Cleaning and Laundry Plants. Dry cleaning and laundry plants shall meet the following standards:**
 - a. Location.** Dry cleaning and laundry plant buildings shall be located at least 250 feet from schools, daycare centers, residential uses, or undeveloped land in residential zoning districts.
 - b. Enclosed Building Required.** Dry cleaning and laundry plants shall be within an enclosed building where there is minimal chance that malfunctioning

- equipment or improper operations could adversely affect persons outside of the establishment.
- c. **Limitations on Cleaning Products.** Dry cleaning and laundry plants shall not use perchloroethylene and shall use only .Use nonflammable liquids in the cleaning processes that emit no odor, fumes, or steam detectable to normal senses from off the premises.
 - d. **Compliance.** Dry cleaning and laundry plants shall comply with all state and federal laws.

Sec. 78-71.15 Light Manufacturing Use Category

- A. **Characteristics.** The light manufacturing use category includes the mechanical transformation of predominantly previously prepared materials into new products, including assembly of component parts and the creation of products for sale to the wholesale or retail markets or directly to consumers. Such uses are wholly confined within an enclosed building and must meet the performance standards in Article XIII.
- B. **Examples.** Example use types of light manufacturing include: apparel production; assembly of pre-fabricated parts; assembly of artificial limbs, dentures, hearing aids, and surgical instruments; computer design, development or production; production or fabrication of electronic parts, electronic equipment, optical instruments or devices, aquariums, electric motors, communication equipment, scientific or professional instruments, precision items; research laboratories; testing for purposes of scientific research and scientific development; sign making; machining and welding fabrication or production; and woodworking and cabinet building.
- C. **Similar Use Types, Accessory Uses and Prohibited Use Types.** Manufacture and production of goods from composted organic material or hazardous materials is prohibited.
- D. **Light Manufacturing Category Specific Use Standards.** All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply:
 - 1. **Standards for All Uses. Light manufacturing uses shall be subject to the following:**
 - a. **Location.** Structures, storage yards, and associated on-site activities other than required parking and landscaping shall be located at least 250 feet from lot lines shared with schools, daycare centers, residential uses, or undeveloped land in residential zoning districts.
 - b. **Enclosed Building Required.** Repair and storage of all machines and equipment shall occur within an enclosed building.

- c. **Landscaping and Screening.** In addition to the landscape and screening requirements in Article XI, additional landscaping and screening may be required as deemed appropriate by the zoning administrator to afford maximum protection to adjoining property and strict adherence to the required landscaping shall be required.
 - d. **Fleet Storage.** Fleet storage shall be located within a wall and gate providing 100 percent visual screen. The area for fleet storage shall be additional to the standard parking requirement for the use, and be no larger than 25 percent of the total lot area. Such area shall be located to the rear of the principal structure. The height of vehicles stored shall not exceed the height of the screening wall.
2. **Research Laboratories or Testing for Purposes of Scientific Research and Scientific Development.** The activities to be performed shall be described in writing by the applicant and approval of an application for a zoning map amendment for this purpose, a zoning inspection permit, or a zoning appropriateness permit for this use shall be based upon the nature, purpose and scope of the activity and its effect upon the general welfare of the community.
 3. **Uses Involving Freight Delivery, Storage, Mass Production and Transporting of Finished Products.** The freight activities to be performed shall be described in writing by the applicant and may be subject to review for transportation impact. Approval of an application for a zoning map amendment for this purpose, a zoning inspection permit, or a zoning appropriateness permit for this use may include conditions for mitigating any transportation impact associated with freight hauling, delivery and distribution. Conditions shall be based upon the nature, purpose and scope of the activity and its effect upon the general welfare of the community.

Sec. 78-71.16 Self-Service Storage Use Category

- A. **Characteristics.** The self-service storage use category is characterized by uses that provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing or removing personal property.
- B. **Examples.** Examples include facilities that provide individual storage areas for rent. These uses are also called "mini-warehouses."
- C. **Similar Use Types, Accessory Uses and Prohibited Use Types.**
 1. **Transfer and Storage Use.** A transfer and storage business where there are no **individual** storage areas or where employees are the primary movers of the goods to be stored or transferred is in the warehouse and freight movement use category.

2. **Accessory Uses.** Accessory uses may include living quarters for a resident manager or security personnel, or leasing offices. Use of the storage areas for business operations, sales, service, repair, or manufacturing operations is not considered accessory to the use. The rental of trucks or equipment is also not considered accessory to the use.

D. Self-Service Storage Category Specific Use Standards. All uses shall comply with all applicable standards in this chapter.

1. **Standards for All Uses.** Self-service storage shall comply with the following standards: :
 - a. **Limited Commercial Uses.** The only commercial uses permitted on site shall be the rental of storage bays and the pickup and deposit of goods or property in storage.
 - b. **Retail Sales.** Retail sale may be permitted as an accessory use limited to the lesser of either 40 percent of the area containing the office or 5,000 square feet.
 - c. **Use of Storage Bays.** Storage bays shall not be used to manufacture, fabricate or process goods; service or repair vehicles, small engines or electrical equipment, or to conduct similar repair activities; conduct garage sales or retail sales of any kind; or conduct any other commercial or industrial activity on the site.
 - d. **Caretaker Residence Allowed.** One security or caretaker residence may be developed on the site.
 - e. **Not Legal Address.** Individual storage bays or private postal boxes within a self-service storage facility use shall not be considered premises for the purpose of assigning a legal address.
 - f. **Stored Items Shall be Enclosed.** Except as provided in this section, all property stored on the site shall be entirely within enclosed buildings.
 - g. **Storage of Recreational Vehicles.** Open storage of recreational vehicles and dry storage of pleasure boats of the type customarily maintained by persons for their personal use shall be permitted within a self service storage facility use, provided that the following standards are met:
 - (1) The storage shall occur only within a designated area. The designated area shall be clearly delineated.
 - (2) The storage area shall not exceed 25 percent of the buildable area of the site.

- (3) The storage area shall be entirely screened from view from adjacent residential areas and public streets by a building or solid wall with landscaping on the outside of the wall.
- (4) Storage shall not occur within the area set aside for minimum building setbacks.
- (5) No vehicle maintenance, washing, or repair shall be permitted.
- h. Circulation and Parking.** If separate buildings are constructed, there shall be adequate space for the circulation and parking of large moving vans.
- i. Storage Bay Doors.** Storage bay doors shall not face any abutting property located in a residential district, nor shall they be visible from any public road.
- j. Hours of Operation.** Hours of public access to a self-storage use adjacent to a residential zoning district shall be restricted to between 6:00 a.m. to 9:00 p.m. Monday through Friday except federal holidays and 7:00 a.m. to 10:00 p.m. on Saturdays, Sundays and Federal Holidays.
- k. Screening of Roof Mounted Equipment.** A screen shall be constructed to obscure roof-mounted heating and air conditioning and other equipment, if any. The combined height of the building and the screen shall not exceed the height limit in the zoning district where the use is permitted.
- l. Stacking and Turning** Be designed to ensure proper functioning of the site as related to vehicle stacking, circulation and turning movements.
- m. Enclosed Trash Facilities.** Provide adequate, enclosed trash storage facilities on the site.

Sec. 78-71.17 Transportation and Parking Use Category

- A. Characteristics.** The transportation and parking use category is characterized by use types that include facilities for public bus maintenance and parking that are not accessories to a specific principal use and at which a fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also in the category of transportation and parking.
- B. Examples.** Example use types include public bus maintenance facilities, commercial parking lots or structures, and mixed parking facilities (partially accessory to a specific use, partially for rent to others except for occasional special events).

C. Similar Use Types, Accessory Uses and Prohibited Use Types.

1. **Public Transit and Parking Facilities.** Local bus stops, bus stop shelters, and public park-and-ride lots and public parking structures are in the category of government facilities.
2. **Occasional Use of Accessory Parking.** Parking facilities that are accessory to a principal use, but that charge the public to park for occasional events nearby, are not considered transportation and parking use types.
3. **Leased Accessory Parking.** Parking facilities that are accessory to a principal use are not considered transportation and parking use types, even if the operator leases the facility to the principal use or charges a fee to the individuals who park in the facility.
4. **Sales and Service of Vehicles.** Sales or servicing of vehicles is in the category of vehicle sales and service.

D. Transportation and Parking Category Specific Use Standards. All transportation and parking uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply:

1. **Public Bus Maintenance Facilities.** Public bus maintenance facilities shall comply with the following standards:
 - a. **Location.** Public bus maintenance facilities shall be located at least 250 feet from schools, daycare centers, residential uses, or vacant land in residential zoning districts.
 - b. **Location of Storage Areas.** Bus maintenance facilities shall not locate storage areas within a required setback or buffer.
 - c. **Screening.** All outside storage areas shall be screened with a solid wall or fence with a minimum height of eight feet.
 - d. **Noise.** Public bus maintenance facilities have no outdoor speaker or public address system that is audible off-site.
2. **Parking Lot or Structures.** A parking lot or structure shall comply with the following standards:
 - a. **Principal Use.** A parking lot or structure shall be a principal use. Parking spaces may be rented for parking.
 - b. **Accessory Uses.** Space for offices, personal services or retail sales are allowed to be developed within a parking structure, or attached to it, if

- permitted by the underlying zoning district, in floor area equivalent to 49 percent of the parking structure.
- c. **Landscaping.** Landscape requirements shall be met for both parking lots and parking structures. In the case of parking structures, landscaping may be provided on the structure itself in planters with proper irrigation and drainage accommodations.
 - d. **Circulation and Access.** Parking lots and structures shall be designed to avoid vehicular entrances and exits across from residentially zoned property unless the property is developed for a use other than residential.

Sec. 78-71.18 Warehousing Use Category

- A. **Characteristics.** The warehousing use category includes establishments that are involved in the storage or movement of goods for themselves or other firms, businesses or households. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present. Accessory uses include offices, truck fleet parking, and maintenance areas. This category also includes electronic warehousing characterized by structures that are primarily occupied by technical and electronic equipment. Operations are characterized by electronic functions rather than the movement of physical objects. Typically, only a small number of employees are present on a site primarily for the purpose of servicing electronic equipment. Traffic to and from an electronic warehousing use type typically involves little heavy vehicle traffic for day-to-day operations, with fiber optic cables or other electronic communications media instead serving as the primary means of connecting the functions of the use to customers and others.
- B. **Examples.** Example use types include separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; parcel services; communication/transmission warehousing, also known as "data warehousing;" electronic switching centers for telecommunications; contractors with storage yards; and mass storage facilities for electronic data.
- C. **Similar Use Types, Accessory Uses and Prohibited Use Types.** Contractor's offices that do not include storage yards are in the category of offices. .
- D. **Warehousing Category Specific Use Standards.** All uses shall comply with all applicable standards in this chapter. In addition, the following standards shall apply.
 - 1. **Electronic Warehousing.** For all electronic warehousing uses, exterior areas devoted to auxiliary generators shall be screened on all sides by a brick or block enclosure that matches the exterior color of the principal building.

Telecommunications uses and related electronic and mechanical equipment are subject to the following standards:

- a. Equipment Area.** The area for equipment shall be designated on a site plan and shall occupy at least 2,000 square feet of floor area within a single building.
 - b. Users and Customers.** The equipment shall primarily serve off-site users or customers.
 - c. Employee Workspace.** The office, workstation, or normal work place of any individual who works in the building housing this designated area shall be outside of the designated area for computation purposes.
 - 2. Contractors Storage Yards.** The contractors storage area shall meet all of the following standards:
 - a. Storage Yard Location.** It shall be incorporated into the overall design of the primary structure on the site and shall be located at the rear of the primary structure.
 - b. Screening/Fencing/Berming.** The storage yard It shall be screened from view from all property lines and adjacent rights-of-way by an opaque fence or wall between six and eight feet in height that incorporates at least one of the predominant materials and one of the predominant colors used in the primary structure. Materials may not be stored higher than the height of the primary structure. The perimeter of the fence or wall shall be landscaped with a seven foot wide strip containing a minimum of one tree for every 150 square feet of lot area. A landscaped earth berm may be used instead of or in combination with a fence or wall.
 - c. Color.** If the outdoor storage area is covered, then the covering shall include at least one of the predominant exposed roofing colors on the primary structure.
 - d. Storage of Flammable Liquids.** Flammable liquids or gases in excess of 1,000 gallons shall be stored underground.
 - e. Exterior Lighting.** If installed, exterior lighting shall meet the functional needs of the establishment without adversely affecting adjacent properties or the neighborhood.
- 3. Accessory Retail Sales.** Retail sales may be permitted as an accessory use in a warehouse establishment, to be limited to the lesser of either 25 percent of the establishment's gross floor area or 5,000 square feet.

Sec. 78-71.19 Wholesale Sales Use Category

- A. Characteristics.** The wholesale sales use category includes firms involved in the sale, lease, or rental of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or taking of orders and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited. Products may be picked up on-site or delivered to the customer. Accessory uses may include offices, product repair, warehouses, minor fabrication services, and repackaging of goods.
- B. Examples.** Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures; contractor's materials; mail order houses; and wholesalers of food, clothing, auto parts, and building hardware.
- C. Similar Use Types, Accessory Uses and Prohibited Use Types.**
- 1. Sales to Public.** Firms that engage primarily in sales to the general public or on a membership basis are in the category of personal services and retail sales.
 - 2. Storage of Goods.** Firms that are primarily storing goods with little on-site business activity are in the category of Warehousing.
- D. Wholesale Sales Category Specific Use Standards.** All uses shall comply with all applicable standards in this chapter.

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ARTICLE VIII – ACCESSORY USES

Sec. 78-80 Accessory Uses and Structures

The following sections contain regulations for accessory uses and structures.

Sec. 78-80.1 Accessory Uses and Structures, Generally

- A. Purpose and Intent.** Sections 78-80.1 through 78-80.5 authorize the establishment of accessory uses and structures that are incidental and customarily subordinate to principal uses. The town's intent is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, and so long as they comply with the standards set forth in this section to reduce potentially adverse impacts on surrounding properties. Some accessory uses are required (such as parking), some are permitted by right (such as signs), some are permitted as special exceptions (such as accessory dwelling units) and many are allowed in planned development districts.
- B. Time of Establishment.** No accessory use shall be established and no accessory structures shall be allowed on land until after the principal structure is constructed.
- C. Standards for All Accessory Uses and Structures** The following standards apply to all accessory uses and structures:
1. **Relation to Principal Use.** Any accessory use or structure shall directly serve the principal use or structure.
 2. **Incidental to Primary Use.** Any accessory use or structure be customarily accessory and clearly incidental to the principal use.
 3. **Subordinate in Nature.** Any accessory use or structure shall be subordinate in area, extent, and purpose to the principal use or structure. An accessory use may not exceed 25 percent of the floor area shared with the principal use, and any combination of more than two accessory uses may not exceed 50 percent of the floor area shared with the principal use.
 4. **Ownership.** Any accessory use or structure shall be owned or operated by the same entity owning the principal use or structure.
 5. **Location.** Any accessory use or structure shall be located on the same lot as the principal use or structure or on a contiguous lot.
 6. **Compliance.** Together with the principal use or structure, any accessory use or structure shall not violate the bulk, density, parking, landscaping, or open space standards of this chapter. Therefore, all accessory uses and structures shall conform to the applicable requirements of this chapter, including the use

regulations in Article VII, Use Regulations, and the dimensional standards in individual zoning districts.

- D. Additional Use-Specific Standards.** Regardless of whether or not an accessory use is permitted by right, permitted as a special exception, or allowed in a planned development, there may be additional regulations that are applicable to a specific accessory use. Use-specific standards are listed following Table 78-80.2.C. These standards apply to all zoning districts unless otherwise specified.
- E. Conflicting Provisions.** The provisions of this section establish additional standards and regulations for accessory uses and structures. In case of any conflict between the accessory use/structure standards of this section and any other requirement of this chapter, the standards of this section shall control.
- F. Other Approvals.** In addition to standards contained in this Article, accessory uses may be subject to other approvals such as a zoning inspection permit, a zoning appropriateness permit, or building permit.
- G. Restricted or Prohibited Accessory Uses and Structures.** Certain accessory uses and structures shall be prohibited or restricted as follows:
- 1. Prohibited in all Zoning Districts.** The following uses are prohibited in all zoning districts:
 - a. The commercial display and sale of vehicles shall be prohibited in all zoning districts, except for approved auto sales businesses that comply with all requirements of this chapter.
 - b. Individually-owned vehicles may be identified for sale provided:
 - (1) The vehicle is parked on a paved surface (Section 78-100.9.B);
 - (2) The vehicle is in operable condition (Herndon Town Code, section 26-307).
 - 2. Restricted in Residential Zoning Districts.** The following activities shall not be regarded as accessory to a residential principal use and are restricted in residential districts as provided below.
 - a. Vehicle repair, including engine, body, or other repair or repainting of vehicles owned by a person not residing at the address is prohibited.
 - b. Portable storage units may not be established as an accessory structure on a residential site. For provisions about use of portable storage units as a temporary use, see Article IX - Temporary Uses and Structures.
 - c. For provisions about parking of commercial vehicles in residential districts, see Section 78-100.9.B.

Sec. 78-80.2 Table of Permitted and Allowed Accessory Uses and Structures

A. Accessory Use Table Format. The symbols listed in the Table 78-80.2.C have the following meanings:

- 1. **“P” Permitted Accessory Uses.** A "P" in a cell indicates that an Accessory Use is permitted by right in the respective zoning district, subject to compliance with the use-specific standards set forth in the final column of the Table of Permitted and Allowed Accessory Uses and Structures. Permitted accessory uses are subject to all other applicable regulations of this chapter, including those set forth in Article II - Zoning Districts, Article XI - Development Standards and Articles for base and overlay zoning and overlays in Articles III through VI. A principal use permitted in Table 78-70.2.D: Table of Principal Permitted and Allowed Uses, can be permitted as an accessory use in the same zoning district where it is permitted as a principal use, subject to restrictions listed in this section.
- 2. **“S” Special Exception Uses.** An "S" in a cell indicates that an Accessory Use is permitted by special exception in the respective zoning district, subject to compliance with the use-specific standards listed in this section, and approval of a special exception (Section 78-155.3). It shall be unlawful to conduct an accessory use requiring a special exception without proper approval of a special exception application.
- 3. **“Z” Allowed Uses in Planned Developments.** A “Z” in a cell indicates that an Accessory Use is an allowed use in the respective planned development district, subject to approval as a zoning map amendment (Section 78-155.1).
- 4. **Uses Not Allowed.** A blank cell indicates that the accessory use is prohibited in the zoning district.

B. Unlisted Uses. Where a particular accessory use is not specifically listed in a zoning district or in Table 78-80.2.C: Table of Permitted and Allowed Accessory Uses and Structures, will treat the consideration of unlisted accessory uses and structures as an interpretation and will follow procedures established for determinations in Section 78-150.6.E subject to the standards established in for considering unlisted uses in accordance with Section 78-70.1.F.

C. Table of Permitted and Allowed Accessory Uses and Structures. The Table of Permitted and Allowed Accessory Uses and Structures, Table 78-80.2.C. identifies the uses permitted within base districts. See also section 78-70.2.D: Table of Principal Permitted and Allowed Uses, and Table 78-90.1.B, Allowed Temporary Uses and Structures; See also use specific standards in Section 78-80.4)

<p>Table 78-80.2.D. TABLE OF PERMITTED AND ALLOWED ACCESSORY USES & STRUCTURES <i>KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z = Use Allowed Subject to Zoning Map Amendment Approval</i></p> <p>Notes: 1.A blank cell means the use is prohibited in the district; 2. Uses may be subject to use specific standards as noted in the last column **For Permitted Accessory Us5es in PD-TOC see Section 78-50.7; For Accessory Uses Permitted and Allowed in PD-W see Section 78-50.8.</p>

ACCESSORY USE	Residential Districts				Business Districts				Planned Development District				Suppl Req.
	R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD-R	PD-B	PD-TD PD-D	PD-TOC PD-W	See Section
Accessory Dwelling Unit	S	S	S						Z			**	§78-80.4.A
Accessory Food Preparation Area – Secondary Kitchen	S	S	S		S				S		S	**	§78-80.4.B
Accessory Food Preparation – Wet Bar	P	P	P	P	P	P	P	P	P	P	P	**	§78-80.4.B
Antennae of all kinds (except commercial communication towers, freestanding)	P	P	P	P	P	P	P	P	Z	Z	Z	**	§78-80.4.C
Bed and Breakfast Establishment	S	S									S	**	§78-80.4.D
Car/Vehicle Rental						S		S		S	S	**	§78-80.4.E
Car/Vehicle Used Sales								S				**	§78-80.4.G
Car/Vehicle Wash (accessory to other automotive uses)						P		S				**	§78-80.4.F
Caretaker or Security Guard's Residence						P		P				**	§78-80.4.H
Commercial Communication Towers, Freestanding	S	S	S	S	S	S	S	S	Z	Z	Z	**	§78-71.13.D.2
Daycare Center, Childcare Center or Pre-School					S	S	S	S	Z	Z	Z	**	§78-80.4.I
Drive-Through Service						S		S		Z		**	§78-80.4.J
Financial Institutions, Accessory					P	P	P	P		Z	Z	**	§78-80.4.K
Home-Based Business, Including Daycare or Childcare	P	P	P	P					Z		Z	**	§78-80.5
Keeping of Livestock												**	§78-80.4.L
Minor Utilities	P	P	P	P	P	P	P	P	Z	Z	Z	**	§78-80.4.M
Mobile Food Unit Preparer, Full Service					P	P	P	P		P	P	**	§78-80.4.T
Mobile Food Unit Dispenser, Limited Service												**	Chap. 14, Art. III, Town Code
Outdoor Restaurant Seating					P	P	P	P	Z	Z	Z	**	§78-80.4.N
Outdoor Storage (as an accessory use)						P		P				**	§78-80.4.O
Outdoor Display of Products for Sale					P	P					Z	**	§78-80.4.P
Parapets, Penthouses for Equipment and Other Roof Structures				P	P	P	P	P		Z	Z	**	§78-80.3.D
Recreational Vehicle Parking and Storage of Individually-Owned Vehicles	P	P	P	P					Z			**	§78-80.4.Q
School Uses in Conjunction with, and on the same site as, Religious Institution	S	S			S			S	Z	Z	Z	**	§78-80.4.R
Social Service and Similar Community Service Uses	S	S	S	S	S	S						**	§78-80.4.S
Features such as Fences, Walls, Retaining Walls, Gate Houses, Trash Enclosures, Refuse Containers, Screening Enclosures, Storage Sheds, and Swimming Pools	P	P	P	P	P	P	P	P	A	A	A	**	§78-80.3.C §78-21.F

Sec. 78-80.3 Accessory Structure Standards

Accessory structures and features shall comply with the following zoning-district specific standards.

A. Accessory Structures in Residential Districts. Accessory structures in residential district shall meet the following standards:

- 1. Location.** Accessory structures, except fences and walls, shall not be located within a required setback or required side yard, except accessory buildings on corner lots may be located within the side yard. Accessory structures except fences and walls shall be located so the structure is not closer than:
 - a. Five feet to any alley line;
 - b. Two feet to any side or rear lot line, except for a townhouse dwelling lot, where the accessory structure may be located on the side or rear lot line.
 - c. Ten feet to the principal dwelling for any single family detached or duplex dwelling.
- 2. Maximum Height.** The height of an accessory structure shall not exceed the lesser of the height of the principal structure on the site, or 15 feet.
- 3. Maximum Floor Area.** On any lot, the combined floor area of all detached accessory structures shall not be greater than 50 percent of the floor area of the principal structure, unless otherwise specified in this chapter.
- 4. Residential Occupancy.** Residential occupancy shall not be allowed in any accessory structure except under the provisions of Section 78-80.4., Accessory Dwelling Unit.
- 5. Temporary Accessory Structures.** Temporary accessory structures shall be governed by the procedures and standards of section 78-155.6.E.4 Temporary Use Site Plan, and Article IX - Temporary Uses and Structures.
- 6. Required Approvals.** On lots with single-family detached or duplex dwellings, the construction, replacement or enlargement of an accessory building when the alteration is:
 - a. Less than 750 square feet may require a building permit and a building location survey in accordance with Section 78-155.6.E.1
 - b. 750 square feet of floor area or more must be approved through a single lot development plan in accordance with Section 78-78-155.6.E.2

B. Accessory Structures in Multi-Family and Nonresidential Districts. Accessory structures in multi-family and nonresidential districts shall meet the following standards:

- 1. General Requirements.** Structures accessory to multi-family and nonresidential uses shall be subject to the approval of a site plan and approved

through the site plan review process, Section 78-155.6. and shall be subject to approval by the Architectural Review Board under Chapter 58 of the Code of Ordinances or the Heritage Preservation Review Board under section 78-155.7.

2. **Location.** The location of accessory structures in multi-family and nonresidential districts shall be subject to the following:
 - a. Accessory structures other than gate houses shall not be located within the required front setback.
 - b. Accessory structures shall not be located within any required buffer, screening or landscaped areas.
 - c. Accessory buildings located on land adjacent to existing residential development or undeveloped land in a residential zoning district shall be located not closer to the property line than a distance equivalent to the height of the accessory structure.
 - d. Trash enclosures shall be located at least 50 feet away from a lot line adjoining existing residential development or undeveloped land in a residential zoning district.
 3. **Maximum Height.** The height of an accessory structure other than a parking structure shall not exceed the lesser of the height of the principal structure on the site, or 18 feet. A parking structure shall not exceed the height of the principal structure.
 4. **Maximum Floor Area.** The maximum floor area of all structures, other than parking structures, accessory to principal multi-family and nonresidential uses shall not exceed ten percent of the area of the lot on which the permitted principal use is located.
 5. **Temporary Accessory Uses and Structures.** Temporary accessory uses and structures shall be governed by the procedures and standards of section 78-155.6.E.4, Temporary Use Site Plan, and Article IX -Temporary Uses and Structures.
- C. Accessory Features (such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools) In All Zoning Districts.** Standards stated elsewhere in this chapter shall govern for specific accessory structures or uses. The following standards shall apply to features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers and screening enclosures:
1. **Within Heritage Preservation Overlay District.** A certificate of appropriateness may be required in the Heritage Preservation Overlay District.

2. **ARB Review.** Approval by the architectural review board may be required for multi-family and non-residential properties outside of the heritage preservation overlay district.
3. **Development Standards.** Development standards for fences, walls, waste receptacles, refuse collection points, retaining walls, storage structures, and other features apply and are contained in Article XI -Development Standards.

D. Architectural and Mechanical Features (such as parapets, penthouses for equipment, flagpoles, chimneys, skylights, steeples and other roof structures) In All Districts. Parapets, penthouses for equipment such as elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, flagpoles, chimneys, skylights, steeples and other roof structures are permitted as features accessory to the principal structure, and subject to the following:

1. **No Additional Floor Area.** Such features shall not be used for providing additional floor area;
2. **Concealment.** Equipment shall be concealed by exterior material of the same type as that used in the exterior walls of the principal structure;
3. **Height Limit.** Features shall not exceed 25 feet over the prescribed height limit in the zoning district in which the principal structure is located; and
4. **Noise.** Equipment noise shall be contained or managed so as to minimize its off-site effect.

Sec. 78-80.4 Standards for Specific Accessory Uses and Structures by Use Type

Accessory uses and structures listed below shall comply with the following specific standards.

- A. **Accessory Dwelling Unit.** An accessory dwelling unit shall comply with the following standards:
 1. **Special Exception Required.** An accessory dwelling unit shall be permitted by special exception in accordance with Section 78-155.3 and Article VIII - Accessory Use Regulations.
 2. **Compliance with Building and Zoning Standards.** An accessory dwelling unit shall comply with all applicable building and development standards for dwelling units in the zoning district in which the accessory dwelling unit will be located. An accessory dwelling unit shall also comply with all applicable standards for the principal dwelling.

- 3. **No Mobile Homes or Recreational Vehicles as Accessory Dwellings.** Mobile homes, recreational vehicles, travel trailers, and the like shall not be used as accessory dwelling units.
- 4. **One Accessory Unit Per Lot.** There shall be no more than one accessory dwelling unit on a lot in addition to the principal dwelling.
- 5. **Size Limit.** The floor area of an accessory dwelling unit shall not exceed 35 percent of the gross floor area of the principal dwelling, or 1,200 square feet, whichever is less.
- 6. **Entrance Location.** If the accessory dwelling unit is a part of the principal structure on the lot, any external entrance for the accessory dwelling unit shall be located on the side or rear of the structure.
- 7. **Limit on Bedrooms and Occupancy.** An accessory dwelling unit shall not contain more than two bedrooms or be occupied by more than two persons.
- 8. **Occupancy Standards.** An accessory dwelling unit shall be subject to the dwelling unit occupancy standards of section 78-170.6. Either the accessory dwelling unit or the principal dwelling shall be occupied by the owner of the principal dwelling. Additionally, either the accessory dwelling unit or the principal dwelling on a property shall be occupied by at least one person who meets the following qualifications:
 - a. The person is at least 62 years of age; or
 - b. The person has a physical, mental, or cognitive disability:
 - (1) As certified by the Social Security Administration, the Veterans Administration, or the Railroad Retirement Board; or
 - (2) As confirmed in writing signed by a licensed medical practitioner or a practitioner licensed in an allied health field.
 - (3) This section shall not be deemed to exclude individuals who meet the qualifications above and are able to seek or engage in employment.
- 9. **Parking.** There shall be a minimum of one off-street parking space with convenient access to a street for the accessory dwelling unit. The parking shall be in addition to the requirements specified for the principal dwelling.
- 10. **Not To Be Sold Separately.** Accessory dwelling units shall not be sold apart from the principal dwelling upon the same lot where they are located.
- 11. **Compliance with Health, Safety, Sanitation and Building Code Regulations.** Any accessory dwelling unit shall meet the applicable code regulations for building, safety, health, and sanitation standards. During reasonable hours upon

prior notice, the applicant shall make provisions to allow officials to make the appropriate inspections.

12. Zoning Permit and Special Exception Time Limits. A zoning inspection permit is required for an accessory dwelling unit. The special exception and zoning inspection permit for the accessory dwelling unit shall expire:

- a. Ninety days from the date on which the owner no longer occupies the property. The owner shall notify the zoning administrator at such time as the owner no longer occupies the property.
- b. Two years from the date of approval of the special exception if required improvements have not been completed.
- c. One year from the date the use ceased.
- d. At any time the use does not comply with any of the conditions of approval or the terms of this chapter.

13. Conflicting Provisions. In the case of any conflict between the accessory dwelling unit standards of this section and any other requirement of this chapter or the subdivision ordinance, the standards of this section shall control.

B. Accessory Food Preparation Area. Accessory food preparation areas include secondary kitchens and wet bars.

1. Secondary Kitchens. Secondary kitchens, as defined in Article XVIII, are permitted by special exception in residential dwellings in accordance with all of the following provisions

- a. A secondary kitchen shall not contribute toward establishment of an unauthorized dwelling as described in Section 78-71.1D.3, Establishment of Unauthorized Dwelling Units.
- b. The location of the secondary kitchen is not separated from the remainder of the dwelling unit by door(s) equipped with any of the following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition.
- c. A unique and compelling need is demonstrated by the applicant.
- d. A zoning inspection permit is applied for and approved.
- e. The proposed activity meets the standards of Section 78-155.3.E Review Standards for Special Exceptions.
- f. Secondary kitchens shall not be permitted in accessory structures except under the provisions of 78-80.4, Accessory Dwelling Unit.

2. **Wet Bars.** Wet bars, as defined in Article XVIII, are permitted by-right in accordance with all of the following provisions:
- a. A wet bar shall not contribute toward establishment of an unauthorized dwelling as described in Section 78-71.1D.3, Establishment of Unauthorized.
 - b. The location of the wet bar, when in the same structure as the primary kitchen, shall not be separated from the remainder of the dwelling unit by door(s) equipped with any of the following: an entry lock set, deadlock, slide lock or chain, or similar locking apparatus or through the construction of other forms of partition.
 - c. A wet bar shall not contain any oven exceeding 2.2 cubic feet, a stove, range, stovetop, grill, 240 volt electrical outlet(s) or any gas lines, a sink having a waste line drain in excess of 1-1/2 inches in diameter, a rough in for any of the items above items, portable burner(s) and/or portable cooktops.
 - d. Wet bars located outside of any building and associated with patio areas may have grills, cooktops and gas lines, but shall not be enclosed on more than two sides.

C. **Antennae Of All Kinds, Except Commercial Communication Towers, Freestanding.** The following standards are adopted to comply with applicable state and federal law, including the Federal Telecommunications Act of 1996 and to control the location and screening of antennae to mitigate impact on surrounding properties:

1. **Small Satellite Dish Antennae.** Satellite dish antennae of one meter (or 39 inches) or less in diameter shall be screened or located so as to not be visible from a public street.
2. **Large Satellite Dish Antennae.** Satellite dish antennae measuring one meter or more are permitted accessory uses in non-residential districts. Such dishes are subject to the standards set forth below to the maximum extent feasible, but only where there is no impairment of acceptable signal quality. These regulations are not intended to impose unreasonable delays or impose unreasonable costs on the installation, maintenance, or use of satellite dishes, and shall not be interpreted or enforced in any manner contrary to federal or state law.
 - a. Within the Heritage Preservation Overlay District, satellite dishes shall be screened or located so as to not be visible from any public streets.

- b. Satellite dishes shall be located to the rear of the principal building, and not within five feet of any side or rear property line or in any required buffer.
 - c. Satellite dishes shall be screened so that no more than 40 percent of the area of the satellite dish antenna is visible from any public street or private street open to the public. The screen may consist of, but is not limited to, fences, buildings, plantings, or any other opaque vegetation or structure permanently affixed to the real property. Screens of vegetation may be installed to meet this standard.
- 4. Commercial Antennae.** Antennae may be located on existing structures in conformance with the applicable provisions of Section 78-71.12.D.2 Communication Towers, Monopoles, and Other Mobile or Land-based Telecommunication Facilities.
- 5. Noncommercial Radio Towers, Masts or Antennae.** Noncommercial radio towers or masts and amateur radio antennas may exceed the prescribed height limit by 25 feet, except amateur radio antennae may be accommodated if they meet reasonable and customary engineering practices, and are consistent with the following:
- a. An amateur radio antenna (antennae) may be erected or maintained to a maximum height of 75 feet above ground level, with no restriction on the number of support structures.
 - b. An amateur radio antenna shall not be located closer than a distance equal to one-fifth of its height to any lot line.
 - c. The antenna shall be erected by a certified rigger who shall annually re-inspect and certify to the zoning administrator the structural integrity of the antenna.
 - d. The owner of an antenna shall obtain and maintain liability insurance coverage in reasonable amounts to protect the owner from claims for bodily injury, death, and property damage related to the erection and maintenance of the antenna, and shall, upon demand, provide evidence to the town that such insurance coverage has been obtained.
 - e. Upon discontinuation of use of the antenna for more than one year, the owner of the land on which the antenna is located shall remove the antenna within the succeeding one-year period.
- D. Bed and Breakfast Establishment.** Bed and breakfast establishments are permitted by special exception in accordance with the provisions of section 78-155.3, Special Exceptions and Article VIII - Accessory Use Regulations as follows:

1. **Limited to Certain Housing Types and Zoning Districts.** Bed and breakfast establishments may be established in owner- or operator-occupied single-family detached homes, including normal residential accessory structures existing as of March 1, 2007, in the R-15 and R-10 zoning districts; and in the Heritage Preservation Overlay District.
2. **No Commercial Rentals.** Commercial use or rental of the property for business meetings, seminars, receptions, or similar events or activities shall not be permitted. Noncommercial activities other than simple lodging and breakfast service anticipated by the applicant as part of the bed and breakfast use must be included specifically with the special exception application.
3. **Special Exception Requirements.** The proposed site shall conform to the requirements for special exception uses in Article III - Residential Districts and other zoning requirements. No special exception for a bed and breakfast establishment may be granted if the special exception would result in a site or structure that would be nonconforming under the terms of Article XVI - Nonconformities.
4. **Residential Character Shall Be Maintained.** Bed and breakfast establishments shall be deemed a residential use subject to applicable standards in this chapter. To maintain residential character the following additional standards shall be met:
 - a. The exterior of the single-family dwelling in which the bed and breakfast establishment is operated shall maintain its single-family dwelling character.
 - b. Commercial vehicle traffic to the facility for services such as laundry, food delivery, and refuse collection shall not exceed that customarily associated with a single-family detached dwelling.
 - c. On site features (such as swimming pools, outdoor seating areas, outdoor dining areas, or parking) used specifically for the operation of the bed and breakfast establishment shall be screened to minimize impact on adjacent properties used for residences.
5. **Application Requirements.** In addition to the submittal requirements described in section 78-152.2, the application for the special exception shall include:
 - a. A report by the town's building official, based on an inspection of the property by the building official, about building modifications that are needed, if any, to comply with building code requirements for use of the property as a bed and breakfast establishment under the Virginia Uniform Statewide Building Code and Section 310 of the International Building Code.
 - b. On-site lighting shall be shielded to prevent adverse off-site impact.

- 6. Parking.** The parking requirement for a bed and breakfast establishment is stated in Section 78-100.3, Off-street Parking and Loading Standards and is in addition to the parking required for the structure as a single-family detached dwelling. Parking spaces used to fulfill the parking requirement for a bed and breakfast establishment shall meet the standards for residential uses in Section 78-100, Off-street parking and loading and the following additional standards:
- a. Guest Parking shall be on a paved surface, except use of alternative pavements such as brick pavers and porous pavement in accordance with Section 78-100.8.B.4, Standards for Alternative Materials, is encouraged and permitted.
 - b. Guest Parking shall not be stacked on-site. All guest vehicles shall have free access and circulation without being blocked by other vehicles on the site.
- 7. Limitations on Operation.** Operation of the Bed and Breakfast shall be limited as follows:
- a. The maximum number of guest rooms on any one property is three and the maximum number of guests permitted on any given date is six.
 - b. The maximum rental term allowed for a specific guest is seven days within any six-month period.
 - c. Each establishment shall maintain an accurate record of each individual guest and the duration of the guest's stay. Such records may be requested and reviewed by the town upon notice.
 - d. A bed and breakfast establishment shall not include an eating establishment; however, breakfast and light fare may be provided for resident guests.
 - e. No cooking shall be permitted in guest rooms and no accessory food preparation area shall be permitted for the use of the bed and breakfast establishment.
- 8. Permits and Inspections.** A bed and breakfast establishment shall be subject to the following permit and inspection requirements:
- a. A zoning inspection permit, a certificate of occupancy, and a business and professional occupation license shall be obtained prior to initial operation of the business as a bed and breakfast establishment. However, approval as a home-based business is not required.
 - b. Residences operating as a bed and breakfast establishment shall meet the applicable code regulations for building safety, health, and sanitation. During reasonable hours upon prior notice, the applicant shall make provisions to allow officials to make the appropriate inspections.

- c. The special exception and zoning inspection permit for the bed and breakfast establishment shall expire:
 - (1) Ninety days from the date on which the owner or operator no longer occupies the property. The owner or operator shall notify the zoning administrator at such time as the owner or operator no longer occupies the property; or
 - (2) One year from the date of approval of the special exception if the bed and breakfast establishment has not begun; or
 - (3) One year from the date the use was terminated; or
 - (4) At any time the use does not comply with any of the conditions of approval or the terms of this chapter.

E. Car/Vehicle Rental Accessory to Hotels, Motels, Inns and Conference Centers. Vehicle rental is permitted by special exception as an accessory to hotels, motels, inns and conference centers and shall comply with the following standards:

1. **Located On-Site.** Vehicles must be located on the site to which their rental is accessory.
2. **Siting Standards.** The location of the vehicles on the site must meet all siting standards of the principal use to which it is accessory;
3. **Limit on Parking Area.** The area used for the parking and storage of vehicle for rent shall be no greater than 10 percent of the site area;
4. **Limits of Vehicle Location.** Vehicles shall be located at least 250 feet from schools, daycare centers, residential uses, or undeveloped land in residential zoning districts.
5. **Landscaping.** In addition to the landscape requirements in Article XI, the building setback and yard areas shall be landscaped to provide a buffer between the right-of-way and vehicle storage areas.
6. **Vehicle Display.** Vehicle display shall be limited as follows:
 - a. Vehicles shall not be displayed within a required setback or buffer.
 - b. There shall be no display of vehicles for rent along any street frontage.
 - c. There shall be no vehicle display on top of a building.
 - d. There shall be no racks that tilt vehicles in any way.

- e. The storage and parking of vehicles shall not use or interfere with parking or loading spaces required for the principal use.

F. Car/Vehicle Wash Accessory to Other Automotive Uses. The standards of Section 78-80.4.J, Drive-Through Service accessory to a retail pharmacy, financial institution, laundry, eating establishment or other principal commercial use shall apply as appropriate.

G. Car/Used Vehicle Sales Accessory to New Vehicle Sales and Vehicle Service and Repair Uses. Used vehicle sales is permitted by special exception as an accessory to new vehicle sales and vehicle service and repair uses and shall comply with the following standards:

1. **Subordinate to New Vehicle Sales.** The subject accessory use operates in conjunction with and subordinate to an established new vehicle sales or vehicle service and repair use;
2. **Minimum Area.** The subject property for the principal and accessory use shall have an area of at least 40,000 square feet;
3. **Located on Same Lot.** The subject accessory use shall be located on the same lot and in the same zoning district as the principal use;
4. **No Parking in Setback.** No vehicles for sale shall be parked in the required setback or between the principal structure and the street, whichever distance is the greater;
5. **Limit on Number of Vehicles.** The number of vehicles associated with the accessory use shall not exceed ten vehicles and shall be located in a contiguous space designated for the exclusive use of the dealer;
6. **Vehicle Shall be in Parking Spaces.** All vehicles associated with the accessory use shall be parked in a dedicated parking space;
7. **Signs, Flags, Banners, Balloons.** The display of signs, banners, small flags, balloons and the like, on vehicles for sale shall not be permitted. This shall not include signs required under Title 46.2, Subtitle IV, Chapter 15, Motor Vehicle Dealers, of the Code of Virginia;
8. **Vehicle Display. Vehicle display shall be limited as follows:**
 - a. Vehicles for sale shall not be elevated off the ground;
 - b. Vehicle hoods shall not remain open to expose the engines;
9. **Vehicle Testing. Vehicles** shall not be tested on minor collector and local streets;

- 10. Landscaping.** The minimum ten-foot wide planted landscaping strip along the street frontage shall be provided in conjunction with a four-foot tall fence, hedge or wall;
- 11. Commercial Vehicle Sales.** Sales of commercial vehicles and equipment as defined by section 42-1 of the Town of Herndon Code, in addition to the sale of air, aquatic and and construction vehicles or equipment, shall not be permitted;
- 12. Limits on Other Vehicle Sales/Storage.** Vehicle sales shall not include vehicle leasing, rental or storage.
- 13. Limit on Number of Special Exceptions.** There shall be no more than one such special exception per property; ~~and~~
- 14. DMV and Other Requirements.** Uses shall meet all requirements as stated in Title 46.2, Subtitle IV, Chapter 15, Motor Vehicle Dealers, and other relevant sections of the Code of Virginia and the Virginia Department of Motor Vehicles.

H. Caretaker's or Security Guard's Residence. Caretakers' or security guards' residences are subject to compliance with the following standards:

- 1. One per Principal Use.** Only one unit per principal use is allowed, and it shall be occupied by at least one person, who shall be an owner or employee of the business that is the principal use.
- 2. Located on Premises.** It shall be located on the same premises with the principal use.
- 3. Size Limit.** It shall not exceed 1,000 square feet in area.
- 4. Style.** It shall be limited to one floor and constructed so that the exterior architectural style of the dwelling is consistent with the development style of the structure housing the principal use.

I. Daycare Center, Childcare Center or Pre-school as an Accessory Use to a Principal Commercial Use or as an Accessory Use in a Planned Development—Residential District. A daycare center, childcare center, or pre-school as an accessory use shall comply with the following standards:

- 1. Principal Use Standards.** The standards set forth in section 78-71.1.2.D.2 for daycare center, childcare center, or pre-school as a principal use.
- 2. Limit on Floor Area.** Not exceed an amount of floor area equivalent to 20 percent of the total floor area of the principal use to which is it is accessory.

3. **Compatibility.** Be allowed as an accessory use only if designed and located to be compatible with adjacent land uses in terms of hours of operation, noise, lighting, parking, and similar considerations, and not cause significant traffic impacts.
4. **Capacity in PD-R Districts.** In a planned development—residential district, the capacity of the facility must be no greater than the need generated by the planned development—residential district to which the facility is accessory. For purposes of calculating permitted capacity, the applicant may include 100 percent of the number of projected children at the age being served by the facility within the planned development.

J. Drive-Through Service Accessory to a Retail Pharmacy, Financial Institution, Laundry, Eating Establishment or Other Principal Commercial Use. A drive-through lane accessory to a principal commercial use shall comply with the following standards:

1. **Special Exception Required. A drive-through lane shall** be allowed only by special exception as accessory to a principal commercial use in an enclosed structure. In approving the use, the town may impose conditions relating to the location, configuration, and operational aspects of such drive-through service as to ensure its compatibility with surrounding uses, its consistency with the layout of the site, and its compliance with the town's building codes and all relevant state laws and regulations.
2. **Stacking Lane Required.** A stacking lane shall be provided for the drive through window as follows:
 - a. The stacking lane shall be a minimum of 12 feet wide and 180 feet long as measured from the drive-through window, except that for uses which include a remote ordering device, the width and length of the required stacking lane shall be measured from the remote ordering device.
 - b. The stacking lane shall be used solely for drive-through window service vehicle stacking and shall not conflict with or extend into vehicle parking areas, drives, aisles, or loading areas. For uses other than eating establishments, a shorter stacking lane may be approved based upon technical information relating to stacking requirements of a particular use.
 - c. Except for that portion of the lane which is adjacent to the building, the vehicle stacking lane shall be located adjacent to a landscaped open space area on at least one side.
 - d. The vehicle stacking lane and drive-through window shall be screened to avoid being a dominant visual feature of the site when it is viewed from adjacent streets.

- 3. Site Landscaping.** Notwithstanding the provisions of Section 78-110, Landscaping, a landscaped buffer a minimum of 15 feet wide shall be provided along all street frontages and shall provide the amount and types of landscape materials as specified in section 78-110.
- 4. Ingress and Egress Limitations.** One vehicle ingress and egress is permitted, except that the town may approve additional vehicle ingress and egress in the following instances:

 - a. The principal use shares a vehicle ingress and egress with a commercial use on an adjoining property;
 - b. The principal use is developed as an integral feature of a site plan for a commercial shopping center or mixed use development; or
 - c. The use is located on a parcel with frontage on more than one street and the town finds that an additional vehicle ingress and egress will improve on-site and off-site circulation.
- 5. Location of Ingress and Egress.** All ingress and egress for vehicles shall be in accordance with the standards in the public facilities manual and shall be located at least ten feet from the property line of adjoining parcels. Egress located on urban minor arterial or higher classification shall be posted with signs prohibiting left-hand turning movements from the site accompanying any entrance configuration to prohibit left turns.
- 6. Pedestrian Access.** A pedestrian access path from public sidewalks to every building entrance shall be provided, and shall include access ramps at all curbs. Where any pedestrian access path crosses a drive-through aisle or stacking lane, the pavement of the drive-through aisle or stacking lane shall be constructed of a material which differs in color from the rest of the drive-through aisle or stacking lane pavement. No pedestrian access path shall cross any parking or loading space.
- 7. Bicycle Parking.** Bicycle parking facilities shall be provided.
- 8. Signage.** Any exterior drive-through service price sign placed in association with any drive-through window use shall be positioned so that the message content is not visible from adjacent streets.
- 9. Canopy Lighting.** Lighting for canopies for drive-through service shall not exceed an average of 12 foot-candles as measured at ground level at the inside of the outside edge of the canopy.
- 10. Screening.** A masonry screening wall a minimum of six feet high shall be provided along any side lot or rear lot line adjacent to a residential use or district.

K. Financial Institutions. Financial institutions that provide all or some of the services as defined in Article XVIII - Definitions, are permitted accessory to a principal use with the following conditions:

1. **Notification to Police.** Prior to obtaining a zoning appropriateness permit, the applicant shall provide to the zoning administrator a written statement from the Herndon Police stating that the Herndon Police Department has been notified of the proposed accessory used and its proposed location.
2. **No Separate Entrance.** The accessory use shall share a public entrance with the principal use and have no separate entrance that serves only the accessory financial service use.

L. Keeping of Livestock. The keeping of livestock as an accessory shall be subject to the following provisions:

1. **General Prohibition.** Except as provided in this subsection the keeping, harboring, or maintaining fowl or livestock of any weight or any age is prohibited.
2. **Vietnamese Pot Bellied Pigs.** In residential districts, on lots of at least 15,000 square feet or more in size, improved with a single-family detached dwelling, one Vietnamese Pot Bellied Pig may be kept as a household pet that is kept primarily indoors. When outside and not accompanied by its owner, such pig shall be kept in a fenced rear yard with a minimum fence height of four feet from grade and capable of containing such a pig. There exists no such rear yard requirement when such pig is outside accompanied by such pig's owner.
3. **Chickens.** In the R-10, R-15 and PD-R residential districts, on lots of at least 6,000 square feet or more in size, improved with single-family detached dwelling, up to four female fowl, commonly known as a domesticated chicken, may be kept as pets, based on the following standards:
 - a. No fowl shall run at large outside of a fenced area. The fence shall not extend forward of a line formed by the front façade of the lot's principal structure, and on corner lots the fence shall not extend forward of the rear corner of the principal structure located closest to the right-of-way. The fence must meet the requirements of Section 78-115, Wall, Fencing and Hedge Standards and must be able to contain the fowl including any chicks.
 - b. An enclosed coop and run or a chicken tractor used for confining, accommodating, and sheltering fowl shall be provided and be subject to the following standards:
 - (1) The coop or coop portion of a chicken tractor shall provide a minimum of 2.5 square feet per fowl and the run or run portion of a chicken tractor shall provide a minimum of 4.0 square feet per fowl.

- (2) The coop and run or chicken tractor shall not be located closer than ten feet from any side or rear lot line and shall not extend forward of a line formed by the rear façade of the lot's principal structure. On corner lots the coop and run or chicken tractor shall not extend forward of the principal structure's rear corner located closest to the right-of-way.
 - (3) The coop and run or chicken tractor shall not be considered an accessory structure for purposes of placement, but roofed portions shall meet requirements for lot coverage and building coverage. The coop and run or chicken tractor may abut the rear façade of the principal structure, pursuant to any applicable Building Code requirements.
 - (4) The coop and run or chicken tractor shall not be located within any drainage easement, drainage swale or within the Chesapeake Bay Resource Protection Area.
 - (5) The coop and run or chicken tractor shall provide ventilation and protection from wind, other weather elements, and predators. If heated, any electric connection shall be to an approved GFI exterior electrical outlet.
 - (6) There shall not be more than one coop and run, or one chicken tractor on site at any one time. This shall not preclude a separate area fenced for the protection of free ranging fowl and not constituting the run attached to the coop. Any such fenced area shall meet the standards of Section 78-80.L.3.c., below.
 - (7) The coop and run or chicken tractor shall not exceed five feet in height, inclusive of piers.
 - (8) The coop and run or chicken tractor shall be specifically designed and constructed for the purpose of protecting and containing fowl.
 - (9) The coop and run or chicken tractor shall be visually screened from abutting properties and along abutting rights-of-way with fencing or landscaping meeting all other applicable sections of Chapter 78. The minimum height of the screening shall be as tall as the tallest point of the coop and run and chicken tractor.
- c. Free ranging of fowl (allowing fowl to wander outside the coop and run or chicken tractor) is allowed exclusively during daylight hours, shall be supervised, and only within fenced areas that shall not extend forward of a line formed by the front façade of the lot's principal structure, and on corner lots shall not extend forward of the principal structure's rear corner closest to the right-of-way. The fence must meet the requirements of 78-115, Wall, Fencing and Hedge Standards, and must be able to contain the fowl including any chicks that may be present

- d. The sale or donation of any food, fiber, or other by-products from a fowl is not permitted on site.
- e. Any associated waste from such fowl shall be properly handled and disposed of so as to not create odor, attract vermin, or create a nuisance to residents or occupants of surrounding properties. Any compost pile for fowl waste shall not be located within any required yard or setback. Waste shall not be allowed to drain or wash onto adjacent properties and must be fully contained on site.
- f. A zoning inspection permit, issued by the zoning administrator, shall be required for the keeping of fowl. Such permit shall be valid for a period not to exceed 12 months and may be renewable, if it is renewed. If the property is found to be in violation or in the future is found to be in violation of the standards of this subsection, Section 78-80.L.3, such permit shall not be issued, or if issued, may be revoked after notice to the holder of the permit and hearing before the zoning administrator, among other possible avenues for a hearing. If the permit is revoked, the fowl shall be removed from the property within 30 days following revocation. Nothing in this subsection shall eliminate or affect the requirement for a separate zoning inspection permit as to any home-based business conducted on the property.
- g. On-site slaughtering of fowl shall not be permitted.
- h. All applications for the keeping of fowl shall include the following items:
 - (1) A building or house location survey, or if none is available, scale drawing of the property;
 - (2) Size and location of existing and proposed structures with dimensions.
 - (3) Distances from all structures to all lot lines and other adjacent structures.
 - (4) Height of proposed structures.
 - (5) Existing easements and known drainage swales; and
 - (6) Existing and proposed impervious surfaces with dimensions and lot coverage calculations.

M. Minor Utilities. A minor utility use shall comply with the following standards:

- 1. **Location.** A minor utility use shall be located within reasonable proximity of the area to be served.
- 2. **Compatibility.** In addition to the landscape and screening requirements in Article XI - Development Standards, a minor utility provide adequate setbacks, screening and buffering around the perimeter of the proposed use as deemed

necessary by the zoning administrator to ensure land use compatibility with surrounding uses.

3. Located Underground, Generally. All new minor utility services and connections including, but not limited to, all wires, cables, pipes, conduits and appurtenant equipment, which carry, transmit or are otherwise utilized in connection with the furnishing of electric power, telephone, telegraph, cable television, internet services, petroleum, gas, steam, water, or drainage or sanitary sewer systems, must be placed below the surface of the ground, except that:

- a. Equipment related to a minor utility use, such as electric distribution transformers, switchgear, meter pedestals, and telephone pedestals, which is normally installed above ground in accordance with accepted utility practices for underground distribution systems, may be installed above ground.
- b. Gas meters and other similar devices normally attached to the outside wall of the premises which they serve may continue to be so installed.
- c. Existing overhead utility services and connections may be repaired, replaced or increased in capacity.
- d. New connections to electric power or telephone systems made to parcels which are served by overhead services or connections may be above ground when the parcel was created by a subdivision of land prior to November 14, 1978, and the use of the parcel is that of single-family or duplex dwelling and the parcel is located in a residential zoning district.
- e. Cable television services and connections may be above ground only where such is specifically permitted under the terms of a franchise agreement with the town.
- f. The installations of any utility company having a franchise agreement with the town are regulated by the provisions of this section only to the extent that the terms of the utility company's franchise agreement do not conflict with the requirements of this section.

4. Installed in Conformance with Accepted Practices. All installations of minor utility services and connections shall be constructed in accordance with accepted standards of utility practice for connection and construction.

N. Outdoor Serving Areas Accessory to an Enclosed Use Providing Food or Beverage for Sale or Tasting. Outdoor serving areas providing or allowing outdoor consumption of food or beverage accessory to an established enclosed use food or beverages for sale or tasting shall comply with the following standards:

1. **No Obstruction of Sidewalks.** The outdoor serving areas shall be located on a private sidewalk or plaza area in such a manner so as to permit unobstructed pedestrian passage. Such passage shall meet all applicable code requirements as well as other standards established by the zoning administrator for safe and convenient pedestrian movement.
2. **Located Outside Required Parking Areas.** The outdoor serving areas shall not be located within a required parking area.
3. **Delineated on Plan.** The outdoor serving areas shall be confined to an area delineated to scale on a plan approved by the zoning administrator or approved at the time of zoning map amendment, development plan or site plan.
4. **Physical Barrier.** A physical barrier, such as a wall, fence, planters or bollards may be installed to define the outdoor serving areas area.
5. **Waste Receptacles.** Trash and debris shall be disposed of on the site of the business establishment and public sidewalk trash containers shall not be used for disposing of waste or recycling generated by customers or the business. When outdoor receptacles are provided on site for use by customers, both trash receptacles and recycling receptacles shall be provided with appropriate signage to distinguish their use.
6. **Location Relative to Residential Districts.** Outdoor serving areas shall not be located within 70 feet of a property zoned R-15, R-10, RTC or RM.
7. **Hours of Operation.** Establishments with outdoor serving areas located within 100 feet of property used for residential uses, including mixed-use development incorporating residential uses, shall limit their hours of outdoor operation to between 7:00 a.m. and 2:00 a.m. Outdoor serving areas located further than 100 feet of property zoned or used for residential purposes shall limit the hours of outdoor dining to between 7:00 a.m. and 2:00 a.m.
8. **Umbrellas and Heaters.** Exterior umbrellas or heaters shall be weighted and shall meet all applicable codes.
9. **Additional Parking.** Parking shall be required for exterior seating in excess of 32 seats. Parking for this excess shall be calculated at the parking ratio required for interior restaurant seating.
10. **Limit on Outdoor Kitchen/Bar Equipment.** No exterior kitchen or bar service equipment shall be permitted abutting a public right-of-way unless permitted in association with, and for the duration of, a permitted temporary use permit. If such equipment, when not associated with a permitted temporary use permit, is visible from the adjacent right-of-way, landscaping or other screening as approved by either the HPRB or ARB, shall be installed to screen the equipment from the right-of-way.

- O. Outdoor Storage As An Accessory Use.** Outdoor storage, other than vehicle sales and service, and including parking of fleet vehicles, may be allowed as an accessory use as shown section in 78-80.2.C, Table of Permitted and Allowed Accessory Uses. The storage area shall meet all of the following standards:
- 1. Design and Location.** Each outdoor storage area shall be incorporated into the overall design of the primary structure on the site and shall be located at the rear of the primary structure.
 - 2. Limitation on Goods to be Stored.** Goods, other than fleet vehicles, stored in an outdoor storage area shall be limited to those sold on the premises as part of an associated, additional primary use.
 - 3. Storage.** Each outdoor storage area shall be screened in accordance with section 78-114.2, Screening Standards.
 - 4. Covered Storage.** If the outdoor storage area is covered, then the covering shall include at least one of the predominant exposed roofing colors on the primary structure.
 - 5. Flammable Liquids.** Flammable liquids or gases in excess of 1,000 gallons shall be stored underground.
 - 6. No Storage in Circulation Areas.** No materials may be stored in areas intended for vehicular or pedestrian circulation.
 - 7. Exterior Lighting.** If installed, exterior lighting shall meet the functional needs of the establishment without adversely affecting adjacent properties or the neighborhood.
- P. Outdoor Display Of Products For Sale.** An area of designated size used for the display of seasonal merchandise or tangible property normally sold within the contiguous business or organization is permitted in the central commercial district, the planned development-downtown district, the planned development-traditional downtown district, and the commercial service district as long as the display area, including any structures and products:
- 1. Access and Circulation to be Maintained.** Outdoor display areas shall not block access to the building or otherwise impair circulation and safety;
 - 2. Located Outside Right-of-Way.** Outdoor display areas shall be located outside of the public right-of-way unless it is the subject of an approved application for a license to use the public right-of-way;
 - 3. Not A Storage Area.** The outdoor display area shall not serve as simply as storage for products that cannot be stored elsewhere on the site;

4. **No Display of Durable Goods.** The outdoor display area shall not include durable goods such as furniture, carpets and large household appliances; and
 5. **Delineated on Plan.** The outdoor display must be shown on an original site plan or site plan amendment, certificate of appropriateness, temporary use site plan, license to use the public right-of-way, or other permit as may be applicable to the circumstances of the business seeking the outdoor display.
- Q. Recreational Vehicle Parking and Storage.** Parking and storage of recreational vehicles shall be subject to the following standards:
1. **Limitations on Parking in Commercial and Industrial Zones.** Except in approved storage yards as permitted in Section 78-70-71.16, Self-Service Storage Use Category, Section 78-80.4.O, Outdoor Storage as an Accessory Use, or similar approved uses, the parking of recreational vehicles for over 12 hours is prohibited in commercial and industrial zones.
 2. **Limitation on Parking in Residential Districts.** Recreational vehicle parking is permitted in residential districts in accordance with Section 78-100.9.B, Limitations on Parking in Residential Districts.
 3. **Recreational Vehicles Not To Be Used For Habitation.** Recreational vehicles shall not be used for either temporary or permanent human occupancy while parked within the town limits.
- R. School Uses In Conjunction With Religious Institutions.** All schools developed in conjunction with a religious institution shall comply with the following standards:
1. **Education Use Category.** The accessory school use shall comply with standards in Section 78-71.2 for the Education Use Category;
 2. **Regulatory Compliance.** The accessory school use shall comply with all applicable federal, state and local laws and regulations for schools; and
 3. **Size Limitations.** The accessory school use shall be an accessory use to the religious institution, and may exceed 50 percent of the floor area of combined school and religious institution.
- S. Social Service And Similar Community Service Uses.** Outreach facilities that provide a direct service by not for profit organizations to clients are permitted with a special exception within a structure used for single-family attached and multi-family dwellings as long as the floor area for the facility does not exceed an amount equivalent to the average of the floor area of two dwelling units in the affected structure. Direct services include instruction in life skills, tutoring, limited health screening or treatment, For purposes of co-location in a structure used for single-family attached and multi-family dwellings, outreach services shall not include uses that consist solely of day care, child care, office or administration.

T. Mobile Food Unit Preparer, Full Service. Mobile Food Unit Preparer, Full Service uses shall comply with the following standards:

1. **Zoning Permit Required.** Prior to operating on property within the town, the owner or operator of an operation classified as a mobile food unit preparer, full service by the Town of Herndon shall apply for and obtain a mobile food unit preparer, full service zoning permit. No mobile food unit preparer, full service zoning permit application shall be considered unless the following documents are provided:
 - a. A copy of the mobile food unit and purveyor's current full service mobile food unit Fairfax County Health Department permit.
 - b. A letter signed and notarized by the owner of record or the owner's agent^z, of the property on which the, mobile food unit preparer, full service apparatus proposes to operate, stating:
 - (1) The proposed time and duration of the operation including days of the week and hours within the day.
 - (2) The number of parking spaces on site and the percentage of parking spaces being used and occupied by the mobile food unit(s) present on site at any one time.
 - (3) The location of the parking spaces to be used on the site through written description or drawing.
 - (4) If a loading space(s) is to be used, the letter shall state that no deliveries shall be made to the businesses served by that loading space during the period of time when the mobile food unit is present and a statement that no delivery will be accepted if it arrives while the mobile food unit is present.
 - (5) If the letter required is signed by the owner's agent, applicant must produce written evidence of the agent's authority.
2. **Additional Requirements.** No mobile food unit preparer, full service zoning permit shall be issued unless the following requirements and conditions are met:
 - a. No single mobile food unit entity shall be present on site for more than 21 hours during the week, consisting of a seven-day period extending from Sunday a.m. through the following Saturday.
 - b. No more than five percent of the parking spaces may be occupied by mobile food unit operations, up to a maximum of five parking spaces on any property.

- c. The mobile food unit or owner of the property shall provide a recycling receptacle as well as a separate litter receptacle.
 - d. Trash and recycling shall be disposed of using the property owner's usual trash and recycling containers and removal service.
 - e. Grease shall be disposed of using the property owner's usual grease container and removal service. If the property does not have grease containment and removal, the mobile food unit shall remove the grease from the property to be disposed of legally elsewhere.
 - f. Styrofoam (foam polystyrene) cups, containers and plates shall not be permitted.
 - g. The mobile food unit must fit in the parking space and not extend into the drive aisle.
 - h. The mobile food unit must be equipped with a three-compartment sink and hand sink.
 - i. The applicant shall pay the annual mobile food unit preparer, full service zoning permit fee for each vehicle.
 - j. The mobile food unit shall only be present on site when the primary use on site is open for business.
- 3. Business License Required.** Prior to operation within the town the owner/operator of the mobile food unit shall obtain a Town of Herndon business license.
- 4. Zoning Permit Validity.** A mobile food unit preparer, full service zoning permit is valid for one year from the date of issuance.
- 5. Permits To Be Displayed.** The mobile food unit preparer, full service zoning permit and a valid Town of Herndon business license must be displayed in public view while the mobile food unit is in operation in the Town of Herndon.

Sec. 78-80.5 Standards for Home-Businesses as Accessory Uses

- A. Home-Based Businesses, Standards for All Business** It is the intent of the town council to allow home-based businesses to foster economic activity; to create wealth, prosperity, and happiness for the town's citizens; to support the high technology and information services industry; and to accommodate changes in business and domestic practices of the town's citizens. Equally important, and with these regulations, the town council intends to preserve the sanctity, tranquility, value, appearance, and ambience of the town's residential neighborhoods and residential units, and prevent, eliminate, or discontinue home-based businesses that

negatively impact residents living near, around, or next to the site of the home-based business. A home-based business is allowed as an accessory use in any dwelling unit in any zoning district, if it complies with the following standards:

1. **Zoning Permit Required.** No home-based business shall be instituted or maintained until a zoning inspection permit is approved pursuant to Section 78-155.7, Zoning Inspection Permit.
2. **Prohibited Businesses.** A home-based business may consist of any lawful business except a business that involves:
 - a. The on-site storage or presence of explosives; hazardous materials, hazardous substances, or hazardous waste; toxic substances; firearms; or any substance or activity that is determined to constitute a threat to the public health or safety of the town, using the intent and standards of this section. (Nothing in this section shall affect or purport to regulate any power of any person given by general law of this commonwealth to purchase, possess, transfer, own, carry or transport firearms, ammunition, or components of a combination thereof);
 - b. The on-site provision of any service to clients or customers other than by appointment;
 - c. The on-site sale of any goods, services, items, or property other than by appointment;
 - d. An on-site restaurant, carry-out service, or any business involving preparation of food, except for on-site preparation of food in a single family detached or attached dwellings when the business transports the food to an off-site location for sale;
 - e. On-site servicing, repair or painting of motor or other vehicles, or any motorized equipment excluding small household appliances and personal computers;
 - f. An animal hospital, kennel, or any other business involving the on-site care or feeding of animals;
 - g. A boarding house or inn, or the like;
 - h. A mortuary or funeral home, or the like;
 - i. A delivery service by which goods or other property to be delivered are stored or brought on-site, excluding a business that involves the purchase, processing, and then delivery of goods or other property in a manner consistent with this section;
 - j. A welding or machine shop or a pipe fitting operation, or the like;

- k. Rental of on-site equipment, on-site goods, or on-site property, or the like;
 - l. Rental, use, dispatch, sale, or lease of a hearse, ambulance, wrecker or tow truck, taxi or limousine, only when such vehicle is brought to the site or to the vicinity of the site of the home-based business, with the exception that an individual may operate a taxi, or a standard passenger vehicle for hire as a home-based business, provided that only one such taxi or standard passenger vehicle may be present at or in the vicinity of the subject dwelling unit;
 - m. A nursing home or the like;
 - n. A small scale alcohol production facility or
 - o. Similar uses.
3. **Area Limitation.** A home-based business shall occupy no more than 33 percent of the floor area of the principal dwelling, up to a total maximum floor area of 1,000 square feet on any one property inclusive of floor area used in accessory structures. No home-based business conducted in an accessory building shall exceed 400 square feet, which area shall be included in the maximum square footage allowed in this section.
 4. **Conduct of Business.** The home-based business must be conducted by an occupant of the dwelling that houses the business.
 5. **Business Not To Be In Detached Accessory Structure** Accessory structures shall not be used for home-based businesses unless expressly included in the application for the zoning inspection permit.
 6. **Enclosed Building Required.** The home-based business including storage of equipment, goods, supplies, and property shall be conducted entirely within an enclosed building.
 7. **Parking.** Parking of commercial vehicles associated with the home-based business shall comply with the standards of Section 78-100.9.B.5 Limitations on Parking in Residential Districts.
 8. **Delivery Limitations.** The total number of arrivals for the purpose of making deliveries to or shipments from the home-based business shall not exceed four per day for dwelling units located on public streets and three per day for *dwelling* units located on private streets. Deliveries shall occur between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday. This section shall not apply to deliveries unrelated to the home-based business.
 9. **Impacts Outside Property Boundaries.** The home-based business shall not cause or create noise; vibration; smoke; radiation; dust; odor; heat; glare; visible or audible interference in radio or television receivers; or fluctuations in line

voltage that is perceptible across the property line or unit limits of the dwelling unit that serves as the site of the home-based business.

10. Solid Waste. The home-based business shall not cause an increase over normal residential use in the volume of solid waste disposal or frequency of refuse collection at the dwelling unit that is the site of the home-based business.

11. Limit on Non-Resident Employees and Visitors (other than childcare and daycare). Between the hours of 8:00 a.m. and 9:00 p.m., the number of non-resident employees and visitors, other than delivery persons allowed by paragraph 8 above, shall be limited at any one time to the following:

- a. Up to two non-resident employees or associates of the home-based business;
- b. Up to three customers or clients are allowed at the site for no more than two consecutive hours per day.
- c. No more than four arrivals of non-resident persons who are employees, clients, customers, or associates of the home-based business shall occur during any 24-hour period.

12. Inspection Upon Reasonable Notice. The part of the dwelling unit used for the home-based business shall be open for inspection by representatives of the town upon reasonable notice by the town to the occupants of the dwelling unit.

13. Incidental and Secondary to Residential Use. A home-based business use may be conducted within a dwelling unit only so long as the home-based business use remains incidental and secondary to the use of the dwelling unit as a place of residence.

B. Home-Based Business, Childcare or Daycare – Additional Standards. In addition to the standards of Section 78-80.5, a home-based childcare or daycare shall be subject to the following additional standards.

1. Limit on Number of Children by Unit Type. The number of children permitted in a home-based childcare or daycare business shall be limited as follows:

- a. **Single Family Detached Dwelling:** No more than seven children per day enrolled in the home-based childcare center or day care center in a single-family detached dwelling shall be on the site, in addition to any children living in the home.
- b. **Townhouse, Rental Residential Townhouse, Two-Family Dwelling:** No more than five children per day enrolled in the home-based childcare center or day care center in a townhouse dwelling, rental townhouse residential development dwelling, or two-family dwelling shall be on the site, in addition to any children living in the home.

- c. **Multi-Family or Quadraplex Dwelling.** No more than five children per day enrolled in the home-based childcare center or day care center in a multi-family dwelling or quadraplex dwelling shall be on site, in addition to any children living in the home.

- 2. **Limit on Non-Resident Employees and Visitors.** Between the hours of 6:00 a.m. and 9:00 p.m. the number of non-resident employees and customers, other than delivery persons allowed by Section 78-80.5.A.8, shall be limited at any one time to the following:
 - a. One non-resident employee or associate of the home-based business;
 - b. Up to seven customers or clients are allowed at the site per day for a single-family detached dwelling; up to five customers or clients are allowed at the site per day for a townhouse dwelling, rental townhouse residential development dwelling or two-family dwelling; or up to five customers or clients are allowed at the site per day for a multi-family dwelling or quadraplex dwelling.
 - c. No more than 15 arrivals of non-resident persons who are employees, clients, customers, or associates of the home-based business shall occur during any 24-hour period for a single-family detached dwelling. No more than 11 arrivals of non-resident persons who are employees, client, customers, or associates of the home-based business shall occur during any 24-hour period for a townhouse dwelling, rental townhouse residential development dwelling, or a two family dwelling. No more than 11 arrivals of non-resident persons who are employees, clients, customers, or associates of the home-based business shall occur during any 24-hour period for a multi-family dwelling or quadraplex dwelling.

- 3. **Play Area.** A home-based childcare or daycare business shall provide a play area that meets the following provisions:
 - a. Seventy-five square feet of outdoor play area must be provided on-site per child enrolled in the childcare or day care business.
 - b. Outdoor play area must be enclosed by a fence with a minimum height of four feet unless applicant can demonstrate that the area provides adequate protection from traffic, neighboring yards or other hazards.
 - c. Outdoor play area must be shown on a plat to scale submitted at the time of application for the permit.
 - d. The requirement for an on-site outdoor play area may be waived when the applicant can demonstrate the home care service is located within 1,000 feet of an existing suitable play area, such as a park or play lot. The play area must be public or owned by the homeowners' association to which the residence belongs.

C. Special Exception For Home-Based Business. The town council may approve by special exception a business conducted in a residential unit or in an accessory building or both when the use would not be consistent with the standards set forth in this section. The town council may impose conditions to assure that the business shall as nearly as practicable conform to the purposes of this section. Any such business use approved by a special exception shall be deemed a home-based business under this section, which shall apply to such home-based business with necessary changes. In addition, any Special Exception for a Home-Based Childcare or Day Care Center shall be limited as follows:

- a. The town council may not ordain that a special exception for a home based childcare center or day care center shall run with the land.
- b. No more than 12 children per day enrolled in any home-based childcare center or day care center shall be on the site excluding any children living in the home.

D. Special Enforcement Provisions For Home-Based Businesses. The standards for home-based businesses shall be enforced as follows:

- 1. **Determinations Regarding Home-Based Businesses.** The zoning administrator shall determine if a home-based business is not, or is no longer, incidental and secondary to the use of the dwelling unit as a place of residence if and when town officers, town employees, or nearby residents may hear, see, smell, or detect the existence of the home-based business use, to the degree it alters the residential character of the zoning district in which the home-based business is located. In making this determination, the zoning administrator shall rely on the intent sections of the respective zoning district regulations, the intent section of this section, and any public affidavits filed by residents.
- 2. **Growth or Change In The Home-Based Business.** It shall be the responsibility of the applicant to report changes needed to the terms of the original approval for the home-based business, and to seek approval for the changes. If the zoning administrator determines that due to growth or change in the home-based business, or new information about the business, it no longer complies with the standards of this section, the zoning administrator may take action pursuant to Article XVII – Enforcement, Violations and Remedies, including revoking the applicable zoning inspection permit, if 30 days' written notice is provided the permittee or owner of the home-based business and the permittee or owner is given an opportunity to respond to the allegations of why the permit should be revoked at a hearing before the zoning administrator. Subsequently, upon revocation of a zoning inspection permit for a home-based business, the permittee or owner shall cease the home-based business within ten days after notice of revocation is delivered.
- 3. **Noncompliance.** If the person conducting the home-based business violates, or if the home-based business becomes in such conduct inconsistent with any provision of this article or other ordinance, law or regulation governing use of the

dwelling for a home-based business, the zoning administrator may revoke the zoning inspection permit using the procedures set forth in paragraph b. above.

4. **Equitable Enforcement Intended.** The town council intends and directs the town manager to enforce this section vigorously in residential communities benefited by community associations as well as in communities not so benefited.
5. **Legal Proceedings.** The town council approves the town attorney's institution and prosecution of legal proceedings deemed necessary or proper by the town attorney to protect the town's interest in the enforcement of this article and related provisions of this chapter. Within seven days after filing of such a legal proceeding, the town attorney shall confidentially inform the mayor and town council of the institution and basis of the legal proceeding. Failure to comply with this section shall not affect the validity of any legal proceeding. This approval shall not be exclusive. The town council may separately act on approval of any legal proceeding.
6. **Business License.** The director of finance shall refuse to issue a business license to any person conducting a home-based business which the zoning administrator certifies is in violation of this section. If the zoning administrator later certifies to the director of finance that the home-based business has been brought into compliance with this section, the director of finance may issue a business license upon payment to the town of all business license taxes, penalties, and interest due for the period in which the business was in operation.
7. **No Vested Rights Accrue.** No vested rights shall accrue to any person operating a home-based business that is approved because it will begin operation in conformance with the standards and requirements of this chapter, but through growth, change, or other action becomes noncompliant with this section and this chapter.

**HERNDON TOWN CODE
CHAPTER 78 - ZONING ORDINANCE**

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ARTICLE IX – TEMPORARY USES AND STRUCTURES

Sec. 78-90 Temporary Uses and Structures

The following sections pertain to temporary uses and structures.

Sec. 78-90.1 Temporary Uses and Structures

- A. Purpose and Intent.** Sections 78-90.1 through 78-90.4 allow for the establishment of certain temporary uses provided that such uses are discontinued upon the expiration of the set time period. Temporary uses do not involve the construction or alteration of any permanent building or structure.
- B. Permitted Temporary Uses and Structures.** Temporary Uses and Structures are allowed as follows:
- 1. List of Allowed Temporary Uses and Structures.** Table 78-90.1-B. Table of Allowed Temporary Uses and Structures, summarizes the temporary uses and structures that are allowed within the town and any general or specific standards that apply.
 - 2. Unlisted Uses.** Where a proposed temporary use is not specifically listed in this section, the Zoning Administrator may allow the proposed temporary use subject to review and evaluation. The request shall be treated as an Interpretation pursuant to Section 78-150.6.E Determination Requests. The zoning administrator shall give due consideration to the intent of this chapter concerning the zoning district(s) involved, the character of the temporary uses listed in this chapter, and the character of the use(s) in question. Based on these considerations, the zoning administrator may find that the proposed temporary use is not permitted, that a temporary use permit is required, or that a temporary use is allowed without a permit upon finding the standards of this section are met.

TABLE 78-90.1-B: TABLE OF ALLOWED TEMPORARY USES AND STRUCTURES		
TEMPORARY USE OR STRUCTURE	ALLOWABLE TIME FRAME	SPECIFIC REGULATIONS
No Permit Required		
GARAGE SALES, YARD SALES, ESTATE SALES	Limit: 2 consecutive days maximum, per sale Annual Limit: 4 occurrences per parcel, per consecutive 12 month period	
TEMPORARY VEHICLE WASHES BY CIVIC AND NONPROFIT ORGANIZATIONS, OR BY MIDDLE AND SECONDARY SCHOOL GROUPS	Limit: 2 consecutive days maximum, per event Annual Limit: 4 occurrences per parcel, per consecutive 12 month period	
SIDEWALK SALES: CIVIC AND NONPROFIT ORGANIZATIONS	Limit: 4 days maximum per calendar year Annual Limit: 4 occurrences per parcel, per consecutive 12 month period	See Section 78-90.4.A.1

TABLE 78-90.1-B: TABLE OF ALLOWED TEMPORARY USES AND STRUCTURES		
TEMPORARY USE OR STRUCTURE	ALLOWABLE TIME FRAME	SPECIFIC REGULATIONS
TEMPORARY USES ON TOWN PROPERTY	Approval by the Town Manager Required	See Section 78.90.4.A.2
TEMPORARY PARKING FOR SPECIAL EVENTS	Limit: 4 days maximum, per event Annual Limit: 3 occurrences per parcel, per consecutive 12 month period	See Section 78.90.4.A.3
ON-SITE CONSTRUCTION-RELATED ACTIVITIES (including construction trailers and employee parking)	Such uses may be in place after plan approval and within 30 days after termination of the building permit or issuance of a final certificate of occupancy	See Section 78.90.4.A.5
PORTABLE STORAGE UNITS ON-SITE FOR UP TO 30 DAYS	Limit: 30 days maximum, per year, per address Annual Limit: 2 occurrences per address, per year, the combined duration of which shall not exceed 30 days per consecutive 12 month period	See Section 78.90.4.A.4
ROLL-OFF DUMPSTERS USED ON RESIDENTIAL PROPERTIES	Varies – See Table 78.90.4.A.6	See Section 78.90.4.A.6
Permit Required		
TEMPORARY OFFICE FACILITIES (INCLUDING REAL ESTATE SALES OFFICES)	Limit: No more than 36 consecutive months	See Section 78.90.4.B.1
OFF-SITE CONSTRUCTION-RELATED ACTIVITIES (INCLUDING CONSTRUCTION TRAILERS AND EMPLOYEE PARKING)	Such uses may be in place after plan approval and within 30 days after termination of the building permit or issuance of final certificate of occupancy	See Section 78.90.4.B.2
OUTDOOR RETAIL SALES EVENTS ASSOCIATED WITH AN EXISTING BUSINESS	Limit: 4 days maximum per calendar year Annual Limit: 4 occurrences per parcel, per consecutive 12 month period	See Section 78.90.4.B.3
SEASONAL SALES (CHRISTMAS TREES, HALLOWEEN PUMPKINS, CIVIC GROUP MERCHANDISE)	Limit: 90 days maximum per calendar year, no more than 30 days per occurrence or 3 occurrences per parcel, per consecutive 12 month period	See Section 78.90.4.B.4
SEASONAL SALES (FIREWORKS)	Limit: 30 days maximum per calendar year Annual Limit: 1 occurrence per parcel, per consecutive 12 month period	See Section 78.90.4.B.4
SPECIAL EVENTS (i.e., FAIRS, FESTIVALS, OR SIMILAR OUTDOOR EVENTS) NOT INCLUDING GRAND OPENINGS	Limit: 4 days maximum per calendar year Annual Limit: 3 occurrences per parcel, per consecutive 12 month period	See Section 78.90.4.B.5
TEMPORARY ASSEMBLY SITE FOR DAY WORKERS	Initial Permit: Not more than 24 consecutive months after date of approval Extensions: Up to 3 extensions of 12 consecutive months granted by town council; no extension on same site after third extension	See Section 78.90.4.B.6
PRIVATE FARMERS' MARKET (on private property)	Limit: 1 day per week, maximum 7 hours per day on private property	See Section 78.90.4.B.7
TEMPORARY FAMILY MEDICAL CARE STRUCTURE	Indefinite based on need.	See Section 78.90.4.B.8

TABLE 78-90.1-B: TABLE OF ALLOWED TEMPORARY USES AND STRUCTURES		
TEMPORARY USE OR STRUCTURE	ALLOWABLE TIME FRAME	SPECIFIC REGULATIONS
GRAND OPENINGS	Limit: 60 consecutive days, maximum	See Section 78.90.4.B.9

C. **Temporary Use Prohibitions.** Retail sales or display of goods, products, or services and any associated signage within the public right-of-way or on other town property is prohibited except as part of a town-recognized event or as authorized by the town manager. See also the Herndon Town Code, section 66-1, obstructing streets and sidewalks.

Sec. 78-90.2 Temporary Use Permits

A. **Temporary Use Permits.** All temporary uses and structures required to obtain a temporary use permit pursuant to Table 78-90.1.B. Table of Allowed Temporary Uses and Structures, shall obtain the permit pursuant this section. A temporary use permit shall be reviewed, approved, or revoked in accordance with the standards of this chapter.

B. **Temporary Use Site Plan Required.** All temporary uses and structures required to have temporary use permit shall file a temporary use site plan in accordance with Section 78-155.6.E.4.

C. **Expiration.** A temporary use permit shall be effective beginning on the date specified in the permit approval, and shall remain effective for the period indicated on the permit, not to exceed the period allowed for the particular type of use as specified in Article IX - Temporary Uses and Structures.

D. **Revocation.** The zoning administrator may revoke a temporary use permit at anytime subsequent to the failure of the owner or operator of the permitted use to observe requirements of the law with respect to the maintenance and conduct of the use, and conditions of the permit that were designated by the zoning administrator when issued. Upon receipt of notice of revocation of the permit, the property owner or operator of such activity shall cease operation of the activity immediately. Such provisions shall not be deemed to preclude the use of any other remedy prescribed by law with respect to violations of the provisions of this division.

E. **Waiver.** The zoning administrator may waive any requirements of this section in specific cases where such requirement is found to be unreasonable and such waiver will not be adverse to the intent of this chapter.

F. **Amendment.** A temporary use permit may be amended, extended, or modified in accordance with the procedures and standards established for its original approval.

Sec. 78-90.3 General Standards For All Temporary Use Permits

All temporary uses and structures shall meet the following general requirements, unless otherwise specified in this chapter:

A. Limited Impact. The temporary use shall not be detrimental to property or improvements in the surrounding area or to the public health, safety, or general welfare and impact shall be limited as follows:

- 1. **Normal Wear, Tear and Risk.** There shall be no damage to public or private property beyond normal wear or tear. There shall be no unusual risk of injury to persons.
- 2. **Impact on Residential Uses and Noise Limits.** The temporary use shall not have substantial adverse or noise impacts on nearby residential uses or neighborhoods. There shall be no public or private disturbances or nuisances. All temporary uses or events that include the operation of amplified sound shall obtain approval as required by Article V, Chapter 26 of the Herndon Town Code.
- 3. **No Permanent Alterations.** Permanent alterations to the site are prohibited.

B. Circulation and Parking. There shall be no unsafe impediments or distractions to, or congestion of, vehicular or pedestrian travel and parking shall be required as follows:

- 1. **Off-Street Parking Required.** All temporary uses shall be provided convenient off-street parking spaces in sufficient number for the use, as determined by the zoning administrator with reference to the requirements of Section 78-100, Off-Street Parking and Loading Standards. Notwithstanding other requirements of this section, such parking may be located off-site.
- 2. **Parking Surface.** All off-street parking shall occur on paved or graveled surfaces. Any parking surface added for the temporary use shall be removed within 30 days of the termination of the temporary use.

C. Public Services and Safety. The applicant shall arrange for any security police, fire, trash removal, maintenance, or other public services the event, use or structure may require.

D. Sufficient Area. The temporary use site shall be sufficient to accommodate the use or structure as follows:

- 1. **Developed Property.** If the property is developed, the site of the temporary use shall contain an area that supports the temporary use without encroaching into or creating a negative impact on existing buffers, open space, landscaping, pedestrian and vehicular traffic movements (including emergency vehicle access), and parking space availability. Portions of on-site parking areas may be used for the temporary use provided emergency access remains available and

the applicant demonstrates that parking will be sufficient for the permanent uses as well as the temporary use. Permanent on-site lighting shall be available in proximity to ensure the safe operation of the temporary use.

2. **Undeveloped Property** If the property is undeveloped, the site of the temporary use shall contain sufficient land area to allow the temporary use to occur, as well as any parking and traffic movement that may be associated with the temporary use, without disturbing sensitive or protected resources, including required buffers.

E. Relation to Principal Uses. The impact of the temporary use or structure on the principal use or the site shall be limited as follows:

1. **No Interference with Normal Operations.** Any temporary structures, including tents, shall be located so as to not interfere with the normal operations of any permanent use located on the property and so as to maintain adequate parking availability on the site while the temporary use is in place.
2. **Approval Conditions of Principal Use Shall Apply.** The temporary use shall not violate any applicable conditions of approval that apply to the principal use on the site.

F. Hours of Operation. Unless otherwise specified in this section, the hours of operation shall be limited to between 9:00 a.m. to 7:00 p.m.; provided, however, that based upon a lighting plan submitted by the applicant, the zoning administrator may approve additional evening hours, but in no event shall a temporary use operate after 11:00 p.m. If permanently-installed lighting is not available in proximity to ensure the safe operation of the temporary use, the zoning administrator may restrict operation of the temporary use to daylight hours.

G. Limit on Number of Events Per Year. In no event shall the town issue a permit for a temporary use for a parcel or property already subject to five temporary use permits for five events, respectively, within a single calendar year.

H. Permits and Inspections. All inspections and permits required by applicable construction codes shall have been approved and passed.

I. Signage. Signs for temporary uses shall meet the following standards.

1. **Signs Removed when Temporary Use Ends.** All approved temporary signs associated with the temporary use shall be removed when the activity ends.
2. **No Signs in Public Right-of-Way** No signs associated with the temporary use or activity shall be permitted in the public right-of-way.

J. Removal of Temporary Structures/Restoration of Site. Temporary uses and structures shall be removed and the site restored as follows:

1. **48 Hour Time Frame for Removal/Restoration.** Structures and features associated with the temporary use shall be dismantled and the site shall be returned within 48 hours to its condition prior to the establishment of the temporary use. Failure to comply with this requirement may cause the town to restore the site at the expense of the property owner and the address shall be prohibited from obtaining another temporary use permit for three years.
2. **Performance Bond or Guarantee May be Required.** If determined necessary by the zoning administrator to ensure the public health, safety or welfare, the applicant shall submit a performance bond or other financial guarantee to ensure that any temporary facilities or structures used for such proposed temporary use will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition.

Sec. 78-90.4 Specific Standards for Certain Temporary Uses and Structures

A. Standards for Uses and Structures That Do Not Require a Temporary Use Permit.

The following events or activities may occur without a temporary use permit subject to time limits in Table 78-90.1-B. and additional standards below.

1. **Sidewalk Sales by Non-Profit Organizations.** Sidewalk sales of cookies, candy, baked goods, or similar small items by civic or nonprofit organizations on commercial properties in areas devoted to pedestrian use provided that:
 - a. A safe and adequate passageway for pedestrians is maintained during the event;
 - b. The activity is limited to eight hours per day; and
 - c. All tables, chairs and other furniture or equipment associated with the event are secured overnight.
2. **Temporary Uses on Town Rights-of-Way or Town Property.** Temporary uses located on town rights-of-way or town property shall be approved by the town manager.
3. **Temporary Parking Approval.** Temporary parking for events lasting up to four days shall be subject to prior approval from the Town of Herndon Police Department. If the use is to utilize off-site parking, the following information must be submitted to the zoning administrator:
 - a. A letter of consent from the property owner or legal agent of the property to be used; and
 - b. A description of how attendees will access safely the temporary use from the off-site parking.

- 4. On-Site Portable Storage Unit.** A property owner or tenant may rent and use a portable storage unit on residential property in accordance with provisions in Article IX, and when the following conditions are met:
- a. The unit is no larger than eight feet by eight feet by 16 feet.
 - b. There are no more than two portable storage units for any address at any one time.
 - c. The portable storage unit is used only for the temporary storage of household goods and related items. The portable storage unit may not be used for construction materials or waste.
 - d. The portable storage is not placed on the property as an accessory structure.
 - e. The portable storage unit is placed on an impervious surface.
 - f. On duplex, townhouse, quadruplex, or multi-family properties, placement of the unit must be approved by an appropriate management or ownership entity to ensure safe and convenient access to required parking spaces, driveways, and pedestrian pathways and to ensure that the unit does not obstruct emergency access or infringe on required landscaped areas.
 - g. The department of community development is notified at least one business day prior to placing the unit on the site.
 - h. The unit(s) shall not be on-site for more than 30 days, per year, per address. The placement of such units shall be limited to two occurrences per year, per address, the combined duration of which shall not exceed 30 days per consecutive 12 month period.
- 5. On-site Temporary Construction-Related Activities.** On-site temporary construction-related activities, including construction offices, indoor and outdoor storage, fencing, portable toilets and parking may occur on the same site as the construction project without obtaining a temporary use permit.
- 6. Roll-off Dumpster on Residential Property.** A property owner or tenant may rent and use a roll-off dumpster on residential property in accordance with provisions of Article IX, and when the following conditions are met:
- a. The department of community development is notified at least one business day prior to placing the unit on the site.
 - b. The unit is placed on the site for the allowable time frame specified in Table 78-90.4.A.6. Extensions of time limits may be approved by the zoning administrator for building permits subject to a single lot development plan or approved subdivision site plan in accordance with Section 78-155.6 .J.

- c. The unit has a maximum capacity of 30 cubic yards, or is no larger than eight feet by eight feet by 16 feet.
- d. The dumpster is used only for disposal of acceptable waste. Examples of waste that are not acceptable include refrigerators, a/c units, tires, batteries, car parts, hazardous waste, gas and propane tanks, dirt, rock, concrete, roofing, railroad ties, and other high density materials.
- e. On duplex, townhouse, quadruplex, or multi-family properties, placement of the unit must be approved by an appropriate management or ownership entity to ensure safe and convenient access to required parking spaces, driveways, and pedestrian pathways and to ensure that the unit does not obstruct emergency access or infringe on required landscaped areas.
- f. The extension of the allowable time frame for a roll-off dumpster on a residential property may be permitted for a building permit subject to a single lot development plan or a subdivision site plan as follows:
 - (1) The property owner shall file a written request with the zoning administrator indicating why the additional time is required.
 - (2) The request and approval shall be subject to an inspection by the zoning administrator to determine whether or not the dumpster appears to be creating any off-site nuisances, such as but not limited to odors and insects.

TABLE 78-90.4.A.6: ALLOWABLE TIME FRAME FOR ROLL-OFF DUMPSTERS ON RESIDENTIAL PROPERTY

FOR SITE IMPROVEMENTS THAT REQUIRE:	ALLOWABLE TIME FRAME FOR INITIAL OCCURRENCE	EXTENSION OF TIME, PER OCCURRENCE	MAXIMUM DURATION, FOR ALL OCCURRENCES COMBINED	OTHER REQUIREMENTS
NO BUILDING PERMIT	2 consecutive weeks	None	4 weeks within any 12 consecutive months	See Section 78-90.A.6
BUILDING PERMIT ONLY OR BUILDING PERMIT AND BUILDING LOCATION SURVEY	8 consecutive weeks		16 weeks within any 12 consecutive months	See Section 78-90.A.6
BUILDING PERMIT AND SINGLE LOT DEVELOPMENT PLAN	10 consecutive months	4 months	14 months	Two extensions permitted; each extension of time is subject to approval by the zoning administrator. See Section 78-90.A.6.f

TABLE 78-90.4.A.6: ALLOWABLE TIME FRAME FOR ROLL-OFF DUMPSTERS ON RESIDENTIAL PROPERTY				
FOR SITE IMPROVEMENTS THAT REQUIRE:	ALLOWABLE TIME FRAME FOR INITIAL OCCURRENCE	EXTENSION OF TIME, PER OCCURRENCE	MAXIMUM DURATION, FOR ALL OCCURRENCES COMBINED	OTHER REQUIREMENTS
BUILDING PERMIT AND AN APPROVED SUBDIVISION SITE PLAN	10 consecutive months	Yes	No limit	Extension of time is subject to approval by the zoning administrator. See Section 78-90.A.6.f

B. Standards for Certain Temporary Uses and Structures that Require a Temporary Use Permit. In addition to the general standards for all temporary uses described in Section 78-90.3 certain temporary uses shall also be required to meet the following requirements to obtain a temporary use permit.

1. **Temporary Office Facilities.** Temporary facilities used as sales/leasing offices, including those located in a model unit of a residential project, or used during construction to expand or replace a permanent building, may be permitted on the same site as the permanent use. Sales offices may be established for pre-sales or leasing prior to construction of the project.
 - a. Such temporary offices may remain on the site for no more than 36 consecutive months. This period may be renewed for two twelve-month periods, for good cause shown, upon approval of a written request, submitted to the zoning administrator 30 days prior to the expiration of the permit. In no event, however, shall such extensions allow the temporary use to remain on the site for more than three years. All temporary buildings approved pursuant to this section shall meet the following additional requirements:
 - (1) Such structures may be located anywhere on site, except within existing vegetated buffers or other areas designated on the site plan to remain free from land disturbance.
 - (2) Temporary Office Facilities shall also be subject to the following requirements:
 - (a) The temporary structure shall be factory-fabricated and transportable.
 - (b) Under-skirting shall be installed around all temporary structures requiring site plan approval. .
 - (c) All permits required by applicable building, electrical, plumbing, and mechanical codes shall be obtained from the building official prior to installation of the temporary structure.

(d) The structure shall be maintained in good condition.

2. **Off-Site Construction-Related Activities.** Off-site temporary construction-related activities, including construction offices, indoor and outdoor storage, fencing, portable toilets and parking may be located on a site that is nearby the construction site with approval of a temporary use permit. Upon removal of the construction use, the site shall be restored to its previous condition.
3. **Outdoor Retail Sales Events Associated with an Existing Business.** A temporary use permit for an outdoor retail sales event associated with an existing business shall conform to the following:
 - a. An outdoor retail sales event shall take place on an improved site where the principal use is retail sales, or on an immediately adjacent site.
 - b. Outdoor retail sales events shall be conducted by and clearly associated with an existing retail business which has been reviewed and approved for compliance with the provisions of this chapter, and for which there are no outstanding violations of this chapter.
 - c. An outdoor retail sales event associated with an individual business, shopping center, or site shall be limited in scope to similar or complementary products, goods, and/or services to those offered by the existing principal use(s) located upon the same site. The temporary sale of products, goods, and/or services that differ from the normal range of those offered by an existing principal use(s) shall be prohibited.
 - d. **Distance from Residential Dwelling.** The proposed display and/or sale of goods, products and/or services during an outdoor retail sales event may not occur within 200 feet of an occupied residential dwelling unit.
 - e. Sidewalk and parking lot sales, located on the same site as the merchant's permanent place of business, may not impede or obstruct safe pedestrian and vehicular circulation.
4. **Seasonal Sales.** Notwithstanding the specific use regulations of the individual commercial and industrial zoning districts enumerated in this chapter, the following uses may be permitted on a temporary basis, subject to approval of a temporary use permit, when such uses are in conformance with the regulations of Article IX, and on property located within any commercial or industrial zoning district; or on the property of non-residential uses approved by special exception in residential zoning districts:
 - a. Temporary retail sales stands limited to the primary sale of Christmas trees;

- b. Halloween pumpkins; ;
- c. Fireworks; and;
- d. Civic or nonprofit group merchandise. For the purpose of this section the term "civic or nonprofit group" shall include any organization that meets regularly in the town or which has "Herndon" or a town location in its name, and which has demonstrated service to the town.

5. Special Events (not including Grand Openings). Temporary special events lasting no more than four days, including but not limited to cultural events, musical events, celebrations, festivals, fairs, carnivals, circuses, and communal camping held on private property within the town, unless exempted pursuant to Section 78-90.4.A may be permitted subject to a temporary use permit in compliance with the following standards:

- a. The proposed special event shall not be of such a nature, size, or duration that the particular location requested cannot reasonably accommodate the event.
- b. The proposed special event shall not be at a time and location that has already been permitted or reserved for other activities in the same location.
- c. In approving the temporary use permit for the special event, the zoning administrator is authorized to impose such conditions upon the premises benefited by the permit as may be necessary to reduce or minimize any potential adverse impacts upon other property in the area, as long as the condition relates to a situation created or aggravated by the proposed special event. The zoning administrator is authorized, where appropriate, to require:
 - (1) Provision of temporary parking facilities, including vehicular access and egress.
 - (2) Control of nuisance factors, such as but not limited to, the prevention of glare or direct illumination of adjacent properties, noise, vibrations, smoke, dust, dirt, odors, gases, and heat.
 - (3) Regulation of temporary buildings, structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards.
 - (4) Provision of sanitary and medical facilities.
 - (5) Provision of solid waste collection and disposal.

- (6) Provision of security and safety measures, including lighting if the temporary use is in operation after day light hours.
 - (7) Use of an alternative location or date for the proposed temporary use.
 - (8) Amendment or elimination of certain proposed activities.
 - (9) Regulation of operating hours and days, including limitation of the duration of the temporary use to a shorter time period than that requested or specified in this section.
- d. A temporary use permit for a special event authorized pursuant to this section shall be limited to a maximum duration of four days, with a maximum of three occurrences per parcel per years, unless otherwise specifically authorized by the zoning administrator.

6. Temporary Assembly Site for Day Workers. A temporary assembly site for day workers shall require approval of a special exception subject to Section 78-155.3 and must conform to all of the following conditions, in addition to any specifically imposed conditions.

- a. The use shall be permitted by special exception for not more than two years after the date of town council approval, with up to three one-year extensions granted by town council possible. No further extensions will be granted for such use on same site.
- b. No more than one assembly site, whether formal or informal, shall be permitted in the town.
- c. The size and location use shall meet the following standards:
 - (1) The area of operation on the site shall be defined in the special exception application, and the operations shall be confined to the defined area.
 - (2) No lot or parcel on which is located the site shall be less than one acre in size. The site may occupy all or part of the lot or parcel.
- d. The site shall be managed as follows:
 - (1) The maximum number of workers to be present on the site at any one time shall be set forth in the special exception application. The number of parking spaces and bicycle racks, the vehicular circulation system, and the size of the facilities shall accommodate this maximum number.

- (2) Written operating procedures governing the site shall be submitted as part of the special exception application and made a part of the conditions of this special exception. Among other operating procedures the hours of operation of the site shall be set forth.
- (3) The site, and any buildings or structures on the site shall be maintained in good order, free from litter or trash, and in a presentable, well maintained and safe manner, as determined by the zoning administrator using recognized standards.
- (4) All activities conducted on the site shall be carried out in a lawful manner, as determined by competent town, Virginia, or federal authorities. Nothing in this subparagraph shall be construed to suggest or require that the zoning administrator enforce any set of laws other than the town's zoning ordinance.
- (5) Sufficient staff shall be provided to control activities during operation of the site.
- (6) No more than one mobile commercial food vendor shall operate at or on the site at any one time. This vendor may be present at the site only during operating hours of the site.

e. The site features shall include the following:

- (1) Shelter from the elements, potable water and toilets for the workers may be provided. Temporary, modular, or manufactured units may be permitted. There must be approval of the architectural review board of all architectural features of all buildings or structures prior to installation on the site.
- (2) A gravel, concrete, asphalt milling, or asphalt surface shall be required for all vehicular and pedestrian circulation areas. The surface materials shall be as specified by the town council.
- (3) Screening shall be provided on any side of the site adjacent to any property zoned or used for residential purposes.

7. Private Farmers' Markets. Private farmers' markets on private property within the town, unless exempted pursuant to section 78-90.1.C, shall comply with the following standards:

- a. Private farmers' markets are permitted subject to a temporary use permit within the Business (PD-B) zoning district.

- b. The operation of the market is limited to a maximum of one day a calendar week and shall not exceed seven hours per calendar day including set-up and clean-up. Such uses shall be limited to no more than 30 weeks per calendar year. No market related vehicles or tents, stands or other materials shall be present on site before or after the time allotted per day unless within a permanent enclosed structure.
- c. Vendors shall grow or produce substantially all items sold. Goods meeting the value-added definition developed by the USDA and accepted by the Commonwealth of Virginia as well as the carrying of goods produced within the same region and meeting the requirements of the market are also permitted. The "region" is defined as within 220 miles of the Town of Herndon.
- d. The private farmers' markets may include accessory educational activities associated with food, food preparation and horticulture, demonstrations and general entertainment.
- e. Prior to the initial commencement of operations, the owner of the property on which the private farmers' market is located shall submit to the zoning administrator for review and approval (if it is approved) an application to hold a private farmers' market. The application shall include the following information:
 - (1) A to scale drawing of the site indicating the total square footage of the property, the proposed location of the farmers' market and accessory activities, the total number of parking spaces, the total number of parking spaces required for the existing development, the number of parking spaces that will be occupied by the farmers' market, the general arrangement of vendors, and the location of both the farmers' market commercial signs and directional signs.
 - (2) An accompanying description of the means of separating the market area from adjacent parking areas and drive aisles, proposed alternative traffic flow, a justification as to why the market as proposed will not pose parking conflicts with existing uses on site, the number of vendors, the name, address and type of merchandise of each vendor, the name, phone number, e-mail address and mailing address of the property owner and property owner's responsible agent, the name, phone number, e-mail address and mailing address of the farmers' market organizer and market manager, as well as the names of market's advisory board or other oversight body.
 - (3) A copy of the market's operational regulations, a notarized affidavit by the market organizer that all vendors meet the market's operational regulations, meet the regulations of the Town of Herndon Zoning

Ordinance governing private farmers' market vendors, and have successfully completed all required federal, state, county and town inspections. If the market is approved and vendors are added during the period of its operation, the information provided to the town shall be updated prior to any new vendor beginning operations on site.

- f. When reviewing the application, the zoning administrator shall consider the location of fire lanes, the ability of the site to continue to provide equitable parking for tenants of the property as well as the farmers' market, the ability of the proposed layout to provide safe vehicle and pedestrian access for both the farmers' market users and permanent tenant users and whether or not the proposed use meets the requirements of this chapter.
- g. Private farmers' markets activity shall not be located on pervious surfaces.
- h. Private farmers' markets shall not be located on parcels or unified commercial developments of less than 20 acres.
- i. The owner of the property on which the private farmers' market is located may utilize no more than 15 percent of the reserved market area for self or non-temporary tenant promotional purposes including demonstrations, food and horticultural education, coupon distribution and similar activities. Sales by the owner of the property and non-temporary tenants shall be limited to prepared food and beverages.

8. Temporary Family Health Care Structures. Temporary family health care structures for use by a caregiver in providing care for a mentally or physically impaired person and on property owned or occupied by the caregiver as one's residence is a permitted accessory use to the primary structure in any single-family residential zoning district on lots zoned and used for single-family detached dwellings (R-15, R-10, PD-R [as appropriate], PD-TD and PD-D [as appropriate]) with approval of a temporary use permit and subject to the following:

- a. Such structures shall not require a special exception permit or be subjected to any other local requirements beyond those imposed upon other authorized accessory structures, except as otherwise provided in this subsection, 8. Such structures shall comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure. Only one temporary family health care structure shall be allowed on a lot or parcel of land.
- b. The following definitions shall apply for the purposes of this subsection.
 - (1) "Caregiver" means an adult who provides care for a mentally or physically impaired person within the commonwealth. A caregiver shall

be either related by blood, marriage, or adoption to or the *legally* appointed guardian of the mentally or physically impaired person for whom the caregiver is caring.

- (2) “Mentally or physically impaired person” means a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in Code of Virginia § 63.2-2200, as certified to the zoning administrator in a writing provided by a physician licensed by the commonwealth.
- (3) “Temporary family health care structure” means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person or, in the case of a married couple, two occupants, one of whom is a mentally or physically impaired person, and the other requires assistance with one or more activities of daily living as defined in Code of Virginia, § 63.2-2200, as certified in writing by a physician licensed in the Commonwealth; (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the Industrialized Building Safety Law (Virginia Code, § 36-70 et seq.) and the Uniform Statewide Building Code (Virginia Code, § 36-97 et seq.).
- c. Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.
- d. Any person proposing to install a temporary family health care structure shall first obtain a temporary use permit from town. The town may not withhold such permit if the applicant provides sufficient proof of compliance with this Subsection, 8. The applicant must provide to the zoning administrator evidence of compliance with this Subsection, 8 on an annual basis on the anniversary of the granting of the temporary use permit, as long as the temporary family health care structure remains on the property. Such evidence may involve the inspection by the town of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation.
- e. Any temporary family health care structure installed pursuant to this Subsection, 8 may be required to connect to any water, sewer, and electric utilities that are serving the primary residence on the property and shall comply with all applicable requirements of the Virginia Department of Health.
- f. No signage advertising or otherwise promoting the existence of the structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.

- g. Any temporary family health care structure installed pursuant to this subsection, 8 shall be removed within 60 days of the date on which the temporary family health care structure was last occupied by a mentally or physically impaired person receiving services or in need of the assistance provided for in this subsection.
 - h. The zoning administrator may revoke the temporary use permit granted pursuant to subsection 8.c. if the permit holder violates any provision of this subsection 8. Additionally, the town may seek injunctive relief or other appropriate actions or proceedings in the circuit court to ensure compliance with this subsection 8. The zoning administrator is vested with all necessary authority on behalf of the governing body of the town to ensure compliance with this subsection 8.
- 9. Grand Openings.** On properties zoned CC, CS, CO, PD-B, PD-D, PD-TD, PD-TOC, PD-W and O&LI each business, not including home-based businesses, commencing operations at a new address within the town, or a business that has undergone significant structural alteration necessitating the submission of a site plan, or any change necessitating a new business license, on or after January 1, 2011 may hold one grand opening event subject to the following provisions:
- a. Applications for a temporary use permit for a grand opening must be received by the town within eight months of the business opening to the public or, in the case of structural alterations, final occupancy being granted by the building official.
 - b. The proposed grand opening event shall not be of such a nature, size, or duration that the particular location requested cannot reasonably accommodate the event, as determined by the standards below in subsection d.
 - c. The proposed grand opening event shall not be at a time and location that has already been permitted or reserved for other temporary use activities in the same location.
 - d. In approving the temporary use permit for the grand opening event, the zoning administrator shall be guided by the following standards:
 - (1) Provision of temporary parking facilities, including vehicular access and egress.
 - (2) Control of nuisance factors, such as but not limited to, the prevention of glare or direct illumination of adjacent properties, noise, vibrations, smoke, dust, dirt, odors, gases, and heat.

- (3) Regulation of temporary buildings, structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards.
 - (4) Provision of sanitary and medical facilities.
 - (5) Provision of solid waste collection and disposal.
 - (6) Provision of security and safety measures, including lighting if the temporary use is in operation after day light hours.
 - (7) Use of an alternative location or date for the proposed temporary use.
 - (8) Amendment or elimination of certain proposed activities.
- e. The proposed grand opening event may include a variety and combination of activities to be held during the entire duration of the grand opening event or during portions of the grand opening event.

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**HERNDON TOWN CODE
CHAPTER 78 - ZONING ORDINANCE**

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ARTICLE X – PARKING, LOADING AND CIRCULATION

Sec. 78-100 Off-Street Parking, Loading and Circulation

The following sections contain provisions pertaining to off-street parking, loading and circulation.

Sec. 78-100.1 Off-Street Parking, Generally

- A. Purpose and Intent.** These provisions are intended to relieve traffic congestion in the streets, to minimize any detrimental effects of off-street parking areas on adjacent properties, to provide adequate parking to support the uses, to ensure proper loading configuration and access, and to ensure the proper and uniform development of parking areas throughout the town.
- B. Applicability.** Off-street parking and loading spaces for each use shall be provided in accordance with the standards established in this section.
- C. Standards.** The off-street parking and loading standards of this section shall apply to development in every zoning district unless otherwise stated within this chapter. .
- D. Responsibility for Provision.** The responsibility for providing the off-street parking and loading required by this Section shall be that of the owner of the land requiring parking and loading facilities. Review for compliance with the standards of this section shall occur at the time of any application for official zoning map amendment subject to proffers, special exception, site plan, preliminary subdivision plan, zoning appropriateness permit or zoning inspection permit.
- E. Change of Use.** Off-street parking and loading shall be provided for any change of use or manner of operation that would, based on the minimum standards established in this section, result in a requirement for more parking or loading spaces than the existing use. When a proposed use requires more parking spaces than the use it is replacing, the owner, owner's agent, or condominium association shall provide the zoning administrator with a parking study providing a summary of all existing uses and their parking requirements, any vacant square footage and its anticipated parking requirements, and the proposed use and parking requirements and the number of conforming parking spaces.
- F. Expansions and Alterations.** The off-street parking and loading standards of this section shall apply when an existing structure or use is expanded, enlarged, or otherwise increased in capacity. For structures and uses that are nonconforming, see Article XVI, Nonconformities.
- G. Use of Stacking Area, Parking Area, or Loading Space.** All vehicular stacking areas, parking areas, and loading spaces required by this Section shall be used only for those purposes. Any other use, including but not limited to any repair work or service of any kind, shall constitute a separate commercial use of the space in

violation of this chapter. Repair and maintenance of the pavement itself is permitted as needed.

Sec. 78-100.2 Minimum Off-Street Parking and Loading Standards

A. Minimum Number of Parking Spaces Required In R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W Zoning Districts. Unless otherwise expressly stated in this chapter, off-street parking spaces in the R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W zoning districts shall be provided in accordance with Table 78-100.2.A Minimum Off-Street Parking Standards, below:

TABLE 78-100.2.A - MINIMUM OFF-STREET PARKING STANDARDS FOR R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W ZONING DISTRICTS <i>("du" = dwelling unit; "sf" = square feet of floor area)</i>	
USE TYPE	REQUIRED NUMBER OF SPACES
RESIDENTIAL USE CATEGORY	
Single-Family Detached Dwelling	Public Street Frontage: 2 spaces per du dwelling with frontage on a public street;
	Private Street Frontage: 3 spaces per du dwelling with frontage on a private street.
Duplex and Townhouse Dwellings and Stacked Townhouse	2.33 per du dwelling
Multi-Family Dwellings	Efficiency/Studio Unit: 1 space per unit for each efficiency unit
	One 1 Bedroom Unit: 1.5 spaces per unit for each 1 bedroom unit,
	Two 2 Bedrooms or more: 2 spaces per unit for each unit with 2 or more bedrooms.
Housing for the Elderly	1.5 spaces per du dwelling unit, plus .25 per du dwelling unit for visitors.
Assisted Living for the Elderly and Persons with Disabilities and Convalescent Homes for Long and Short-Term Care	1 per 4 four beds, plus 1 one space for each two 2employees, plus 1 one space for each doctor assigned to the facility per shift.
Group Home	1 per four beds, plus one space for each 2 two employees.
Bed and Breakfast Establishment	1 per guestroom, in addition to the dwelling's required parking spaces.
EDUCATION USE CATEGORY	

TABLE 78-100.2.A - MINIMUM OFF-STREET PARKING STANDARDS FOR R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W ZONING DISTRICTS
 ("du" = dwelling unit; "sf" = square feet of floor area)

USE TYPE	REQUIRED NUMBER OF SPACES
Childcare Center, Daycare Center or Preschool	1 per employee, and one space per five children at maximum occupancy. As accessory uses, see section 78-100.3.B, uses with variable parking demand characteristics. See also section 78-71.2.
Post Secondary Education and Career Schools	1.5 per two students of design capacity
School, Public or Private (K-12)	1 per 15 students, except in the case of schools where students are permitted to drive and park at the school, there shall be one parking space per vehicle permitted to park.
GOVERNMENT FACILITIES USE CATEGORY	
Government Buildings, Facilities and uses not Otherwise Categorized	See section 78-100.3.B, uses with variable parking demand characteristics.
INSTITUTIONAL USE AND COMMUNITY SERVICES USE CATEGORY	
Cemetery	See section 78-100.3.B Uses with variable parking demand characteristics.
Community Centers	1 per 50 square feet of floor area.
Convalescent Home	1 per four beds, plus one space for each two employees, plus one space for each doctor assigned to the facility per shift.
Hospital	1 per four beds, plus one space for each two employees, plus one space for each doctor assigned to the facility per shift.
Library	1 per 500 square feet of floor area.
Museum, Fine Arts Center	1 per 500 square feet of floor area.
Religious Institution, with or without any Accessory Schools, Daycare Centers, or Recreational Facilities	1 per four 4 worship spaces in the principal place of worship.
Senior Center	1 per 50 square feet of floor area.
Social Service and Similar Community	1 per 50 square feet of floor area.

TABLE 78-100.2.A - MINIMUM OFF-STREET PARKING STANDARDS FOR R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W ZONING DISTRICTS <i>("du" = dwelling unit; "sf" = square feet of floor area)</i>	
USE TYPE	REQUIRED NUMBER OF SPACES
Service Uses	
EATING ESTABLISHMENTS USE CATEGORY	
Restaurant	1 per four seats, plus 1 per each two employees on duty during peak shift.
ALCOHOL PRODUCTION FACILITIES, SMALL	
Craft Breweries, Micro-Distilleries, Micro-Cideries, Micro-Wineries (without on-site vineyards)	1 per 150 per square feet of gross floor area.
Brewpubs	1 per four 4 seats plus 1 per each two employees on duty during peak shift for any floor area dedicated to the eating establishment. 1 per 150 sq square feet of gross floor area dedicated to the alcohol production facility.
OFFICE USE CATEGORY	
All Office Uses, excluding any medical or health related services (see "health care facility")	1 per 300 square feet of gross floor area.
INDOOR ENTERTAINMENT USE CATEGORY	
Commercial Recreation/ Entertainment, Indoor	1 per each three seats or other accommodations, and one space per each attendant, employee or participant.
OUTDOOR ENTERTAINMENT USE CATEGORY	
Commercial Recreation/ Entertainment, Outdoor	1 per each three seats or other accommodations, and one space per each attendant, employee or participant.
Private Swimming Pools	1 per each three persons included in the capacity for the facility, and 1 space per each attendant, employee or participant.
PERSONAL SERVICES AND RETAIL SALES USE CATEGORY	

TABLE 78-100.2.A - MINIMUM OFF-STREET PARKING STANDARDS FOR R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W ZONING DISTRICTS
 ("du" = dwelling unit; "sf" = square feet of floor area)

USE TYPE	REQUIRED NUMBER OF SPACES
Animal Hospital, Animal Shelter, Kennel, Pet Day Care, Veterinary Clinic and similar uses.	1 per 400 square feet of floor area.
Artist's Studio or Gallery	1 per 400 square feet of floor area
Dry-cleaning/Laundry Drop-Off and Pick-Up Without on-site Cleaning, Laundromats	1 per 250 square feet of floor area, but not less than 3 per establishment.
Durable Goods Sales	1 per 400 square feet of floor area.
Financial Institution	1 per 300 square feet of floor area.
Funeral Home	1 per each five seats, provided that there shall be not less than 20 spaces for each chapel or parlor. One space for each employee, hearse, ambulance and other business-related vehicles shall be provided.
Health Care Facility including Medical Offices	1 per 300 square feet of gross floor area.
Health Care Laboratory	1 per 300 square feet of gross floor area
Mailing and packing service	1 per 200 square feet of floor area.
Personal services, general	1 per 200 square feet of floor area
Pharmacy	1 per 200 square feet of floor area
Product Repair and Services	1 per 200 square feet of floor area, but not less than 3 spaces per establishment.
Retail Sales	1 per 200 square feet of floor area
School of Special Instruction	1 per two students at peak hour capacity. See also section 78-100.3.B, uses with variable parking demand characteristics.

TABLE 78-100.2.A - MINIMUM OFF-STREET PARKING STANDARDS FOR R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W ZONING DISTRICTS
("du" = dwelling unit; "sf" = square feet of floor area)

USE TYPE	REQUIRED NUMBER OF SPACES
Other Personal Services and Retail Sales Uses	1 per 200 square feet of floor area.
VEHICLE SALES AND SERVICES USE CATEGORY	
Vehicle Rental and Sales as a Principal Use	One customer and one employee parking space for each 1,200 square feet of display area.
Vehicle Repair; Transmission and Muffler Shops, Sales of Vehicle Parts and Tires	3 for each repair bay for the servicing of vehicles, not including the repair bay, plus one parking space for each employee on duty.
Vehicle Full Service Wash and Detailing	20 standing or parking spaces for waiting vehicles for each wash rack, plus one parking space for each two employees.
Recreational Vehicle Rental and Sales	One customer and one employee parking space for each 1,200 square feet of display area.
LODGING BUSINESSES USE CATEGORY	
Conference Center	1 per guestroom
Hotel, Motel or Inn	1 per guestroom
COMMERCIAL UTILITIES USE CATEGORY	
Commercial Communication Tower, Freestanding	1 per site
Electrical Substation	1 per site
Telecommunication Switching Station	See section 78-100.3.B, uses with variable parking demand characteristics.
Utility-Related Maintenance and Storage Yards	See section 78-100.3.B, uses with variable parking demand characteristics.
INDUSTRIAL SERVICE USE CATEGORY	
Dry Cleaning or Laundry Plants	1 per 250 square feet of floor area, but not less than three spaces for any one establishment.

TABLE 78-100.2.A - MINIMUM OFF-STREET PARKING STANDARDS FOR R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W ZONING DISTRICTS <i>("du" = dwelling unit; "sf" = square feet of floor area)</i>	
USE TYPE	REQUIRED NUMBER OF SPACES
Scientific Research and Scientific Development	1 per 300 square feet of gross floor area
All Other Industrial Service Uses	Uses consisting of the manufacture, processing, assembly, or storage, the following spaces shall be assigned: one space for each 1,000 square feet of floor area, or one space for each two employees, whichever is greater.
	All others: 1 per 300 square feet of gross floor area
LIGHT MANUFACTURING USE CATEGORY	
Light manufacturing Uses	For uses consisting of the manufacture, processing, assembly, or storage associated with retail uses, the following spaces shall be assigned: one space for each 1,000 square feet of floor area, or one space for each two employees, whichever is greater.
	Otherwise shall not include elevator shafts, structured parking or atrium space not designed for occupancy and not occupied.
SELF-SERVICE STORAGE USE CATEGORY	
Self-Service Storage Uses	See section 78-100.3.B, uses with variable parking demand characteristics.
TRANSPORTATION AND PARKING USE CATEGORY	
Bus Maintenance Facility for Public Bus Service	One space for each 1,000 square feet of floor area, or one space for each two employees, whichever is greater.
Parking Facility, Commercial, Permanent	See section 78-100.3.B, uses with variable parking demand characteristics.
WAREHOUSING USE CATEGORY	
Electronic Warehousing	1 per 6,000 square feet of floor area designated for such use.
Warehouse (storage)	One space for each 1,000 square feet of floor area, or one space for each two employees, whichever is greater.
WHOLESALE SALES USE CATEGORY	
Contractor's Materials	One space for each 400 square feet of floor area, or one space for each two employees, whichever is greater.
Wholesale	One space for each 1,000 square feet of floor area, or one space for each two

TABLE 78-100.2.A - MINIMUM OFF-STREET PARKING STANDARDS FOR R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W ZONING DISTRICTS
 ("du" = dwelling unit; "sf" = square feet of floor area)

USE TYPE	REQUIRED NUMBER OF SPACES
Establishment	employees, whichever is greater.

B. Minimum Number of Parking Spaces Required In PD-TD, CC AND PD-D Zoning Districts. Unless otherwise expressly stated in this chapter, off-street parking spaces in the PD-DD, CC, PD-D zoning districts shall be provided in accordance with Table 78-100.2.B: Minimum Off-Street Parking Standards, below:

TABLE 78-100.2. B:MINIMUM OFF-STREET PARKING STANDARDS IN THE PD-TD, CC and PD-D ZONING DISTRICTS
 (see Section 78-100.7 for public parking options)
 ("du" = dwelling unit; "" = square feet of floor area)

USE TYPE	REQUIRED NUMBER OF CAR SPACES PER	REQUIRED NUMBER OF BICYCLE SPACES
RESIDENTIAL USE CATEGORY		
Single-Family Detached Dwelling	2 spaces per dwelling	0
Duplex, Townhouse Dwellings and Stacked Townhouse Dwellings	2 spaces per dwelling	0
Multi-Family	1.5 spaces per dwelling unit	1 interior or exterior long-term covered space per every 5 five units; 1 short-term space per every 12 units
OFFICE		
Office Uses including General Business, Medical, Professional and Governmental	3.3 spaces per 1,000 square feet of gross floor area	1 short-term space per every 1,500 square feet of gross floor area
COMMERCIAL		
Retail, Personal Service	3.3 spaces per 1,000 square feet of gross floor area	1 short-term space per every 1,500 square feet of gross floor area
Restaurant, and other Nonresidential and Non-Office Uses	3.3 spaces per 1,000 square feet of gross floor area	1 short-term space per every 1,500 square feet of gross floor area
Craft Breweries, Micro-Distilleries, Micro Cideries, Micro-Wineries (without on-site Vineyard	3.3 spaces per 1,000 square feet of gross floor area	1 short-term space per every 1,500 square feet of gross floor area

Brewpubs (eating establishment where food is prepared and served but also to produce alcoholic beverages on a small scale)	3.3 spaces per 1,000 square feet of gross floor area	1 short-term space per every 1,500 square feet of gross floor area
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C. Minimum Number of Parking Spaces Required In PD-TOC Unless otherwise expressly stated in this chapter, off-street parking spaces in the PD-TOD, zoning district shall be provided in accordance with Table 78-100.2.C: Table of Parking Standards PD-TOC.

TABLE 78-100.2.C: PARKING STANDARDS PD-TOC				
USE	SPACE PER UNIT OF MEASURE	MINIMUM PARKING LONG-TERM USE	MINIMUM PARKING INTERIM USE	MINIMUM BICYCLE PARKING
Residential	Per Dwelling Unit	1.0	1.6	0.75
Hotel	Per Hotel Unit	.75	.90	0.10
Hotel with Conference Center	Per Hotel Unit	1.0	1.2	0.15
Retail, Personal Service, Restaurant (including all ground-floor public assembly space and retail space)	Per 1,000 GFA	1.25	3.0	0.25
Office and Other Nonresidential/Hotel Uses above the Ground-Floor	Per 1,000 GFA	2.0	3.0	0.20

D. Loading Space Standards. The minimum number of off-street loading spaces shall be provided on-site for all developments specified in Table 78-100.2.D. Required Off-Street Loading Spaces, depending on the use or its gross floor area.

**TABLE 78-100.2.D
REQUIRED MINIMUM OFF-STREET LOADING SPACES**

"GFA" Gross Floor Area (in square feet)

LAND USE	GROSS FLOOR AREA (in square feet)	MINIMUM NUMBER OF SPACES
Multi-Family Uses with More than 50 Units	N/A	1 per each 200 units or fraction thereof
Offices and Personal Service Establishments	6,000 +	1
Space Used by, Designed for, or Adaptable to Retail Use	3,000—14,999	1
	15,000—49,999	2
	50,000—99,999	3
	100,000 +	4, plus 1 for each additional 100,000 gfa above 100,000 sf
Telecommunications Uses	6,000 +	1 per each 6,000 gfa
Wholesale, Light Industrial and Manufacturing Uses	Up to 15,000	1
	15,000—49,999	2
	50,000 +	3, plus 1 per each additional 50,000 gfa above 50,000 sf
All Other Commercial and Industrial Uses	Less than 40,000	1
	40,000 to 100,000	2
	100,000—160,000	3
	160,000—240,000	4
	240,000—320,000	5
	320,000—400,000	6
	Above 400,000	1 per each 90,000 above 400,000 gsf of area

Sec. 78-100.3 Determination of Off-Street Parking and Loading Requirements (including mixed uses, variable uses, unspecified uses, and accessible spaces)

A. Parking and Loading Standards for Unlisted Uses. Parking and loading standards for uses not specifically listed in Tables 78-100.2. A-C Minimum Off-Street Parking Standards, or Table 78-100.D, Required Off-Street Loading Spaces, shall be determined by the zoning administrator based on the standards for the closest comparable use or by reference to standard parking and loading resources

published by the National Parking Association or the American Planning Association. The zoning administrator may alternately require, for such uses not specifically listed, that the applicant submit a parking or loading demand study that justifies estimates of parking or loading demand based on the recommendations of the Institute of Traffic Engineers or other credible source, and includes relevant data collected from uses or combinations of uses that are the same or comparable to the proposed use in terms of density, scale, bulk, area, type of activity, and location.

- B. Parking and Loading Standards for Uses with Variable Parking Demand Characteristics.** Uses that reference this section in Table 78-100.2.A. Minimum Off-street Parking Standards for the R-15, R-10, RTC, RM, CS, CO, O&LI, PD-R, PD-B, PD-W zoning districts, may have widely varying parking and loading demand characteristics, making it difficult to establish a single off-street parking or loading standard. Upon receiving a development application for a use subject to these standards, the zoning administrator shall apply the off-street parking and loading standard specified for the listed use that is deemed most similar to the proposed use or establish minimum off-street parking standards on the basis of a parking and loading study prepared by the applicant. Such a study shall include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the zoning administrator, and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study shall document the source of data used to develop the recommendations.
- C. Parking Standards for Mixed Uses.** Unless otherwise approved, lots containing more than one use shall provide parking spaces in an amount equal to the total of the requirements for all individual uses.
- D. Parking Standards for Accessible Spaces for Persons with Disabilities.** When provided as a required accessibility improvement, accessible off-street parking spaces and related access aisles and accessible routes shall be in accordance with the provisions of the Virginia Uniform Statewide Building Code and the Town of Herndon Public Facilities Manual. Additional information concerning the number of required accessible parking spaces for persons with disabilities as well as required signage should be obtained from the office of the Town of Herndon building official.
- E. Parking Standards for Religious Institutions.** Required parking spaces may be located on a parking lot which is accessory to another principal use which is not open or operating at the time worship services are conducted if this lot is located within 600 feet by the shortest route of effective pedestrian access, from the religious institution.

Sec. 78-100.4 Computation of Off-Street Parking and Loading Requirements

- A. **Computation of Required Off-Street Parking Spaces.** The following provisions shall be used for the purpose of computing required off-street standing and parking or loading space:
1. **Gross Floor Area.** The gross floor area shall be used where calculations are based on floor area. For office uses, health care laboratory, scientific research and development, light manufacturing, gross floor area calculations shall not include elevator shafts, structured parking or atrium space not designed for occupancy and not occupied.
 2. **Fractional Spaces.** When application of the requirements would result in a fractional space, the fraction shall be counted as one space.
 3. **Uncertainty of Proposed Use.** If there is any uncertainty as to the amount of parking space required as a result of indefiniteness of the proposed use of the building or land, the maximum requirement for the general type of use that is involved shall govern.
- B. **Maximum Number of Spaces Permitted for Commercial or Service and Industrial Uses.** For any use categorized as a Commercial or Service and Industrial use in Table 78-72.D, Table of Principal Permitted and Allowed Uses, off-street vehicle parking spaces shall not be provided in an amount that is more than 125 percent of the minimum requirements established in Table 78-100.2.A Minimum Off-street Parking Standards.

Sec. 78-100.5. Construction, Dimension and Design Standards for Off-Street Parking, Loading and Stacking

- A. **Construction of Parking and Loading Areas.** Construction of off-street parking and loading areas shall be subject to the following provisions:
1. **Approval Required.** Construction of any parking area shall require review and approval in accordance with the terms of this chapter.
 2. **Construction of Off-street Parking and Loading Facilities before Zoning Permit Issuance.** All off-street parking and loading facilities shall be completed prior to the issuance of a zoning inspection permit or a zoning appropriateness permit for the use or uses they serve. In the case of phased development, off-street parking and loading need only be provided for the portions of the development for which a zoning inspection permit or zoning appropriateness permit is being issued.
 3. **Construction Materials.** The ground surface of parking and stacking areas shall be paved with a durable, dust free and hard material, such as bituminous hot mix or Portland cement, concrete, or some comparable material. Such paving shall be maintained for safe and convenient use at all times. See also Section 78-100.8.B.4, Standards for Alternative Materials.

B. Dimensional Standards for Parking Spaces and Aisles. Off-street parking spaces, areas and access aisles areas shall be subject to the following provisions:

1. **Dimensions of Parking Spaces and Aisles.** Notwithstanding similar provisions in the Herndon Public Facilities Manual, the minimum dimensions for standard car parking spaces and parking lot aisles shall be provided as shown in Table 100.4.B.1 Dimensional Standards for Parking Spaces and Aisles; below:

TABLE 78-100.B.1 DIMENSIONAL STANDARDS FOR PARKING SPACES AND AISLES				
PARKING ANGLE	STALL WIDTH (FT)	DEPTH OF STALLS (FT) PERPENDICULAR TO AISLE	ONE-WAY AISLE	TWO-WAY AISLE (FT)*
45°	8.5	19.0	15.5	18.0
60°	8.5	20.0	17.0	19.0
90°	8.5	18.0 <i>(See 78-100.B.2)</i>	23.0	23.0

2. **Fire Lanes and Aisle Width.** Where required, fire lanes shall comply with the Virginia Uniform Statewide Fire Prevention Code as amended by the Fairfax County Code as found in the Town of Herndon adopted Public Facilities Manual.
3. **Depth of Stall Reduction.** For a parking space at a 90 degree angle the depth of the stall may be reduced by up to 1.5 feet where the zoning administrator determines that adequate "head-in" overhang exists exclusive of required planting or screening requirements, and sidewalks.
4. **Dimensions of Parking Spaces within Parking Structures.** Parking structures may be subject to dimensional adjustments based on utilization, but in no case shall the standard space width be less than eight and one-half feet. Reduction in design standards shall be subject to approval by the approving authority.

C. Design of Parking and Stacking Areas. Every stacking and parking area shall be provided with safe and convenient access to a street and shall be improved in accordance with the standards of this section:

1. **Sufficient Area and Access** For every land use, there shall be provided sufficient area for access by and for the off-street standing and parking of all motor vehicles that may be expected to come to the establishment at any time under normal conditions for any purpose, whether driven by patrons, customers, purveyors, guests, employees or otherwise.
2. **Access to Public Streets and Alleys.** All parking areas shall be located and designed so as to avoid undue interference with the use of public streets and alleys. Parking areas shall provide suitable maneuvering room so that all vehicles may enter an abutting street in a forward direction.

3. **Backing into Public Streets Generally Prohibited.** The backing of a motor vehicle onto a public street from a parking area shall be prohibited, except from lots used for single-family detached, townhouse, and two-family dwellings.
4. **Visibility of Parking Areas.** To the extent possible, the visibility of parking areas from public streets shall be reduced by placing at least 20 to 40 percent of the parking to the rear or side of buildings facing public streets. Ideally, no more than one two-sided bay of nose-in parking should be placed between the building(s) and the street.
5. **Required Distance from Buildings.** All parking areas, other than spaces required on individual lots for single-family detached or single-family attached dwellings, and attached parking garages, shall be separated at least ten feet from buildings to allow room for sidewalks, landscaping, and other plantings between the building and the parking area. This separation may be eliminated in the rear of buildings in areas designed for unloading and loading of materials.
6. **Sufficient Access for Parking and Removal of Vehicles.** In calculating any required parking area (other than for parking spaces required for single-family detached, townhouse, and two-family dwellings), sufficient access and maneuver space shall be provided to permit the parking and removal of any vehicle without moving other vehicles.
7. **Delineation of Spaces.** All parking spaces shall be delineated and periodically restored to maintain a clear identification of separate parking stalls.
8. **Screening and Landscaping.** Screening and landscaping for off-street parking and vehicular stacking areas shall be provided as required in Section 78-110.5 Vehicular Use Areas.
9. **Exterior Lighting.** Exterior lighting for stacking areas and parking areas shall comply with the standards in Section 78-130.9, Exterior Lighting Standards.
10. **Maintenance.** Parking facilities shall be continually maintained in compliance with the approved site plan or subdivision plan, and shall be free of litter and debris at all times.

Sec. 78-100.6. Dimension and Design Standards for Off-Street Loading Spaces

- A. **Dimensional Standards for Off-Street Loading Space and Access Aisles.** Each loading space required by this section shall be at least 17 feet wide by 25 feet long (or deep), with at least 14 feet of overhead clearance. Each loading space shall have adequate, unobstructed means for the ingress and egress of vehicles, and a minimum aisle width of 24 feet.
- B. **Design Standards for Off-Street Loading Spaces.** Off-Street loading spaces shall be subject to the following provisions:
 1. **Location.** The spaces shall be located adjacent to the buildings loading doors, in an area that promotes their practical use.

2. **Delineation and Signage.** All loading spaces shall be delineated by signage and striping and labeling of the pavement.
3. **Access.** Every loading area shall be provided with safe and convenient access to a street, but in no case shall the loading space extend into the required aisle of the parking lot.
4. **Materials.** The ground surface of loading areas shall be paved with a durable, dust free and hard material, such as bituminous hot mix or Portland cement, concrete, or some comparable material. Such paving shall be maintained for safe and convenient use at all times.
5. **Landscaping.** Loading areas shall be landscaped in accordance with Section 78-110.5, Vehicular Use Areas and 78-114.2, Screening Standards for certain features.
6. **Exterior Lighting.** Exterior lighting for loading areas shall comply with the standards in Section 78-130.9, Exterior Lighting Standards.

Sec. 78-100.7. Public Parking Options

A. Public Shared Parking. Parking requirements may be met through public shared parking in certain areas of the town, subject to the following provisions:

1. **Applicability.** The provisions of this subsection apply to land designated Planned Development Downtown (PD-D), Planned Development Traditional Downtown (PD-TD) and land zoned Central Commercial District (CC) in sectors 1 and 2 of the Herndon Downtown, as described in the Herndon 2030 Comprehensive Plan, adopted August 12, 2008 as amended (sectors 1 and 2), where the development applicant has voluntarily respectively proffered or chosen participation in the public shared parking program. In the absence of such a proffer or choice, the other parking requirements set out in this chapter apply to the development.
2. **Purpose.** The town plans for the provision of public shared parking spaces to serve development and revitalization in sectors 1 and 2. It is the policy of the town that provision of public shared parking spaces or facilities shall be a public-private undertaking to advance the town's public purpose of providing public parking in sectors 1 and 2 for new and expanding development so that the public benefit may be served and sectors 1 and 2 may be adaptively reused and revitalized.
3. **Procedure.** If public shared parking spaces are available at the time of town council adoption of a zoning map amendment, or staff approval of a site plan or permit, in lieu of providing parking spaces to fulfill the off-street parking standards of this chapter a development applicant or owner may respectively proffer or elect to pay to the town 60 percent of the per space capital cost per, subsection 78-100.7.A.4, below and 50 percent of the per space yearly operation, maintenance and administration cost.

- 4. Public Shared Parking Cost Calculations.** Capital and operations costs for **public shared parking spaces** shall be determined and certified by the town manager, based on an annual review of parking construction costs for projects of comparable scale in the Washington Metropolitan Area or the Commonwealth of Virginia. The projected capital cost of public shared parking spaces to serve development and revitalization in sectors 1 and 2 of the Herndon Downtown is approximately \$14,700.00 per space; and annual cost of operations, maintenance and administration of public shared parking spaces is \$156.00 per space. The town council, by ordinance, may prospectively adjust the capital cost and the yearly cost for operation, maintenance and administration to reflect the actual cost of these elements, as determined by certification of the town manager. The adjustment may not occur more than once every calendar year.
- 5. Computation of Public Shared Parking Space and Loading Requirements.** The following standards shall apply to public shared parking:
- a. Parking space standards shall be computed at the rate of 3.3 spaces per 1,000 gross square feet of nonresidential floor area in the proposed development.
 - b. Parking space standards shall be computed at the rate of 1.5 per dwelling unit of which only 0.5 or less may be in the form of public shared parking. Public shared parking for residential development is limited to multi-family uses.
 - c. In case of conflict with the standards in Table 78-100.2.A, the standards in this subsection prevail.
 - d. Reserved spaces shall not be counted for the purpose of computing the required number of spaces except those spaces reserved for and marked for use by persons with disabilities.
 - e. There shall be no double counting of public shared parking spaces.
 - f. In cases where public shared parking is used (see Section 78-100.7.A) the developer or owner shall provide loading spaces on site, unless physically impossible due to existing development, as determined by the zoning administrator. In the latter case, the developer or owner may provide such spaces in the public shared parking lot or facility by special arrangements, to accommodate loading space size requirements.
- 6. Limitations on Use of Public Shared Parking Areas.** Vehicle storage, vehicle repair and recreational vehicle parking shall not be permitted in public shared parking areas.
- 7. Town Authority and Public Shared Parking Facilities.** Any public shared parking provided by the town, shall be controlled by the town through lease, license, or fee ownership of the land, real estate, or other facilities within sectors 1 and 2 for public shared parking pursuant to this section. The town shall provide such land, real estate, or other facilities upon the physical occupancy of such building or structure, to which such parking pertains, as

certified in writing by the zoning administrator and filed in the office of the town clerk. The town council shall declare by resolution public land, real estate, or other facilities to be used for public shared parking. The town council by resolution may amend the declaration; may substitute new land, real estate, or other facilities for land, real estate or other facilities formerly so declared; or may release land, real estate, or other facilities from such a declaration. The gross number of spaces designated by the town and available as set out above as public shared parking shall be equivalent to or greater than the gross number of spaces allocated through development approval for participation in the public shared parking program.

8. **Public Shared Parking Option Runs with Land.** A public shared parking option shall attach to the land and bind the successors and assigns of the person who applied for and is provided the rights and responsibilities of public shared parking.
9. **Town Retains Police Power over Public Land Used for Public Shared Parking Facilities.** In declaring public land to be used for public shared parking, the town council retains full police power over the land. The land shall be characterized as land in the nature of a public street or public square. The town council, among other powers, may restrict condition, authorize temporary private use of under general law, temporarily prevent, or otherwise control the terms of public use of this land, while substantively realizing the goal of providing public parking.

B. Public Parking Alternative. Parking requirements may be met through a public parking alternative in certain areas of the town, subject to the following provisions:

1. **Applicability.** The provisions of this subsection apply to land designated Planned Development Downtown (PD-D), Planned Development Traditional Downtown (PD-TD) and land zoned Central Commercial District (CC) in sectors 1 and 2 of the Herndon Downtown, as described in the Herndon 2030 Comprehensive Plan, adopted August 12, 2008 as amended (sectors 1 and 2), where the development applicant has voluntarily respectively proffered or chosen participation in the public parking alternative program. In the absence of such a proffer or choice, the other parking requirements set out in this chapter apply to the development.
2. **Purpose.** The town plans for the provision of an adequate number of public parking spaces to serve development and revitalization in sectors 1 and 2. It is the policy of the town that provision of public parking spaces or facilities shall be a public-private undertaking to advance the town's public purpose of providing public parking in sectors 1 and 2 so that the public benefit may be served and sectors 1 and 2 may be adaptively reused and revitalized.
3. **Procedure.** A development applicant may respectively proffer or elect to dedicate to the town up to 100 percent of those parking spaces serving proposed ground floor commercial uses, and up to 0.5 parking spaces per proposed multi-family unit located on the property in question.

- 4. Public Parking Alternative Payment Calculations.** The town shall pay to the development applicant or its successor 40 percent of the per space capital cost, to be determined at the time of proffer or dedication, and 50 percent of the per space yearly operation, maintenance and administration cost. Such capital and operations costs shall be determined and certified by the town manager, based on an annual review of parking construction costs for projects of comparable scale in the Washington Metropolitan Area and Commonwealth of Virginia. The town council, by ordinance, may prospectively adjust the capital cost and the yearly cost for operation, maintenance and administration to reflect the actual cost of these elements, as determined by certification of the town manager. The adjustment may not occur more than once every calendar year.
- 5. Computation of Spaces for the Public Parking Alternative.** The following standards shall apply to parking provided under the public parking alternative.

 - a. Parking space standards shall be computed at the rate of 3.3 spaces per 1,000 gross square feet of ground floor commercial space in the proposed development. Additional commercial square footage shall be parked on site and paid for in full by the developer or private property owner.
 - b. Parking space standards for multi-family units shall be computed at the rate of 1.5 per dwelling unit of which only 0.5 or less may be in the form of parking under the public parking alternative program. The developer or private property owner shall be responsible for providing the remaining private parking spaces per unit at full cost.
 - c. In case of conflict with the standards of Table 78-100.2.A the standards in this subsection prevail.
- 6. Limitations on Use of Public Parking Alternative Areas.** Vehicle storage, vehicle repair and recreational vehicle parking shall not be permitted in public parking alternative areas.
- 7. Public Parking Alternative Option Runs with Land.** The public parking alternative option shall attach to the land and bind the successors and assigns of the person who applied for and is provided the rights and responsibilities of public shared parking.
- 8. Town Authority and Public Parking Alternative Program Spaces.** Spaces designated as public though the public parking alternative program shall be under the control of the town and the town shall have the authority to control and manage the public parking as it sees fit. The town council shall possess full police power over the portion of land or structure designated as public though the public parking alternative program land. The land shall be characterized as land in the nature of a public street or public square. The town council, among other powers, may restrict, condition, authorize temporary private use of under general law, temporarily prevent, or otherwise control the terms of public use of this land, while substantively realizing the goal of providing public parking.

Sec. 78-100.8. Parking Alternatives

- A. Town Council Review.** For developments that are the subject of a zoning map amendment, special exception, or preliminary subdivision plan, the town council may consider, approve, or disapprove requests for the following alternatives to providing the number of required off-street parking spaces required by Table 78-100.2 Minimum Off-Street Parking Standards, in accordance with the respective standards.
- 1. Inter-parcel Access.** For all developments, the town council by ordinance, may determine to approve an inter-parcel connection with a corresponding reduction of parking as to the requirements of Table 78-100.2.A Minimum Off-street Parking Standards. Any such reduction shall be the minimum necessary to accommodate the inter-parcel connection.
 - 2. Standards for Inter-parcel Access.** The town council shall be guided by these standards in the determination for inter-parcel access: (i) improvement in the traffic or pedestrian safety or convenience of traffic circulation; and adequate storm water management.
 - 3. Inter-parcel Access Agreement.** Nothing in this subsection shall be construed to require an applicant landowner to achieve an inter-parcel connection agreement with another adjacent landowner. The town council however, may require that the applicant landowner make physical or planning provisions for the eventual completion of an inter-parcel connector to achieve the reduced parking to accommodate the inter-parcel connection. Any agreement to achieve inter-parcel connection must be in recordable form and recorded by the parties to the agreement in the land records of the Circuit Court of Fairfax County.
- B. Zoning Administrator Review.** For developments that have not been approved under a zoning map amendment, special exception, or preliminary subdivision plan, and are the subject of a zoning inspection permit or a zoning appropriateness permit, the zoning administrator may consider requests for the following alternatives to mitigate existing conditions that may be insurmountable or too onerous to provide the number of required off-street parking spaces required by Table 78-100.2.A Minimum Off-street Parking Standards, in accordance with the respective standards.
- 1. Standards for Private Shared Parking for Land Uses with Different Operating hours or Different Peak Business Periods.**
 - a. Shared parking spaces are to be located within 500 feet of the primary entrance of all uses served, unless remote parking shuttle bus service is provided. Shared parking spaces are not separated from the use they serve by an arterial or collector road. In addition, adequate and safe pedestrian access is provided from and to the shared parking areas.
 - b. A shared parking area is located on a site with the same or more intensive zoning classification than required for the primary uses served.

- c. Those wishing to use shared parking as a means of satisfying the off-street parking standards must submit a shared parking request to the zoning administrator that justifies the feasibility of shared parking. Justification includes information on the size and type of the proposed development, the composition of tenants, the anticipated rate of parking turnover, and the anticipated peak parking and traffic loads for all uses that share off-street parking spaces.
 - (1) The maximum reduction in the number of parking spaces required for all uses sharing the parking area shall be 35 percent.
 - (2) Directional signage that meets the requirements of this chapter shall be added to direct the public to the shared parking spaces. It is preferable for the employees of the affected establishment to utilize these spaces.
 - d. A shared parking plan is enforced through written agreement among all owners of record. An attested copy of the agreement between the owners of record is submitted to the zoning administrator for review prior to its recordation by the owners. Recordation of the agreement takes place before issuance of a building permit, zoning inspection permit or zoning appropriateness permit for any use to be served by the shared parking area. A shared parking agreement may be revoked by the applicant only if all required off-street parking spaces are provided in accordance with the requirements of Table 78-100.2.A Minimum Off-Street Parking Standards. If the zoning administrator determines that a change in use of any establishment involved in the shared parking agreement necessitates a change in the agreement to satisfy the parking requirements of the new use or uses, the applicant shall amend the agreement accordingly and provide the additional parking needed to comply with the parking requirements of Table 78-100.2.A Minimum Off-Street Parking Standards.
- 2. Off-Site Parking.** Parking shall be located on the same site as the principal use. Parking that is off-site and off-street may be permitted only where there are practical difficulties in the location of the parking area on-site or if the public safety or public convenience, or both, is better served by the location of required parking on another parcel of land. The zoning administrator may permit off-site parking if the zoning administrator determines that the following standards are met:
- a. The parking area is located on land under the same ownership or the use it serves.
 - b. A pedestrian way, not more than 600 feet in length, is established from the parking area to the use to be served.
 - c. The parking area is convenient to use without causing unreasonable:
 - (1) Hazard to pedestrians;
 - (2) Hazard to vehicular traffic;
 - (3) Traffic congestion;

- (4) Interference with commercial activity or convenient access to other parking areas in the vicinity;
- (5) Detriment to the appropriate use of business property in the vicinity; or
- (6) Detriment to any abutting residential neighborhood.

3. Standards for Valet and Tandem Parking. Tandem parking is permitted for nonresidential uses only if all of the standards below are satisfied:

- a. Limited tandem parking for commercial and industrial uses is provided only for development that requires 75 or more parking spaces.
- b. No more than 30 percent of the total number of spaces is designated as tandem.
- c. A valet parking attendant is on duty during hours of operation.

4. Standards for Alternative Materials. The zoning administrator may approve alternative materials based on the following standards:

- a. Porous parking area surfacing may be considered for purposes of facilitating on-site stormwater control or environmental conservation. It is not intended for porous parking area surfacing to facilitate temporary parking arrangements or economy of site development.
- b. In accordance with the Herndon Public Facilities Manual, as a special asphaltic paving material that allows stormwater to infiltrate at a high rate. Infiltrated water is temporarily retained below the pavement within a high-void aggregate base. Porous pavement is applicable as a substitute for conventional asphalt pavement on parking areas.
- c. Porous parking area surfacing materials are not located on easements for underground utilities, in accordance with the Herndon Public Facilities Manual.
- d. In accordance with section 78-115.A, for a reduction in the minimum number of required parking spaces for tree preservation, alternative paving materials may be required by the zoning administrator in cases where required parking areas encroach upon critical root zones.
- e. Porous parking areas are properly maintained.
- f. Where possible porous parking area surfacing materials are used in areas proximate to and in combination with on-site stormwater control devices.

Sec. 78-100.9. Parking Restrictions and Specific Standards for Certain Uses and In Certain Districts

A. Limitations on Tandem Parking for Residential Uses. For any residential use, a maximum of three tandem (stacked) spaces, inclusive of garage parking, shall be permitted on a per dwelling unit basis to meet the required parking in accordance with the following standards:

1. **For Residents Only.** Vehicles using any stacked parking spaces shall be under the control and use of residents of the same dwelling unit.
2. **Townhouses.** For townhouse dwellings, no more than two-thirds of the required parking shall be met using tandem spaces.
3. **Multi-Family.** For multi-family dwellings, no more than ten percent of the required parking shall be met using tandem spaces.

B. Limitations on Parking in Residential Districts. The follow regulations apply in the R-10, R-15, RTC, and RM districts

1. **Parking Must be on Same Parcel.** Off-street parking areas and off-street loading space appurtenant to any use permitted in residential districts shall be provided on the same parcel of land occupied by the use to which the area or space is appurtenant.
2. **No Parking in Required Yards.** No person shall park any motor vehicle, vehicle, trailer, or semi-trailer on the front, side or rear yard of any lot, improved with a single-family dwelling, zoned for residential use, except on a lawfully paved surface. For corner lots, the front yard for this purpose shall be the lot area bounded by streets, the side lot lines, and the dwelling facades that face the streets. In accordance with Article III – Residential Districts, the minimum distance between paved surface and the property line shall be two feet.
3. **Limitation on Paved Area.** Except on any lot improved with a single-family attached dwelling, no paved surface used for parking shall exceed 35 percent of the size of the front yard of the lot. See also the Table of Dimensional Standards for the applicable in the Residential Zoning District in Article III, Section 78-30.6 Specific Use Standards for residential uses, section Article XIII-Accessory Uses and Structures, and Section 78-80.1.G.2 Restricted in Residential Zoning Districts.
4. **Limitations on Recreational Vehicles in Residential Districts.** Recreational vehicles owned or rented by occupants of the property may be parked on private property in residential districts in accordance with the following requirements and shall not be parked within required parking spaces:
 - a. For single-family detached and duplex dwellings, recreational vehicles shall be parked on a paved surface behind the front setback line of the principal structure and shall not exceed two recreational vehicles per dwelling.
 - b. For townhouse dwellings, recreational vehicles may be parked in community designated parking areas provided that the parking area was designated for recreational vehicles and approved on a site plan. The total number of recreational vehicles parked in the designated parking area at any one time may not exceed one per five dwellings. The designated parking area shall be screened from view of the public right-of-way.
 - c. For multi-family dwellings, recreational vehicles may be parked in designated parking areas provided that the parking area is no closer than 200 feet to any public right-of-way, and the use of the parking area for these

purposes was shown on an approved site plan or was otherwise approved by the zoning administrator, in writing. The designated parking area shall be screened from view of the public right-of-way. The total number of recreational vehicles parked in the designated parking area at any one time may not exceed one per five dwellings.

5. Limitations on Commercial Vehicles in Residential Districts. The parking of commercial vehicles in residential districts shall comply with the following standard and parking of commercial vehicles on private property used for residential purposes in areas zoned for residential use shall conform to the following regulations:

- a. Except as provided below in this section, no person shall park any commercial vehicle on private property used for residential purposes in the town in areas zoned for residential use, except in a fully enclosed building with a vehicle door not exceeding nine feet in height over grade.
- b. No person shall park any commercial vehicle on private property used for residential purposes in the town in areas zoned for residential use in a fully enclosed (or other) building with a vehicle door exceeding nine feet in height over grade.
- c. One resident of each single-family detached or attached, garden court, or two-family dwelling unit in areas zoned for residential use may park, per dwelling unit, outside a fully enclosed building, one vehicle licensed as a taxicab or limousine on such private property or one vehicle described in subparagraph (8) of the definition of commercial vehicle found in section 42-1 of this Code or one pick-up truck that is used for a commercial purpose but without external racks or ladders; and, for lots or parcels 20,000 square feet or more in size, one step van or panel truck with a registered gross weight, or gross vehicle weight rating as defined in Code of Virginia § 46.2-341.4, of 12,000 pounds or more, behind the rear building line of the main building, provided in all such cases other vehicles are permitted to park there.
- d. One resident of each multi-family residential unit in areas zoned for residential use may park, per dwelling unit, outside a fully enclosed building, one vehicle licensed as a taxicab or limousine or one vehicle described in subparagraph (8) of the definition of commercial vehicle found in section 42-1 of the Herndon Code or one pick-up truck that is used for a commercial purpose but without external racks or ladders, (i) on such private property, provided other vehicles are permitted to park there; or (ii) in lawfully designated private community parking areas (if any) approved for parking of commercial vehicles in writing by the entity managing the private community parking area. Or, (if no such managing entity exists and for zoning purposes only) the zoning administrator may make such designation using the following standards: mitigation of visual, auditory, and operational effects on residents of the surrounding residential area and prevention of use of residential property for commercial purposes.

- e. The provisions of this section shall not apply to a commercial vehicle when picking up or discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location.

C. Limitations on Parking in Commercial Districts and Industrial Districts. Parking of recreational vehicles for over 12 hours is prohibited within business districts in accordance with Section 78-80.4.Q.7, Recreational Vehicle Parking and Storage.

D. Specific Parking, Loading and Circulation Standards for the PD-TOC District
The following standards pertaining to parking, loading and circulation shall apply in the PD-TOC District.

1. **Access Drives.** Motor vehicle, service and emergency access associated with development governed by a development plan as described in section 78-802, Density, shall be designed as described within the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core. Such access drives, whether located within one parcel or across multiple parcels, shall not be less than 40 feet in width from building façade to building façade. Any vehicle standing or parking accommodations shall be in addition to the 40 foot minimum width.
2. **Parking Requirements by Use in the PD-TOC Districts.** Notwithstanding the provisions of section 78-100.3, Off-street parking standards, parking for uses established in the PD-TOC district shall be provided as set forth below. In connection with its approval of a development plan pursuant to section 78-804 or upon separate application by one or more property owners, the town council may reduce the minimum off-street parking and loading requirements for a proposed development when it is demonstrated by the applicant and determined by the council that such reduction furthers the goals of the adopted comprehensive plan. In support of an application for a reduction in parking and loading spaces, the applicant shall submit a statement regarding how the proposed number of parking and loading spaces is adequate to serve the proposed uses within the development; a descriptions of any planned valet parking, tandem parking, and shuttle arrangements that will be implemented for the proposed use(s) and how such spaces or shuttles will be managed; and a statement regarding how the proposed number of parking spaces addresses the goals of the comprehensive plan. Required bicycle parking shall not be on balconies or within public rights-of-way.
3. **Accessible Parking Spaces for Persons with Disabilities in PD-TOC.** When provided as a required accessibility improvement, accessible off-street parking spaces and related access aisles and accessible routes shall be in accordance with the provisions of the Virginia Uniform Statewide Building Code and the town public facilities manual. The number of accessible parking spaces shall be included in the required number of parking spaces. Each such accessible parking space shall be designated as reserved for persons with disabilities by an above

grade sign in conformance with the design and content specifications of the public facilities manual.

4. **Motorcycle Parking in the PD-TOC.** Within the PD-TOC district up to two and one-half percent of required parking spaces may be sized for motorcycles.
5. **Tandem Parking in the PD-TOC.** Within the PD-TOC district, tandem parking is permitted when valet parking is provided during operating hours, or when the spaces are dedicated to a single dwelling unit, or when a fully automated parking system has been installed in a parking area.
6. **Loading Spaces in the PD-TOC.** Development within the PD-TOC shall provide adequate loading spaces as determined at the time of development plan or site plan approval, based upon recognized standards for the type and mix of uses. All loading spaces shall be screened from view preferably by their location within the structure of the building and will not be located along Herndon Parkway frontage or façade. The dimensions, access, and screening of loading spaces shall be determined at the time of development plan or site plan approval.

Sec. 78-100.10. Circulation and Traffic

- A. **Purpose and Intent.** These provisions are intended to relieve traffic congestion in the streets, promote the safe operation of vehicles in public rights-of-way, coordinate the interface of public rights-of-way with private rights-of-way, and ensure the proper and uniform development of utilities, curb cuts and other features affecting streets, safe circulation and traffic control.
- B. **Applicability** The following sections contain provisions pertaining to circulation and traffic control and the standards of these sections shall apply to development in every zoning district.
- C. **Circulation Standards.** Circulation standards are provided to help ensure that access points to development are designed to provide safe and smooth traffic flow, controlled turning movements, and safe and efficient pedestrian ways. The standards promote the provisions of turn lanes, through lanes, medians and devices to guide traffic flow where existing or anticipated traffic flows indicate that such lanes or devices are necessary to provide safe and adequate access and egress to the site. The objective is for development to have a safe and adequate on-site traffic circulation system, and for the on-site traffic circulation system to be integrated with the off-site circulation system of the town.
 1. **Vehicular Movement.** Vehicular movement will be subject to the following provisions:

- a. Principal vehicular access to the proposed development is from roads with adequate capacity to support existing traffic, and the external traffic estimated to be generated by the development.
- b. On-site roads shall be designed to ensure emergency service vehicles have access to all lots and development on the site.
- c. During site development, adjoining streets are improved to provide on-street parallel parking in front of the development with the exception of development frontage on arterials and collector streets.
- d. On-street parallel parking is not used to meet on-site parking requirements, except where approved as part of a planned development district.

2. Pedestrian Movement. Pedestrian movement will be subject to the following provisions:

- a. Pedestrian access is designed so as to provide safe and convenient pedestrian ways to, from and within the proposed development. Pedestrian ways within the development are provided to connect the buildings within the development.
- b. Sidewalks are provided on both sides of every street (including private streets), except in cases where environmental or topographic features make such provision impractical.
- c. Connections to existing or planned sidewalks are made at the property boundaries by incorporating and continuing all sidewalks stubbed to or shown as stubbed to the boundary of the development by previously approved plans. In addition, future sidewalk connections to adjacent developable parcels are located at planned or current street connections along each side of the development's boundary.
- d. Developed recreation space and open space intended for pedestrian use, and schools, religious institutions, and other pedestrian-oriented uses, are connected by pedestrian ways to residential and office uses, with a minimum of street crossings. Where possible, office and residential uses are to be connected by an integrated pedestrian way system.
- e. Pedestrian crossing(s) at the perimeter of the development are marked and controlled. Where pedestrians are exposed to substantial vehicular traffic, barriers may be warranted to prevent crossing at other than designated points.
- f. Pedestrian passages over and under vehicular routes are used wherever possible.
- g. Bicycle paths, trails or lanes are coordinated with the on-site traffic circulation and pedestrian system, to the maximum extent feasible. Where feasible, bicycle crossings and pedestrian crossings are combined.

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**HERNDON TOWN CODE
CHAPTER 78 - ZONING ORDINANCE**

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ARTICLE XI – DEVELOPMENT STANDARDS

Sec. 78-110 Landscaping

The following sections contain provisions pertaining to site landscaping, buffering, screening, tree preservation, open space and exterior lighting.

Sec. 78-110.1 Landscaping, Generally

- A. Purpose.** It is the purpose of this section to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, maintenance, preservation and removal of trees, shrubs and other plants within the town.
- B. Intent.** The provisions of this section are intended to:
1. Ensure and encourage the planting, maintenance, restoration and survival of desirable trees, shrubs and other plants;
 2. Ensure the protection of community residents and visitors from personal injury and property damage, and the protection of the town from property damage, caused or threatened by the improper planting, maintenance or removal of trees, shrubs or other plants;
 3. Reduce erosion and sedimentation;
 4. Reduce stormwater runoff and the costs associated therewith;
 5. Preserve the water table;
 6. Ensure ground water recharge;
 7. Conserve energy through proper plantings;
 8. Restore soils and land denuded as a result of construction and/or grading;
 9. Protect and enhance property values and aesthetic qualities in the town;
 10. Protect and enhance the overall environment of the town;
 11. Provide visual screening, where appropriate;
 12. Provide sound attenuation, where appropriate;
 13. Promote, protect and wildlife habitat;
 14. Enhance the quality of life of the town and its citizens.

- C. Applicability.** These standards shall apply to all development, and shall be applied at the time of application submittal for a site plan or subdivision plan, whichever occurs first.
- D. Effect on Other Requirements.** The provisions and requirements of this article shall not be construed in any manner such as to lessen or eliminate any other requirement of this chapter, or of other portions of the Code of the town, or of any other applicable rule, regulation or law.
- E. Line-of-Sight Requirement Conflict.** In case of conflict between screening and line-of-sight distance requirements, the line-of-sight distance requirements shall prevail.
- F. Compliance and Implementation.** All development shall be required to comply with the following landscaping standards:
- 1. Landscaping to be On Property.** In general, required landscaping shall be contained within the boundary of the subject property, unless otherwise noted in this chapter. See also section 78-113.2, Open Space.
 - 2. Components of Landscape Requirements.** Sites shall meet the cumulative requirements enumerated for:
 - a. Perimeter Buffer Strip
 - b. Vehicular Use Areas; and
 - c. Site Landscaping (areas not otherwise contained in perimeter buffers and vehicular use areas).
 - 3. Landscape Plan.** In order to implement the requirements of this section, a landscape plan that demonstrates compliance with the standards of this section shall be included with or as a part of each site plan required by Section 78-155.6, Site Plan, Single Lot Development Plan and Building Location Surveys and shall contain the following elements, and shall be shown on a sheet separate from other required elements, for a plan as described in Section 78-152.3.C:
 - a. Groups of trees and individual trees standing alone that will be retained on the site, accurately identified and located;
 - b. Designated "tree protection areas," accurately identified and located;
 - c. A chart of required and proposed plant materials conforming to the requirements of this chapter;
 - d. A schedule of the proposed plant species, size, common and botanical name;

- e. Methods of proposed irrigation and drainage;
- f. Any other information that will help demonstrate how the site will meet the landscaping standards in Article X;
- g. Drawings showing planting details for landscape materials proposed to be placed on the site;
- h. Any other information deemed necessary by the reviewing authority.

G. Penalty for Violation. Every person who violates any section under this section shall be guilty of a misdemeanor.

78.110.2 Planting Standards for Landscaping

A. Planting Standards. Plantings required by this section shall comply with the following standards, unless otherwise specified herein.

1. New Plantings. New plant materials shall meet the following minimum standards:

- a. Canopy trees shall be a minimum of two inches in caliper at six inches above ground level at the time of planting. Ornamental trees shall have a caliper of 1½ inches at four inches above grade at time of planting.
- b. Evergreen trees shall be a minimum of six feet in height at the time of planting.
- c. Shrubs which are upright in nature shall be a minimum of 24 inches in height at the time of planting, and shrubs which are spreading in nature shall be a minimum of 18 inches in diameter at the time of planting.
- d. All landscape plant materials shall conform to the latest version of the American Standard of Nursery Stock (ANSI Z60.1, as amended). Plant material shall be of standard quality or better, true to name and type of their species or variety.
- e. To curtail the spread of disease or insect infestation in a plant species, new plantings shall comply with the following standards:
 - (1) When fewer than 20 trees are required on a site, no more than 50 percent shall be of one type.
 - (2) When more than 20 but fewer than 40 trees are required to be planted on site, no more than 33 percent shall be of one single species.
 - (3) When 40 or more trees are required on a site, no more than 25 percent of the required trees shall be of a single species.

- f. Landscape plant materials shall be planted in accordance with either the standardized landscape specifications adopted by the state nurserymen's association, the state society of landscape designers, or the state chapter of the American Society of Landscape Architects.

2. Existing Vegetation. Existing vegetation shall be subject to the following standards:

- a. Existing healthy, well-formed canopy and under story trees, as well as healthy shrubs, shall be credited toward the requirements of this Section, provided the vegetation is protected before and during development of the site and maintained thereafter in a healthy growing condition (see section 78-111.4, Tree Preservation Credit.)
- b. Prior to issuance of a zoning inspection permit, the applicant shall remove all alien, invasive plants from the property.

3. Stabilization. Upon approval of a landscape plan for a site pursuant to the requirements of this section, the site shall be stabilized with grass or suitable ground cover and be maintained in a way that is consistent with the approved landscape plan.

4. Berms. Berms shall comply with the following design standards:

- a. The slope of all berms shall not exceed a 2:1 ratio (horizontal to vertical), shall have a top width at least one-half the berm height, and a maximum height of four feet above the toe of the berm.
- b. All berms, regardless of size, shall be stabilized with a ground cover or other suitable vegetation.
- c. Berms proposed to be placed along street ROW shall be designed and constructed to provide adequate sight distances at intersections and along all other roads.
- d. Berms shall in no case damage the roots of existing healthy vegetation designated to be preserved.

5. Easements. Easements within landscaped areas and plantings within easements shall be subject to the following:

- a. Proposed easements shall be located and designed so as to minimize adverse impact on required landscape areas.
- b. No material shall be planted or installed within an underground or overhead utility easement or a drainage easement without the consent of the town.

B. Installation of Required Landscaping. Required landscaping shall be installed as follows:

1. **Time Limit.** All landscaping, including mulching and seeding, shall be completed in accordance with the approved site plan or subdivision plan, prior to issuance of an occupancy permit unless the zoning administrator grants an exception to meeting this requirement due to extreme heat, drought, or cold conditions. In this case, an irrevocable letter of credit or other acceptable surety shall be in place to ensure that all landscaping requirements will be met at a predetermined later date. The installation of these requirements shall comply with the required planting standards set forth in this section.
2. **Extensions and Exceptions.** The zoning administrator may grant exceptions and extensions to the above time limit in the following circumstances and under the following conditions:
 - a. Exceptions may be granted due to unusual environmental conditions, such as drought, ice, over-saturated soil (deep mud), or inappropriate planting season for the plant species. In such cases, the zoning administrator may issue a conditional Occupancy Permit for a period of 30 to 180 days, depending on the Administrator's recommendation for the next earliest planting season.
 - b. Exceptions may be granted due to the substitution or unavailability of plant species or acceptable plant size as specified on the landscape plan in cases where such materials are not commercially available within a reasonable time.
 - c. Exceptions may be granted due to circumstances beyond the developer's or property owner's control, such as incomplete construction or utility work to occur in a proposed landscaped area within 30 days after expected site completion, provided the developer or property owner submits a letter from the utility company stating the estimated installation date. In such cases, the zoning administrator may issue a conditional Occupancy Permit for a defined period not to exceed 30 days.

C. Maintenance of Landscaped Areas. The owner, tenant and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscape areas not in the public right-of-way. Such areas shall be maintained in accordance with the approved site plan and so as to present a healthy and orderly appearance free from refuse and debris. Changes to the approved landscape plan shall require the approval of the zoning administrator. All plant life shown on an approved development plan shall be replaced if, in the opinion of the town's community forester, it dies or is seriously damaged or is removed.

D. Permitted Changes in Landscaping Plant Materials. A change in landscaping plant materials may be permitted where unreasonable or impractical situations, as

determined by the town's community forester, would result from application of this Section 78-110, Landscaping. Alternative materials or methods may be justified based on field conditions such as pre-existing and unalterable utility easements, or natural conditions, such as streams, natural rock formations, topography, and other physical conditions. The appropriate reviewing authority may approve a change in the required amount of landscaping plant material at the time of site plan or subdivision plan review, limited to the following:

1. **Reduction.** A reduction in the count, spacing, or species diversity requirements which would be more desirable in terms of good landscape planning practice considering the merit of existing vegetation or any adverse effect of new plantings on existing conditions on or near the site.
2. **Increase in Cumulative Caliper.** Up to a ten percent reduction in total number of required trees provided that the cumulative caliper size of all trees to be planted meets or exceeds the total caliper inches which would have been provided otherwise.
3. **Relocation to Public Property.** A reduction by up to five percent in the total number of required trees on a development site provided that all trees not planted on the site are relocated to designated public property as approved by the town council. A performance guarantee, consistent with the requirements in Article XII, Performance Guarantees, shall be posted for all relocated plant materials.

78-110.3 Site Landscaping (not contained in Perimeter Buffer Strips and Vehicular Use Areas)

A. Minimum Standards for Site Landscaping.

1. **Applicability.** Landscaping for site areas not otherwise contained in perimeter buffers and vehicular use areas shall be required for all development, except as otherwise stated in Section 78- 110.3.C below.
2. **Amount and Type of Landscaping.** Site landscaping not otherwise contained in perimeter buffers and vehicular use area shall be supplied in the amounts identified in Table 78-110.3.A, required site landscape plantings, and shall meet the minimum size standards in Section 78-110.2 Planting Standards for Landscaping.

TABLE 78-110.3.A.: REQUIRED SITE LANDSCAPE PLANTINGS	
TYPE OF USE	REQUIRED PLANTINGS*
SINGLE-FAMILY DETACHED DWELLING, TWO-FAMILY DWELLING, GROUP HOME, OR QUADRUPLEX	4 canopy trees, 3 evergreen trees, and at least 12 shrubs per dwelling unit
TOWNHOUSE DWELLING	1 canopy tree, 1 evergreen tree, and at least 10 shrubs per dwelling unit lot
TOWNHOUSE DEVELOPMENT COMMON AREA	16 canopy trees + 10 evergreen trees per acre, and at least one shrub per each 5 feet of outer building perimeter
MULTIPLE-FAMILY DWELLING, AND HOME FOR THE ELDERLY	12 canopy trees + 7 evergreen trees per acre, and at least 1 shrub per each 5 feet of outer building perimeter
PUBLIC AND INSTITUTIONAL USES	16 canopy trees + 10 evergreen trees per acre, and at least 1 shrub per each 5 feet of outer building perimeter
BUSINESS USES	16 canopy trees + 10 evergreen trees per acre, and at least 1 shrub per each 5 feet of outer building perimeter
*For purposes of calculating required plantings, the acreage of the entire site shall be used.	

B. Additional Requirements for Site Landscaping. Landscaping as supplied in Table 78-78-110.3.A., required site landscape plantings shall meet the following requirements, as well as the minimum size standards in section 78-110.2, Planting Standards for Landscaping.

1. **Evergreen Shrubs.** At least one-half of the required shrubs shall be of an evergreen variety.
2. **Flowering Ornamental Trees.** Flowering ornamental trees, a minimum caliper of one and one half inches, may be substituted on a one-for-one basis, for up to 25 percent of required canopy trees.
3. **PD-D Townhouse Trees and Shrubs.** For townhouses in the PD-D, trees and shrubs required for individual lots may be located on common area.
4. **Building Perimeter Landscaping.** For multi-family dwellings, homes for the elderly, public uses, institutional uses, and business uses:
 - a. Fifty percent of the perimeter of the principal structure shall have a landscape strip with a minimum width of 7.5 feet and it shall contain a portion of the landscaping required in Table 78-110.5.A.1 -503.6;

- b. The building's perimeter landscape strip shall be located immediately adjacent to the building unless it is incorporated into a pedestrian area adjacent to the landscaping.
- c. The building's perimeter landscape strip shall be designed to receive adequate light and moisture to support the growth of healthy plants.

5. Zoning Administrator May Require Additional Landscaping. The zoning administrator may require additional landscaping beyond these requirements if necessary to buffer an adjacent parcel from noise and light emanating from the subject parcel.

C. Certain Exemptions for Downtown. Properties zoned PD-D and PD-TD shall be exempt from section 78- 110.5.C. except as follows:

1. Townhouse Parcels located within the PD-D and PD-TD. Townhouse parcels located within the PD-D and PD-TD shall provide:

- a. A landscape planting area with a minimum width of four feet located between the façade of the townhouse and the public streetscape running the length of the front façade except where interrupted to accommodate entrances and exits. The planting area shall contain at least one shrub every six linear feet.
- b. One deciduous tree and one shrub located to the rear of the property, except in cases where the rear of the structure adjoins a parking structure.

2. Single-family Detached Parcels Located Within the PD-D and PD-TD. Single-family detached parcels located within the PD-D and PD-TD shall provide:

- a. A landscape planting area with a minimum width of five feet located adjacent to the front façade and in a multiple frontage condition, along all façades facing a public or private street, except where interrupted to accommodate entrances and exits. The planting area shall contain at least one shrub every six linear feet.
- b. One deciduous tree located within the functional rear yard of the property and one deciduous tree located along all sides of the property facing a public or private street. At least one tree shall be a canopy tree.

3. Nonresidential Development and Mixed-Use Residential Development located in the PD-D and PD-TD. Nonresidential development and mixed-use residential development located in the PD-D and PD-TD shall provide:

- a. Commercial grade planting containers designed to complement (as determined by the heritage preservation review board using recognized

standards) the architecture of the building, or planting beds, planted and maintained with evergreen shrubs or live plants affording seasonal color. Such containers or planting beds shall not extend into the required 12-foot public streetscape.

- b. Planting beds or containers shall flank each public entrance. Additional planters or beds may be located along the foundation of the structure.
 - c. Minimum container and planting bed dimensions shall be 20 inches by 20 inches.
- 4. Exposed Parking Deck Frontage Located in the PD-D and PD-TD.** Exposed Parking Deck Frontage Located in the PD-D and PD-TD shall be landscaped with:
- a. A landscape planting area with a minimum width of six feet located adjacent to any façade not wrapped by usable ground floor retail, office or lobby space and fronting a public street or pedestrian plaza area.
 - b. Such landscape planting area shall run the length of the exposure except where interrupted to accommodate entrances or exits.
 - c. The plant material shall be selected based upon the desired screening effect, to be determined by the zoning administrator using recognized standards at the time of zoning map amendment or in the absence of a zoning map amendment, at the time of site plan review.

78-110.4 Perimeter Buffer Strip Landscaping Requirements

- A. Location of Perimeter Buffer Strips.** Required perimeter buffers shall be located as follows:
- 1. Located Generally at Parcel Boundary or Right-of-Way.** The perimeter buffers required by this section shall be located along the outer perimeter of the parcel and shall extend to the parcel boundary line or right-of-way line; however, the buffers may be located along shared access easements between parcels in non-residential developments.
 - 2. Location in Unified Commercial Subdivision.** In unified commercial subdivision developments, as described in Section 78-40.5.D, and as permitted according to the regulations of Article IV and Article V, buffers are not required along property lines internal to the subdivision.
 - 3. Perimeter Buffers within Required Yards or Setbacks.** Required buffers may occur within required yards or setbacks, except within individual townhouse lots. The required setback or yard shall be no less than the width of the required buffer as established in Section 78-110.4.E.3.a and Section 78-110.4.E.3.b.

4. **Screening of Parking Areas.** Screening shall be planted or constructed to a height of not less than seven feet above grade where the property containing a parking area to be screened abuts land zoned for residential use, and to a height of not less than three feet above grade where the property containing a parking area to be screened abuts land zoned for non-residential use.

B. Development within Required Buffers. Development within required Perimeter Buffers shall be limited as follows:

1. **Limits on Development.** The required buffer shall not contain any development, impervious surfaces, or site features that do not function to meet the standards of this section or that require removal of existing vegetation, unless otherwise permitted in this chapter.
2. **Land Disturbing Activities Generally Prohibited.** No grading, development, or land-disturbing activities shall occur within the buffer unless approved by the zoning administrator.
3. **Sidewalks and Trails Permitted.** Sidewalks and trails may be placed in buffers provided that damage to existing vegetation to be saved is minimized and the town's community forester determines that the required landscape buffer plantings are not adversely impacted.
4. **Utilities Generally Prohibited.** Utilities are not permitted in buffers unless no reasonable alternative exists. When utilities and other easements must intrude into the required buffer, they shall run perpendicular to the property line.

C. Credit for Existing Vegetation in Perimeter Buffer Area. Existing significant vegetation within the perimeter buffer area shall be preserved and credited toward standards for the type of buffer required, unless otherwise approved by the zoning administrator at the time of landscape plan approval, or unless the existing vegetation is seriously diseased, damaged and treatment would not be practical, or vegetation has given or could give rise to a nuisance situation or is not suitable for the required screening. Wherever practical, vegetation removal should be limited to just those portions of the vegetation area necessary to correct any problems, while the remainder of the vegetation area without problems shall be left intact.

D. Perimeter Buffer Strip Requirements Adjacent to Public Rights-of-Ways. The following buffer requirements shall apply to property boundaries that are adjacent to public rights-of-way:

1. **Residential Districts.** The required buffer width in residential districts is ten feet. It shall contain one canopy tree every 35 linear feet. Alternatively, the trees may be planted between the sidewalk and curb if the distance between the curb and sidewalk is at least five feet in width, and no other buffer shall be required. In developments where land is subdivided for lots, such as townhouses, the required buffer shall be exclusive of land contained within lots for individual dwelling units.

2. **Business Districts (except CC) and Office and Light Industrial District:** The required buffer width in the business district (except CC) and office and industrial district is ten feet. It shall contain one canopy tree every 35 linear feet. The trees may be planted between the sidewalk and curb where the distance between the curb and sidewalk is at least five feet in width. When the distance between the curb and sidewalk is less than five feet in width, the trees shall be planted on the property in question, adjacent to the public right-of-way.
3. **CC, PD-D and PD-TD Districts.** For buffer requirements in the CC, PD-D and PD-TD districts, see Sections 78-40.6.1 and 78.50.9.1 Downtown.
4. **Guidelines for Town Streetscape Projects.** Properties along the right-of-way shall incorporate provisions in 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) as part of an application for development, in accordance with the terms of this article.
5. **Green Streets.** Along designated Green Streets, the buffers adjacent to public rights-of-way shall be augmented by an average of one canopy tree every 35 linear feet and one evergreen tree every 70 linear feet. Trees and shrubs may be clustered, but a continuous screen of evergreen shrubs shall be required if parking and vehicle drive-aisles are visible from the right-of-way. See section 78-505 for additional standards for green streets.

E. Perimeter Buffer Strip Requirements Not Adjacent to Public Right-of-Way. The following buffer requirements and buffer classifications shall apply to property boundaries that are not adjacent to public rights-of-way.

1. **Applicability.** Every parcel of land created upon a subdivision of land other than those parcels to be developed for single-family detached or duplex dwelling units, and every parcel of land for which a site plan is required under the provisions of this chapter, except as provided for in the central commercial planned development-mixed use, and planned development-traditional downtown districts (CC-central commercial, PD-D-planned development downtown and PD-TD-planned development-traditional downtown), shall contain an area immediately inside the entire perimeter of the parcel, referred to as the buffer strip.
2. **Walls and Fences.** When a wall or fence is required as part of the perimeter buffer strip on a property not adjacent to a public right-of-way, and the combined width of the required buffer and the amount of open space abutting the buffer exceeds 50 feet in width on the property in question, a berm with additional landscaping may be substituted for the wall or fence at the discretion of the reviewing authority.

- 3. Buffer Types, Widths and Materials.** Buffer types and landscape materials are prescribed in Table 78-110.4.E.3.a. The width of the buffer strip and type of buffer required between zoning are prescribed in Table, 78-110.4.E.3.b Landscape Buffer Classifications. In developments where land is subdivided for lots other than those parcels to be developed for single-family detached or duplex dwelling units, the required buffer shall include land contained within lots for individual dwelling units.

TABLE 78-110.4.E.3.a TYPE AND AMOUNT OF LANDSCAPE BUFFER MATERIAL REQUIRED WHEN NOT ADJACENT TO PUBLIC RIGHTS-OF-WAY

LANDSCAPE BUFFER CLASS	Canopy Trees per linear feet of Property Boundary (Average Number)	Evergreen Trees per linear feet of Property Boundary (Average Number)	Ornamental or Understory Trees per linear feet of Property Boundary (Average Number)	Fence*
A	1 per 30	1 per 30	1 per 50	Six foot tall fence
B	1 per 25	1 per 25	1 per 50, plus one shrub per every three linear feet	Six foot tall masonry wall
C	1 per 25	1 per 25	1 per 50	Six foot tall masonry wall
D	1 per 30	1 per 30	1 per 50	Permitted, with maximum visibility between properties and a design that discourages climbing

*When the required wall or fence is pre-existing on the abutting property, then by written agreement with the owner or owner's designee of the abutting property, an average of one additional evergreen or canopy tree every 30 feet and one additional shrub every six feet may be planted in lieu of providing the fence or wall.

TABLE 78-110.4.E.3.b TYPE AND AMOUNT OF LANDSCAPE BUFFER MATERIAL REQUIRED WHEN NOT ADJACENT TO PUBLIC RIGHTS-OF-WAY

(KEY: Letter = Buffer Type per Table 78-110.4.E.3.a; Number = Minimum Buffer Width, in feet; n/a=No Buffer)

ZONING DISTRICTS	ZONING OF ADJOINING PROPERTY												
	R-15	R-10	RTC	RM	CC	CS	CO	O&LI	PDR	PD-B	PD-D	PD-W	
ZONING OF PROPERTY SUBJECT	R-15	n/a	n/a	A-10	A-10	B-10	B-10	B-10	B-10	A-10	B-10	B-10	B-10
	R-10	n/a	n/a	A-10	A-10	B-10	B-10	B-10	B-10	A-10	B-10	B-10	B-10
	RTC	A-15	A-15	A-10	A-10	B-10	B-10	B-10	B-10	A-10	B-10	B-10	B-10

TABLE 78-110.4.E.3.b TYPE AND AMOUNT OF LANDSCAPE BUFFER MATERIAL REQUIRED WHEN NOT ADJACENT TO PUBLIC RIGHTS-OF-WAY

(KEY: Letter = Buffer Type per Table 78-110.4.E.3.a; Number = Minimum Buffer Width, in feet; n/a=No Buffer)

ZONING DISTRICTS		ZONING OF ADJOINING PROPERTY											
		R-15	R-10	RTC	RM	CC	CS	CO	O&LI	PDR	PD-B	PD-D	PD-W
TO DEVELOPMENT APPROVAL	RM	A-15	A-15	A-15	A-10	B-10	B-10	B-10	B-10	A-10	B-10	B-10	B-10
	CC	C-25	C-25	C-25	C-25	n/a	n/a	n/a	n/a	C-25	n/a	n/a	n/a
	CS	C-15	C-15	C-15	C-15	D-7.5	D-7.5	D-7.5	D-7.5	C-15	D-7.5	D-7.5	D-7.5
	CO	C-15	C-15	C-15	C-15	D-7.5	D-7.5	D-7.5	D-7.5	C-15	D-7.5	D-7.5	D-7.5
	O&LI	C-20	C-20	C-20	C-20	D-7.5	D-7.5	D-7.5	D-7.5	C-20	D-7.5	D-7.5	D-7.5
	PD-R	B-15	B-15	B-15	B-15	B-15	B-15	B-15	B-15	B-15	B-15	B-15	B-15
	PD-B	C-15	C-15	C-15	C-15	D-7.5	D-7.5	D-7.5	D-7.5	C-15	D-7.5	D-7.5	D-7.5
	PD-D	C-15	C-15	C-15	C-15	n/a	n/a	n/a	n/a	C-15	n/a	n/a	n/a
	PD-W	C-15	C-15	C-15	C-15	D-7.5	D-7.5	D-7.5	D-7.5	C-15	D-7.5	D-7.5	D-7.5

Examples for Selecting the Correct Landscape Buffer:

1. A property owner wants to locate a convenience store in the CS zoning district, adjacent to land that zoned R-10. The convenience store property would be required to include a Landscape Buffer Class "C" of 15 feet in width along the boundary shared with the R-10 property. Within the Buffer Class "C", the property owner would be required to place one canopy tree every 25 linear feet, plus one evergreen tree every 25 feet, plus one ornamental or understory tree every 50 linear feet, and to construct a masonry wall of six feet in height.
2. A developer wants to locate an office building in the O&LI district, adjacent to land zoned PD-B. The office building property would be required to include a Landscape Buffer Class "D" of 7.5 feet in width along the boundary shared with the PD-B property. Within the Buffer Class "D", the developer would be required to place one canopy tree every 30 linear feet, and evergreen tree every 30 linear feet, one ornamental or understory tree every 50 feet. If the developer chooses to provide a fence, it must permit maximum visibility between the O&LI property and the PD-B property.

78-110.5 Vehicular Use Area Screening and Landscaping

A. Screening. Vehicular use areas shall be screened from view of public streets and adjacent properties. Such screening shall be exclusive of the required perimeter buffer. Where a vehicular use area abuts a public right-of-way, or an adjacent property, the following requirements shall apply:

1. **Screening Shall be Continuous.** Screening for vehicular use areas shall form a continuous visual screen, excluding required visibility clearances at driveways. The owner may incorporate fences, walls, earthen berms or any combination thereof in addition to the required landscaping. See Section 78-21.F., Visibility Clearance.
2. **Evergreens Required.** Screening for vehicular use areas shall consist of evergreen shrubs. Shrubs shall be planted no less than three feet on center.

3. **Height of Plantings.** Plant materials shall be planted and maintained at a minimum height of 36 inches above the surface elevation of the adjacent vehicular use area, provided the installation meets all visibility clearance standards in Section 78-21.F, Visibility Clearance.
4. **Curbing Required.** The screening shall be protected from vehicular intrusion by the installation of curbing. Shrubs shall not be planted within 2.5 feet of the back of the curb. In the absence of curbing, wheel stops, extra width in the buffer, or other methods may be approved by the zoning administrator.
5. **Located on Property.** Landscape strips for screening vehicular use areas shall be located on the property, and shall be placed to assure visibility and safety of pedestrians on the public street, as well as those within the parking lot.
6. **Relation to Perimeter Buffer Strip.** Screening strips may be integrated into adjacent perimeter buffers on site, provided that the minimum standards of this section are maintained.
7. **Parking Lots and Structures to be Screened.** Screening requirements shall be met for both parking lots and parking structures. In the case of parking structures, landscaping may be provided on the structure itself in planters with proper irrigation and drainage accommodations.

B. Other Landscaping Requirements in Vehicular Use Areas

1. **Subdivision or Site Plan with More than Four Spaces.** There shall be at least one canopy tree for every eight parking spaces not contained within a covered parking structure or garage when a site plan or subdivision plan indicates more than four parking spaces. Such trees shall be planted within the vehicular use area and not within abutting buffers or other perimeter open space.
2. **Standards for Landscaping within Vehicular Use Areas.** The following requirements shall apply for any landscaping placed within vehicular use areas:
 - a. Vehicular use area landscaping shall be planted within islands.
 - b. No parking space shall be located more than 120 linear feet from a tree provided on the site.
 - c. No more than ten percent of vehicular use area trees shall be under story or ornamental species.
 - d. Any vehicular use area island used for landscaping, other than groundcover or turf, shall contain a minimum of 120 square feet of unpaved planting area. Islands with less than 120 square feet shall not be considered landscape islands for purposes of placing required landscaping, but may be

counted toward any green space requirement if applicable standards are met (see Section 78-113.2.B.4 Composition).

- (1) The minimum width of a planting area with a tree shall be eight feet.
 - (2) For purposes of safety, mobility and clearance, any trees or shrubs planted within the unpaved planting area shall be planted a minimum of 3.5 feet from the edge of pavement. For this purpose, the edge of pavement shall be considered the face of continuous curb or, absent a continuous curb, the edge of pavement.
 - (3) Each tree shall be surrounded by a minimum of 120 square feet of unpaved planting area.
- e. Islands shall be arranged in the following manner:
- (1) There shall be a landscape island at the end of every row of parking spaces.
 - (2) Landscape islands shall be single islands providing a minimum of 120 square feet of unpaved planting area or they shall be combined to create larger landscaping areas within vehicular use areas. Combined landscape islands shall provide the required minimum of 120 square feet of area of unpaved planting area per tree and shall meet or exceed required clearances stated above in paragraph 78-503.5(b)(4). Combined islands can be used to provide tree save areas. When utilized for tree save purposes, additional clearance requirements may be required by the zoning administrator to ensure the health of the trees. Pedestrian walks shall not encroach into the required 120 square feet of unpaved planting area.
 - (3) Vehicular use area landscape requirements shall be met for both parking lots and exposed parking spaces located on parking structures. In the case of parking structures, landscaping shall be provided on the structure itself in planters with proper irrigation and drainage accommodations.
- f. To ensure the survival of existing trees to be retained in a parking lot area, sufficient ground shall be left ungraded around each tree, as determined by an arborist for the town. Proper arboriculture measures, as adopted by the community forester, may be required to allow its survival.

78-111 Tree Preservation

78-111.1 Tree Preservation, Generally

- A. Purpose.** The purpose of this section is to protect existing tree and vegetation cover during development so as to protect the natural environment of the town and preserve its visual and aesthetic character.
- B. Intent.** This section is intended to establish standards for maintaining, preserving or removing trees on public and private property within the town. Its specific purposes are to promote: maintenance and survival of trees within the town; the use of site design techniques that preserve the natural environment and enhance the developed environment; the conservation of energy through the retention of existing tree cover; the promotion, protection, and enhancement of wildlife habitat; and the enhancement of the quality of life of the town and its citizens.
- C. Additional Tree Provisions in Town Code.** Chapter, 26, Article II of the Herndon Town Code contains provisions for tree protection on public lands and for maintenance of trees on private property when required for public safety.
- D. Exemptions.** The following are exempt from the standards of this section:
- 1. Removal of Dead Trees.** The removal of dead or naturally fallen trees or vegetation, or trees or vegetation that is determined to be a threat to the public health, safety, or welfare.
 - 2. Selective Clearing for Visibility.** The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways or intersections, or for the purpose of performing authorized field survey work.
 - 3. Imminent Threat.** The severe pruning or removal of trees if it is demonstrated to the zoning administrator they pose an immediate or imminent threat (but not an emergency) to improved structures.
 - 4. Removal of Trees on Town Property.** Removal of trees on town-owned property pursuant to chapter 26, Article II of the Herndon Town Code.
 - 5. Utility Easements.** The necessary and reasonable actions of public and private utility companies within their utility easements provided that proper arboriculture techniques are used.
- E. Applicability to Properties Under Development Review .** The following standards shall apply to parcels under development review for subdivision, site plan, single lot development plan, special exception.

1. **Healthy Trees to be Preserved.** No healthy tree shall be destroyed or removed from any parcel of land for which an application for a subdivision plat, subdivision plan, site plan, single lot development plan, or generalized development plan for a special exception has been submitted to the town for approval. No healthy tree may thereafter be destroyed or removed unless such destruction/removal has been specially permitted or required under the terms of an approved subdivision plat, subdivision plan, site plan, single lot development plan, or generalized development plan for a special exception, except on lots for single-family detached dwellings. The provisions of this section shall apply to all trees. Each tree unlawfully removed or destroyed shall constitute a separate violation of this section.

2. **Tree Removal Requires Review and Approval.** No subdivision plat, subdivision plan, site plan single lot development plan or generalized development plan for a special exception that provides for the destruction or removal of any existing healthy tree as regulated by this section shall be approved by the reviewing authority unless, in the discretionary judgment of the zoning administrator, such destruction/removal:
 - a. Is necessary for development on the parcel to be accomplished in accordance with the other approved aspects of the plan or plat; or
 - b. Would further the purposes of this article allowing for a more appropriate landscape design.

78-111.2 Tree and Vegetation Protection and Replacement on Private Property

- A. **Retention of Existing Site Canopy.** Priority areas for retention of existing trees and vegetation shall include, but shall not be limited to: riparian areas, wetlands, wildlife habitat, aquifer or wellhead protection areas, and other sensitive natural areas. Streets, buildings, and lot layouts shall be designed to minimize disturbance to all trees eight inches diameter at breast height or larger. For purposes of this section, the area of existing site canopy to be protected shall be known as the "Tree Protection Zone."

- B. **Replacement and Mitigation Requirements.** The following provisions shall apply when tree replacement and mitigation measures are required:
 1. **Tree Replacement Plan (TRP) May Be Required.** A tree replacement plan (TRP) shall be submitted when the development of a site causes disturbance, destruction or removal of trees or vegetation inside the tree protection zone, or when damage related to the construction of the site in the opinion of the Town's community forester will lead to the deterioration or death of protected trees.

 2. **TRP to Provide Design for Replacement Trees.** A TRP shall be submitted for tree replacement for those trees required to be preserved under the terms of this chapter. A TRP shall provide a design for loss and replacement of trees

shown to be preserved on a subdivision plat, subdivision plan, site plan or single lot development plan.

3. **Applicability.** The provisions of this section shall apply when disturbance, destruction or removal of trees or vegetation inside the tree protection zone shall be deemed by the town's community forester to be caused by construction associated with the approved site development plan which includes public improvements.
4. **Standards for Replacement Trees.** The trees to be replaced under the TRP shall consist of 100 percent of the total diameter at breast height of the trees destroyed. The replacement plants shall be spaced in accordance with sound urban reforestation procedures as provided for in the Reference Handbook for Foresters by the United States Department of Agriculture. If it is determined that the number of trees to be planted exceeds the space in which these trees can be accommodated in the tree protection area, those excess trees can be planted elsewhere on the site.
 - a. Any tree which is damaged or removed from the protected site canopy area shall be replaced with one or more trees that have a caliper of at least two inches and a cumulative caliper equal to or greater than the original tree.
 - b. Any tree eight inches DBH or larger that is damaged or removed from the protected site canopy area shall be replaced by three trees with a minimum 3.5-inch caliper.
 - c. Replacement trees shall be either planted on the developed site if sufficient space is available, or planted on public property as approved by the town council. See also Section 78-110.D.2, Permitted Changes in Landscaping Plant Materials.
 - d. All replacement plant materials shall conform to the requirements set forth in this chapter.
5. **Maintenance of Replacement Trees.** Replacement trees shall be maintained through an establishment period of at least three years. The applicant shall guarantee the survival and health of all replacement trees during the establishment period and guarantee any associated replacement costs. If the replacement trees do not survive the establishment period, the applicant will purchase and install new replacement trees.

78-111.3 Tree Protection During Construction

- A. **Property Owner Shall Be Responsible.** During development of the property, the owner or developer shall be responsible for the erection of any and all barriers necessary to protect any existing or installed vegetation from damage both during and after construction.

B. Protective Fencing. Tree protection fencing shall be provided as follows:

1. **Placement of Fencing.** All existing trees that are to be preserved in the tree protection zone shall be fenced with a sturdy and visible fence before grading begins. Fencing shall extend as far as practical; preferably at least one foot distance from the tree for each inch of caliper, but in no case closer than six feet to the trunk. The applicant and zoning administrator shall consider existing site conditions in determining the exact location of any tree protection fencing.
2. **Fence Height and Type.** All fencing required by this section shall be a minimum four feet high and of durable construction. Four-foot orange polyethylene laminar fencing is acceptable. Passive forms of tree protection may be utilized to delineate tree save areas that are remote from areas of land disturbance. These must be surrounded by fencing, continuous rope, or durable taping (minimum four inches wide).
3. **Signage.** Signs shall be installed on the tree protection fence visible on all sides of the fenced-in area (at least one every 150 linear feet). The size of each sign must be a minimum of two feet by two feet and shall contain the following language: "TREE PROTECTION ZONE: KEEP OUT."
4. **Fencing to be Shown on Plan.** The tree protection fencing shall be clearly shown on the Site plan, preliminary subdivision plan, or single lot development plan.
5. **No Activity Permitted in Fenced Area.** No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced area.
6. **Maintenance and Removal of Fence.** Fencing shall be maintained until the final site inspection prior to the occupancy permit is scheduled. The fencing shall be removed prior to final site inspection for the occupancy permit.

C. Preventative Measures for Encroachments. Encroachments within the critical root zones of trees, or within designated tree protection zones, shall occur only in rare instances. If such an encroachment is anticipated, the following preventive measures shall be employed:

1. **Trenching Adjacent to Tree Save Areas.** The removal of trees adjacent to tree save areas can cause inadvertent damage to the protected trees. Wherever possible, it is strongly recommended to cut minimum one and one-half-foot trenches along the limits of land disturbance, so as to cut and root prune, rather than tear, roots.
2. **Compaction.** Where compaction might occur due to traffic or materials through the tree protection zone, the area must first be mulched with a minimum four-inch layer of processed pine bark or wood chips, a six-inch layer of pine straw, or an approved specialized mat. Equipment or materials storage shall not be allowed within tree protection zone areas.

78-111.4 Tree Preservation Credit

- A. Existing Healthy Trees may be Credited Toward Landscaping Requirements.** Except as provided in this section, existing, healthy trees which are to be preserved may be included to meet all or part of the landscaping requirements described in section 78-110 Landscaping, if the site plan, preliminary subdivision plan or single lot development plan identifies such trees. Existing trees that are not in a required buffer area shall not be included to meet any part of the landscape requirements for buffers.
- B. Tree Preservation Credit Multipliers.** In order to encourage the preservation of trees on a site, a tree preservation credit for trees that are not destroyed as a result of the construction process may be granted. The credit provided will be 1.25 multiplied by the number of preserved trees as delineated on the site plan, preliminary subdivision plan or single lot development plan and surveyed in the field. A higher factor of up to 4.0 may be used for trees of outstanding size and quality if approved by the zoning administrator. This number shall be subtracted equally from the canopy and evergreen tree requirements.

78-111.5 Adjustments to Other Zoning Standards to Allow for Tree Preservation

- A. Administrative Adjustments from Required Building Setbacks.** An encroachment into a required building setback of up to five percent may be approved by the zoning administrator through the administrative adjustment procedure (see Section 78-155.5) as a way to accommodate healthy existing trees and their root zones. This provision shall not be construed to allow a structure to exceed the maximum floor area as specified in dimensional standards for individual zoning districts in Article IV, Article V or Article VI.
- B. Reduction in the Minimum Number of Required Parking Spaces.** Up to a five percent reduction in the number of off-street parking spaces required on the site shall be allowed if the reduction in the amount of required pavement will preserve the root zones of existing healthy trees with a diameter at breast height of ten inches or greater. The amount of reduction can be determined only after taking into consideration any unique site conditions and the impact of the reduction on parking needs for the use, and must be agreed upon by both the applicant and zoning administrator. Alternative paving materials (see Section 78-100.8.B.4, Standards for Alternative Materials) may be required by the zoning administrator in cases where required parking areas encroach upon critical root zones.

78-111.6 Monitoring and Maintenance of Preserved Trees.

- A. Maintenance Responsibility.** The owners of the property and their agents, heirs, or assigns shall be responsible for the preservation and maintenance of all trees required to be saved and protected under this section.

- B. Performance Guarantees.** Prior to the issuance of a grading permit (or building permit if no grading is required), the owner/developer shall post a financial guarantee in accordance with the provisions of Article XII, Performance Guarantees, to ensure that improperly removed, damaged, or destroyed trees are replaced should the applicant fail to follow the requirements of this Section. Financial guarantees shall be returned following the issuance of an occupancy permit, or upon completion of the establishment period for replacement vegetation specified in Section 78-112.B. Replacement and Mitigation Requirements.
- C. Separate Violation.** Each tree unlawfully removed or destroyed after submittal of a site plan, subdivision plan or single lot development plan, or inconsistent with an approved site Plan, subdivision plan, single lot development plan, final subdivision plat, proffered zoning map amendment, or special exception shall constitute a separate violation of this chapter.

Sec. 78-112 Special Streetscape Areas

- A. Applicability.** To enhance the townscape, provide areas to augment walkability, calm traffic, promote the safe and orderly operation of vehicles in public rights-of-way, and coordinate the interface of public rights-of-way with private development, the standards of this section shall apply to development in every zoning district to development with frontage on a public or private street.
- B. Streetscape Types.** Certain streetscape designs apply to certain areas in Town as provided for in this section and listed below.
- C. Standards.** The streetscape shall meet the requirements in the Herndon Guidelines for the Planning and Design of Town Streetscape Projects (dated November 25, 2008, as may be amended) and shall be designed in general conformance with the Downtown Pattern Book and the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core as determined by the Zoning Administrator.

78-113 Common Areas, Open Space, and Private Recreational Facilities

The following sections contain provisions pertaining to Common Areas, Open Space and Private Recreational Facilities.

78-113.1 Common Areas

- A. Common Areas, Generally.** As defined in Article XVIII, common area refers to land and facilities within a development which are intended to be used or enjoyed in common by the residents or owners of the development including, but not limited to, driveways, parking areas, sidewalks on private land, walkways, recreation facilities, trash facilities, lighting, community buildings and open space.
- B. Ownership of Common Areas.** Common areas shall be owned, maintained and regulated by an organization created by covenants running with the land that comprises the development. Accordingly, such area shall be conveyed to a nonprofit

corporation authorized under the laws of the commonwealth, with proper agreements, and covenants acceptable to the town for the development and maintenance of the open land. The members of such nonprofit corporation shall be the owners of all the lots in the subdivision and such land is to be held and used for the recreation purposes for the owners of the subdivision lots. Covenants shall provide that assessments, charges and costs for the maintenance of open space shall constitute a pro rate lien upon the individual lots of the subdivision, second only to taxes, and any bona fide recorded first trust lien on each lot.

C. Ownership Arrangements. The following forms of common area ownership shall be permitted:

1. **Dedication to Homeowner's or Property Owner's Association.** Wherever possible, all common areas shall be owned jointly or in common by the owners of the development through a recognized homeowner's or property owner's association, which should be established in accordance with the following:
 - a. The landowner submits documents for the creation of the homeowners' or property owners' association to the town for review and approval, including its bylaws, and all documents governing ownership, maintenance, and use restrictions for the common area, including a legal description of such areas;
 - b. The landowner agrees that the association is established by the landowner or applicant and will be in operation (with financial subsidization by the owner or applicant, if necessary) before approval of the first final subdivision plat for the property; and
 - c. Membership in the association is automatic (mandatory) for all purchasers of dwelling units, lots, or other structures therein and their successors in title.
2. **Retained on Private Lots.** Required open space may be allowed on individual building lots only through the use of an easement prohibiting the area from being fenced off and prohibiting future development of the open space. Such open space shall be clearly marked on the site plan or preliminary and final plats for a subdivision.
3. **Dedicated to Town.** In some cases, certain lands designated as common area, such as floodplains, may be dedicated to the town during the development review process. The town council shall determine which lands and under what conditions such dedications will be accepted by the town.

D. Maintenance of Common Areas. The owner(s) of the property are responsible for maintenance of all common areas unless dedicated to the town. If common areas or other community facilities are not maintained consistent with the approved site plan, subdivision site plan, zoning map amendment, or special exception, the town shall cause such maintenance to be performed and assess the costs to the affected property owner(s) or responsible association.

78-113.2 Open Space

- A. Applicability.** The provisions of this section shall apply to all property within the town that is subject to the provisions for subdivision plans, zoning map amendments, special exceptions, and site plans. This section addresses the character and design of those portions of development that are not occupied by platted lots or streets and that are reserved for parks, trails, landscaping, and open space uses. The standards of this section apply regardless of whether or not the land involved will be dedicated to the town, and regardless of whether or not such open space will be open to the public or to other residents of the development.
- B. General Open Space Standards.** Open Space shall be subject to the following provisions:
- 1. Amounts of Open Space Required.** Development shall provide at least the minimum amounts of open space identified in zoning districts in Articles III, IV, V, in the tables of dimensional standards for residential districts and for business districts, respectively, and in the provisions for planned developments in Article VI. "Open Space" is defined in Article XVIII-Definitions.
 - 2. Counted as Open Space.** For the purposes of meeting the open space requirement, types of space may include, but are not limited to:
 - a. Areas occupied by required landscaping or features that meet urban forestry requirements;
 - b. Areas, whether in the public right-of-way or on private land, that meet the provisions of 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) as described in Sections 78-40.6.1 and 78.50.9.1 Downtown Streetscape;
 - c. Land occupied by outdoor recreational uses such as pools, playgrounds, tennis courts, and jogging trails;
 - d. Vegetated roofs when meeting criteria for eligibility for credits of any kind under the LEED™ Green Building Rating System for New Construction and Major Renovation;
 - e. Land area occupied by stormwater management devices, including retention and detention ponds, sand filters, and other bio-retention devices when not located below ground and when landscaped so as to provide an aesthetic amenity on the site, including at least four of the following:
 - (1) Outside the pond area: plants that are non-invasive and decorative. Plants that may be considered based on the approval of the urban forester and the director of public works include:

- (a) Grasses: Warm season grasses and wildflower mixes. In wet areas, plant Sweet flag, Yellow Iris and Soft Rush for color and texture;
 - (b) Shrubs: Red Chokeberry (*Aronia arbutifolia*), Silky Dogwood (*Cornus ammomum*), Arrowwood (*Viburnun Dentatum*), Cranberry bush (*Viburnum trilobum*);
 - (c) Trees: Red Maple (*Acer rubrum*), River Birch (*Betula nigra*), Sweet gum (*Liquidambar styraciflua*), various Willows.
- (2) Edging a pond or in a pond: native wetland plants that screen or enhance the appearance of the facility without obstructing its effectiveness at stormwater management may be used. The facility may be managed as an upland meadow with grass no shorter than six to eight inches. However, the dam embankment, side-slopes, and emergency spillway of an extended detention dry pond or wet pond should be kept free of woody growth.
- (3) Wildlife habitat area;
- (4) Landscape features such as fountains that add value to the device as a visual amenity;
- (5) Decorative fencing around the device, if fencing is required; or
- (6) Features located on a green roof (such as sand filters) when meeting eligibility criteria for credits by the LEED™ Green Building Rating System for New Construction and Major Renovation.
- 3. Not Counted as Open Space.** The following areas shall not be counted as open space:
- a. Public or private streets or rights of way, including sidewalks, except as may be allowed expressly in this chapter;
 - b. Stormwater management devices that do not meet the standards in section 78 -504(b)(2)e.;
 - c. Parking areas and driveways for dwellings;
 - d. Land covered by structures of any kind; or
 - e. Designated outdoor storage areas.
- 4. Design Standards.** Land used as open space shall meet the following design standards:

- a. Location. Open space is located so as to be readily accessible and useable. Where possible, a portion of the open space should provide focal points for the development.
- b. Composition. For uses in areas other than Sectors 1, 2 or 3 of the Herndon Downtown Overlay as described in the "Herndon 2030 Comprehensive Plan" (adopted August 12, 2008), as may be amended, 60 percent of the required open space is "green space" as defined in Article XVIII - Definitions. To be counted as green space, candidate spaces have no dimension less than seven and one half feet. For uses in Sectors 1, 2 or 3 of the Herndon Downtown Overlay as described in the "Herndon 2030 Comprehensive Plan" (adopted August 12, 2008), as may be amended, thirty percent of the required open space is "green space" as defined in Article VII, Definitions To be counted as green space, candidate spaces have no dimension less than three feet.
- c. Features to be preserved. The required open space is located and organized to include, protect, or enhance as many of the following open areas and features as possible:
 - (1) Natural features such as stream corridors, bluffs, ridges, steep slopes, mature trees (8 inch caliper or greater), rock outcroppings, wetlands, native upland ecosystems, and riparian areas;
 - (2) Landscaped buffers or visual transitions between different types or intensities of land uses;
 - (3) Natural or geologic hazard areas or soil conditions, such as unstable or potentially unstable slopes, expansive soils, or floodplains; and
 - (4) Habitat for endangered species as identified by the Commonwealth of Virginia.

C. Ownership and Maintenance. All open space shall be sufficiently maintained to preserve its value as an aesthetic amenity. For additional provisions about the ownership and maintenance of open space lands, see Section 78-113, Common Areas.

78-113. 3 Privately Provided Recreation Areas

A. Applicability. On-site recreational amenities shall be provided in development, redevelopment, or substantial site rehabilitation occurring after the effective date of this chapter for townhouse, multi-family, and planned development-residential districts. These provisions do not apply to residential uses in Sectors 1, 2 and 3 of the Herndon Downtown Overlay as described in the "Herndon 2030 Comprehensive Plan" (adopted August 12, 2008), as may be amended.

B. Standards for Private On-Site Recreation Areas. On-site recreational amenities shall meet the following standards:

1. **Amount.** On-site recreational space shall be provided at the rate of 100 square feet per dwelling. Recreational space provided may be eligible to meet the requirements for open space or green space.
2. **Configuration of Recreation Uses.** The required recreation area shall have no dimension less than ten feet. It shall be located outside the required buffer area.

TABLE 78-113.B - SAMPLE ON-SITE RECREATIONAL AMENITIES AND WHETHER OR NOT THEY MAY BE COUNTED AS MEETING THE OPEN SPACE OR GREEN SPACE REQUIREMENT			
	OPEN SPACE	GREEN SPACE	NEITHER OPEN SPACE NOR GREEN SPACE
TOT LOT OR PLAYGROUND	•		
BASKETBALL HALF COURT	•		
TENNIS COURT, not enclosed in a structure	•		
CLUB HOUSE, INTERIOR EXERCISE ROOM			•
TRAIL, PAVED	•		
SPORT FIELD, INFORMAL, without any structures or lighting	•	•	
TRAIL, wood chip or other permeable surface	•	•	
COMMUNITY VEGETABLE GARDEN AREA	•	•	
SWIMMING POOL, exterior	•		
MEDITATION GARDEN with landscape amenities such as a fountain, benches, gazebo	• (Impervious features such as decorative hardscape or paved pathways)	• (Planted areas)	• (Impervious structures such as the fountain or gazebo)

Sec. 78-114 Screening

The following sections contain provisions pertaining to screening of certain uses and features.

78-114.1 Additional Screening Requirements *Formerly Sec. 78-503.7]*

- A. **Applicability.** In addition to the landscaping and buffer standards in this section, screening shall be required for all uses other than single-family detached and townhouses to conceal specific areas of high visual or auditory impact or hazardous areas. Such areas shall be screened at all times, unless otherwise specified, regardless of adjacent uses, districts, or other proximate landscaping material.
- B. **Review.** In addition to review as part of a site plan or subdivision plan application, all screening structures shall be subject to review and decision by the architectural review board or heritage review board, as appropriate.
- C. **Items to be Screened.** The following areas shall be screened in accordance with this section: waste receptacles and refuse collection points; loading and service areas; outdoor storage areas (including storage tanks); generators; roof-mounted features such as mechanical equipment, antennae, utility meters and utility boxes; and ground level mechanical equipment, and utility meters and boxes.

78-114.2 Screening Standards

- A. **Ground Level Areas and Features.** The following standards shall apply to features or areas that require screening and that are located at ground level.
 - 1. **Features or Areas Visible from a Public Right-of-Way or Within 25 feet of a Property Line Abutting a Property Zoned and Used for Residential Purposes.** Ground level features or areas visible from a public right-of-way or that lie within 25 feet of a property line abutting a property zoned and used for residential purposes shall be screened as follows:
 - a. Loading and service areas, outdoor storage areas (including storage tanks); generators and ground level mechanical equipment shall be screened with a masonry wall with metal opaque gates on the fourth side.
 - b. Required masonry walls shall be tall enough to visually screen the object located within.
 - c. The interior surfaces of the required masonry wall shall be designed with sound absorption materials if the equipment being screened produces noise.
 - 2. **Features or Areas Not Visible from a Public Right-of-Way or 25 feet or more from a Property Line Abutting a Property Zoned and Used for Residential Purposes:** Ground level features or areas that are not visible from a public right-

of-way or that lie within 25 feet of a property line abutting a property zoned and used for residential purposes. If determined to be appropriate prior to final approval for the site plan or subdivision plan, the zoning administrator may require screening with a wood fence or landscaping for:

- a. Loading and service areas;
- b. Ground level mechanical equipment, utility meters, and utility boxes that do not generate audible sound at the property line.

B. Roof-Mounted Features (such as Mechanical Equipment, Antennae, Utility Meters and Utility Boxes). If determined to be appropriate prior to final approval for the site plan or subdivision plan, the zoning administrator may require:

1. **Matching Materials.** Screening material shall be metal, masonry or other material to match the predominant building material.
2. **Noise Abatement.** Abate noise generated by the equipment being screened.
3. **Height.** Screening material shall be of a height equivalent to the object being screened; antennae shall be screened to the extent possible to permit function.
4. **View.** Screening material shall effectively block the view from the ground of the roof-mounted object.

C. Solid Waste Receptacles and Refuse Collection Points. Waste receptacles and refuse collection points shall be screened as described below:

1. **Applicability.** These standards for solid waste receptacles and enclosures apply to any nonresidential development and multi-family dwellings. These standards are provided to help ensure the proper and healthful storage of solid waste between refuse collections. Solid waste excludes recyclables and includes all garbage, cardboard, ashes, trash, industrial wastes, swill, abandoned vehicles or parts thereof, discarded industrial appliances, manure, vegetable or animal solid and semisolid wastes, bulky wastes, other discarded materials, and construction and demolition wastes. Recyclables shall also be stored within screening enclosures. Single-family residential uses shall provide for refuse collection as described in Chapter 62, Solid Waste, of the Herndon Town Code.
2. **Standards for Solid Waste Receptacles and Screening Enclosures.**
 - a. Any nonresidential development or multi-family dwelling, shall provide a sufficient number of approved containers for storage of solid waste to prevent overflow between times of collection and to maintain the premises in accordance with the provisions of section 62-5(b)(2) of the Herndon Town Code or as may be amended in the future.

- b. Solid waste containers shall be placed either within a building in a room designed to store solid waste or in a screening enclosure. The waste container and its screening enclosure shall meet the following standards:
- (1) Comply with the provisions of maintenance of bulk containers in Chapter 62 of the Herndon Town Code.
 - (2) Be shown on an approved site plan or minor site plan.
 - (3) Be located outside of any required buffer or open space on the site. .
 - (4) Have an enclosure that is large enough to accommodate the containers required to serve the uses on the property.
 - (5) Be placed on the lot for adequate service from the refuse collection company.
 - (6) Be the subject of an approved building permit for the construction of a new dumpster enclosure.
 - (7) Enclosure gates shall remain closed at all times except during service. .
 - (8) The design of the enclosure structure must include:
 - (a) Brick or concrete block walls with brick facing.
 - (b) Walls and gates that fully enclose the dumpster and do not exceed eight feet in height.
 - (c) Construction in such a manner that all structural members, including braces, posts, poles and other projections, shall be on the interior side of the walls.
 - (d) Construction of the gates with commercial grade hinges, poles hasps and closing latches.
 - (e) Gates with supporting poles of metal with a minimum diameter of at least one and five-eighths inches to support the gate.
 - (9) Be placed on a concrete pad with a minimum concrete depth of four inches.
 - (10) Have daily washing of dumpsters provided for food service establishments with a French drain in the dumpster pad.
 - (11) Have a concrete pavement extension at the dumpster pad for truck tires.
 - (12) Have bollards at the rear and sides of the dumpster location.

(13) Not obstruct access to manholes. A clear zone is required for a distance of three feet around the rim of any manhole cover.

- 3. Maintenance of Screening Enclosure.** The owner of the premises benefited by a solid waste receptacle shall utilize and maintain in a workable and effective condition the screening enclosure, and shall ensure that the tenants, contractors, agents, employees or officers accessing or servicing the solid waste receptacle shall utilize the screening enclosure upon each such access or service. Any person accessing or servicing a solid waste receptacle for which screening or a screening enclosure has been provided shall replace the solid waste receptacle behind or within the screening enclosure immediately after access or service.

Sec. 78-115 Walls, Fencing and Hedge Standards

The following sections contain provisions pertaining to retaining walls, other types of walls, fencing and hedges.

78-115.1 Retaining Walls

- A. Applicability.** Article VIII - Accessory uses and structures, establishes that features such as retaining walls are permitted as accessory uses in all zoning districts. The provisions of this Section 78-115 shall apply to all construction, substantial reconstruction, or replacement of retaining walls not required for support of a primary or accessory structure.
- B. Standards for Retaining Walls.** Retaining walls subject to this section shall meet the following standards:
- 1. Adherence to Building Code.** Retaining walls shall be constructed in accordance with the Virginia Uniform Statewide Building Code as applicable.
 - 2. Drainage.** Retaining walls shall be constructed to maintain or enhance drainage patterns both on- and off-site, and shall avoid adverse effects on neighboring properties.
 - 3. Relation to Property Line.** A retaining wall shall not be located closer than two feet to a property line;
 - 4. Required Information.** When shown on the site plan, single lot development plan or subdivision plan, information shall include the wall location, height, adjacent grade and details of design.
 - 5. Building Permit Requirement.** In accordance with the Herndon Public Facilities Manual (2004) as amended, and as may be amended from time to time, a separate building permit shall be obtained for any retaining walls utilized in connection with site plan or subdivision development.

- C. Review and Approval of Retaining Walls.** Retaining walls shall be reviewed and approved, if they are approved, in accordance with the following provisions, as applicable:
- 1. Properties within the Heritage Preservation Overlay District.** The heritage preservation review board shall be the reviewing authority for retaining walls on any property within the heritage preservation overlay district.
 - 2. Townhouse, Multifamily or Commercial Uses Outside the Heritage Preservation Overlay District.** The architectural review board shall be the reviewing authority for walls on property developed with townhouses, multi-family uses or commercial uses outside of the heritage preservation overlay district.
 - 3. Site Plan, Single Lot Development Plan and Building Location Survey Provisions.** The provisions of Section 78-155.6, Site plans, single lot development plans and building location surveys - shall apply to retaining wall reviews as appropriate.

78-115.2 Fencing, Walls (except retaining walls) and Hedges

- A. Applicability.** Article XIII, Accessory Uses and Structures, establishes that features such as fences, walls or hedges are permitted as accessory uses in all zoning districts. The provisions of this section, 78-115.2 shall apply to all construction, substantial reconstruction, or replacement of fences, hedges and walls not required for support of a primary or accessory structure, or similar linear barriers.
- B. Inconsistencies.** In the event of any inconsistency between the provisions of this section 78-115.2 and any screening or buffering standard in Section 78-110, Landscaping, the screening standard in section 78-110 shall govern.
- C. Approvals.** A certificate of appropriateness may be required for fencing or walls in the heritage preservation overlay district (see "certificate of appropriateness in the heritage preservation overlay district" in Article II, Administration). Approval may be required from the architectural review board for fencing, walls or hedges associated with all uses under the purview of the architectural review board (see Chapter 58 of the Herndon Town Code, section 58-62, approval of construction, reconstructions and alterations in architectural control districts required).
- D. Prohibited Fencing.** The following fence types and fence materials are prohibited:
- 1. Barbed Wire and Electric (above-ground).** Barbed wire fences and above-ground electrified fences are prohibited in all zoning districts.
 - 2. Prohibited Fence Material.** Fences or walls made of debris, junk, rolled plastic, sheet metal, plywood, or waste materials are prohibited in all zoning districts, unless such materials have been recycled and reprocessed into building materials marketed to the general public and resemble customary fencing

materials described in Section 78-115.2.F.6. Temporary fences made of materials customarily used for temporary construction purposes (such as silt fences and other barriers) are permitted.

E. Fencing, Wall and Hedge Standards. The following standards shall apply within all zoning districts throughout the town unless otherwise stated.

- 1. Location, Generally.** The following provisions shall apply to location of fences, walls and hedges:
 - a. Fences or walls are permitted within a lot or on the property line between two or more parcels of land.
 - b. No fence, wall or hedge shall be located as to encroach upon public property including but not limited to public streets and other public rights-of-way.
 - c. Hedges shall be planted at a distance from the right-of-way to keep the mature hedge from encroaching into the right-of-way. No hedge shall be allowed to encroach into the public right-of-way.
- 2. Temporary Construction Fences.** Temporary fences for construction sites, tree protection or a similar purpose shall comply with the requirements of this chapter, the Herndon Public Facilities Manual, the approved site plan, and the building code adopted by the town.
- 3. Underground Electric Fences.** Underground electric fences designed for control of domestic animals are permitted.
- 4. Installation Standards.** The following provisions shall apply to installation of fences and walls:
 - a. Unless approved on a site plan, subdivision plan or single lot development plan, no fence or wall shall be installed so as to create, change, block or divert drainage flow on to or off of any other property.
 - b. Fences or walls shall be installed so as to minimize disturbance or damage to existing vegetation or installed plant material.
 - c. Wherever a fence or wall is installed, if one side of the fence or wall appears more "finished" than the other (for example, one side has visible support framing and the other does not), then the more "finished" side of the fence shall face the perimeter of the lot, rather than facing the interior of the lot.
 - d. Fences, walls or hedges shall be installed to prevent obstacles to sight distance at intersections, in accordance with Section 78-21.F. Visibility Clearance.

5. **Maintenance** Fences and walls shall be maintained in good repair. Any deteriorated, damaged or decayed materials shall be promptly repaired, and any post or section that leans more than 20 degrees from vertical shall be promptly repaired to correct that condition.
6. **Fencing and Wall Materials.** The following provisions shall apply to wall and fence materials:
 - a. Fences or walls shall be constructed of customary fencing or wall materials, including solid wood, masonry, stone, brick, wrought iron, decorative metal materials, or products designed to resemble these materials. Any fence or wall material may be further restricted in the heritage preservation district by the heritage preservation review board.
 - b. Chain link fencing is permitted only for the following purposes:
 - (1) To surround tennis courts, ball fields, playgrounds, other recreational facilities not located on a lot with a single-family detached or single-family attached dwelling, and schools not associated with a home-based child care business subject to the following:
 - (a) Chain link fencing used for recreational use within the heritage preservation district shall be coated with black or dark green vinyl and shall be screened from public rights-of-way and abutting properties by landscaping with a growth habit adequate to screen the fencing. :
 - (b) Installation of the screening and fencing shall be dependent upon review and approval by the heritage preservation review board.
 - (c) Where materials are specified for screening or buffering fences or walls on an approved site plan, all other materials are prohibited.
 - (2) To surround construction sites or construction staging areas for a period of consecutive two years subject to the following:
 - (a) The installation of temporary chain link fencing for construction or staging areas shall require prior to installation that the contractor or property owner provide the zoning administrator with a signed letter stating the date that the fencing will be installed, its location and purpose, and contact information for the responsible party. The stated date of installation shall commence the two year period.
 - (b) A time extension for a period of six months may be granted by the zoning administrator. No more than two consecutive extensions shall be granted.
 - (c) The fencing shall be removed within ten days of completion of related construction.

F. Wall and Fence Height Measurements . All fences and walls shall be subject to the following measurement standards.

1. **Measured at Natural Grade.** In all cases, heights are measured from natural grade. If a fence is constructed on top of a wall or a fence or wall is constructed on top of fill material over the natural grade, the combined height of the two items shall not exceed the maximum height that would apply to the fence or wall alone.
2. **Allowance for Average Deviation.** When measuring the height of a fence or wall, the measurement shall allow for an average deviation of up to five percent of the allowable maximum height for the whole fence or wall measured every four feet with no measurement exceeding five inches above the maximum allowable height.
3. **Finials and Decorative Elements.** Fence and wall posts shall not exceed the maximum allowed fence height by more than six inches inclusive of finials or other decorative elements.

G. Walls and Fences Exempt from Height Limitations. The following will be exempt from the height limitations of this section:

1. **Recreational Fencing.** Customary fencing provided as a part of a permitted tennis court, ball field, or other recreational facility shall be exempt from the height restrictions of this section, except as further restricted by Section 78-21.F., Visibility Clearance.
2. **Roadway Sound Attenuation Walls.** Walls and fences installed by the town, county, or state for the purpose of protecting property abutting streets from roadway noise are exempt from the height restrictions of this section.

H. Height and Location Restrictions for Walls and Fences in Non-Residential Districts.

1. **Fences and Walls Up to Seven Feet.** Except as further restricted by Section 78-21.F., Visibility Clearance, fences or walls up to and including four feet in height may be located within a required setback or required yard.
2. **Fences and Walls Up to Four Feet.** Fences and walls up to and including seven feet in height may be located within a required rear yard or required side yard, but shall not extend forward of the architectural front façade of the principal structure.
3. **Administrative Adjustment Required for Site Security Plan for Walls and Fences Above Permitted Height.** The owner or tenant of any property in a business zoning district may submit an application for an administrative adjustment to the zoning administrator per Section 78-155.5 for a site security plan requesting fences or walls taller than those permitted by this section. The

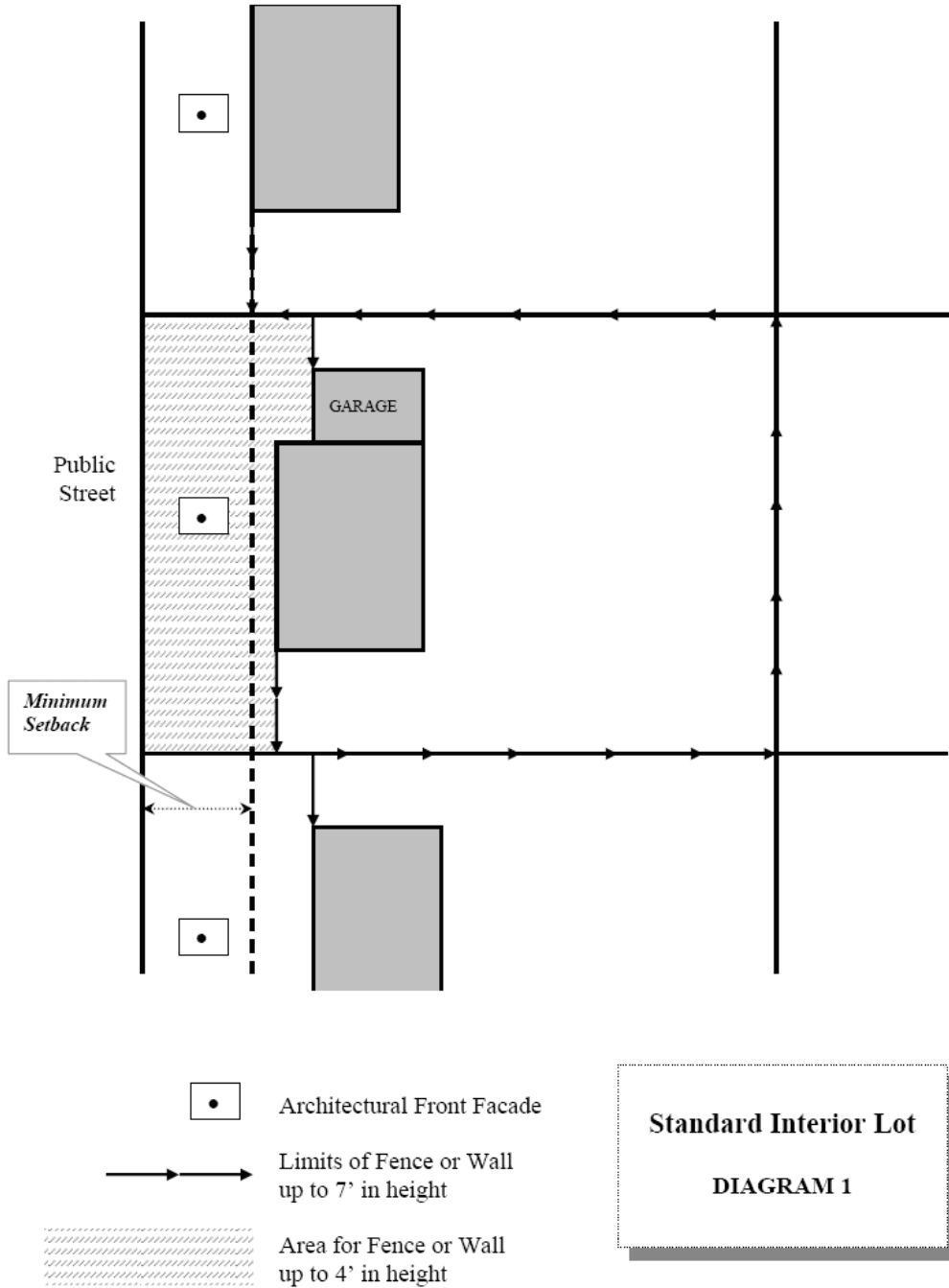
zoning administrator may approve the administrative adjustment, if it is approved, upon findings that:

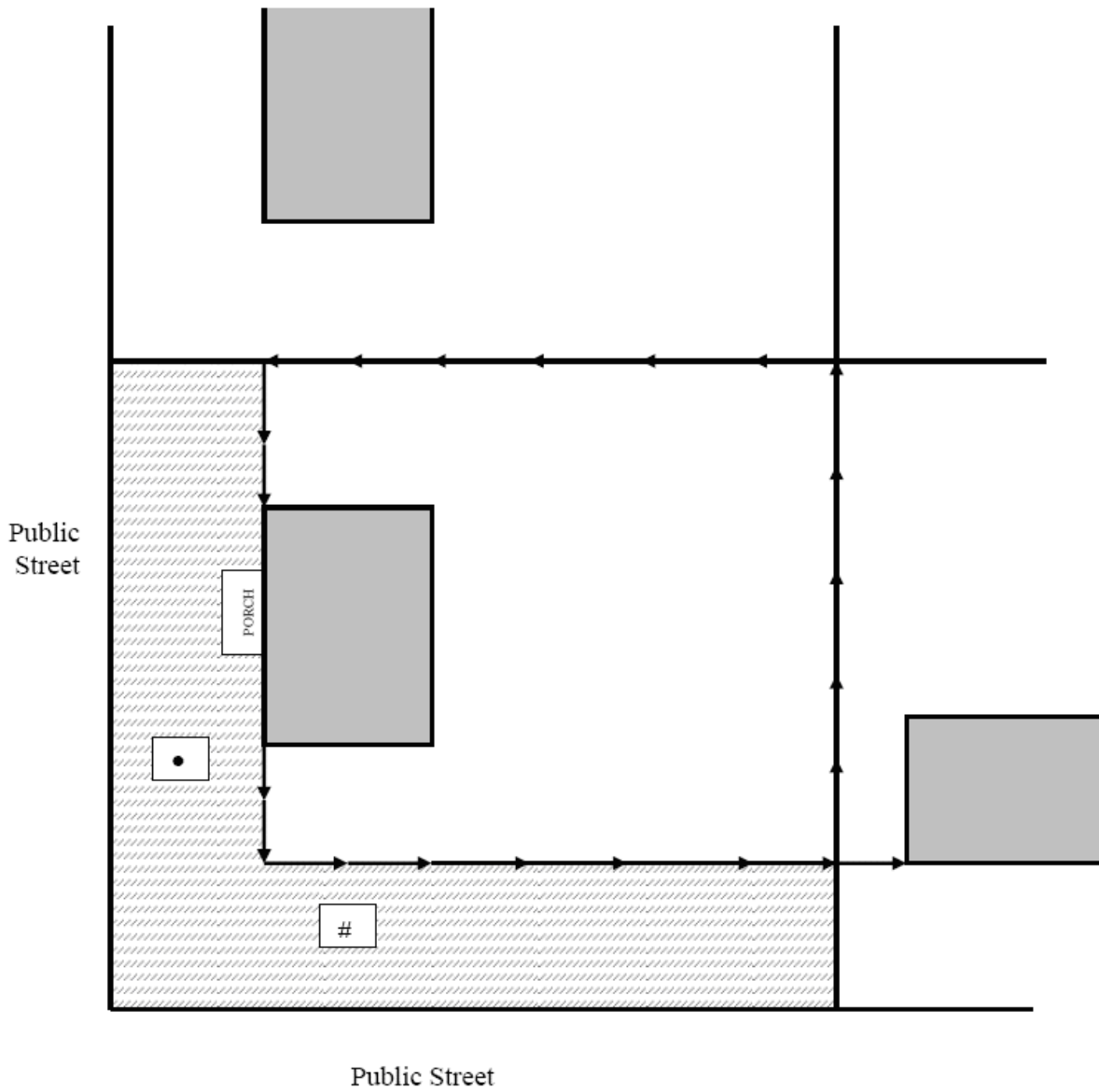
- a. The condition, location, or use of the property, or the history of activity in the area, indicates the property or any materials stored or used on the property are in significantly greater danger of theft or damage than the surrounding properties.
 - b. The additional height of fences or walls indicated in the site security plan will not have a significant adverse effect on the security, functioning, appearance, or value of adjacent properties or the surrounding area as a whole.
 - c. Security fences in commercial and industrial zoning districts shall not exceed nine feet in height.
- I. **Height and Location Standards for Walls and Fences in Residential Districts.** All fences and walls in Residential Districts shall conform to the following height and standards.
1. **Fences and Walls up to Four Feet May Locate in Any Required Setback or Yard.** Fences or walls up to and including four feet in height may be located within any required setback or yard, except as further restricted by Section 78-21.F., Visibility Clearance
 2. **Fences and Walls up to Seven Feet May Locate in a Required Rear or Side Yards, with Limitations.** Fences and walls up to and including seven feet in height may be located within a required rear yard or required side yard. However, fences and walls in excess of four feet in height shall not extend forward of the architectural front of the principal structure or be located between any portion of the architectural front of the principal structure and the required front setback except as permitted by Section 78-115.2.J. Perimeter Fences and Walls for Residential Development.
 3. **Administrative Adjustment Required for Walls and Fences in Secondary Front Yards on Corner Lots and Through Lots.** On corner and through lots, except as further restricted by Section 78-21.F., Visibility Clearance, fences or walls up to and including seven feet in height may be located in secondary front setbacks (a front setback that is located to the architectural side or rear of the structure as determined by the zoning administrator) with the approval (if it is approved) of an administrative adjustment per Section 78-155.5 provided that the following provisions, as applicable, are met:
 - a. No fence or wall exceeding four feet in height shall extend forward of the architectural front (the façade with the primary architectural entrance) of the principal structure on the same or abutting parcels or

be located between any portion of the architectural front of the principal structure and the required front setback.

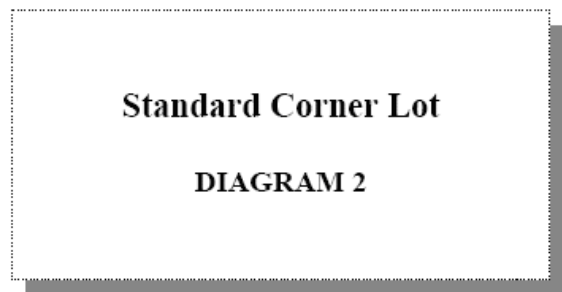
- b. No fence or wall exceeding four feet in height located within a secondary front setback on the property shall be closer than 11.5 feet from edge of pavement or gravel along public rights-of-way without sidewalks or trails.
- c. No fence or wall exceeding four feet in height located within a secondary front setback on the property shall be closer than three feet from the edge of a sidewalk or trail closest to the principal structure along public rights-of-way.
- d. On lots improved with a principal structure that is angled so that the architectural front façade faces the intersection of two streets, no fence or wall exceeding four feet in height shall encroach into the front yard or setback running parallel to the intersecting streets. In addition, fences or walls in excess of four feet shall not extend closer to the adjacent right-of-way than the distance of the right-of-way to the corner of the front façade closest to the fence.

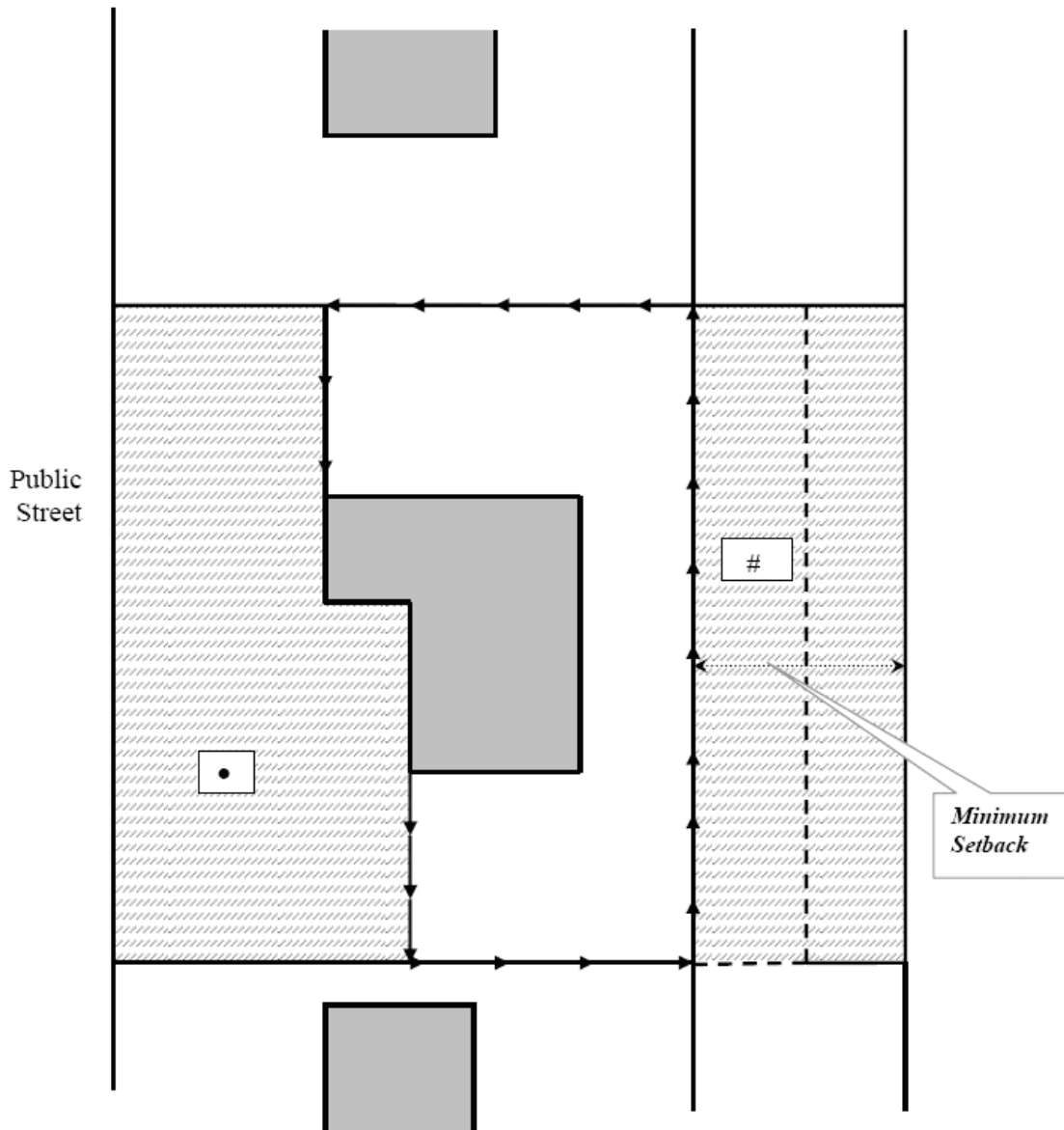
4. **Explanatory Illustrations and Diagrams.** The regulations established in this section are illustrated on the following diagrams entitled standard interior lot, standard corner lot, through lot, three sided corner lot with rear of dwelling abutting adjacent property, and three sided corner lot with side of dwelling abutting adjacent property. These diagrams are incorporated by reference.





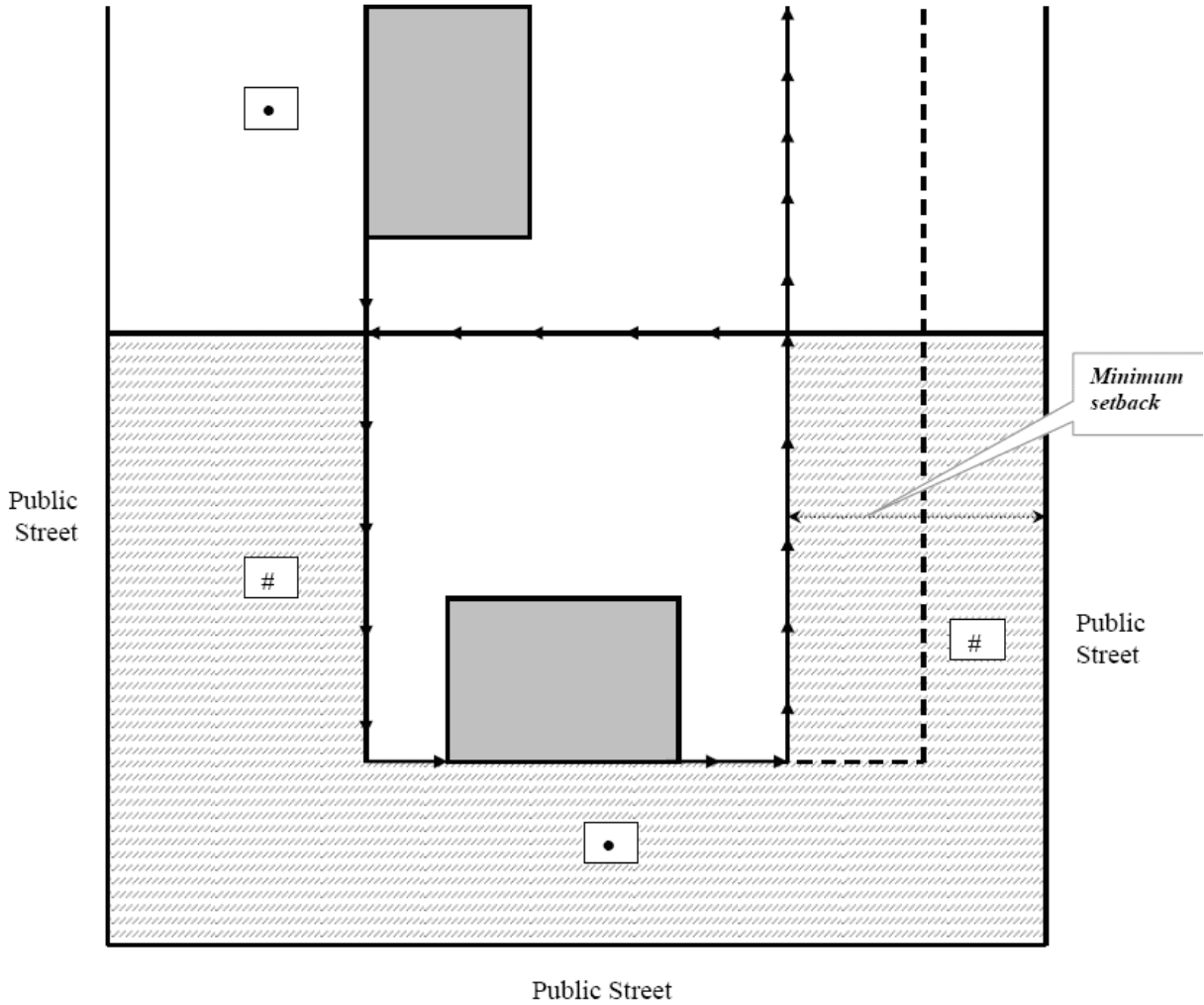
- Architectural Front Facade
- # Secondary Front Setback
- \longrightarrow Limits of Fence or Wall up to 7' in height
- Area for Fence or Wall up to 4' in height





- Architectural Front Facade
- # Secondary Front Setback
- Limits of Fence or Wall up to 7' in height
- Area for Fence or Wall up to 4' in height
- Administrative Adjustment (Illustrative only)

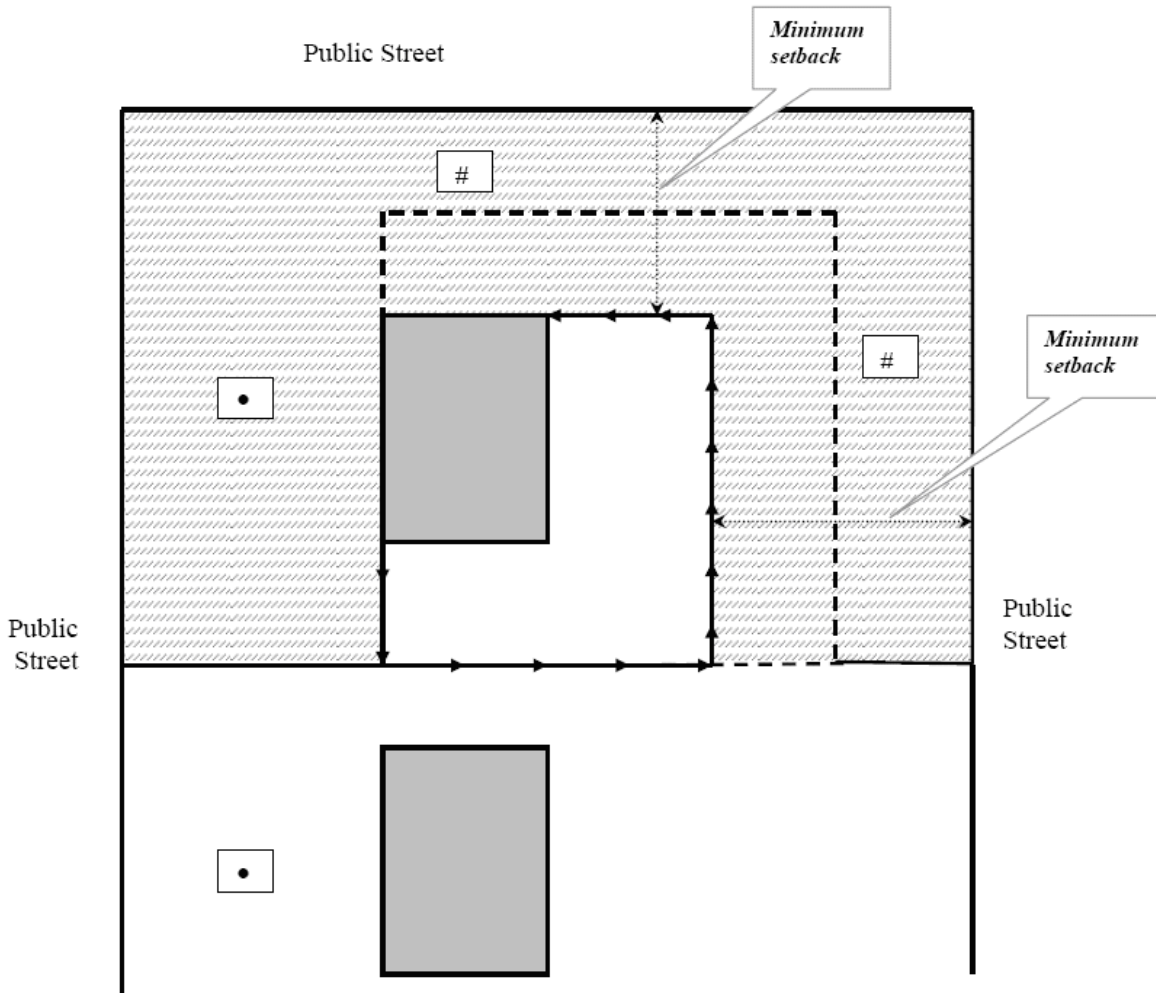
Through Lot
DIAGRAM 3



- Architectural Front Facade
- # Secondary Front Setback
- Limits of Fence or Wall up to 7' in height
- Area for Fence or Wall up to 4' in height
- Administrative Adjustment (Illustrative only)

**Three Sided Corner Lot
With Rear of Dwelling
Abutting Adjacent Property**

DIAGRAM 4



- Architectural Front Facade
- # Secondary Front Setback
- Limits of Fence or Wall up to 7' in height
- Area for Fence or Wall up to 4' in height
- Administrative Adjustment (Illustrative only)

**Three Sided Corner Lot
With Side of Dwelling Abutting
Adjacent Property**

DIAGRAM 5

J. Perimeter Fences and Walls for Residential Development. For purposes of this section, "perimeter fences and walls" means any fence or wall that is located within the common area of any single-family detached, single-family attached or multi-family development and that is within 20 feet of the edge of the right-of-way of a

public street. Developments may provide perimeter fences or walls between primary structures and the abutting street. Such fences or walls may be required to meet the screening requirements of section 78-110, Landscaping. Whether required under this chapter or provided at the applicant's option, the following standards shall be applied to perimeter fences and walls.

1. **Landscaping.** Perimeter fences and walls that exceed four feet in height shall meet the following landscaping requirements as applicable:
 - a. One evergreen shrub is installed for each five feet of fence or wall frontage along the public right-of-way. Shrubs shall be 18 to 24 inches tall at the time of installation. Shrubs may be installed in a clustered or linear fashion, and all plantings shall be installed on the side of the fence that faces the public right-of-way.
 - b. One under story or ornamental tree may be substituted for every three evergreen shrubs provided that the tree meets the minimum size standards at the time of planting found in section 78-110 Landscaping.
 - c. Required landscape screening of fences or walls may be credited towards landscaping required for streetscape landscaping or perimeter landscape buffers with the approval of the zoning administrator.
2. **Uniformity.** Perimeter fences and walls shall be of a uniform style that meets the standards of this section.
3. **Maximum Length of Unbroken Wall Plane.** The maximum length of unbroken fence or wall plane shall be 200 feet. A break in the plane of a fence or wall shall be at least 40 feet long (measured parallel to the street), and at least two feet in depth (measured perpendicular to the street).
4. **Height.** Perimeter fences or walls shall not exceed 6 feet in height measured from natural grade, except as further restricted by Section 78-21.F., Visibility Clearance.
5. **Distance from Right-of-Way.** Perimeter fences and walls shall adhere to the following distance standards.
 - a. Perimeter fences and walls up to and including four feet in height shall be at least three feet from the edge of right-of-way.
 - b. Perimeter fences and walls over four feet in height shall be at least six feet from the edge of right-of-way.

**HERNDON TOWN CODE
CHAPTER 78 - ZONING ORDINANCE**

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ARTICLE XII - PERFORMANCE GUARANTEES

Sec. 78-120 Performance Guarantees

The following sections contain provisions relating to performance guarantees.

Sec. 78-120.1 Performance Guarantees for Public Improvements

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. Such performance guarantees shall conform to the following standards:

A. Improvements Subject to Guarantee Requirements. Public improvements subject to performance guarantee requirements include, but are not limited to, streets, curbs, gutters, sidewalks, trails, reforestation, storm drainage facilities and associated grading, sanitary sewage facilities, waterlines, property markers, streetlights, street trees, highway signs and markers and other relevant features shown on or described in a site plan, single lot development plan, special exception, preliminary subdivision plan, final subdivision plat, proffer associated with an official zoning map amendment, or generalized development plan.

B. Form of Performance Guarantee. The performance guarantee for public improvements shall consist of:

1. **Performance Guarantee Agreement.** A performance guarantee agreement between the owner, owner's agent, or developer and the town to construct and maintain until acceptance such required physical improvements as are located within public rights-of-way or easements or as are connected to any public facility in form and substance as approved by the town attorney; and,
2. **Security.** A security, taking one or more of the following forms, as specified by the town:
 - a. Cash or certified check deposited with the Town of Herndon
 - b. Guarantee from a lender on the town's approved list of local financial institutions based upon a cash deposit, in a form acceptable to the town attorney;
 - c. Irrevocable letter of credit from a northern Virginia banking institution in a form acceptable to the town attorney; or
 - d. Performance bond from a security institution approved by the town's director of finance in a form acceptable to the town attorney.

C. Time of Posting. All parties shall sign a performance guarantee agreement and the associated security posted by the owner, owner's agent, or developer prior to the

final administrative approval of any site plan or single lot development plan by the zoning administrator, or prior to the recordation of any final subdivision plat.

- D. Amount.** The amount of the security is the full amount of the cost estimate plus contingencies, engineering costs and inflation. It shall include the total estimated cost of the required public improvements as determined by the then current Fairfax County Table of Public Improvement Costs or by the town director of public works if the improvements are not set forth in the table. In any event, the amount of such certified check, cash escrow, bond, or letter of credit shall not exceed the total of the estimated cost of construction based on unit prices for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities, which shall not exceed ten percent of the estimated construction costs. "Such facilities," as used in this section, means those facilities specifically provided for in this section.
- E. Duration.** The performance guarantee agreement and security shall be provided for completion of all work covered thereby within the time to be determined by the applicant, which time may be extended by the zoning administrator upon written application by the owner, owner's agent, or developer, signed by all parties (including security, if appropriate) to the original agreement.
- F. Request for Early Site Occupancy.** During certain seasons of the year, or due to the steps in the construction process, it may be impractical for some public improvements to be installed or totally completed (e.g., the final lift of asphalt on a street, street trees, and the like) prior to occupancy or use of the property. When early occupancy is requested in writing prior to the completion of such improvements, the zoning administrator may allow early site occupancy when the following requirements are satisfied. As part of the procedure for the request for site occupancy, town staff will inspect the site and prepare a provisional report of the site inspector and zoning conformance findings which is referenced under these requirements. All of the following requirements must be met:
- 1. Written Request.** A written request shall be made at least 30 days in advance of the requested occupancy date; the written request shall include a list of items not completed, documentation for how the items will be completed (such as contracts), the timeline for completion of the items, and justification for delay in completion of the items;
 - 2. Provisional Report.** Based on a provisional report prepared by the town staff, staff may determine that the site can function without the subject improvements without creating a threat to health, safety, and welfare, and without detrimental impacts to the surrounding properties or town service provision in the area;
 - 3. Response to Report.** After issuance of the provisional report by the town staff:

- a. The applicant's timeline for completion of all improvements shall be revised, as needed to conform with the report; and,
 - b. Any deficiencies that pose a threat to health, safety, and welfare, or that pose detrimental impacts to the surrounding properties or town service provision in the area shall be corrected and shall be documented by the staff as corrected before occupancy is permitted.
- 4. Placement of Utility Lines.** Unless specifically waived by the approving authority as part of the site plan or subdivision site plan approval, overhead utility wires that are required to be placed below ground shall be placed below ground prior to early occupancy.
- 5. Re-inspection and Update.** Upon request by the applicant, or on or after the date of anticipated completion of improvements as specified in the original written request by the applicant, town staff may re-inspect the property and update the provisional report described in paragraph 2, above. If the applicant does not adhere to the time for completion of improvements:
- a. Zoning violation proceedings may commence in accordance with Section 78-170.3.
 - b. A fee will be charged for each inspection and re-inspection necessitated by the early occupancy request in accordance with Section 78-152.2.B.3.c.
 - c. Any future town approvals for early occupancy prior to completion of all required improvements within the associated development may cease.
- 6. Uniform Building Code Requirements.** These provisions do not relieve the applicant from the responsibility for meeting all applicable requirements of the Uniform Statewide Building Code prior to building occupancy.
- G. Release.** Upon satisfactory completion of the following requirements, the town manager may, following a recommendation in the form of a release from the directors of community development, finance, and public works, release the security in accordance with the standards in § 15.2-2245 of the Code of Virginia (as amended).
- a. Upon completion of all physical improvements shown on the approved plan, whether on-site or off-site, including acceptance of streets and other improvements in any dedicated right-of-way, the applicant may initiate the release of the security by a written request for a final inspection by the town. A status report showing the pass/fail list of cumulative items outstanding shall be sent to the applicant within 30 days of the receipt for release of the security. The applicant shall remedy the items on the list at the applicant's expense within 30 days after the receipt date of the list or other time as prescribed by the inspector. The applicant may then re-initiate the release of

the security, as above. The town staff shall issue a final inspection report, provided that all physical improvements covered by the security have been completed and accepted.

b. The "as-built" site plan shall be approved by the town and accepted.

H. Filing Fee. A filing fee, tabulated in accordance with the fees in Section 78-152.2.B.3.c. shall be paid prior to submittal of a performance guarantee, request for an extension of time, request for reduction of a performance guarantee, or a request to replace a performance guarantee.

I. Indemnity Insurance. The owner, owner's agent, or developer shall furnish such insurance as is deemed necessary by the town, and approved as to form by the town attorney, to indemnify and hold harmless the town from any and all liability arising by reason of the unimproved conditions of the development that may arise or grow out of the construction or installation of such public improvements. The insurance shall be of such duration as determined by the town, but shall in no case be allowed to expire earlier than the effective period of any performance guarantee agreement. A copy of the insurance policy shall be filed in the office of the zoning administrator.

J. Forfeiture. Repayment of the performance guarantee may be forfeited under the following circumstances:

1. Failure to Install Improvements. If an owner, owner's agent, or developer fails to properly install all required improvements within 30 days of the third zoning violation issued in accordance with subsection 6.e. of this section, or other time as determined by the zoning administrator, the town shall give 30-days written notice to the owner, owner's agent, or developer (if different) by certified mail, after which time the town may draw on the performance guarantee and use the funds to complete the required improvements. The performance guarantee agreement may provide for more timely action in the event of a threat to public health or safety.

2. Report of Expenditures. After completing the required improvements, the town shall provide a complete accounting of the expenditures to the property owner, owner's agent, or developer (as appropriate) and, as applicable, refund all unused security deposited, without interest, to the party posting the guarantee. If the costs to complete the required improvements are greater than the amount of the security, the town may assess the additional costs to the affected property owner(s) or responsible association, which assessment shall constitute a lien upon the property and shall be collected in the manner of tax assessments.

Sec. 78-120.2 Performance for Guarantees for Existing Public Improvements, Protection of Trees, and Required Private Improvements

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 certain required private (on-site) improvements, including erosion and siltation control devices, tree retention and protection measures, and required landscaping, as well as for the reconstruction of existing on-site or nearby public improvements that could be damaged during the development process. Such performance guarantees shall conform to the following standards.

- A. Performance Guarantees for other Features.** In addition to the performance guarantees required for private improvements in Section 78-120.2, above, the town may require the owner, owner's agent, or developer to post a performance guarantee for open space set-asides, and on-site private improvements such as off-street parking and loading, landscaping, exterior lighting, and other relevant features shown on or described in a site plan, single lot development plan, special exception, preliminary subdivision plan, final subdivision plat, proffer associated with an official zoning map amendment or generalized development plan.
- B. Form.** The form for a performance guarantee posted for a private improvement shall be in accordance with the standards in Section 78-120.1.B, Form of Performance Guarantee. The zoning administrator may, in certain instances, allow a single performance guarantee to be posted for both public and private improvements associated with a single development.
- C. Time of Posting.** The time of posting for a performance guarantee for private improvements shall be in accordance with the standards in Section 78-120.1.C., time of posting.
- D. Amount.** The security amount for private improvements shall be as follows:
- 1. Erosion and Siltation Control Devices.**
 - a. For industrial and commercial development: \$300.00 per acre, with a minimum of \$1,000.00.
 - b. For mixed use and residential development: \$175.00 per lot, with a minimum of \$1,000.00.
 - 2. Tree Protection and Retention.**
 - a. For tree protection: \$3.00 per linear foot of tree protection fencing or other approved demarcation of the limits of clearing; and
 - b. For tree retention, the amount of the security will be established by the zoning administrator, based upon a determination of which trees are at risk.
 - 3. Required Landscaping.** The amount of the security for required landscaping shall be based on Table 78-120.2.D.3, Security for Required Landscaping.

TABLE 78: 120.2.D.3: SECURITY FOR REQUIRED LANDSCAPING	
Type of Material	Amount of Security
Deciduous Canopy/Shade Tree	\$150.00 per caliper inch
Deciduous Understory/Ornamental Tree	2-inch caliper or less—\$200.00; More than 2-inch caliper—\$120.00 per caliper inch
Evergreen Tree	\$240.00 per each tree 6 feet in height + \$60.00 for every additional 2 feet in height
Shrub	\$30.00 per each shrub 3 feet in height + \$10 for every additional 1 foot in height
<p>NOTES: If the total amount of the required landscaping security exceeds \$15,000.00, then up to seventy-five percent (75%) of the total security amount may be posted in the form of an Irrevocable Letter of Credit.</p>	

- 4. **Protection of Existing Public Improvements.** The amount of the security shall include the total estimated cost of replacement for all existing on-site and nearby public improvements that could be damaged during development, as determined by the Director of Public Works utilizing the current Fairfax County Table of Public Improvement Costs.
- 5. **Other Private Improvements.** The zoning administrator shall estimate the amount of the security for any other private improvements based on recommendations from the director of public works.
- E. **Duration.** The duration of the performance guarantee agreement for private improvements shall be in accordance with the standards in Section 78-120.1.E, Duration.
- F. **Request for Early Site Occupancy.** During certain seasons of the year, it may be impractical for some private improvements, such as off-street parking and loading or landscaping, to be installed or completed prior to occupancy or use of the property. When early site occupancy is requested in writing prior to the completion of such improvements, the zoning administrator may allow early site occupancy when all of the following requirements are satisfied. As part of the procedure for the request for site occupancy, town staff will inspect the site and prepare a provisional report of the site inspector and zoning conformance findings which is referenced under these requirements. All of the following requirements must be met:

1. **Written Request.** A written request shall be made at least 30 days in advance of the requested occupancy date; the written request shall include a list of items not completed, documentation for how the items will be completed (such as contracts), the timeline for completion of the items, and justification for delay in completion of the items;
2. **Provisional Report.** Based on a provisional report prepared by the town staff, staff may determine that the site can function without the subject improvements, without creating a threat to health, safety, and welfare, and without detrimental impacts to the surrounding properties or town service provision in the area;
3. **Response to Report.** After issuance of the provisional report by the staff:
 - a. The applicant's timeline for completion of all improvements shall be revised, as needed to conform with the report; and
 - b. Any deficiencies that pose a threat to health, safety, and welfare, or that pose detrimental impacts to the surrounding properties or town service provision in the area shall be corrected and shall be documented by the staff as corrected before occupancy is permitted.
4. **Re-inspection and Update.** Upon request by the applicant, or on or after the date of anticipated completion of improvements as specified in the original written request by the applicant, town staff may re-inspect the property and update the provisional report described in paragraph 2, above. If the applicant does not adhere to the time for completion of improvements:
 - a. Zoning violation proceedings may commence in accordance with Section 78-170.3.
 - b. A fee will be charged for each inspection and re-inspection necessitated by the early occupancy request in accordance with Table 78-152.2.B.3.c.
 - c. Any future town approvals for early occupancy prior to completion of all required improvements within the associated development may cease.
5. **Uniform Building Code Requirements.** These provisions do not relieve the applicant from the responsibility for meeting all applicable requirements of the Uniform Statewide Building Code prior to building occupancy.

G. Release. The release of performance guarantees shall be subject to the following:

1. **Erosion and Sedimentation Control Devices.** Upon satisfactory completion of the development, and issuance of a zoning inspection permit, the owner, owner's agent, or developer may apply in writing for a release of the unexpended or unobligated portion of such security.

2. Tree Protection and Retention Measures.

- a. Upon satisfactory completion of the development, the owner, owner's agent, or developer may apply in writing for a release of the tree protection and tree retention security. The community forester shall make the determination concerning the degree of damage to any tree, whether replacement of any damaged tree is required, or the corrective measures to be taken to ensure the survival of damaged trees. The community forester shall notify the owner, owner's agent, or developer if any trees must be repaired or replaced because of the damage caused by the stress of construction or shall refund one-half of the security if no repairs or replacements are needed.
- b. Upon notification by the community forester that repairs or replacements are to be made, the owner, owner's agent, or developer shall make the required repairs and replacements and shall notify the community forester when the repairs and replacements are complete. The community forester shall inspect the repairs and replacements and shall notify the owner, owner's agent, or developer when it is determined that the required repairs and replacements have been adequately performed. One-half of the security shall then be refunded.
- c. The remaining one-half of the security shall be held for a period of three years from the date of the community forester's notification to the owner, owner's agent, or developer that the required repairs or replacements have been completed or at such time as may be determined by the community forester. The purpose of retaining this portion of the security is to ensure that trees, which are damaged by construction, but where injury becomes apparent after construction is completed, will be repaired or replaced. At the end of this three-year period, the owner, owner's agent, or developer may apply to the town in writing for a release of the unexpended or unobligated portion of such security. If the protected trees have survived in good health, based upon the opinion of the community forester, the town shall release the security. The security shall not be discharged until all required repairs or replacements have been made.
- d. If the owner, owner's agent, or developer refuses to comply with the requirements of the community forester, the town may, at its option, have the work performed by others or by its own forces in accordance with Section 78-120.2.I, Forfeiture. All costs incurred by the town shall be reimbursed from the security.
- e. If the owner, owner's agent, or developer has during the two-year period, sold all or a portion of the real estate subject to the agreement, the original owner, owner's agent, or developer shall continue to be responsible for all measures required by the agreement and for all trees subject to the performance guarantee agreement. The original owner, owner's agent, or

developer shall take the measures, and repair or replace trees as required by the community forester.

3. **Required Landscaping.** Upon satisfactory installation of all required landscaping, the owner, owner's agent, or developer may apply in writing for a release of up to eighty percent of the security. The town shall retain an additional twenty percent of the security for a period of one year from the date of the first release to ensure continued functioning and maintenance of all required landscaping. Following a passing inspection of the required landscaping by the town one year after the initial release of the security, the owner, owner's agent, or developer may request in writing a release of the unexpended or unobligated remaining portion of such security.
 4. **Security to Protect On-site or Nearby Public Improvements.** Upon satisfactory completion of the development, the owner, owner's agent, or developer may apply in writing for a release of the unexpended or unobligated portion of such security.
 5. **Other Private Improvements.** Following a passing inspection of the private improvements by the town, the owner, owner's agent, or developer may request in writing a release of the unexpended or unobligated remaining portion of such security. The town shall release such security consistent with the provisions of Section 78-120.1.G, Release.
- H. **Filing Fee.** A filing fee, tabulated in accordance with the fees in Table 78-152.2.B.3.c shall be paid prior to submittal of a performance guarantee, an extension of time, request for reduction of a performance guarantee, or a request to replace a performance guarantee.
- I. **Forfeiture.** Forfeiture of security shall be in accordance with the requirements and standards described in section 78-120.1.J.

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ARTICLE XIII – PERFORMANCE STANDARDS

Sec. 78-130 Performance Standards

The following sections contain provisions pertaining to performance standards.

Sec. 78-130.1 Performance Standards, Generally

- A. **Applicability.** The performance standards in this section apply town wide.
- B. **Nonconformities.** The fact that the operations of a lawful use violate the performance standards of this article shall not of itself make such use subject to the requirements of this chapter relating to nonconformities.

Sec. 78-130.2 Maximum Sound Levels

- A. **Required Performance Level.** No machinery, mechanical apparatus or other stationary feature affixed to the property or structure, or operating within a structure operation or activity shall cause or create noise in excess of the sound levels prescribed in the table titled “Maximum Sound Levels” when measured from the property line of the sound source or any point within any other property affected by the sound.

TABLE 78-130.2.A MAXIMUM SOUND LEVELS			
PROPERTY USE & ZONING	TIME OF DAY	MAXIMUM CONTINUOUS SOUND (DBA)	MAXIMUM IMPULSIVE SOUND (DB)
Non-residential Districts Adjacent to Residential Districts	7 a.m. to 10 p.m.	60	100
Non-residential Districts Adjacent to Residential Districts	10 p.m. to 7 a.m.	55	80
Non-residential Districts not Adjacent to Residential Districts	All	65	100
Mixed-Use Districts	7 a.m. to 10 p.m.	65	100
Mixed-Use Districts	10 p.m. to 7 a.m.	60	80

- B. **Method of Measurement.** The following provisions shall apply to measurement of sound:

1. **Intensity and Frequency.** For the purpose of measuring the intensity and frequency of sound, a sound level meter using the A-weighted network shall be employed. Specific to impulsive sound levels, the fast setting of the sound pressure meter using unweighted peak dB levels shall be employed.
2. **Equipment.** Sound pressure meters shall meet or exceed the American National Standards Institute (ANSI) Standard S1.4 for a “Type Two” meter and shall be

calibrated by the manufacturer of a company that can certify the calibration as least one (1) time each year.

C. Exemptions. The following uses and activities shall be exempt from the noise level regulations of this section:

1. **Not Under Direct Control.** Noises not directly under the control of the property users shall be exempt.
2. **Construction and Maintenance Noise.** Noises emanating from construction and maintenance activities pursuant to Section 26-222 of the Town Code shall be exempt.
3. **Safety Related Noises.** The noises of safety signals, warning devices and emergency pressure relief valves or related to the emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound during emergency circumstances that require immediate action and involving actual or imminent injury, illness, death, threat to public health or to public welfare or property damage shall be exempt.
4. **Transient Noises.** Transient noises of moving sources such as automobiles, trucks, airplanes and railroads shall be exempt; provided, however, that noises of motor vehicles are pursuant to Section 26-226 of the Town Code.

Sec. 78-130.3 Earthborn Vibration Standards

A. Required Performance Level. No activity or operation shall cause or create earthborn vibrations in excess of the displacement values given in this section.

B. Method of Measurement. The following provisions shall apply to measurement of vibrations:

1. **Location.** Measurements shall be made at or beyond the adjacent lot line or the nearest residential district boundary line, as described in this chapter division.
2. **Equipment.** Vibration displacements shall be measured with an instrument capable of simultaneously measuring in three mutually perpendicular directions.
3. **Computation Formula.** The maximum permitted displacements shall be determined in each zoning district by the following formula: $D = K/f$. In which:

D = displacement in inches

K = a constant to be determined by reference to Table 78-130.3.C in this section

f = the frequency of vibration transmitted through the ground in cycles per second.

C. Standards for All Non-Residential Uses. The maximum earth displacement permitted at the points described in this section shall be determined by use of the formula in this section and the appropriate K constant shown in Table 78-130.3.C in this section.

TABLE 78-130.3.C: VALUES OF "K" TO BE USED IN THE VIBRATION FORMULA		
LOCATION	ON OR BEYOND ANY ADJACENT LOT LINE (K)	ON OR BEYOND ANY RESIDENTIAL DISTRICT BOUNDARY LINE (K)
Continuous	0.015	0.003
Impulsive	0.030	0.006
Less than 8 Pulses per 24-hour period	0.075	0.015

Sec. 78-130.4 Smoke and Particulate Matter Standards

A. Required Performance Level. No operation or activity shall cause or create the emission of smoke from any vent, stack, chimney, flue or other opening that exceeds the density or equivalent opacity prescribed in this division. The total emission of particular matter from all vents, stacks, chimneys, flues or other openings of any process, operation or activity shall not exceed the particulate matter limitations prescribed in this division.

B. General Limitations. The following limitations shall apply to emissions:

1. **Particulate Matter.** Particulate matter emissions caused by the wind from open storage areas, yards, roads, etc., shall be kept to a minimum by appropriate landscaping, paving, oiling, wetting or other means.
2. **Limit on Open Air Emissions.** No operation shall cause or allow to be emitted into the open air from any process or control equipment or to pass any convenient measuring point in a breaching or stack particulate matter in the gases that exceeds 0.60 pounds per 1,000 pounds of gases during any one hour.

C. Method of Measurement. The following provisions shall apply to measurement of emissions:

1. **Smoke.** For the purpose of determining the density or equivalent opacity of smoke, the Ringelmann Smoke Chart as adopted and published by the United States Bureau of Mines in Information Circular No. 8333 shall be employed.
2. **Particulate Matter.** Particulate matter loadings in pounds per acre described in this section shall be determined by selecting a continuous four-hour period which will result in the highest average emission rate. In computing pounds per acre, the gross area of the zoning lot on which the use is located shall be employed.

D. Standards for All Non-Residential Uses. The following standards shall be used to evaluate emissions:

1. **Smoke Standards.** The continuous emission of smoke from any vent, stack, chimney or combustion process shall not exceed a density or equivalent opacity of Ringelmann No. 1. Smoke exceeding Ringelmann No. 1, but not exceeding Ringelmann No. 3, shall be permitted up to six minutes during any four-hour period. Smoke in excess of Ringelmann No. 3 is prohibited.
2. **Particulate Matter Standards.** The emission of particulate matter from all vents, stacks, chimneys and openings of any operation shall not exceed 0.2 pounds per hour, per acre.

Sec. 78-130.5 Toxic Matter Standards

- A. **Required Performance Level.** No operation or activity shall cause or create the emission of toxic matter in amounts or quantities that exceed the levels prescribed in this section.
- B. **Method of Measurement.** In determining the maximum permissible concentration allowed an industrial worker, the most recent listing of threshold limit values published by the American Conference of Governmental Industrial Hygienists shall be used. If a toxic substance is not contained in the most recent listing of threshold limit values published by the American Conference of Governmental Industrial Hygienists, then the applicant shall produce sufficient and satisfactory evidence showing that the proposed levels are safe to the general population. Concentrations shall be measured and calculated as the highest average that could occur over a continuous eight-hour period.
- C. **Standards for All Non-Residential Uses.** The release of airborne toxic matter (including radioactive matter) shall not exceed five percent of the maximum permissible concentration allowed an industrial worker when measured at any point beyond the lot line, either at ground level or habitable elevation, whichever is more restrictive.

Sec. 78-130.6 Fire and Explosive Matter Standards

- A. **Compliance.** All operations, activities and uses shall be conducted so as to comply with the performance standards governing fire and explosion hazards prescribed in this section.
- B. **Materials that Decompose by Detonation.** The following general requirements shall pertain to the storage, handling and use of materials that decompose by detonation:
 1. **Activities and Materials Subject to Regulation.** Activities involving the storage, utilization or manufacture of materials or products which decompose by detonation are permitted only in accordance with the use standards in Article

VII and this section. Such materials shall include, but are not limited to: All primary explosives such as lead azide, lead styphnate, fulminates and tetracene; all high explosives such as TNT, RDX, HMX, PETN and picric acid; propellants and components thereof such as nitrocellulose, black powder, boron hydrides, hydrazine and its derivatives; pyrotechnics and fireworks such as magnesium powder, potassium chlorate and potassium nitrate; blasting explosives such as dynamite and nitroglycerine; unstable organic compounds such as acetylides, tetrazoles and ozonides; strong oxidizing agents such as perchloric acid, perchlorates, chlorates and hydrogen peroxide in concentrations greater than 35 percent; and nuclear fuels, fissionable materials and products and reactor elements such as Uranium 235 and Plutonium 239.

2. National Fire Code. Where materials or products which decompose by detonation are permitted, these materials shall be handled, stored, utilized or manufactured in accordance with the National Fire Codes published by the National Fire Protection Association.

C. Standards For Various Materials. Uses involving fire and explosive matter shall be subject to the following:

- 1. Materials that Decompose by Detonation.** Uses involving the manufacture, storage and utilization of materials and products that decompose by detonation may be allowed only as a special exception use.
- 2. Incompatible to Moderate Burning Materials.** The storage, utilization or manufacture of solid materials or products ranging from incombustible to moderate burning is permitted.
- 3. Free or Active Burning to Intense Burning Materials.** The storage, utilization or manufacture of solid materials or products ranging from free or active burning to intense burning is permitted, provided that such materials or products are stored, manufactured or utilized in fire-resistant and fire-protected buildings or spaces. Such materials or products may be stored outdoors, provided that such storage areas are setback at least 70 feet from all lot lines.
- 4. Flammable Liquid, Vapors and Gases.** The storage, utilization or manufacture of flammable liquids or materials which produce flammable or explosive vapors or gases shall be permitted in accordance with the following table, except that the storage of finished products in original sealed containers of 55 gallons or less shall be unrestricted.

TABLE 78-130.6.C - TOTAL CAPACITY OF FLAMMABLE MATERIALS PERMITTED

TYPE OF MATERIAL	MAXIMUM ABOVE GROUND STORAGE (GALLONS)	MAXIMUM BELOW GROUND STORAGE (GALLONS)
Industries Engaged in Storage for Resale		
Materials Having a Closed Cup Flashpoint over 187°F but less than 356°F	Prohibited	100,000
Materials having a closed cup flashpoint over 105° to and including 187° F	Prohibited	100,000
Materials having a closed cup flashpoint less than 105° F	Prohibited	100,000
TOTAL		300,000
Industries Engaged in Utilization and Manufacture of Flammable Materials Where Storage is an Ancillary Use		
Materials having a closed cup flashpoint over 187° but less than 356° F	50,000	100,000
Materials having a closed cup flashpoint over 105° to and including 187° F	20,000	100,000
Materials having a closed cup flashpoint less than 105° F	5,000	100,000
TOTAL	75,000	300,000

Sec. 78-130.7 Electrical Interference Standards

No operation or activity associated with any land use in any zoning district shall be conducted so as to cause any electrical disturbance or electromagnetic interference that is not in conformance with the regulations of the Federal Communications Commission that adversely affects, at any point, the operation of any equipment other than that belonging to the creator of such disturbance or interference.

Sec. 78-130.8 Liquid and Solid Waste Standards

No operation or activity associated with any land use in any industrial district shall be conducted so as to discharge any liquid or solid waste products or materials into any ditch, stream, river, other body of water or drainage facilities; and there shall be no discharge of toxic or nonbiodegradable products or materials into any sewer or sewerage facility, except as otherwise specifically authorized by the governmental authorities having jurisdiction over the discharge of liquid or solid waste products or materials.

Sec. 78-130.9 Exterior Lighting

- A. Applicability.** Various sections of this chapter address the need for site lighting to maintain adequate lighting levels on site and provide security for people and property. The installation of site lighting for these purposes may be required with development of townhouse, two-family, and multiple-family dwellings, public and institutional, commercial, and service and industrial uses. Whether required under this chapter, or provided at the applicant's option, the following standards shall be applied to exterior lighting.
- B. Compliance.** In addition to the standards contained in this section, exterior lighting shall also comply with the Herndon Guidelines for Planning and Design of Town Streetscape Projects (dated November 25, 2008, as may be amended, located in the Herndon Department of Community Development) as described in section 1-16, Herndon Town Code (2000) as amended.
- C. Inconsistencies.** Where there is conflict of inconsistency between this article and the Herndon Guidelines for Planning and Design of Town Streetscape Projects (dated November 25, 2008, as may be amended, located in the Herndon Department of Community Development) as described in section 1-16, Herndon Town Code (2000) as amended, the more restrictive standard shall apply.
- D. Site Lighting Plan.** Any development proposed within the town shall conform to the town's exterior lighting standards. As part of the site plan review process, information about site lighting shall be provided as required in Section 78-155.6.
- E. Exterior Lighting Standards.** Exterior lighting shall meet the following standards:
- 1. Hours of Illumination.** Properties on which public and institutional uses, commercial uses, and service and industrial uses are located that are adjacent to existing residential development or vacant land in a residential zoning district have lighting that is turned off during non-operating hours, except lighting that is necessary for security or emergency purposes. Such lighting may be activated on-site by motion sensor devices.
 - 2. Fixtures.** Lighting is provided through the use of fixtures that are durable, yet avoid the use of tall light fixtures that unnecessarily disperse light and glare to surrounding properties.
 - 3. Illumination Direction.** In all residential districts, lighting of non-residential properties is directed downward except for low-voltage architectural lighting.
 - 4. Maximum Lighting Height.** Maximum lighting height shall conform to the following:
 - a. Residential property light fixtures are no more than 14 feet above grade.
 - b. On nonresidential properties, outdoor lighting is no greater than 15 feet in height, whether mounted on poles or walls or by other means, except:

- (1) Light fixtures in parking lots containing between 100 and 250 spaces are no more than 25 feet high; and;
- (2) Light fixtures in parking lots containing more than 250 spaces are no higher than 35 feet in height;
- (3) In any event, where visible from residential properties, fixtures do not exceed 20 feet above grade;
- (4) Wherever possible, illumination of outdoor seating areas, building entrances, and walkways is accomplished by use of ground mounted fixtures not more than four feet in height.

5. Shielding. Lighting shall be shielded as follows:

- a. Light fixtures in excess of 60 watts or 100 lumens use full cut-off lenses, hoods other shielding as warranted to prevent glare or spillover from the project site onto adjacent properties and roadways.
- b. No light source emits light directly onto adjacent residential property.
- c. No light source in a canopy structure extends downward further than the lowest edge of the canopy ceiling.
- d. Awnings or canopies used for building accents over doors, windows, etc., are not internally illuminated (i.e., from underneath or behind the awning) .

6. Maximum Light Levels. Outdoor lighting and indoor lighting visible from outside are designed and located so that the maximum illumination measured in foot candles at a vertical distance of three feet above grade at the property line do not exceed the standards in Table 78-130.9.E.6. Maximum Illumination Values. Cut-off lighting shall be designed to direct light downward (e.g., shoe box style). In any case, spillage of indirect light onto adjacent residential properties is 0.1 foot candles or less, or 1.0 foot candles or less for other uses, measured at the boundary line of the site.

Table 78-130.9.E.6. MAXIMUM ILLUMINATION VALUES (regardless of light type)

USE	MAXIMUM ILLUMINATION AT PROPERTY LINE (IN FOOT-CANDLES)	MAXIMUM ILLUMINATION LEVEL INSIDE LOT LINES (IN FOOT-CANDLES)
Residential	0.5	5
Public and Institutional	2.5	10
Commercial	2.5	10
Service and Industrial/Edge of Right-of-Way	2.5	10
Parking Lots	1.0	5

7. **Uniformity Ratios.** The ratio of maximum to minimum lighting on a given property measured at ground level, does not exceed 15:1 in the residential districts; 10:1 in the business districts; and 3:1 in parking lots.
8. **Direction of Lighting:** No light source is directed outward toward property boundaries or adjacent rights-of-way. No light source directly illuminates facades of buildings visible from residential properties.
9. **Distance from Property Line.** All exterior lighting fixtures are located a minimum of ten feet from a property line or five feet from a right-of-way line and are not located within a required perimeter buffer or streetscape unless they are located at the interior edge of the buffer or streetscape.
10. **Hue.** Lighting sources are color-neutral types such LED (light emitting diode) or metal halide. Light types of limited spectral emission such as low-pressure sodium or mercury vapor lights, are prohibited.
11. **Wall-Mounted Lights.** Wall-mounted lights (other than entry lights of 100 watts or less) are fully shielded luminaries (such as shoebox or can style fixtures) to direct all light downward, and to prevent the light source from being visible from any adjacent residential property or public street right-of-way.
12. **Floodlights and Spotlights.** Floodlights or other type of lighting attached to light poles that illuminate the site and/or building(s) are prohibited. Permitted floodlights and spotlights are selected, located, aimed, and shielded so that direct illumination is focused exclusively on a portion of the building facade or other intended site feature and away from adjoining properties or the right-of-way. On-site lighting may be used to accent architectural elements but is not used to illuminate entire portions of building(s). Such lighting is installed in a fixture that is shielded so that no portion of the light bulb extends below the bottom edge of the shield, and the main beam from the light source is not visible from adjacent properties of the adjacent right-of-way.

- 13. Wall Pack Lights:** Wall packs on buildings may be used at entrances to a building to light unsafe areas. Such lights are not used to draw attention to the building or provide general building or site lighting. "Wall Packs" on the exterior of the building are fully shielded (true cut-off type bulb or light source not visible from off-site) to direct the light vertically downward at an angle that will limit output to prevent glare on adjacent property and be of low wattage (preferably 100 watts or lower). Wall pack lights visible from any location off the site are prohibited.
- 14. Illumination of Outdoor Sports Fields and Performance Areas.** Lighting of outdoor sports fields and performance areas shall comply with the following standards:
- a. All lighting fixtures shall be equipped with a glare control package (e.g., louvers, shields, or similar devices), and the fixtures shall be aimed so that their beams are directed and fall within the primary playing or performance area; and
 - b. The hours of operation for the lighting system for any game or event shall not exceed one hour after the end of the game or event.

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CHAPTER 78 - ZONING ORDINANCE**

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ARTICLE XIV – SIGNS

Sec. 78-140 Signs

The following sections pertain to signs and signage in all zoning districts.

Sec. 78-140.1 General Provisions

- A. Purpose.** Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, color, illumination, movement, materials, location, height and condition of all signs placed on private property for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive and harmonious community, protection against destruction of or encroachment upon historic areas, and the safety and welfare of pedestrians and wheeled traffic, while providing convenience to citizens and encouraging economic development. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, size and purpose of all signs.
- B. Intent.** A sign placed on land or on a building for the purpose of identification, protection or directing persons to a use conducted therein shall be deemed to be an integral but accessory and subordinate part of the principal use of land or building. Therefore, the intent of this article is to establish limitations on signs in order to ensure they are appropriate to the land, building or use to which they are appurtenant and are adequate for their intended purpose while balancing the individual and community interests identified in subsection A. of this section. These provisions are further intended to:
- 1. Promote Compatibility.** These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible and appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.
 - 2. Distinguish Between Areas.** These regulations are intended to distinguish between portions of the Town designed for primarily vehicular access and portions of the Town designed for primarily pedestrian access.
 - 3. Meet Purpose and Scope of Article.** These regulations do not regulate every form and instance of visual speech that may be displayed anywhere within the jurisdictional limits of the Town. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.

- 4. Provide Balance.** These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.
- C. Applicability.** Signs not expressly permitted as being allowed by right or by specific requirements in another portion of this chapter are forbidden.
- D. Interpretation and Protection of Free Speech.** This article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech.
- E. Substitution of Non-Commercial Content.** Wherever this Article permits a sign with commercial content, non-commercial content is also permitted subject to the same requirements of size, color, illumination, movement, materials, location, height and construction.
- F. Validity.** If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this article which can be given effect without the invalid provision.
- G. Effective Date.** This ordinance shall be effective on and after the date of its adoption.

Sec. 78-140.2 Sign Related Definitions

See Article XVIII for definitions pertaining to signs and signage in all zoning districts.

Sec. 78-140.3 Measurements of Sign Area and Height

The following measurement provisions pertain to signs and signage in all zoning districts:

- A. Support Structures.** Supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed. In such cases, the sign area shall be computed in accordance with the preceding provisions.
- B. Multiple Tenants.** In instances where there are multiple tenants or users on a property or in a building, allowable sign area for all parties shall not exceed the maximum sign area computed as if there were a single tenant or user.

C. Sign Area. Sign area is calculated under the following principles:

1. **Sign Face.** The area of a sign face shall be the area within four straight lines forming a rectangle (a maximum of two abutting or overlapping rectangles may be used) enclosing the extreme limits of the sign including any material or color of the background of the sign that is used to differentiate the sign from the backdrop or structure.
2. **Double-Faced Signs.** The area of a double-faced sign shall be the area of one side only provided that the faces are either parallel or have an internal angle between its two faces of no more than 45 degrees. If one side is larger than the other the larger of the two shall be used to calculate area.

D. Sign Height. Freestanding sign height is measured from normal grade at the base of the sign to the top of the highest component of the sign. Wall sign height is measured from normal grade at the base of the building elevation on which the sign is located to the top of the highest component of the sign.

E. Building Frontage (as relates to signage). For freestanding signs, sign area is calculated based on linear footage of the building elevation which faces the public right-of-way on which the sign is located. For wall signs, sign area is calculated based on the linear footage of the building elevation on which the sign is located.

Sec. 78-140.4 Prohibited Signs

A. General Prohibitions. In addition to signs prohibited elsewhere in this Code or by applicable state or federal law, the following signs are prohibited:

1. Signs that violate any law of the Commonwealth relating to outdoor advertising.
2. Signs attached to natural vegetation.
3. Signs simulating, or which are likely to be confused with, a traffic control sign or any other sign displayed by a public authority. Any such sign is subject to immediate removal and disposal by an authorized city official as a nuisance.
4. Vehicle or trailer signs.
5. Signs hanging from supports, except against the face of a building.
6. Any sign displayed without complying with all applicable regulations of this chapter.
7. Signs painted directly on a building, except in the Heritage Preservation Districts when approved by the HPRB.

8. Animated signs. This prohibition does not apply to flags expressly permitted under this article or the changing of the message content no more often than once every ten (10) seconds.
9. Flashing signs or other signs displaying flashing, scrolling or intermittent lights or lights of changing degrees of intensity.
10. Signs consisting of illuminated tubing or strings of lights.
11. Signs that emit smoke, flame, scent, mist, aerosol, liquid, or gas.
12. Signs that emit sound.
13. Any electronic sign that is generated by a series of moving images, such as an LED, digital display, or other video technology, whether displayed on a building, vehicle, or mobile unit.
14. Strings of flags or pennants.
15. Pole Signs.
16. Off-site signs.
17. Signs erected on public land other than those approved by an authorized Town official in writing, required by law without such approval, or permitted under Virginia Code § 24.2-310 E. Any sign not so authorized is subject to immediate removal and disposal by any authorized official. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign.
18. Signs on the roof surface or extending above the roofline of a building or its parapet wall.
19. Neon signs, except when no more than two (2) square feet and installed in windows, and except as permitted in the CC, PD-D, PD-TD and PD-TOC zoning districts.
20. Neon window signs within the CC, PD-D, PD-TD, and PD-TOC zoning districts.
21. Any sign located in the vision triangle formed by any two (2) intersecting streets, as regulated by the provisions of Section 78-71.2.E.
22. Box signs, cabinet signs, and signs with exposed raceway transformers.
23. Signs on, worn, or held by humans or animals.

Sec. 78-140.5 Sign License Required

- A. Applicability.** A sign license is required prior to the display and erection of any sign except as provided in Section 78-140.5.N of this Article.
- B. License Types and Approving Authorities.** Sign licenses shall be approved by either the Zoning Administrator or the appropriate Review Board as follows:
- 1. Administrative Approvals.** The Zoning Administrator or designee conducts final review of applications for Freestanding Sign Licenses, Wall or Window Sign Licenses, Temporary Sign Licenses and Master Sign Plan Conformance Licenses (after approval of a Master Sign Plan License). Signs for all arts businesses, as defined in Section 7-2 of the Herndon Town Code and licensed to operate as a business in the Herndon Arts District may receive administrative approval of the sign license if the signs comply with the HPRB and ARB approved Arts District Master Sign Plan.
 - 2. Review Board Approvals.** The Architectural Review Board or Heritage Preservation Review Board conducts final review of applications for Master Sign Plan Licenses within their respective overlay districts (Architectural Control District for the ARB and Heritage Preservation Overlay District for the HPRB).
- C. Sign License Application Review and Approval Process.**
- 1. Filing.** An application for a sign license shall be filed with the Town Community Development Department on forms furnished by that department. The applicant shall provide sufficient information, as determined by the Zoning Administrator or designee, to evaluate whether the proposed sign is permitted under the zoning ordinance and other applicable laws, regulations, and ordinances.
 - 2. Application Acceptance and Review.** The Town Zoning Administrator or designee shall process a completed sign license application and approve the application, reject the application, notify the applicant of deficiencies in the application, or schedule the application on a review board agenda within 10 business days after receipt. Any application that complies with all provisions of this zoning ordinance and other applicable laws, regulations, and ordinances, in addition to applicable design guidelines, as interpreted by the Zoning Administrator, shall be approved.
 - 3. Review Process for Applications Subject to Review Board Approval.** The Zoning Administrator or designee shall prepare a staff report for applications requiring review board approval, and transmit the report to the applicable review board. At hearings for the application, the review board shall consider the application, staff report, relevant support materials, and any other relevant testimony and evidence. At the hearing, the review board shall approve, reject,

or defer the application. Deferrals may occur when there are stated deficiencies in the application. Any application that complies with all provisions of this zoning ordinance and other applicable laws, regulations, and ordinances, in addition to applicable design guidelines, as interpreted by the review board, shall be approved.

4. **Application Rejection.** If the application is rejected, the Town shall provide a list of the reasons for the rejection in writing. An application shall be rejected for non-compliance with the terms of the zoning ordinance, building code, or other applicable law, regulation, or ordinance.
- D. **Architectural Control District Regulations.** Permanent signs within the Herndon Architectural Control District shall comply with Town Code Chapter 58, Planning, in addition to the zoning ordinance, building code, or other applicable law, regulation, or ordinance. All permanent sign applications require approval by the Architectural Review Board (ARB), unless exempt as specified in Section 78-140.5.
 - E. **Heritage District Overlay Zoning District Regulations.** Herndon overlay zoning districts may require overlay-specific sign standards and regulations in addition to the general requirements and district-specific standards detailed in this Article.
 - F. **Heritage Preservation District.** Permanent signs installed within the Heritage Preservation Districts shall comply with the relevant design guidelines, as interpreted by the HPRB, of the *Herndon Heritage Preservation Handbook* and *Downtown Herndon Pattern Book*, or adopted superseding documents.
 - G. **Arts District.** Signs for all arts businesses, as defined in Section 7-2 of the Herndon Town Code and licensed to operate as a business in the Herndon Arts District may receive administrative approval of the sign license if the signs comply with the HPRB and ARB approved Arts District Master Sign Plan.
 - H. **Master Sign Plans.** Any non-residential development or district in which two or more individual establishments are located may request the approval of a Master Sign Plan, for signs within the development. A Master Sign Plan establishes a comprehensive and coordinated sign program with a specific set of sign standards for the development.
 1. **Master Sign Plan Compliance License.** Individual signs that meet all the standards set forth in an approved Master Sign Plan shall be approved administratively with a Master Sign Plan Conformance License.
 2. **Noncompliant Signs.** The Town shall forward applications for signage that do not meet all the standards of a Master Sign Plan to the applicable review board. In order to be approved, proposed signage shall meet the following criteria:
 - a. Will result in design quality equal to or greater than that established in the master sign plan through the proposed combination of colors, materials,

aesthetic balance and composition, height and width, area, placement, and typeface, or use of any symbols, designs, and logos; and

- b. Will not detract from or be detrimental to the appearance of the development and its signs approved under the master sign plan.
- I. **License Fee**. A nonrefundable fee as set forth in the fee schedule in Section 78-152.2.B shall accompany all sign license applications.
- J. **Revocation of License**. The Town may revoke a sign license under any of the following circumstances:
- 1. **False or Misleading**. The Town determines that information in the application was materially false or misleading;
 - 2. **Non-Conformity with Application Approval**. The sign as installed does not conform to the sign license application as approved; or
 - 3. **Violation**. The sign violates the zoning ordinance, building code, or other applicable law, regulation, or ordinance.
- K. **License Duration and Extension**. If a sign is not installed within six months following the issuance of a sign license or within 30 days in the case of a temporary sign license, the license shall be void. Upon written request to the Zoning Administrator prior to license expiration and upon demonstrated good cause, the approved sign license may be extended for an additional six months.
- L. **Appeals**. Decisions on sign applications heard by a review board are appealed to the Herndon Town Council in accordance with Article XV. Decisions on all other sign applications are appealed to the Board of Zoning Appeals.
- M. **Inspection**. Any sign for which a sign license has been granted shall be subject to inspection by the Zoning Administrator. If the sign fails to pass inspection, the applicant shall correct the items not in compliance or apply for a new sign license within 30 days of notification of the violation or the sign license shall be deemed invalid and void and the sign shall be removed.
- N. **No Sign License Required Some Types of Signs**. A sign license is not required for:
- 1. **Required or Governmental Signs**. Signs erected by a governmental body or required by law.
 - 2. **Flags**. Up to three (3) flags no more than sixteen (16) square feet in size each and not containing any commercial advertising; provided that the flags comply with Section 78-140.6.E.

3. **Changeable Copy on Licensed Sign.** The changing of messages on changeable copy signs, when the change does not impact the sign colors, sizes, or general design of the sign face; and, the repair of an existing licensed sign. Repair of a nonconforming sign must comply with Section 78- 140.7.
4. **Official Court Notices.** Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his official or directed duties; provided that all such signs shall be removed no more than ten (10) days after their purpose has been accomplished.
5. **Certain Signs on Single Family Residential Properties.** On single family residential properties signs conforming to the following provisions may be permitted without a sign license:
 - a. One or more temporary signs non-commercial with a total area of no more than twelve (12) square feet, and which are removed within 90 days after being erected, except signs associated with home-based businesses.
 - b. One or more temporary non-commercial window signs, provided that the total extent of window signs do not obstruct more than 25% of any one window, and which are removed within 90 days after being erected, except signs associated with home-based businesses.
 - c. One non-commercial wall sign or sign posted on a mailbox, no more than one (1) SF in size.
6. **Certain Signs on Non-Residential Properties.** On non-residential properties signs conforming to the following provisions may be permitted without a sign license:
 - a. Up to two minor signs per parcel.
 - b. Permanent, non-internally illuminated, window signage, provided that the aggregate area of all window signs on each window does not exceed twenty-five percent (25%) of the total area of the window.
 - c. Temporary, non-internally illuminated, window signage, provided that the aggregate area of all window signs on each window does not exceed twenty-five percent (25%) of the total area of the window, which are removed within 90 days after being erected.
 - d. One window-mounted neon sign, no more than two (2) SF, per ground floor business, except in the CC, PD-D, PD-TD, and PD-TOC zoning districts.

Sec. 78-140.6 General Standards for All Signs

The following standards apply to all signs unless otherwise stated in the specific use or district sections of this Article.

- A. Compliance with Building Code.** All signs shall be constructed and mounted in compliance with the Virginia Uniform Statewide Building Code.
- B. Freestanding Signs.** In addition to the size and height limitations included in this article, freestanding signs shall meet the following standards:
1. **Placement.** Except as otherwise permitted, all freestanding signs shall be set back five (5) feet from any street right-of-way.
 2. **Visibility.** Freestanding signs shall not pose a visibility clearance danger as determined by the zoning administrator in accordance with Section 78-21.E.
 3. **Supporting Structure.** Freestanding sign structures may extend two (2) feet beyond the maximum sign height. Freestanding signs shall not be mounted on a single pole or post and any voids in the sign structure base between the ground and the bottom edge of the sign shall not exceed three (3) feet in height.
 4. **Landscaping.** All non-temporary freestanding signs shall be installed with a minimum surround of minimum surround of four (4) feet of regularly maintained floral and shrubbery landscaping in every direction.
- C. Wall Signs.** Wall signs shall be located on building elevations per the following criteria:
1. **Facing Public or Private Street.** Wall signs may be installed on any building elevation that faces an adjacent public or private street.
 2. **Side Elevation.** Wall signs may be installed on the front half of any side elevation that is visible from the adjacent public or private street.
 3. **Public Entrances.** Wall signs may be installed on a building elevation that contains a public entrance.
 4. **Limitations on Internally Illuminated Wall Sign.** Internally illuminated wall signs shall not be placed on any building elevation that faces adjacent properties zoned residential.
- D. Sign Illumination.** Lighting shall be the minimum necessary to be visible at night time and shall not create a distraction or other hazard, such as pinpoint glare, to vehicular traffic and shall conform to the following standards:

1. **Indirect Lighting.** In the case of indirect lighting, the source shall be so shielded that it illuminates only the face of the sign. Indirect lighting shall consist of full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light shall be substantially confined to the sign to minimize glare, sky glow, and light trespass. The beam width shall not be wider than that needed to light the sign. The light source shall have a neutral hue and be consistent for all fixtures illuminating a single sign.
 2. **Internal and Halo Illumination.** Internal illumination and halo illumination shall not be permitted to have an illumination spread of more than .05 foot candle at the lot line, shine into on-coming traffic, affect highway safety, or shine directly into a residential dwelling unit. The background of internally illuminated signs shall be designed so that the illumination only penetrates the letters, logos, symbols, or other message copy.
- E. **Flags.** Up to three flags at a maximum size of sixteen (16) square feet each are permitted without a license per Section 78-140.5.N.2. Additional flags are prohibited. Flag pole height cannot exceed twenty five (25) feet and the distance from any property line must be at least half the height of the pole. Flags shall not be illuminated unless otherwise required by law.
- F. **Maintained in Good Repair.** All signs and components thereof shall be maintained in good repair and in a safe, neat, clean, and legible condition. Any sign that has deteriorated in general appearance and, in the opinion of the zoning administrator, needs to be repainted, refinished or reworked, in order to restore the original appearance, violates this section.
- G. **Safety Hazard.** Any sign which becomes a safety hazard or which is not kept in good general condition and reasonably good state of repair and is not, after written notice to the owner of the premises or the permittee, put in a safe and good state of repair may be removed, repaired or otherwise abated by the building official in accordance with Chapter 10 of this Code. Any sign which, in the opinion of the building official, constitutes an immediate or imminent danger to life or property may be caused to be removed or put in a safe condition by him immediately.
- H. **Removal.** Any sign, located on commercial property where the use or business has ceased operating shall, within 30 days of the cessation of use or business operation, be removed and the area on which the sign was installed shall be repaired to its original condition by the business or property owner.

Sec. 78-140.7 Non-Conforming Signs

- A. **Non-Conforming Sign Status.** Signs lawfully existing on the effective date of this chapter or prior ordinances, which do not conform to the provisions of this chapter, and signs which are accessory to a nonconforming use shall be deemed to be nonconforming signs and may remain except as qualified below. The burden of establishing nonconforming status of signs and of the physical

characteristics/location of such signs shall be that of the owner of the property. Upon notice from the zoning administrator, a property owner shall submit verification that sign(s) were lawfully existing at time of erection. Failure to provide such verification shall be cause for order to remove sign(s) or bring sign(s) into compliance with the current ordinance.

- B. Limitation on Expansion and Degree of Non-Conformity.** No nonconforming sign shall be enlarged nor shall any feature of a nonconforming sign, such as illumination, be increased or added.
- C. Limitation on Alterations other than Repairs.** Nonconforming signs shall not be extended or structurally reconstructed or altered in any manner, except a sign face may be changed so long as the new face is equal to or reduced in height and/or sign area. Nothing in this section shall be deemed to prevent keeping in good repair a nonconforming sign.
- D. Location.** No nonconforming sign shall be moved for any distance on the same lot or to any other lot unless such change in location will make the sign conform in all respects to the provisions of this article.
- E. Restoration after Damage.** A nonconforming sign that is destroyed or damaged by any casualty to an extent not exceeding fifty (50) percent of its area may be restored within two (2) years after such destruction or damage but shall not be enlarged in any manner. If such sign is so destroyed or damaged to an extent exceeding fifty (50) percent, it shall not be reconstructed but may be replaced with a sign that is in full accordance with the provisions of this article.
- F. Change in Status.** A nonconforming sign which is changed to becoming conforming or is replaced by a conforming sign shall no longer be deemed nonconforming, and thereafter such sign shall be in accordance with the provisions of this article.
- G. Removal.** A nonconforming sign structure shall be subject to the removal provisions of Section 78-160.3. In addition, a nonconforming sign structure shall be removed if the use to which it is accessory has not been in operation for a period of two years or more. Such structure sign shall be removed by the owner or lessee of the property. If the owner or lessee fails to remove the sign structure, the zoning administrator or designee shall give the owner fifteen (15) days' written notice to remove it. Upon failure to comply with this notice, the zoning administrator or designee may enter the property upon which the sign is located and remove any such sign or may initiate such action as may be necessary to gain compliance with this provision. The cost of such removal shall be chargeable to the owner of the property.

Sec. 78-141 Specific Sign Regulations by Use and District

Signs shall be reviewed for compliance with the following specific district standards as applicable.

Sec. 78-141.1 Sign Standards for Single Family Residential Districts

Except as otherwise prohibited in this Article, the following signs are permitted as accessory to properties zoned and used for single family detached or attached dwelling units; the following standards apply.

TABLE 78-141.1 SIGN STANDARDS FOR SINGLE FAMILY RESIDENTIAL DISTRICTS			
Type	Freestanding	Wall	Temporary
Number	1 per principal street entrance into neighborhood, community, subdivision	None	1 per principal street entrance into neighborhood, community, subdivision
Size	24 SF Max.	N/A	12 SF Max.
Height	6' Max.	N/A	6' Max.
Location	5' Min. from ROW	N/A	5' Min. from ROW
Illumination	Indirect Lit	N/A	None
Duration	Unlimited	N/A	60 Days

Sec. 78-141.2 Sign Standards for Multi-Family Residential Districts

Except as otherwise prohibited in this Article, the following signs are permitted as accessory to properties zoned and used for multi-family residential; the following standards apply.

TABLE 78-141.2 SIGN STANDARDS FOR MULTI-FAMILY RESIDENTIAL DISTRICTS			
Type	Freestanding	Wall	Temporary
Number	1 per street frontage	1 per street frontage	1 per street frontage
Size	24 SF Max.	24 SF Max.	12 SF Max.
Height	6' Max.		If freestanding: 6' Max
Location	5' Min. from ROW	No more than 10' high on building when fronting residential; 20' otherwise	If freestanding: 5' from ROW; if wall: No more than 10' high on building
Illumination	Halo-lit or Indirect Lit	Halo-lit or Indirect Lit	None
Duration	Unlimited	Unlimited	60 Days

Sec. 78-141.3 Sign Standards for Non-Residential Uses in Residential Districts

Except as otherwise prohibited in this Article, the following signs are permitted as accessory to any properties zoned and used for **non-residential** uses in residential districts; the following standards apply.

TABLE 78-141.3 SIGN STANDARDS FOR NON-RESIDENTIAL USES IN RESIDENTIAL DISTRICTS			
Type	Freestanding	Wall	Temporary
Number	1 per street frontage	1 per street frontage	1 per street frontage
Size	24 SF Max.	24 SF Max.	12 SF Max.
Height	6' Max.		If freestanding: 6' Max
Location	5' Min. from ROW	No more than 10' high on building when fronting residential; 20' otherwise	If freestanding: 5' from ROW; if wall: No more than 10' high on building
Illumination	Halo-lit or Indirect Lit	Halo-lit or Indirect Lit	None

Sec. 78-141.4 Sign Standards for Commercial Districts

A. Freestanding, Wall and Temporary Signs. Except as otherwise prohibited in this Article, the following signs are permitted as accessory to any properties within the Commercial Service (CS), Commercial Office (CO), Planned Development-Business (PD-B), and Office and Light Industrial (O&LI) Zoning Districts; the following standards apply.

TABLE 78-141.4.A STANDARDS FOR FREESTANDING, WALL AND TEMPORARY SIGNS IN COMMERCIAL DISTRICTS			
Type	Freestanding	Wall	Temporary
Number	1 per street frontage, 2 max.; or, 2 max. per street frontage with more than one primary entrance <i>and</i> more than 300' of frontage	Unlimited	Up to 1 per street frontage
Size	1 SF of sign area for each linear foot of frontage. 50SF Max. per sign	1 SF of sign area for each linear foot of frontage. 150SF Max. per sign	24 SF Max.
Height	8' Max. 6" Min. letter height		If freestanding: 6' max.
Location	5' Min. from ROW	No more than 20' high on building	If freestanding: 5' from ROW; if wall: No more than 20' high

TABLE 78-141.4.A STANDARDS FOR FREESTANDING, WALL AND TEMPORARY SIGNS IN COMMERCIAL DISTRICTS			
Type	Freestanding	Wall	Temporary
			on building
Illumination	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	None
Duration	Unlimited	Unlimited	Short term: 60 Days, per calendar years Long term: 6 months, per calendar year

B. Projecting, Parapet, Internal and Light Pole Banner Signs. Additional sign types are permitted in the Commercial Service (CS), Commercial Office (CO), Planned Development-Business (PD-B), and Office and Light Industrial (O&LI) Zoning Districts; for which the following standards apply.

TABLE 78-141.4.B STANDARDS FOR PROJECTING, PARAPET, INTERNAL AND LIGHT POLE BANNER SIGNS IN COMMERCIAL DISTRICTS				
Type	Projecting	Parapet	Internal	Light Pole Banners
Number	1 per establishment frontage	Up to 2 per building	Up to 3 per primary building	No more than 35% of on-site light poles
Size	12 SF max.	150 SF max. per sign	24 SF max. per sign	6 SF max.
Height	N/A	N/A	If freestanding: 6' max; if wall: 10' max	Not to exceed height of pole
Location	Limited to ground floor; or 20' above normal grade whichever is less.	On parapet of multi-story buildings; and 175' separation between signs located on same building elevation	At least 50' from any ROW	Limited to on-site light poles
Illumination	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	Indirect from site lighting
Duration	Unlimited	Unlimited	Unlimited	No more than 3 continuous months, once a year

Sec. 78-141.5 Sign Standards for Multi-Tenant Mixed Use Properties in the Planned Development Worldgate District (PD-W)

A. Freestanding Signs. Except as otherwise prohibited in this Article, the following freestanding signs are permitted as accessory to any properties within the Planned Development - Worldgate (PD-W), Zoning District, the following standards apply.

TABLE 78-141.5.A STANDARDS FOR FREESTANDING SIGNS IN MULTI-TENANT MIXED USE PROPERTIES IN PD-W				
Type	Monument	Vehicle Entrance	Column	Internal
Number	1 max.	2 max.	2 max.	4 max.
Size	150 SF max.	75 SF max. per sign	35 SF max. per sign	10 SF max. per sign
Height	20' max.	15' max.	16' max.	5' max.
Location	Corner of Worldgate Dr & Centerville Rd	At vehicle entrances off Worldgate Dr	At internal entrance to garage ramp	At least 50' from right-of-way
Illumination	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit
Duration	Unlimited	Unlimited	Unlimited	Unlimited

B. Wall Signs. Except as otherwise prohibited in this Article, the following freestanding signs are permitted as accessory to any properties within the Planned Development-Worldgate (PD-W), Zoning District, the following standards apply.

TABLE 78-141.5.B STANDARDS FOR WALL SIGNS IN MULTI-TENANT MIXED USE PROPERTIES IN PD-W					
Type	Ground Floor Wall	Major Tenant Wall	Garage	Pedestrian Entrance	Blade
Number	Unlimited	3 max. per building frontage	3 max.	1 max. per entrance	1 max.
Size	1 SF of sign area for each linear feet of establishment frontage	1 SF of sign area for each linear foot of establishment frontage or 300 SF, whichever is less	25 SF	2 SF of sign area for each linear foot of entrance frontage	40 SF max.
Height	N/A	N/A	N/A	N/A	13' max.
Location	Above	Only on	Mounted	On façades	Mounted

TABLE 78-141.5.B STANDARDS FOR WALL SIGNS IN MULTI-TENANT MIXED USE PROPERTIES IN PD-W					
Type	Ground Floor Wall	Major Tenant Wall	Garage	Pedestrian Entrance	Blade
	storefronts	frontage for tenants with more than 100k Gross SF of floor area	on garage at garage entrances	above shared entrances on ground floor	on garage at entrance off Worldgate Dr.
Illumination	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit	Internally Lit, Halo-lit or Indirect Lit
Duration	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

C. **Signs in the PD-W District as of January 5, 2005.** Signs existing on January 2, 2005 and developed in accord with the provisions of Article 12 and Article 11 of the Fairfax County Zoning Ordinance shall be deemed legal and conforming with respect to this chapter.

Sec. 78-141.6 Sign Standards for Downtown Mixed-Use Districts

A. **Freestanding, Wall and Temporary Signs.** Except as otherwise prohibited in this Article, the following signs are permitted as accessory to any properties within the Central Commercial (CC), Planned Development-Downtown (PD-D), Planned Development-Traditional Downtown (PD-TD) Zoning Districts, the following standards apply:

TABLE 78-141.6.A STANDARDS FOR FREESTANDING, WALL AND TEMPORARY SIGNS IN CC, PD-D and PD-TD DOWNTOWN MIXED USE DISTRICTS			
Type	Freestanding	Wall	Temporary
Number	1 per street frontage when there's more than 150' of street frontage	Up to 2 per establishment	Up to 1 per property
Size	24 SF Max.	24 SF Max. per sign	12 SF max.
Height	8' Max.	N/A	If freestanding: 6' max.
Location	5' Min. from ROW	Limited to ground floor	N/A
Illumination	Halo-lit or Indirect Lit	Halo-lit or Indirect Lit	None
Duration	Unlimited	Unlimited	60 Days per calendar year

B. Projecting, Canopy/Awning and A-Frame Signs. Additional sign types are permitted in the Central Commercial (CC), Planned Development-Downtown (PD-D), Planned Development-Traditional Downtown (PD-TD) Zoning Districts, for which the following standards apply.

TABLE 78-141.6.B STANDARDS FOR PROJECTING, CANOPY/AWNING AND A-FRAME SIGNS IN CC, PD-D and PD-TD DOWNTOWN MIXED USE DISTRICTS			
Type	Projecting	Canopy/Awning	A-frame
Number	1 per ground floor establishment; 1 per building on upper floors	1 per ground floor establishment	1 A-frame per ground floor establishment
Size	12 SF Max on ground floor; 24SF Max on upper floors	12 SF Max.	12S F Max. 3' Max width
Height	6' Max on ground floor; 12' Max on upper floors	1' Max.	4' Max.
Location	No more than 25' high on the building; not to project more 4' from face of building	Limited to ground floor	In front of establishment; not within pedestrian area of sidewalk
Illumination	Halo-lit, Indirect Lit, or open neon lit	Halo-lit or Indirect Lit	Non-illuminated
Duration	Unlimited	Unlimited	Limited to business hours
Materials			Wood, Metal, and/or Chalkboard

C. Compliance with Design Guidelines. Signs installed within the Central Commercial (CC), Planned Development-Downtown (PD-D), Planned Development-Traditional Downtown (PD-TD) Zoning Districts shall comply with the relevant design guidelines of the *Herndon Heritage Preservation Handbook* and *Downtown Herndon Pattern Book*, or adopted superseding documents.

Sec. 78-142 Temporary Signs

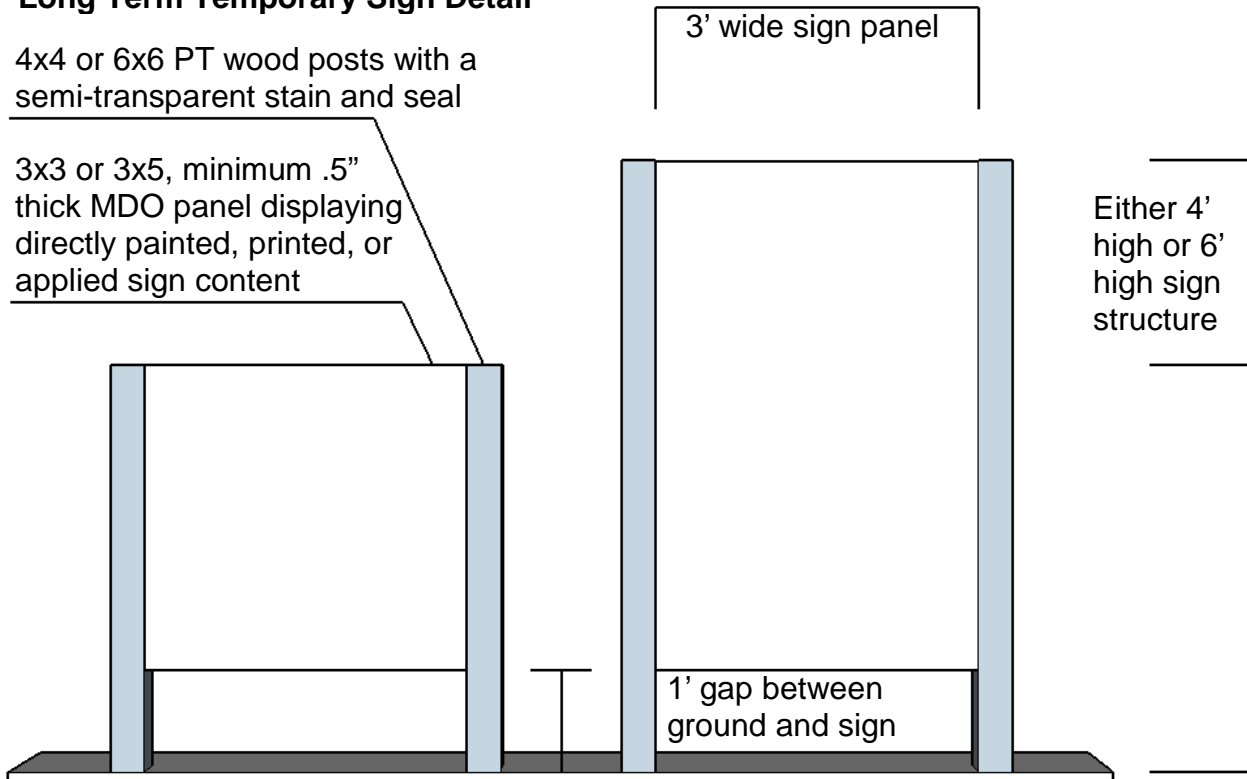
A. Temporary Signs Permitted. Temporary signs are permitted in all zoning districts.

B. Temporary Sign Licenses. Unless exempt as specified in Section 78-140.5.N, temporary signs require a Temporary Sign License. Temporary sign shall comply with specific zoning district standards of this article in addition to the following.. There are two different types of temporary sign permitted with a license:

- 1. Short Term Temporary Signs.** Short term temporary signs may be constructed of any material that is durable enough to safely, securely, and effectively allow for the sign to meet its purpose for the length of the license.

2. **Long Term Temporary Signs.** Long term temporary signs are only permitted on properties zoned and used as commercial where there is an active building permit, property for sale, or property available for lease and must be constructed in compliance with the following detail and standards or in a similar manner as determined by the zoning administrator.

Long Term Temporary Sign Detail



- C. **Duration.** Short Term Temporary Signs may be installed up to 60 days from when the license was issued. The sign expiration date shall be indicated on the license. Upon written request to the Zoning Administrator prior to license expiration and upon demonstrated good cause, the license may be extended for an additional 60 days. Long Term Temporary Signs may be installed up to six (6) months. Upon written request to the Zoning Administrator prior to license expiration and upon demonstrated good cause, the license may be renewed another six (6) months up to two (2) times.
- D. **Licensing Limit.** No more than two Short Term Temporary Sign licenses may be issued per calendar year, per property or unified commercial subdivision. No more than one Long Term Temporary Sign license may be issued per calendar year, per property or unified commercial subdivision. Upon temporary sign license expiration, another temporary sign license shall not be issued for a minimum of 60 days, for the same property or unified commercial subdivision.

- E. **Signs Associated with a Temporary Use Permit.** Additional temporary signs beyond what is permitted in this Article may be permitted as part of a temporary use permit per Section 78-90.3.I. Limits on temporary signs types, sizes, locations, numbers, and duration exceed the requirements of this Article. These allowances function to ensure sign flexibility for special non-recurring, temporary occurrences.

- F. **Installation.** Temporary signs shall be securely fastened or anchored to the surface on which they are attached, in a manner by which regular weather conditions will not compromise the means of installation for the length of time that the sign is installed.

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ARTICLE XV – DECISION-MAKING AUTHORITIES, APPLICATION REVIEW AND PERMITTING

Sec. 78-150 Administrative, Advisory and Decision-Making Authorities

The following sections contain provisions for review and decision-making authorities who will administer and implement the regulations of this chapter.

Sec. 78-150.1 Town Council

A. Powers and Duties. The town council shall have the powers and duties specified in Title 15.2, Chapter 22 of the Code of Virginia and the Town Charter, as well as the following powers and duties under this chapter:

1. **Application Review.** The town council shall review and decide applications for:
 - a. Amendments to the official zoning map;
 - b. Amendments to the zoning text;
 - c. Special exception;
 - d. Proffer condition amendment;
 - e. Comprehensive plan amendment;
2. **Appeals.** The town council shall review and decide appeals from:
 - a. Final decisions of the zoning administrator on site and subdivision plans (Section 78-155.6);
 - b. Determinations of the zoning administrator on interpreting proffers (Section 78-150.6);
 - c. Final decisions of the Historic Preservation Review Board (HPRB) on certificates of appropriateness (Section 78-60.G);
 - d. Final decisions of the ARB Architectural Review Board (ARB) (section 58-79).
3. **Historic Designation.** The town council shall review and decide whether or not to designate any site, building or structure as an historic landmark or an area as a heritage preservation overlay district.
4. **Implementation Authority Not Otherwise Delegated.** The town council shall have the authority to take any other action not delegated to the planning commission, board of zoning appeals, architectural review board, heritage preservation review board, town manager, town attorney, zoning administrator, or

heads of town departments, as the town council may deem desirable and necessary to implement the provisions of this chapter.

- B. Training.** Newly elected members of the town council shall obtain, training and certification by Citizens Planning Education Association of Virginia or similar certification to be completed within two years of election.

Sec. 78-150.2 Planning Commission

- A. Powers and Duties.** The planning commission shall have the powers and duties specified in Title 15.2, Chapter 22 of the Code of Virginia, as well as the powers and duties under this chapter.

1. Application Review. The planning commission shall review and make recommendations to the town council to approve or disapprove applications for:

- a. Amendments to the official zoning map;
- b. Amendments to the zoning text;
- c. Special exception;
- d. Proffer condition amendment;
- e. Comprehensive plan amendment;
- f. Designation of any site, building or structure as an historic landmark or an area as a heritage preservation overlay district.

2. Knowledge and Expertise. The planning commission shall make its special knowledge and expertise available upon written request and authorization of the town council to any official, department, board, commission, or agency of the town.

3. Training. Newly appointed members of the planning commission shall be offered training and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed within two years of appointment.

- B. Membership and Procedures.** The membership and procedures for the planning commission are established in Sections 2-36 through 2-44 of the Herndon Town Code.

- C. Bylaws and Standards.** The planning commission may establish bylaws and other standards to carry out its duties.

Sec. 78-150.3 Board of Zoning Appeals

- A. Powers and Duties.** The board of zoning appeals shall have the following powers and duties under this chapter:

1. **VariANCES.** The board of zoning appeals shall review and decide applications for variances (Section 78-155.4).
 2. **Appeals.** The board of zoning appeals shall review and decide appeals taken from any final decision of the zoning administrator or other administrative officer on:
 - a. Administrative adjustments (Section 78-155.5);
 - b. Temporary use site plans (Section 78-155.6);
 - c. Zoning inspection permits (Section 78-155.7);
 - d. Zoning appropriateness permits (Section 78-155.8);
 - e. Other determinations and decisions of the zoning administrator (Section 78-150.60.F).
 3. **Knowledge and Expertise.** The board of zoning appeals shall make its special knowledge and expertise available upon written request and authorization of the town council to any official, department, board, commission or agency of the town.
- B. Membership.** The membership of the board of zoning appeals shall be established as follows.
1. **Number.** The board of zoning appeals shall consist of five members.
 2. **Qualified Voter.** Each member shall be a qualified voter of the town.
 3. **Limitations.** No member of the board shall hold any other position, whether elected, appointed or employed, with the town.
 4. **Appointment.** Each member shall be appointed by the town council by majority vote of those present and voting. *1st sentence]*
 5. **Training.** Newly appointed members of the board of zoning appeals shall be offered training and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed within two years of appointment.
 6. **Term.** The term of office of members of the board of zoning appeals shall be five years, staggered so that one term begins each year. A member shall continue to serve until reappointed or replaced.
 7. **Resignation.** Any member who resigns from the board of zoning appeals prior to the end of the member's term shall do so in writing to the chair.

8. **Removal.** Any member of the board of zoning appeals may be removed by the town council from office for malfeasance, misfeasance or nonfeasance in office.
 9. **Vacancies.** Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term in the same manner as the original appointment.
 10. **Compensation.** Members' compensation, if any, shall be fixed by resolution of the town council.
- C. **Officers.** Officers of the board of zoning appeals shall be established as follows:
1. **Chair and Vice-Chair.** The board of zoning appeals shall choose annually a chair and a vice-chair.
 2. **Terms.** The term of office of the chair and the vice-chair of the board of zoning appeals shall be one year.
 3. **General Duties of Officers.** The duties of the chair and vice-chair of the board of zoning appeals shall be as follows:
 - a. The chair shall preside at meetings of the board of zoning appeals, decide points of order on procedure, and take such action as shall be necessary to preserve the order and integrity of proceedings before the board.
 - b. In the absence of the chair, the vice-chair shall act as chair and shall have powers of the chair.
 - c. In the absence of the chair and vice-chair, the most senior board member shall act as chair and shall have powers of the chair.
- D. **Staff.** The zoning administrator or designee shall serve as the professional staff to the board of zoning appeals and provide it with administrative support. For the purposes of this section, "non-legal staff of the town" means any staff who is not in the office of the attorney for the town, or for the board, or who is appointed by special law or pursuant to Code of Virginia § 15.2-1542.
- E. **Communications and Distribution of Materials.**
1. **Ex-Partie Communications.** The non-legal staff of the town may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his or her agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this subsection, regardless of whether all

parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the town, the applicant, landowner or his or her agent or attorney are all invited.

2. **Ex-Partie Communications with Attorney or Attorney’s Staff.** Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.
3. **Availability Materials Related to Case.** Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under Code of Virginia § 15.2-2314 as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under Code of Virginia § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to Code of Virginia § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of Code of Virginia § 2.2-3707.

F. **Meetings, Hearings and Procedures.** Meetings of the board of zoning appeals ordinarily shall be held monthly and at such other times as a quorum of the board may determine.

1. **Quorum.** Three members of the board of zoning appeals shall constitute a quorum. No official business of the board shall be conducted without a quorum present.
2. **Necessary Vote.** No action of the board shall be valid unless authorized by a majority vote of those present and voting except as otherwise provided in the next sentence. A favorable vote of at least three members of the board shall be necessary to reverse any determination of the zoning administrator on appeal, or to approve a variance.
3. **Witnesses and Oaths.** The chair may administer oaths and compel the attendance of witnesses.
4. **Rules and Record of Proceedings.** The board of zoning appeals shall document proceedings as follows:
 - a. The board of zoning appeals shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or abstaining from a vote, indicating such fact.

- b. The board of zoning appeals shall keep records of its official actions, which shall be immediately filed in the office of the zoning administrator and shall be a public record.
5. **Bylaws.** The board of zoning appeals may, by a majority vote of the entire membership, draft and approve such additional bylaws governing its procedure as it may deem necessary or advisable.

Sec. 78-150.4 Heritage Preservation Review Board

- A. **Establishment.** There hereby is established a heritage preservation review board (HPRB).
- B. **Powers and Duties.** The HPRB shall have the following powers and duties under this chapter:
 - 1. **Recommendations.** The HPRB shall provide recommendations to the planning commission and the town council on the establishment, expansion, reduction, or elimination of heritage preservation overlay districts.
 - 2. **Application Review.** The HPRB shall review and decide applications for properties within the heritage preservation overlay district for:
 - a. Certificates of appropriateness.
 - b. Sign permits.
 - c. Master sign plans.
 - d. Modification for master sign plan for individual establishment.
 - 3. **Special Knowledge and Expertise.** The HPRB shall make its special knowledge and expertise available upon its own initiative or upon request by the town council or any official, department, board, commission or agency of the town.
- C. **Membership.** The membership of the HPRB shall be established as follows
 - 1. **Number.** The HPRB shall consist of seven members. It shall be comprised of the five members of the town's architectural review board (ARB), along with two additional members.
 - 2. **Qualifications.** The two additional members of the HPRB who are not on the the ARB shall meet the following minimum qualifications:
 - a. At least one member shall have a demonstrated interest, competence or knowledge in historic preservation.

b. At least one member shall be an architect or an architectural historian, and have appropriate professional qualifications to qualify as an expert in the area of historic preservation.

3. **Residency.** No more than two of the members on the combined ARB/HPRB with the required professional qualifications for an architect or an architectural historian may be non-residents of the town. The other members on the combined ARB/HPRB shall be town residents.

4. **Appointment.** The ARB members serving on the HPRB shall be appointed pursuant to Part I, Charter, of the Code of Ordinances, section 7.4:1(b). The two additional members shall be appointed by a majority of the town council.

5. **Term.** The term of office of the ARB members serving on the HPRB shall be concurrent with their membership on the ARB. The terms of the two additional HPRB members shall be three years.

6. **Removal.** Any member of the HPRB may be removed from office by the town council for malfeasance, misfeasance or nonfeasance in office.

7. **Vacancies.** Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term in the same manner as the original appointment.

8. **Compensation.** Members' compensation, if any, shall be fixed by resolution of the town council.

9. **Training.** Newly appointed members of the HPRB shall be offered training and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed within two years of appointment.

D. **Officers.** Officers of the board of zoning appeals shall be established as follows:

1. **Chair and Vice-Chair.** The HPRB shall elect from its members a chair and a vice-chair.

2. **Terms.** The term of office of the chair and vice-chair shall be one year.

3. **General Duties of Officers:** The duties of the chair and vice-chair of the board of zoning appeals shall be as follows:

a. The chair shall preside at meetings of the HRPB, decide points of order on procedure, and take such action as shall be necessary to preserve the order and integrity of proceedings before the HPRB.

b. In the absence of the chair, the vice-Chair shall act as chair and shall have powers of the chair. :

- c. In the absence of the chair and vice-chair, the most senior HPRB member shall act as chair and shall have powers of the chair.
- E. **Staff.** The zoning administrator or the zoning administrator's designee shall serve as the professional staff to the HPRB and provide it with administrative support. :
- F. **Meetings, Hearings and Procedures.** Meetings of the HPRB ordinarily shall be held monthly and at such other times as a quorum of the HPRB may determine **subject to the following:**
 - 1. **Open Meetings.** All meetings of the HPRB shall be open to the public.
 - 2. **Quorum and Necessary Vote.** Four members of the HPRB shall constitute a quorum, and no action of the HPRB shall be valid unless authorized by a majority vote of those present and voting.
 - 3. **Rules and Records of Proceedings.** The HPRB shall document proceedings as follows:
 - a. The HPRB shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or abstaining from a vote, indicating that fact.
 - b. The HPRB shall keep records of its official actions, which shall be immediately filed in the office of the zoning administrator and shall be a public record.
 - c. The HPRB may, by a majority vote of the entire membership, draft and approve such additional bylaws governing its procedure as it may deem necessary or advisable.

Sec. 78-150.5 Architectural Review Board

- A. **Establishment.** The provisions of the Town Charter Section 7.4:1 and Chapter 58 of the Herndon Town Code establish and govern the architectural review board (ARB) and its powers and duties.
- B. **Powers and Duties.** The ARB shall have the following powers and duties under this chapter:
 - 1. **Review and Approval.** Generally, the ARB is empowered by the Town Charter and the town council to review and approve structures, buildings, signs, major landscape features and other improvements for development excluding: (i) the heritage preservation overlay district, (ii) single-family detached residences in the R-15 and R-10 zoning districts, and (iii) single-family detached residences in planned development districts after initial construction.

2. **Application Review.** For purposes of this chapter, the ARB is authorized to review and make decisions on sign permits and master sign plans (Section 78-130.5.B)
 3. **Knowledge and Expertise.** The ARB shall make its special knowledge and expertise available upon written request and authorization of the town council to any official, department, board, commission, or agency of the town.
- C. **Training.** Newly appointed members of the ARB shall be offered training and certification by the Citizens Planning Education Association of Virginia or similar certification to be completed within two years of appointment.

Sec. 78-150.6 Zoning Administrator

- A. **Authority.** The zoning administrator is designated by the town manager to administer and enforce this chapter. The zoning administrator may appoint one or more deputies (designees) to carry out the assigned duties of the zoning administrator. In this chapter, any reference to "zoning administrator" shall include deputies (designees.)
- B. **Powers and Duties.** The zoning administrator or an appropriate designee acting as zoning administrator shall have the following jurisdiction, powers, and duties under this chapter:
1. **Application Review.** The zoning administrator shall review and decide applications for:
 - a. Site and subdivision plans and plan revisions (Section 78-155.6).
 - b. Temporary use site plans (Section 78-155.6.E.4).
 - c. Administrative adjustments (Section 78-155.5).
 - d. Master sign plan conformance permit (Section 78-140.5.B).
 - e. Temporary sign approvals (Section 78-140.5B).
 - f. Zoning inspection permit (Section 78-155.7).
 - g. Zoning appropriateness permit (Section 78-155.8).
 - h. Building location survey (Section 78-155.6.E.1).
 - i. Single lot development plan (Section 78-155.6.E.2).
 2. **Determinations and Interpretations.** The zoning administrator shall make determinations about interpreting this chapter, proffers and the official zoning map (Section 78-.150.6.E).

3. **Application.** The zoning administrator shall establish application requirements and schedules for review of applications and appeals, to review and make recommendations to the town council, planning commission, HPRB, and ARB on applications for development permits and approvals, and take any other action necessary to administer the provisions of this chapter.
4. **Enforcement.** The zoning administrator shall enforce the provisions of this chapter in accordance with Article XVII – Enforcement, Violations and Remedies.
5. **Official Map and Records.** The zoning administrator shall maintain the official zoning map and other such records and official materials as they relate to the adoption, amendment, enforcement, or administration of this chapter.
6. **Expertise and Technical Assistance.** The zoning administrator shall provide expertise and technical assistance to the town council, planning commission, BZA, HPRB, and ARB, upon request.
7. **Training.** The zoning administrator shall obtain training, education and appropriate certifications in order to develop and maintain necessary knowledge and skills, under the town's sponsorship.

C. Power to Request Subpoena for Suspected Violation of Occupancy Limits.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of this chapter that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of this chapter, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, the zoning administrator may request that the town attorney petition the judge of the general district court for Fairfax County for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

D. Power to Request Warrant for Inspection of Property for Probable Zoning Violation.

This subsection provides for the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his or her agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his or her agent an inspection warrant to enable the zoning administrator or his or her agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. The zoning administrator or his or her agent shall make a reasonable effort to obtain consent

from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this subsection.

E. Determination Requests. Determinations about interpreting this chapter shall be made on application, in writing by the zoning administrator, including determinations about interpreting: the text of this chapter; the location of zoning district boundaries; whether or not an unspecified use falls within a use category or use type allowed in a zoning district; and previously approved special exceptions, site plans, single lot development plan, variances, or proffers associated with an amendment to the zoning map in accordance with the following: *(a)*

1. Initiation. A written determination may be requested by the town council, the planning commission, any resident or landowner, or any person having a contractual interest in land in the town.

2. Procedure. The procedure for a formal written determination by the zoning administrator shall be as follows:

a. Written Request to be Submitted. Before a written determination shall be provided by the zoning administrator, a request for determination shall be submitted in writing to the zoning administrator in writing along with the applicable items required in Section 78-155.2.C, Submittal Requirements.

b. Sufficiency. After a request for determination has been submitted, the zoning administrator shall determine whether or not it is sufficient.

(1) If the zoning administrator determines the request is not sufficient, a notice shall be provided to the applicant specifying the deficiencies. The zoning administrator shall take no further action on the request for determination until the deficiencies are remedied. If the applicant fails to respond to the deficiencies within 30 days of the zoning administrator's notice, the request for determination shall be considered withdrawn.

(2) When the request for determination is determined sufficient, the zoning administrator shall review the request and render a determination pursuant to this section.

c. Review Standards. After the request for determination has been determined sufficient, the zoning administrator shall review the request and render a determination, based on the following standards:

(1) When the request is for a determination about the location of zoning district boundaries on the official zoning map, the zoning administrator shall apply the following standards:

(a) Unless otherwise specified, zoning district boundary lines are lot lines or the centerlines of streets, alleys, or W. & O.D. right-of-way, or such lines, fixed by dimensions, or otherwise clearly shown or designated.

- (b) Where district boundaries are indicated as approximately following or being at right angles to the centerlines of streets, highways, alleys, or W. & O.D. alignment, and those centerlines shall be construed to be the boundaries. Any significant relocation of a centerline shall result in a shift of the boundary.
 - (c) Where a district boundary follows a river, creek, or branch, or other body of water, the boundary shall be construed to follow the centerline at low water, or at the limit of the jurisdiction, and in the event of change in the shoreline, the boundary shall be construed as moving with the actual shoreline.
 - (d) If no distance, angle, curvature, description, or other means is given to determine a boundary line accurately and the provisions of this section do not apply, the boundary line shall be determined by the zoning administrator by using the scale shown on the official zoning map.
- (2) When the request is for a determination about whether or not an unspecified use falls within a use classification, use category, or use type allowed in a zoning district, the zoning administrator shall apply the standards of Section 78-150.6.E in making the determination.
 - (3) For other determinations, the zoning administrator shall evaluate the request in light of the comprehensive plan, this chapter, the official zoning map, other relevant codes and statutes, and any previously approved permits (if applicable).
 - (4) When making determinations, the zoning administrator shall consult with the town attorney and other affected town staff before rendering the determination.
- d. Review Time.** The zoning administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of the zoning administrator's authority unless the requester has agreed to a longer period.
- e. Determination Decision and Notification Requirements.**
- (1) The determination shall be in writing, approved as to form by the town attorney, and sent to the applicant and property owners adjacent to the subject property by mail after the zoning administrator has made the determination.
 - (2) In addition, the determination shall be posted on the town's web site and published in a newspaper of general circulation in the town. The published determination shall:

- (a) Identify the application or application number, and the name of the applicant or the applicant's agent.
- (b) Indicate the date of the determination.
- (c) Describe the land involved by its complete street address and by county tax map reference number, nearest cross street, and land area.
- (d) Identify the current zoning district designation of the land subject to the application.
- (e) Describe the nature of the applicant's request.
- (f) Describe in which department the public may inspect the request, the zoning administrator's decision, and related materials, and state that these materials are available for public inspection during normal business hours.
- (g) Include a statement that aggrieved parties may file an appeal pursuant to Section 78-150.6.F and provide the time frame in which an appeal may be filed.

f. Official Record. The zoning administrator shall maintain a record of written determinations that shall be available for public inspection in the office of the zoning administrator, upon reasonable request, during normal business hours.

F. Appeal of Zoning Administrator Decision or Determination. Any person aggrieved by a written determination from the zoning administrator including determinations about interpreting: the text of this chapter; the location of zoning district boundaries; whether or not an unspecified use falls within a use category or use type allowed in a zoning district; and approved special exceptions, site plans, single lot development plans or variances may appeal the determination to the board of zoning appeals pursuant to this section as follows:

1. Procedure. An appeal of a decision or determination made by the zoning administrator shall be subject to the following provisions:

a. Time Limit for Filing Appeal. An appeal of a decision by the zoning administrator must be initiated by filing a written notice of appeal, along with a fee established pursuant to Section 78-152.2.B within 30 days after the decision. However, for cases involving maximum occupancy limitations of a residential dwelling unit, the period in which to file such an appeal is 15 days after the decision.

b. Required Information for Written Notice of Appeal. The written notice of appeal shall include a statement of the error or improper decision or

determination, the date of that decision, the grounds for the appeal, and related support materials.

- c. **Transmission of Notice to BZA and Record of Appeal.** Upon receiving the written notice of appeal, the zoning administrator shall transmit it and papers, documents and other materials relating to the decision or determination that is being appealed, to the board of zoning appeals. This material shall constitute the record on the appeal.
 - d. **Public Hearing Schedule and Notice Provisions.** The zoning administrator shall schedule a hearing on the matter at the earliest feasible board of zoning appeals meeting by which time notice can be provided consistent with the requirements of Section 78-153.2-H.2, written (mailed) notice. The hearing shall be scheduled and notice provided so the board can make a decision on the appeal within 90 days of the date of the filing of the written notice of appeal.
 - e. **Public Hearing Process.** At the hearing on the appeal, the zoning administrator shall present the staff report on the appeal. The appellant or the appellant's agent shall state the grounds for the appeal and identify any materials or evidence from the record to support the appeal. The zoning administrator shall be given an opportunity to respond, as shall any other person(s) the board deems necessary and appropriate.
 - f. **BZA Decision and Decision Deadline.** After the conclusion of the hearing, the board of zoning appeals shall affirm, partly affirm, modify, reverse, or partly reverse the decision or determination, based on the standards in Section 78-150.6.F.2., Review Standards for Appeals. The decision shall be made on the appeal within 90 days of the date of the filing of the written notice of appeal.
2. **Review Standards for Appeal.** A decision or determination by the zoning administrator shall not be reversed or modified unless there is evidence in the record that the decision or determination is not correct, based on the relevant procedures and review standards in this chapter. The board or council shall consider the purpose and intent of any applicable provisions of this chapter and other relevant ordinances, laws, and regulations in making its decision.
 3. **Stay of Administrative Actions During Appeal.** An appeal shall stay all administrative proceedings by the town in furtherance of the action appealed from, unless the zoning administrator certifies to the board of zoning appeals that by reason of facts stated in the certificate a stay would cause imminent peril to life or property, in which case the administrative proceedings shall not be stayed unless a restraining order is granted by the board of zoning appeals or a court of law, on application and notice to the zoning administrator and for good cause shown.

G. Proffer Determination Appeal. In accordance with § 15.2-2301 of the Code of Virginia, any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made regarding a proffered amendment to the zoning map may petition the town council for review of the decision of the zoning administrator.

1. **Filing Deadline for Petition.** 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.
2. **Procedure.** An appeal of a decision or determination about a proffered amendment to the zoning map made by the zoning administrator shall be subject to the following provisions:
 - a. **Time Limit for Filing Appeal.** A petition to the town council on a decision by the zoning administrator must be initiated by filing a written notice of appeal, along with a fee established pursuant to Section 78-152.2, within 30 days of the date the decision is provided pursuant to Section 78-154.2, Notification of Decision.
 - b. **Required Information for Written Notice of Appeal.** The written notice of appeal shall include a statement of the error or improper decision or determination, the date of that decision, the grounds for the appeal, and related support materials.
 - c. **Transmission of Notice to Town Council and Record of Appeal.** Upon receiving the written notice of appeal, the zoning administrator shall transmit it and papers, documents and other materials relating to the decision or determination that is being appealed to the town council if the appeal pertains to a proffered zoning map amendment. This material shall constitute the record on the appeal.
 - d. **Public Hearing Schedule and Notice Provisions.** The zoning administrator shall schedule a public hearing on the matter at the earliest feasible town council meeting by which time notice can be provided consistent with the requirements of Section 78-153.2.H.5, Written/Mailed Notice. The hearing shall be scheduled and notice provided so the council can make a decision on the appeal within 90 days of the date of the filing of the written notice of appeal.
 - e. **Public Hearing Process.** At the hearing on the appeal, the appellant or the appellant's agent shall state the grounds for the appeal and identify any materials or evidence from the record to support the appeal. The zoning administrator shall be given an opportunity to respond, as shall any other person(s) the council deems necessary and appropriate.
 - f. **Town Council Decision and Decision Deadline.** After the conclusion of the hearing, the town council shall affirm, partly affirm, modify, reverse, or partly

reverse the decision or determination, based on the standards in section 78-150.6.G.3, Review Standards for Appeals, and based on a majority vote. The decision shall be made on the appeal within 90 days of the date of the filing of the written notice of appeal.

3. **Review Standards for Appeals.** A decision or determination by the zoning administrator regarding a proffered zoning map amendment shall not be reversed or modified unless there is evidence in the record that the decision or determination is not correct, based on the relevant procedures and review standards in this chapter. The council shall consider the purpose and intent of any applicable provisions of this chapter and other relevant ordinances, laws, and regulations in making its decision.
4. **Stay of Administrative Actions During Appeal.** An appeal shall stay all administrative proceedings by the town in furtherance of the action appealed from. If the zoning administrator certifies to the town council that by reason of facts a stay would cause imminent peril to life or property the administrative proceedings shall not be stayed.

Sec. 78-151 Summary Table of Development Review Responsibilities

TABLE 78-151: DEVELOPMENT PERMIT REVIEW PROCEDURES							
<i>(S = Staff Review, R = Review and Advise, D = Final Decision, A = Appeal)</i>							
PROCESS	ZONING ADMINISTRATOR	ARCHITECTURAL REVIEW BOARD (ARB)	HERITAGE PRESERVATION REVIEW BOARD (HPRB)	PLANNING COMMISSION	TOWN COUNCIL	BOARD OF ZONING APPEALS (BZA)	CIRCUIT COURT
TOWNWIDE:							
OFFICIAL ZONING MAP AMENDMENTS	S			R	D		
ZONING ORDINANCE TEXT AMENDMENT	S			R	D		
COMPREHENSIVE PLAN AMENDMENTS	S			R	D		
PROFFER CONDITION AMENDMENTS	S			R	D		
SPECIAL EXCEPTION	S			R	D		
VARIANCE	S					D	
ADMINISTRATIVE ADJUSTMENTS	D					A	
SITE PLANS	D						A
SUBDIVISION PLANS	D				A		
SINGLE LOT DEVELOPMENT PLAN	D				A		

TABLE 78-151: DEVELOPMENT PERMIT REVIEW PROCEDURES							
<i>(S = Staff Review, R = Review and Advise, D = Final Decision, A = Appeal)</i>							
PROCESS	ZONING ADMINISTRATOR	ARCHITECTURAL REVIEW BOARD (ARB)	HERITAGE PRESERVATION REVIEW BOARD (HPRB)	PLANNING COMMISSION	TOWN COUNCIL	BOARD OF ZONING APPEALS (BZA)	CIRCUIT COURT
TEMPORARY USE SITE PLANS	D					A	
TEMPORARY SIGN APPROVAL	D					A	
BUILDING LOCATION SURVEY	D					A	
ZONING INSPECTION PERMIT	D					A	
ZONING APPROPRIATENESS PERMIT	D					A	
ZONING ADMINISTRATOR DETERMINATIONS	D					A	
APPEALS RELATED TO PROFFER INTERPRETATION					A		
OUTSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT:							
SIGN APPROVAL	S	D			A		
MASTER SIGN PLAN	S	D			A		
MASTER SIGN PLAN CONFORMANCE PERMIT	D				A		
NEW CONSTRUCTION, ADDITIONS, ALTERATIONS	S	D			A		
AMENDMENTS TO APPROVED APPLICATIONS	S	D			A		
INSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT:							
DESIGNATION OF ANY SITE, BUILDING OR STRUCTURE AS AN HISTORIC LANDMARK OR AN AREA AS A HERITAGE PRESERVATION OVERLAY DISTRICT	S		R	R	D		
SIGN PERMIT	S		D		A		
MASTER SIGN PLAN	S		D		A		

TABLE 78-151: DEVELOPMENT PERMIT REVIEW PROCEDURES <i>(S = Staff Review, R = Review and Advise, D = Final Decision, A = Appeal)</i>							
PROCESS	ZONING ADMINISTRATOR	ARCHITECTURAL REVIEW BOARD (ARB)	HERITAGE PRESERVATION REVIEW BOARD (HPRB)	PLANNING COMMISSION	TOWN COUNCIL	BOARD OF ZONING APPEALS (BZA)	CIRCUIT COURT
MASTER SIGN PLAN CONFORMANCE PERMIT	D		A		A		
CERTIFICATE OF APPROPRIATENESS FOR NEW CONSTRUCTION, ADDITIONS, ALTERATIONS	S		D		A		
AMENDMENTS TO APPROVED APPLICATIONS	S		D		A		
PRE-APPROVED CONDITIONS	D				A		

Sec. 78-152 Application Process and Procedures

The general provisions of the following sections shall apply to applications for development approval and permit requests under this chapter, unless otherwise stated.

Sec. 78-152.1 Pre-Application Procedures

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 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 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. 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 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.

B. Neighborhood Meeting. A neighborhood meeting is strongly encouraged prior to filing certain types of development applications, as follows.

1. **Purpose.** Neighborhood meetings are opportunities for informal communication between landowners, applicants, and residents who may be affected by development proposals. The purposes of the neighborhood meeting are to:
 - a. Educate neighbors about the proposed development and application, *l*
 - b. Receive neighborhood comments, *l*
 - c. Address concerns about the development proposal and,

d. Resolve conflicts and outstanding issues, where possible.

2. **Timing of Meeting for Zoning Map Amendments (Rezoning).** At least one neighborhood meeting is strongly encouraged for a zoning map amendment application prior to filing the application if any part of the property proposed for zoning map amendment is abutting or across the street from existing residences. The applicant shall file a report of the neighborhood meeting with the application for zoning map amendment.
3. **Timing of Meeting for Other Applications Requiring Public Hearings.** Neighborhood meetings generally are encouraged prior to, or shortly after, submittal of other applications requiring a public hearing. The town council, planning commission, architectural review board or heritage preservation review board may encourage an applicant to conduct a neighborhood meeting on an application if, in the determination of the review board, the proposed development could affect neighboring properties.

Sec. 78-152.2 Application Submission, Requirements and Acceptance

A. **Authority to File Applications.** The following provisions apply to the filing of applications:

1. **Submission to Zoning Administrator.** Applications required pursuant to this chapter shall be submitted to the zoning administrator by the land owner or contract purchaser of the land upon which the development is proposed, an authorized agent, or any other person authorized by state law.
2. **Non-Owner Applicant.** If the applicant is an agent of the owner or a contract purchaser of the land, a letter signed by the owner consenting to the submittal of the application shall be submitted.
3. **Multiple Owners.** If the applicant is not the sole owner of the land, the other owners or an entity representing the owners shall sign and submit a letter indicating their consent for the application and their role in the application.

B. **Application Requirements, Schedule, and Fees.** The following standards are established for the acceptance of applications.

1. **Application Contents.** The zoning administrator shall establish reasonable requirements for the content and form of applications for development approval and permits required under this chapter, and may update those requirements from time to time.
2. **Submittal Schedule.** The zoning administrator shall establish a schedule that controls the timing for submittal of applications, and may amend and update those requirements from time to time. The schedule shall be in accordance with

the provisions of this article and shall be kept on file in the department of community development.

3. **Fees.** The town council shall, by ordinance, establish application fees and may amend and update those fees from time to time and fees shall be assessed at the time of application as follows:
 - a. The fee amount shall defray some or all of the estimated cost of processing the application.
 - b. A filing fee as required in this subsection shall be paid as part of the submission of an application or element thereof.

TABLE 78-152.2.B.3: FEES FOR DEVELOPMENT APPLICATIONS	
TYPE OF FEE	AMOUNT
ARCHITECTURAL REVIEW BOARD	
New Construction	\$150
Alterations, Additions	\$150
Accessory Structures	\$150
Wall Signs, Window Signs, Freestanding Signs, Master Sign Plans	\$75
Amendments to Approved Applications	\$75
HERITAGE PRESERVATION REVIEW BOARD	
COA for New Construction	\$150
COA for Alterations, Additions	\$150
COA for Accessory Structures	\$150
Wall Signs, Window Signs, Freestanding Signs, Master Sign Plans	\$75
Amendments to Approved Applications	\$75
COA for Alterations, Additions, Accessory Structures for Residential Use	\$1
BOARD OF ZONING APPEALS	
Single Variance	\$100
Additional Variances	\$25ea
Zoning Administrator Decision Appeal	\$100
BONDING FEES	
Performance Bond	\$250

TABLE 78-152.2.B.3: FEES FOR DEVELOPMENT APPLICATIONS	
TYPE OF FEE	AMOUNT
Letter of Credit	\$250
Conservation Cash Escrow Agreement	\$250
Time Extension Request of Performance Bond Contract	\$400
Amount Reduction Request of Performance Bond Letter of Credit or Cash Account	\$600
Replacement request of Performance Bond, Letter of Credit, Cash Account	\$250
Performance Bond, Letter of Credit or Cash Account Contract	\$250
Waiver Request of Maintenance Bond	\$75
COMPREHENSIVE PLANNING	
Comprehensive Plan Amendment	\$1000
REZONING	
Zoning Map Amendment Application flat fee	\$5000
Zoning Map Amendment Application , per quarter acre	\$250
Request to Extend Approval flat fee	\$2500
Request to Extend Approval, per quarter acre	\$250
Proffer Condition Amendment	\$300
Request for Modification	\$300ea
Request to Waive re-application time limit	\$100
ACCESSORY DEVELOPMENT REVIEWS	
Traffic Impact Study, PLUS, one half of consultant review fees, if required	\$500
Minor Water Quality Impact Assessment	\$50
Major Water Quality Impact Assessment	\$500
Exception Request to Provisions of Chesapeake Bay Preservation Overlay District Ordinance	\$100
Waiver Request to Provisions of Chesapeake Bay Preservation Overlay District Ordinance	\$100
Site Specific Delineation in Resource Protection Area, Areas less than 5,000 SF	\$50
Site Specific Delineation in Resource Protection Area, Areas more than 5,000 SF	\$500
Flood Plain Study, PLUS, one half of consultant review fees, if required	\$1000
Virginia Stormwater Management Plan	

TABLE 78-152.2.B.3: FEES FOR DEVELOPMENT APPLICATIONS	
TYPE OF FEE	AMOUNT
SPECIAL EXCEPTIONS	
For Residential Uses	\$300
For Education, Government, Institutional, and Community Service Uses	\$300
For All Other Non-Residential Uses with no site alterations or building additions	\$300
For All Other Non-Residential Uses with site alterations or building additions	\$1500
Request to extend time period of approval	\$300
Request to Waive re-application time limit	\$100
SITE PLANS	
Major Site Plan application first submission	\$2000
Major Site Plan application first submission, per quarter acre	\$250
Minor Site Plan, per sheet	\$200
Resubmissions, per sheet	\$200
Revisions, per sheet changed	\$200
Request to extend time period of approval	\$200
Waiver request, per section of the zoning and subdivision ordinance or PFM	\$200
CONSTRUCTION: bituminous surface, per square yard	\$.51
CONSTRUCTION: curb and gutter, per linear foot	\$.92
CONSTRUCTION: header curb, per linear foot	\$.92
CONSTRUCTION: sanitary sewer, per linear foot	\$2.34
CONSTRUCTION: screening, per linear foot	\$2.34
CONSTRUCTION: sidewalk, per linear foot	\$1.35
CONSTRUCTION: storm drainage, per linear foot	\$4.39
CONSTRUCTION: TV inspection of pipe, per linear foot	\$2.32
CONSTRUCTION: rain gardens, per facility	\$250
CONSTRUCTION: overlot grading and surface drainage, per land division or disturbed acre, whichever has a higher total	\$200
CONSTRUCTION: stormwater detention facilities, BMP measures, other than rain gardens, per facility/measure	\$1000

TABLE 78-152.2.B.3: FEES FOR DEVELOPMENT APPLICATIONS	
TYPE OF FEE	AMOUNT
CONSTRUCTION: street lights, per light	\$50
CONSTRUCTION: inspection following a violation	\$160
As-built site plan, per sheet	\$50
SINGLE LOT DEVELOPMENT PLANS	
Initial submission	\$750
Second submission	\$0
Third and subsequent submissions	\$100
BUILDING LOCATION SURVEYS	
Building Location Survey	\$25
TEMPORARY USE SITE PLAN	
Uses less than 90 consecutive days	\$0
Uses more than 90 consecutive days	\$75
Resubmissions	\$75
Waiver request, per section of the zoning ordinance or PFM	\$75
Temporary health care structure application	\$100
PRELIMINARY SUBDIVISION PLANS	
Application: 1 to 5 lots	\$750
Application: 6 to 10 lots	\$1000
Application: more than 10 lots	\$1500
Application (regardless of number of lots), per lot	\$30
Resubmission, per sheet changed	\$200
Revision to an approved plan	\$200
Request to extend time period of approval	\$200
Waiver request, per section of the zoning and subdivision ordinance or PFM	\$200
SUBDIVISION SITE PLAN	
Initial Submission, first submission	\$1000
Initial Submission, first submission, per quarter acre	\$250

TABLE 78-152.2.B.3: FEES FOR DEVELOPMENT APPLICATIONS	
TYPE OF FEE	AMOUNT
Resubmission, per sheet changed	\$200
Revision, per sheet changed	\$200
CONSTRUCTION: curb and gutter, per linear foot	\$.92
CONSTRUCTION: street, per linear foot	\$1.20
CONSTRUCTION: sidewalk, per linear foot	\$1.35
CONSTRUCTION: sanitary sewer, per linear foot	\$2.34
CONSTRUCTION: storm drainage, per linear foot	\$4.39
CONSTRUCTION: TV inspection of pipe, per linear foot	\$2.32
CONSTRUCTION: waterline, per linear foot	\$1.75
CONSTRUCTION: rain gardens, per facility	\$250
CONSTRUCTION: overlot grading and surface drainage, per land division or disturbed acre, whichever has a higher total	\$200
CONSTRUCTION: stormwater detention facilities, BMP measures, other than rain gardens, per facility/measure	\$1000
CONSTRUCTION: street lights, per light	\$50
CONSTRUCTION: inspection following a violation	\$160
Sketch Plan	\$0
Rough Grading Plan	\$0
Waiver request, per section of the zoning and subdivision ordinance or PFM	\$200
PLATS	
Final Subdivision Plat and Deed, flat fee	\$300
Final Submission Plat and Deed, per lot	\$30
Request to extend time period of approval, per plat	\$200
Correction to recorded plat, per plat	\$200
Plat/Deed of Condominium	\$300
Plat/Deed of Condominium, per lot	\$30
Plat/Deed of ROW Vacation, per plat	\$150
Plat/Deed of Lot Line Adjustment, per plat	\$250

TABLE 78-152.2.B.3: FEES FOR DEVELOPMENT APPLICATIONS	
TYPE OF FEE	AMOUNT
Plat/Deed of Consolidation, per plat	\$250
Plat/Deed resubmissions, per document changed	\$100
ZONING AND SUBDIVISION ORDINANCE TEXT AMENDMENTS	
Change in permitted uses, density, open space, parking, landscaping	\$1000
Other than changes listed above; amendment involving changes to more than 100 words, changes to more than one section of the ordinances, or when number of words changed is unknown	\$500
Other than changes listed above; amendment involving less than 100 words in one ordinance section	\$250
MISCELLANEOUS ADMINISTRATIVE REVIEWS	
Administrative Adjustment, per building affected	\$50
Zoning Verification Letter: SFD properties	\$50
Zoning Verification Letter: non-SFD properties	\$300
Zoning Inspection Permit, per inspection	\$25
Request to Receive Notice of Development and Zoning applications, by mail, per year	\$25
Request to Receive Notice of Development and Zoning applications, by e-mail, per year	\$10
Request for early site occupation prior to completion of improvements in accordance with section 78-204.1 and 78-204.2, application flat fee	\$50
Request for early site occupation prior to completion of improvements in accordance with section 78-204.1 and 78-204.2, per inspection	\$50
Mobile Food Unit Preparer, Full Service Zoning Permit	\$100

C. Submittal Requirements, Generally. In most cases, any application for a development approval or other permit shall include the following items. Additional requirements are described in Section 78-155, Application Specific Requirements and Review Procedures:

1. **Signed Application.** A completed application form provided by the town and signed by the owner(s) or owner's agent(s).
2. **Payment.** Payment of required fee(s) as indicated Town of Herndon User's Guide 23, Fee Schedule.
3. **Statement of Authorization.** A statement of authorization from a landowner or other party authorizing an agent to act upon their behalf (if applicable).

4. **Pre-Application Conference Statement.** A statement indicating the date and time a pre-application conference was held with the town, as well as a list of participants in the conference.
5. **Neighborhood Meeting Statement.** A statement indicating the date, time, location, invitation list, number of attendees, and outcome of a neighborhood meeting if one was held prior to application submittal.
6. **Development Plan or Drawing.** If the application requires a plan or drawing, it shall be prepared in accordance with the following standards:
 - a. Site plans, single lot development plans, generalized development plans, preliminary subdivision plans, and subdivision site plans, plats, surveys, or any portion thereof, involving engineering, architecture, landscape architecture or land surveying, shall be prepared and certified respectively by an engineer, architect, landscape architect or land surveyor duly authorized by the state to practice as such.
 - b. Plans may be prepared in one or more sheets to show clearly the information required by this section and to facilitate the review and approval of the plan. If prepared in more than one sheet, match lines shall clearly indicate where the several sheets join.
 - c. The number of plans or drawings required for each type of application shall be determined by the zoning administrator.
 - d. Plans shall be prepared with the following scales:
 - (1) Generalized development plans and preliminary subdivision plan: one inch equals 50 feet or larger.
 - (2) Single lot development plans, site plans and subdivision site plans: one inch equals 30 feet or larger.
 - (3) Other plans (such as temporary use site plans, or administrative adjustment plans) shall be drawn to scale and signed by the preparer.
 - e. Sheet size shall not exceed 24 by 36 inches. Profiles must be submitted on standard plan profile sheets.
 - f. All lettering on plans shall be not less than one-tenth of an inch in height.
 - g. All horizontal distances shown on plans shall be in feet and decimals of a foot to the closest 1/100 of a foot, and all bearings in degrees, minutes and seconds to the nearest ten seconds.
 - h. All copies shall be clearly legible blue or black line copies.

7. **Contents of Plans.** Plans submitted with applications for a zoning map amendment, site plan (major and minor) subdivision site plan, single lot development plan, temporary use site plan, shall contain the information listed in the plan content tables found in the development application manual, as maintained by the zoning administrator.
8. **Taxes and Other Fees Must be Paid.** Prior to the initiation of an application by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a special exception, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits; or prior to the issuance of final approval, the applicant must produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, str management utility fees, or any other charges that constitute a lien on the subject property, that are owed to the town and have been properly assessed against the subject property, have been paid.
9. **Stormwater Management Submittal Requirements.** In addition to the requirements of Section 26-326, stormwater management plan contents for land disturbance in excess of 2,500 square feet, as listed in the plan content tables found in the development application manual.
10. **Other Submittal Requirements.** The plan content tables found in the development application manual include a list of additional materials that may be required when plans are submitted.

Sec. 78-152.3 Application Completeness

Original and revised applications shall be submitted to the zoning administrator pursuant to the application submittal schedule (Section 78-152.2.B) in the form established by the zoning administrator (Section 78-152.2.A.), along with a fee established pursuant to Section 78-152.2.B.3. It shall be the responsibility of the applicant to ensure that the application is complete and meets applicable submittal requirements. If, during the review process, the staff discovers that the application does not meet the requirements of sections 78-152.2.A-C. and any additional submittal requirements in the applicable section of Section 78-155, Application Specific Submission Requirements and Review Procedures, the application shall be considered insufficient and shall be returned to the applicant. Time limits for review of the application shall become void.

Sec. 78-152.4 Simultaneous Processing of Applications

Whenever two or more forms of review and approval are required under this chapter, the applications for those permits or development approvals may, at the option of the zoning administrator, be processed simultaneously, so long as applicable state and local requirements are satisfied. Each application is subject to review and decision on its own merits, and the simultaneous processing of the applications does not constitute

any representation that the individual applications will be approved or reviewed more favorably than if they had occurred separately. Simultaneous processing may result in additional costs for the applicant; for example, substantive changes in one application may necessitate the re-drawing of plans in a related application.

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 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. 78-152.6 Deferral and Withdrawal of Applications

A. Deferral of Application. Applications for development may be deferred by the applicant subject to the following provisions.

1. **Submittal of Request for Deferral.** Any request for deferral of an application shall be either submitted in writing to the zoning administrator, or made through an oral request during a public hearing.
2. **Deferral Prior to Notice of Public Hearing.** The zoning administrator shall approve a request for deferral of an application if it has been submitted prior to notification of a public hearing on the application pursuant to Section 78-153.2.H Public Hearing Notification.
3. **Deferral Subsequent to Notice of Public Hearing.** If the request for deferral of an application is submitted subsequent to notification of a public hearing pursuant to Section 78-153.2.H Public Hearing Notification, the request for deferral shall be placed on the public hearing agenda and acted upon by the advisory or decision-making body.
4. **Request for Deferral at a Public Hearing.** If the request for deferral of an application is made either orally or in writing subsequent to the beginning of the scheduled public hearing, the request for deferral may be considered and acted upon by the advisory or decision-making body.
5. **New Date for Public Hearing.** The date of the public hearing at which the application will be heard shall be set at the time the deferral is granted. The date of the public hearing shall be appropriate to allow compliance with Section 78-153.2.H, Public Hearing Notification. Except as noted in Section 78-153.2.I, Public Hearing Procedures, any time limits set forth in the Code of Virginia for the review of the application shall begin anew on the date of the public hearing at which the application will be heard.

B. Withdrawal of Application. Applications for development may be withdrawn by the applicant subject to the following provisions.

1. **Submittal of Request for Withdrawal.** Any request for withdrawal of an application shall be either submitted in writing to the zoning administrator, or made through a verbal request during a public hearing.
2. **Withdrawal Prior to Notice of Public Hearing.** The zoning administrator shall approve a request for withdrawal of an application if it has been submitted prior to notification of a public hearing on the application pursuant to 78-153.2.H.
3. **Withdrawal Subsequent to Notice of Public Hearing.** If the request for withdrawal of an application is submitted subsequent to notification of a public hearing pursuant to Section 78-153.2.H, Public Notification, the request for withdrawal shall be placed on the public hearing agenda and acted upon by the advisory or decision-making body.

Sec. 78-152.7 Examination and Copying of Applications Related Documents

In accordance with the provisions of § 2.2-3700 of the Code of Virginia, at any time upon reasonable request and during normal business hours, any person may examine an application, a staff report, and materials submitted in support of or in opposition to an application in the office of the zoning administrator. Copies of such materials shall be made available at a reasonable cost.

Sec. 78-153 Development Application Review Procedures

Sec. 78-153.1 Review Process for Application 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. 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.
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.
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.** 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.

- 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 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 a minimum of five days before the first scheduled work session for applications to the architectural review board, heritage preservation 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 heritage preservation review board shall conduct at least one public hearing for applications for certificates of appropriateness.
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 and Section.

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).
 - d. Identify the current zoning district designation of the land subject to the application.
 - e. 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 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.
 - (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, along with an affidavit with affirmation that notice meeting the content requirements of Section 78-153.2.H.5, was mailed 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.
 - (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.5, 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 heritage preservation 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 78-201.9(5) 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 heritage preservation 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.
 - 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 heritage preservation review board.

6. Registration to Receive Notice. Any individual, business, or organization in the town may register with the zoning administrator 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 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.
- 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:

- 1. 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 78-155.2.B, 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 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. 78-154 Development Application Decisions and Notification

Sec. 78-154.1 Conditions of Approval

- A. Approvals May Include Conditions.** Where a review board or town official may, according to the express terms of the Code of Virginia and this chapter, approve a permit or development with conditions (such as special exceptions and (variances), the board or official may impose restrictions or conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as are required to prevent or minimize adverse effects from the proposed development on surrounding lands.

B. Approval Conditions Must Be Stated and Directly Related to Proposed Development. The restrictions and conditions imposed must be related in both type and amount to the impact that the proposed development would have on the public and surrounding development. Conditions imposed shall be expressly set forth in the permit approval.

Sec. 78-154.2 Notification of Decision

Following a decision on an application, the decision-making officials, advisory or decision-making body, or the staff from that body shall notify the applicant of the decision in writing by mail.

Sec. 78-154.3 Lapse of Approval

Lapse of approval shall occur as provided by this chapter for the various types of development permits and approvals.

Sec. 78-155. Application Specific Submission Requirements and Review Procedures

The following sections provide specific standards and other requirements for development approvals for each type of application. These provisions apply in addition the general procedures in Sec. 78-152 through 78-154. In the case of a conflict, the more detailed standards shall apply.

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 § 15.2-2286(A)(7) of the Code of Virginia (as amended).
 - 3. 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;
 - 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 that 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 shall include ten copies 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.D.2 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 § 15.2-2303 of the Code of Virginia (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.
 - (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 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 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. Expiration of Planned Development Zoning Map Amendments. Approval of a “conditional” application for a zoning map amendment to a Planned Development (PD) districts shall be subject 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

- 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.
- 2. Proffer Review by ARB or HP Prior to Planning Commission Public Hearing (if applicable).** If an application for a zoning map amendment includes a proffer or proffers dealing with a building's exterior appearance or materials, the application and proffers shall be reviewed by the architectural review board, or heritage preservation review board if in a heritage preservation overlay district 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 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.

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:

- 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. Town Council Make 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.
- 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.

Sec. 78-155.2. - Zoning Ordinance Text Amendment (ZOTA)

- A. **Purpose and Intent.** The purpose and intent of this section is to provide a means for amending the text of this chapter.
- B. **Authority.** The town council may adopt an ordinance amending the text of this chapter upon compliance with the provisions of this section.
- C. **Initiation.** An application to amend the text of this chapter may be initiated by the town council: by resolution on its own initiative or following receipt of a petition from the planning commission or other board, or citizen.

D. Public Purpose. The town council shall state the public purpose for the proposed amendment and refer it to the planning commission for public hearing and a recommendation.

E. Submittal Requirements. The applicant shall submit:

1. **Specific Text.** A specific proposal for amending the text of the zoning ordinance.
2. **Affidavit.** The applicant shall submit a conflict of interest affidavit. The affidavit shall be signed by the applicant and state 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 in the property directly affected by the proposed amendment, either individually, by ownership of stock in a corporation or partnership.
3. **Statement of Justification.** The applicant shall submit a statement supporting the requested amendment to the zoning ordinance text.

F. Procedures for Zoning Text Amendments.

1. Planning Commission Public Hearing, Review and Action. If the town council adopts a resolution referring the proposed amendment to the planning commission, the planning commission shall conduct a public hearing on the application and review the proposed amendment 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, disapprove or change the proposed amendment based on the standards in Section 78-155.2.G. The report of the planning commission's recommendations shall be forwarded to the town council.

2. Town Council Public Hearing, Review and Action. 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 proposed amendment and review the proposed amendment as follows:

- a. At the public hearing, the town council shall consider the proposal, the relevant support materials, the staff report, the 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 78-155.2.G., the town council, by a majority vote of those present and voting, shall

adopt an ordinance amending the text of this chapter, continue the public hearing, refer the application back to the planning commission, or disapprove the application.

- c. During consideration of an application, the town council may make appropriate changes or corrections to the proposed amendment.

3. Effective Date of Amendment. Zoning ordinance text amendments shall take effect on the date specified in the associated ordinance approved by the town council and shall continue in effect until a subsequent amendment of the zoning ordinance text changes the associated zoning provisions.

G. Standards for Zoning Text Amendments. The advisability of amending the text of this chapter is a matter committed to the legislative discretion of the town council and is not controlled by any one factor. In determining whether to adopt or disapprove the proposed amendment, the town council may consider whether and to what extent the proposed amendment meets any of the following standards:

- 1. Comprehensive Plan Compliance.** Consistent with the comprehensive plan.
- 2. Meets Regulations.** Free of conflict with any provision of this chapter, related town regulations, or any other applicable local, state, or federal laws and regulations.
- 3. Change in Conditions.** Changed conditions justify an amendment.
- 4. Demonstrated Community Need.** Addresses a demonstrated community need.
- 5. Consistent with Purpose and Intent of Districts.** Consistent with the purpose and intent of the zoning districts in this chapter, or will improve compatibility among uses and will ensure efficient development within the town.
- 6. Promotes Orderly Development.** Results in a logical and orderly development pattern consistent with accepted or emerging planning practices.
- 7. Avoids Adverse Impacts.** Avoids adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
- 8. Adequate Facilities and Utilities.** Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).

Sec. 78-155.3. - Special Exception

- A. Purpose and Intent.** The special exception is utilized for a use that is potentially compatible with the other uses permitted in a zoning district, but requires individual review of location, design, configuration, and density and intensity of use and usually requires the imposition of conditions to ensure the appropriateness of the use at a particular location. The purpose and intent of this section is to establish procedures and standards for review of special exceptions.
- B. Authority.** The town council is authorized to review and approve, approve with conditions, or disapprove an application for a special exception pursuant to this section following review and recommendation by the planning commission subject to the following:
- 1. Specified Uses Only.** Only those uses identified as special exception uses in Section 78-70.2.D, Table of Principal Permitted and Allowed Uses or Table 78-70.2.C, Table of Permitted and Allowed Accessory Uses, may be considered for a special exception under this section.
 - 2. Special Exception Uses must be Evaluated for Compliance with Specific Standards.** The designation of a use as a special exception in Section 78-70.2.D, Table of Principal Permitted and Allowed Uses or Table 78-70.2.C, Table of Permitted and Allowed Accessory Uses, , does not constitute authorization that such use shall be approved as a special exception pursuant to this section. Rather, each proposed special exception use shall be evaluated by the town council for compliance with the standards set forth in this section, the standards for the use in Section 78-71, Principal Uses, Categories and Types, and any other relevant considerations.
- C. Submittal Requirements.** All applications for a special exception shall include all the items required in Section 78-152.2 Application Submission requirements, and the following, as applicable:
- 1. Zoning Administrator may Waive Certain Information Requirements.** All Information as indicated in Section 78-152.C.7, Contents of Plans, shall be included with the special exception application except that the zoning administrator may waive one or more of the required information elements if not needed to evaluate the application.
 - 2. Additional Requirements for Applications in Floodplain Overlay District.** Applications for development in the floodplain overlay district also shall incorporate the following information:
 - a. For structures that have been elevated, the elevation of the lowest floor, including the basement.

- b. For structures that have been flood proofed (nonresidential only), the elevation to which the structure has been flood proofed and the method of elevation.
- c. For single-family detached dwellings that are being restored or replaced as a result of casualty damage, any flood proofing methods used;
- d. A flood study performed by an engineer or other qualified person or agency evaluating the proposed project in relation to flood heights and velocities, the adequacy of the plans for protection and other related matters. Such study shall include the elevation of the 100-year flood before and after the proposed development and any additional information as may be deemed necessary by the zoning administrator, to include but not be limited to an engineering study or detailed calculation on any proposed drainage improvement.
- e. Topographic information showing existing and proposed ground elevations.

D. Procedures for Special Exceptions. The procedures and requirements for submittal and review of an application, public notification and scheduling the public hearing are established in Section 78-152, review procedures. In addition:

- 1. Additional Procedure for Special Exception Applications in the Floodplain Overlay District.** Within five days after an application for a special exception in the floodplain overlay district is accepted by the town, the zoning administrator shall notify the applicant, in writing, that the issuance of a special exception to develop a structure within the floodplain overlay district may increase the risks to life and property and will result in increased premium rates for flood insurance.
- 2. Planning Commission Public Hearing, Review and Action.** After public notification and the scheduling of a public hearing on the application, 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, approve with conditions or disapprove the application based on the standards in Section 78-155.3.E, standards.
 - c. The recommendation shall be forwarded to the town council.
- 3. Town Council Public Hearing, Review and Action.** After receipt of the recommendation from the planning commission, and public notification and the

scheduling of a public the town council shall conduct a public hearing on the application hearing and review the application as follows:

- a. At the public hearing, the town council shall consider the application, the relevant support materials, the staff report, the 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 the standards in Section 78-155.3.E, standards, as well as any other information deemed to be relevant, the town council shall either approve, approve with conditions, or disapprove the application.

E. Review Standards for Special Exceptions.

1. General Standards for All Special Exceptions Uses. A special exception may be approved upon a determination by the planning commission and town council, respectively, as to whether, and the extent to which, the proposed use(s) meet the following standards:

- a. Is consistent with the comprehensive plan.
- b. Is free of conflict with any provision of this chapter and related town regulations or any other applicable local, state, or federal laws and regulations.
- c. Does not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.
- d. Consistent with the purpose and intent of the zoning district in which it is located, or will improve compatibility among uses and will ensure efficient development within the town.
- e. Minimizes adverse visual impact of the proposed use on adjacent lands.
- f. Contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices.
- g. Minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.
- h. Avoids significant adverse impacts on the property values of surrounding lands or substantially and permanently injures the use of neighboring property for those uses that are permitted in the zoning district.
- i. Does not significantly and adversely impact the natural environment, including but not limited to water, air, noise, stormwater management,

wildlife, vegetation, wetlands, and the natural functioning of the environment.

- j. 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 and whether or not the proposed use is designed to ensure safe ingress and egress onto the site and safe road conditions on and around the site.
- k. Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).
- l. If 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.
- m. If located in the floodplain overlay district, meets floodplain overlay standards.

2. Special Review Standards for Floodplain Overlay District:

- a. Findings: If the land subject to the special exception is in the floodplain overlay district, the special exception shall be approved upon a finding by the planning commission and town council, respectively, that granting of the permit for the proposed structure, use or both shall not result in:
 - (1) Any increase in the established 100-year flood levels in the flood insurance study;
 - (2) Other unacceptable or prohibited increases in flood heights;
 - (3) Additional threats to public safety;
 - (4) Extraordinary public expense;
 - (5) Creation of a nuisance;
 - (6) Fraud or victimization of the public; or
 - (7) Conflict with other town, state, or federal laws and regulations.
- b. Technical assistance: The planning commission and town council may refer any application and accompanying documentation pertaining to any request for a special exception to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, the adequacy of the plans for protection and other related matters.

- c. Factors to be considered: The planning commission and town council shall consider the following factors in making the findings in Sec. 78-155.3.E.2.a. (1) through (7)
- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - (2) The danger that materials may be swept on to other lands or downstream to the injury of others.
 - (3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 - (5) The requirements of the facility for a waterfront location.
 - (6) The availability of alternative locations not subject to flooding for the proposed use.
 - (7) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - (9) The safety of access to the property in time of flood by ordinary and emergency vehicles.
 - (10) The expected heights, velocity, duration, rate rise, and sediment transport of floodwaters expected at the site.
 - (11) The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (12) Such other factors which are relevant to the purposes of this article.

3. Special Standards for Density and Height in the Residential Multi-Family (RM) District. The town council may permit an increase in the height and density for multi-family structures in the RM district with a special exception if the proposed RM development meets the following standards:

- a. The gross density does not exceed 20 dwellings per acre.

- b. The height of buildings does not exceed 50 feet.
- c. The development boundaries do not abut any established subdivision containing single-family detached homes.
- d. The proposed development meets standards (other than height and density) in Article III - Residential Zoning Districts, and Article VII, Use Regulations, and other provisions in this chapter.
- e. Additional open space (common or dedicated) above that required by Table 78-30.4.G: Table of Dimensional Standards in the RM Zoning Districts, part two, is provided in proportion to the requested increase in dwelling unit density.
- f. Additional common recreation space (developed) above that required by Section 78-113.3, Privately Provided Recreation Areas, is provided in proportion to the requested increase in dwelling unit density.

4. Special Review Standards for Condominium Conversions on Nonconforming Properties. Condominium and cooperative conversions may occur in accordance with Section 78-70.71.1.D.4, Condominium and Cooperative Conversions. The town council may permit the conversion of a non-condominium development that does not conform with currently-adopted zoning regulations to a condominium or cooperative regime with a special exception if the development meets the following standards:

- a. The applicant has submitted an analysis clearly showing the nonconforming features on the property;
- b. The applicant has presented preferred remedies to either correct or to mitigate each nonconforming feature to the extent possible, using as a guide all applicable standards contained in this chapter and other chapters of the Herndon Town Code;
- c. Nonconformities that cannot be mitigated are not likely to be adversely affected by the proposed conversion;
- d. For residential land uses, the application meets the requirements of section 78-70.71.4, Residential Condominiums, Condominium and Cooperative Conversions.

F. Effect of Special Exception Approval. Issuance of a special exception shall authorize the particular use that is so approved for the subject lot or parcel subject to the following:

- 1. Time Limitation.** The town council, based on the land use standards as appropriate and set out in Section 78-155.3.E., of this chapter, may limit the duration of the special exception.

2. **Approval Linked to Land.** Except for a special exception for a childcare center or day care center, the town council, based on the land use standards as appropriate and set out in Section 78-155.3.E., of this chapter, may ordain that a special exception, including any conditions, shall run with the land and not be affected by a change in ownership of the subject land.
3. **Approval Linked to Owner of Property, not Land.** In the absence of an approval expressly stating that a special exception is not affected by a change of ownership, the special exception shall not run with the land and shall terminate by:
 - a. A change in substantial ownership or possession of the subject land, or
 - b. Discontinuing the use for which the special exception was granted for a continuous period of two years or more; or
 - c. Expiration of the duration of such special exception approval as prescribed by the town council at the time of initial approval.
 - d. In case of conflict, such duration prescribed by the town council shall prevail.

G. Expiration Of Special Exception Approval for Inaction

1. **One Year Timeframe to File Site Plan.** Unless specified otherwise by the town council, a building permit must be issued for the development approved by the special exception within one year from the date of approval, and development shall be completed within the time allowed under the town's building regulations, or the special exception shall expire and become void.
2. **Extension Request Procedures.** Upon written application submitted at least 30 days prior to the expiration of the special exception by the applicant, and upon a showing of good cause, the town council may grant an extension not to exceed six months. The approval shall be deemed extended until the town council has acted upon the request for extension.

H. Revocation of Special Exception Approval. If a use requiring a special exception is found by the zoning administrator to be constructed or to be operating other than as required by the conditions in the approved special exception or in violation of any other section of the Herndon Town Code, the zoning administrator, following reasonable attempts to bring the property into conformance, shall prepare a report and submit it to the town council, detailing the nature of the violations. The town council may, following a duly advertised public hearing, revoke the special exception.

I. Termination of Special Exception.

1. **Request by Owner.** A special exception may be terminated by the submittal of a notarized letter from the current owner(s) of the property, addressed to the

zoning administrator. Upon receipt and verification of such letter, the special exception shall be terminated by the zoning administrator.

2. **Zoning Administrator Action.** If a use permitted by a special exception is terminated for a period of two years, the zoning administrator may terminate the special exception. .
- J. **Amendment of Special Exception.** A special exception may be amended, extended, or eliminated in accordance with the procedures and standards established for its original approval. .
- K. **Reapplication Time Limit.** No application for a special exception for the same lot shall be considered by the town council within a period of one year from its last consideration. This section, however, shall not impair the right of the town council to propose a special exception on its own motion.

Sec. 78-155.4. – Variances

- A. **Purpose and Intent.** The purpose and intent of this section is to establish procedures for the review of variances.
- B. **Authority.** Notwithstanding any other provision of law, general or special, the board of zoning appeals is authorized to grant upon appeal, or original application in specific cases, a variance as defined in Article XVIII. The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his or her application meets the standards for a variance as defined and according to the criteria set out in this section.
- C. **Variance Procedures.**
1. **Application Submission, Public Notice and Public Hearing Schedule.** The procedures and requirements for submittal of an application, public notification and scheduling the public hearing are established in Section 78-153, review procedures. An application for a variance must include the relevant items listed in Section 78-152.C, submittal requirements as well as copies of a statement of support for the requested variance.
 2. **Board of Zoning Appeals Public Hearing, Review and Action.** After public notification and scheduling a public hearing, the zoning administrator shall transmit a copy of the application to the board of zoning appeals, which shall conduct a public hearing on the application and review the application as follows:
 - a. At the public hearing, the board of zoning appeals 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 board of zoning appeals shall approve, approve with conditions, or disapprove the application based on the standards in Section 78-155.4.D standards, as well as any other information deemed to be relevant.

D. Variance Review Standards.

1. Variance Criteria. Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the applicable provision of this chapter, and all of the following;

- a. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
- b. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- c. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
- d. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property;
- e. The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application.
- f. The character of the zoning district in which the property is located will not be changed by the granting of the variance.

2. Variances in the Floodplain Overlay District. In the floodplain overlay district, variances shall be issued only in accord with the standards above and evaluated and processed as follows:

- a. In passing upon applications for variances related to floodplain districts, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the 100-year flood elevation.
 - (2) The danger that materials may be swept on to other lands or downstream to the injury of others.
 - (3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 - (5) The importance of the services provided by the proposed facility to the community.
 - (6) The requirements of the facility for a waterfront location.
 - (7) The availability of alternative locations not subject to flooding for the proposed use.
 - (8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - (9) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - (10) The safety of access by ordinary and emergency vehicles to the property in time of flood.
 - (11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - (12) The historic nature of a structure. Variances related to floodplain districts for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (13) Such other factors which are relevant to the purposes of this section.
- b. The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the

proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

- c. The board of zoning appeals shall notify the applicant for such a variance, in writing and signed by the zoning administrator, that the issuance of a variance to construct a structure below the 100-year flood elevation (i) increases the risks to life and property and (ii) will result in increased premium rates for flood insurance.
 - d. A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any such variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.
- E. Limitations on Expansions Once Variance is Granted.** Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance on or after July 1, 2006 shall be treated as conforming for all purposes under state law and town ordinance; however the use or the structure permitted by variance may not be expanded. For this subsection, "property" means only the zoning rights affected by the variance and the real estate rights directly supporting or related to these zoning rights, as determined by the zoning administrator. "Property" shall not necessarily mean the entire parcel of real estate that is the subject of a variance.
- F. Conditions of Approval.** In granting a variance, the board of zoning appeals may impose appropriate conditions on the permit approval pursuant to Section 78-154.1, Conditions of Approval, to ensure the standards of this section are met. The conditions may include conditions upon the location, character, and other features of the proposed structure or use as the board of zoning appeals may deem necessary in the public interest. The board of zoning appeals may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. The conditions shall be included as part of the permit approval.
- G. Appeal to Circuit Court.** Any person jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer or any officer, department, board, or agency of Fairfax County or the town, may appeal the decision to the Circuit Court of Fairfax County pursuant to, and within the time limits specified in, § 15.2-2314, Code of Virginia.
- H. Subsequent Development.** Development authorized by the variance shall not be carried out until the applicant has secured other permits required by this chapter or any other applicable provisions of the town. A variance, in itself, shall not ensure that the development approved as a variance shall receive subsequent approval for other applications for development approval.

- I. **Effect.** Issuance of a variance shall authorize the particular variance that is approved in the permit. A variance, including any conditions, shall run with the land and not be affected by a change in ownership.
- J. **Amendment.** A variance may be amended, extended, or eliminated in accordance with the procedures and standards established for its original approval.

Sec. 78-155.5. - Administrative Adjustments

- A. **Purpose and Intent.** The purpose and intent of this section is to establish the procedures and standards for administrative adjustments.
- B. **Authority.** The zoning administrator is authorized to review and approve, approve with conditions, or disapprove an application for an administrative adjustment pursuant to this section.
- C. **List of Permitted Administrative Adjustments.** An administrative adjustment may be considered under certain circumstances:
 1. **Building Setback in Case of Error.** An administrative adjustment may be considered for a building setback dimensional standard to accommodate an error in the siting of a building;
 2. **Required Setback to Accommodate Existing Tree.** An administrative adjustment may be considered for a required setback as a way to accommodate healthy existing trees and their root zones (see Section 78-111.5.A);
 3. **Wall or Fence in Secondary Front Setback on Certain Lots.** An administrative adjustment may be considered for a fence or wall in excess of four feet in height in a secondary front setback on a corner or through residential lot (See section 78-115.2); and
 4. **Security Fence or Wall up to 9' in Commercial Zoning District.** An administrative adjustment may be considered for a security fence or wall in a commercial zoning district up to and including nine feet in height (see Section 78-115.2).
- D. **Submittal Requirements for Administrative Appeals.** All applications for an administrative adjustment **shall meet the following standards as applicable:**
 1. **For Adjustment of a Building Setback or Required Setback.** An application for an administrative adjustment for items 1 and 2 shall include the applicable items required in section 78-152.2.C., Submittal Requirements, as well as the following:

- a. A boundary survey of the property;
- b. A plan showing the:
 - (1) Name and address of the owner and developer;
 - (2) Tax map reference number and street address of the subject property;
 - (3) Town, county, state;
 - (4) North point;
 - (5) Date;
 - (6) Scale of drawing;
 - (7) Number of sheets;
 - (8) A blank space three inches wide and five inches high for the use of the approving authority;
 - (9) Existing building(s) and use(s);
 - (10) Proposed building or addition;
 - (11) Dimensions and height of structures;
 - (12) Changes in physical improvements;
 - (13) Changes in setback lines;
 - (14) Lot area, zoning district designation, and present record owner of plat;
and
 - (15) Any additional information the zoning administrator deems appropriate.

2. Submittal Requirements for Walls, Fences and Security Fences. All applications for an administrative adjustment for items 2 and 3 shall include:

- a. A boundary survey of the property showing the:
 - (1) Name and address of the property owner and applicant;
 - (2) Tax map reference number and street address of the subject property;
 - (3) Date;
 - (4) Scale of drawing;

- (5) A blank space three inches wide and five inches high for the use of the approving authority;
 - (6) Property lines;
 - (7) Existing building(s) and use(s);
 - (8) Proposed fence or wall location;
 - (9) Height of the proposed fence or wall;
 - (10) Location of the architectural front of the principal structure on the lot; and
 - (11) Location of the architectural front of the principal structures on abutting parcels.
- b. Photographs of all sides of the property and the streets abutting the property;
 - c. A detailed written description of what the applicant is proposing and why; and
 - d. Any additional information the zoning administrator deems appropriate.

3. Administrative Adjustment Application Submission and Review Procedures.

- a. The procedures and requirements for submittal and review of an application are established in Section 78-152, Application Process and Procedures.
- b. The zoning administrator shall review the application pursuant to the requirements of Section 78-153.1, Development Application Review Procedures,. Review process for applications not requiring a public hearing.

4. Standards. An administrative adjustment may be approved upon a finding that no other requirement of this chapter is adversely affected and:

- (1) The building or structure encroaches no more than 18 inches into a yard or setback; and
 - (2) The building or structure does not exceed any setback or yard requirement by more than five percent.
- b. For an adjustment to a required setback:
 - (1) The encroachment in a required building setback is no greater than five percent; and
 - (2) The community forester has verified that the adjustment would help accommodate healthy existing trees and their root zones.

- c. For an adjustment to permit a fence or wall:
 - (1) The sight distance requirements of Section 78-21.E., Visibility Clearance, are met; and
 - (2) The applicable standards found in Section 78-115, Walls, Fencing, and Hedge Standards, are met.

- 5. **Subsequent Development.** Development authorized by the administrative adjustment shall not be carried out until the applicant has secured other permits required by this chapter or any other applicable provisions of the town. An administrative adjustment, in itself, shall not ensure that the development approved as an administrative adjustment shall receive subsequent approval for other applications for development permit or approval.

- 6. **Effect of Approval.** Issuance of an administrative adjustment shall authorize the particular administrative adjustment that is approved in the permit. An administrative adjustment, including any conditions, shall run with the land and not be affected by a change in ownership.

- 7. **Amendment to an Administrative Adjustment.** An administrative adjustment may be amended, extended, or modified in accordance with the procedures and standards established for its original approval.

Sec. 78-155.6. Site Plans, Subdivision Plans, Single Lot Development Plans and Building Location Surveys

- A. **Purpose and Intent.** This section establishes procedures and standards for review of subdivision plans, site plans, single lot development plans and building location surveys to ensure development complies with the development standards of this chapter and other related town ordinances and regulations, and state and federal regulations. These review procedures and standards are intended to:
 - 1. Ensure the layout and general design of proposed development is compatible with surrounding land uses and complies with applicable provisions of this chapter;
 - 2. Foster consultation and cooperation between neighborhoods and developers proposing to develop land and the town;
 - 3. Balance rights of the property owner with the development goals of the town and the rights of adjacent landowners;
 - 4. Minimize the adverse impacts of development on the investments of surrounding landowners;
 - 5. Ensure site design minimizes negative impacts on the environment, drainage, soil erosion, and stormwater control;

6. Ensure the arrangement, location, and design of development is consistent with the character of the area and the goals of the comprehensive plan including but not limited to aesthetics, the environment, historic resources, property values, quality of life, and other public health, safety and welfare objectives;
7. Ensure site design minimizes negative impacts on roadway capacity, the safety of motorists and pedestrians, utilities, and community facilities and services;
8. Ensure safe and efficient circulation for motorized and non-motorized traffic and pedestrians within and adjacent to sites; and
9. Provide for the gradual upgrade of existing sites that do not conform with existing standards.

B. Applicability. All development, unless exempted pursuant to Section 78-155.6, Exemptions, shall have a subdivision plan, site plan, single lot development plan or building location survey reviewed and approved pursuant to the procedures and standards of this section and prior to issuance of a building permit. Any such approved plan may be amended or extended in accordance with the procedures in this section.

C. Exemptions. The following development is exempt from the requirements of this section. Other portions of this chapter or the Herndon Town Code may apply.

1. **Certain Satellite Dishes.** Roof-mounted satellite dishes.
2. **Certain Internal Construction.** The internal construction or alteration of the floor area of a development which does not increase gross floor area, increase the intensity of use, or increase the number of parking spaces required.
3. **Land Disturbance under 2,500 square feet, Generally.** Land disturbance not otherwise associated with a site plan or subdivision plan within an area of less than 2,500 square feet, except review shall be accomplished as may be otherwise required in accordance with the provisions of Section 78-60.4, Chesapeake Bay preservation overlay district.
4. **Certain Temporary Uses.** Certain temporary uses in accordance with Article IX, Temporary Uses and Structures.

D. General Procedures for Development Applications Approved Administratively

1. **Applications Subject to Administrative Review.** The following are development applications that may be approved administratively:
 - a. Building location survey;
 - b. Single lot development plan;

- c. Minor site plan and plan revision;
- d. Temporary use site plan;
- e. Subdivision plan;
- f. Major site plan and plan revision.

2. General Application, Review and Approval Procedures. Applications that require administrative approval shall subject to the following provisions:

- a. The basic procedures and requirements for submittal and review of an application are established in Section 78-153, Development Application Review Procedures.
- b. The zoning administrator shall review the application pursuant to the requirements of Section 78-153, Development Application Review Procedures.
- c. The applicant may appeal a final decision of the zoning administrator on the administrative approval or disapproval of a development application to the town council within 30 days of the decision.
- d. If a final decision of the zoning administrator is appealed pursuant to this section, the zoning administrator shall schedule a hearing on the appeal at the earliest feasible meeting of the town council. At the hearing, the town council shall consider the appeal and application, the relevant support materials, the staff report, the decision of the zoning administrator, and the testimony and evidence given at the hearing. After the close of the hearing, and based on the standards in Section 78-155.6.G, Standards, the town council shall either affirm, modify or reverse the decision of the zoning administrator on the application.

E. Specific Development Application Standards for Development Applications Approved Administratively

1. Building Location Survey. An application for a Building Location Survey shall be subject to the following provisions:

- a. Residential development, other than construction of decks, that requires a building permit and that does not require a subdivision plan, site plan, or single lot development plan must submit an application for review and approval of a building location survey prior to applying for a building permit.
- b. A building location survey must be prepared to scale and must show:
 - (1) Boundary survey of the property based on record data and containing the seal of a licensed preparer;

- (2) Size and location of existing and proposed structures with dimensions;
- (3) Distances from all structures to all lot lines;
- (4) Height and number of stories of existing and proposed buildings;
- (5) Existing and proposed easements;
- (6) Existing and proposed impervious surfaces with dimensions;
- (7) Any structures proposed for demolition as part of the building permit;

2. Single Lot Development Plan. An application for a Single Lot Development Plan shall be subject to the following provisions:

- a. The following development on individual residential lots (single-family detached or duplex lot-by-lot development) shall be in accordance with the requirements of this section and all other applicable sections of this chapter:
 - (1) Land disturbance of 2,500 square feet or more, with or without any other construction.
 - (2) Construction or replacement of a dwelling.
 - (3) Construction, replacement or enlargement of an accessory building when the alteration is 750 square feet of floor area or more.
 - (4) Enlargement of a dwelling when the footprint of the enlargement is 750 square feet or more, measured from the exterior walls of the proposed addition.
- b. Certain public improvements are required when a single lot development plan is submitted.
 - (1) Development and redevelopment of lots shall include the provision of curb, gutter, sidewalk and on-site drainage improvements. A waiver from the zoning administrator may be requested and considered for the curb, gutter and sidewalk improvements if at least one of the following criteria is met:
 - (a) Provision of curb and gutter along the street would cause the subject property to become the only lot in the neighborhood with curb and gutter; or
 - (b) The street on which the subject property fronts is not on the town's plan for installation of curb and gutters.
 - (2) In lieu of providing the curb, gutter, and sidewalk improvements, the applicant shall, unless this requirement is waived by the zoning

administrator in accordance with subsection 78-155.6.E.1.2.b(1), make a cash contribution to the town's street improvement program equivalent in value to the cost of installing the improvements. After consultation with other town staff, the zoning administrator shall determine the value of the cash contribution using recognized standards.

- (3) Neither the cost of installing the improvements nor the value of the cash contribution shall exceed five percent of the value of the sum of all other lot improvements.
 - (4) Development shall comply with the Town's Public Facilities Manual (section 1-16, standards for public improvements adopted by reference.)
- c. Prior to issuance of a certificate of occupancy for any new or replacement dwelling built in accordance with a single lot development plan, the applicant shall submit for approval a house location survey on sheets of 8.5 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:
- (1) The distance from all structures to all lot lines;
 - (2) The elevation of the floor plate and the height of the building;
 - (3) The deed book and page number for the easements and conveyances shown on the plat.

3. Minor Site Plan and Minor Site Plan Revision (for uses other than single family detached or duplex dwellings). The following development constitutes a minor site plan and shall be reviewed pursuant to the review procedures for applications that do not require a public hearing in Section 78-153.1:

- a. Additions to existing buildings, other than single family detached or duplex dwellings, when the addition does not exceed one-quarter of the gross floor area of the original building or 1,500 square feet, whichever is smaller;
- b. Accessory buildings appurtenant to nonresidential uses and containing less than 1,500 square feet;
- c. Land disturbance of 2,500 or more square feet, including: any grading, excavation, filling, soil removal, clearing of trees, or paving, without any other site improvements;
- d. Walls above seven feet in height;

- e. Permanent outdoor display areas, permanent outdoor seating areas for 25 or fewer seats, additional sidewalks, parking spaces, landscaping, and similar minor changes;
- f. Revisions which in the judgment of the zoning administrator contain minor changes in the physical improvements of a previously approved site development plan; or
- g. Site plans not otherwise described in this chapter and which in the judgment of the zoning administrator contain minor changes to the subject property.

4. Temporary Use Site Plans. The provisions of this section shall apply to proposed temporary uses as set forth in Article IX, Temporary Uses or Structures as follows.

- a. Applications for a temporary use shall include the applicable requirements of Section 78-155.2.C, submittal requirements, the information listed in the plan contents tables found in the development application manual and the following:
 - (1) Contact information for a party who has agreed to be responsible in the event that the temporary use is found to be in violation of this chapter, including phone number, street address, permanent residence, and adequate proof of the validity of the contact information provided.
 - (2) A letter signed by the owner or owner's agent consenting to the submittal of the application shall be submitted. If the letter included with the application is faxed or photocopied, the letter containing the original signature shall be submitted to the town within five business days of application submittal.
 - (3) A written description of the proposed activity, including an analysis of any noise that may not comply with the noise provisions in the Herndon Town Code; and associated signage.
- b. The procedures and requirements for submittal and review of an application are established in Section 78-153, review procedures. The zoning administrator shall review the application consistent with the requirements of Section 78-153.1, administrative approval procedures. Site plans for temporary uses may be approved administratively unless a public hearing is specifically required for a particular use as described in section Article IX.. A zoning inspection permit is required for temporary uses for which a temporary use permit is required.

F. Major Site Plans and Major Site Plan Revisions. The provisions of this section shall apply to major site plans and major site plan revisions.

1. **Application Requirements.** Applications for a site plan shall include the items required in Section 78-152.2, application submission requirements and the plan contents tables found in the development application manual, as maintained by the zoning administrator.
 2. **Written Notice Required.** Written notice of the application must be provided to adjoining neighbors prior to submission. The procedures and requirements for the provision of written notice are established in Section 78-153.2.H, Public Hearing Notification.
 3. **Posted Notice Required.** Posted (placard) notice shall be required. The procedures and requirements for posting placards on the property are established in section 78-153.2.H.4.
- G. Standards For Development Applications.** Development applications may be approved upon a determination by the decision-making authority that the development and uses proposed and the general layout and design comply with:
1. **Principal Use Provisions.** Applications must comply with Section 78-71 Use Regulations: Principal Use Categories, Characteristics and Types.
 2. **Development Standards.** Applications must comply with All appropriate standards in Article XI -Development Standards.
 3. **Safe Ingress and Egress.** Applications must demonstrate compliance with conventional practices for providing safe ingress and egress onto the site and safe road conditions around the site.
 4. **Other Applicable Standards.** Applications must comply with all other applicable standards, provisions and regulations of this chapter, other chapters of the Herndon Town Code, and any applicable federal, state or local laws.
- H. Performance Guarantees.** Performance guarantees shall be posted in accordance with the standards in Article XII, Performance Guarantees.
- I. Required Improvements.** All improvements shall be shown on the site plan (excluding a single lot development plan) and installed at the cost of the applicant in accordance with the Town of Herndon Public Facilities Manual (1997), as amended, as described in section 1-16 of the Herndon Town Code, and the following standards:
1. **Pedestrian Walkways.** Designation of pedestrian walkways so that patrons may walk safely and conveniently on such walkways from store to store or building to building within the site and to adjacent sites, and to the public right-of-way;
 2. **Adequate Vehicular Access.** Provision of adequate vehicular access facilities to and within the site and between adjacent sites, given consideration to the

nature of the site, the proposed use, adjacent sites and uses, and the nature of roadways serving the site, and with the overall objective of providing optimal vehicular access and circulation to and within the site, while minimizing interference with through traffic on the road network. In furthering this objective, the following improvements may be required:

- a. Construction and dedication of an interparcel access drive or drives to provide vehicular travel to and from adjacent parking areas and property, constructed according to town specifications. The setback requirements shall be no greater if the access drive is dedicated than without the dedication; and
 - b. Any additional requirements for access as required by the fire marshal.
3. **Stormwater Management.** Stormwater management provisions in accordance with chapter 26 of the town code, environment, and section plan shall meet the content requirements of Section 78-152,2,C,9, Stormwater Management Plan submittal requirements.
 4. **Landscaping, Screening and Open Space.** Screening, landscaping and open space as required by the provisions of this chapter.
 5. **Public Easements and Rights of Way.** Easements or rights-of-way, clearly defined for the purposes intended, for facilities to be publicly maintained.
 6. **Curb and Gutter.** Curb and gutter provisions are as follows:
 - a. Curb and gutter shall be required:
 - (1) For travel lanes or driveways that provide vehicular travel to and from adjacent parking areas or adjacent property for the purpose of separating same from parking areas and walkways.
 - (2) Around the perimeter of all parking areas. Such curb and gutter shall meet the requirements of the public facilities manual adopted by the town.
 - (3) Along the street frontage of the subject property and along any streets to be constructed as part of the subject development.
 - b. Curb and gutter may be waived
 - (1) Upon a determination by the reviewing authority that such waiver will be of benefit for the natural environment and stormwater management practices; will not have an adverse impact on the site and on the surrounding area; and upon consideration of the following items:
 - (a) Stated reasons for the request for the waiver;

- (b) Size of the parking and loading area(s) and the percentage of these areas proposed for the waiver.
- (c) Resultant effect of the modification or waiver on the natural environment, storm drainage, water quality and E&S based upon information, including an engineering study if requested by the reviewing authority, provided by the applicant or other sources.
- (d) Type of vehicles that will use the facility and frequency of use.

(2) The reviewing authority may approve or deny such request and may impose such conditions, restrictions and time limitations as may be deemed necessary to assure that the streets, travel lanes, driveways and off-street parking and/or loading areas will be compatible with and will not adversely impact the adjacent area. Such conditions and restrictions may include but need not be limited to, the following:

- (a) A detail of the edge of pavement conditions shall be shown on the site plan in the area where the waiver is requested.
- (b) The location subject to the waiver of curb and gutter may be restricted.
- (c) The waiver of curb and gutter may be revoked upon a change in the use of the site, site conditions or adjacent properties if the change warrants the provision of curb and gutter.
- (d) Where a special typical section is approved, details shall be provided on plans.

7. Site Lighting. Adequate site lighting as required by this chapter and other relevant town regulations and policies.

8. Utilities. New and existing utilities placed below ground, in accordance with accepted standards of utility practice for underground construction. The developer shall be responsible for arranging with the appropriate utility so that new, existing, or relocated distribution and customer service utility facilities, carrying or used in connection with water, sanitary sewer, electric power, communications, cable television, petroleum, gas or steam, installed within the boundaries of the site, or within the adjacent public right-of-way shall be placed below the surface of the ground. The following equipment may be installed above ground on the site, and shall be shown on the site plan:

- a. Equipment such as electric distribution transformers, switchgear, meter pedestals, and telephone pedestals which is normally installed above ground in accordance with accepted utility practices for underground distribution;

- b. Meters, service connections, and similar equipment normally attached to the outside wall of the premises they serve; and
- c. Temporary overhead facilities required for construction purposes.

9. Road Improvements. Where allowed by law, dedication, construction, and improvement of an abutting street, highway, or portion thereof when the subject property of a site plan abuts a public street or any other street appearing on the comprehensive plan map adopted by the town council, or any street which may be required for the general welfare and safety in conformance with established criteria, construction standards, and specifications of the town.

10. Dedication Requirements. The dedication requirements for public streets shall apply to internal streets needed to serve the development proposed in a site plan except in cases where the internal streets are to remain private. Private streets and driveways in residential developments shall be built to public street standards.

11. Other Required Improvements. Provision of any other required improvements identified in this chapter or the subdivision ordinance.

J. Expiration of Approval. Approved site plan, subdivision plans, and single lot development plans shall be subject to the following time limitations.

1. Five Year Approval Period. Site plan, subdivision plan, and single lot development plan approval shall automatically expire at the end of a five-year period following the date of its final approval by the zoning administrator for any phase or part of an approved site plan for which a building permit has not been approved.

2. Development Limitations after Expiration of Approval. No building permit shall be approved and no site development shall be commenced after the expiration of the five-year period of validity. Thereafter, any undeveloped portion of the site can be developed only in accordance with a new site plan approved according to standards in effect at the time of the subsequent approval. A change in ownership of the property does not affect this provision.

3. Extension Requests prior to Expiration. Upon written application submitted at least 30 days prior to the expiration of the validity period by the applicant and upon a showing of good cause, the reviewing authority that approved the site plan or single lot development plan may grant an extension not to exceed six months. The approval shall be deemed extended until reviewing authority has acted upon the request for extension.

K. Revision, Change, or Erasure. No revision, change, or erasure shall be made on any approved single lot development plan, subdivision plan, site plan or

accompanying data sheets unless the reviewing authority that approved the plan has approved the change, except as otherwise provided.

- L. **Waiver.** The zoning administrator may waive any requirements of this section in specific cases where such requirement is found to be unreasonable and such waiver will not be adverse to the intent of this chapter.
- M. **Minor or Technical Changes.** The zoning administrator may approve minor or technical changes to an approved plan.
- N. **Finality.** A site plan or single lot development plan shall be deemed final once it has been reviewed and approved by the town, including the recordation of associated plats and acceptance by the town of any performance guarantees (Article XII). The zoning administrator's signature on the final site plan or single lot development plan shall indicate that all requirements, including the posting of performance guarantees, have been met and that the final site plan or single lot development plan is approved.
- O. **Inspection and Supervision During Installation.** Improvements required as part of an approved plan shall be subject to the following provisions:
 1. **Improvements to Conform to Town Standards.** Unless specifically provided for in this chapter, the construction standards for off-site public improvements and on-site public improvements required by this section shall conform to the town design and construction standards. The public works director shall approve the plans and specifications for required improvements and shall inspect the construction of such improvements to ensure conformity thereto.
 2. **Inspections.** Inspections during the installation of the off-site public improvements and required on-site public improvements shall be made by the department responsible for such improvements as required to certify compliance with the approved site plan or single lot development plan and applicable standards.
 3. **Advanced Notification.** The owner, owner's agent, or developer shall notify the public works director, in writing, three days prior to the beginning of street or storm sewer work shown to be constructed on the site plan or single lot development plan.
 4. **Supervision of Work.** The owner, owner's agent, or developer shall provide adequate supervision on the site during the installation of required public improvements and have a responsible superintendent or foreman, together with one set of approved plans, profiles, and specifications available at the site at all times when work is being performed.
 5. **Acceptance of Improvements.** The installation of improvements as required in this chapter shall in no case serve to bind the town to accept such improvements for the maintenance, repair, or operation thereof, but such

acceptance shall be subject to the existing regulations concerning the acceptance of each type of improvement. *Formerly Sec. 78-202.6(m)(5)*

P. As-Built Plan. Upon completion of development associated with a site plan (major or minor) or subdivision plan, an "as-built" plan shall be submitted in accordance with following provisions.

- 1. Copies of As-Built Plans to be Provided to Town.** Upon final completion of the development, three copies of a certified "as-built" plan prepared by a licensed professional engineer or licensed land surveyor registered in the state, shall be submitted to the town for verification of features shown. Revision and resubmittal may be needed to obtain the staff's verification of the "as-built" plan. Once verification has been affirmed, the subdivider shall submit:
 - a. Three copies of the final certified "as-built" plan prepared by a licensed professional engineer or licensed land surveyor registered in the state;
 - b. A "read only" version of the "as-built" site plan in an electronic format approved by the director of public works.
- 2. As-Built Plans Controls Development.** Following approval of the "as-built" plan, it shall control development on the property unless the plan is amended or replaced.
- 3. Contents of As-Built Plan.** In addition to reflecting all specifications and features shown on the approved plan, the certified "as-built" plan shall include the following:
 - a. Pages corresponding with all pages in the approved plan set;
 - b. Boundary of the site as shown on the approved site plan or final plat of record. The "as-built" plan shall show any geodetic reference points located on the site.
 - c. Locations of all storm sewer, sanitary sewer, fire hydrants and associated easements including all waterline easements. For storm and sanitary sewers, the pipe sizes, lengths, top and invert elevations and percent grade of pipes as computed shall also be shown.
 - d. Ponds, including detention, retention and best management practice (BMP) ponds, showing elevations of tops of embankments, toes of embankments, weirs, spillways, drainage structures, access easements and capacities of such ponds. Capacities shall be shown both volumetrically and topographically with sufficient elevations to calculate the capacities.
 - e. Rain gardens, drainage swales and detention trenches.

- f. Description of location and type of alien, invasive plant species removed from the site in accordance with Section 78-110.2.
- g. Deed book and page number(s) of the recordation in the land records of Fairfax County of dedications and easements reflected on the approved site plan.
- h. All utility locations, except building and service connections, with the notation "from available records." The applicant shall obtain such plans and records from the appropriate utility companies.
- i. A statement of certification by a licensed professional engineer or land surveyor registered in the state, certifying that the "as-built" plan conforms with the criteria listed above and represents actual conditions on the site for those items only, and bearing the engineer's or surveyor's seal, signature and Virginia registration number.

Q. Maintenance of Site Improvements. Following approval of the "as-built" plan, it shall control the maintenance of site improvements unless the site plan is amended. All improvements shown on the site plan shall be maintained in a manner that protects the safety and convenience of persons using the site as well as surrounding property values. All required installation for stormwater management shall be maintained in working order by the property owner unless otherwise agreed by the town in writing. All required landscaping, parking spaces and other features shall be adequately maintained in good condition.

Sec. 78-155.7. Zoning Inspection Permit

- A. Applicability.** A zoning inspection permit (ZIP) is required prior to occupancy or operation of the following developments and uses:
 - 1. Home-based businesses.
 - 2. Bed and breakfast establishments, in accordance with the conditions of Section 78-80.4.D, permits and inspections.
 - 3. Temporary uses for which a temporary use permit is required.
 - 4. The keeping of fowl, in accordance with the standards of Section 78-80.4.L
- B. Procedure.** Application for a ZIP shall be made to the zoning administrator on forms provided by the zoning administrator as follows:
 - 1. **Occupancy Permit Required.** An application for a ZIP shall not be approved until the building official has issued an occupancy permit for the subject use, if a building permit is required.

2. **Submission Requirements.** All applications for a ZIP shall include the applicable items required in Section 78-152.2, Application Submission Requirements.
3. **Review and Inspection.** After the application is accepted by the town, the zoning administrator shall review the application, inspect the subject property and take action on the application.
4. **Approval.** A ZIP may be approved upon a finding that the development that is the subject of the application complies with applicable standards of this chapter.

Sec. 78-155.8. Zoning Appropriateness Permit

- A. **Applicability.** To ensure the proposed use of structures, buildings, and land complies with the standards of this chapter, a zoning appropriateness permit (ZAP) is required. prior to issuance of a business license for each individual establishment that is a new, renamed, or relocated non-residential use within the town, excluding any home-based business and multi-family development;
- B. **Procedure.** Application for a ZAP shall be made to the zoning administrator on forms provided by the zoning administrator as follows:
 1. **Information Required.** Where an applicant for a ZAP is engaged in two or more businesses, trades, or occupations at the same location, each business, profession, trade, or occupation shall be listed on the application for the ZAP.
 2. **Submission Requirements.** All applications for a zoning appropriateness permit shall include the applicable items required in Section 78-152.2, Application Submission Requirements.
 3. **Review and Inspection (if appropriate).** After the application is accepted by the town, the zoning administrator shall review and take action on the application. Inspection of the subject property by the zoning administrator is not required for a zoning appropriateness permit, but may occur if deemed appropriate by the zoning administrator.
 4. **Approval.** A zoning appropriateness permit may be approved upon a finding the proposed use of the structure, building, and land is allowed in the applicable zoning district and meets applicable requirements and standards in this chapter and the Herndon Town Code.
- C. **Expiration/Extension of Permit.** A zoning appropriateness permit shall expire at the end of six months after the date of its initial approval if business license or business license relocation has not been approved, or the establishment has not opened to the public. Upon written request, the zoning administrator may grant one six-month extension of the zoning appropriateness permit for good cause shown.

- D. Amendment of Permit.** A zoning appropriateness permit may be amended, extended, or modified in accordance with the procedures and standards established for its original approval.

Sec. 78-155.9. Calculation of Density/Intensity Credit.

A. Density/Intensity Credit. In cases where fee simple title to real estate within a lot or parcel is needed by the town for a public purpose, and the landowner, through police power or through condemnation power, dedicates or conveys this real estate to the town, the town shall provide a density or intensity (floor area ratio), or both credit to the landowner proportional to that area conveyed for the public purpose to the remaining otherwise still developable land. Where the remaining land is not otherwise still developable, the town must, under condemnation law, acquire the whole lot or parcel. In other such cases, where none of a parcel to be acquired is developable, no density/intensity credit shall be granted. No such dedication or conveyance results in or increases a nonconformity of the lot or parcel or structure on the land retained by the landowner. Any resulting setback or yard determinations shall be measured from the post-conveyance land configuration with necessary changes to carry out the principle in previous sentence. The town grants the credit in accordance with the following standards:

- 1. Approval and Recordation.** There is approval of density/intensity credit prior to the recordation of the deed, dedication, or conveyance among the county's land records by:
 - a. The town council in approving a rezoning or special exception application when dedication or conveyance is part of such application; or
 - b. The subdivision administrator in approving a subdivision plat in accordance with the subdivision ordinance or the zoning administrator in approving a site plan in accordance with this chapter, when dedication or conveyance is part of such subdivision plat or site plan; or
 - c. The town manager or designee when such dedication or conveyance is not proposed as part of the approval of a rezoning, special exception, subdivision plat, or site plan.
- 2. Computation of Credit.** The density/intensity credit shall be computed by determining the (i) density or intensity for the lot or parcel that by right or by accepted proffer would be available to the landowner without the dedication, conveyance, or condemnation and the (ii) density or intensity for the lot or parcel that would be available to the landowner after the dedication, conveyance, or condemnation. The difference between element (i) and (ii) in the previous sentence represents the density/intensity credit allocated to the lot or parcel. The zoning administrator shall determine and certify in writing the density/intensity credit for the lot or parcel and shall file this certificate in the office of the town clerk.

3. **Required Plat.** Prior to dedication, conveyance, or condemnation, the landowner shall submit to the town a plat of dedication, prepared by the town in case of use of condemnation powers. The plat shall show the land area to be dedicated, conveyed, or condemned, the resultant lot or parcel and the appropriate density/intensity allocations by the town council, zoning administrator, subdivision administrator, or town manager, as appropriate. Such plat and an accompanying deed or other instrument providing for a dedication or conveyance to the town for public use shall be recorded among the land records of the county, and shall specifically reserve the density/intensity credit to the remainder of the lot or parcel. Thereafter, any reallocation of such density/intensity credit shall require a resubmission to and approval by the town council, zoning administrator, subdivision administrator, or town manager, as appropriate.
4. **No Monetary Compensation if Density/Intensity Credit Accepted.** The area to be dedicated or conveyed will be deeded to the town and such dedication or conveyance will not be in exchange for monetary compensation. Nothing in this section shall diminish or affect a landowner's right to reject the provisions of this section and to seek to receive just compensation for real estate taken or acquired by the town using powers of condemnation.
5. **Credit Runs with the Land.** A density/intensity credit in accordance with this paragraph shall run with the land remaining after such dedication, conveyance, or condemnation.
6. **Not a Subdivision or Lot Line Adjustment.** Unless growing out of a formal subdivision or lot line adjustment, such dedication or conveyance shall not be treated as a subdivision or lot line adjustment.
7. **Effective after January 1, 2011.** A density/intensity credit in accordance with this paragraph shall be applicable to lots or parcels having dedicated, conveyed, or through condemnation provided real estate to the town from January 1, 2011 and afterwards.

Sec. 78-156. Requirements for Supplemental Application Materials

Certain development applications and proposed uses require additional information for review of development impacts. Where required per this chapter or by the zoning administrator, such supplemental information shall meet the following standards.

Sec. 78-156.1. Traffic Impact Studies

- A. **Purpose and Intent.** The traffic impact study assesses the impact likely to be created on capacity, level of service by a proposed development. Traffic studies shall identify what improvements, if any, are needed to ensure safe ingress to and egress from a site, maintain adequate street capacity on public streets serving the development, ensure safe and reasonable traffic operating conditions on streets and at intersections in the vicinity of a proposed development, avoid creation of or

mitigate existing hazardous traffic conditions, minimize the impact of non-residential traffic on residential neighborhoods in the community; and protect the substantial public investment in the existing street system.

B. Applicability. A traffic impact study is required as follows:

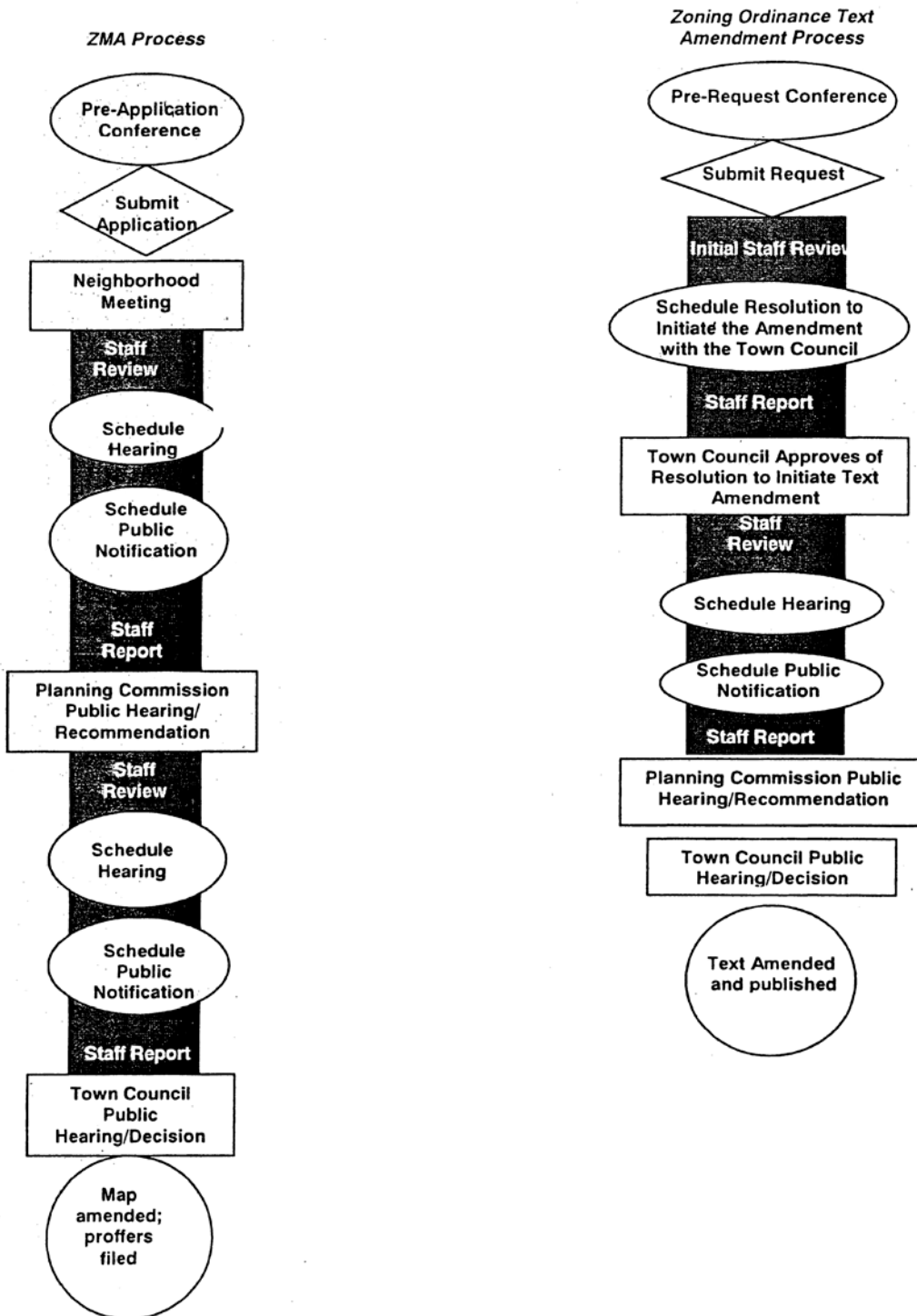
1. **Certain Development Applications and Uses.** A traffic impact study is required for a preliminary subdivision plan, subdivision site plan when a preliminary plan is not submitted, special exception, or official zoning district map application for the following proposed developments:
 - a. Residential proposals in excess of 20 dwelling units.
 - b. Nonresidential proposals in excess of 10,000 square feet of floor area.
 - c. Any commercial drive-through service proposal.
 - d. Uses other than residential single lot development with proposed direct vehicular access to Elden Street or Herndon Parkway.
 - e. Any expansion of an existing use exceeding 5,000 square feet if no traffic impact study has been approved for the use in the five-year period preceding the application for expansion.
2. **PD-TOC Development Plan Application.** A traffic impact study is required in conjunction with a PD-TOC Development Plan application.

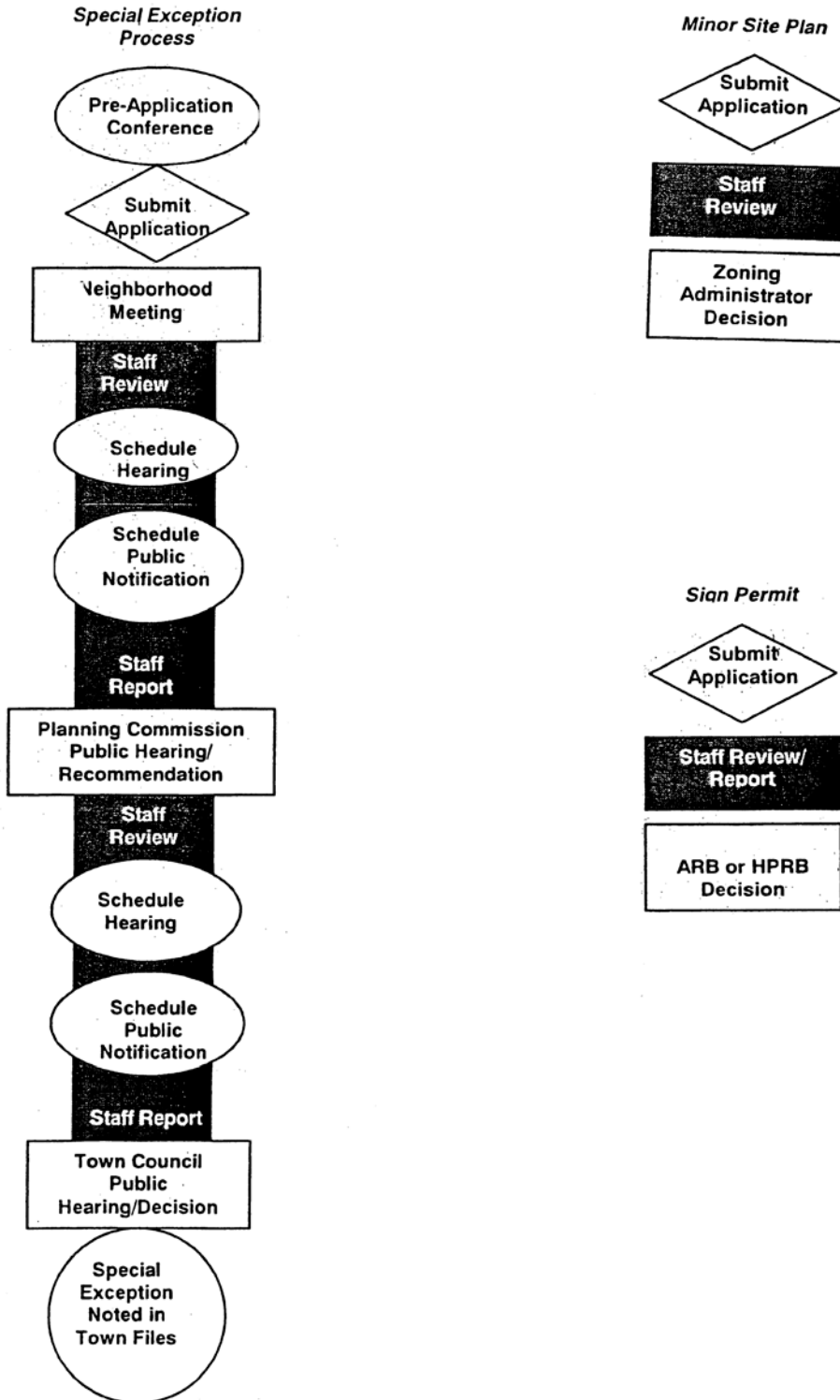
C. Preparation and Submission. When required, applicants shall submit a traffic impact study prepared and containing information in accordance with the town's administrative guidelines and policies for traffic impact studies at the time of application. Applications that require a traffic study but do not include a traffic study shall be found insufficient and returned to the applicant, in accordance with section 78-201.6

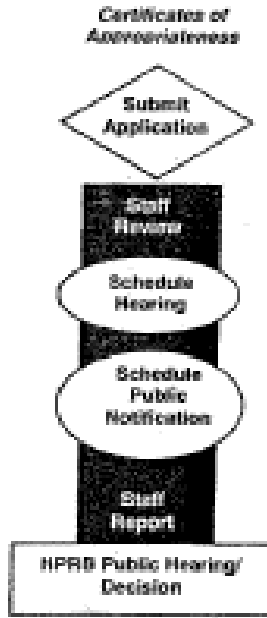
D. Level of Service (LOS) Criteria. Prior to approval of proposed development, the

1. **Standard Met.** The proposed development does not cause the level of service for any signalized intersection located within the traffic impact area to be lower than "LOS D."; and no individual turning movement level of service at an intersection falls below "LOS E."
2. **Standard Not Met and Remedy Proposed.** The proposed development does cause an intersection or intersections within the designated traffic impact area to fall below "LOS D," or an individual turning movement level of service does fall below "LOS E." In such case, to address the level of service, the applicant provides guarantees that associated street improvements will be constructed or in place to bring the affected intersections to "LOS D" by the time the impacts from the development occur.

3. **Existing Level of Service.** The traffic impact study shall identify those improvements needed to maintain the existing level of service, and what additional improvements would be needed to raise the level of service to the standards indicated.







**HERNDON TOWN CODE
CHAPTER 78 - ZONING ORDINANCE**

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ARTICLE XVI - NONCONFORMITIES

Sec. 78-160 Nonconformities

The following sections contain provisions for nonconforming uses and structures.¹

Sec. 78-160.1 Generally

- A. **Purpose and Intent.** It is the town council's intent to protect vested rights from impairment, while at the same time to provide for the gradual elimination of nonconforming uses, nonconforming structures, and nonconforming lots, to achieve eventual conformance with the policies of the town council as expressed in this chapter.
- B. **Limitations on Nonconformities.** Nonconformities are not supposed to be perpetuated, renewed or replaced. Nonconformities should not be extended, enlarged or rendered more permanent, and shall be brought into compliance with this chapter upon the elimination of the nonconformity.
- C. **Adaptive Reuse.** The town council intends to allow the adaptive reuse and convenient and efficient utilization of structures in the heritage preservation districts and other older areas that may have been developed under different standards, by allowing some flexibility in the treatment of nonconformities where the specific nonconformity is not increased.
- D. **Interpretation of Unlawful Versus Nonconforming.** Any use, lot, parcel or structure that was unlawful on the date of the enactment of this chapter, October 26, 1971, or amendment thereto, shall remain unlawful and shall not enjoy the status of a nonconforming use, nonconforming structure or nonconforming lot.
- E. **Nonconforming Status Runs with Land.** Nonconforming status shall adhere to the land and shall not be personal to the owner, tenant or possessor of land. .

Sec. 78-160.2 Nonconforming Uses

- A. **Continuation of Nonconforming Use.** Continuation of a nonconforming use shall be subject to the following:

¹ **Editor's note**— The ordinance from which this chapter was derived shall be effective on and after the date of its adoption and shall apply (where it does so apply) to rights in existence on and after October 26, 1971. The town council intends that the ordinance from which this chapter was derived apply retroactively to clarify, preserve and support zoning rights that were in existence on and after (or that have come into existence since) October 26, 1971. If any part of Ordinance No. 97-O-32, adopted December 9, 1997, should be declared invalid, unconstitutional or unenforceable, this declaration shall not affect the remaining parts of Ordinance No. 97-O-32. The remaining parts of Ordinance No.97-O-32 in that case shall continue in force.

1. **Time of Nonconformity.** A nonconforming use may continue as it existed when it became nonconforming.
 2. **Partial Use of Structure.** A nonconforming use within a part of a structure shall not affect the status of uses in the remaining part of the structure.
- B. Accessory Uses not Basis for Nonconforming Status.** A use that is accessory or incidental to a permitted principal use cannot be made the basis for a nonconforming principal use. Therefore, no use, including signage, accessory to a principal nonconforming use, shall continue after such principal use terminates, except as may be approved under Section 78-160.2.E.6, change of a nonconforming use to a different nonconforming use that decreases the degree of nonconformity.
- C. Discontinuance of Nonconforming Use.** Discontinuing a nonconforming use may result in loss of nonconforming status subject to the following:
1. **Two Year Discontinuance.** If any nonconforming use is discontinued for a continuous period of two years or more, or is changed to or replaced by a conforming use, it shall lose its nonconforming status, except as provided in Section 78-160.2.E.6, change of a nonconforming use to a different nonconforming use that decreases the degree of nonconformity. Any subsequent use shall conform to the provisions of this chapter.
 2. **Accessory or Incidental Use.** Operation of only an accessory or incidental use to the principal nonconforming use during the two-year period shall not continue the principal nonconforming use.
- D. Changes to Nonconforming Uses, Generally.** Changes to nonconforming uses shall only be permitted subject to the following general provisions; adherence to more specific provisions in this article may also be required.
1. **Loss of Status.** Changes not permitted under the standards of this article shall cause loss of nonconforming use status and shall meet the applicable provisions of this chapter.
 2. **Conforming Use.** A nonconforming use may be changed to a conforming use.
 3. **Lot Limitations.** No nonconforming use shall be expanded or moved to any other lot or within the lot on which it exists unless such lot is zoned to permit the use. (2)]
 4. **Decrease in Nonconformity.** A nonconforming use may change to a different nonconforming use that decreases the degree of nonconformity, as set forth in Section 78-160.2.E.6.
 5. **Permitted Changes and Required Approvals.** A nonconforming use, or the structure in which it exists, may be changed, altered, structurally altered,

repaired, restored, replaced, relocated or expanded without loss of nonconforming use status only in accordance with this article and the specific provisions of Section 78-160.2.E, and subject to the appropriate approvals, including building permit approval, and zoning inspection approval.

E. Specific Provisions for Changes to Nonconforming Uses. Permitted changes to nonconforming uses shall be subject to the following specific provisions:

- 1. Repairs.** A conforming or nonconforming structure housing a nonconforming use may be repaired, provided that such repair constitutes only routine maintenance necessary to keep the structure in the same general condition it was in when the use originally became nonconforming. Inherently unsafe nonconforming uses, or the structures housing those uses, may be restored or replaced, where otherwise allowed by law.
- 2. Minor Alterations.** Minor alterations, cosmetic modifications, interior renovations, and similar nonstructural changes to an existing structure housing a nonconforming use may be permitted subject to the following standards:
 - a. Such changes shall not increase the land area occupied by any aspect of the nonconforming use, and shall not increase the gross floor area of any structure that is the site of a nonconforming use; and
 - b. Such construction shall meet all current requirements of this chapter.
- 3. Expansion and Other Alterations.** A nonconforming use occupying an existing structure may expand or be altered only in accordance with the following provisions:
 - a. An existing conforming or nonconforming structure devoted to a nonconforming use shall not be enlarged, extended, constructed, reconstructed, moved or structurally altered except in accordance with Sections 78-160.2.D through 78-160.2.E. and
 - b. Any nonconforming use may be extended throughout any parts of a structure which were manifestly arranged or designed for such use at the effective date of this chapter, October 26, 1971, or amendment thereto. Such use shall not be extended to occupy any land outside the structure, except accessory uses that do not compound the nonconforming uses shall be allowed under Section 78-155.8 and Section 78-150.6.E of this chapter.
- 4. Restoration of a Nonconforming Use Damaged by Casualty.** A structure housing a nonconforming use damaged by casualty (as distinguished from ordinary wear and tear) may be restored in accordance with the following provisions:

- a. Restoration of a structure housing a nonconforming use shall require approval as set forth in section 78-155.8 or Section 78-150.6.E, whichever is appropriate, of this chapter.
- b. A structure housing a nonconforming use that is damaged by any casualty to an extent of 50 percent or less of its assessed value(exclusive of foundation) at the time of the casualty according to the records maintained by the county department of tax administration, may be restored to its condition prior to the casualty. Such restoration shall be begun within 12 months of the date of the casualty and completed within 24 months of the date of the casualty.
- c. The restoration shall not include any expansion unless approved under the provisions of section 78-160.2.D through 78-160.2.E. Such restoration may include changes that make the use less nonconforming than it was prior to the casualty.
- d. A structure housing a nonconforming use that is damaged by any casualty to an extent more than 50 percent of its assessed value (exclusive of foundations) at the time of the casualty according to the records maintained by the county department of tax administration, shall not be restored except as follows:
 - (1) Restoration shall be permitted to a conforming use.
 - (2) If the use is as a single-family detached or single-family attached dwelling, restoration shall be permitted, provided such restoration is begun within 12 months of the date of the casualty and completed within 24 months of the date of the casualty, and the dwelling occupies the same space that it occupied prior to such casualty. In no instance shall such structure be used to accommodate a greater number of dwelling units than such structure accommodated prior to any such work.
- e. In the floodplain overlay district, the modification, alteration, repair, reconstruction or improvement that amounts to less than 50 percent of its market value is elevated or flood proofed or both to the greatest extent possible.

5. Change to Nonconforming Use in Structures Located within the Floodplain Overlay District. The use of land and use of structures housing nonconforming uses within the floodplain overlay district are subject to the limitations of this subsection:

- a. Existing structures in a floodway area, zone A1—A30, or zone AE, shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard

engineering practice that the proposed expansion would not result in any increase in the 100-year flood elevation.

- b. Within the floodplain overlay district, existing structures and/or uses shall not be expanded or enlarged unless the effect of the proposed expansion or enlargement on flood heights is fully offset as part of the improvements, such that there is no net flood height increase resulting from the expansion or enlargement.

6. Change to a Different Nonconforming Use that Decreases Degree of Nonconformity. A nonconforming use may change to a different nonconforming use that decreases the degree of nonconformity or a conforming use, upon issuance by the zoning administrator or his designee of a written approval for such a change in accordance with the following provisions:

- a. The approval shall include a determination that the proposed use is more restricted than the existing nonconforming use. If the zoning administrator or his designee determines the proposed use is not more restricted than the existing nonconforming use, the application shall be denied.
- b. In determining whether a proposed use decreases the degree of nonconformity, the following factors among others shall be considered:
 - (1) Whether the proposed use will change the size, type and scope of the existing use;
 - (2) Whether the proposed use will increase the intensity of the nonconforming use, including hours of operations, traffic, noise, and similar visual impacts;
 - (3) Whether the proposed use will have a more or less detrimental effect on conforming uses in the surrounding area; and
 - (4) Whether the proposed use would require more parking. A more restricted nonconforming use shall never be a use which requires more parking than the existing nonconforming use.
- c. In the issuance of an approval to change to a conforming use or to a different nonconforming use that decreases the degree of nonconformity, the procedures, set forth in Section 78-155.8 or Section 78-150.6.E, whichever is appropriate, of this chapter shall be followed.

Sec. 78-160.3 Nonconforming Structures

- A. Relationship with Nonconforming Uses.** Where a nonconforming structure is the site of a nonconforming use, the regulations for nonconforming structures and

nonconforming uses shall both be applied. In case of conflict, the rules for nonconforming uses shall prevail.

- B. Continuation.** A nonconforming structure may continue as it existed when it became nonconforming, as long as it is maintained in its then structural condition.
- C. Special Status for Certain Nonconforming Structures.** Notwithstanding any other provision in this chapter to the contrary, if (i) the town has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the town issued a certificate of occupancy or a use permit therefor, or (ii) the owner of the building or structure has paid taxes to the town for such building or structure for a period of more than the previous 15 years, such building or structure is not illegal and subject to removal solely due to such nonconformity. Such building or structure shall be nonconforming. Such building or structure shall be brought in compliance with the Uniform Statewide Building Code, provided that to do so shall not affect the nonconforming status of such building or structure.
- D. Changes to Nonconforming Structures, Generally.** Changes to nonconforming structures shall only be permitted subject to the following general provisions; adherence to more specific provisions in this article may also be required.
- 1. Loss of Status.** Changes to nonconforming structures not permitted under the standards of this article shall cause loss of nonconforming structure status and shall meet the applicable provisions of this chapter.
 - 2. Conforming Structure.** A nonconforming structure may be changed to a conforming structure by conforming to all requirements of this chapter.
 - 3. Lot Limitations.** No nonconforming structure shall be moved to any other lot or within the lot on which it exists unless the nonconforming structure is brought into conformity with this chapter.
 - 4. Permitted Changes and Required Approvals.** A nonconforming structure may be changed, altered, structurally altered, repaired, restored, replaced, relocated or expanded only in accordance with this section and the specific provisions of 78-160.3.E and only with the appropriate approvals, including building permit approval and zoning inspection permit approval.
 - 5. Conflict.** This section and the specific provisions of 78-160.3.E supplement the provisions of section 78-160.2.A Continuation of Nonconforming Uses, and shall be read in concert with it. In case of conflict, this section shall prevail.
- E. Specific Provisions for Changes to Nonconforming.** Permitted changes to nonconforming structures shall be subject to the following specific provisions:

1. **Repairs.** A nonconforming structure may be repaired, provided that such repair constitutes only routine maintenance necessary to keep the structure in the same general condition it was in when it became nonconforming. Inherently unsafe nonconforming structure may be restored or replaced, where otherwise allowed by law.
2. **Minor Alterations.** Minor alterations, cosmetic modifications, interior renovations, and similar nonstructural changes may be permitted subject to the following standards:
 - a. Such changes shall not increase the land area occupied by any aspect of the nonconforming use, and shall not increase the gross floor area of any structure that is the site of a nonconforming use; and
 - b. Such construction shall meet all current requirements of this chapter.
3. **Expansion and Other Alterations.** A nonconforming structure may expand or be altered only in conformance with the following provisions:
 - a. A nonconforming structure may be enlarged, extended, reconstructed, altered or structurally altered in ways that do not increase or intensify the elements of nonconformity, under the procedures of in Section 78-155.8 or Section 78-150.6.E or if applicable, Section 78-155.6 of this chapter.
 - b. The nonconforming structure shall be brought into conformity with this chapter, including the parking requirements set out in Article X of this chapter, whenever the nonconforming structure is enlarged, extended, reconstructed or structurally altered, in such a way that increases or intensifies the elements of nonconformity.
4. **Restoration of a Nonconforming Structure Damaged by Casualty (excluding "Acts of God" or natural disaster).** A nonconforming structure damaged by casualty (as distinguished from ordinary wear and tear) may be restored in accordance with the following provisions:
 - a. A nonconforming structure that is damaged by any casualty (excluding natural disaster or other Act of God) to an extent of 50 percent or less of its assessed value (exclusive of foundations) at the time of the casualty according to the records maintained by the county department of tax administration may be restored to its condition prior to the casualty, provided that such restoration is begun within 12 months of the date of the casualty and completed within 24 months of the date of the casualty. For developments containing multiple buildings that are not assessed individually by the county department of tax administration, the total assessed value of all buildings on the property shall be used when calculating whether or not any casualty damage is equivalent to 50 percent or less.

- b. The restoration shall not include any expansion unless approved under the provisions of sections 78-160.3.B and 78-160.3.D. Such restoration may include changes that make the structure less nonconforming than it was prior to the casualty.
- c. A nonconforming structure that is damaged by any casualty to an extent more than 50 percent of its assessed value (exclusive of foundations) at the time of the casualty according to the records maintained by the county department of tax administration shall not be restored except as follows:
 - (1) Restoration shall be permitted to a conforming structure.
 - (2) If the nonconforming structure is within the heritage preservation district, or is designed and used as a single-family detached or single-family attached dwelling and such single-family detached or single-family attached use is allowed in the zoning district in which the nonconforming structure exists, restoration of such structures shall be permitted. The restoration shall begin within 12 months of the date of the casualty and shall be completed within 24 months of the casualty. The structure shall occupy the same space that it occupied prior to such casualty. In no instance shall any residential structure covered by this subsection 78-160.3.E.4 be used to accommodate a greater number of dwelling units than such structure accommodated prior to any such work.
- d. Restoration of a nonconforming structure shall necessitate approval as set forth in Section 78-155.8 or Section 78-150.6.E, of this chapter.
- e. The reconstruction of preexisting buildings or structures destroyed or damaged by casualty is allowed, provided the reconstruction is in the same location and creates no more impervious area than the preexisting building or structure.
- f. For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God and shall be subject to the provisions of Section 78-160.3.E.5. Nothing herein shall be construed to enable the property owner to commit an arson under Code of Virginia, § 18.2-77 or § 18.2-80, and obtain vested rights under this section.

5. Restoration of a Nonconforming Structure After Damage by a Natural Disaster or Other Act of God.

- a. The owner of any residential structure or commercial building damaged or destroyed by a casualty or act of God is permitted to repair, rebuild, or replace such building or structure to eliminate or reduce the non-conforming features to the extent possible, as determined by the zoning administrator

using the standards in this chapter. Such owner may take such a step without the need to obtain a variance as provided in Code of Virginia, § 15.2-2310. If such building or structure is damaged greater than 50 percent of its market value and cannot be repaired, rebuilt or replaced in accordance with the standards of this chapter, as determined by the zoning administrator using the standards in this chapter, the owner shall have the right to restore the structure or building to its original nonconforming condition.

- b. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code (§ 36-98 et seq., Virginia Code), and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the flood plain regulations adopted as a condition of participation in the National Flood Insurance Program. These provisions are found in section 78-60.2 of this chapter.
- c. Unless such building is repaired or rebuilt within two years of the date of the natural disaster or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of Section 78-160.3.E.4.B of this chapter. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the owner of the building shall have an additional two years from the date of the natural disaster for the building to be repaired, rebuilt or replaced as otherwise provided in this section.

6. Change to Nonconforming Structures Located within the Floodplain Overlay District (FPO). Nonconforming structures within the floodplain overlay district are subject to the additional standards of this subsection:

- a. In the floodplain overlay district, the modification, alteration, repair, reconstruction or improvement that amounts to less than 50 percent of its market value shall be elevated or flood proofed or both to the greatest extent possible.
- b. If the structure in the floodplain overlay district is designed and used as a single-family detached dwelling that is a permitted use in the zoning district pursuant to Table 78-70.2.D: Table of Principal and Permitted Allowed Uses, it may be restored in its location prior to casualty so long as:
 - (1) The restoration is begun within 12 months and completed within 24 months of the casualty;
 - (2) The modification, alteration, repair, reconstruction or improvement is elevated or flood proofed or both to the greatest extent possible;

- (3) The structure occupies the same space it occupied prior to the casualty; and
- (4) No dwelling units are added.

Sec. 78-160.4 Nonconforming Lots

A. Lots Predating the Zoning Chapter. Lots existing prior to adoption of the town zoning ordinance shall be subject to the following:

- 1. Conforming Structures on a Nonconforming Lot.** Structures on a nonconforming lot are not, by virtue of being located on a nonconforming lot, nonconforming structures. Such structures maybe continued, enlarged, extended, reconstructed or structurally altered in such a way that does not increase the nonconformity of the lot or any nonconformity of the structure and in such a way that is consistent with the requirements of this chapter.
- 2. Use of Improved Lots Existing before October 26, 1971.** If, in a residential zoning district an improved lot (excluding outlots) was part of a subdivision or division of land evidenced by plat or deed, or both, recorded prior to October 26, 1971, the effective date of this chapter, then such lot, either as a single lot, or in combination with other lots accomplished by lot line adjustment under section 70-206 of this Code, may be used, developed, redeveloped on the same footprint after casualty, for any currently or prospectively permitted use in the applicable zoning district. This use, development or redevelopment after casualty may take place even though the lot does not meet applicable minimum lot area or lot width requirements, provided that all other requirements of this chapter shall be satisfied.
- 3. Use of Unimproved Lots Existing before October 26, 1971.** If, in a residential zoning district an unimproved lot (excluding outlots) was part of a subdivision or division of land evidenced by plat or deed, or both, recorded prior to October 26, 1971, the effective date of this chapter, then such lot, either as a single lot, or in combination with other lots accomplished by lot line adjustment under section 70-206 of this Code, may be developed for any currently permitted use in the applicable zoning district upon the town council's issuance of a conditional use permit for such development. This development may take place even though the lot does not meet applicable minimum lot area or lot width requirements, provided that all other requirements of this chapter shall be satisfied.
- 4. Lots Rezoned or Subdivided after December 9, 1997.** Subsections 2 and 3 of this section shall not apply to any lot which after the effective date of this section, December 9, 1997, is rezoned or subdivided at the request of the owner, except this last clause shall not apply to reduction in lot area or lot width resulting from a governmental acquisition of a portion of the lot for a public purpose.

5. **Use of Nonconforming Lot After Casualty.** Use, redevelopment or redevelopment after casualty of a nonconforming lot or the structures thereon in a manner not permitted by this section is prohibited.

B. Change of Nonconforming Lot. Nonconforming lots in residential zoning districts may change as follows:

1. **Lot Line Adjustment to Reduce Nonconformity.** A nonconforming lot may be increased in lot size, lot width, or both, to make the lot less nonconforming. This action shall be accomplished by a boundary line adjustment under Section 70-206 of this Code.
2. **Lot Line Adjustment to Nonconforming Lot.** The boundaries of a lot that is nonconforming as to lot size or lot width, or both, may be adjusted by a lot line adjustment under Section 70-206 of this Code, with the boundaries of any contiguous conforming or nonconforming lot, provided that such adjustment does not make the lot or lots more nonconforming, that no new lot is created, and the lot width along the resulting front setback line or lines is not decreased to less than the minimum required within the respective zoning district.
3. **Lot Line Adjustment to Create Conforming Lot.** Two or more conforming or nonconforming lots may be assembled to create a conforming lot by a boundary line adjustment under Section 70-206 of this Code.

Sec. 78-160.5 Changes to Nonconforming Uses and Structures That Require Changes to Site Conditions

- A. Change in Use Causing Loss of Nonconforming Use Status May Require Additional Parking.** In any change of a nonconforming use which causes a loss of nonconforming use status, any required parking shall be provided under Article X of this chapter only for any marginal increase of parking required for the new use over the parking required for the existing use. Computation of parking required under the existing use and under the new use shall be based on the land or building space subject to change. Any increase in required parking shall be provided in addition to any existing conforming parking.
- B. Change in Use Located in Existing Nonconforming Structure May Require Additional Parking.** If the amount of parking provided for a structure is inadequate to meet the requirements of Article X of this chapter, based upon the existing use, then the structure is nonconforming with respect to parking. If the use within such structure is changed, then additional parking which meets the requirements of article of this chapter shall be provided only for any marginal increase of parking required for the new use over the parking required for the existing use. Computation of parking required under the existing use and under the new use shall be based on the land or building space subject to change. Any increase in required parking shall be provided in addition to any existing conforming parking.

C. Correction of Landscaping, Parking, and Buffering Upon Expansion of a Nonconforming Use or Nonconforming Structure in a Business District.

If the amount of parking, landscaping, or buffering or screening provided for a structure or use in a business zoning district is inadequate to meet the requirements of Article V, Development Standards, based upon the existing use, the structure or use is nonconforming with respect to parking, landscaping, or buffering or screening. The expansion of such structures and uses shall be subject to the following standards for parking, landscaping, buffering, screening and lighting:

1. **Expansions resulting in less than a 75 percent increase in gross square footage.** Expansions that result in less than a 75 percent increase in gross square footage of the existing structure(s) require that parking, landscaping, screening, buffering and lighting be improved a rate equivalent to:

<p>2 X (percentage increase in gross square footage of the existing structures)</p>	<p>=</p>	<p>Percentage of correction of nonconformity for parking, landscaping, screening, buffering and lighting.</p>
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(For example, if the addition is 25 percent of the size of the existing building and the site contains only 50 percent of the required landscaping, 50 percent of the required landscaping for the entire area shall be provided, bringing the landscaping on the site to 100 percent of the total required in Article XI: Development Standards.) Existing landscaping on the site shall be retained or replaced but shall not count toward the required percentage of new landscaping (see Section 78-110.5, Site Landscaping.)

2. **Expansions in Gross Square Footage.** Expansions resulting in an increase of gross square footage of the existing structure(s) by greater than 75 percent require the site to comply fully with the standards of Section 78-110.5, Site Landscaping.
3. **Landscaping and Screening on Physically Constrained Lands.** Lands physically constrained from complying with these provisions shall comply with the maximum extent practicable for landscaping and screening, as determined by the zoning administrator. No allowance for physically constrained land shall be permitted for the required number of parking spaces.

**HERNDON TOWN CODE
CHAPTER 78 - ZONING ORDINANCE**

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Article XVII - ENFORCEMENT, VIOLATIONS AND REMEDIES

Sec. 78-170 Enforcement, Violations and Remedies

The following sections contain provisions for enforcement of zoning regulations, remedies for violations and penalties for unresolved violations.

Sec. 78-170.1 Generally

- A. **Purpose and Intent.** This section establishes procedures through which the town seeks to ensure compliance with the provisions of this chapter and obtain corrections for chapter violations. It also sets forth the remedies and penalties that apply to violations of this chapter. The provisions of this section are intended to encourage the voluntary correction of violations, where possible.
- B. **Compliance Required.** Compliance with all provisions of this chapter is required. It shall be unlawful for any person to construct, reconstruct, alter, demolish, change the use of, or occupy any land, building, or other structure within the town in violation of this chapter.
- C. **Permits Required.** All persons, firms, and corporations shall obtain all permits required by the town prior to commencing any use or building within the town.
- D. **Responsible Persons.** Any person who violates this chapter shall be subject to the remedies and penalties set forth in this article.

Sec. 78-170.2 Enforcement, Generally

- A. **Responsibility for Enforcement of Zoning Provisions.** The zoning administrator shall enforce this chapter. The zoning administrator shall be provided with the assistance of such other persons as the town manager may direct.
- B. **Notice of Violations.** When the zoning administrator finds that any activity, building, structure, or land is in violation of this chapter, the zoning administrator shall notify, in writing, the person violating this chapter, as follows:
 1. **Content of Notice.** Such notification shall indicate the nature of the violation, order the necessary action to abate the violation, give a deadline for correcting the violation, and include an indication of the applicable appeal fee and a reference to where other information regarding the appeal process may be obtained regarding the filing of the appeal to the board of zoning appeals.
 2. **Fee.** The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs.
 3. **Limitation on Penalty During Appeal Process.** Any civil penalty for appealed violations of the zoning ordinance shall not accrue or be assessed during the pendency of the period in which to file an appeal to the board of zoning appeals.

- 4. Action by Zoning Administrator.** If a violation is not corrected within a reasonable period as provided in the notification, the zoning administrator shall take appropriate action to correct and abate the violation and to ensure compliance with this chapter. He or she shall take any other action authorized by law to ensure compliance with or to prevent violation of its provisions.
- C. Complaints Regarding Violations.** Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written or oral complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the zoning administrator, who shall record the complaint. The zoning administrator shall promptly cause the complaint to be investigated, and action taken to abate or correct the violation.
- D. Inspections to Ensure Compliance.** Upon presentation of proper credentials, the zoning administrator may enter any building, structure, land, or premises to ensure compliance with the provisions of this chapter.

Sec. 78-170.3 Types of Violations

- A. Violations, Generally.** The following constitute general violations of this chapter:
- 1. Compliance Failure.** Any failure to comply with a requirement, standard, prohibition, or limitation imposed by this chapter, or the terms or conditions of any permit or other development approval or authorization granted pursuant to this chapter, shall constitute a violation of this chapter.
 - 2. Noncompliance with Permit.** Permits issued on the basis of plans and applications approved by the town council, planning commission, board of zoning appeals, heritage preservation review board, zoning administrator, or other officials or agencies where additional approval is required, authorize the use, arrangement, alteration, location, and construction set forth in such permits and development approvals, and no other use, arrangement, alteration, location, or construction.
 - 3. Unauthorized Development.** Development, use, arrangement, location, or construction at variance with that authorized shall be deemed violations of this chapter, punishable as provided in this section.
- B. Specific Violations.** In addition to the offenses listed in Table 78-170.4.A.5, it shall be a violation of this chapter to do any of the following:
- 1. Unauthorized Activity.** Construct, reconstruct, alter, demolish, change the use of, or occupy any building, structure, or sign, or to engage in development or subdivision of any land in contravention of this chapter, including the conditions and terms of required permits and development approvals.

2. **Unauthorized Land Disturbance.** Excavate, grade, cut, clear, or undertake any other land disturbing activity contrary to the requirements of this chapter—~~or~~ without first obtaining all approvals required by this chapter or other applicable regulations.
3. **Unauthorized Change in Nonconformity.** Create, expand, replace, or change any nonconformity except in compliance with this chapter.
4. **Noncompliance with Development Standards.** Reduce or diminish the lot area, setbacks, buffers, or open space below the minimum required by this chapter.
5. **Unauthorized Increase in Density/Intensity.** Increase the intensity or density of use of any land or structure except in accordance with the requirements of this chapter.
6. **Development without Required Permit.** Construct, reconstruct, alter, demolish, change the use of or occupy any land, building, or other structure without first obtaining the appropriate permit or permit approval, or without complying with the terms and conditions of the permit or approval required to engage in such activity.
7. **Failure to Comply with Terms of Approval.** Fail to comply with any terms, conditions, or limitations placed by the town council, planning commission, board of zoning appeals, heritage preservation review board, or zoning administrator upon any development approval, including designation of a planned development (PD) zoning district classification and preliminary PD plan, special exception, variance, administrative adjustment, certificate of appropriateness, sign permit, temporary use permit, zoning inspection permit, zoning appropriateness permit, site plan, single lot development plan, building location plan, final pd plan, final plat for minor subdivision, preliminary plat for subdivision, final plat for subdivision, site grading permit, excavation permit, street name or name change, or other form of authorization.
8. **Lapse in Sign Permit.** Fail to remove any sign installed, created, erected, or maintained in violation of this chapter, or for which the sign permit has lapsed.
9. **Noncompliance with Certificate of Appropriateness.** Fail to comply with a certificate of appropriateness, which shall include the discontinuance of work or lack of progress toward achieving compliance with a certificate of appropriateness for a period of six months.
10. **Unauthorized Dwellings.** Establish any unauthorized dwelling units as described in Section 78-71.1.D.3.

Sec. 78-170.4 Penalties, Fines and Remedies for Violations

A. Penalties, Fines and Remedies for Civil Violations.

1. **Penalties and Fines.** Except as provided in subsections 2 and 3 below, any person, firm or corporation who as the owner of any land, building or structure, or the agent thereof having possession or control of such property as employee, lessee, tenant, architect, builder, contractor or otherwise, who permits, assists in or attempts any violation of this chapter, whether by act or omission, shall be liable for a civil penalty for each individual offense described in Table 78-170.4.A.5.- Summary Table of Common Civil Violations. All civil violations shall be punishable by a fine of \$200.00 for the initial violation and \$500.00 for each additional violation of the same ordinance section.
2. **Cumulative Penalties.** Each day during which the violation is found to have existed shall constitute a separate offense. However, specific violations arising from the same operative set of facts shall not be charged more frequently than once in any ten-day period and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$5,000.00.
3. **Criminal Action.** Designation of a particular violation of this chapter for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violations resulting in injury to persons such designation shall preclude the prosecution of violation as a criminal misdemeanor, provided however, that when such civil penalties total \$5,000.00 or more, the violation may be prosecuted as a criminal misdemeanor.
4. **Limitations.** No provision in this section shall be construed to allow the imposition of civil penalties (i) for activities related to land development or, (ii) for violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.
5. **Summary Table of Common Civil Violations and Fines.**

TABLE 78-170.4.A.5 : SUMMARY OF COMMON CIVIL VIOLATIONS AND PENALTIES		
OFFENSE	Penalty for Initial Summons (in \$)	Penalty for Each Additional Summons (in \$)
Establishing a prohibited use (except the conduct of an un-permitted boarding house, un-permitted rooming house, un-permitted inn, or of an un-permitted	200.00	500.00

**TABLE 78-170.4.A.5 : SUMMARY OF COMMON CIVIL VIOLATIONS
AND PENALTIES**

OFFENSE	Penalty for Initial Summons (in \$)	Penalty for Each Additional Summons (in \$)
transient lodging business)		
Failure to obtain Zoning Appropriateness Permit	200.00	500.00
Failure to obtain Zoning Inspection Permit	200.00	500.00
Violation of home based business use-specific standards	200.00	500.00
Failure to properly screen material from public view as required	200.00	500.00
Failure to comply with an approved Conditional Use Permit or Special Exception	200.00	500.00
Failure to maintain site in accordance with approved site plan or single lot development plan	200.00	500.00
Failure to provide trash receptacle enclosure as required	200.00	500.00
Conducting outdoor storage, sales, or display of materials required to be within a completely enclosed building	200.00	500.00
Failure to conform to the provisions of Article IX- Temporary Uses and Structures	200.00	500.00
Failure to conform to the provisions of the Chesapeake Bay Regulations	200.00	500.00
Failure to obtain a Floodplain Permit prior to conducting use	200.00	500.00
Failure to comply with performance standards for noise control	200.00	500.00
Encroachment of a structure or building into a required setback or yard	200.00	500.00
Exceeding the height limitation for a building or structure, as set out in various provisions of this Chapter	200.00	500.00
Failure to obtain an approved Special Exception, as set out in various provisions of this Chapter	200.00	500.00
Violation of the single-family dwelling unit occupancy limitations	200.00	500.00
Illegally establishing an accessory dwelling unit, as set out in various provisions of this Chapter	200.00	500.00

TABLE 78-170.4.A.5 : SUMMARY OF COMMON CIVIL VIOLATIONS AND PENALTIES

OFFENSE	Penalty for Initial Summons (in \$)	Penalty for Each Additional Summons (in \$)
Establish an unauthorized dwelling unit	200.00	500.00
The unlawful keeping, harboring or maintaining of livestock	200.00	500.00
The keeping or maintaining of shrubbery, plantings or any structure that creates a visibility problem	200.00	500.00
Displaying merchandise or conducting business between the street line and the building setback area	200.00	500.00
Erecting, altering, relocating or displaying a sign on private property without first obtaining a permit	200.00	500.00
Erecting or posting off-site signs on private property	200.00	500.00
Erecting moving signs, such as pennants, flags, and the like on private property	200.00	500.00
Posting strings of lights in windows or on buildings	200.00	500.00
Failure to meet stated conditions of Sign Permit	200.00	500.00
Erecting, reconstructing, demolishing, altering or restoring a building or structure in a Heritage Preservation District without obtaining a current, valid Certificate of Appropriateness	200.00	500.00
Failure to meet terms of certificate of appropriateness	200.00	500.00
Violation of Fencing Standards	200.00	500.00
Violation of Performance Standards	200.00	500.00
Violation of Standards for Refuse Enclosures	200.00	500.00
Violation of Standards for Roll-Off Dumpsters	200.00	500.00
Failure to park a recreational vehicle in an approved area in a residential district as required	200.00	500.00
Failure to park a commercial vehicle in an approved area in a residential district as required	200.00	500.00
The temporary or permanent occupancy of a recreational vehicle while parked	200.00	500.00

TABLE 78-170.4.A.5 : SUMMARY OF COMMON CIVIL VIOLATIONS AND PENALTIES

OFFENSE	Penalty for Initial Summons (in \$)	Penalty for Each Additional Summons (in \$)
within the limits of the Town		
Any violation related to a sign not requiring a permit	200.00	500.00
Parking on unpaved surface	200.00	500.00
Creation of excessively large paved surface for front or side yard parking	200.00	500.00
Creation of excessively large impervious surface on a lot improved with a single-family detached dwelling	200.00	500.00
Violation of floodplain overlay district standards (Section 78-60.2.)	200.00	500.00
Maintaining or allowing maintenance of donation drop-off box	200.00	500.00

B. Penalties, Fines and Remedies for Criminal Violations.

1. **Criminal Violations.** The following shall be treated as criminal violations of this chapter:
 - a. Conduct of an unpermitted boarding house, unpermitted rooming house, unpermitted inn or unpermitted transient lodging business constitutes a criminal violation of this chapter.
 - b. Specific violations arising from the same operative set of facts charged for three civil penalties, and persisting after the third civil penalty charge and after the time for its payment, shall constitute criminal violations of this chapter.

2. **Penalties and Fines.** Any person, firm or corporation who as the owner of any land, building or structure, or the agent having possession or control of such property as employee, lessee, tenant, architect, builder, contractor or otherwise, knowingly refuses or neglects to comply with any written order issued by the zoning administrator to abate any violation of this chapter shall be guilty of a misdemeanor punishable by a fine of not less than \$10.00 nor more than \$1,000.00.

3. **Remedy.** If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with this

chapter, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10.00 nor more than \$1,000.00, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period, punishable by a fine of not less than \$10.00 nor more than \$1,500.00.

4. **Excess Criminal Penalty for Unrelated Persons Violation.** However, and notwithstanding the above subsections, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000.00. Failure to abate the violation within the specified period shall be punishable by a fine of up to \$2,000.00, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine of up to \$2,500.00. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against the tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, Code of Virginia (unlawful detainer), as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

- C. **Cumulative Remedies for Violations.** Except as provided in § 15.2-2209, Code of Virginia, the remedies provided in this article are cumulative and not exclusive, and the designation of any violation of the provisions of this chapter as a criminal or a civil violation shall not be construed as prohibiting the town from utilizing any remedies in the Code of Virginia or from initiating appropriate injunctive, abatement, or other appropriate actions or proceedings to prevent, correct, restrain, or abate violations.

Sec. 78-170.5 Procedures for Civil Violations

- A. **Notice of Violation.** If the zoning administrator, or a designee, determines that a civil violation has occurred, the zoning administrator, or a designee, may cause a notice of the violation to be served by certified mail on any or all persons committing or permitting such violation, in accordance with Section 78-170.2.B., Notice of Violation. This notice of violation will serve as a civil summons or ticket for the scheduled violation.
- B. **Right to Stand Trial.** Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance, care of the department of community development prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.

- C. **Payment of Penalty.** The person waiving trial shall abate the violation and pay to the town the civil penalty prior to the date set for trial.
- D. **Violation to be Tried.** If a person charged with and contesting a scheduled violation does not elect to enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. If the violation exceeds the jurisdictional limits of a general district court, the violation shall be tried in the county circuit court. In any trial for a scheduled violation authorized by this section, it shall be the burden of the town to show the liability of the violator by a preponderance of the evidence.
- E. **Liability.** An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

Sec. 78-170.6 Residential Occupancy

In any district in which residential uses are allowed or legally exist, a dwelling unit shall be occupied only by a family as defined in Article VXIII-Definitions. Occupancy by any other entity or person shall constitute a violation of this chapter. All dwelling units shall be subject to the following standards:

- A. **Purpose.** Notwithstanding any other provision of this chapter, and as an element of the use of land under this chapter to define and limit appropriate family use of dwelling units, occupancy of dwelling units shall be limited to the maximum number of occupants allowed by this section, to protect against threats to neighborhood quality that can accompany overcrowding of land, or undue density of population in relation to existing or available community facilities caused by excessive occupancy.
- B. **Occupant Defined.** For the purposes of this chapter, an "occupant" is defined as a person 18 years of age or older, living or sleeping in a building, or having possession of a space within a building.
- C. **Maximum Occupancy, Single-Family Dwellings.** For single-family attached and detached dwellings or two-family dwellings, the maximum number of occupants of each dwelling unit shall not exceed the quotient of the floor area (measured in square feet) of the dwelling unit divided by the number set forth below, rounded up to the next whole number. The maximum occupancy of single-family dwelling units is as follows:
1. **Up to 1,500 square feet.** For a dwelling with a floor area up to 1,500 square feet, use 300 square feet.
 2. **Up to 2,100 square feet** For a dwelling with a floor area from 1,501 square feet to 2,100 square feet, use 350 square feet.

3. **Up to 2,800 square feet.** For a dwelling with a floor area from 2,101 square feet to 2,800 square feet, use 400 square feet.
 4. **Up to 3,600 square feet.** For a dwelling with a floor area from 2,801 square feet to 3,600 square feet, use 450 square feet.
 5. **Over 3,600 square feet.** For a dwelling with a floor area greater than 3,601 square feet, use 500 square feet.
- D. Maximum Occupancy, Multi-Family.** For multi-family dwellings, the maximum number of occupants of each dwelling unit shall not exceed the quotient of the floor area (measured in square feet) of the dwelling unit divided by 200, rounded to the nearest whole number.
- E. Excessive Occupancy, Owner Response.** An owner of a dwelling unit that occupies or allows the occupancy of a dwelling unit by a number of occupants in excess of the maximum occupancy prescribed shall forthwith lower the occupancy to a level consistent with the limits of this chapter.
- F. Excessive Occupancy, Occupant Response.** An occupant of a dwelling unit occupied by a number of occupants in excess of the maximum occupancy here prescribed shall forthwith lower the occupancy to a level consistent with the limits of this chapter.
- G. Investigation of Excessive Occupancy.** The town manager is authorized to investigate incidences of possible excessive occupancy in the town. In exercising the powers granted by this section, the town manager may inspect buildings according to the procedures set out in Code of Virginia, Sections 19.2-393—19.2-397 (or some comparable, later provisions), with necessary changes, for administrative enforcement, or general law of this commonwealth for criminal enforcement.
- H. Injunction to Limit Occupancy.** Upon the town manager's conclusion that there exists excessive occupancy of a dwelling unit, the town manager, on behalf of the town, may seek an injunction to limit, lower or control the number of occupants in the dwelling unit.
- I. Conflict between Zoning Code and Building Code.** This section addresses uses of land including occupancy of dwelling units under the town's zoning powers. Section 10-257, Herndon Town Code and the Virginia Uniform Statewide Building Code also address occupancy, but as a matter of building maintenance and health. In case of conflict between any of these sources, this section applies to questions of the use of land; as such application is determined by the zoning administrator. Section 10-257, Herndon Town Code or the Virginia Uniform Statewide Building Code applies to property maintenance or health issues; as such application is determined by the building official.

**HERNDON TOWN CODE
CHAPTER 78 - ZONING ORDINANCE**

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ARTICLE XVIII – DEFINITIONS

Sec. 78-170 Definitions

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section.

-A-

A- Weighted Sound Pressure Level. The sound pressure level as measured on a sound level meter using the A-weighted network. The level read shall be abbreviated to dBA.

Access Easement. Real estate rights for vehicular or other passage over land.

Accessory Building. A subordinate building located on the same lot as the principal building, or a portion of the principal building, the use of which is clearly incidental but customarily associated with the principal building.

Accessory Dwelling Unit. See "dwelling unit, accessory".

Accessory Food Preparation Areas. An area other than the primary kitchen of a structure for the preparation of food. Accessory food preparation areas are divided into two categories consisting of secondary kitchens and wet bars.

Accessory Use. A use that is clearly incidental to and customarily associated with the principal use. An accessory use shall be located on the same lot as the principal use. When "accessory" is used in the text, it shall have the same meaning as "accessory use."

Act of God. An act attributable to nature without human interference and not preventable by any human agency. For example, damage from a flood, tornado or a lightning strike would be considered an act of God. For purposes of this section "act of God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. (See also "casualty.")

Addition. Any construction, including for example porches, sunrooms, finished floor area, or similar structures or buildings, that increases the roofed area of an existing structure or building.

Administrative Adjustment (by the zoning administrator). An action described in the Town Code, Section 78-155.5, Administrative Adjustments.

Administrative Waiver. An action as described in provisions for the Chesapeake Bay Preservation Area Overlay District, Section 78-60.4.P. of the Town Code.

Aggregate Area or Width. The sum of two or more designated areas or widths to be measured, limited or determined under the provisions of this chapter.

Alcohol Production Facilities, Small Scale. A facility for the small scale production and packaging of alcoholic beverages for retail or wholesale distribution and for on-premises or off-premises consumption. The facility may include accessory uses such as retail sales and tasting rooms. The facility shall meet all applicable laws and regulations as required by the Virginia Alcoholic Beverages Control Act. Such facilities wineries shall not include on-site vineyards. Also see Brewpubs.

Alley. A narrow street not exceeding 20 feet in width which provides only a secondary means of vehicular access to abutting properties and is not intended for general traffic circulation.

Alteration.

1. Any change in the total floor area, use, adaptability or external appearance of an existing structure.
2. Any act or process that changes one or more of the exterior architectural features of a building or structure including but not limited to, construction, reconstruction, renovation, and restoration of any structure excluding new construction.

Amusement Arcade. An establishment in which four or more amusement machines are available for operation for the amusement of the general public. In no event shall an amusement arcade be considered an accessory use.

Amusement Machine. Any mechanical, electronic and/or coin-operated game machine and/or device available for operation for the amusement of the general public. This definition shall not be construed to include coin-operated music players, commonly referred to as jukeboxes, coin-operated rides for children, coin-operated vending machines that merely dispense cigarettes, candy, gum, soft drinks, and toys or like products.

Animal Hospital. A facility for the provision of surgical or other medical treatment for small domestic animals (dogs, cats, birds, and the like).

Animal Shelter. A facility not operated for profit where stray or unwanted animals are brought and kept for eventual placement with permanent caretakers or humane disposition by euthanasia.

Antennae (except commercial communication antennae). Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whips, but not including satellite earth stations.

Apartment. See "dwelling, multiple-family."

Apartment House. See "dwelling, multiple-family."

Architectural Control Districts. All land areas in the town which are zoned other than single-family detached residential are hereby designated as architectural control districts. Also, any lot, parcel or area of land within any district zoned for single-family detached residences, which is used for other than a single-family detached residence, or which is the subject of an application for a special exception or building permit involving any such use, is designated an architectural control district.

Architectural Front. The façade of a building designed to serve as the primary entrance to the building, often distinguished from the other facades by more elaborate architectural detail. The architectural front entry is not determined upon custom or use but rather upon the exterior and interior design of the building.

Areas Zoned for Residential Use. All areas of the town which have been zoned to a zoning classification which permits one or more residential dwelling units. See also "residential district."

Artist's Studio. The workshop of an artist, musician, writer, or craftsman, including a place where a maximum of five members of the public come at any one time to receive instruction. "Artist's studio" includes custom manufacturing and accessory retail sales of the artist's work. See also "school, special instruction."

Assisted Living for the Elderly and Persons with Disabilities. A facility for persons who are unable to live independently and that provides (i) private living quarters, which may include kitchen facilities limited to a sink, refrigerator and/or microwave, (ii) supervision and general care, including but not limited to the provision of meals, housekeeping, health care, and (iii) assistance with moderate activities of daily living.

Auditorium. A building or part of a building used for an assembly hall with seating for an audience of 100 or more persons before a stage, podium, or other focal area for presentations by live speakers or audio-visual media.

Average Daily Trips. The number of vehicular trips generated by or associated with an existing or proposed use of land over a twenty-four hour period.

-B-

Base Flood. For floodplain management purposes, the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE). The Federal Emergency Management Agency designated 100-year water surface elevation.

Basement. That portion of a building between the floor and ceiling which is wholly or partly below grade and having more than one-half of its height below grade. For purposes of flood insurance or administration of the floodplain overlay district: any area of the building having its floor subgrade (below ground level) on all sides.

Bed and Breakfast Establishment. An operator- or owner-occupied residence that provides lodging with breakfast as a commercial enterprise.

Berm. An elongated earthen mound typically designed or constructed on a site to separate, screen, or buffer adjacent land uses.

Best Management Practices or BMP. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

Billiards Parlor. An indoor commercial establishment with four or more billiards tables and equipment for playing billiards for use by members of the public.

Bioretention. On-lot retention of stormwater through the use of vegetated depressions and other facilities that are engineered to collect, store, infiltrate, filter, evaporate, and detain runoff close to its source. Rain gardens and bioretention filters are types of bioretention.

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

Boarding House. A building other than a hotel or apartment hotel where for compensation or by prearrangement for definite periods, meals or lodging and meals, or lodging are provided on a commercial basis for three or more persons, but not exceeding 20 persons.

Bowling Alley. An indoor commercial establishment with multiple lanes and equipment for bowling for use by members of the public.

Breezeway. A structure entirely open except for roof and supporting columns which connects a residence and an accessory building on the same lot.

Brewpub. A facility that prepares and serves food and alcoholic beverages for on-premises consumption and which also produces alcoholic beverages such as beer, ale, or other fermented malt beverages, liquor, cider, and wine. As an accessory retail or wholesale use, the facility may also sell alcoholic beverages that area produced on-site and intended for off-premises consumption.

Buffer. An area of land that: (i) typically includes landscaping, berms, walls, fences, setbacks and required yards; (ii) is located between land uses of different character; and (iii) is intended to mitigate negative impacts of the more intense use on a less intense use or vacant parcel. (See also Section 78-110, Landscaping, for buffer requirements.)

Buffer Area. For purposes of the Chesapeake Bay Preservation Overlay District, an area of natural or established vegetation managed to protect other components of a resource protection area and state waters from significant degradation due to land disturbance.

Buildable Width The width of that part of a lot not included within the open spaces required by this chapter.

Building. A structure that is enclosed and isolated by a roof and exterior walls and used for shelter, support, or enclosure as a residence, business, industry, or other public or private purpose, or accessory thereto, the construction of which may require a building permit under the Uniform Statewide Building Code.

Building, Completely Enclosed. Any building having no outside openings other than ordinary doors, windows or ventilators.

Building, Detached. A building surrounded by open space on the same lot.

Building, Elevated. For floodplain management purposes, a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

Building Elevation. See "Elevation Drawings."

Building Footprint. The area of a lot or a site included within the surrounding exterior walls of a building or portion of a building, exclusive of courtyards.

Building, Height. The vertical distance, from the grade to:

1. The highest point of the membrane of a flat roof;
2. The deck line of a mansard roof;
3. To the mean height level between the highest ridge and its highest associated eaves for gable, hip and gambrel roofs. See also "Grade."

Building, Main. Any building which is not an accessory building.

Bus Maintenance Facility for Public Bus Service. A facility for maintaining and servicing vehicles that are designed for carrying more than nine passengers over roadways and that are operated directly or indirectly by a governmental entity for use by the general public without restrictions. This term shall not include the storage of vehicles for other than maintenance and servicing.

Business Districts. The Central Commercial Zoning District (CC), Commercial Services Zoning District (CS), Office and Light Industrial Zoning District (O&LI), and Planned Development-Business Zoning District (PD-B).

Business. (From Town of Herndon Town Code Section 30-211) A course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business:

1. Advertising or otherwise holding oneself out to the public as being engaged in a particular business; or
2. Filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

-C-

Caliper. A horticultural method of measuring the diameter of a tree trunk for the purpose of determining size. The caliper of the trunk is measured six inches above the ground for trees up to and including four inches in diameter, 12 inches above the ground for trees greater than four inches up to 12 inches in diameter, and at breast height (4.5 feet) for trees greater than 12 inches in diameter.

Canopy Tree. A tree which has an expected height at maturity greater than 30 feet and which produces significant shade because it has a crown that is oval, round, vase-shaped, or umbrella-shaped. See also "Tree Canopy."

Car Wash. See "vehicle wash" and "Temporary vehicle washes by civic and nonprofit organizations."

Casualty. An event, including natural disaster or other act of God, that is sudden, unexpected, and unusual, such as a hurricane, earthquake, fire, war, terrorism, flood, accident, vandalism, theft, or similar event that causes injury, death, or loss or damage to property or improvements. See also "natural disaster or other act of God."

Cemetery. Land used or dedicated to the interment of human or animal remains, including crematoriums, mausoleums, and related maintenance facilities.

Certificate of Appropriateness. A certificate issued by the heritage preservation review board or on appeal by the town council, indicating its approval of plans for alterations, construction, removal or demolition of a landmark or of a building or structure within a preservation district.

Chesapeake Bay Preservation Area (CBPA). Any land designated by the town pursuant to part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, § 9 VAC 10-20-10 et seq., and Code of Virginia § 10.1-2107. A CBPA shall consist of the resource protection area (RPA) and the resource management area (RMA). The abbreviated "CBPA" and "CBPAOD" (Chesapeake Bay preservation area overlay district) shall be used interchangeably where the context does not indicate otherwise.

Chicken Tractor. A moveable combination coop and run.

Child Care Center or Day Care Center. A nonresidential facility that, for compensation, provides care for children who are under the age of 14 years old and who do not stay overnight at the facility. The facility may provide for limited instruction. A child care center shall not include a business operated as a home occupation, public or private schools organized, operated or approved under state laws, or churches or other religious or public institutions caring for children within the institutional building while their parents or legal guardians are attending services, activities or meetings.

Child Care or Day Care at Home. See "home-based business, child care or day care".

Civic or Nonprofit Organization. Any land use activity associated with a private nonprofit organization, such as not-for-profit organizations, corporations, community chest, funds, foundations, or an organization exempt from taxation under Section 501(C) of the Internal Revenue Code, and having a principal place of business in this state or another state.

Clinic. An office building or a group of offices for one or more physicians, surgeons or dentists, engaged in treating the sick or injured but not including rooms for abiding patients.

Club, Private. Buildings and facilities owned or operated by a corporation, association or persons for a social, educational or recreational purpose, but not primarily for profit which inures to any individual and not primarily to render a service which is customarily carried on as a business.

Coop. The structure within a run that houses fowl and is built and maintained with materials as impenetrable barriers so as to keep such fowl confined and secure from other animals.

Collector Street. A street so designated on the adopted major thoroughfare plan of the town, and within the territorial jurisdiction of such plan.

Commercial Communication Tower. See "communication tower, freestanding" or "communication tower, roof-mounted."

Commercial Districts. See "business districts"

Commercial Printing. Facilities for reproduction of printed matter on a wholesale scale beyond ordinary photocopying production. Commercial printing includes publishing, engraving, and lithography.

Commercial Recreation/Entertainment, Indoor. Facilities that offer participatory or spectator recreation or entertainment activities to the public, including billiards parlors, bowling alleys, enclosed dancehalls, enclosed skating rinks, and enclosed swimming pools, but not including theaters or amusement arcades.

Commercial Vehicle. See "vehicle, commercial."

Commission. The planning commission of the town.

Common Area. Land and facilities within a development which are intended to be used or enjoyed in common by the residents or owners of the development including, but not limited to, driveways, parking areas, sidewalks, walkways, recreation facilities, trash facilities, lighting, community buildings and open space. Such common areas are owned, maintained and regulated by an organization created by covenants running with the land that comprises the development.

Communication Tower, Freestanding. A monopole or lattice structure that: (is erected on the ground;

1. may be supported by guy wires, ground anchors or other means of support;
2. may transmit or receive signals by radio, electromagnetic, optical, or other means;
3. is used by commercial, governmental, or other public or quasi-public users;
4. does not include private home use of satellite dishes and television antennas, or amateur radio operators as licensed by the Federal Communications Commission;
5. is non-staffed;
6. may include antennas, microwave dishes, horns or similar types of equipment, towers or similar accessory structures supporting such equipment; and
7. may include an equipment cabinet and a wall or security barrier.

Communication Tower, Roof-Mounted. A structure placed on a building used primarily for the support of cellular telephone technology, broadcast and/or receiving equipment and utilized by commercial, governmental, or other public or quasi-public users. A communication tower does not include private home use of satellite dishes and television antennas, or amateur radio operators as licensed by the Federal Communications Commission.

Communication/Transmission Warehousing. A facility where computer hard drives are stored for web-hosting or other mass storage of electronic information, also known as "data warehousing," or an electronic switching center for telecommunications. A communication/transmission warehousing use is characterized by structures that are primarily occupied by technical and electronic equipment, with a small number of employees present to service the equipment. Traffic to and from a communication/transmission warehousing use typically involves minimal vehicle traffic for day-to-day operations, with fiber optic cables or other electronic communications media instead serving as the primary means of connecting the functions of the use to customers and others.

Community Center. A place, structure, hall or other facility used for and providing fraternal, cultural, social, educational or recreational programs or activities, open to the public or a designated part of the public.

Comprehensive Plan Amendment. An action to amend the town's comprehensive plan adopted by the town council, and initiated other than by a motion of the town council.

Conference Center. A facility used for service organizations, business and professional conferences, and seminars limited to accommodations for conference attendees. The accommodations can include sleeping, eating, and recreation.

Connectivity. The relative degree of connection between streets, sidewalks, or other means of travel.

Construction Plan. Any drawing used for the construction of any phase of on-site or off-site improvements. Construction plans may include, but are not limited to, site plans, subdivision site plans, single lot development plans, grading plans, plans, profiles and cross sections.

Construction-Related Activities. Temporary activities that typically accompany and support work at a site that is undergoing development and construction. Temporary construction-related activities may include construction offices, indoor and outdoor storage, fencing, portable toilets and parking.

Construction, New.

1. **For Heritage Preservation Purposes:** Any construction within a preservation district which is independent and exclusive of an existing building or structure or part thereof in the preservation district.
2. **For Floodplain Management Purposes:** "New construction" means structures for which "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
3. **For the Purposes of Determining Insurance Rates:** Structures for which the "start of construction" commenced on or after August 1, 1979, and includes any subsequent improvements to such structures.

Continuation of Public Hearing. As described in the Herndon Town Code, Section 78-153.2.1.2), Continuation of Public Hearing.

Continuous Sound. A sound whose intensity remains essentially constant during the period of observation. Continuous sound shall be defined for measurement purposes as sound which is measured by the slow response setting of sound level meter.

Continuous Visual Screen. Screening of vehicular use areas by vegetative material, berm, or structures (walls and fences), or a combination of these items designed to completely obstruct off-site views of the vehicular use area typically to a height four feet (48 inches) above the adjacent grade.

Contractor's Materials. A specialized collection of items often in an establishment for the wholesaling or rental of building supplies or equipment primarily to contractors or the building trades. This use type includes lumberyards, tool and equipment sales or rental

establishments, building contractor's yards, and electrical, heating, lumber, and plumbing supply stores to the wholesale trade

Contributing Landmark, Building, or Structure. One that adds to or is consistent with the historic or architectural qualities, historic associations, or values for which the district was established pursuant to Code of Virginia § 15.2-2306 because it (i) was present during the period of significance, (ii) relates to the documented significance of the district, and (iii) possesses historic integrity or is capable of yielding important information about the period.

Convalescent Home. A building where regular nursing care is provided for more than one person not a member of the family which resides on the premises.

Convenience Store. An establishment, not exceeding 3,500 square feet of gross floor area, engaged in the retail sale of food, beverages, and other frequently or recurrently needed items for household use.

Convenience Store with Gas Sales. An establishment, not exceeding 3,500 square feet of gross floor area, engaged in the retail sale of food, beverages, and other frequently or recurrently needed items for household use, and which includes accessory gasoline sales.

Coverage, Lot. The percentage of the lot covered by buildings or structures.

Critical Root Zone. An underground area extending laterally in all four cardinal directions from the base of a tree's trunk to a distance typically 1½ times larger than the perimeter of the tree's drip-line.

Cultural Center or Facility. A facility established for the purpose of educating and entertaining members of the public about art, history, heritage, folkways, music, theater, or other social and cultural matters. A cultural center may include areas for exhibit space, classrooms or seminar rooms, auditoriums, and offices.

Customer Utility Service. All of those wires, conduits, pipes, cables and appurtenant equipment located between the distribution line and the wall of the building occupied by customer in the case of an electric power, telephone, telegrapher, cable television system and all of those conduits, pipes and appurtenant equipment located between the street main and the wall of the building occupied by a customer in the case of gas, water, steam, petroleum or sewer system.

-D-

Day Care Center. See "child care center or day care center."

Day Care Home. See "home based business, child care or day care."

Deck. A roofless balcony, platform, porch or terrace, and associated stairs, attached to an outer wall of a dwelling and having no enclosure other than the sides of the dwelling to which it is attached, and a minimum safety railing as required by the Town's building code.

Density, Gross. The number of dwelling units on a particular tract or parcel of land divided by the entire area of that tract or parcel. Residential density is expressed as "dwellings per acre." See also "intensity."

Density, Net. The number of dwelling units on a particular tract or parcel of land divided by the area of that tract or parcel remaining after subtracting land that is dedicated. Residential density is expressed as "dwellings per acre."

Development.

1. **Generally:** The construction, reconstruction, remodeling, conversion, structural alteration, relocation, enlargement, or demolition of any structure, portion of a structure, or sign; any change in use of a property, building, or structure, or material change in the appearance of any structure; any increase in the number of dwelling units, businesses, manufacturing establishments, or offices; any construction or substantial alteration of institutional, recreational, transportation or utility facilities or structures; any mining, excavation, filling, grading, paving, or land disturbance; and any act of subdivision of land.
2. **For Floodplain Management Purposes:** Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Diameter at Breast Height (DBH). The measurement of the diameter of a tree trunk over 12 inches in diameter taken at a height of 4.5 feet above the ground.

Distribution Center. See "Warehouse (storage)."

District, Zoning. A classification of land under the jurisdiction of the town to regulate, restrict, permit, prohibit, and determine: the use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses; the size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures; the areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and

structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or excavation activities. See Code of Virginia, §§ 15.2-2280 and 15.2-2281.

Donation Drop-Off Box. Any container, storage unit, or building that is intended or used for the holding by charitable, non-profit, or for profit entities, of items left in or adjacent to such donation drop-off box for disposal or donation by the general public and for later collection by the entity operating, owning, or serving the donation drop-off box. These items include but are not limited to clothing, toys, books, household items, newspapers, or magazines. This term does not include a recycling collection point.

Downtown. The land encompassed within sectors 1 through 6 of the Herndon Downtown Overlay policy area, as described in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as may be amended.

Drive-In Window Service (not Drive Through). A term used to describe an establishment designed or operated to serve a patron while seated in an automobile parked in an off-street parking space.

Drive-Through Service. A portion of an establishment designed and operated, in whole or in part, to serve or accommodate patrons while they are seated in an automobile on the premises.

Driveway. A private road connecting one or more houses, garages or other buildings with the street.

Dry Cleaning and Laundry Plants. A commercial facility where linens, clothing, or other cloth or leather goods are cleaned by solvent processes, water washing, or other cleaning processes, but not including self-service laundromats or retail locations where such goods are dropped off by members of the general public for delivery to a central facility where cleaning occurs.

Dry-Cleaning/Laundry Drop-Off and Pick-Up Without On-Site Cleaning, Laundromats. A use where articles or goods of fabric are dropped off and picked up by customers and are sent to a different location for cleaning and pressing. See also "Laundromats."

Duplex. See dwelling, two-family.

Durable Goods Sales. Establishments that display and offer for retail sale, rental, or lease durable goods, including major household appliances; electrical, heating, cooling, and plumbing supplies; lumber and wood; carpet, flooring, and floor coverings; office equipment and supply; and medical equipment and supply; but not including contractors' materials establishments.

Dwelling. Any building or portion thereof, designed or used for residential purposes but, not trailers or mobile homes.

Dwelling Unit. A single unit providing complete, independent living facilities for a single-family, including provisions for living, sleeping, eating, sanitation. See "family."

Dwelling, Accessory. A dwelling unit established within the same structure or in an accessory structure and clearly subordinate to an existing single-family dwelling unit.

Dwelling, Duplex. See "dwelling, two-family."

Dwelling, Multi-Family. A building designed for or occupied exclusively by three or more families living independently of each other.

Dwelling, Quadruplex. A building designed for and occupied by four families living independently of each other. For purposes of this chapter, a quadruplex is a type of multi-family dwelling.

Dwelling, Rental Townhouse Residential Development. A housing development in which the owner leases each townhouse unit to tenants. These developments are rental properties and function like an apartment complex or other multi-family residential, rental commercial property. For purposes of this chapter, a rental townhouse residential development is a type of multi-family dwelling, subject to all associated standards and restrictions.

Dwelling, Single-Family Detached. A building designed for not more than one dwelling unit, not physically attached to any other principal structure.

Dwelling, Stacked Townhouse. A residential building divided into a minimum of three noncommunicating dwelling units, each dwelling unit being separated from the other vertically and horizontally.

Dwelling, Townhouse. A row of two or more single-family attached dwelling units of at least two floors, separate from one another by party walls without doors, windows or other provisions for human passage or visibility through such walls from basement to roof. The roofs of townhouse dwellings may extend from one such townhouse dwelling unit to another. Typically, each townhouse unit is located on an individual lot.

Dwelling, Two-Family. A building designed exclusively for two dwelling units on a single lot, each with their own exterior entrance at grade. Also known as a "duplex."

-E-

Easement. A grant by the property owner to the public, a corporation, or other person or persons for the right to use an identifiable piece of land for specified purposes, such as for access or utilities.

Educational Institution. See "post secondary education and career schools."

Electrical Substation. An assemblage of equipment for purposes other than generation or utilization, through which electric energy in bulk is passed for purposes of switching or modifying the characteristics to meet the needs of the general public, provide that in residential districts an electric substation shall not include rotating equipment, storage of materials, trucks or repair facilities, housing of repair crews, or office or place of business.

Electronic Warehousing. A telecommunication carrier facility containing equipment for telecommunications use including switches, routers, operation centers, and other infrastructure critical for internet servers, data firms fiber-optic cable, and other technology providers.

Elevation. The height in feet above the mean sea level, reference to the National Geodetic Vertical Datum.

Elevation Drawings. A fully dimensioned drawing of the front, rear or side of a building showing features such as windows, doors, siding, and relationship of grade to floor level.

Encroachment. For floodplain management purposes, the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Exception. An action as described in provisions for the Chesapeake Bay Preservation Area Overlay District, Section 78-60.4.O. of the Herndon Town Code.

Existing Construction. For the purposes of determining flood insurance rates and administration of the flood plain overlay district existing construction means structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

-F-

Facade. That portion of any exterior wall of a building extending from grade to top of the parapet, wall or eaves and the entire width of the building elevation.

Facade, Front. Those portions of a facade which face and are most closely parallel to the front lot line.

Family. A person living alone, or any of the following groups conforming to the limitations in Section 78-170.6, Excessive Residential Occupancy, living together as a single nonprofit and non-commercial housekeeping unit, and sharing common living, sleeping, cooking and eating facilities:

1. Subject to the limitations in Section 78-170.6, any number of persons all of whom are related to the second degree of consanguinity by blood, marriage, adoption, guardianship, or other duly-authorized custodial relationship, as verified by official public records such as drivers licenses, birth or marriage certificates; or by affidavits. The zoning administrator may require an affidavit in this regard and may reject any such evidence not in the form of an affidavit; or
2. Up to four persons not all related to one another to the second degree of consanguinity by blood, adoption, guardianship, or other duly-authorized custodial relationship, as verified by official public records such as drivers licenses, birth or marriage certificates; or by affidavits. The zoning administrator may require an affidavit in this regard and may reject any such evidence not in the form of an affidavit; or
3. Subject to the limitations in Section 78-170.6, two unrelated persons and any children related to either of them, as verified by official public records such as drivers licenses, birth or marriage certificates; or by affidavits. The zoning administrator may require an affidavit in this regard and may reject any such evidence not in the form of an affidavit; or
4. Not more than eight persons who are:
 - a. Residents of a residential facility as defined in § 15.2-2291, Code of Virginia, or;
 - b. Handicapped as defined in the Fair Housing Act, 42 USC § 3602(h) and this chapter. This definition does not include persons currently illegally using or addicted to a "controlled substance" as defined in the Controlled Substances Act, 21 USC § 802(6).
 - c. Subject to the limitations in Section 78-170.6, the following shall not be included in the number of persons who might comprise a family: up to two (overall) persons who may be servants (or one servant and one minor child of the servant), live-in companions to the elderly or disabled, or "au pair"

employees (except for families described under subparagraph 2, definition of "family"). Under the last sentence no more than two such persons, of whatever such nature, may be excluded from the number of persons who might comprise a family. Any one claiming a servant, live-in companion to the elderly or disabled, or "au-pair" employee status for an occupant or for one's self must first verify to the zoning administrator the existence of a bona fide employment relationship by a copy of a record, such as an employment contract, a federal I-9 form, a tax return, or an affidavit.

FAR. See "floor area ratio (F.A.R.)"

Farmers' Market, Private. A designated area, located on private property, in which producer-only vendors, limited to farmers, growers, or producers of food or plants, on a regularly scheduled basis meet to sell, at retail, farm products, whole shell eggs, meat, baked goods, plants or food to the public as well as accessory uses as permitted by the ordinance.

Fence. A freestanding, tangible barrier constructed of any allowable materials erected on the ground and rising above ground level for the purpose(s) of: confinement, security, protection, preventing uncontrolled access, or screening (visual, acoustic, or both) of materials stored, operations conducted, or activities occurring behind it.

Financial Institution. Banks, savings and loan institutions, credit unions, investment or brokerage services and other financial services having a public lobby or customer service area open for business at regular hours.

Flood/Floodplain Related Terms:

1. **Flood or flooding.** For floodplain management purposes:
 - a. A general or temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters; or
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source; or
 - (3) Mudflows which are proximately caused by flooding as defined in paragraph a. of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
 - b. The collapse or subsistence of land along the (shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a

- abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.(1) of this definition.
2. **Flood Depth.** For purposes of flood insurance and administration of the floodplain overlay district, the depth of flood waters in shallow flooding areas.
 3. **Flood Insurance Rate Map (FIRM).** For floodplain management purposes, an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a digital flood insurance rate map (DFIRM).
 4. **Flood Insurance Study (FIS).** For floodplain management purposes, an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.
 5. **Flood Proofing.** Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
 6. **Floodplain or Flood-Prone Area.** Any land area susceptible to being inundated by water from any source.
 7. **Floodplain, 100-Year.** All lands that would be inundated by floodwater as a result of a storm event of a one hundred year return interval.
 8. **Floodplain Study.** Hydrology study and related floodplain information prepared using topographic base maps, hydrologic analyses, and hydraulic calculations to arrive at precise water surface profiles and floodplain delineations. See also Chapter 26 and Chapter 70 of the Herndon Town Code.
 9. **Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Floor Area.

1. **For Commercial Business and Industrial Buildings or Buildings Containing Mixed Uses:** The sum of the gross horizontal areas of the several floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings, but not including:
 - a. Attic space providing headroom of less than seven feet;

- b. Basement space not used for retailing;
 - c. Uncovered steps of fire escapes;
 - d. Accessory water towers or cooling towers;
 - e. Accessory off-street parking spaces; and
 - f. Accessory off-street loading berths.
2. **For Residential Buildings:** The sum of the gross horizontal areas of the several stories of a dwelling, exclusive of garages, decks, and open porches. The gross horizontal areas shall be measured from the exterior faces of the exterior walls.

Floor Area Ratio. A quotient which is determined by dividing the total floor area of all buildings on a lot, by the gross area of the lot. Atriums not designed for occupancy and not occupied, and parking structures, both above and below grade, are excluded from the computation of floor area ratio.

Footcandle. A unit of illumination measuring the amount of light that falls onto a surface as emitted by an exterior lighting device.

Fowl. Any domesticated gallinaceous bird, including chickens or roosters, or both. Nothing in this definition shall allow the keeping of a rooster in a residential zoning district.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.

Frontage. For a parcel or lot that abuts street, common area parcel or other defined land area:

1. **Street Frontage:** All of the property on one side of street between two intersecting streets (crossing or termination), measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead end of the street.
2. **Lot Frontage:** The distance for which the front boundary line of the lot and the street line are coincident;
3. **Building Frontage:** The linear distance of a building, measured along the exterior wall which faces a public right-of-way abutting the parcel of land on which the building is located, except as provided in Article XIII - Signs.
4. **Establishment Frontage:** The linear distance of that portion of a building facade measured from centerline to centerline of walls which separate individual businesses.

Full Cut-Off Lens. An artificial outdoor lighting fixture designed to ensure that no light is directly emitted above a horizontal line parallel to the ground.

Funeral Home. An establishment for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

-G-

Garage and/or Yard Sales. The sale, other than retail sales or wholesale for business, of personal property during an event conducted on residential premises in any residential zoning district, including all sales entitled "garage," "lawn," "yard," "attic," "porch," "room," "backyard," "patio," "flea market," or "rummage" sale.

Garage, (residential, private). An accessory building, with doors not exceeding nine feet in height, designed or used for the storage of up to three non-commercial vehicles owned and used by the occupants of the building to which it is accessory. On a lot occupied by a multiple-family dwelling, the private garage may be designed and used for the storage of one and one half times as many automobiles as there are dwelling units.

Glazing. The portion of an exterior building surface occupied by glass or windows.

Golf Course. A tract of land laid out with a course having nine or more holes for playing the game of golf, including any accessory clubhouse, driving range, office, restaurant, concession stand, picnic tables, pro shop, maintenance building, restroom facility, or similar accessory use or structure. This term shall not include miniature golf courses as a principal or accessory use, nor shall it include driving ranges that are not accessory to a golf course.

Governing Body (of the town). The town council of the Town of Herndon.

Government Buildings, Facilities and Uses not Otherwise Categorized. Any facility owned or operated, by an agency of local, regional, state or federal government, including but not limited to any government building, structure, facility, park, golf course, cemetery, public works yard, maintenance, storage, and fueling facilities, playground, parking facility, or other use.

Grade.

1. For buildings having a wall adjoining one street only, the grade is the elevation of the sidewalk at the center of the wall adjoining the street.
2. For buildings having a wall adjoining more than one street, the grade is the average elevation of the sidewalk at the centers of all walls adjoining the streets.
3. For buildings having no wall adjoining the street, the grade is the average level of the finished surface of the ground adjacent to the exterior walls of the building. Any wall parallel to or within ten degrees of being parallel to, and not more than 15 feet from a street line is to be considered as adjoining the street. Sidewalk grades shall be established by the town engineer.

Grading Plan. A drawing and associated information sealed by a Virginia registered professional engineer showing existing and proposed topography, environmental controls, demolition, and proposed alterations to the land. May be referred to as "over lot grading" and "rough grading plan" in this chapter and Chapter 26 of the Herndon Town Code.

Green Space. Permeable land area that is planted or landscaped with non-invasive plant species in accordance with provisions throughout this chapter.

Ground Cover. Any non-invasive living plant designed to grow low to the ground (generally one foot or less) and intended to stabilize soils and protect against erosion.

Group Home. In accordance with the Code of Virginia § 15.2-2291, group home means a residential facility in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one or more resident counselors or other staff persons. In applying the definition of group home under § 15.2-2291(A), (i) mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in the Code of Virginia § 54.1-3401, or (ii) "residential facility" means any group home or other residential facility for which the Department of Behavioral Health and Development Services is the licensing authority. In accordance with the Code of Virginia § 15.2-2291(B), group home also means a residential facility in which no more than eight aged (65 years or older), infirm, or disabled persons reside, with one or more residential counselors or other staff persons. In applying the definition of "group home" under the authority of Code of Virginia § 15.2-2291(B), "residential facility" shall mean any assisted living facility or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority.

-H-

Health Care Facility. A facility providing medical, dental, psychiatric, or surgical service exclusively on an outpatient basis, including emergency treatment, diagnostic services, treatment including alternative treatments or therapies, training, administration.

Health Care Laboratory. A facility that is designed or equipped for collection, testing and analysis of samples or specimens for the purpose of diagnosing medical or dental conditions, but not including inpatient or outpatient clinical or treatment facilities such as hospitals or clinics.

Health Club. An establishment, which may include saunas and steam baths, offering or providing facilities for, and instruction in, general health, physical fitness and controlled exercises such as weight lifting, calisthenics, and aerobic dancing. The facility may be used by member or nonmembers. This term shall not be deemed to include a "school of special instruction."

Hedge. A linear planting of closely spaced shrubs or trees.

Height of Building. See "building, height" and "grade."

Heritage Preservation District. Preservation districts shall be designated by town council. Preservation district boundaries shall encompass and may include areas adjacent to historic landmarks.

Highest Adjacent Grade. For floodplain management purposes, the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Highly Erodible Soils. Soils with an erodibility index from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula, $RKLS/T$, in which R is the rainfall and runoff; K is the soil susceptibility to water erosion in the surface layer; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

Historic Landmarks. Any areas designated by the town council as areas containing buildings or places in which historic events occurred or as having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation, and any building or structures designated by the town council as having an important historic, architectural or cultural interest.

Historic Structure. For purposes of flood insurance and administration of the floodplain overlay district, any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the

Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Home-Based Business. A business that is conducted (i) within a dwelling unit which is the principal and bona fide residence of the practitioner or practitioners of the business and (ii) in accordance with the provisions of Article VII - Use Regulations.

Home-Based Business, Daycare or Childcare. A dwelling in which a permanent occupant of the dwelling provides for the care of up to five children or adults, in accordance with the provisions for home-based businesses in Article VII - Use Regulations. Those receiving care are not all related to the occupant or to each other by blood or marriage and are not the legal wards or foster children of the attendant adults, and do not reside on the site.

Hospital. An establishment providing services for surgery and surgical care, in-patient medical, out-patient medical, and the care of sick or injured persons. A hospital may include related facilities such as laboratories, out-patient services, training facilities, central service facilities, and staff offices, provided the related facility is incidental and subordinate to the principal hospital use and is an integral part of the hospital operation.

Hotel (including extended stay hotels). An establishment containing 50 or more separate and distinct sleeping rooms or suites that contain at least one private bath, are offered to the general public for rental, and are occupied by persons on primarily transient basis such that most occupants stay in the building for no longer than one week at a time. A hotel may contain restaurants, ballrooms, banquet halls and meeting and conference rooms. A hotel may also contain a retail sales area provided that the goods sold therein are of such nature as to accommodate or comfort persons in transit. A hotel and/or the parcel on which hotel is located may contain pools, saunas and/or other recreational facilities utilized primarily by persons occupying sleeping rooms or suites in the building.

Housing for the Elderly. A residential development that is limited to occupancy by elderly persons or persons with disabilities as defined in the Federal Fair Housing Amendments Act of 1988 (as amended). Such a facility shall provide (i) dwelling units with complete kitchen facilities, (ii) supportive services such as meals, personal emergency response systems, recreation and transportation services, and (iii) features of adaptable design specified in 24 CFR 100.205(c)(2)-(3).

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Illuminated Tubing. Neon or other internally illuminated tubing designed to convey a commercial message, or provide a decorative outline of windows, building lines or trees.

Impervious Surface. A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel area and similar ground coverings. See also "paved surface."

Impulse Sound. A single or multiple sound event characterized by a rapid rise to a maximum sound pressure of light intensity, followed by a somewhat slower decrease in sound pressure. The duration of an impulse sound event, which includes a combination of rise and peak, peak amplitude and decay, shall be no more than one (1) second. Impulse sound shall be measured using unweighted peak dB levels and the fast setting of a sound level meter. Impulse sound may include, but not limited to, sound from weapons fire, pile drivers, or blasting.

Industrial Districts. See "business districts."

Industrial Service Uses, All Other. Businesses, other than scientific research and scientific development or dry cleaning and laundry plants, that are engaged in the repair or servicing of industrial, business, or consumer machinery, equipment, products, or by-products. Such businesses may include but are not limited to welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; building, heating, plumbing or electrical contractors; bulk and direct mail insertion and sealing; document production, printing, engraving, commercial publishing and lithography; exterminators; janitorial and building maintenance services; establishments for the mechanical cleaning of garments, articles or goods of fabric; linen or diaper cleaning service establishment; or photo-finishing laboratories.

Infill Site. Any vacant lot or parcel where at least 80 percent of the surrounding land has been developed, and where water, sewer, streets, sidewalks, storm drainage, schools, and fire protection have already been developed and are provided. See also "redevelopment."

Inn. A building or complex of buildings containing at least five, but no more than 49, separate and distinct sleeping rooms or suites that do not contain cooking or eating facilities, that are offered to the general public for rental and that are occupied by persons on primarily a transient basis, such that most occupants stay in the establishment for no longer than one week at a time. Meals may be prepared for and provided to the occupants of an inn within a centralized cooking and dining area in the inn.

Intensely Developed Area (IDA). An area designated by the Chesapeake Bay Preservation Area map for existing development and infill sites at the original adoption date of this article on October 23, 1990, in which development is concentrated and little

of the natural environmental remains. IDAs are generally characterized by at least one of the following:

1. Development has severely altered the natural state of the area such that it has more than 50 percent impervious surface;
2. Public sewer and water systems, or a constructed stormwater drainage system, or both, have been constructed and serve the area by the original adoption date of this article;
3. The condition in item 2 does not include areas planned for public sewer and water or constructed stormwater drainage systems. For the purposes of this definition, any property within 500 feet of public sewer and water is considered served by public sewer and water; or
4. Housing density is equal to or greater than four dwelling units per acre.

Intensity. The level of concentration of activity occurring on a site or in an area, usually expressed for commercial sites as "floor area ratio." Intensity is sometimes used interchangeably with density. See also "Density" and "Floor Area Ratio."

Intermittent Stream. A watercourse that flows in a well-defined channel during some seasons of the year but not the entire year.

-K-

Kennel. A place or establishment in which more than three animals, more than one year of age, are kept, bred, raised, fed, boarded or handled for a fee.

Kept as a Pet. This phrase means maintained for private, noncommercial, and personal reasons, despite the possible occasional, minimal, and incidental sale off-site of by-products.

Kitchen. An area that is used or designated to be used as an element of an independent dwelling unit for the preparation of food and that contains a sink, refrigerator, or food heating unit. See also "accessory food preparation area."

-L-

Land Disturbing Activity. Any land change which may result in soil erosion from water or wind or the movement of sediments into state waters or onto lands in the town including, but not limited to, clearing, grading, excavating, transporting and filling of land. The term shall not include:

1. Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work of less than 2,500 square feet;
2. Individual service connections;
3. Installation, maintenance or repair of any underground public utility lines when such activity occurs in an existing hard-surfaced road, street or sidewalk, provided that such land disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
4. Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;
5. Surface or deep mining;
6. Exploration or drilling for oil and gas including the well site, roads, feederlines and off-site disposal areas;
7. Tilling, planting or harvesting of agricultural, horticultural or forest crops or livestock feed-lot operations; including agricultural engineering operations as follows: the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Code of Virginia, § 10.1-604, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
8. Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;
9. Emergency work to protect life, limb or property, and emergency repairs; provided, however, that if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the town; and
10. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.

Land Disturbing Permit. See Section 26-48, Definitions, of the Herndon Town Code.

Laundromat. An establishment that provides self-service type washing, drying and ironing facilities for the use of retail customers.

Level of Service (traffic). A quantitative measure of traffic congestion identified by a letter scale which indicates the relative free flow of traffic with no delays, where the higher the number of delays, the "higher" the alphabetic indicator.

Library. A publicly-operated facility housing a collection of books, magazines, audio and video tapes, or other media for borrowing and use by the general public.

Light Manufacturing Uses. Businesses that are engaged in the production of products, the mechanical transformation of predominantly previously prepared materials into new products, or the assembly of component parts and the creation of products for sale. Activities may include the production or repair of small machines or electronic parts and equipment; woodworking and cabinet building; publishing, lithography or bulk production of printed material distributed by commercial vehicles; design and development of computers; production and repair of communication equipment, precision items, and other electrical items; assembly of pre-fabricated parts; manufacture of electronics or optical instruments or devices; manufacture and assembly of artificial limbs, dentures, hearing aids, and surgical instruments; production of apparel; and making of signs.

Livestock. Horses, ponies, donkeys, cattle, sheep, goats, swine (except Vietnamese pot bellied pigs) and other hoofed animals.

Loading Space or Loading Berth. A space within the main or accessory building or on the same or adjacent lot, providing for the standing, loading or unloading of trucks, having a minimum dimension of 12 feet by 35 feet and a vertical clearance of at least 14 feet.

Lot Related Terms.

1. **Lot.** Any lawfully created parcel of land, excepting property dedicated to public street purposes.
2. **Lot, Area.** The total area included within the lot lines of a lot.
3. **Lot, Corner.** A lot located at the intersection of two or more streets.
4. **Lot, Depth of.** The mean horizontal distance between the front and rear lot lines.
5. **Lot Line.** The legal boundary line of a lot.
6. **Lot Line Adjustment.** A plat that may be used under certain specified circumstances as a method for making minor revisions to property lines between two or more existing lots or parcels. The lot line adjustment is not a procedure for subdividing property. A lot line adjustment is sometimes called a boundary line adjustment.

7. **Lot, Interior.** A lot other than a corner lot with only one street frontage.
8. **Lot, Pipestem.** A narrow elongated portion of a lot which has as its predominant purpose providing access from a public right-of-way to the house or garage located on the lot.
9. **Lot, Reversed Frontage.** A lot in which the frontages at right angles to the general pattern in the area involved. Reversed frontage lot may also be a corner lot or an interior lot.
10. **Lot, Through.** An interior lot having frontages on two streets.
11. **Lot Width.** The distance between the side lot lines measured at the required front yard line.

Lowest Floor. For purposes of flood insurance and administration of the floodplain overlay district the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44 CFR § 60.3.

-M-

Mailing and Packing Service. An establishment providing mailing, packing, and parcel shipping services for individual retail customers who may deliver and pick up items at the establishment on a walk-in basis. Mailing and packing service may include accessory photocopying machines or services. Mailing and packing service does not include installations of the United States Postal Service, express shipping company distribution and collection facilities, facilities that pack and ship materials on a wholesale basis, or commercial printing, publishing, engraving, and lithography establishments.

Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days, but does not include a recreational vehicle.

Manufacturing, Custom. The production of goods by hand manufacturing involving the use of hand tools, or the use of mechanical equipment commonly associated with residential or hobby uses, or a single kiln.

Manufacturing, Light. The production of goods or articles, predominantly from previously prepared materials of finished products or parts, including processing, fabrication, assembly, treatment and packing of such products, and incidental storage, sales, and distribution of such products. Such use shall not involve on the premises the use of heat, noise, or odor generating or producing processes which are detectable off-site.

Maximum Extent Practicable or Feasible. No feasible or practical alternative exists, as determined by town staff, and all possible efforts to comply with the regulation or minimize potential harmful or adverse impacts have been undertaken by an applicant. Economic considerations may be taken into account but shall not be the overriding factoring determining "maximum extent practicable".

Medical and Dental Laboratories. See "health care laboratory."

Mini-Warehouse. See "self-service storage."

Minor Site Plan. A site plan that meets the provisions of Section 78-155.6.E.3, Minor Site Plan.

Minor Utilities. Small-scale facilities serving a local area, such as pumping stations for water or sewer, hydrants, storm water detention facilities, generators for backup power, electrical transformers and similar equipment in structures that are no larger than 100 square feet and ten feet in height.

Mobile Food Unit, Preparer, Full Service. A motorized food establishment or a food establishment that is pulled or carried by a motorized vehicle, within which food is cooked and plated for sale. Such unit shall include and operation commercial kitchen with three-compartment sink and a separate hand sink. The products sold are not prepackaged but are prepared on-site at time of sale.

Mobile Food Unit, Dispenser, Limited-Service. A motorized food establishment or a food establishment that is pulled or carried by a motorized vehicle, from which prepackaged food is sold, or heated, plated and sold.

Modification. An action for planned developments and described in the Town Code, Section 78-50.2.D, Modification of Requirements.

Mortuary. An establishment for the storage of human bodies prior to their burial or cremation.

Motel. A building or group of buildings on one parcel of land containing 50 or more separate and distinct living or sleeping quarters, each quarter containing at least one private bath, which quarters are offered to the general public for rental for more than nominal compensation and are occupied by persons on primarily a transient basis, such that most occupants stay in the building for no longer than one week at a time. A motel and/or the parcel on which a motel is located may contain pools, saunas, and/or other recreational facilities utilized primarily by persons currently occupying living or sleeping quarters in the motel.

Motor Vehicle. This term is defined in § 46.2-100, Code of Virginia (1950), as amended, and as may be amended from time to time.

Multi-Family Dwelling. See "dwelling, multi-family."

Municipal Performing Arts Facility. Any building or structure operated by the municipality, to provide a service to the public such as, but not limited to, performing arts, visual arts, public assembly or governmental service.

-N-

Natural Disaster or Other Act of God. An act attributable to nature without human interference and not preventable by any human agency. For example, damage from a flood, tornado or a lightning strike would be considered a natural disaster or other act of God. (See also "casualty.")

Natural Grade. The Elevation of the Ground according to (i) an approved engineered development plan or (ii) the elevation of the ground immediately before the beginning of the subject development, which includes any deposit of fill material. The applicant for development approval may determine which of the methods of determining natural grade to use. In the absence of such a determination, the zoning administrator shall make such determination.

Nonconforming Lot. An otherwise legally platted lot, or an otherwise legally created parcel, in existence on and after July 1, 2006, that does not conform to the minimum area or width requirements of this chapter for the district in which it is located either at the effective date of this chapter, July 1, 2006, or as a result of subsequent amendments to the chapter. Such an otherwise legally platted lot or parcel that does conform to the minimum area and width requirements, but does not conform to other requirements of this chapter, is a conforming lot and shall not be treated as a nonconforming lot.

Nonconforming Structure. An otherwise legal building or structure that does not conform with the yard, height, lot coverage, parking or other development regulations of this chapter, for the district in which it is located, either at the effective date of this chapter, July 1, 2006, or as a result of subsequent amendments to the chapter.

Nonconforming Use. The otherwise legally established use of a building, structure or tract of land, which has been continued but that does not conform to the use regulations of this chapter for the district in which it is located, either at the effective date of this chapter, July 1, 2006, or as result of subsequent amendments to the chapter.

Nonconformity. The use or development of land, building(s), structure(s), or lot(s), which was lawful at the time of enactment or amendment of zoning regulations but is not in conformity with this Chapter or an amendment.

Nonpoint Source Pollution. Pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

Nonprofit Organization. See "civic and nonprofit organizations."

Nontidal Wetlands. Those wetlands other than tidal wetlands that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S.

Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act, in 33 CFR 328.3b.

Noxious Weeds. Johnson grass, kudzu, poison ivy, ragweed, poison oak, poison sumac, purple loosestrife, multiflora rose, Japanese honeysuckle, mile-a-minute vine and any other species hereinafter identified on the list of "Invasive Alien Plant Species of Virginia," compiled by the Virginia Department of Conservation and Recreation.

-O-

Occupancy, Residential. Use of a building or structure as a dwelling unit or place of abode.

Occupant. Any person who is an individual 18 years of age or older, living or sleeping in a building; or having possession of a space within a building.

Office. Any room studio, clinic, suite or building wherein the primary use is the conduct of a business such as for examples accounting, correspondence, research, editing, administration or analysis, demographic and market research, technical or academic consulting, among others; or the conduct of a business by sales, sales representatives or manufacturer's representatives, among others; or the conduct of a business by professionals such as engineers, architects, land surveyors, planners, lawyers, real estate brokers, insurance agents, or landscape architects. Office shall not involve manufacturing, fabrication, production, processing, assembling, cleaning, testing, repair or storage of materials, goods and products, or the sale and/or delivery of any materials good or products which are physically located on the premises. An office shall not be deemed to include a health care facility, a health laboratory, or a veterinary clinic.

One Hundred Year Floodplain. All lands that would be inundated by floodwater as a result of a storm event of a one hundred year return interval.

Open Space. Land which is not occupied by a building, parking or loading space, vehicular travel lane, driveway, street, or sidewalk in the public right-of-way; also areas, whether in the public right-of-way or on private land, that meet downtown streetscape provisions of 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) and as referenced in section 1-16, Herndon Town Code (2000) as amended. Open space may contain landscaping, walks, paths, trails, plazas, stormwater management facilities provided as a landscape amenity, play equipment, pools, basketball courts, and the like. See also definition of "green space," and open space standards in Article XI.

Ornamental Tree. See "under story tree."

Outdoor Advertising. See Article XI - Development Standards.

Outdoor Display of Products for Sale. An area of designated size used for the display of seasonal merchandise or tangible property normally sold within the contiguous business or organization.

Outdoor Retail Sales Events. See Article VII - Use Regulations

Outdoor Seating (with a restaurant). See "Restaurant with Outdoor Seating."

Outdoor Storage. The on-going placement of goods, products, vehicles and other articles outside of a roofed enclosure. See also Article VII - Use Regulations.

Over Lot Grading Plan. Plan showing proposed grading of a lot and related information. See "grading plan."

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Parapets, Penthouses for Equipment and Other Roof Structures. A structure mounted on a roof for the purpose of screening, protecting, or facilitating activities within the associated building, but not for purposes of advertising or commercial gain. See also antenna and commercial communication towers.

Park or Playground. A noncommercial, non-profit facility composed primarily of open land area and improvements, intended to be used for recreation and enjoyment, including both active and passive recreation

Parking Area. Land designed and used for location of parking spaces or loading spaces, or both, or for the storage or display of motor vehicles and related driveways and landscaping.

Parking Bay. The parking module consisting of one or two rows of parking spaces or stalls and the aisle from which motor vehicles enter and leave the spaces.

Parking Facility, Commercial. Land designed and used for parking and storage of motor vehicles on a temporary, daily, or overnight basis, and not accessory to a specific principal use. Commercial parking lot includes parking lots located off the site of a principal use and parking lots that are conducted as commercial ventures offering paid parking.

Parking Space, Off-Street. An all-weather surface area not in a street or alley and having an area of not less than 180 square feet, exclusive of driveways, permanently reserved for the temporary storage of one automobile and connected with street or alley by an all-weather surfaced driveway which affords satisfactory ingress and egress for automobiles.

Parking Structure. A structure or facility designed with one or more levels or floors partially or fully enclosed and used exclusively for the parking or storage of motor vehicles, whether accessory to a principal use or located off the site of a principal use. The facility may be above, below, or partially below ground. Parking structure includes parking garages and parking decks.

Parking, Off-Site. An off-street parking area provided on a different parcel than the use it is intended to serve.

Paved Surface. Ground surface or structures above the ground covered with clay-fired bricks, concrete recast paver units (including but not limited to grasscrete), poured concrete, blacktop, or other asphaltic or rubber mixture which may include sand or gravel as an ingredient and which creates a hard surface. A graded surface or a surface covered with rolled stone or loose gravel is not a paved surface. See also "impervious surface."

Peak Hour Trips. The hour-long period on any given day where the number of vehicular trips generated by a land use or group of land uses is the highest, typically occurring within the morning and evening commuter periods.

Perimeter Landscape Strip. Vegetative material, perhaps used with structures (i.e., walls, fences), placed around the perimeter of a lot and used to separate land uses from each other as required by this chapter.

Person. Person shall include but not be limited to human beings, business entities, and non-business entities or organizations. Persons subject to the remedies and penalties set forth in this chapter may include any person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this chapter; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use, occupancy, or development of the property on which the violation occurs.

Personal Services, General. See Article VII - Use Regulations, for a description of activities included in this category.

Personal Services and Retail Sales Uses, Other. See Article VII - Use Regulations, for a description of activities included in this category.

Pet Day Care. An establishment where pets are delivered on a recurring basis and kept for less than 24 hours at a time for commercial compensation, but not including a private home in which pet-sitting for animals belonging to another household is done occasionally on a non-commercial basis.

Pharmacy, Retail. A business principally devoted to the sale of pharmaceutical items, supplies, and equipment.

Pipestem. See "Lot, pipestem."

Portable Storage Units. Self-storage containers that are placed temporarily at the place of residence or business of the customer. See also "structure, temporary."

Post Secondary Education and Career Schools. See "school, post secondary education and career."

Preliminary Subdivision Plan. Plan of a subdivision with lot or site layout, as a basis for consideration by the town prior to the preparation of a record plat and subdivision site plan as described by Chapter 78 of the Town Code.

Preschool. A school for children primarily between the ages of three and five, providing preparation for elementary school.

Primarily Indoors. Kept inside the dwelling unit more than fifty percent of the time.

Principal Structure. A structure or building having a significant or primary use justifying its own utilization, such as a dwelling or office building, as contrasted to accessory structures which are incidental or subordinate to primary structures and do not alone justify their utilization, such as a tool shed or auto garage used in conjunction with a single-family dwelling unit. Certain structures may be either principal or accessory depending upon their utilization, such as a parking garage as an accessory structure to a high-rise apartment or a principal structure when operated commercially.

Principal Use. The significant or primary activity carried out within a structure or upon land.

Private Shared Parking. Off-street parking facilities shared by two or more uses which are close to one another and the parking area, and which have different operational characteristics such that use of the parking facilities by one use will not generally overlap with the use of the parking area by the other use(s).

Private Swimming Pool. See "club, private."

Product Repair and Services. Establishments offering repair of goods and equipment servicing, including household appliance repair, upholstering shops, and office equipment services.

Proffers. Reasonable conditions, in addition to the regulations provided for the zoning district by this chapter, made in writing by owner of the property that is the subject of a zoning map amendment, in advance of the public hearing required by Code of Virginia, §15.2-2285. These conditions are found in the application for rezoning and accompanying documents, and may supplement or modify the regulations provided for particular zoning district or zone by the overall zoning ordinance.

Public Road. For purposes of the Chesapeake Bay Preservation overlay district, public streets or public rights-of-way in the town and publicly owned roads designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (Code of Virginia, § 10.1-560 et seq.) and (ii) the Virginia Stormwater Management Act (Code of Virginia, § 10.1-603.1 et seq.)

Public Shared Parking. Parking spaces or parking facilities open to the public, generally benefiting a certain use, proffered as a condition attached to a conditional rezoning or as an option chosen by a developer or landowner for provision of parking with respect to a site plan or use approval. Public shared parking is provided and financed in part by a developer or landowner to meet parking requirements as set forth in Article X of this chapter for development and in part by the town to provide public parking. In all cases, public shared parking shall be dedicated to the public purposes of providing public parking, revitalization of the downtown, and conserving land, water and the environment; and shall not include any parking spaces that are specifically designated for the benefit of any particular use or property.

-Q-

Quadruplex. See "dwelling, quadruplex."

-R-

Record Plat. The final plat that is approved by the Mayor and town council, recorded in Land Records Division of the Fairfax County Circuit Court, as described in Chapter 70 of the Herndon Town Code. See "subdivision plat, final."

Recreation Space. Land that is dedicated to recreational pursuits that require physical alteration to the area in which they are performed. Such areas may include but are not limited to playgrounds, ball fields, tennis or other courts, fitness trails, walking paths, or swimming pools.

Recreational Vehicle.

1. **Recreation Vehicle, (Generally):** A towed or motorized mobile unit designed, used or intended to be used for recreational purposes, including temporary human occupancy during travel or recreational use. This definition includes jet skis, snow mobiles, all terrain vehicles, travel trailers, pickup campers, motorized dwellings, tent trailers, boats, boat trailers, house boats and the like.
2. **Recreational Vehicle (For purposes of flood insurance and administration of the Floodplain overlay district):** A vehicle which is:
 - a. Built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection;
 - c. Designed to be self-propelled or permanently towable by a light duty truck; and
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

Recreational Vehicle Parking and Storage of Individually Owned Vehicles. A facility owned or operated by a corporation, association, or group of individuals established for the perpetual parking and storing of more than three recreational vehicles in an enclosed, secure area.

Recreational Vehicle Rental and Sales. The display and sale or rental of recreational vehicles.

Recycling Collection Facility. An area or facility where business or household consumers may deposit waste and used materials such as glass, metals, paper, wood, cardboard, plastics, and rubber, for recycling.

Redevelopment. The process of developing land that is or has been previously developed.

Regulatory Flood Protection Level. For floodplain management purposes, refers to a level of one foot, at minimum, above the 100-year floodplain.

Regulatory Floodway. For floodplain management purposes, the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 100-year flood discharge can be conveyed without increasing the base flood elevation more than a specified amount.

Religious Institution. A structure or place where worship ceremonies, rituals, and education pertaining to a particular system of beliefs are held, together with accessory buildings and uses (including buildings used for educational and recreational purposes). Religious institutions may include what are commonly called churches, synagogues, temples, or mosques.

Rental Townhouse Residential Development. A housing development in which the owner leases each townhouse unit to tenants. These developments are rental properties and function like an apartment complex or other multi-family residential, rental commercial property.

Research Laboratory. A facility that is designed or equipped for basic or applied research or experimental study, testing, or analysis in the natural sciences or engineering, including any educational and training activities associated with and accessory to such research.

Residential District. R15, Residential District; R10, Residential District; RTC, Townhouse Cluster Residential District; RM, Multiple-Family Residential District, and Single-Family and Townhouse/Apartment areas of PD-R, planned development—Residential.

Residential Facility. See definition of "group home."

Residential Occupancy. See "occupancy, residential."

Resource Management Area (RMA). Lands that if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area. RMA is further described in Herndon Town Code Section 78-60.4, Chesapeake Bay Overlay District.

Resource Protection Area (RPA). That component of the Chesapeake Bay Preservation Area CBPA comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological process they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters. The elements of an RPA are set out in Herndon Town Code Section 78-60.4.

Restaurant. Any use or building in which, for compensation, food or beverages are dispensed for consumption on or off the premises, including among other establishments, cafes, tearooms, confectionery shops or refreshment stands.

Restaurant, Drive-In. See "drive-In."

Restaurant, with Drive-Through Service. See "drive-through service accessory to a retail pharmacy, dry cleaning business, and financial institution, eating establishment or other principal commercial use."

Restaurant, with Outdoor Seating. Any restaurant that has on its premises for outdoor or open-air dining by customers on a seasonal or year-round basis, a seating area that is (i) subordinate to, clearly associated with, served by, and on the premises of, the restaurant; and (ii) operated as part of the restaurant business and not within any required parking area, open space, sidewalk or public area.

Resubmission. An applicant's written response to comments by town officials on an application that has not received final approval by any reviewing authority.

Retail Sales. Establishments that display and offer for retail sale, rental, or lease consumer, home, and business goods and merchandise, including antiques, art, art supplies, barbershop and beauty shop, bicycles, clothing, crafts, decorator supplies, dry goods, electronic equipment, fabric, florist, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry (including sales and repair), pets, pet food, pharmaceuticals, plants, printer material, stationery, and videos.

Reviewing Authority. The authority designated to make decisions on a specific application as determined by Table 78-151, Development Permit Review Procedures, and the description of review roles in Section 78-150, Administrative, Advisory and Decision-Making Bodies.

Revision. An application to alter any aspect of a plan that was previously approved by a reviewing authority.

Revision, Site Plan. See site plan, revised.

Roofline. The juncture of the roof and the perimeter walls of the structure.

Rooming House. See "boarding house".

Run. The area of property enclosed at all times and on all sides, including the top, with a strong fence of mesh wire or other reliable material as a barrier so as to keep all fowl confined and secure from other animals.

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Sales, Civic and Nonprofit Organizations. See "civic and nonprofit organizations" and Article IX - Temporary Uses and Structures.

Sales of Fireworks. See Article IX - Temporary Uses and Structures for provisions governing the sale of fireworks.

School, Post Secondary Education and Career. An institution of learning that provides a post-secondary, technical, vocational or any other program awarding credentials, skills, knowledge, degrees, or certificates beyond the high school level, and that may also provide subordinate community education programs such as adult education.

School, Public or Private. A public or private institution at the elementary, middle, or high school level that provides educational instruction to students. This definition does not include educational institutions and schools of special instruction.

School, Special Instruction. Unlike a "post secondary education and career school," a school of special instruction is primarily devoted to giving instruction and not leading to a career-based degree, diploma, certification, or other qualification. Activities may include classes for recreation, self-improvement, adult education leading to a GED, arts of all kinds, faith-based subjects, language or other special subjects, and not including nursery schools, day care centers or preschools.

Scientific Research and Scientific Development. Any uses that (i) involve the administration and conduct of investigation, examination or experimentations, but which does not include the operation of laboratory facilities, pilot plants, prototype productions or the assembly, integration, testing, manufacture or production of goods and products on-site, or (ii) involves prototype production limited to computer software development, services and data processing facilities.

Screening. Plantings, walls, fences or earthen berms of sufficient height and density as determined by the zoning administrator using recognized standards to shield effects of one land use from another abutting land use. This term includes variations or other modes of the word "screening."

Seasonal Sales of Agricultural Products at Produce Stands. Temporary stands offering for sale plants or seasonal produce at appropriate planting or harvest seasons for the items offered.

Second Degree of Consanguinity. A human relationship that includes husbands, wives, parents, children, grandparents, grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and first cousins, (including "step" or "half" such relationships) as demonstrated by official public records such as drivers' licenses, birth or marriage certificates; or by affidavits. The zoning administrator may require an affidavit in this regard and may reject any such evidence not in the form of an affidavit. A degree of

relationship beyond or outside of the second degree of consanguinity, or that cannot be or is not verified to the zoning administrator by documents, does not constitute a "relation" or does not amount to "related" under this chapter.

Secondary Front Setbacks. On a corner or through lot, a front setback that is located to the architectural side or rear of the principal building on the lot and not the architectural front of the principal building on the lot.

Secondary Kitchen. A food preparation area that does not constitute the primary kitchen on a property and does not comply with the definition of a wet bar as defined in this article and meeting the provisions of Section 78-80.4.B

Self-Service Storage Uses. A facility, other than a storage warehouse, with buildings divided into separate compartments that may climate controlled units, used to meet the temporary storage needs of households and small businesses with no commercial transactions permitted other than the rental of the storage units.

Semi-Trailer. This term shall be defined as it is defined in § 46.2-100, Code of Virginia (1950), as amended, and as may be amended from time to time.

Senior Center. A place, structure, area, or other facility used for and providing social, educational, or recreational programs or activities for persons age 55 and older, and which may be publicly or privately owned.

Setback. The minimum distance by which any building or structure must be separated from the front lot line or any lot line adjoining a street.

Shallow Flooding Area. A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Shopping Center. One or more buildings or establishments located on the same lot or parcel of ground which are built at the same time or over an extended period of time, with land, buildings and appurtenant facilities in a single ownership, or under management or supervision of a central authority or subject to such other supervisory lease, ownership control or agreement. One building shall be deemed a shopping center if, at the time of its construction, another building is ultimately planned by the person responsible therefore, which building is to be connected to the first or original building.

Shrub. A woody plant, smaller than a tree, consisting of several small stems emerging from the ground, or small branches near the ground.

Sidewalk and Parking Lot Sales (including temporary retail sales stands of non-agricultural goods). A temporary, outdoor retail sales event governed by provisions in Section 78-90.2 for Temporary Use Permits.

Sight Distance Triangle. The horizontal and vertical areas at the intersections of streets and/or driveways which must remain unobstructed, in order to ensure that drivers can see traffic and pedestrians around the corner of the intersection, entrance or driveway. See Article XI - Development Standards.

Sign Related Terms. The following definitions pertain to signs and signage in all zoning districts:

1. **A-Frame Sign.** A-Frame sign means a two-faced sign with supports that are connected at the top and separated at the base, forming an “A” shape. These are also referred to as “sandwich board” signs.
2. **Awning Sign.** Awning sign means a sign placed directly on the surface of an awning.
3. **Blade Sign.** Blade sign means a projecting sign that is vertically oriented and mounted on a wall perpendicular to the wall plane.
4. **Box Sign.** Box sign means a wall sign designed with a cabinet that houses internal illumination and faced with a translucent panel containing the sign copy.
5. **Building Frontage.** Building frontage means the length of the exterior wall of a building which physically encloses usable interior space and faces a public right-of-way.
6. **Canopy Sign.** Canopy sign means a sign affixed on a canopy.
7. **Changeable Copy Sign.** Changeable copy sign means a sign or part of a sign that is designed so that characters, letters or illustrations can be changed or rearranged without altering the face or surface of the sign.
8. **Design Guidelines.** Design guidelines mean the guidelines found in either the Herndon Heritage Preservation Handbook, the Downtown Herndon Pattern Book or the Urban Design & Architectural Guidelines for the Herndon Transit-Oriented Core.
9. **Flag.** Flag means a piece of cloth or similar material, typically rectangle, attachable by one edge to a pole or rope.
10. **Flashing Sign.** Flashing sign means a sign that includes lights that flash, blink, or turn on and off intermittently.
11. **Freestanding Sign.** Freestanding sign means a sign that is supported by structures or supports in or upon the ground and independent of any support from any building or wall.

12. **Illegal Sign.** Illegal sign means any sign erected without a required permit or which otherwise does not comply with any provisions of this article.
13. **Illuminated Sign.** Illuminated sign means a sign that is halo-lit, internally lit, or indirectly lit, but does not include a neon sign.
14. **Internal Sign.** Internal sign means freestanding or wall signs that are located away from the right-of-way (more than 50') on multi-tenant, multi-parcel, and multi-building commercial centers.
15. **Master Sign Plan.** Master Sign Plan means a coordinated, comprehensive sign program for a multi-tenant commercial property or center that sets specific sign standards for that property or center.
16. **Minor Sign Plan.** Minor sign means a wall or freestanding sign not exceeding two (2) square foot in area and not illuminated or neon.
17. **Moving Sign.** Moving sign means a sign any part of which moves.
18. **Neon Sign.** Neon sign means a sign containing exposed tubes filled with light-emitting gas.
19. **Nonconforming Sign.** Nonconforming sign means any sign which was lawfully erected in compliance with applicable regulations of the Town and maintained prior to the effective date of this chapter of the zoning ordinance and which fails to conform to current standards and restrictions of the zoning ordinance.
20. **Normal Grade.** Normal grade means the grade at the edge of the adjacent public or private street.
21. **Off-Site Sign.** Off-site sign means a sign that directs attention to a business, product, service or activity conducted, sold or offered at a location other than the premises on which the sign is erected.
22. **Parapet Sign.** Parapet sign means a wall sign installed on the parapet of a multi-story building.
23. **Pole Sign.** Pole sign means a sign that is mounted on one (1) or more freestanding poles.
24. **Projecting Sign.** Projecting sign means any sign, affixed to a building, supported only by the wall on which it is mounted, and oriented perpendicular to the wall plane on which it is anchored.
25. **Raceway Transformer.** Raceway Transformer means a running electrical transformer box affixed to and housing the circuitry for internally illuminated wall signs.

26. **Review Board.** Review board means either the Architectural Review Board or the Heritage Preservation Review Board.
27. **Roof Sign.** Roof sign means a sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.
28. **Sign.** Sign means any word, numeral, figure, design, trademark, flag, pennant, twirler, light, display or other device of any kind which, whether singly or in any combination, is used to attract attention, direct, identify, inform, persuade, advertiser for the purpose of visually attracting attention of the public while viewing the sign from outdoors.
29. **Sign Face.** Sign face means the portion of a sign structure bearing the message.
30. **Sign Structure.** Sign structure means any structure bearing a sign face.
31. **Temporary Sign.** Temporary sign means any sign intended to be displayed for a limited period.
32. **Vehicle or Trailer Sign.** Vehicle or trailer sign means any sign attached to or displayed on a vehicle, if the vehicle or trailer is used for the primary purpose of advertising a business establishment, product, service or activity. Any such vehicle or trailer shall, without limitation, be considered to be used for the primary purpose of advertising if it fails to display current license plates, inspection sticker, or municipal decal, if the vehicle is inoperable, if evidence of paid-to-date local taxes cannot be made available, or if the sign alters the standard design of such vehicle or trailer.
33. **Wall Sign.** Wall Sign means any sign attached to a wall or painted on or against a flat vertical surface of a structure.
34. **Window Sign.** Window sign means any sign visible outside the window and attached to or within 18 inches in front of or behind the surface of a window or door.
35. **Wind Sail Sign.** Wind sail sign means a lightweight, portable sign mounted along one edge on a single, vertical, flexible pole the physical structure of which at may resemble a sail, bow, feather, or teardrop.

Single-Family Detached Dwelling. See "Dwelling, single-family detached."

Single Lot Development Plan. A construction plan for a single-family detached or duplex dwelling located on an existing lot not subject to a preliminary subdivision plan.

Site Plan. Detailed drawings indicating all buildings constructed and improvements required by Article XV of this chapter.

Site Plan, Revised. A site plan showing any proposed changes or revisions to an existing, previously approved site plan. See provisions of Section 78-155.6.E.3, Minor Site Plan.

Sketch Plan. A sketch of a proposed subdivision or other development and of sufficient accuracy and detail to be used for purposes of discussion and classification.

Social Service Uses. A service or activity undertaken to advance the welfare of persons in need. Social services may include counseling, management of learning or physical disabilities, training in life management skills, vocational skills, related matters, but not a health care facility or educational institution as a primary use. A social service may include accessory uses such as offices, health clinic, or a food and goods distribution facility.

Sound Pressure Meter. An instrument to measure sound pressure levels which shall meet or exceed the American National Standards Institute (ANSI) Standards S1.4 for a "Type Two" meter and shall be calibrated by the manufacturer of a company that can at certify the calibration at least one (1) time each year.

Special Exception. A land use not permitted otherwise in a particular district except by a specific action of the Town Council as described in Section 78-155.3 of the Town Code.

Special Flood Hazard Area. The land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in Section 78-60.2 of the Town Code.

Stacking or Standing Area, Standing Spaces. A portion of the vehicular use area on a site which is dedicated to the temporary storage or "standing" of vehicles engaged in drive-through use of the site or development. Parking or storage of vehicles is not permitted within the stacking/standing area.

Start of Construction. For floodplain management purposes, other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L. 97-348), means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural

part of a building, whether or not that alteration affects the external dimensions of the building.

Steep Slopes. Slopes with a gradient equal to or greater than 15 percent.

Storage Yard or Outdoor Sales Display. The keeping outside of an enclosed structure of any goods, material, merchandise, or equipment in the same place for more than 24 hours, or the outdoor display or offering for sale of any goods, material, merchandise, or equipment.

Stormwater Management Device. The system, or portion thereof, including inlets, conduits, channels, ditches, retention and detention ponds, sand filters, and other bio-retention devices and appurtenances which serve to manage the conveyance of stormwater through and from a given drainage area.

Story. That portion of a building other than a basement, included between the surface of any floor and the surface of the floor next above it; or if there is no floor above it, then the space between such floor and the ceiling next above it.

Street Related Terms

1. **Street.** The word "street" shall include avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the town, and shall mean the entire width between the property lines thereof. It shall not be construed to include a sidewalk or footpath not adjacent to the motor vehicle travel way, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the town council. The word "street" also includes or is supplemented by the definition of "highway" found in Code of Virginia, § 46.2-100. This latter term controls in cases of conflict or variance with the town council's definition here. In any event, "street" includes the sidewalk adjacent to the motor vehicular travel way. Access easements or alleys are not deemed streets for the purposes of applying sign, height, fence, grade or setback regulations of this chapter. See also "street, private" and "street, public."
2. **Street Frontage.** The distance along which a property line of a lot adjoins a public or private street
3. **Street Line.** A dividing line between a lot, tract or parcel of land and a contiguous street.
4. **Street Trees.** See "tree, street."
5. **Street, Arterial.** Higher order streets with controlled access which are intended for through or regional traffic moving between urban centers and not intended for local or residential neighborhood traffic. These streets have multiple travel lanes, provide access to regional travel ways, and carry high volumes of traffic.

6. **Street, Collector.** Streets that penetrate various land use classifications to provide both land access and mobility within neighborhoods and commercial areas. Their primary function is traffic service, collecting traffic from intersecting streets and funneling it to major thoroughfares.
7. **Street, Cul-De-Sac.** A street with a single means of ingress and egress with a turnaround at the terminus.
8. **Street, Loop.** A street that has more than one intersection with another street.
9. **Street, Private.** Any street in which the public right of passage is owned by an entity other than a government and is or is intended to be constructed to certain minimum standards in accordance with the Town of Herndon Public Facilities Manual.
10. **Street, Public.** Any street in which the public right of passage is owned by a unit of government.

Structural Alterations. Any change in the supporting members of a building including, but not limited to, bearing walls or partitions, columns, beams or girders or any substantial change in the roof or in the exterior walls.

Structure.

1. **For flood plain management purposes:** A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
2. **For flood insurance coverage purposes:**
 - a. A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
 - b. A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
 - c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.
 - d. "Structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph **c.** of this definition, or a gas or liquid storage tank.

Structure, Permanent. Any assembly of materials forming a construction for occupancy or use, (other than a fence, retaining wall, surface parking area or small dish

antennae) that requires location on the ground or that is attached to something having a location on the ground including, but not limited to, advertising signs, billboards, or poster boards. stadiums, circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, swimming pools, amusement devices, storage bins, or other structures of this general nature.

Structure, Temporary. A feature, device, container or vehicle such as a trailer, shipping container, tent, recreational vehicles and certain motor vehicles, without a permanent foundation or footing and which is removed when the designated time period, activity, or use for which the temporary structure was erected has ceased.

Subdivision Plat, Final. A record plat for a subdivision. See "record plat."

Subdivision Site Plan. See Herndon Town Code Chapter 70, Article IV, Definitions.

Submittal. Formal delivery to the town by hand, U.S. mail, or courier of a complete development application, including all forms, fees, plans, specifications and other submittal requirements as may be required for specific applications. Items submitted by facsimile or electronic means are not part of the formal submittal.

Substantial Alteration. For purposes of the Chesapeake Bay Preservation overlay district, any expansion or modification of a structure for development that would result in a disturbance of land exceeding an area of 2,500 square feet in the resource management area.

Substantial Damage. For purposes of flood insurance and administration of the floodplain overlay district: "substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement. For purposes of flood insurance and administration of the floodplain overlay district: "substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures, which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either (i) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (ii) any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".

Survey, Building Location. A plat with bearings and distances for the boundaries and the area of the lot or parcel of land shown in accordance with record data, and

determining the location of physical improvements on any parcel of land or lot. For the purposes of this chapter, the building location survey meets the standards describes in Section 78-155.6.E.1, Building Location Survey.

Survey, House Location. A plat with bearings and distances for the boundaries and the area of the lot or parcel of land shown in accordance with record data, and determining the location of physical improvements on any parcel of land or lot. The plat is 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 reflected in 18 Virginia Administrative Code 10-20-380.

-T-

Taxicab Service. A service that offers passenger transportation to individuals. The business may include facilities for servicing, repairing and fueling the taxi vehicles.

Telecommunication Switching Station. See "communication/transmission warehousing."

Temporary Assembly Site for Day Workers. A place where workers or potential workers assemble to seek or accept casual, intermittent, or temporary work off-site; where employers, or potential employers, visit to hire or to seek to hire workers for such work; and as to which the zoning approval is limited in duration. The temporary assembly site for day workers may be referred to as "the site."

Temporary Vehicle Washes by Civic and Nonprofit Organizations. A temporary event governed by Article IX - Temporary Uses and Structures, and hosted by a locally-based civic or nonprofit organization as defined herein, for the purpose of fundraising for a charitable cause and consisting of a full-service wash provided by volunteers or the organization.

Temporary Office Facilities (including real estate sales offices). The temporary use of a structure such as a trailer, shipping container, or recreational vehicle in conjunction with construction or associated real estate sales or leasing, including those located in a model unit of a residential project, or used during construction to expand or replace a permanent building, and governed by the provisions in Article IX - Temporary Uses and Structures.

Temporary Parking for Special Events. See provisions in Article IX - Temporary Uses and Structures.

Temporary Sales. See provisions in Article IX - Temporary Uses and Structures.

Temporary Structure. See "structure, temporary."

Temporary Uses. A use established for a fixed period of time, with the intent to discontinue such use upon the expiration of such time, and that does not involve the construction or alteration of any permanent structure. See provisions in Article IX - Temporary Uses and Structures.

Temporary Uses on Town Property. A temporary use established on any property owned or managed by the Town of Herndon.

Theater. A building or part of a building used for showing motion pictures or theatrical, musical, dance, or other live performances on a paid admission basis.

To Run at Large. To roam, run, or self-hunt off the property of the owner or custodian of an animal and not under such owner's or custodian's immediate control.

Towing Service. The removing of an automobile by towing, carrying, hauling, or pushing from public or private property when such vehicle has been ordered to be impounded to a public or private impound lot. This shall not include an "automobile servicing" use that has a tow truck and repair vehicles on site. It shall not include the impoundment and storage of vehicles.

Townhouse Dwelling. See "dwelling, townhouse."

Traffic Impact Study. A document required of applicants under certain circumstances as described in Section 78-156.1 of the Town Code to help town officials evaluate a development application.

Trailer. This term shall be defined as it is defined in § 46.2-100, Code of Virginia (1950), as amended, and as may be amended from time to time.

Transient Lodging Business. A use where transient lodging, lodging and meals, or meals are provided to individuals for money or other thing of value.

Transitional Use. A use intended to permit a more gradual change of the character of uses at or near the boundaries of districts which have different use regulations and which may be permitted by the board of zoning appeals in accordance with the provisions of this chapter.

Tree Canopy. The leaves and branches composing the crown of one or more self-supporting woody plants which can reasonably be expected to achieve a mature height of 30 feet or greater. See also "canopy tree."

Tree, Deciduous. A tree that annually drops its foliage before becoming dormant.

Tree, Evergreen. A tree with foliage that is not dropped, or which remains green throughout the year.

Tree Protection Zone. The portion of a development site located under a tree canopy area to be retained during the development process.

Tree, Street. Canopy or shade trees planted at regular intervals within or adjacent to existing street rights-of-way.

-U-

Understory Tree. A tree that has an expected height at maturity no greater than 30 feet.

Used Vehicle Sales as an Accessory Use. A use in which used passenger automobiles, trucks, motorcycles, and the like, in operating condition are displayed for sale in conjunction with and subordinate to a new vehicle sales or vehicle service and repair use. This use does not include leasing, rental or storage of such vehicles. This use does not include the sale of air, aquatic, commercial or construction vehicles or equipment or the sales of new vehicles.

Utilities, Major. Infrastructure services providing regional or community-wide service. Major utilities include water towers; wastewater treatment plants; potable water plants; and public transit park and ride facilities; major electrical transmission wires, fiber optic cable, and electrical substations.

Utilities, Minor. Infrastructure services that need to be located in or near the neighborhood where the service is provided. Minor utilities include water and sewage pump stations; stormwater retention and detention facilities; ordinary poles, lines, and pipes for local distribution; transformers; rights-of-way and utility easements; telephone exchanges; and surface transportation stops.

Utility Strip. A vegetated strip of ground typically located between the sidewalk and the back of curb or edge of pavement of a public or private street. The utility strip is usually intended for the placement of street trees and underground or above ground utilities.

Utility-Related Maintenance and Storage Yards. Outdoor storage accessory to a major or minor utility.

-V-

Variance. (From Code of Virginia): A reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk or location of a building or structure when the strict application of this chapter would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of this chapter. A variance shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

VDOT. Virginia Department of Transportation.

Vehicle. This term, excluding bicycles, shall be defined as it is defined in §46.2-100, Code of Virginia (1950), as amended, and as may be amended from time to time.

Vehicle, Commercial. See Section 42-1 of the Herndon Town Code.

Vehicle Fuel Sales with or without Convenience Store. Any buildings and premises wherein the sole use is the supply and/or dispensation at retail of gasoline, oil, grease, batteries, tires, and/or motor vehicle accessories and where, in addition, the following services may be rendered and sales made, but only as accessory and incidental to the use:

1. Sales and servicing of spark plugs, batteries and distributors and distributor parts;
2. Tire servicing and repair, but not recapping or reproofing;
3. Replacement of mufflers and tailpipes, water hoses, fan belts, break fluid, light bulbs, fuses, floor mats, windshield wipers and wiper blades, grease retainers, wheel bearings, oil filters, mirrors and the like;
4. Washing and polishing, and sale of automotive washing and polishing materials;
5. Greasing and lubrication and radiator flushing;
6. Minor servicing and repair of carburetors, fuel pumps, water pumps and lines and minor motor adjustments;
7. Installation and repair of electrical wiring;
8. Adjusting and repairing brakes;
9. In addition to automotive products, sales to be limited to soft drinks, packaged foods and tobacco products;

10. Provision of road maps and other information material to customers, and provision of restroom facilities;
11. State inspections on automobiles; Uses permissible at a service station shall not include major mechanical and body work, repair of transmissions or differentials, straightening of body parts, painting, welding or other work involving noise, glare, fumes, smoke or other characteristics to an extent greater than normally found in-service stations.

Vehicle Full-Service Wash and Detailing. The use of a site for washing, cleaning, and detailing (including related services such as hand waxing) of passenger vehicles, recreational vehicles, or other light duty equipment.

Vehicle, Inoperable Motor. See Section 26-306 of the Herndon Town Code.

Vehicle, Junk. A motor vehicle, recreational vehicle, trailer or semi-trailer which has been abandoned or is being held for salvage, scrap or for any purpose other than to restore it to its intended use or to restore it for expository purposes. It shall be presumed to be a junk vehicle if no license plates are displayed, or if the license plates displayed have been invalid for more than 90 days, or if the vehicle remains in an inoperable condition for more than 90 days. No vehicle stored in a completely screened area shall be deemed a junk vehicle. See also "Vehicle, Inoperable motor."

Vehicle Rental and Sales as a Principal Use. Premises on which new or used passenger automobiles, trailers, trucks and other vehicles in operating condition are displayed for sale, lease, or rental. This use does not include the rental, storage, or maintenance of large construction equipment.

Vehicle Rental as an Accessory Use. A use in which new or used passenger automobiles, trucks, motorcycles, and the like, in operating condition are displayed for rent in conjunction with and subordinate to a principal use. This use does not include sale or storage of such vehicles. This use does not include the rental of air, aquatic, commercial or construction vehicles or equipment or the sale of vehicles.

Vehicle Repair; Transmission and Muffler Shops. General repair, rebuilding, or reconditioning of engines, motor vehicles, or trailers, including body work, framework, welding, and major painting service.

Vehicle, Sales of Parts and Tires. Premises on which new vehicle parts, tires and accessories are sold and may include installation of minor parts but not the sale of used parts or tire recapping establishments.

Vehicle Sales, New. A use in which new passenger automobiles, trucks, motorcycles, and the like, in operating condition are displayed for sale and lease in conjunction with a new vehicle sales use. This use does not include rental or storage of such vehicles. This use does not include the sale of air, aquatic, commercial or construction vehicles or equipment or the sale of used vehicles.

Vehicle Servicing. The replacement or repair of any automobile part that does not require removal of the engine head or pan, engine transmission, or differential; incidental body and fender work; minor painting; upholstering service; and oil change and lubrication. See also "vehicle fuel sales with or without convenience store."

Vehicle Sign. See "sign, vehicle."

Vehicular Use Area. The portion of a site or development dedicated to vehicular ingress and egress, off-street parking, parking aisles, internal travel ways, fire lanes, and other areas dedicated to vehicular use, but not necessarily including vehicular storage areas.

Vehicle Wash Accessory to Other Automotive Uses. An automated vehicle wash operating as an accessory to a use involving vehicle fuel sales, vehicle rental and sales, vehicle repair, vehicle parts and tire sales, or vehicle servicing. This use is governed by provisions for drive through establishments in Article VII.

Vehicular Use Area Landscaping, Interior. Vegetative material, structures (walls or fences), berms, and associated ground cover located within the interior of a parking lot, or other vehicular use area for the purposes of providing visual relief and heat abatement.

Vehicular Use Area Landscaping, Perimeter. Vegetative material, structures (walls or fences), berms, and associated ground cover located around the perimeter of a parking lot, or other vehicular use area when such areas are adjacent to a street right-of-way or residentially zoned or used property for the purposes of screening the vehicular use area from off-site views.

Veterinary Clinic. The commercial provision of medical or animal care services and treatment when conducted solely on the basis of travel by the treating individual(s) to the site where the treated animal is located; veterinary or grooming services performed solely on a "house call" basis.

Vietnamese Pot Bellied Pig. A domesticated miniature Vietnamese, Chinese, or Asian pot-bellied or pot-belly pig, a type of swine. A swine is a stout bodied short legged omnivorous mammal of the species "Sus scrofa" and the family "Suidae," with a thick bristly skin and a long mobile snout.

Violation. For floodplain management purposes, the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in [CFR] Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

-W-

Waiver. For site plans, an action as described in Section 78-155.6.L. of the Town Code.

Wall. As used in required landscaping, a structure used to delineate a boundary or act as a barrier or means of protection, confinement, or screening.

Warehouse, Distribution. A structure or facility for the ongoing receipt, storage, and distribution of goods, products, cargo, or materials, or for the breakdown or consolidation of orders for goods, products, cargo, or materials, to or from sources for distribution to various recipients and locations. Also called "distribution center."

Warehouse, Storage. A structure or facility used primarily for the storage of goods and materials by the owner of the goods or operated for a specific commercial establishment or group of establishments in a particular industrial or economic field.

Water Body with Perennial Flow. A body of water flowing in a natural or open man-made channel year-round, except during periods of drought. The term "water body with perennial flow" includes perennial streams, estuaries and tidal embayments. A perennial stream means any stream that is both perennial and so depicted on the map of Chesapeake Bay Preservation Areas, adopted by the town council. Lakes and ponds that form the source of a perennial stream, or through which the perennial stream flows, are part of the perennial stream. The width of the perennial stream may be measured from either (i) top-of-bank to top-of-bank on the opposite side of the stream or (ii) from Ordinary High Water Mark (OHWM) to the OHWM on the opposite side of the stream, as defined by 33 CFR Part 328.3(e), as determined by the zoning administrator. Ponds or lakes are to be measured from the limits of the normal water level. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow.

Water Course. A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Water-Dependent Development. A facility or development that cannot exist outside of the RPA and must be located in the stream proximity by reasons of the intrinsic nature of the operation. These facilities include intakes and outfalls of storm sewers, stream restoration projects, and public water-oriented recreation areas.

Water Quality Impact Assessment, Minor and Major. A report described in provisions for the Chesapeake Bay Preservation Area Overlay District, Section 78-60.4 of the Town Code.

Wet Bar. A supplemental food preparation area within a structure or external to the structure when not enclosed on more than two sides, which is not used for the establishment of an additional dwelling unit and which meets the provisions of Section 78-80.4.B.

Wetlands. Any tidal and nontidal wetlands that meet the unified federal definition as delineated by hydrology, soils and vegetative characteristics. See CFR, Title 33, Navigation and Navigable Waters, Chapter II, Part 328, Section 3.

Wholesale Establishment. Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users; or to other wholesalers. Wholesale establishment does not include contractor's materials or office or retail sales of business supplies/office equipment.

-Y-

Yard. That portion of a lot area and the space above it not containing any portion of a principal structure, except as otherwise provided in this chapter.

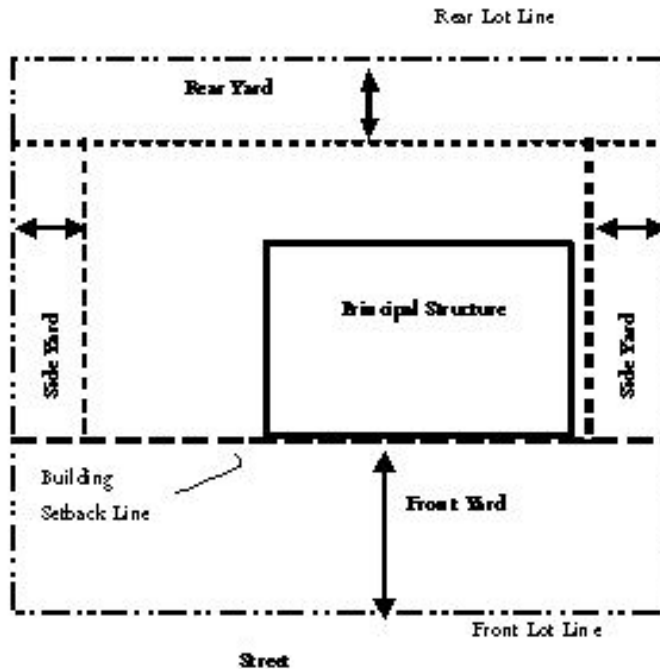


Diagram of Required Yards

Yard, Front. A yard extending across the front of a lot between the side lot lines, the minimum depth of which is the required setback. On corner lots, the front yard shall be considered as parallel to the streets upon which the lot has frontage.

Yard, Rear. A yard extending across the rear of the lot between the side lot lines on interior lots, the depth of which is the minimum parallel distance between the rear lot line and the rear of the main building.

Yard Sale. See "garage and/or yard sales."

Yard, Side. A yard between the main building and the side line of the lot and extending from the setback line to the rear yard on interior lots, the width of which being the minimum horizontal distance between the side lot line and the side of the main building.

-Z-

Zoning Map Amendment. An action to amend the town's official zoning map as provided in section 78-155.1 of the Town Code.

Zoning Administrator Determination. An interpretation of Chapter 78 by the zoning administrator as provided in Section 78-150.6.E. of the Town Code.

Zoning Verification Letter. A letter by the zoning administrator and provided upon written request from a property owner or agent to verify the zoning status of a property.