

TOWN OF HERNDON, VIRGINIA**ORDINANCE****November 17, 2020**

Ordinance – to amend Chapter 78 (ZONING), Article I (Introductory Provisions), Section 78-10.3 (Purpose and Intent), Article II (Zoning Districts), Section 78-20.2 (Establishment of Overlay Zoning Districts), Section 78-20.3 (Relationship of Base Districts to Overlay Zoning Districts), Section 78-20.5 (Transition to New Zoning Districts), Article V (Planned Development Districts), Section 78-50.2 (Standards for all Planned Development Districts), Section 78-50.6 (PD-D, Planned Development-Downtown), Section 78-50.7 (PD-TD, Planned Development-Traditional Downtown), Article VI (Overlay Districts), Section 78-60.2 (Floodplain Overlay District (FPO)), Section 78-60.3 (Heritage Preservation Overlay District (HP District), Section 78-60.4 (Chesapeake Bay Preservation Area Overlay District (CBPAO)), Article VII (Use Regulations), Section 78-71.13 (Commercial Utilities Use Category), Article VIII (Accessory Uses), Section 78-80.3 (Accessory Structure Standards), Section 78-80.4 (Standards for Specific Accessory Uses and Structures by Use Type), Article XI (Development Standards), Section 78-110.3 (Site Landscaping (Not Contained in Perimeter Buffer Strips and Vehicular Use Areas)), Section 78-114.1 (Additional Screening Requirements), Section 78-115.1 (Retaining Walls), Section 78-115.2 (Fencing, Walls (Except Retaining Walls) and Hedges, Article XIV (Signs), Section 78-140.4 (Prohibited Signs), Section 78-140.5 (Sign License Required), Section 78-141.6 (Sign Standards for Downtown and Mixed-Use Districts), Article XV (Decision-Making Authorities, Application Review and Permitting), Section 78-150.1 (Town Council), Section 78-150.2 (Planning Commission), Section 78-150.4 (Heritage Preservation Review Board), Section 78-150.5 (Architectural Review Board), Section 78-150.6 (Zoning Administrator) Section 78-151. (Summary Table of Development Review Responsibilities), Section 78-152.2 (Application Submission, Requirements and Acceptance), Section 78-153.2 (Review Process for Applications Requiring a Public Hearing (Approval by Decision Making Body)), Section 78-155.1 (Zoning Map Amendment (ZMA)), Article XVI (Nonconformities), Section 78-160.1 (Generally), Section 78-160.3 (Nonconforming Structures), Article XVII (Enforcement, Violations and Remedies), Section 78-170.3 (Types of Violations), Section 78-170.4 (Penalties, Fines and Remedies for Violations), Article XVIII (Definitions), Section 78-180. (Definitions), and adding a new Section 78-155.10 (Certificates of Appropriateness) to change the name of the Heritage Preservation Overlay district to the Historic District Overlay and to allow for the administrative review of certain types of certificates of appropriateness.

BE IT ORDAINED by the Council for the Town of Herndon that:

1. Chapter 78 (ZONING) of the Herndon Town Code is amended and reenacted as follows.

1 **Section 78-10.3 – Purpose and Intent.**

2 ***

3 (b) Intent. *This chapter is intended to:*

4 ***

5 (5) Protect against destruction of or encroachment upon historic ~~and heritage~~ areas.

6 ***

7 (19) Enhance the unique characteristics of historic ~~and heritage~~ resources and ensure
8 a built environment that is a *historically* worthy ~~heritage~~ for future generations.

9 ***

10 **Section 78-20.2 – Establishment of overlay zoning districts.**

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

TABLE 78-20.2: OVERLAY ZONING DISTRICTS	
Abbreviations	District Name
FPO	Floodplain Overlay District
HPO <i>HDO</i>	Heritage Preservation <i>Historic District</i> Overlay District
CBPAO	Chesapeake Bay Preservation Area Overlay District

13

14 **Section 78-20.3 – Relationship of base districts to overlay zoning districts.**

15 Three overlay districts are established in addition to the base zoning districts: The Floodplain
16 Overlay (FPO) ~~District~~, the ~~Heritage Preservation~~ *Historic District* Overlay (~~HPO~~) (*HDO*)
17 ~~District~~, and the Chesapeake Bay Preservation Area *Overlay* (CBPAO) ~~district~~. Where land is
18 classified into an overlay district as well as a base zoning district, the regulations governing the
19 development in the overlay district shall apply in addition to the regulations governing the
20 development in the underlying base zoning district. In the event of an express conflict, as
21 determined by the zoning administrator, between the standards governing an underlying base
22 zoning district and those governing an overlay district, the standards governing the overlay
23 district shall control.

24 ***

25 **Section 78-20.5 – Transition to new zoning districts.**

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

TABLE 78-20.5: TRANSITION TO NEW ZONING DISTRICTS	
Overlay Districts:	
Floodplain Overlay District (FPO)	Floodplain Overlay District (FPO)
Heritage Preservation District (HPO) <i>Historic District Overlay District (HDO)</i>	Heritage Preservation District (HPO) <i>Historic District Overlay District (HDO)</i>
Chesapeake Bay Preservation Area Overlay District (CBPAO)	Chesapeake Bay Preservation Area Overlay District (CBPAO)

31

32

33 **Section 78-50.2 – Standards for all planned development districts.**

34

35 (b) *Review board approval for PD development.* Development located within a planned
 36 development district and outside of the ~~heritage preservation district~~ *historic district* overlay
 37 ~~district~~, other than single-family detached units, shall be subject to the approval of the
 38 architectural review board. Development within a planned development district in the
 39 ~~heritage preservation district~~ *historic district* overlay ~~district~~ shall be subject to the approval of
 40 the ~~heritage preservation district~~ *historic district* review board.

41

42 **Section 78-50.6 – Planned development downtown district.**

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

48 (1) *Objectives.* Objectives of the PD-D district include:

49

50 e. Adhering to the standards and guidelines of the Herndon 2030
 51 Comprehensive Plan (adopted August 12, 2008), as may be amended, and
 52 the Herndon ~~Heritage Preservation Handbook, revised July 1990, as may~~
 53 ~~be amended from time to time (the Heritage Preservation Handbook).~~
 54 *Historic District Overlay Guidelines, as amended.*

55 (2) *Additional considerations to ensure purpose and intent are met.* Decisions on
 56 PD-D zoning map amendments shall involve consideration of the existence or
 57 provision of an adequate road network and parking facilities, provision of public
 58 facilities and amenities, the use or mix of uses offered in proposed development
 59 plans, the merit of proposed site design in achieving the goals of the
 60 comprehensive plan and the ~~heritage preservation handbook~~ *Historic District*
 61 *Overlay Guidelines*, and the contribution of the proposed development to
 62 revitalization of the downtown. The flexibility of PD-D district regulations does
 63 not mean that an applicant is entitled to such a rezoning by meeting the
 64 minimum requirements of this division or that proposals approaching the
 65 maximum permitted density are entitled to a PD-D zoning map amendment.

66

67 (f) *Dimensional Standards.* The PD-D district shall be subject to the following dimensional
 68 standards:

69

70 (2) *Increases in intensity.* The floor area ratio of development shall not exceed 0.5 in
 71 the Downtown Overlay in the Herndon 2030 Comprehensive Plan (adopted
 72 August 12, 2008), as may be amended, except as allowed in section 78-50.6(f)(2),
 73 increases in intensity. The town council may, as part of the review of the PD-D
 74 district, increase the floor area ratio (i) up to 2.50 in sectors 1, 2 and 6 or (ii) up to
 75 0.7 in sectors 3 and 4 of the Downtown Overlay, if the PD-D development meets
 76 three or more of the following criteria.

77

78 (d.) Building façade design that excels at meeting the objectives and
 79 guidelines contained in the ~~Herndon Heritage Preservation Handbook~~
 80 *Historic District Overlay Guidelines*, subject to preliminary review by the
 81 ~~heritage preservation~~ *historic district* review board as provided in section
 82 78-155.1(i)(a).

83

84 (h) *Site planning and building design in PD-D.* Sites and buildings within the PD-D district
 85 shall meet the following standards:

86

87 (6) ~~HPRB HDRB~~ review required for increased FAR. Site and building design shall
 88 comply with guidelines in the ~~Herndon Heritage Preservation Handbook~~ *Historic*
 89 *District Overlay Guidelines* as determined by the ~~HPRB HDRB~~ prior to the
 90 planning commission public hearing when the increased floor area ratio is
 91 considered.

92

93 **Section 78-50.7 – PD-TD – Planned development traditional downtown district.**

94 (h) *Site planning and building design in PD-TD.* Sites and buildings within the PD-TD
 95 district shall meet the following standards:

96

97 (5) ~~HPRB HDRB~~ review required. Site and building design shall comply with
 98 guidelines in the ~~Herndon Heritage Preservation Handbook~~ *Historic District*
 99 *Overlay Guidelines* as determined by the ~~HPRB HDRB~~ prior to the planning
 100 commission public hearing in accordance with section 78-155.1(h)(2).

101

102 **Section 78-60.2 – Floodplain overlay district (FPO).**

103

104 **Section 78-60.3 – ~~Heritage Preservation~~ *Historic District Overlay* district (HP
 105 *HDO* district).**

106 (a) *Purpose and intent.* The ~~heritage preservation~~ *historic district* overlay district (HP *HDO*
 107 ~~district~~) is *established pursuant to the authority granted to localities by Virginia Code §*
 108 *15.2-2306. It is intended to promote and protect the unique character of the town*
 109 *through the identification, preservation and enhancement of buildings, structures,*
 110 *settings, neighborhoods, places and features with historical architectural significance*
 111 *to the town. The HDO further intends to:* ~~intended to provide for the establishment of~~
 112 ~~historic landmarks and preservation districts as a means of preserving the historical,~~
 113 ~~cultural, and architectural heritage of the town and protecting designated historic~~
 114 ~~resources and is adopted pursuant to the authority granted to localities by Virginia Code~~
 115 ~~§15.2-2306.~~

116 (1) *Ensure that additions, repairs, modifications, and new construction enhance*
 117 *rather than detract from the town's historic architectural settings.*

118 (2) *Preserve the architectural, artistic, and historic merit of individual structures.*

119 (3) *Protect historic resources from neglect and demolition.*

- 120 (4) *Retain important townscapes, streetscapes, and viewsheds integral to the*
 121 *identity of Herndon.*
- 122 (b) *Applicability.* No building, structure, or sign located in the ~~HP historic~~ *historic district overlay*
 123 shall be erected, reconstructed, altered, demolished, moved, expanded or restored except
 124 in accordance with the provisions of 78-60.3(g), certificate of appropriateness in the
 125 ~~heritage preservation historic district~~ *historic district overlay district.*
- 126 (c) *District boundaries and maps.* The boundaries of the ~~HP district~~ *historic district*
 127 *overlay* shall be shown on the town's official zoning map and on the appropriate
 128 comprehensive plan maps after action by the planning commission and town council.
- 129 (d) *Revision of ~~HP district~~ historic district overlay boundary and designation of*
 130 *landmarks.* The boundaries of the ~~HP district~~ *HDO* may be amended or areas, sites,
 131 buildings, and structures may be designated as historic landmarks in compliance with
 132 the following:
- 133 (1) *Amendment procedures.* The procedures for amendment of the ~~HP district~~ *HDO*
 134 boundaries or designation of historic landmarks shall be as provided for as an
 135 amendment to the official zoning map pursuant to section 78-155.1, zoning map
 136 amendment. In addition, the following procedures shall apply:
- 137 a. The planning commission shall conduct or delegate a survey of the town.
 138 The survey shall identify and inventory all landmarks, buildings, or
 139 structures, in areas being proposed within the proposed district
 140 boundaries. The planning commission shall also prepare reports
 141 recommended to be included in the ~~HP district~~ *HDO.*
- 142 b. Prior to establishing or expanding the ~~HP district~~ *HDO* the town council
 143 shall:
- 144 1. Provide for public input from the community and affected
 145 property owners in accordance with Code of Virginia, § 15.2-2204;
- 146 2. Follow the written criteria set out below to be used to determine
 147 which properties should be included within the ~~HP district~~ *HDO*;
 148 and
- 149 3. Review the inventory and the criteria to determine which
 150 properties in the areas being considered for inclusion within the
 151 proposed district meet the criteria to be included in the ~~HP district~~
 152 *HDO.*
- 153 c. Upon the inclusion of an area in the ~~HP district~~ *HDO*, the owner of each
 154 property within the established district boundaries therein shall be given
 155 written notification, including a description of the factors justifying the
 156 designation.

157 (2) *Review of ~~HP-district~~ HDO boundary amendments.* The advisability of
158 amending the ~~HP-district~~ HDO boundary is a matter committed to the legislative
159 discretion of the town council and is not controlled by any one factor. The
160 following shall be considered by the town council, and its advisory bodies as part
161 of the deliberation process:

162 a. In considering an amendment to ~~HP-district~~ *the HDO* boundary, the town
163 council may adopt a change for only part of the area surveyed by the
164 planning commission. The town council may amend the ~~HP-district~~ HDO
165 boundary to include any area that has been considered by the planning
166 commission.

167 b. The following criteria shall be used by the historic ~~preservation~~ *district*
168 review board, planning commission, and town council in evaluating the
169 potential expansion of the ~~HP-district~~ HDO. The historic ~~preservation~~
170 *district* review board and planning commission may recommend, and the
171 town council may so ordain, a landmark, building, or structure, for
172 designation as a ~~HP-district~~ *which within the HDO, provided it* meets one
173 or more of the following criteria:

174 ***

175 5. The property or properties are closely related to or contiguous
176 with properties that meet criteria a-d as related to their visual
177 character or historic pattern of development; or otherwise
178 contribute to the historic and architectural context of the proposed
179 or existing ~~HP-district~~ HDO.

180 c. Such ~~HP-district~~ HDO boundaries may be adjusted to exclude properties
181 along the perimeter that do not meet the criteria. The town council shall
182 include only the geographical areas in the ~~HP-district~~ HDO where a
183 majority of the properties meet the criteria established below by the town
184 in accordance with this section. However, parcels of land contiguous to
185 arterial streets or highways found by the town council to be significant
186 routes of tourist access to the town or to be designated historic
187 landmarks, buildings, structures, or districts therein, or in a contiguous
188 locality, may be included in the ~~HP-district~~ HDO notwithstanding the
189 provisions of this subsection.

190 ***

191 (e) *Reduction of setback.* In the ~~HP-district~~ HDO, the front setback for a single-family
192 detached dwelling may be reduced from 35 feet to a lesser amount but not less than 20
193 feet, in instances where the ~~HPRB~~ HDRB makes a finding that such reduction shall cause
194 the subject structure to be more compatible with nearby contributing structures.

195 (f) ~~Development within the heritage preservation historic district overlay district.~~
 196 Development located within a preservation district *the historic district overlay* shall be
 197 completed in accordance with the Herndon Heritage Preservation Handbook *Historic*
 198 *District Overlay Guidelines*, and the following standards:

199 (1) ~~Alteration, restoration or reconstruction.~~ *Standards for Alterations.* A certificate of
 200 appropriateness for altering, restoring, or reconstruction of *to* a building or structure
 201 shall be approved only after considering the following standards, as well as other
 202 appropriate matters: *meeting the following standards:*

203 a. ~~Whether or not reasonable~~ *Reasonable* effort shall be *is* made to alter the
 204 site, building, or structure, and its environment to the minimal extent
 205 practicable.

206 b. ~~Whether or not alteration~~ *Alteration* of the original, distinguishing
 207 qualities or character of a site, building, or structure, and its environment
 208 and the removal or alteration of any historic material or distinctive
 209 architectural features shall be *is* avoided to the greatest extent practicable.

210 c. ~~Whether all sites, buildings and structures shall be recognized as products~~
 211 ~~of their own time, with alterations~~ *Alterations* and reconstruction to
 212 existing buildings, and structures, *and sites* to be *are* consistent with the
 213 original style of such buildings and structures.

214 d. ~~Whether or not distinctive~~ *Distinctive* stylistic features or examples of
 215 skilled craftsmanship that characterize a building, or structure, or site
 216 shall be retained and restored to the greatest extent practicable.

217 e. ~~Whether or not deteriorated~~ *Deteriorated* architectural features shall be
 218 repaired, rather than replaced, wherever reasonably possible, ~~and, if~~ *If*
 219 replacement is necessary, ~~whether or not~~ new materials shall match the
 220 material being replaced in composition, design, color, texture, and other
 221 visual qualities to the greatest extent practicable.

222 f. ~~Whether or not repair or replacement~~ *Repair or replacement* of missing
 223 architectural features shall, to the greatest extent possible, be based on
 224 accurate duplications of the original features, substantiated by historic,
 225 physical, or pictorial evidence, rather than on conjectural designs or the
 226 availability of different architectural elements from other buildings or
 227 structures.

228 g. ~~Whether or not the surface cleaning~~ *Cleaning* of buildings and structures
 229 constituting historic landmarks shall be undertaken with the gentlest
 230 means practicable; provided, however, that sandblasting and other
 231 cleaning methods that may damage the existing building materials shall
 232 not be approved.

233 h. *When more than 49 percent of the structure containing the original or*
 234 *historic facades or the roof structure are removed, the provisions of*
 235 *Section 78-60.3(f)(2), New Construction, or Section 78-60.3(f)(4),*
 236 *Demolition, apply. Whether or not partial demolition of buildings or*
 237 *structures within preservation districts may be approved when one or*
 238 *more of the existing facades are retained for the purpose of integrating*
 239 *new construction into existing historic buildings or structures when such*
 240 *is appropriate and in accordance with the intent of this article. The town*
 241 *does not advocate this procedure, as it goes against the Secretary of the*
 242 *Interior's guidelines for rehabilitation and credits would not be allowed in*
 243 *such projects.*

244 i. ~~Whether or not, to the greatest extent practicable, every~~ *Every* effort shall
 245 be made to protect and preserve archeological resources within or
 246 adjacent to the heritage preservation overlay *historic* district. *to the*
 247 *greatest extent practicable.*

248 j. ~~Whether or not contemporary~~ *Contemporary* design ~~for~~ *of* alterations
 249 and additions to existing buildings and structures is *shall be* compatible
 250 with the size, scale, color, material *texture*, and character of the building
 251 and structures within preservation districts; ~~and whether or not such~~
 252 *Such* alterations and additions would *shall not* destroy *or negatively*
 253 *impact* significant historical, architectural, or cultural material.

254 k. ~~Whether or not the proposed additions or alterations~~ *Alterations* to
 255 existing buildings and structures shall be done in such a manner that, if
 256 such additions or alterations were to be removed in the future, the
 257 essential form and integrity of the *original* building or structure would be
 258 unimpaired. ~~Whenever possible, new additions or alterations to existing~~
 259 ~~buildings and structures shall be done in such a manner that, if such~~
 260 ~~additions or alterations were to be removed in the future, the essential~~
 261 ~~form and integrity of the building or structure would be unimpaired.~~

262 (2) *New Construction.* A certificate of appropriateness for new construction of a
 263 building or structure may be approved only after ~~considering~~ *meeting* the
 264 following standards, ~~as well as other appropriate matters:~~

265 a. ~~Whether or not the design will~~ *The design shall* be architecturally
 266 compatible with the historic landmarks, buildings, and structures in the
 267 heritage preservation *historic district* overlay ~~district~~ in terms of size,
 268 scale, color, material, and character.

269 b. No specific architectural style shall be adopted or imposed on the
 270 administration of this section.

271 c. *Alterations of more than 49 percent of the structure containing the*
 272 *original or historic facades, or more than 49 percent of the structure of*

273 ~~the roof~~, as determined by the zoning administrator, shall be considered
 274 new construction.

275 (3) *Moving or relocating a building.* A certificate of appropriateness to move or
 276 relocate a building or structure may be approved only after ~~considering the~~
 277 ~~following, as well as other appropriate matters~~ *meeting the following standards:*

278 a. ~~Whether or not the proposed relocation may~~ *The relocation shall not* have
 279 a detrimental effect on the structural soundness of the building;

280 b. ~~Whether or not the proposed relocation would have a negative or positive~~
 281 *The relocation shall not have a negative* effect on other historic
 282 landmarks or on other sites, buildings, or structures located within the
 283 ~~heritage preservation overlay district~~ *historic district overlay*;

284 c. ~~Whether or not the~~ *The* proposed relocation ~~would~~ *shall* provide new
 285 surroundings that would be compatible with the architectural aspect of
 286 the building or structure;

287 d. ~~Whether or not the~~ *The* proposed relocation is the only practicable means
 288 of saving the structure from demolition; ~~and.~~

289 e. ~~Whether or not the~~ *The* building or structure ~~will~~ *shall* be relocated to
 290 another site within the corporate limits of the town or to another adjacent
 291 site that is subject to ~~preservation control~~ *protections enumerated in the*
 292 *district.*

293 (4) *Demolition.* A certificate of appropriateness to demolish a building or structure
 294 may be approved, only after ~~reviewing and considering the circumstances and~~
 295 ~~conditions of the structure or building or the part proposed for demolition, and~~
 296 ~~considering the following factors as well as all other appropriate matters~~ *meeting*
 297 *the following standards:*

298 a. ~~Whether or not the~~ *The* building or structure ~~is an historic landmark or is~~
 299 ~~a building within the heritage preservation overlay district that~~ *does not*
 300 *contribute* ~~contributes~~ to the character of the ~~heritage preservation~~
 301 ~~overlay~~ *historic* district;

302 b. ~~Whether or not the~~ *The* building or structure ~~is of such interest or~~
 303 ~~significance that it would~~ *not* qualify as a national or state landmark
 304 building or structure listed on the National Register of Historic Places or
 305 the Virginia Landmarks Register;

306 c. ~~Whether or not the building or structure is of such old or uncommon~~
 307 ~~design, texture or scarce material that it could not be reproduced or could~~
 308 ~~be reproduced only with great difficulty and expense;~~ *The building or*
 309 *structure has a common design that could reasonably be reproduced.*

- 310 d. ~~Whether or not historic events occurred in the building or structure;~~ *No*
 311 *historic events occurred in the building or structure.*
- 312 e. ~~Whether or not the building or structure is structurally unsound and to~~
 313 ~~what extent;~~ *It is determined the building or structure has a degree of*
 314 *structural unsoundness.*
- 315 f. ~~Whether or not a relocation of the building or structure or a portion~~
 316 ~~thereof would be to any extent practicable as a preferable alternative to~~
 317 ~~demolition;~~ *It is not practicable to relocate the building or structure, or*
 318 *portion thereof.*
- 319 g. ~~Whether or not the~~ *The* proposed demolition could potentially *does not*
 320 adversely affect other historic landmarks located within a ~~preservation~~
 321 ~~district~~ *the historic district overlay* or adversely affect the character of a
 322 ~~preservation district~~ *the historic district overlay*;
- 323 h. ~~— If a building is damaged by a fire or other natural hazard, the building~~
 324 ~~inspector shall determine if a building is structurally sound and is in~~
 325 ~~imminent danger to public safety and should be demolished;~~
- 326 i.h. ~~The reason for demolishing the building or structure and whether or not~~
 327 ~~any alternatives to demolition exist.~~ *Practicable alternatives to*
 328 *demolition do not exist.*
- 329 j.i. ~~Whether or not there has been a professional, economic, and structural~~
 330 ~~feasibility study for rehabilitating or reusing the structure and whether or~~
 331 ~~not its findings support the proposed demolition.~~ *An economic and*
 332 *structural feasibility study prepared by a qualified professional is*
 333 *submitted that concludes rehabilitating or reusing the building or*
 334 *structure is not a practicable alternative.*
- 335 (g) *Certificate of appropriateness (COA) in the heritage preservation overlay district*
 336 *historic district overlay.* The purpose of this section is to establish the procedures and
 337 standards for the review of certificates of appropriateness in the ~~heritage preservation~~
 338 ~~overlay district~~ *historic district overlay.*
- 339 (1) *Applicability.* Unless exempted pursuant to section 78-60.3(g)(2), exemptions, a
 340 certificate of appropriateness must be approved prior to:
- 341 a. ~~Erecting, reconstructing, altering, or restoring~~ *New construction or*
 342 *alterations to* any building or structure in the ~~heritage preservation~~
 343 ~~overlay district~~ *historic district overlay*; or
- 344 b. Demolishing, or moving any historic landmark, building, or structure
 345 located in the ~~heritage preservation district~~ *historic district overlay.*

346 c. ~~Signs in the heritage preservation overlay district are reviewed pursuant~~
 347 ~~to the applicable procedures in Article XIV, Signs. *The installation of any*~~
 348 ~~*sign not subject to Section 78-140.5(f).*~~

349 (2) *Exemptions from COA.* The following minor development, which has been
 350 determined not to have permanent effects on the character of the *building or*
 351 *sites within the* ~~heritage preservation district~~ *historic district overlay*, is
 352 exempted from the requirements of this section. In the event the scope or nature
 353 of the development changes during the improvement process, ~~the zoning~~
 354 ~~administrator shall have the authority to order all work to be stopped and that an~~
 355 ~~appropriate application for a certificate of appropriateness be filed. *a violation*~~
 356 ~~*may be issued pursuant to Article XVII (Enforcement, Violations, and*~~
 357 ~~*Remedies).*~~

358 ***

359 c. Landscaping, grading, walks, swimming pools and related mechanical
 360 equipment, retaining walls of less than 12 inches in height, or temporary
 361 fencing in place for one year or less, when it does not significantly affect
 362 the character of the ~~heritage preservation overlay district~~ *historic district*
 363 *overlay* or an historic landmark and its surroundings.

364 ***

365 (3) *Relationship of certificate of appropriateness to site administrative plan review.*

366 a. An application for a certificate of appropriateness in the ~~heritage~~
 367 ~~preservation overlay district~~ *historic district overlay* for a development
 368 that requires site plan, *subdivision site plan*, single lot development plan,
 369 *or building location survey* approval pursuant to ~~s~~Section 78-155.6, site
 370 plan (*Site Plans, Subdivision Plans, Single Lot Development Plans, and*
 371 *Building Location Surveys*) shall not be reviewed formally by the ~~heritage~~
 372 ~~preservation~~ *historic district* review board (HPRB HDRB) until the site
 373 plan, *subdivision site plan*, ~~or~~ single lot development plan, *or building*
 374 *location survey* is approved. ~~However, applicants~~ *Applicants* may meet
 375 informally with the HPRB HDRB prior to site *administrative* plan
 376 approval.

377 b. ~~In instances where development requires site plan or single lot~~
 378 ~~development plan approval (section 78-155.6), upon recommendation of~~
 379 ~~the zoning administrator or the town council, an applicant may present~~
 380 ~~the substance of the plan for development for which a certificate of~~
 381 ~~appropriateness is required at a work session of the HPRB prior or~~
 382 ~~concurrent with the review of the site plan or single lot development plan.~~
 383 *On properties zoned and used for single family residential within the*
 384 *historic district overlay, additions that comply with the applicable*
 385 *standards in Section 78-60.3(f), and with a footprint between 750*

386 *square feet and 1,250 square feet, and disturb less than 2,500 square feet*
 387 *of land, may not be required to submit a single lot development plan.*
 388 *Relief from the submission of a single lot development plan shall be*
 389 *determined by the concurrence of the zoning administrator and town*
 390 *engineer.*

391 (4) Certificate of appropriateness review procedure. The approval of a certificate of
 392 appropriateness shall be subject to the *Historic District Procedure Guide, Section*
 393 *78-153.2 (Review Process for Applications Requiring a Public Hearing*
 394 *(Approval by a Decision Making Body)), and the following:*

395 ~~a. Prior to submitting an application for a certificate of appropriateness,~~
 396 ~~applicants are encouraged to seek advice from the HPRB during one or~~
 397 ~~more work sessions. At the work session, the HPRB will review the~~
 398 ~~proposed plan for development and provide the applicant comments~~
 399 ~~about its general conformance with the requirements for a certificate of~~
 400 ~~appropriateness. The comments are advisory and do not confer~~
 401 ~~development rights on the applicant or bind the HPRB, town staff, or any~~
 402 ~~other entity of the town providing comments.~~

403 ~~b. The procedures and requirements for submittal and review of an~~
 404 ~~application, scheduling the public hearing and public notification are~~
 405 ~~established in Section 78-153.2.~~

406 ~~e. All applications for a certificate of appropriateness shall include the items~~
 407 ~~required in section 78-152.2, submittal requirements, as well as the~~
 408 ~~following:~~

409 ~~1. Architectural drawings or renderings drawn to scale (for new~~
 410 ~~construction, rehabilitation or building alterations);~~

411 ~~2. Site plan drawn to scale (including landscaping);~~

412 ~~3. Samples of materials and colors to be used;~~

413 ~~4. Written statements concerning the following:~~

414 ~~(a) Construction methods to be employed;~~

415 ~~(b) A description of proposed materials;~~

416 ~~(c) Any proposed signs, with appropriate details;~~

417 ~~(d) Any proposed exterior lighting arrangements;~~

418 ~~(e) Elevations of all portions of structures and their~~
 419 ~~relationships to public view;~~

420 ~~(f) Design of doors and windows;~~

- 421 ~~(g) — The colors to be utilized and their relationships to adjacent~~
 422 ~~structures;~~
- 423 ~~(h) — All other exhibits and reports deemed necessary by the~~
 424 ~~board for a full review of the application; and~~
- 425 ~~(i) — If an application for demolition is submitted for a building~~
 426 ~~or structure and is defined as a contributing building in the~~
 427 ~~heritage preservation district, the interior and exterior of~~
 428 ~~the building must be thoroughly documented with black~~
 429 ~~and white photographs and measured drawings including~~
 430 ~~floor plans and elevations following the standards of the~~
 431 ~~Historic American Buildings Survey.~~
- 432 *a. Certain certificates of appropriateness may be reviewed and approved,*
 433 *approved with conditions, or denied administratively. Review of such*
 434 *certificates of appropriateness shall be based upon the Herndon Historic*
 435 *Preservation Guidelines, the standards in Section 78-60.3(f), and the*
 436 *standards listed below:*
- 437 *1. A list of improvements that may receive administrative review of*
 438 *a certificate of appropriateness shall be established by the zoning*
 439 *administrator maintained in the Office of Community*
 440 *Development.*
- 441 *2. Improvements eligible for an administrative review shall be of a*
 442 *common and recurring nature.*
- 443 *3. Improvements eligible for administrative review shall have only*
 444 *a minor impact on the design, character, or historic fabric of*
 445 *building, structure, or site.*
- 446 *4. Applications may be forwarded to the HDRB if the zoning*
 447 *administrator determines the application does not meet the*
 448 *aforementioned criteria.*
- 449 ~~db.~~ *After For those applications requiring HDRB review, following public*
 450 *notification and the scheduling of a public hearing, the ~~HPRB~~ HDRB shall*
 451 *conduct a public hearing on the application. At the public hearing, the*
 452 *~~HPRB~~ HDRB shall consider the application, the relevant support*
 453 *materials, the staff report, and the public testimony and evidence given at*
 454 *the hearing. After the close of the public hearing, the ~~HRPB~~ HDRB shall*
 455 *either approve or disapprove the application based on the standards in*
 456 *section 78-60.3(gf), development within the ~~heritage preservation~~ historic*
 457 *district overlay district as follows and the following standards:*

- 458 1. If the ~~HRPB~~ *HDRB* finds the application complies with the
 459 standards in section 78-60.3(~~g~~); ~~development within the heritage~~
 460 ~~preservation overlay district and the applicable guidelines found in~~
 461 ~~the Herndon Heritage Preservation Handbook, and the *Historic*~~
 462 ~~*District Guidelines*~~ the ~~HRPB~~ *HDRB* shall approve a certificate of
 463 appropriateness.
- 464 2. If the ~~HRPB~~ *HDRB* determines the application fails to comply
 465 with the standards in section 78-60.3(~~g~~), ~~development within the~~
 466 ~~Heritage Preservation Overlay District, and the applicable~~
 467 ~~guidelines found in the Herndon Heritage Preservation~~
 468 ~~Handbook, and the *Historic District Guidelines*~~, it may either
 469 disapprove the application or continue the public hearing. In
 470 either case, it shall explain why the application fails to comply with
 471 the review standards. It shall recommend revisions to the plans
 472 and specifications that would bring the application into
 473 conformance with section 78-60.3(~~g~~), ~~development within the~~
 474 ~~heritage preservation overlay district and the applicable guidelines~~
 475 ~~found in the Herndon Heritage Preservation Handbook *Historic*~~
 476 ~~*District Guidelines*~~. The applicant may request or agree to a
 477 continuation of the public hearing in accordance with section 78-
 478 152.6, deferral of application and section 78-153.2(i)(2),
 479 continuation of public hearing.
- 480 (5) *Certificate of appropriateness for minor improvements.* At its discretion, the
 481 ~~HRPB~~ *HDRB* may adopt a certificate of appropriateness providing design
 482 guidance for certain minor improvements such as changes in color of materials or
 483 fences, dumpster enclosures, and similar screening. The staff may review
 484 applications for eligible minor improvements addressed in the certificate of
 485 appropriateness for compliance with the certificate of appropriateness. The staff
 486 shall then notify the applicant in writing whether or not the application
 487 successfully complies with the certificate of appropriateness and the
 488 improvements shall be authorized under that certificate of appropriateness,
 489 without a public hearing before the ~~HRPB~~ *HDRB*.
- 490 (6) *Certificate of appropriateness review standards.* Development located within a
 491 ~~preservation district—the *historic district overlay*~~ shall be completed in
 492 accordance with the ~~Herndon Heritage Preservation Handbook *Historic District*~~
 493 ~~*Overlay Guidelines*~~ and the standards set forth in section 78-60.3(f),
 494 development within the ~~heritage preservation overlay district *historic district*~~
 495 ~~*overlay*~~.
- 496 (7) *Appeal of COA administrative decision to the historic district review board.* *The*
 497 *applicant may appeal the final decision of an administrative COA to the HDRB.*

- 498 (a) *An appeal shall be initiated by filing a written notice of appeal with the*
 499 *zoning administrator specifying the grounds for the appeal within 30*
 500 *days of the final decision.*
- 501 (b) *If a written notice of appeal on an administrative certificate of*
 502 *appropriateness is received by the zoning administrator then anything*
 503 *on the administrative COA application shall be stayed.*
- 504 (78) *Appeal of COA decision to town council.* The applicant or any person aggrieved
 505 by the decision with a property interest in land abutting or across the street from
 506 property which is the subject of a final decision of the ~~HPRB~~ *HDRB* on a
 507 certificate of appropriateness, may appeal the decision to the town council, as
 508 follows.
- 509 (a) An appeal shall be initiated by filing a written notice of appeal with the
 510 zoning administrator specifying the grounds for the appeal within 14 days
 511 of the final decision of the ~~HPRB~~ *HDRB*.
- 512 (b) No action shall be taken until 15 days after the final decision of the ~~HPRB~~
 513 *HDRB* on a certificate of appropriateness. If a written notice of appeal on
 514 a certificate of appropriateness is initiated pursuant to this section, action
 515 on the certificate of appropriateness shall be stayed pending the final
 516 decision by town council.
- 517 ***
- 518 (e) After the conclusion of the hearing, the town council may affirm, modify,
 519 or reverse the decision of the ~~HPRB~~ *HDRB*, in whole or in part, or may
 520 remand the case to the ~~HPRB~~ *HDRB*. The decision shall be based on the
 521 standards in section 78-60.3(f), development within the ~~Historic~~
 522 ~~Preservation Overlay District~~ *historic district overlay*. The town council
 523 decision shall be subject to the following standards:
- 524 (1.) A decision shall not be reversed or modified unless there is
 525 evidence in the record that the decision of the ~~HPRB~~ *HDRB* is not
 526 correct, based on the review standards for a certificate of
 527 appropriateness.
- 528 (2.) In determining whether or not to remand a case to the ~~HPRB~~
 529 *HDRB*, the town council shall be guided by the following factors:
 530 the completeness of the record; the appropriateness of further
 531 review by the ~~HPRB~~ *HDRB* of certain points or facts; and any
 532 amendments to the application after the decision of the ~~HPRB~~
 533 *HDRB*. Town council recognizes that revisions to an application
 534 for the purpose of clarifying issues, or addressing concerns raised
 535 during the public hearing are positive and will not necessarily

536 result in a remand, except that significant and substantive
537 revisions to the application may serve as a basis for remand.

538 (89) *Appeal of town council decision to circuit court.* The applicant, any person jointly
539 or severally aggrieved with a property interest in land abutting or across the
540 street from property which is the subject of a final decision of the town council
541 pursuant to subsection (78) above, any person with a property interest in land in
542 the ~~Heritage Preservation District~~ *historic district overlay*, who is aggrieved by a
543 final decision of the town council, pursuant to subsection (78) above, or the town,
544 may appeal the decision to the Circuit Court of Fairfax County pursuant to Code
545 of Virginia § 15.2-2306. If appealed, a petition at law shall be filed setting forth
546 the alleged illegality of the action by the town council, provided that such petition
547 shall be filed within 30 days after the final decision is rendered by the town
548 council. The filing of the petition shall stay the decision of the town council
549 pending the outcome of the appeal to the court, except that the filing of the
550 petition shall not stay a decision of the town council denying the right to raze or
551 demolish a historic landmark, building or structure.

552 (910) *Submittal of new COA application after disapproval.* If the ~~HPRB~~ *HDRB*
553 disapproves a certificate of appropriateness, the applicant may, at any time,
554 submit a new application with new information addressing the written reasons
555 for disapproval.

556 (1011) *Transfer of certificate of appropriateness.* A certificate of appropriateness shall
557 be transferable to subsequent owners of the property for which the certificate is
558 issued.

559 (1112) *Expiration of certificate of appropriateness.* Development activity or demolition
560 approved pursuant to a certificate of appropriateness must begin within ~~one~~ *five*
561 years of the issuance of the certificate *of appropriateness, unless a shorter*
562 *timeframe is included as a condition of approval on the certificate of*
563 *appropriateness.* Failure to begin the activity within ~~one~~ *five* years, *or the*
564 *timeframe conditioned on the approval,* shall render the certificate of
565 appropriateness void.

566 (1213) *Extension of approved certificate of appropriateness.* Upon written application
567 submitted to the zoning administrator by the applicant at least ~~60~~ *30* days prior to
568 the expiration of the certificate, ~~the HRPB staff~~ shall consider and may grant one
569 extension not to exceed ~~one~~ *five* years upon a showing of good cause. In
570 determining good cause, ~~the HRPB staff~~ shall take into consideration the scope of
571 the proposed work and the laws, ordinances, and regulations in effect at the time
572 of the request for extension. ~~The approval shall be deemed extended until the~~
573 ~~HRPB has acted upon the request.~~ *An administrative decision to disapprove a*
574 *certificate of appropriateness may be appealed to the HDRB by the applicant*
575 *pursuant to section 78-60.3(g)(7).* Failure to apply for an extension within the

576 time limits established by this section shall render the certificate of
577 appropriateness void.

578 (h) *Demolition, relocation and alteration of structures in the ~~heritage preservation overlay~~*
579 *~~district~~ historic district overlay.* As provided in the Code of Virginia § 15.2-2306, in
580 addition to the right of appeal outlined in this section, the owner of any building or
581 structure shall be permitted to demolish, alter or relocate a building, structure or historic
582 landmark in the ~~heritage preservation overlay district~~ *historic district overlay* provided
583 that:

584 ***

585 (5) *Hazardous properties.* A contributing landmark, building or structure, or
586 historic landmarks, shall not be razed, demolished or moved until the razing,
587 demolition or moving thereof is approved by the ~~heritage preservation review~~
588 ~~board (HPRB)~~ *historic district review board (HDRB)* or, on appeal, by the town
589 council after consultation with the ~~HPRB~~ *HDRB*, unless the building official
590 consistent with the Uniform Statewide Building Code, Part III Maintenance,
591 determines that the contributing structure constitutes such a hazard that it shall
592 be razed, demolished or moved.

593 ***

594 **Section 78-60.4 – Chesapeake Bay Preservation Area Overlay ~~district~~ (CBPAO).**

595 ***

596 **Section 78-71.13 – Commercial utilities use category.**

597 ***

598 (d) *Commercial utilities category specific use standards.* In addition to the applicable
599 requirements in this chapter, the following standards apply:

600 ***

601 (3) *Small cell facilities on a new utility distribution or transmission pole less than*
602 *50 feet.* Any new utility distribution or transmission pole of less than 50 feet in
603 height above grade and designed to support small cell facilities is an
604 administrative review-eligible project (AREP) as defined by the Code of Virginia §
605 15.2-2316.3. An AREP is subject to approval by the zoning administrator and
606 shall comply with the following standards:

607 (a.) ~~Heritage preservation~~ *Historic district overlay* review. Small cell
608 facilities in the ~~heritage preservation overlay~~ *historic district overlay* are
609 subject to the following:

610 (1.) *Certificate of appropriateness.* A certificate of appropriateness
611 must be obtained from the ~~heritage preservation~~ *historic district*
612 review board unless all of the following conditions are met.

613 ***

614 (b.) *Architectural review.* Small cell facilities outside of the ~~heritage~~
615 ~~preservation~~ *historic district* overlay must receive approval by the
616 architectural review board unless the following conditions are met:

617 ***

618 **Section 78-80.3 – Accessory structure standards.**

619 ***

620 (b) *Accessory structures in multi-family and nonresidential districts.* Accessory structures
621 in multi-family and nonresidential districts shall meet the following standards:

622 (1) *General requirements.* Structures accessory to multi-family and nonresidential
623 uses shall be subject to the approval of a site plan and approved through the site
624 plan review process, section 78-155.6. and shall be subject to approval by the
625 architectural review board under Chapter 58 of the Code of Ordinances or the
626 ~~heritage preservation~~ *historic district* review board under section 78-155-760.3.

627 ***

628 (c) *Accessory features (such as fences, walls, retaining walls, gate houses, trash*
629 *enclosures, refuse containers, screening enclosures, storage sheds, and swimming*
630 *pools) in all zoning districts.* Standards stated elsewhere in this chapter shall govern for
631 specific accessory structures or uses. The following standards shall apply to features such
632 as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers and
633 screening enclosures:

634 (1) *Within ~~heritage preservation overlay district~~ *historic district overlay.* A*
635 *certificate of appropriateness may be required in the ~~heritage preservation~~*
636 *~~overlay district~~ *historic district overlay.**

637 (2) *ARB review.* Approval by the architectural review board may be required for
638 multi-family and nonresidential properties outside of the ~~heritage preservation~~
639 ~~overlay district~~ *historic district overlay.*

640 ***

641 **Section 78-80.4 – Standards for specific accessory uses and structures by type.**

642 ***

643 (c) *Antenna of all kinds, except commercial communication towers, freestanding.* The
 644 following standards are adopted to comply with applicable state and federal law,
 645 including the Federal Telecommunications Act of 1996 and the "Spectrum Act", and to
 646 control the location and screening of antennae to mitigate impact on surrounding
 647 properties.

648 ***

649 (2) *Large satellite dish antennae.* Satellite dish antennae measuring one meter or
 650 more are permitted accessory uses in nonresidential districts. Such dishes are
 651 subject to the standards set forth below to the maximum extent feasible, but only
 652 where there is no impairment of acceptable signal quality. These regulations are
 653 not intended to impose unreasonable delays or impose unreasonable costs on the
 654 installation, maintenance, or use of satellite dishes, and shall not be interpreted
 655 or enforced in any manner contrary to federal or state law.

656 (a) Within the ~~heritage preservation overlay district~~ *historic district overlay*,
 657 satellite dishes shall be screened or located so as to not be visible from any
 658 public streets.

659 ***

660 (3) *Commercial antennae.* Antennae may be located on existing structures provided
 661 the following standards are met:

662 ***

663 (c) Must receive a certificate of appropriateness when located within the
 664 ~~heritage preservation overlay~~ *historic district overlay* and visible from a
 665 public right-of-way.

666 ***

667 (d) *Bed and breakfast establishment.* Bed and breakfast establishments are permitted by
 668 special exception in accordance with the provisions of section 78-155.3, special
 669 exceptions and Article VIII, Accessory Use Regulations, as follows:

670 (1) *Limited to certain housing types and zoning districts .* Bed and breakfast
 671 establishments may be established in owner- or operator-occupied single-family
 672 detached homes, including normal residential accessory structures existing as of
 673 March 1, 2007, in the R-15 and R-10 zoning districts; and in the ~~heritage~~
 674 ~~preservation overlay district~~ *historic district overlay*.

675 ***

676 (n) *Outdoor serving areas accessory to an enclosed use providing food or beverage for sale*
 677 *or tasting.* Outdoor serving areas providing or allowing outdoor consumption of food or

678 beverage accessory to an established enclosed use food or beverages for sale or tasting
679 shall comply with the following standards:

680 ***

681 (10) *Limit on outdoor kitchen/bar equipment.* No exterior kitchen or bar service
682 equipment shall be permitted abutting a public right-of-way unless permitted in
683 association with, and for the duration of, a permitted temporary use permit. If
684 such equipment, when not associated with a permitted temporary use permit, is
685 visible from the adjacent right-of-way, landscaping or other screening as
686 approved by either the ~~HPRB~~ *HDRB* or ARB, shall be installed to screen the
687 equipment from the right-of-way.

688 ***

689 **Section 78-110.3 – Site landscaping (not contained in perimeter buffer strips and**
690 **vehicular use areas).**

691 ***

692 (c) *Certain exemptions for downtown.* Properties zoned PD-D and PD-TD shall be exempt
693 from section 78-110.4(c) except as follows:

694 ***

695 (3) *Nonresidential development and mixed-use residential development located in*
696 *the PD-D and PD-TD.* Nonresidential development and mixed-use residential
697 development located in the PD-D and PD-TD shall provide:

698 a. Commercial grade planting containers designed to complement (as
699 determined by the ~~heritage preservation review board~~ *historic district*
700 *review board* using recognized standards) the architecture of the
701 building, or planting beds, planted and maintained with evergreen shrubs
702 or live plants affording seasonal color. Such containers or planting beds
703 shall not extend into the required 12-foot public streetscape.

704 ***

705 **Section 78-114.1 – Additional screening requirements.**

706 ***

707 (b) *Review* . In addition to review as part of a site plan or subdivision plan application, all
708 screening structures shall be subject to review and decision by the architectural review
709 board or ~~heritage review board~~ *historic district review board*, as appropriate.

710 ***

711 **Section 78-115.1 – Retaining walls.**

712 ***

713 (c) *Review and approval of retaining walls.* Retaining walls shall be reviewed and
714 approved, if they are approved, in accordance with the following provisions, as
715 applicable:

716 (1) *Properties within the ~~heritage preservation overlay district~~ historic district*
717 *overlay.* The ~~heritage preservation~~ *historic district* review board shall be the
718 reviewing authority for retaining walls on any property within the ~~heritage~~
719 ~~preservation overlay district~~ *historic district overlay.*

720 (2) *Townhouse, multifamily or commercial uses outside the ~~heritage preservation~~*
721 *overlay district historic district overlay.* The architectural review board shall be
722 the reviewing authority for walls on property developed with townhouses, multi-
723 family uses, or commercial uses outside of the ~~heritage preservation overlay~~
724 ~~district~~ *historic district overlay.*

725 ***

726 **Section 78-115.2 – Fencing, walls (except retaining walls) and hedges.**

727 ***

728 (c) *Approvals.* A certificate of appropriateness may be required for fencing or walls in ~~the~~
729 ~~heritage preservation overlay district~~ *historic district overlay.* (~~see "certificate of~~
730 ~~appropriateness in the heritage preservation overlay district" in Article II,~~
731 ~~Administration).~~ Approval may be required from the architectural review board for
732 fencing, walls or hedges associated with all uses under the purview of the architectural
733 review board (~~see Chapter 58 of the Herndon Town Code, section 58-62, approval of~~
734 ~~construction, reconstructions and alterations in architectural control districts required).~~

735 ***

736 (e) *Fencing, wall and hedge standards.* The following standards shall apply within all
737 zoning districts throughout the town unless otherwise stated.

738 ***

739 (6) *Fencing and wall materials.* The following provisions shall apply to wall and
740 fence materials:

741 a. Fences or walls shall be constructed of customary fencing or wall
742 materials, including solid wood, masonry, stone, brick, wrought iron,
743 decorative metal materials, or products designed to resemble these
744 materials. Any fence or wall material may be further restricted in the
745 ~~heritage preservation district~~ *historic district overlay.* ~~by the heritage~~
746 ~~preservation review board.~~

747 b. Chain link fencing is permitted only for the following purposes:

748 1. To surround tennis courts, ball fields, playgrounds, other
749 recreational facilities not located on a lot with a single-family
750 detached or single-family attached dwelling, and schools not
751 associated with a home-based child care business subject to the
752 following:

753 (a) Chain link fencing used for recreational use within the
754 ~~heritage preservation district~~ *historic district overlay* shall
755 be coated with black or dark green vinyl and shall be
756 screened from public rights-of-way and abutting properties
757 by landscaping with a growth habit adequate to screen the
758 fencing.

759 (b) Installation of the screening and fencing shall be
760 dependent upon review and approval by the ~~heritage~~
761 ~~preservation~~ *historic district* review board.

762 ***

763 **Section 78-140.4 – Prohibited Signs.**

764 (a) *General prohibitions.* In addition to signs prohibited elsewhere in this Code or by
765 applicable state or federal law, the following signs are prohibited:

766 ***

767 (7) Signs painted directly on a building, except in the ~~Heritage Preservation Districts~~
768 *historic district overlay* when approved by the ~~HPRB~~ *HDRB*.

769 ***

770 **Section 78-140.5 – Sign license required.**

771 ***

772 (b) *License types and approving authorities.* Sign licenses shall be approved by either the
773 zoning administrator or the appropriate review board as follows:

774 (1) *Administrative approvals.* Following approval by the ~~HPRB~~ *HDRB* or ARB, the
775 zoning administrator or designee conducts final review of applications for all sign
776 licenses other than those provided for in section 78-140.5(n). The following
777 administratively approvable signs, not requiring review by the ~~HPRB~~ *HDRB* or
778 ARB, are subject to review by the zoning administrator or designee, temporary
779 sign licenses, master sign plan conformance licenses (after approval of a master
780 sign plan license) and any sign which complies with uniform standards adopted
781 by the ~~HPRB~~ *HDRB* and ARB for administratively approved signs. Signs for all
782 arts businesses, as defined in section 7-2 of the Herndon Town Code and licensed
783 to operate as a business in the Herndon Arts District may receive administrative

784 approval of the sign license if the signs comply with the ~~HPRB~~ *HDRB* and ARB
785 approved uniform design standards.

786 (2) *Review Board Approvals.* The architectural review board or ~~Heritage~~
787 ~~Preservation Review Board~~ *historic district review board* also conducts final
788 review of sign licenses that do not conform to the adopted uniform standards, as
789 determined by the zoning administrator, within their respective overlay districts.
790 (~~Architectural Control District for the ARB and Heritage Preservation Overlay~~
791 ~~District for the HPRB~~).

792 ***

793 (e) *Heritage District Overlay zoning district regulations.* Herndon overlay zoning districts
794 ~~may require overlay specific sign standards and regulations in addition to the general~~
795 ~~requirements and district specific standards detailed in this article.~~ *Reserved.*

796 (f) ~~Heritage Preservation District~~ *Historic district overlay.* Permanent signs installed
797 within the ~~Heritage Preservation Districts~~ *historic district overlay* shall comply with the
798 relevant design guidelines, as interpreted by the ~~HPRB~~ *HDRB*, and the uniform
799 standards for administrative approval of signs as approved by the ~~HPRB~~ *HDRB* and
800 interpreted by the zoning administrator, or adopted superseding documents.

801 (g) ~~Arts district.~~ Permanent signs installed within the arts districts shall comply with the
802 relevant design guidelines, as interpreted by the ~~HPRB~~ and ~~ARB~~, and the uniform
803 standards for administrative approval of signs as approved by the ~~HPRB~~ and ~~ARB~~ and
804 interpreted by the zoning administrator, or adopted superseding documents. *Reserved.*

805 ***

806 **Section 78-141.6 – Sign standards for downtown mixed-use districts.**

807 ***

808 (c) *Compliance with design guidelines.* Signs installed within the central commercial (CC),
809 planned development-downtown (PD-D), planned development-traditional downtown
810 (PD-TD) zoning districts shall comply with the relevant design guidelines of the ~~Herndon~~
811 ~~Heritage Preservation Handbook~~ *Historic District Overlay Guidelines* and Downtown
812 Herndon Pattern Book, or adopted superseding documents.

813 ***

814 **Section 78-150.1 – Town Council**

815 (a) *Powers and duties.* The town council shall have the powers and duties specified in Code
816 of Virginia ~~tit.~~ *Title* 15.2, ~~ch.~~ *Chapter* 22 and the Town Charter, as well as the following
817 powers and duties under this chapter

818 ***

819 (2) Appeals. The town council shall review and decide appeals from:

820 ***

821 c. Final decisions of the ~~Heritage Preservation Review Board (HPRB)~~
822 *historic district review board (HDRB)* on certificates of appropriateness
823 (section 78-60.63(g));

824 ***

825 (3) *Historic designation.* The town council shall review and decide whether or not to
826 designate any site, building or structure as an historic landmark or an area as a
827 ~~heritage preservation overlay district.~~ *historic district overlay.*

828 (4) *Implementation authority not otherwise delegated.* The town council shall have
829 the authority to take any other action not delegated to the planning commission,
830 board of zoning appeals, architectural review board, ~~heritage preservation review~~
831 ~~board~~ *historic district review board*, town manager, town attorney, zoning
832 administrator, or heads of town departments, as the town council may deem
833 desirable and necessary to implement the provisions of this chapter.

834 ***

835 **Section 78-150.2 – Planning Commission**

836 (a) *Powers and duties.* The planning commission shall have the powers and duties specified
837 in Code of Virginia ~~tit. Title~~ 15.2, ~~ch. Chapter~~ 22, as well as the powers and duties under
838 this chapter.

839 (1) *Application review.* The planning commission shall review and make
840 recommendations to the town council to approve or disapprove applications for:

841 ***

842 f. Designation of any site, building or structure as an historic landmark or
843 an area as a ~~heritage preservation overlay district~~ *historic district overlay.*

844 ***

845 **Section 78-150.4 – ~~Heritage preservation~~ *Historic district* review board.**

846 (a) *Establishment.* There hereby is established a ~~heritage preservation~~ *historic district*
847 review board (~~HPRB~~ *HDRB*).

848 (b) *Powers and duties.* The ~~HPRB~~ *HDRB* shall have the following powers and duties under
849 this chapter:

850 (1) *Recommendations.* The ~~HPRB~~ *HDRB* shall provide recommendations to the
851 planning commission and the town council on the establishment, expansion,

852 reduction, or elimination of ~~heritage preservation overlay districts~~ *the historic*
853 *district overlay*.

854 (2) *Application review.* The ~~HPRB~~ *HDRB* shall review and decide applications for
855 properties within the ~~heritage preservation overlay district~~ *historic district*
856 *overlay* for:

857 ***

858 (e) *Appeals of administratively approved certificates of appropriateness.*

859 ***

860 (3) *Special knowledge and expertise.* The ~~HPRB~~ *HDRB* shall make its special
861 knowledge and expertise available upon its own initiative or upon request by the
862 town council or any official, department, board, commission or agency of the
863 town.

864 (c) *Membership.* The membership of the ~~HPRB~~ *HDRB* shall be established as follows:

865 (1) *Number.* The ~~HPRB~~ *HDRB* shall consist of seven members. It shall be comprised
866 of the five members of the town's architectural review board (ARB), along with
867 two additional members.

868 (2) *Qualifications.* The two additional members of the ~~HPRB~~ *HDRB* who are not on
869 the ARB shall meet the following minimum qualifications:

870 ***

871 (3) *Residency.* No more than two of the members on the combined ARB/~~HPRB~~
872 *HDRB* with the required professional qualifications for an architect or an
873 architectural historian may be nonresidents of the town. The other members on
874 the combined ARB/~~HPRB~~ *HDRB* shall be town residents.

875 (4) *Appointment.* The ARB members serving on the ~~HPRB~~ *HDRB* shall be appointed
876 pursuant to Part I, Charter, of the Code of Ordinances, section 7.4:1(b). The two
877 additional members shall be appointed by a majority of the town council.

878 (5) *Term.* The term of office of the ARB members serving on the ~~HPRB~~ *HDRB* shall
879 be concurrent with their membership on the ARB. The terms of the two
880 additional ~~HPRB~~ *HDRB* members shall be three years.

881 (6) *Removal.* Any member of the ~~HPRB~~ *HDRB* may be removed from office by the
882 town council for malfeasance, misfeasance or nonfeasance in office.

883 ***

884 (9) *Training.* Newly appointed members of the ~~HPRB~~ *HDRB* shall be offered
885 training ~~and certification by the Citizens Planning Education Association of~~

886 ~~Virginia or similar certification to be completed~~ *by the Virginia Department of*
 887 *Historic Resources* within two years of appointment.

888 (d) Officers. Officers of the ~~HPRB~~ *HDRB* shall be established as follows:

889 (1) *Chair and vice-chair.* The ~~HPRB~~ *HDRB* shall elect from its members a chair and
 890 a vice-chair.

891 ***

892 (3) *General duties of officers.* The duties of the chair and vice-chair of the ~~HPRB~~
 893 *HDRB* shall be as follows:

894 a. The chair shall preside at meetings of the ~~HPRB~~ *HDRB*, decide points of
 895 order on procedure, and take such action as shall be necessary to preserve
 896 the order and integrity of proceedings before the ~~HPRB~~ *HDRB*.

897 ***

898 c. In the absence of the chair and vice-chair, the most senior ~~HPRB~~ *HDRB*
 899 member shall act as chair and shall have powers of the chair.

900 (e) *Staff.* The zoning administrator or the zoning administrator's designee shall serve as the
 901 professional staff to the ~~HPRB~~ *HDRB* and provide it with administrative support.

902 (f) *Meetings, hearings and procedures.* Meetings of the ~~HPRB~~ *HDRB* ordinarily shall be
 903 held monthly and at such other times as a quorum of the ~~HPRB~~ *HDRB* may determine
 904 subject to the following:

905 (1) *Open meetings.* All meetings of the ~~HPRB~~ *HDRB* shall be open to the public.

906 (2) *Quorum and necessary vote.* Four members of the ~~HPRB~~ *HDRB* shall constitute
 907 a quorum, and no action of the ~~HPRB~~ *HDRB* shall be valid unless authorized by a
 908 majority vote of those present and voting.

909 (3) *Rules and records of proceedings.* The ~~HPRB~~ *HDRB* shall document proceedings
 910 as follows:

911 a. The ~~HPRB~~ *HDRB* shall keep minutes of its proceedings, showing the vote
 912 of each member upon each question or, if absent or abstaining from a
 913 vote, indicating that fact.

914 b. The ~~HPRB~~ *HDRB* shall keep records of its official actions, which shall be
 915 immediately filed in the office of the zoning administrator and shall be a
 916 public record.

917 c. The ~~HPRB~~ *HDRB* may, by a majority vote of the entire membership, draft
 918 and approve such additional bylaws governing its procedure as it may
 919 deem necessary or advisable.

920 **Section 78-150.5 – Architectural review board.**

921 ***

922 (b) *Powers and duties.* The ARB shall have the following powers and duties under this
923 chapter:

924 (1) *Review and approval.* Generally, the ARB is empowered by the Town Charter
925 and the town council to review and approve structures, buildings, signs, major
926 landscape features and other improvements for development excluding: (i) the
927 ~~heritage preservation overlay district~~ *historic district overlay*, (ii) single-family
928 detached residences in the R-15 and R-10 zoning districts, and (iii) single-family
929 detached residences in planned development districts after initial construction.

930 ***

931 **Section 78-150.6 – Zoning Administrator.**

932 ***

933 (b) *Powers and duties.* The zoning administrator or an appropriate designee acting as
934 zoning administrator shall have the following jurisdiction, powers, and duties under this
935 chapter:

936 (1) *Application review.* The zoning administrator shall review and decide
937 applications for:

938 ***

939 d. Administrative sign conformance permit for signs that are part of an
940 approved master sign plan or that conform to the adopted requirements
941 of the ARB or ~~HPRB~~ *HDRB*, whichever applies (section 78-140.5(b)).

942 ***

943 *j. Administrative certificates of appropriateness pursuant to Section 78-*
944 *60.3(3)(g).*

945 ***

946 (3) *Application.* The zoning administrator shall establish application requirements
947 and schedules for review of applications and appeals, to review and make
948 recommendations to the town council, planning commission, ~~HPRB~~ *HDRB*, and
949 ARB on applications for development permits and approvals, and take any other
950 action necessary to administer the provisions of this chapter.

951 ***

952 (6) *Expertise and technical assistance.* The zoning administrator shall provide
 953 expertise and technical assistance to the town council, planning commission,
 954 BZA, ~~HPRB~~ **HDRB**, and ARB, upon request.

955 **Section 78-151 – Summary table of development review responsibilities.**

TABLE 78-151: DEVELOPMENT PERMIT REVIEW PROCEDURES (S = Staff Review, R = Review and Advise, D = Final Decision, A = Appeal)							
PROCESS	ZONING ADMINISTRATOR	ARCHITECTURAL REVIEW BOARD (ARB)	HERITAGE PRESERVATION BOARD (HPRB) Historic District REVIEW BOARD (HDRB)	PLANNING COMMISSION	TOWN COUNCIL	BOARD OF ZONING APPEALS (BZA)	CIRCUIT COURT

OUTSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT HISTORIC DISTRICT OVERLAY:							

INSIDE THE HERITAGE PRESERVATION OVERLAY DISTRICT HISTORIC DISTRICT OVERLAY:							
ADMINISTRATIVE ELIGIBLE CERTIFICATE OF APPROPRIATENESS	D		A				

956

957 ¹ Appeals are limited to technical determinations. Appeals to the uniform standards shall be
 958 heard by the ~~HPRB~~ **HDRB**/ARB.

959 **Section 78-152.2 – Pre-application procedures.**

960 style="text-align: center;">***

961 (b) *Neighborhood meeting.* A neighborhood meeting is strongly encouraged prior to filing
 962 certain types of development applications, as follows.

963 style="text-align: center;">***

964 (3) *Timing of meeting for other applications requiring public hearings.*
 965 Neighborhood meetings generally are encouraged prior to, or shortly after,
 966 submittal of other applications requiring a public hearing. The town council,
 967 planning commission, architectural review board or ~~heritage preservation~~

968 *historic district* review board may encourage an applicant to conduct a
 969 neighborhood meeting on an application if, in the determination of the review
 970 board, the proposed development could affect neighboring properties

971 ***

972 **Section 78-152.2 – Application submission, requirements and acceptance.**

973 ***

TABLE 78-152.2(b)(3): FEES FOR DEVELOPMENT APPLICATIONS	
TYPE OF FEE	AMOUNT

HERITAGE PRESERVATION <i>HISTORIC DISTRICT</i> REVIEW BOARD	

974

975 ***

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

978 ***

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

980 ***

981 (2) *Staff report availability.* The staff report shall be available to the applicant and
 982 the public a minimum of five days before the first scheduled work session for
 983 applications to the architectural review board, ~~heritage preservation~~ *historic*
 984 *district* review board, planning commission and town council. For the board of
 985 zoning appeals, the staff report shall be available to the applicant and the public a
 986 minimum of five days before the first scheduled public hearing.

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

989 ***

990 (2) *Certificate of appropriateness.* The ~~heritage preservation~~ *historic district* review
991 board shall conduct at least one public hearing for applications for certificates of
992 appropriateness.

993 ***

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

997 ***

998 (2) *Written/mailed notice.* When the provisions of this chapter (see section 78-
999 153.2(h)(5)) require that written or mailed notice be provided, the preparation
1000 and transmittal of the written notice shall comply with this section, unless
1001 expressly stated otherwise.

1002 ***

1003 b. Notice shall be mailed to:

1004 ***

1005 6. The zoning administrator shall be responsible for providing
1006 written notice when the public hearing is before the board of
1007 zoning appeals, the ~~heritage preservation~~ *historic district* review
1008 board, or the architectural review board. The zoning administrator
1009 shall prepare a list of property owners and registrants to whom
1010 notice was mailed via first class mail and an affidavit affirming
1011 that notice meeting the content requirements of section 78-
1012 153.2(h)(1) was mailed pursuant to this section. The affidavit shall
1013 be conclusive that notice has been given pursuant to the terms of
1014 this section. A copy of the mailed notice shall be maintained in the
1015 office of the zoning administrator for public inspection during
1016 normal business hours.

1017 ***

1018 (4) *Posted/placard notice.* When the provisions of section 78-153.2(h)(5), require
1019 that notice be posted on the land subject to the application, notice for
1020 applications other than those pertaining to the architectural review board or the
1021 ~~heritage preservation~~ *historic district* review board (which do not require placard
1022 notice) shall comply with the following requirements:

1023 ***

1024 (5) *Required notice and timing.* Notice shall be provided as required in the Code of
1025 Virginia, § 15.2-2204. Such notice shall not be required for sign permit

1026 applications before the architectural review board or ~~heritage preservation~~
1027 *historic district* review board.

1028 ***

1029 **Section 78-155.1 – Zoning map amendment (ZMA).**

1030 ***

1031 (h) *Procedures for zoning map amendments.*

1032 ***

1033 (2) *Proffer review by ARB or ~~HPRB~~ HDRB prior to planning commission public*
1034 *hearing (if applicable) . If an application for a zoning map amendment includes a*
1035 *proffer or proffers dealing with a building's exterior appearance or materials, the*
1036 *application and proffers shall be reviewed by the architectural review board, or*
1037 *heritage preservation ~~historic district~~ review board if in a ~~heritage preservation~~*
1038 *overlay district ~~within the historic district overlay~~, as follows:*

1039 ***

1040 ***Section 78-155.10 – Certificates of Appropriateness***

1041 (a) *Intent. The purpose of a certificate of appropriateness is to ensure proposed changes to*
1042 *a building or site within the historic district overlay comply with the Historic District*
1043 *Guidelines and this chapter.*

1044 (b) *Applicability. A certificate of appropriateness is required for any development within*
1045 *the historic district overlay unless exempted pursuant to Section 78-60.3(g)(2).*

1046 **Section 78-160.1 – Generally**

1047 ***

1048 (c) *Adaptive reuse.* The town council intends to allow the adaptive reuse and convenient
1049 and efficient utilization of structures in the ~~heritage preservation districts~~ *historic*
1050 *district overlay* and other older areas that may have been developed under different
1051 standards, by allowing some flexibility in the treatment of nonconformities where the
1052 specific nonconformity is not increased.

1053 ***

1054 **Section 78-160.3 – Nonconforming Structures.**

1055 ***

1056 (e) *Specific provisions for changes to nonconforming structures.* Permitted changes to
1057 nonconforming structures shall be subject to the following specific provisions:

1058

1059

- (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:

1060

1061

1062

1063

1064

- (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:

1065

1066

1067

1068

1069

2. If the nonconforming structure is within the ~~heritage preservation district~~ *historic district overlay*, 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.

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1083

Section 170.3 – Types of violations.

1084

- (a) *Violations, generally.* The following constitute general violations of this chapter.

1085

1086

- (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 district~~ *historic district* 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.

1087

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1093

1094 (b) *Specific violations.* In addition to the offenses listed in Table 78-170.4(a)(5), it shall be a
 1095 violation of this chapter to do any of the following:

1096 (7) *Failure to comply with terms of approval.* Fail to comply with any terms,
 1097 conditions, or limitations placed by the town council, planning commission,
 1098 board of zoning appeals, ~~heritage preservation~~ *historic district* review board, or
 1099 zoning administrator upon any development approval, including designation of a
 1100 planned development (PD) zoning district classification and preliminary PD plan,
 1101 special exception, variance, administrative adjustment, certificate of
 1102 appropriateness, sign permit, temporary use permit, zoning inspection permit,
 1103 zoning appropriateness permit, site plan, single lot development plan, building
 1104 location plan, final PD plan, final plat for minor subdivision, preliminary plat for
 1105 subdivision, final plat for subdivision, site grading permit, excavation permit,
 1106 street name or name change, or other form of authorization.

1107 ***

1108 **Section 78-170.4 – Penalties, fines and remedies for violations.**

1109 (a) *Penalties, fines and remedies for civil violations.*

1110 ***

1111 (5) *Summary table of common 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 \$)

Erecting, reconstructing, demolishing, altering or restoring a building or structure in a Heritage Preservation District <i>historic district overlay</i> without obtaining a current, valid Certificate of Appropriateness	200.00	500.00

1112

1113 ***

1114 **Section 78-180 – Definitions**

1115 ***

1116 *Board.* May refer to the board of zoning appeals, the architectural review board, or the ~~heritage~~
1117 ~~preservation~~ *historic district* review board of the town, where the context so indicates.

1118 ***

1119 *Certificate of appropriateness.* A certificate issued by the ~~heritage preservation~~ *zoning*
1120 *administrator, historic district* review board, or on appeal by the town council,
1121 indicating its approval of plans for alterations, *new* construction, removal or demolition
1122 of a landmark or of a building or structure within a ~~preservation district~~ *the historic*
1123 *district overlay.*

1124 ***

1125 *Construction, new.*

1126 (1) For ~~Heritage preservation~~ *historic district overlay* purposes: Any construction *of*
1127 *a building or structure* within a ~~preservation district~~ *the historic district overlay*
1128 which is independent and exclusive of an existing building or structure, or part
1129 thereof, in the ~~preservation district~~ *historic district overlay.*

1130 ***

1131 ~~Heritage preservation district~~ *Historic district overlay.* ~~Preservation districts~~ *the historic*
1132 *district overlay* shall be designated by town council. ~~Preservation district~~ *B* ~~Boundaries~~
1133 shall encompass and may include areas adjacent to historic landmarks.

1134 ***

1135 *Sign related terms.* The following definitions pertain to signs and signage in all zoning districts:

1136 ***

1137 (8) *Design guidelines.* Design guidelines mean the guidelines found in either the
1138 ~~Herndon Heritage Preservation Handbook~~ *Historic District Overlay Guidelines,*
1139 the Downtown Herndon Pattern Book or the Urban Design & Architectural
1140 Guidelines for the Herndon Transit-Oriented Core.

1141 ***

1142 (26) *Review board.* Review board means either the *A* ~~Architectural R~~ ~~review B~~ *board* or
1143 the ~~Heritage Preservation~~ *historic district R* ~~review B~~ *board.*

1144 ***

1145 2. This ordinance shall be effective on and after the date of its adoption.

1146