

Ad to run 12/30 and 1/6

**TOWN OF LEESBURG
NOTICE OF PUBLIC HEARING
TO CONSIDER AMENDMENTS TO ZONING ORDINANCE
ARTICLES 2, 3, 7, 9, 10, 11, 12, and 15**

Pursuant to Sections 15.2-1427, 15.2-2204, 15.2-2205 and 15.2-2285 of the Code of Virginia, 1950, as amended, the **LEESBURG TOWN COUNCIL** will hold a public hearing on **TUESDAY, JANUARY 12, 2016 at 7:03 p.m.** in the Town Council Chambers, 25 West Market Street, Leesburg, Virginia, 20176 to consider the following amendments to the Zoning Ordinance:

1. Sec. 2.3.7.E Comprehensive Sign Plans revising language to be consistent with regulations previously enacted regarding comprehensive sign plan review.
2. Sec. 3.3.6 Submittal Requirements establishing requirements pertaining to requests for modifications/waivers associated with rezoning applications.
3. Sec. 3.3.6.M Archeological/Historical Information to establish next steps in an archeological study when potential archeological resources are found in an initial survey.
4. Sec. 3.4.6. Submittal Requirements establishing requirements pertaining to requests for modifications/waivers associated with special exception applications.
5. Sec. 3.13 Variances amending in accordance with recently adopted changes relating to variances in the Code of Virginia.
6. Sec. 3.14 Appeals of Administrative Decisions amending in accordance with recently adopted changes relating to administrative appeals in the Code of Virginia.
7. Sec.7.5.5 Certificate of Appropriateness establishing a General Concept plan and its review procedures in the H-1 Overlay District.
8. Sec. 7.5.6 Administrative Approval of Certificate of Appropriateness establishing broader authority for administrative review of COAs by the Preservation Planner.
9. Establishing Sec. 7.6.9 General Concept Plans and its review procedures in the H-2 Overlay District.
10. Sec. 9.2 Use Table deleting the listing for Indoor Vehicle Auctions to be consistent with Sec. 9.1.5 Prohibited Uses.
11. Relocate Sec. 9.3.11.1 Family Day Homes use standards establishing Section 9.4.7. to acknowledge the Family Day Home use is an Accessory Use to a residential dwelling versus a Primary Use.
12. Sec. 9.5.4 D.2 Duration, Fair in the R-1 District amending the number of annual occurrences permissible on an individual property.
13. Sec. 10.4.5.C.2. Air Conditioners and Similar Equipment amending the minimum setbacks for such mechanical equipment
14. Sec. 11.6.2.B. Accessible Parking for Physically Handicapped Persons clarifying language describing how the minimum required number of such spaces is to be calculated.
15. Sec. 11.4.4.A Building within 500 feet of Municipal Parking Facility amending to exclude the Loudoun County Government Center parking garage as a qualifying facility for parking credits.
16. Sec 12.3.1 Requirements to delete repeated regulations relating to twenty-year tree canopy.
17. Sec. 12.3.2 B. Tree planting credit establishing a restriction on location of trees near light poles.
18. Sec. 12.4.3 Number clarifying language relating to the calculation of the number of street trees.
19. Sec. 12.5.1 Applicability clarifying language relating to perimeter parking lot landscaping requirements.

20. Sec. 12.9.6 Tree Selection and Cover Guide Table 12.9.6.J Ground Cover revising degree of slope when ground cover is required to be applied in a landscape buffer.
21. Sec. 15.7.4 Pre-Existing/Non-Conforming Signs establishing a sunset provision for discontinued non-conforming signs.
22. Sec. 15.13.7 Sign Permit Procedures revision language relating to comprehensive sign plan review.

Copies and additional information regarding each of these proposed Zoning Ordinance amendments are available at the Department of Planning and Zoning located on the second floor of the Leesburg Town Hall, 25 West Market Street, Leesburg, Virginia 20176 during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.), or by calling 703-771-2765 and asking for Christopher Murphy, Zoning Administrator. This zoning ordinance amendment application is identified as case number TLOA-2015-0004.

At this hearing all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations should contact the Clerk of Council at (703) 771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.



Date of Council Meeting: January 12, 2016

TOWN OF LEESBURG
TOWN COUNCIL
PUBLIC HEARING

Subject: TLOA-2015-0004 Zoning Ordinance Batch Amendment

Staff Contact: Christopher Murphy, AICP, Zoning Administrator

Council Action Requested: Approve amendments to various sections of the Zoning Ordinance as part of the annual Zoning Ordinance Batch Amendment process.

Staff Recommendation: Staff recommends approval of the Zoning Ordinance Batch Amendments as presented in this report.

Planning Commission Recommendation: The Planning Commission forwarded the Zoning Ordinance Batch Amendments to Council with recommendations of approval on two separate votes outlined below:

- 1) Amendments #1 and #3 - #21 were approved by a vote of 6-0-1 as presented in the November 19, 2015 staff report; and,
- 2) After further review, Amendment #2 was approved by the Commission on a vote of 6-1 as presented in the staff report revision dated December 17, 2015.

The Planning Commission spent extra time discussing amendment #2 which is a new requirement for land development application submissions that request modifications from the Zoning Ordinance. The new requirement addresses minimum submission requirements for justification of a modification request, and for describing the net effect of the modification on a development proposal. The Planning Commission discussed whether this new provision would result in additional regulation for an applicant. The majority of the Planning Commission found that there would be no additional regulation imposed through the adoption of this change and further, that the change would better clarify the modification request for staff, Planning Commission, and Town Council.

The following draft of the Batch Ordinance Amendments presented in this staff report reflects the various amendments as recommended for approval by the Planning Commission.

It should be noted that two additional amendments were advertised relating to flags and comprehensive sign plans as a part of the 2015 Batch. These proposed changes to Article 15, signage requirements, will be discussed at a later date along with other amendments to Article 15 that are necessary to respond to the recent decision by the US Supreme Court in *Reed vs Gilbert*.

Fiscal Impact: Unlike a land development application, or a zoning ordinance text amendment that will lead directly to new development or uses within an existing zoning district that might produce immediate financial impacts for the Town, the Zoning Ordinance Batch Amendments

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are intended to “update” the Zoning Ordinance to comply with recent State Code amendments and to correct errors and/or create efficiencies that make it easier to understand and to administer the Zoning Ordinance. Any potential fiscal benefits may be realized through a streamlining of review times and the opening of opportunities created through efficiencies built into the Zoning Ordinance by the proposed revisions.

Executive Summary: Staff has an established a process for the annual review and amendment of the Zoning Ordinance in order to:

- Comply with recently adopted state law;
- Address ease of use and interpretation issues;
- Correct errors; and
- Be responsive to the changing needs of the community.

The following table provides a synopsis of each amendment included in this report with the reason for each particular change, the current procedure, and the effect of the proposed change going forth if approved.

Amendment	Reason for Change	Current Procedure	Effect of Change
<p>1. (pg.6) Sec. 2.3.7.E Comprehensive Sign Plans</p>	<p>Correcting Error in Text</p>	<p>The BAR has sole authority to review and approve-CSPs in the H-1. Council review is on appeals only.</p>	<p>Will remove old, overlooked, reference to recommendation to Town Council by the BAR</p>
<p>2. (pg.7) Sec 3.3.6 & 3.4.6. Submittal Requirements</p>	<p>Changing Needs of Community Request of the PC</p>	<p>Rezoning and Spec. Exception plans submitted showing requested modifications already in place. Only written justification required.</p>	<p>Will required illustrations, exhibits, and/or section drawings of effect of requested modifications in addition to written narratives</p>
<p>3. (pg.9) Sec. 3.13 Variances heard by BZA</p>	<p>State Code Update</p>	<p>Zoning Ordinance Section 3.13 matches the corresponding State Code Section verbatim</p>	<p>Amends the Zoning Ordinance to match recent amendment to the corresponding State Code provision</p>
<p>4. (pg.11) Sec. 3.14.8 Appeals of Administrative Decisions to the</p>	<p>State Code Update</p>	<p>Zoning Ordinance Section 3.14.8 matches the corresponding State Code Section verbatim</p>	<p>Amends the Zoning Ordinance to match recent amendment to the corresponding State Code provision</p>

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Amendment	Reason for Change	Current Procedure	Effect of Change
BZA			
5. (pg.12) Sec. 3.3.6.M Archeological/ Historical Information	Ease of Use	Phase I archeological surveys are required with any rezoning application.	Clarifies procedures for mitigation of impacts on archeological resources when discovered by Phase I survey
6. (pg.13) Sec.7.5.5 H-1 Certificate of Appropriateness (COA)	Changing Needs of Community Request of the BAR	The BAR has no procedure for conceptual review of an application for a Certificate of Appropriateness (COA) in the H-1	Establishes General Concept Plans review whereby the BAR can offer guidance for the conceptual appearance of a proposed project in the H-1
7. (pg.14) Sec. 7.6 H-2 COA	Changing Needs of Community Request of the BAR	The BAR has no procedure for conceptual review of an application for a Certificate of Appropriateness (COA) in the H-2	Establishes General Concept Plans review whereby the BAR can offer guidance for the conceptual appearance of a proposed project in the H-2
8. (pg.15) Sec. 7.5.6 Administrative Approval of COA	Changing Needs of Community	Administrative approvals are limited to lighting, fences, paving, color, signs, like-kind replacements, storm windows/doors, new shutters, and specific changes to approved plans	Broadens the administrative authority to minimize approval time for less complicated application types
9. (pg.16) Sec 9.2 Use Table	Correcting Error	Indoor Vehicle Auctions are a prohibited use in all zoning districts, yet, the use is still included in the Use Table, albeit not permitted in any district	Removes the use from the Use Table and relies solely on Section 9.1.5 <u>Prohibited Uses</u> to express the town-wide prohibition of the use

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Amendment	Reason for Change	Current Procedure	Effect of Change
10. (pg.17) Sec.9.3.11.1 Family Day Homes	Ease of Use	Regulations pertaining to the home occupation Family Day Home are provided under principal use standards	Relocates Family Day Home regulations under accessory use standards in Sec. 9.4.7
11. (pg.21) Sec. 9.5.4.D.2 Fair in the R-1 District	Changing Needs of Community	The Temporary Use, Fair in the R-1 District, is limited to 3 consecutive days 5 times per year (i.e., 15 days per year)	Increases the duration of the Fair in the R-1 use to 3 consecutive days eight times per year (i.e., 24 days per year)
12. (pg.21) Sec.10.4.5.C Extensions into Required Yards	Ease of Use	Minimum residential mechanical setback is 2' to 3' depending on minimum side yard setback	Reduces minimum setback by establishing 18" minimum setback for interior single-family attached lots
13. (pg.23) Sec.11.6.2 Dimensions of Parking Spaces and Aisles	Ease of Use	Calculation of minimum number of accessible spaces based on required number of spaces.	Clarifies practice to require number of accessible spaces by total number of spaces provided.
14. (pg.23) Sec. 11.4 Alternative Parking Provisions	Town Council Directive	Loudoun County parking garage included as a municipal parking facility qualifying for parking modification in the B-1 District	Eliminates the Loudoun County garage as a qualifying parking facility per TC Task Force recommendation.
15. (pg.24) Sec. 12.3.1 and Sec.12.3.2.B Twenty-Year Tree Canopy Requirements	Ease of Use	Provides for payment into tree canopy fund when trees cannot be accommodated on site.	Clarifies language re the pro-rata tree canopy cost, and establishes a new prohibition on counting trees near light poles

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Amendment	Reason for Change	Current Procedure	Effect of Change
16. (pg.25) Sec. 12.4.3 Street Trees	Ease of Use	Inconsistent language exists relating to required numbers of street trees. Current practice is to exclude entrance widths	Eliminates inconsistency and codifies practice to exclude entrances from calculations
17. (pg.26) Sec. 12.5 Perimeter Parking Lot Landscaping	Ease of Use	Ordinance can be misinterpreted re where perimeter parking lot landscaping may be omitted	Adds clarifying language specific to the intent of the regulation
18. (pg.26) Sec. 12.9 Plant Material Specifications	Ease of Use	Ground cover is required on slopes 2:1 or greater	Expands requirement to plant ground cover to any slope steeper than 3:1
19. (pg.27) Sec. 15.7 Regulations Applicable to all Signs	Ease of Use	There is no sunset provision for non-conforming signs	Establishes a sunset provision whereby unused non-conforming signs must be removed

Background: Presented below is the list of amendments as summarized in the preceding chart. Each amendment is followed by a brief explanation of the reasons for each amendment along with the specific language of the proposed text change(s).

Key to Text Used in this Report:

- A brief description of the proposed amendment is *written in italics* at the beginning of each section.
- Text **highlighted in yellow and underlined** is proposed new language.
- Text in ~~red and with strikethrough~~ is existing text proposed to be eliminated.

1.) Section. 2.3.7.E Comprehensive Sign Plans

Currently, under Section 15.13.3 Review Authority, Town Council is only involved in the review of Comprehensive Sign Plans (CSPs) outside the H-1 and H-2 when on appeal of a decision of the administrative panel, or on appeal of a decision of the BAR in the H-1 Overlay. The current draft of Section 2.3.7.E remains from the time when final review and approval of CSPs was made by the Council with the recommendation of the BAR. The revision of this section has, inadvertently, been overlooked continuously on account of Article 2 not being used regularly in the day-to-day administration of the Zoning Ordinance.

This is being undertaken to correct an error in the text.

2.3.7 Powers and Duties

The powers and duties of the Board of Architectural Review shall be as follows:

Decision Making Authority

- E. Comprehensive Sign Plans. Review and **approve** ~~make recommendations to the Town Council regarding~~ comprehensive sign plans within the boundaries of the **H-1 Overlay District** as established by this Zoning Ordinance and in accordance with Sec. 15. ~~13~~ **44** (Comprehensive Sign Plans).

2.) Section. 3.3.6 Submittal Requirements (Rezoning) and, Section 3.4.6 Submittal Requirements (Special Exceptions)

The Planning Commission has suggested that modification requests from applicants be supported with exhibits, illustrations and/or any written justification to show how the proposal will be accomplished both with and without the requested modification (note Planning Commission Tracking Chart item #2). This provision is proposed to be added to address the Planning Commission's request. It places the burden of proof on the applicant to show that the modification requests will enhance the design of the project and/or are needed to attain a reasonable use of the property and that the modifications are not simply submitted in an effort to maximize the density of the project.

Currently, there is no standard that must be met to obtain a modification or waiver other than a finding being made by Town Council determining the waiver or modification is necessary to “accommodate the reasonable use” of the subject property.

There is, however, a provision in Article 8, Section 8.2.2.E Zoning Modifications that stipulates no modification shall be permitted that affects uses, density or floor area ratio of the (Planned) district, and no modification will be granted for the primary purpose of achieving the maximum density on a site.

These regulations are proposed to establish a test of the net affect a waiver or modification might have relative to achieving a maximum density versus accommodating reasonable use of a property.

Sec. 3.3 Zoning Map Amendments (Rezoning)

3.3.6. Submittal Requirements

N. Zoning Modifications/Waivers Analysis. Every request for a modification and/or waiver of a zoning requirement shall be accompanied by a detailed justification statement that must answer the following questions:

- (1) How is the requested modification/waiver intended to achieve a more reasonable use of the subject property;**
- (2) How does it achieve an innovative design;**
- (3) How does it improve upon existing regulations or otherwise exceed the public purpose of the existing regulations; and,**
- (4) Demonstrate that it is not requested for the primary purpose of achieving maximum density on the subject property.**

- 1. Buffer Yard Modifications/Waivers.** For buffer yard modifications/waivers, information shall also include the following:
 - a. An exhibit illustrating the extent and location of the required buffer yards overlaid on the proposed plan;**
 - b. A calculation of the square footage reduction in the required buffer yard; and**
 - c. A calculation of the difference in number and type of the plant materials required and proposed.**

- 2. Other Modifications/Waivers.** For other types of modification/waivers, information shall also include illustrations, exhibits, and/or, section drawings to best depict the effect of the

requested waiver/modification. Computations shall be included to illustrate the net effects of the request on, as applicable, including, but not limited to, lot size, total open space area, numbers of parking spaces, gross floor area of commercial uses and residential density compared to development that fully complies with all applicable requirements of the Zoning Ordinance.

Sec. 3.4 Special Exceptions

3.4.6. Submittal Requirements.

H. Zoning Modifications/Waivers Analysis. Every request for a modification and/or waiver of a zoning requirement shall be accompanied by a detailed justification statement that must answer the following questions:

- (1) How is the requested modification/waiver intended to achieve a more reasonable use of the subject property;
- (2) How does it achieve an innovative design;
- (3) How does it improve upon existing regulations or otherwise exceed the public purpose of the existing regulations; and,
- (4) Demonstrate that it is not requested for the primary purpose of achieving maximum density on the subject property.

- 1. Buffer Yard Modifications/Waivers.** For buffer yard modifications/waivers, information shall also include the following:
 - a. An exhibit illustrating the extent and location of the required buffer yards overlaid on the proposed plan;
 - b. A calculation of the square footage reduction in the required buffer yard; and
 - c. A calculation of the difference in number and type of the plant materials required and proposed.

- 2. Other Modifications/Waivers.** For other types of modification/waivers, information shall also include illustrations, exhibits, and/or, section drawings to best depict the effect of the requested waiver/modification. Computations shall be included to illustrate the net effects of the request on, as applicable, including, but not limited to, lot size, total open space area, numbers of

parking spaces, gross floor area of commercial uses and residential density compared to development that fully complies with all applicable requirements of the Zoning Ordinance.

3.) Section. 3.13 Variances

These proposed revisions correspond to amendments of § 15.2-2201; 15.2-2308; 15.2-2309; 15.2-2314 of the 1950 Code of Virginia, as amended, affecting the definition of “variance,” the duties and powers of the Board of Zoning Appeals, and procedural matters related to variances and appeals of administrative decisions.

Sec. 3.13 Variances

3.13.2 Authorized Variances

Variances (as defined in Section 15.2-2201 of the Code of Virginia, 1950, as amended) from the regulations and restrictions contained in this Zoning Ordinance, may be granted only for the following:

- A. A variance from the provisions regulating the shape, size or area of a lot; or
- B. A variance from the provisions regulating the size, height, area, bulk, setback, open space, yards, or location of a building or structure.

3.13.9 Approval Criteria

No variance shall be approved by the Board of Zoning Appeals unless the Board of Zoning Appeals finds that all of the following statements are true with respect to the subject property:

- A. That strict application of the regulations of this Zoning Ordinance would ~~produce undue hardship~~ unreasonably restrict the utilization of the property;
- B. 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 Zoning Ordinance when that restriction(s) that the applicant is seeking relief from became applicable to the applicant’s land/land interest;
- C. That such ~~hardship~~ need for a variance is not shared generally by other properties; ~~in the same zoning district and in the same vicinity.~~
- D. That the ~~authorization~~ granting of ~~such the~~ variance will not be of substantial detriment to adjacent properties and nearby properties in the proximity of that geographical area; ~~that the character of the district will not be changed by the granting of the variance.~~

- E. Such variance is not contrary ~~to the public interest or~~ to the stated purpose of this Zoning Ordinance;
- F. ~~Such variance would result in substantial justice being done.~~ That any hardship was not created by the applicant for the variance;
- G. The property interest for which the variance is being requested was acquired in good faith;
- H. The condition or situation of the property ~~which gives rise to the need for such variance~~ concerned is not of so general or recurring a nature as to make reasonably ~~practical~~ practicable the formulation of a general regulation to be adopted as an amendment to this Zoning Ordinance;
- I. 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; and
- J. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the Zoning Ordinance, pursuant to subdivision 6 of § 15.2-2309 of the 1950 Code of Virginia, as amended, or the process for modification of a zoning ordinance to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.
- K. Sufficient evidence exists to support all of the required findings of this section.

3.13.10 Applicant's Burden of Persuasion

The burden of proof shall be on the applicant to prove by a preponderance of the evidence that the application meets the standards for a variance, as required, pursuant to § 3.13.9 (Approval Criteria). ~~The burden of showing that a variance should be granted to alleviate undue hardship shall be on the applicant. In making such a showing, the applicant shall be required to demonstrate that one or more of the following conditions exist:~~

- A. ~~That strict application of the ordinance would effectively prohibit or unreasonably restrict reasonable use of the property by reason of any one of the following:~~
 - 1. ~~Exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of enactment of this Zoning Ordinance;~~
 - 2. ~~Exceptional topographic conditions or other extraordinary and exceptional situation or condition of such property;~~
 - 3. ~~The condition, situation, or development of property immediately adjacent to the subject property; or~~

~~B.—That the granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.~~

That **The applicant shall be required to demonstrate that** the granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.

4.) Section 3.14.8 Appeals of Administrative Decisions

These proposed revisions correspond with the amendment of §15.2-2309 of the 1950 Code of Virginia, as amended, regarding appeals of administrative decisions.

Sec. 3.14 Appeals of Administrative Decisions

3.14.8 Approval Criteria; Findings of Fact

A. An appeal shall be sustained only if the Board of Zoning Appeals finds that the administrative official erred. **However, the determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.**

B. The decision of the Board of Zoning Appeal shall be accompanied by specific, written findings of fact and conclusions of law clearly stating the reason for the decision. The Board of Zoning Appeals shall file with the Zoning Administrator its findings of fact and conclusions of law with respect to the appeal. The Zoning Administrator shall serve a copy of the decision on the appellant and upon each other person who was a party of record at the hearing.

5.) Section 3.3.6.M Archeological/Historical Information

The amendment removes the reference to “Phase 1” archeological survey replacing it with archeological survey in accordance with the latest version of SHPO standards. By this revision, in those instances where local, state or nationally significant archeological deposits worthy of protection are discovered,

the proper procedure for further protection is established by reference to the National Register Criteria for Evaluation.

Sec. 3.3 Zoning Map Amendments (Rezoning)

3.3.6 Submittal Requirements

- M. Archeological/Historic Information.** The applicant shall provide the following information with the initial submission to determine if there are historical and/or archeological resources of local, state, or national significance that are worthy of protection on the proposed site:
1. Structures, any portion of which ~~was constructed prior to 1940~~ is 50 years of age or older, located on any portion of land designated to be rezoned, require an Intensive Level architectural survey conducted in accordance with the latest version of State Historic Preservation Office (SHPO) survey standards by an individual or firm that meets the professional qualification standards set forth in 36 CFR 61, Appendix A to evaluate the structure and site for its local, state, or national significance as an individual resource or district using:
 - a. The National Register Criteria for Evaluation listed in 36 CFR 60.4; and
 - b. The Criteria for Designation listed under Section 7.5.10.B.1 of the Zoning Ordinance.
 2. An ~~Phase I~~ archeological survey shall be conducted in accordance with the latest version of SHPO standards by an individual or firm that meets the professional qualification standards set forth in 36 CFR 61, Appendix A to evaluate any archeological deposits on the property that may be of local, state, or national significance using the National Register Criteria for Evaluation listed in 36 CFR 60.4.
 3. A letter from the State Historic Preservation Office concurring with the evaluations listed in ~~"b"~~ above.
 4. Recommendations for mitigating the adverse impact of any proposed development on significant historic structures and significant archeological resources that exist on the property. Avoidance of adverse impacts is the preferred mitigation alternative, although other mitigation alternatives may be considered if consistent with local historic preservation guidelines and historic resource best management practices.

6.) Section 7.5.5 Certificate of Appropriateness

This amendment will establish paragraph G. General Concept Plans as an optional conceptual design review before the Board of Architectural Review (BAR) for projects in the H-1 Overlay. This amendment

comes at the suggestion of the BAR's members who see a need for establishing an "unofficial" review and comment procedure for those potential applicants who wish to seek the BAR's input into design of a project before investing more money in the design required to make a formal submission to the BAR for a Certificate of Appropriateness, (COA).

Sec. 7.5 H-1, Overlay, Old and Historic District

7.5.5 Certificate of Appropriateness

G. General Concept Plans. An applicant for Certificate of Appropriateness may submit a general concept plan to the Board of Architectural Review to seek guidance for the conceptual appearance of a proposed project regarding adopted design guidelines and other requirements under the Board's purview. An application for review of a general concept plan shall show information that communicates: (a) height; (b) massing; (c) fenestration; (d) roof form; (e) primary exterior materials; (f) façade orientation; and (g) building footprint along with placement and position on the associated land parcel. Such application shall include any proposed demolition, as applicable to the project, but does not need to meet other application requirements outlined in Section 3.10.2, *Required Contents of Applications*.

An application for review of a general concept plan shall not be bound by the 75-day review requirement outlined in 3.10.5, *Review of Plans in a Timely Manner*, and may be continued to future Board meetings to allow the applicant opportunity to address Board comments and concerns.

In response to an application for review of a general concept plan, the Board of Architectural Review may address the conceptual appearance of a proposed project as it relates to conformance with established design guidelines and other requirements by adopting a resolution by majority vote of the members present at the time of the review. This resolution may include endorsement of the conceptual appearance of all or a specified portion of the project and guidance to the applicant on necessary changes to the appearance in order to conform to established design guidelines and other requirements. The applicant may revise the general concept plan based upon comments received from the Board and resubmit the application.

A resolution endorsing a general concept plan adopted by the Board shall not constitute final approval. A Certificate of Appropriateness application consistent with the requirements outlined in Section 3.10 and Section 7.5 reviewed and approved by the Board shall be required for final approval of a project.

7.) Section 7.6 Certificate of Appropriateness

This amendment will establish Section 7.6.9 General Concept Plans as an optional conceptual design review before the Board of Architectural Review (BAR) for projects in the H-2 Overlay. This amendment comes at the suggestion of the BAR's members who see a need for establishing an "unofficial" review and comment procedure for those potential applicants who wish to seek the BAR's input into design of a project before investing more money in the design required to make a formal submission to the BAR for a Certificate of Appropriateness, (COA).

Sec. 7.6 H-2, Historic Corridor Architectural Control Overlay District

7.6.9 General Concept Plan

Prior to the submission of an application for Certificate of Approval, an applicant may submit a general concept plan to the Board of Architectural Review to seek guidance for the conceptual appearance of a proposed project regarding adopted design guidelines and other requirements under the Board's purview. An application for review of a general concept plan shall show information that generally communicates: (a) height; (b) massing; (c) fenestration; (d) roof form; (e) primary exterior materials; (f) façade orientation; (g) building footprint along with placement and position on the associated land parcel; and (h) any proposed demolitions.

An application for review of a general concept plan shall not be bound by the 75-day review requirement outlined in 3.11.8, Review of Plans in a Timely Manner, and may be continued by mutual agreement of the applicant and Board to a future meeting to allow the applicant opportunity to address Board comments and concerns.

In response to an application for review of a general concept plan, the Board of Architectural Review may address the conceptual appearance of a proposed project as it relates to conformance with established design guidelines and other requirements by adopting a resolution by majority vote of the members present at the time of the review. This resolution may address the conceptual appearance of all or a specified portion of the project and provide guidance to the applicant on necessary changes to the conceptual appearance in order to conform to established design guidelines and other requirements. The applicant may revise the general concept plan based upon comments received from the Board and resubmit the application for further review.

A resolution addressing the conceptual appearance of a proposed project adopted by the Board of Architectural Review shall not constitute approval. A Certificate of Appropriateness application consistent with the requirements outlined in Section 3.11 and Section 7.6 reviewed and approved by the Board shall be required for final approval of a project.

8.) Section 7.5.6 Administrative Approval of Certificate of Appropriateness

Sec. 7.5 H-1, Overlay, Old and Historic District

7.5.6 Administrative Approval of Certificate of Appropriateness

A report of administrative approvals shall be made to the Board of Architectural Review at the regular business meeting following the date said administrative approvals are granted. If the Preservation Planner determines the application may not be in conformance with the Old and Historic District Design Guidelines, the application shall be forwarded to the Board for consideration at the applicant's request.

- A. ~~Lighting, Fences, Paving and Color~~ **Building and Site Enhancements**. The Preservation Planner shall have the authority to issue a Certificate of Appropriateness for alterations to existing or installation of new lampposts, light fixtures, fences, driveways, ~~residential~~ walkways, changes in existing exterior color schemes, **bollards and other traffic control structures outside of the public right-of-way**. ~~If the Preservation Planner determines the application may not be in conformance with the Old and Historic District Design Guidelines, the application shall be forwarded to the Board for consideration at the applicant's request.~~
- B. **Signs**. The Preservation Planner shall have authority to issue a Certificate of Appropriateness for applications that request approval for signs that conform to the criteria as established in the in the Old and Historic District Sign Guidelines in the section titled "Administrative Approval Criteria for Signs in the Old and Historic District". ~~In the event the Preservation Planner determines that the sign does not conform to said guidelines the application shall be forwarded to the Board for consideration at the applicant's request.~~
- C. **Modifications to Existing Structures**. The Preservation Planner shall have the authority to issue a Certificate of Appropriateness for the following modifications to existing structures **that are contributing and noncontributing resources: (a) the** like-kind replacement of roof materials; **(b) the** installation of storm windows and doors; **(c) the** replacement or installation of new shutters; **(d) installation of HVAC units and associated support structures; and (e) utility-related improvements. In addition, the Preservation Planner shall have the authority to issue a Certificate of Appropriateness for the change in appearance of gutters, downspouts, attic vents and exterior doors on noncontributing resources only.**

10.) Section 9.3.11.1 Family Day Homes/(Establishing) Section 9.4.7

The proposed revisions simply move the use from Section 9.3 (Use Standards [for principal uses]) to Section 9.4 (Accessory Uses). "Family Day Home" is a residential accessory use. There are no proposed changes to its content.

Sec. 9.3 Use Standards

9.3.11.1 Family Day Homes

- ~~**A. Description.** Family Day Homes for 6 to 9 children are permitted by right and 10–12 by special exception, subject to meeting the performance standards below and Section 3.4.13 as applicable. A home occupation application is required and shall include a Sketch Plan depicting the entire lot to scale, setbacks, pathway to door of facility, drop off and pick-up locations, location of any permanent in-ground play equipment, the size and location of the required outdoor play area and required fence.~~
- ~~**B. Required Notice.** As required by Virginia State Code section 15.2-2292, upon receipt of an application for a by-right Family Day Home for 6–9 children the Zoning Administrator shall send notice by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within thirty days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator shall issue the permit sought.~~
- ~~**C. Performance Standards.** Any Family Day Home application that does not meet one or more of the performance standards below, or is denied a permit through the administrative process described above, or requests approval for 10 to 12 children may apply for a Special Exception for the Family Day Home use subject to the standards below as modified by Town Council and Town of Leesburg Zoning Ordinance section 3.4.~~
- ~~1. The Family Day Home shall comply with any and all requirements of the Town and State Codes, including without limitation, obtaining a Home Occupation Permit, maintenance of a Town Business License, and obtaining a State Family Day Home License in accordance with the State Code, as applicable.~~
 - ~~2. The Family Day Home shall comply with any and all requirements of the County and State Building Codes.~~

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- ~~3. If the proposed location of the Family Day Home is subject to a Declaration of Covenants, Conditions, and Restrictions for a Homeowners Association (HOA), then prior to the issuance of the Home Occupation Permit, the Family Day Home provider shall provide the Town with documentation whether or not the use is allowable under applicable HOA Covenants, Conditions, and Restrictions.~~
- ~~4. The Family Day Home lot must be at least 6,000 square feet in size.~~
- ~~5. There shall be no more than two employees for a Family Day Home. The applicant shall demonstrate availability of employee parking onsite or along the street.~~
- ~~6. Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent to the Family Day Home center in such a manner that children do not have to cross a street to enter or exit the Home.~~
- ~~7. Family Day Homes shall stagger pick up and drop off times such that there are never more than two vehicles picking up or dropping off at one time.~~
- ~~8. There shall be no change in the outside appearance of the Family Day Home or lot nor other visible evidence of the conduct of a Family Day Home other than what may be required by the State Family Day Home License or provisions elsewhere in this Zoning Ordinance.~~
- ~~9. Seventy-five (75) square feet of outdoor play area must be provided on-site per child except as follows: No outdoor play area shall be required on-site when applicant can demonstrate the Family Day Home is located within 1,000 feet of an existing park or play lot that is at least twice the area otherwise required for the home care service. The park or play lot must be public or owned by the homeowners' association to which the residence belongs and must be accessed without crossing an arterial or collector road. The Outdoor play area must be shown on a plat to scale submitted at the time of application for the permit.~~
- ~~10. Fencing: Outdoor play area must be enclosed by a fence with a minimum height of four (4) feet.~~
- ~~11. Play Equipment Location: -- No play equipment shall be located within the required yard setbacks.~~

- ~~12. Pathway to Facility: There must be a continuous hard-surface pathway/sidewalk connecting the drop-off and pick-up location to the entrance of the Family Day Home. The pathway shall be kept free of any snow or ice.~~

Sec. 9.4 Accessory Uses

9.4.7 Family Day Homes

- A. Description.** Family Day Homes for 6 to 9 children are permitted by-right and 10-12 by special exception, subject to meeting the performance standards below and Section 3.4.13 as applicable. A home occupation application is required and shall include a Sketch Plan depicting the entire lot to scale, setbacks, pathway to door of facility, drop off and pick-up locations, location of any permanent in-ground play equipment, the size and location of the required outdoor play area and required fence.
- B. Required Notice.** As required by Va. Code Section 15.2-2292, upon receipt of an application for a by-right Family Day Home for 6-9 children, the Zoning Administrator shall send notice by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within thirty days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator shall issue the permit sought.
- C. Performance Standards.** Any Family Day Home applicant may apply for a special exception for the Family Day Home if the application does not meet one or more of the performance standards listed below; is denied a permit through the administrative process described above; or requests approval for 10-12 children. The Special Exception use shall be subject to the standards below as modified by Town Council and the Town of Leesburg Ordinance Section 3.4.
1. The Family Day Home shall comply with any and all requirements of the Town and State Codes, including without limitation, obtaining a Home Occupation Permit, maintenance of a Town Business License, and obtaining a State Family Day Home License in accordance with the State Code, as applicable.
 2. The Family Day Home shall comply with any and all requirements of the County and State Building Codes.
 3. If the proposed location of the Family Day Home is subject to a Declaration of Covenants, Conditions, and Restrictions for a Homeowners Association (HOA), then prior to the issuance of the Home Occupation Permit, the Family Day Home provider shall provide the Town with documentation whether or not the use is allowable under applicable HOA Covenants, Conditions, and Restrictions.

- 4. The Family Day Home lot must be at least 6,000 square feet in size.**
- 5. There shall be no more than two employees for a Family Day Home. The applicant shall demonstrate availability of employee parking onsite or along the street.**
- 6. Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent to the Family Day Home center in such a manner that children do not have to cross a street to enter or exit the Home.**
- 7. Family Day Homes shall stagger pick up and drop off times such that there are never more than two vehicles picking up or dropping off at one time.**
- 8. There shall be no change in the outside appearance of the Family Day Home or lot nor other visible evidence of the conduct of a Family Day Home other than what may be required by the State Family Day Home License or provisions elsewhere in this Zoning Ordinance.**
- 9. Seventy-five (75) square feet of outdoor play area must be provided on-site per child except as follows: No outdoor play area shall be required on-site when applicant can demonstrate the Family Day Home is located within 1,000 feet of an existing park or play lot that is at least twice the area otherwise required for the home care service. The park or play lot must be public or owned by the homeowners' association to which the residence belongs and must be accessed without crossing an arterial or collector road. The Outdoor play area must be shown on a plat to scale submitted at the time of application for the permit.**
- 10. Fencing: Outdoor play area must be enclosed by a fence with a minimum height of four (4) feet.**
- 11. Play Equipment Location: - No play equipment shall be located within the required yard setbacks.**
- 12. Pathway to Facility: There must be a continuous hard-surface pathway/sidewalk connecting the drop-off and pick-up location to the entrance of the Family Day Home. The pathway shall be kept free of any snow or ice.**

11.) Section 9.5.4.D.2 Fair in the R-1 District

The proposed revision increases the maximum number and duration of permitted temporary uses for pre-existing businesses/uses in the R-1 Zoning District.

Sec. 9.5 Temporary Uses

9.5.4. Standards for Specific Temporary Uses

D. Fair in the R-1 District

1. Existing Uses Only. Fairs may only be approved when located on a parcel with a pre-existing business or use on the subject R-1 zoned property. Vacant properties shall not be used for Fair uses.
2. Duration. A temporary use permit for such activities shall be issued for no more than three (3) consecutive days, ~~five (5)~~ **eight (8)** times per year. The total number of days allotted for the year may be consolidated resulting in more consecutive days, ~~fewer times~~ **s** per year.

12.) Section 10.4 Measurements, Computations and Exceptions

This proposed amendment revises the minimum setback for HVAC, and similar residential mechanical equipment, on interior single-family attached dwelling unit lots to 18 inches, or 1½ feet. The revised 18 inch setback will maximize useable lot area by moving mechanical equipment to a place on individual lots as close to the boundary as possible while still allowing room for maintenance, adequate air circulation, and fencing around the equipment. This revision will also result in making many existing HVAC units setbacks compliant that are currently non-conforming or non-compliant with existing minimum setback requirements.

The interior side yard setback for single-family attached lots is zero (0') feet.

As a result, all, if not almost all, single-family lots in town are fenced along the interior boundaries.

The vast majority, if not all, interior single-family attached dwelling unit lots are fenced along the property boundaries. Such fencing will provide adequate screening of HVAC units from neighboring properties. The 18 inch setback is proposed to allow for adequate access to the equipment, as well as, provide proper air circulation while allowing fences to be installed along the interior side property boundaries. In some instances where single-family attached dwelling units are proposed with rear loaded driveways, existing HVAC equipment setback requirements required such units to be installed in the middle of the driveway. It is hoped that this proposed change will alleviate similar circumstances the future.

Other language is added that more specifically explains the applicability of other setback requirements also provided in this section.

Sec. 10.4 Measurements, Computations and Exceptions

10.4.5 Minimum Yard Requirements

C. Extensions into Required Yards. The following uses and structures shall be permitted to be located within required yards, subject to the limitations established herein. No structure may be erected over a public right-of-way or easement, except as permitted in the Town Code.

2. **Air Conditioners and Similar Equipment.** On lots containing single-family detached dwellings, duplex dwellings, multi-family dwellings, and end-unit single-family attached dwellings, ~~Air conditioning equipment, heat pumps~~ heating, ventilation, and air conditioning (HVAC) equipment and similar mechanical equipment may not project more than three (3) feet into any required side or rear yard but no closer than five (5) feet to any lot line. Notwithstanding, window air conditioning units may not project more than eighteen (18) inches into a required yard.

On interior single-family attached dwelling unit lots only, HVAC and similar mechanical equipment may be located no less than eighteen (18) inches (or, 1½ feet) from the property boundary.

On lots containing single-family detached dwellings, duplex dwellings, multi-family dwellings, and end-unit single-family attached dwellings, in which the required side or rear yard setback is five (5) feet or less, ~~heating, ventilation, and air conditioning (HVAC)~~ equipment and other similar equipment may be located no closer than two (2) feet from the side or rear lot line if the following standards are met:

13.) Section 11.6.2. Dimensions of Parking Spaces and Aisles

This revision does nothing more than removes the word “required” from the paragraph so as to make is clear that the number of accessible parking spaces is determined by the total number of parking spaces provided, regardless of whether or not a certain number of those parking spaces are provided in addition to the minimum number of required parking spaces.

Sec. 11.6 Parking and Loading Area Design Standards

11.6.2 Dimensions of Parking Spaces and Aisles

- B. Accessible Parking for Physically Handicapped Persons.** A portion of the total number of ~~required~~ off-street parking spaces **provided** in each off-street parking area shall be specifically designated, located and reserved for use by persons with physical disabilities. The number and dimensions of handicapped accessible parking spaces shall be required in accordance with the Federal Americans with Disabilities Act (ADA).
1. **Number of Spaces.** The minimum number of accessible spaces to be provided shall be a portion of the total number of off-street parking spaces ~~required~~ **provided**, as determined from the following schedule. Parking spaces reserved for persons with disabilities shall be counted toward fulfilling off-street parking standards.

14.) Section 11.4.4 Modified Requirements in the Downtown H-1 Overlay District

On August 11, 2015, the Town Council approved Resolution 2015-092 authorizing some of the recommendations of the Downtown Parking Task Force Report which included a Zoning Ordinance amendment to eliminate the Loudoun County garage as a qualifying facility when considering a development request to waive the provision of on-site parking if located within 500 feet of the Loudoun County parking garage. As such, this revision removes the Loudoun County Government Center parking garage as an eligible municipal parking structure/facility to qualify for being excused from providing off street parking in accordance with Section 11.4.4.A.

Building within 500 feet of Municipal Parking Facility. The reason for disqualifying the County Parking Garage is based on the fact that during weekday business hours, spaces in that garage are available to County employees and County Government Center visitors only. The basis for the modification provided in 11.4.4.A is that public parking will be available in a municipal parking facility that is in relatively close proximity (i.e., 500 feet) to the subject property, thus justifying not having to provide new off street parking spaces on the subject property.

Sec. 11.4 Alternative Parking Provisions

11.4.4 Modified Requirements in the Downtown H-1 Overlay District

- A. Building within 500 feet of Municipal Parking Facility.** Where an existing building or structure is used or rehabilitated for any nonresidential use in the B-1 District, no parking spaces shall be required for any such building or structure within 500 feet of a municipal parking facility, measured from the nearest point of the building lot to an entrance to the municipal parking facility. For purposes of this article a municipal parking facility is defined as any parking facility owned and maintained by the Town of Leesburg or Loudoun County, excluding the Loudoun County Government Center parking garage.

15.) Section 12.3 Twenty-Year Tree Canopy Requirements

This amendment corrects a reference in Sec. 12.3.1 to cite the proper ordinance section referring to tree canopy pro-rata costs. In addition, this revision adds the exclusion of trees planted within 20-feet of a light pole from canopy coverage calculations. The intent here is keep trees from being planted too close to light poles that can impact the vitality of any such tree. This requirement is mirrored in Section 12.6.3.E. Light Poles.

Sec. 12.3 Twenty-Year Tree Canopy Requirements

12.3.1 Requirements

- E. If the full canopy requirement cannot be achieved on-site, the remaining requirement of canopy shall be calculated with the cost amount listed in Section ~~G~~ **12.3.3.B Pro-rata Tree Canopy Cost** below and a fee for the total shall be collected and deposited in the Town of Leesburg tree fund.
- F. ~~The cost to establish a new tree with a twenty (20) year canopy area starting with a two (2) — inch caliper nursery stock shall be \$990.00.~~
- ~~G~~. For the purpose of this section, “site” shall include all of the area within a property boundary, either as proposed on the final subdivision plat or site plan or the existing property (property line to property line). In instances where a small portion of land is not being subdivided out of a larger tract of land and is the subject of a site plan application, the Land Development Official may accept the smaller site area for canopy calculation purposes. For multi-phased or sectioned subdivisions, canopy may be calculated for the overall subdivision.

12.3.2 Calculations and Exceptions

- B. **Tree planting credit.** Street trees shall be counted toward required tree canopy cover. All trees planted on site as well as street trees planted in public right of way shall qualify for the minimum tree canopy calculation provided that:
 - 3. Any tree planted within twenty (20) feet of a light pole shall not be counted toward the minimum canopy coverage requirement.**

16.) Section 12.4 Street Trees

This revision codifies the practice to exclude the width of vehicle driveway entrances from the frontage calculation for determining the number of required street trees. The revision removes inconsistent language from the text and rearranges the remainder to make it read properly.

Sec. 12.4 Street Trees

12.4.3 Number

One (1) medium or large canopy tree shall be provided for every forty (40) feet of street frontage, excluding the width of vehicle entrances. ~~In the case of overhead utility lines, only understory trees shall be utilized and one understory tree shall be provided for every fifteen (15) feet of street frontage.~~ In cases where street trees are planted under or near overhead utility lines and understory trees are required per Sec. 12.4.2.C, one (1) tree should be provided for every thirty (30) feet of street frontage. In the case of capital improvement projects for public streets, one (1) tree should be provided for every forty (40) feet of street frontage; however, in no case shall there be a net loss in the number of trees in the area improved. In cases where street trees are planted under or near overhead utility lines and understory trees are required per Sec. 12.4.2.C, one (1) tree should be provided for every thirty (30) feet of street frontage.

17.) Section 12.5 Perimeter Parking Lot Landscaping

The intent of this revision is to add language that clarifies when the required perimeter parking lot landscaping may be omitted per Section 12.5.1.

Sec. 12.5 Perimeter Parking Lot Screening

12.5.1 Applicability

All parking areas described below, unless explicitly exempted, must be screened as described in this article. For the purposes of this article, parking lots are defined as any area used for the display or parking of any and all types of vehicles, boats or heavy construction equipment, whether these vehicles are or are not for sale or lease. This definition includes, but is not limited to, parking lots and display areas for automobile dealerships and service stations. The area of the parking lot shall be calculated to include all paved areas used for ingress/egress. The requirements of this section shall apply to the construction or enlargement of any parking lot with five (5) or more parking spaces. No perimeter parking lot screening shall be required if an S-2 or S-3 screen as described in Sec. **Error! Reference source not found.** is required to be installed where the perimeter parking lot landscaping would otherwise be installed.

18.) Section 12.9 Plant Material Specifications

This revision amends when ground covers are required to be installed. The Zoning Ordinance acknowledges slopes 3:1 or greater as being “steep slopes” and 3:1 is the steepest grade trees can be planted on be expected to survive when care is taken in their planting. This revision establishes ground covers must be used on steep slopes that cannot accommodate trees where landscaping is required to be installed.

Sec. 12.9 Plant Material Specifications

12.9.6 Tree Selection and Cover Guide

Table 12.9.6.J. Ground Cover		
Common Name	Botanical Name	Function
Pachysandra	Pachysandra terminalis	B
Ground Juniper	(various species)*	B
Dwarf Cotoneaster	(various species)*	B
Lirope	(various species)*	B

*Use appropriate size cultivars for interior parking lot landscaping. Note that ground covers must be used ~~in~~ on slopes ~~steeper than 23:1~~ **steeper than 23:1 or greater.**

19.) Section 15.7 Regulations Applicable to All Signs

The intent of this ordinance revision is to establish a “sunset” provision for non-conforming signs that are not in use. Currently, a non-conforming sign may remain in place indefinitely regardless of whether it is blank or continues to advertise a use that is no longer active. Signs that have since been eliminated as permissible signs have been determined to no longer meet the purpose and intent of the Sign Regulations established in Section 15.1.1 of the Zoning

Ordinance. By amending the Sign Regulations to no longer allow certain sign types, Town Council has established its intent to see any such sign go away after certain conditions have been met.

This provision is not intended to, nor does it require that legally pre-existing, non-conforming sign that continue to comply with subsections 1 – 6 of paragraph A be removed.

Sec. 15.7 Regulations Applicable to All Signs

15.7.4 Pre-Existing/Non-Conforming Signs

- A. Any sign which was lawfully established in accordance with all applicable regulations in effect at the time of its establishment which does not conform to the provisions herein, and any sign which is accessory to a lawful nonconforming principal use, shall be deemed a lawful pre-existing sign, and may remain, subject to the following conditions:

7. Should a non-conforming sign remain blank, or continue to advertise a business that has been discontinued, vacated or has been inactive on the premises where the non-conforming sign is situated, for a period of two (2) years, it cannot be used, and shall be removed by the property owner when order to do so by the Town.

Note that Section 15.13.7, Sign Permit Procedures was included in the Town Council Public Hearing advertisement for the 2015 Zoning Ordinance Batch. This amendment, as drafted by staff was reviewed and recommended for approval by the Planning Commission. However, upon further reflection since the Planning Commission public hearing, staff does not recommend that changes be made to Section 15.13.7. As such, this amendment has been deleted from the Batch amendment for Town Council review and staff recommends that no change be made to Section 15.13.7.

PRESENTED: January 12, 2016

ORDINANCE NO: _____

ADOPTED: _____

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

The Town Council of Leesburg, Virginia, hereby ordains:

SECTION I. That the following sections of the Zoning Ordinance of the Town of Leesburg, Virginia, 2003, as amended, be and the same are hereby amended to read as follows:

1.) Section. 2.3.7.E Comprehensive Sign Plans

2.3.7 Powers and Duties

The powers and duties of the Board of Architectural Review shall be as follows:

Decision Making Authority

- E. Comprehensive Sign Plans. Review and approve ~~make recommendations to the Town Council regarding~~ comprehensive sign plans within the boundaries of the H-1 Overlay District as established by this Zoning Ordinance and in accordance with Sec. 15. 13 ~~44~~ (Comprehensive Sign Plans).

2.) Section. 3.3.6 Submittal Requirements (Rezoning) and, Section 3.4.6 Submittal Requirements (Special Exceptions)

Sec. 3.3 Zoning Map Amendments (Rezoning)

3.3.6. Submittal Requirements

N. Zoning Modifications/Waivers Analysis. Every request for a modification and/or waiver of a zoning requirement shall be accompanied by a detailed justification statement that must answer the following questions:

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

- (1) How is the requested modification/waiver intended to achieve a more reasonable use of the subject property;
- (2) How does it achieve an innovative design;
- (3) How does it improve upon existing regulations or otherwise exceed the public purpose of the existing regulations; and,
- (4) Demonstrate that it is not requested for the primary purpose of achieving maximum density on the subject property.

1. **Buffer Yard Modifications/Waivers.** For buffer yard modifications/waivers, information shall also include the following:
 - a. An exhibit illustrating the extent and location of the required buffer yards overlaid on the proposed plan;
 - b. A calculation of the square footage reduction in the required buffer yard; and
 - c. A calculation of the difference in number and type of the plant materials required and proposed.

2. **Other Modifications/Waivers.** For other types of modification/waivers, information shall also include illustrations, exhibits, and/or, section drawings to best depict the effect of the requested waiver/modification. Computations shall be included to illustrate the net effects of the request on, as applicable, including, but not limited to, lot size, total open space area, numbers of parking spaces, gross floor area of commercial uses and residential density compared to development that fully complies with all applicable requirements of the Zoning Ordinance.

Sec. 3.4 Special Exceptions

3.4.6. Submittal Requirements.

- H. **Zoning Modifications/Waivers Analysis.** Every request for a modification and/or waiver of a zoning requirement shall be accompanied

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

by a detailed justification statement that must answer the following questions:

- (1) How is the requested modification/waiver intended to achieve a more reasonable use of the subject property;
- (2) How does it achieve an innovative design;
- (3) How does it improve upon existing regulations or otherwise exceed the public purpose of the existing regulations; and,
- (4) Demonstrate that it is not requested for the primary purpose of achieving maximum density on the subject property.

1. **Buffer Yard Modifications/Waivers.** For buffer yard modifications/waivers, information shall also include the following:
 - a. An exhibit illustrating the extent and location of the required buffer yards overlaid on the proposed plan;
 - b. A calculation of the square footage reduction in the required buffer yard; and
 - c. A calculation of the difference in number and type of the plant materials required and proposed.

2. **Other Modifications/Waivers.** For other types of modification/waivers, information shall also include illustrations, exhibits, and/or, section drawings to best depict the effect of the requested waiver/modification. Computations shall be included to illustrate the net effects of the request on, as applicable, including, but not limited to, lot size, total open space area, numbers of parking spaces, gross floor area of commercial uses and residential density compared to development that fully complies with all applicable requirements of the Zoning Ordinance.

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

3.) Section. 3.13 Variances

Sec. 3.13 Variances

3.13.2 Authorized Variances

Variances (as defined in Section 15.2-2201 of the 1950 Code of Virginia, ~~1950~~, as amended) from the regulations and restrictions contained in this Zoning Ordinance, may be granted only for the following:

- A. A variance from the provisions regulating the shape, size or area of a lot; or
- B. A variance from the provisions regulating the size, height, area, bulk, setback, open space, yards, or location of a building or structure.

3.13.9 Approval Criteria

No variance shall be approved by the Board of Zoning Appeals unless the Board of Zoning Appeals finds that all of the following statements are true with respect to the subject property:

- A. That strict application of the regulations of this Zoning Ordinance would ~~produce undue hardship~~ unreasonably restrict the utilization of the property;
- B. 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 Zoning Ordinance when that restriction(s) that the applicant is seeking relief from became applicable to the applicant's land/land interest;
- C. That such ~~hardship~~ need for a variance is not shared generally by other properties; ~~in the same zoning district and in the same vicinity~~;
- D. That the ~~authorization~~ granting of ~~such the~~ variance will not be of substantial detriment to adjacent properties and nearby properties in the proximity of that geographical area; ~~that the character of the district will not be changed by the granting of the variance~~;
- E. Such variance is not contrary ~~to the public interest or~~ to the stated purpose of this Zoning Ordinance;
- F. ~~Such variance would result in substantial justice being done~~. That any hardship was not created by the applicant for the variance;

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

- G. The property interest for which the variance is being requested was acquired in good faith;
- H. The condition or situation of the property ~~which gives rise to the need for such variance~~ concerned is not of so general or recurring a nature as to make reasonably ~~practical~~ practicable the formulation of a general regulation to be adopted as an amendment to this Zoning Ordinance;
- I. 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; and
- J. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the Zoning Ordinance, pursuant to subdivision 6 of § 15.2-2309 of the 1950 Code of Virginia, as amended, or the process for modification of a zoning ordinance to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.
- K. Sufficient evidence exists to support all of the required findings of this section.

3.13.10 Applicant's Burden of Persuasion

The burden of proof shall be on the applicant to prove by a preponderance of the evidence that the application meets the standards for a variance, as required, pursuant to § 3.13.9 (Approval Criteria). ~~The burden of showing that a variance should be granted to alleviate undue hardship shall be on the applicant. In making such a showing, the applicant shall be required to demonstrate that one or more of the following conditions exist:~~

- ~~A. That strict application of the ordinance would effectively prohibit or unreasonably restrict reasonable use of the property by reason of any one of the following:~~
 - ~~1. Exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of enactment of this Zoning Ordinance;~~
 - ~~2. Exceptional topographic conditions or other extraordinary and exceptional situation or condition of such property;~~
 - ~~3. The condition, situation, or development of property immediately adjacent to the subject property; or~~

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

~~B. That the granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.~~

That **The applicant shall be required to demonstrate that** the granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.

4.) Section 3.14.8 Appeals of Administrative Decisions

Sec. 3.14 Appeals of Administrative Decisions

3.14.8 Approval Criteria; Findings of Fact

A. An appeal shall be sustained only if the Board of Zoning Appeals finds that the administrative official erred. **However, the determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.**

B. The decision of the Board of Zoning Appeal shall be accompanied by specific, written findings of fact and conclusions of law clearly stating the reason for the decision. The Board of Zoning Appeals shall file with the Zoning Administrator its findings of fact and conclusions of law with respect to the appeal. The Zoning Administrator shall serve a copy of the decision on the appellant and upon each other person who was a party of record at the hearing.

5.) Section 3.3.6.M Archeological/Historical Information

Sec. 3.3 Zoning Map Amendments (Rezoning)

3.3.6 Submittal Requirements

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

M. Archeological/Historic Information. The applicant shall provide the following information with the initial submission to determine if there are historical and/or archeological resources of local, state, or national significance that are worthy of protection on the proposed site:

1. Structures, any portion of which ~~was constructed prior to 1940~~ is 50 years of age or older, located on any portion of land designated to be rezoned, require an Intensive Level architectural survey conducted in accordance with the latest version of State Historic Preservation Office (SHPO) survey standards by an individual or firm that meets the professional qualification standards set forth in 36 CFR 61, Appendix A to evaluate the structure and site for its local, state, or national significance as an individual resource or district using:
 - a. The National Register Criteria for Evaluation listed in 36 CFR 60.4; and
 - b. The Criteria for Designation listed under Section 7.5.10.B.1 of the Zoning Ordinance.
2. An ~~Phase I~~ archeological survey shall be conducted in accordance with the latest version of SHPO standards by an individual or firm that meets the professional qualification standards set forth in 36 CFR 61, Appendix A to evaluate any archeological deposits on the property that may be of local, state, or national significance using the National Register Criteria for Evaluation listed in 36 CFR 60.4.
3. A letter from the State Historic Preservation Office concurring with the evaluations listed in ~~"b"~~ above.
4. Recommendations for mitigating the adverse impact of any proposed development on significant historic structures and significant archeological resources that exist on the property. Avoidance of adverse impacts is the preferred mitigation alternative, although other mitigation alternatives may be considered if consistent with local historic preservation guidelines and historic resource best management practices.

6.) Section 7.5.5 Certificate of Appropriateness

Sec. 7.5 H-1, Overlay, Old and Historic District

7.5.5 Certificate of Appropriateness

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

G. General Concept Plans. An applicant for Certificate of Appropriateness may submit a general concept plan to the Board of Architectural Review to seek guidance for the conceptual appearance of a proposed project regarding adopted design guidelines and other requirements under the Board's purview. An application for review of a general concept plan shall show information that communicates: (a) height; (b) massing; (c) fenestration; (d) roof form; (e) primary exterior materials; (f) façade orientation; and (g) building footprint along with placement and position on the associated land parcel. Such application shall include any proposed demolition, as applicable to the project, but does not need to meet other application requirements outlined in Section 3.10.2, *Required Contents of Applications*.

An application for review of a general concept plan shall not be bound by the 75-day review requirement outlined in 3.10.5, *Review of Plans in a Timely Manner*, and may be continued to future Board meetings to allow the applicant opportunity to address Board comments and concerns.

In response to an application for review of a general concept plan, the Board of Architectural Review may address the conceptual appearance of a proposed project as it relates to conformance with established design guidelines and other requirements by adopting a resolution by majority vote of the members present at the time of the review. This resolution may include endorsement of the conceptual appearance of all or a specified portion of the project and guidance to the applicant on necessary changes to the appearance in order to conform to established design guidelines and other requirements. The applicant may revise the general concept plan based upon comments received from the Board and resubmit the application.

A resolution endorsing a general concept plan adopted by the Board shall not constitute final approval. A Certificate of Appropriateness application consistent with the requirements outlined in Section 3.10 and Section 7.5 reviewed and approved by the Board shall be required for final approval of a project.

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

7.) Section 7.5.5 Certificate of Appropriateness

Sec. 7.6 H-2, Historic Corridor Architectural Control Overlay District

7.6.9 General Concept Plan

Prior to the submission of an application for Certificate of Approval, an applicant may submit a general concept plan to the Board of Architectural Review to seek guidance for the conceptual appearance of a proposed project regarding adopted design guidelines and other requirements under the Board's purview. An application for review of a general concept plan shall show information that generally communicates: (a) height; (b) massing; (c) fenestration; (d) roof form; (e) primary exterior materials; (f) façade orientation; (g) building footprint along with placement and position on the associated land parcel; and (h) any proposed demolitions.

An application for review of a general concept plan shall not be bound by the 75-day review requirement outlined in 3.11.8, Review of Plans in a Timely Manner, and may be continued by mutual agreement of the applicant and Board to a future meeting to allow the applicant opportunity to address Board comments and concerns.

In response to an application for review of a general concept plan, the Board of Architectural Review may address the conceptual appearance of a proposed project as it relates to conformance with established design guidelines and other requirements by adopting a resolution by majority vote of the members present at the time of the review. This resolution may address the conceptual appearance of all or a specified portion of the project and provide guidance to the applicant on necessary changes to the conceptual appearance in order to conform to established design guidelines and other requirements. The applicant may revise the general concept plan based upon comments received from the Board and resubmit the application for further review.

A resolution addressing the conceptual appearance of a proposed project adopted by the Board of Architectural Review shall not constitute approval. A Certificate of Appropriateness application consistent with the requirements outlined in Section 3.11 and Section 7.6 reviewed and approved by the Board shall be required for final approval of a project.

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

8.) Section 7.5.6 Administrative Approval of Certificate of Appropriateness

Sec. 7.5 H-1, Overlay, Old and Historic District

7.5.6 Administrative Approval of Certificate of Appropriateness

A report of administrative approvals shall be made to the Board of Architectural Review at the regular business meeting following the date said administrative approvals are granted. If the Preservation Planner determines the application may not be in conformance with the Old and Historic District Design Guidelines, the application shall be forwarded to the Board for consideration at the applicant's request.

- A. ~~Lighting, Fences, Paving and Color~~ **Building and Site Enhancements**. The Preservation Planner shall have the authority to issue a Certificate of Appropriateness for alterations to existing or installation of new lampposts, light fixtures, fences, driveways, ~~residential~~ walkways, changes in existing exterior color schemes, **bollards and other traffic control structures outside of the public right-of-way**. ~~If the Preservation Planner determines the application may not be in conformance with the Old and Historic District Design Guidelines, the application shall be forwarded to the Board for consideration at the applicant's request.~~
- B. **Signs**. The Preservation Planner shall have authority to issue a Certificate of Appropriateness for applications that request approval for signs that conform to the criteria as established in the in the Old and Historic District Sign Guidelines in the section titled "Administrative Approval Criteria for Signs in the Old and Historic District". ~~In the event the Preservation Planner determines that the sign does not conform to said guidelines the application shall be forwarded to the Board for consideration at the applicant's request.~~
- C. **Modifications to Existing Structures**. The Preservation Planner shall have the authority to issue a Certificate of Appropriateness for the following modifications to existing structures **that are contributing and noncontributing resources**: **(a) the like-kind replacement of roof materials; (b) the installation of storm windows and doors; (c) the replacement or installation of new shutters; (d) installation of HVAC units and associated support structures; and (e) utility-related improvements**. In addition, the Preservation Planner shall have the authority to issue a Certificate of Appropriateness

AN ORDINANCE: AMENDING ARTICLE 2 REVIEW AND DECISION-MAKING BODIES; ARTICLE 3 REVIEW AND APPROVAL PROCEDURES; ARTICLE 7 OVERLAY AND SPECIAL PURPOSE DISTRICTS; ARTICLE 9 USE REGULATIONS; ARTICLE 10 DENSITY/INTENSITY & DIMENSIONAL STANDARDS; ARTICLE 11 PARKING, LOADING AND PEDESTRIAN ACCESS; ARTICLE 12 TREE PRESERVATION, LANDSCAPING, SCREENING, OPEN SPACE AND OUTDOOR LIGHTING; AND, ARTICLE 15 SIGNS.

10.) Section 9.3.11.1 Family Day Homes/(Establishing) Section 9.4.7

Sec. 9.3 Use Standards

9.3.11.1 Family Day Homes

- ~~A. **Description.** Family Day Homes for 6 to 9 children are permitted by right and 10–12 by special exception, subject to meeting the performance standards below and Section 3.4.13 as applicable. A home occupation application is required and shall include a Sketch Plan depicting the entire lot to scale, setbacks, pathway to door of facility, drop off and pick-up locations, location of any permanent in-ground play equipment, the size and location of the required outdoor play area and required fence.~~
- ~~B. **Required Notice.** As required by Virginia State Code section 15.2-2292, upon receipt of an application for a by-right Family Day Home for 6–9 children the Zoning Administrator shall send notice by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within thirty days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator shall issue the permit sought.~~
- ~~C. **Performance Standards.** Any Family Day Home application that does not meet one or more of the performance standards below, or is denied a permit through the administrative process described above, or requests approval for 10 to 12 children may apply for a Special Exception for the Family Day Home use subject to the standards below as modified by Town Council and Town of Leesburg Zoning Ordinance section 3.4.~~
- ~~1. The Family Day Home shall comply with any and all requirements of the Town and State Codes, including without limitation, obtaining a Home Occupation Permit, maintenance of a Town Business License, and obtaining a State Family Day Home License in accordance with the State Code, as applicable.~~
 - ~~2. The Family Day Home shall comply with any and all requirements of the County and State Building Codes.~~

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- ~~3. If the proposed location of the Family Day Home is subject to a Declaration of Covenants, Conditions, and Restrictions for a Homeowners Association (HOA), then prior to the issuance of the Home Occupation Permit, the Family Day Home provider shall provide the Town with documentation whether or not the use is allowable under applicable HOA Covenants, Conditions, and Restrictions.~~
- ~~4. The Family Day Home lot must be at least 6,000 square feet in size.~~
- ~~5. There shall be no more than two employees for a Family Day Home. The applicant shall demonstrate availability of employee parking onsite or along the street.~~
- ~~6. Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent to the Family Day Home center in such a manner that children do not have to cross a street to enter or exit the Home.~~
- ~~7. Family Day Homes shall stagger pick up and drop off times such that there are never more than two vehicles picking up or dropping off at one time.~~
- ~~8. There shall be no change in the outside appearance of the Family Day Home or lot nor other visible evidence of the conduct of a Family Day Home other than what may be required by the State Family Day Home License or provisions elsewhere in this Zoning Ordinance.~~
- ~~9. Seventy five (75) square feet of outdoor play area must be provided on-site per child except as follows: No outdoor play area shall be required on-site when applicant can demonstrate the Family Day Home is located within 1,000 feet of an existing park or play lot that is at least twice the area otherwise required for the home care service. The park or play lot must be public or owned by the homeowners' association to which the residence belongs and must be accessed without crossing an arterial or collector road. The Outdoor play area must be shown on a plat to scale submitted at the time of application for the permit.~~

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~~10. Fencing: Outdoor play area must be enclosed by a fence with a minimum height of four (4) feet.~~

~~11. Play Equipment Location: -- No play equipment shall be located within the required yard setbacks.~~

~~12. Pathway to Facility: There must be a continuous hard surface pathway/sidewalk connecting the drop-off and pick-up location to the entrance of the Family Day Home. The pathway shall be kept free of any snow or ice.~~

Sec. 9.4 Accessory Uses

9.4.7 Family Day Homes

- A. Description.** Family Day Homes for 6 to 9 children are permitted by-right and 10-12 by special exception, subject to meeting the performance standards below and Section 3.4.13 as applicable. A home occupation application is required and shall include a Sketch Plan depicting the entire lot to scale, setbacks, pathway to door of facility, drop off and pick-up locations, location of any permanent in-ground play equipment, the size and location of the required outdoor play area and required fence.
- B. Required Notice.** As required by Va. Code Section 15.2-2292, upon receipt of an application for a by-right Family Day Home for 6-9 children, the Zoning Administrator shall send notice by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within thirty days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator shall issue the permit sought.
- C. Performance Standards.** Any Family Day Home applicant may apply for a special exception for the Family Day Home if the application does not meet one or more of the performance standards listed below; is denied a permit through the administrative process described above; or requests approval for 10-12 children. The Special Exception use shall be subject to the standards below as modified by Town Council and the Town of Leesburg Ordinance Section 3.4.
1. The Family Day Home shall comply with any and all requirements of the Town and State Codes, including without limitation, obtaining a Home Occupation Permit.

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maintenance of a Town Business License, and obtaining a State Family Day Home License in accordance with the State Code, as applicable.

2. The Family Day Home shall comply with any and all requirements of the County and State Building Codes.
3. If the proposed location of the Family Day Home is subject to a Declaration of Covenants, Conditions, and Restrictions for a Homeowners Association (HOA), then prior to the issuance of the Home Occupation Permit, the Family Day Home provider shall provide the Town with documentation whether or not the use is allowable under applicable HOA Covenants, Conditions, and Restrictions.
4. The Family Day Home lot must be at least 6,000 square feet in size.
5. There shall be no more than two employees for a Family Day Home. The applicant shall demonstrate availability of employee parking onsite or along the street.
6. Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent to the Family Day Home center in such a manner that children do not have to cross a street to enter or exit the Home.
7. Family Day Homes shall stagger pick up and drop off times such that there are never more than two vehicles picking up or dropping off at one time.
8. There shall be no change in the outside appearance of the Family Day Home or lot nor other visible evidence of the conduct of a Family Day Home other than what may be required by the State Family Day Home License or provisions elsewhere in this Zoning Ordinance.
9. Seventy-five (75) square feet of outdoor play area must be provided on-site per child except as follows: No outdoor play area shall be required on-site when applicant can demonstrate the Family Day Home is located within 1,000 feet of an existing park or play lot that is at least twice the area otherwise required for the home care service. The park or play lot must be public or owned by the homeowners' association to which the residence belongs and must be accessed without crossing an arterial or collector road. The Outdoor play area must be shown on a plat to scale submitted at the time of application for the permit.
10. Fencing: Outdoor play area must be enclosed by a fence with a minimum height of four (4) feet.

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11. Play Equipment Location: - No play equipment shall be located within the required yard setbacks.
12. Pathway to Facility: There must be a continuous hard-surface pathway/sidewalk connecting the drop-off and pick-up location to the entrance of the Family Day Home. The pathway shall be kept free of any snow or ice.

11.) Section 9.5.4.D.2 Fair in the R-1 District

Sec. 9.5 Temporary Uses

9.5.4. Standards for Specific Temporary Uses

D. Fair in the R-1 District

1. Existing Uses Only. Fairs may only be approved when located on a parcel with a pre-existing business or use on the subject R-1 zoned property. Vacant properties shall not be used for Fair uses.
2. Duration. A temporary use permit for such activities shall be issued for no more than three (3) consecutive days, ~~five (5)~~ eight (8) times per year. The total number of days allotted for the year may be consolidated resulting in more consecutive days, ~~fewer times~~ s per year.

12.) Section 10.4 Measurements, Computations and Exceptions

Sec. 10.4 Measurements, Computations and Exceptions

10.4.5 Minimum Yard Requirements

- C. **Extensions into Required Yards**. The following uses and structures shall be permitted to be located within required yards, subject to the limitations established

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herein. No structure may be erected over a public right-of-way or easement, except as permitted in the Town Code.

2. Air Conditioners and Similar Equipment. On lots containing single-family detached dwellings, duplex dwellings, multi-family dwellings, and end-unit single-family attached dwellings. ~~Air conditioning equipment, heat pumps heating, ventilation, and air conditioning (HVAC) equipment~~ and similar mechanical equipment may not project more than three (3) feet into any required side or rear yard but no closer than five (5) feet to any lot line. Notwithstanding, window air conditioning units may not project more than eighteen (18) inches into a required yard.

On interior single-family attached dwelling unit lots only, HVAC and similar mechanical equipment may be located no less than eighteen (18) inches (or, 1½ feet) from the property boundary.

On lots containing single-family detached dwellings, duplex dwellings, multi-family dwellings, and end-unit single-family attached dwellings, in which the required side or rear yard setback is five (5) feet or less, ~~heating, ventilation, and air conditioning (HVAC)~~ equipment and other similar equipment may be located no closer than two (2) feet from the side or rear lot line if the following standards are met:

13.) Section 11.6.2. Dimensions of Parking Spaces and Aisles

Sec. 11.6 Parking and Loading Area Design Standards

11.6.2 Dimensions of Parking Spaces and Aisles

- B. **Accessible Parking for Physically Handicapped Persons.** A portion of the total number of ~~required~~ off-street parking spaces provided in each off-street parking area shall be specifically designated, located and reserved for use by persons with physical disabilities. The number and dimensions of handicapped

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accessible parking spaces shall be required in accordance with the Federal Americans with Disabilities Act (ADA).

1. Number of Spaces. The minimum number of accessible spaces to be provided shall be a portion of the total number of off-street parking spaces ~~required~~ provided, as determined from the following schedule. Parking spaces reserved for persons with disabilities shall be counted toward fulfilling off-street parking standards.

14.) Section 11.4.4 Modified Requirements in the Downtown H-1 Overlay District

Sec. 11.4 Alternative Parking Provisions

11.4.4 Modified Requirements in the Downtown H-1 Overlay District

- A. **Building within 500 feet of Municipal Parking Facility.** Where an existing building or structure is used or rehabilitated for any nonresidential use in the B-1 District, no parking spaces shall be required for any such building or structure within 500 feet of a municipal parking facility, measured from the nearest point of the building lot to an entrance to the municipal parking facility. For purposes of this article a municipal parking facility is defined as any parking facility owned and maintained by the Town of Leesburg or Loudoun County, excluding the Loudoun County Government Center parking garage.

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15.) Section 12.3 Twenty-Year Tree Canopy Requirements

Sec. 12.3 Twenty-Year Tree Canopy Requirements

12.3.1 Requirements

- E. If the full canopy requirement cannot be achieved on-site, the remaining requirement of canopy shall be calculated with the cost amount listed in Section ~~G~~ **12.3.3.B Pro-rata Tree Canopy Cost** below and a fee for the total shall be collected and deposited in the Town of Leesburg tree fund.
- F. ~~The cost to establish a new tree with a twenty (20) year canopy area starting with a two (2) — inch caliper nursery stock shall be \$990.00.~~
- ~~G~~. For the purpose of this section, “site” shall include all of the area within a property boundary, either as proposed on the final subdivision plat or site plan or the existing property (property line to property line). In instances where a small portion of land is not being subdivided out of a larger tract of land and is the subject of a site plan application, the Land Development Official may accept the smaller site area for canopy calculation purposes. For multi-phased or sectioned subdivisions, canopy may be calculated for the overall subdivision.

12.3.2 Calculations and Exceptions

- B. **Tree planting credit.** Street trees shall be counted toward required tree canopy cover. All trees planted on site as well as street trees planted in public right of way shall qualify for the minimum tree canopy calculation provided that:
 - 3. Any tree planted within twenty (20) feet of a light pole shall not be counted toward the minimum canopy coverage requirement.**

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16.) Section 12.4 Street Trees

Sec. 12.4 Street Trees

12.4.3 Number

One (1) medium or large canopy tree shall be provided for every forty (40) feet of street frontage, excluding the width of vehicle entrances. ~~In the case of overhead utility lines, only understory trees shall be utilized and one understory tree shall be provided for every fifteen (15) feet of street frontage.~~ In cases where street trees are planted under or near overhead utility lines and understory trees are required per Sec. 12.4.2.C, one (1) tree should be provided for every thirty (30) feet of street frontage. In the case of capital improvement projects for public streets, one (1) tree should be provided for every forty (40) feet of street frontage; however, in no case shall there be a net loss in the number of trees in the area improved. In cases where street trees are planted under or near overhead utility lines and understory trees are required per Sec. 12.4.2.C, one (1) tree should be provided for every thirty (30) feet of street frontage.

17.) Section 12.5 Perimeter Parking Lot Landscaping

Sec. 12.5 Perimeter Parking Lot Screening

12.5.1 Applicability

All parking areas described below, unless explicitly exempted, must be screened as described in this article. For the purposes of this article, parking lots are defined as any area used for the display or parking of any and all types of vehicles, boats or heavy construction equipment, whether these vehicles are or are not for sale or lease. This definition includes, but is not limited to, parking lots and display areas for automobile dealerships and service stations. The area of the parking lot shall be calculated to include all paved areas used for

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ingress/egress. The requirements of this section shall apply to the construction or enlargement of any parking lot with five (5) or more parking spaces. No perimeter parking lot screening shall be required if an S-2 or S-3 screen as described in Sec. **Error! Reference source not found.** is required to be installed where the perimeter parking lot landscaping would otherwise be installed.

18.) Section 12.9 Plant Material Specifications

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12.9.6 Tree Selection and Cover Guide

Table 12.9.6.J. Ground Cover		
Common Name	Botanical Name	Function
Pachysandra	Pachysandra terminalis	B
Ground Juniper	(various species)*	B
Dwarf Cotoneaster	(various species)*	B
Lirope	(various species)*	B

*Use appropriate size cultivars for interior parking lot landscaping. Note that ground covers must be used in on slopes steeper than 23:1 or greater.

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19.) Section 15.7 Regulations Applicable to All Signs

Sec. 15.7 Regulations Applicable to All Signs

15.7.4 Pre-Existing/Non-Conforming Signs

- A. Any sign which was lawfully established in accordance with all applicable regulations in effect at the time of its establishment which does not conform to the provisions herein, and any sign which is accessory to a lawful nonconforming principal use, shall be deemed a lawful pre-existing sign, and may remain, subject to the following conditions:

7. Should a non-conforming sign remain blank, or continue to advertise a business that has been discontinued, vacated or has been inactive on the premises where the non-conforming sign is situated, for a period of two (2) years, it cannot be used, and shall be removed by the property owner when order to do so by the Town.

PASSED this _____ day of _____, 2016.

Kelly Burk, Vice Mayor
Town of Leesburg

ATTEST:

Clerk of Council