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PUBLIC HEARINGS

97-O-04 Zoning Map Amendment, ZMA #96-104, President's Court.

Kay D. Robertson, Senior Planner, presented the staff report dated February 4, 1997 which is on file in the Town Clerk's office. This is a proposal to rezone approximately seven acres on the northwest corner of the intersection of Herndon Parkway and Van Buren Street, from R-10 (Single Family Residential) to R-GC (Residential Garden Court) single family dwellings. The current zoning, R-10, allows dwellings at a density of four dwellings per acre on minimum 10,000 square foot lots. The proposed zoning, R-GC, allows dwellings at a density of six dwellings per acre. The property is designated on Herndon's Land Use Map as "Neighborhood Conservation" which calls for development density similar to surrounding

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residential properties (currently, approximately four dwellings per acre). The developer proposes 31 dwellings at a resulting density of 4.5 dwellings per acre. Owners of the three parcels are Batman Corporation, William Nelson, Ellen L. Deck, David Acheson and Najeeb E. Halaby. The applicant is Batman Corporation.

The subject property has substantial frontage on Van Buren Street, and about one-fourth as much frontage on Herndon Parkway. It backs up to Chandon Woods, a development of single family homes on lots that average about 11,000 square feet in size. It lies across Van Buren Street from the Haley M. Smith Park which is currently under construction. The site is relatively flat, draining toward the south, and is partially wooded. The site is comprised of three existing parcels: one is developed and used as a single family home, and two are undeveloped.

Ms. Robertson briefly outlined the new Generalized Development Plan (GDP) which was distributed earlier in the meeting by the applicant. The number of units has been reduced from 31 to 27. Additional space has been reserved along Herndon Parkway to help preserve existing trees. The homes previously located closer to Herndon Parkway have now been shifted over.

Ms. Robertson compared the proposed R-GC zoning to development that could occur under the conventional R-10 zoning. She stated, because of the property's overall configuration, R-10 development would likely result in a series of individual driveway cuts along Van Buren Street, and this would be much less desirable than a single entrance as proposed for the R-GC development.

Ms. Robertson stated the maximum density permitted in the R-GC district is six units per acre and the applicant is proposing 4.3 units per acre with the 27 lots. She stated the applicant is providing ample on-site parking. The zoning requirement is for two parking spaces on each lot. The applicant has satisfied this requirement and is providing almost double the amount of parking required under the parking ordinance.

Ms. Robertson stated that, earlier in the meeting, copies of the revised proffers and a draft ordinance of rezoning were distributed to Councilmembers. She stated this is a request for a conditional rezoning and the applicant has proposed conditions for the requested rezoning. She briefly highlighted the following proposed conditions:

1. Batman Corporation proffers that the development of the subject property of this application shall be in substantial conformity with the conditions set forth on the "Generalized Development Plan" prepared by Charles P. Johnson & Associates, Incorporated, dated October 8, 1996, and as revised February 21, 1997, and containing three sheets.

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2. Batman proffers that the R-GC district, is an Architectural Control District for the purposes of this development.
3. Batman proffers that garages may not be converted into living space or any use other than the parking of vehicles. This restriction shall be evidenced by a Covenant, in a form approved by the Town Attorney, recorded among the Fairfax County Land Records prior to the sale of any units. The covenant shall run to the benefit of the homeowners' association and to the Town of Herndon. The sales contracts for all units in the development shall contain notice of this restriction.

The garage parking spaces shall be considered required parking spaces for the purposes of this development.

4. Batman proffers that front yard fencing within the project, facing the internal driveway, shall not exceed 6 feet in height. In addition, a deed restriction similar to that in #3 above shall be included to enforce this fence height limitation.
5. Batman proffers that all units in the development shall contain a minimum of 2,800 square feet of finished floor area.
6. Batman proffers that site lighting shall be provided with lamp posts on each property the specific design thereof to be approved by the Architectural Review Board.
7. Batman proffers to use its best efforts to save existing trees on the site and the developer's engineer shall work in conjunction with the Town's Urban Forester to this end.
8. Batman proffers that the design features, subject to Architectural Review Board approval, shall include variety yet have unifying features and the materials, colors and designs shall be varied, but complementary.
9. Batman proffers a cash contribution of no more than \$27,000 as a portion of the funds necessary to provide pedestrian signalization at the Van Buren Street/Herndon Parkway intersection and as a contribution to off-site recreational facilities. The recreation contribution and the pedestrian signalization contribution, together, shall be in the amount of \$1,000 per unit which sum shall be payable upon the issuance of each building permit (\$6,250 of the total represents the contribution towards the signalization improvements and the balance is contributed towards off-site recreation facilities).
10. Batman proffers that Van Buren Street will be improved along the frontage of the site with curb, gutter and sidewalk, with striping for left turn lanes for the project entrance and the Haley Smith Park entrance directly opposite, and one through lane, one right-and-through lane and one dedicated left turn lane at the intersection of Van Buren Street and Herndon Parkway, in accordance with Town of Herndon standards.
11. Batman proffers that sales materials and the sales contracts for all units shall include notice of the existence of the Haley Smith Park across Van Buren Street from the subject property and the possibility of lighted fields and night play.

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12. Batman proffers that all units shall be constructed with at least 50% brick facades (i.e. at least 50 percent of the total opaque vertical surfaces of each building). This requirement may be modified by the Town of Herndon Architectural Review Board in the event that body is of the opinion that varied materials and textures or different materials and textures would be more appropriate.

In addition to the proffers submitted by the applicant, Ms. Robertson stated the staff has compiled a list of "Advisory Guidelines" pertaining to the architectural treatment of the proposed development and recommends that the guidelines be forwarded to the Architectural Review Board (ARB) for reference if the application is approved. Because the units are closer together than they would be under an R-10 zoning, she stated staff believes the proposed guidelines add interest to the development and, with the appropriate architectural detail, believes the units can be compatible with the surrounding neighborhood.

In summary, Ms. Robertson stated staff recommends approval of ZMA#96-104, as presented.

Councilman Downer stated the property is owned by three separate owners and could potentially be developed into three different parcels under the R-10 scenario. He stated the proposed application consolidates the property under the R-GC zoning scenario and is an advantage to the development of the site.

Councilman De Noyer stated his disappointment that the applicant did not submit the signed proffers in a manner timely enough to allow for review by Councilmembers. He stated this has been a topic of discussion by the Mayor and Town Council on several occasions and he urged the Town Council, whenever possible, to strongly discourage the practice of submitting signed proffers at the last minute.

Councilman De Noyer referred to Section 28-8-8(b) of the Zoning Ordinance which states that "...every single family dwelling shall have access to a public street. Access may be over land owned by the association of homeowners..." He stated he interprets this statement to mean that, even if the street is constructed and owned by the homeowners association, the street should conform to public street standards.

Councilman De Noyer stated his concern pertaining to storm water management on the site and he questioned whether the pond has been removed from the plan?

Ms. Robertson stated the pond is still shown on the plan; however, the applicant has requested a waiver of the Chesapeake Bay requirements.

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Councilman De Noyer stated it appears that the pond, when it overflows, would empty across Van Buren Street into a swale, with part of the water going into a storm water ditch. He stated this area has a lot of water and he questioned whether any one has (i) calculated the increased run off anticipated as a result of the proposed application, i.e., pavement, number of units, impervious surfaces, etcetera or (ii) calculated what the storm water run off requirements are for the proposed development?

Ms. Robertson responded, no. She stated this information is usually not required at the rezoning stage.

Councilman De Noyer stated his concern with approving an application that may create problems in the future for the proposed development and the adjacent area. He pointed out that a lot of water currently runs across Van Buren Street and he does not believe the proposed application adequately addresses this issue.

Councilman Tirrell stated the staff report indicates that "...A note should be added on the cover sheet as follows: 21. Street improvements shall be made in accordance with applicable regulations and are not shown definitively hereon." He requested further clarification since the note does not appear on the plans submitted by the applicant.

Ms. Robertson stated the applicant has addressed this item in proffer 10 of the revised proffers which states: "...10. Batman proffers that Van Buren Street will be improved along the frontage of the site with curb, gutter and sidewalk, with striping for left turn lanes for the project entrance and the Haley M. Smith Park entrance directly opposite, and one through lane, one right-and-through lane and one dedicated left turn lane at the intersection of Van Buren Street and Herndon Parkway, in accordance with Town of Herndon standards..."

Councilman Downer pointed out that even though the proffers distributed in last week's dispatch were unsigned, they appeared to be essentially the same as the signed proffers distributed earlier in the meeting.

Councilman Downer referred to proffer 5 which states: "...5. Batman proffers that all units in the development shall contain a minimum of 2,800 square feet of finished floor area." He questioned whether the interior garage space was calculated as part of the "finished floor area"?

Ms. Robertson responded, no.

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Vice Mayor Thoesen questioned what other developments had utilized garage space to satisfy parking requirements.

Ms. Robertson referred to the Parkway Plaza development as one example. She stated there are other townhouse developments in Town with garages but without researching the record for those developments she was not sure whether the garages were included as part of the parking requirements.

Councilman Downer questioned whether the storm water system designed for the Haley M. Smith Park took into account flows that may be generated from future development on properties to the west?

John E. Moore, Director of Public Works, responded the storm water design for the park took into account proposed development within the existing zoning.

Councilman De Noyer stated that it is his understanding that one of the swales, which would carry water from the proposed development, will run between two existing houses located in the Downs subdivision. If this is the case, he stated, he finds it unacceptable. He referred to Section 28-8-8(a) of the Zoning Ordinance which states that "...common open space shall be protected by adequate covenants running with the land..." He stated this item is not addressed in the proffers.

Ms. Robertson responded this item would be addressed during the subdivision and site plan process.

Councilman Downer stated that, theoretically, 24 single family homes could be developed under the existing R-10 zoning; therefore, he pointed out that the storm water calculations for the Haley M. Smith Park had to have been based on the theoretical maximum homes under R-10 zoning.

Mr. Moore stated allowances were made in the design to account for overages or slight changes in the existing zoning.

Councilman Downer stated it appears the storm water infrastructure recently constructed for the Haley M. Smith Park would be adequate to handle the proposed development.

Mr. Moore responded, yes.

Councilman De Noyer stated his concern because of the way the pond is shown on the plan. He stated it appears that most of the water would not be going to the Haley M. Smith Park but would be going through the Downs subdivision.

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Councilman Downer stated this issue would be addressed during the site plan process.

Mr. Moore stated staff will carefully review the storm drainage design and calculations once they are submitted to the Town to ensure they meet standards.

Mayor Rust stated in reviewing the proposed plan, it appears the storm sewer from the pond ties into the existing storm sewer on Van Buren Street.

Mayor Rust stated proffer 1 refers to the GDP "...containing three sheets." He stated the Town Council received plans containing four sheets and he questioned which sheet is not being proffered?

Ms. Robertson stated the fourth sheet outlines a proposed striping plan that was provided by the applicant for informational purposes.

Mayor Rust referred to the specific language contained in proffer 10 regarding the striping for left turn lanes for the project entrance and the Haley M. Smith Park entrance directly opposite, one through lane, one right-and-through lane and one dedicated left turn lane at the intersection of Van Buren Street and Herndon Parkway. He questioned whether this language would take precedence over the sketch provided by the applicant?

Mr. Moore responded, yes.

Comments from the Applicant

Mr. Norman F. Hammer, Jr., attorney for Batman Corporation, the contract purchaser and the applicant, stated the applicant plans to construct 27 high quality homes in the garden court setting. He pointed out this will be the first use of the garden court zoning district in the history of the Town. He stated Ms. Robertson, during her presentation, pointed out the advantages of using this particular zoning district versus the traditional R-10 zoning in this location and he stated the applicant has worked very hard during the past week to resolve concerns expressed at last week's work session. He stated the plan has been revised to reduce the number of units from 31 to 27. In addition to gaining additional space, the applicant was able to save the major span of specimen trees along Herndon Parkway on the site.

Mr. Hammer referred to the "Supplemental Statement of Justification" transmitted to the Town Council last week which addresses many of the concerns expressed at last week's work session:

- This is a transitional site, lying between the Herndon Parkway and the office buildings to the west and office buildings and the park to the south, with R-10 residential neighborhoods to the north and east. This proposal

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provides an effective transition at a density that is less than most town house developments.

- The proposed development produces only one vehicular entrance on Van Buren Street which is aligned with the entrance to the park. This will enable safe left turn lanes into both the park and the proposed development without impeding through traffic. R-10 development could produce multiple driveways accessing Van Buren Street. The proposed application has been able to achieve 12 foot lanes for the through lanes on Van Buren and increased one lane by two feet on the park side. The sketch presently shows 10 foot extended left turn lanes; however, if necessary, during the site plan process, the applicant will be able to expand the left lane as well.
- The proposed development will have the homes along Van Buren Street with their rears towards the lighted park as opposed to R-10 development, which would have home directly facing Van Buren Street and the park. It is extremely important to the developer that the Van Buren Street frontage be treated so as to produce a handsome entrance to the development as well as a gateway to the Town. The final details will be finalized by the ARB, but the concept that the area be heavily landscaped and mounded and the fencing as a combination of brick posts and decorative wood, will make a handsome presentation for the area.
- The homes are proffered to have at least 2,800 square feet of finished floor area, plus either a one or two car garage. The square footage, coupled with the proffer that the homes be at least 50 percent brick, with the location and design to be determined by the ARB, goes a long way in guaranteeing a quality development.

Mr. Hammer briefly outlined the major elements of the proffers:

- The applicant has proffered that the R-GC District is an Architectural Control District for the purposes of this development (proffer 1);
- To guarantee that the garages will remain parking spaces, the applicant has proffered that the restrictive covenants will be recorded with the subdivision deed and will prohibit the garages from being used for anything but parking spaces. The covenants can be enforced by any homeowner, the homeowners' association or by the Town of Herndon. Secondly, in accordance with the GDP and other proffers in this case, the use of a garage for other than parking would constitute a zoning violation which could be enforced by the Town as any other zoning violation (proffer 3);
- All units will contain a minimum of 2,800 square feet of finished floor area (proffer 5);
- The applicant will contribute a total of \$1,000/unit, a maximum of \$27,000 which includes the recommended \$6,250 contribution to the pedestrian signalization of the interchange at Herndon Parkway/Van Buren Street, with the balance for contributions towards off-site recreation (proffer 9);
- The applicant proffers that Van Buren Street will be improved along the frontage of the site with curb, gutter and sidewalk, with striping for left turn lanes for the project entrance and the Haley M. Smith Park entrance directly opposite, and one through lane, one right-and-through lane and one dedicated left turn lane at the intersection of Van Buren Street and Herndon Parkway, in accordance with Town of Herndon standards (proffer 10);

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- All sales materials and the sales contracts for all units will include notice of the existence of the Haley M. Smith Park across Van Buren Street from the subject property and the possibility of lighted fields and night play, as well as notice of the requirement that garages will remain parking spaces (proffer 11); and
- All units will be constructed with at least 50 percent brick facades, with the design to be ultimately determined by the ARB (proffer 12).

Mr. Hammer addressed the drainage concerns. He stated the developer has provided easements for the drainage system for the Haley M. Smith Park. He stated staff believes the park drainage system design will be adequate for the proposed development. The nominal density of R-10 development is 27.2 units, whereas the proposed application under the R-GC zoning produces 27 units.

In summary, Mr. Hammer stated, to his knowledge, all of the citizens living in close proximity to the proposed development, appear to support the application. He stated the proposed development will be both aesthetically and economically successful and he respectfully requested approval of the application.

Councilman De Noyer referred to the applicant's statement that the orientation of the homes will lessen the impact of the park's lighting on the homes. He pointed out the bedrooms, which will be located on the upper floor in the rear of the homes, will be impacted by the park's lights.

Councilman Tirrell referred to proffer 6 that site lighting will be provided with lamp posts on each property the specific design thereof to be approved by the ARB and he questioned whether any street lighting will be provided?

Mr. Hammer responded street lights will be provided on Van Buren Street; however, the developer does not intend to provide street lighting on the interior street, only lamp posts on each property for site lighting.

Councilman Tirrell referred to proffer 12 that all units shall be constructed with at least 50 percent brick facades and that this requirement may be modified by the ARB. He questioned whether it was the intent of the proffer that the ARB could modify the percentage of brick to require less than 50 percent?

Mr. Hammer responded, no. The thought in permitting a modification by the ARB was to allow a change in materials, but the applicant is proffering a minimum of 50 percent brick facades.

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Councilman Tirrell referred to last paragraph contained on page two of Mr. Hammer's letter dated February 21, 1997 "...I mention all of this to reiterate that the applicant in the Presidents Court application simply cannot underground the utilities under the present system and also to hopefully to help you be ready to move quickly to take advantage of the massive changes that are on the way as soon as they arrive before us..." He questioned whether this was the applicant's statement that there will be no undergrounding of utilities?

Mr. Hammer responded that was the intent. He stated it was absolutely impossible for the developer to afford the cost to underground the utilities.

Councilman Downer, as a point of clarification, questioned whether the proposed development would have any above-ground utilities on the site itself?

Mr. Hammer responded, no. He stated the only issue was the transmission facilities along Van Buren Street which would be a site or subdivision requirement that may or not be waived.

Vice Mayor Thoesen referred to the statement that the rear of the homes would be facing Van Buren Street. He questioned whether the rear of homes would face Van Buren Street under the R-10 zoning?

Mr. Hammer responded the fronts of homes would more than likely face Van Buren Street under the R-10 zoning.

Vice Mayor Thoesen questioned whether it was the applicant's understanding that the lighting for the Haley M. Smith Park would be properly shielded and would not have an impact on the development?

Mr. Hammer responded he has not reviewed the lighting proposed for the park and he was not aware that any lighting had been designed to date.

Vice Mayor Thoesen referred to the parking along the street in front of the homes. He stated the parking is depicted on the sketch by "insets" and he questioned how the parking would be designated, i.e., painted asphalt, brick, or concrete? He also requested clarification on how much room (depth) was allowed for the insets? He stated his concern that the on-street parking may create tight squeezes throughout along the interior street of the development.

Mr. Hammer responded the on-street parking spaces would be paved along the perimeter of the curb and would be adequately constructed to accommodate the width of a vehicle for parallel parking.

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Vice Mayor Thoesen stated he felt that the rear fencing and screening would be a significant architectural treatment and he requested additional comments from the applicant regarding this item.

Mr. Hammer responded the presentation and appearance of the development was very important to the developer and these two items would be outstanding, both in appearance and in quality. He stated the fencing will be maintained by the homeowners association to ensure the proper maintenance of the fence.

Vice Mayor Thoesen stated the developer must provide adequate drainage under the ordinance requirements. He stated the Town uses the requirements of the Fairfax County Code and he questioned whether the County requirements were for a two year or 10 year storm?

Mr. Hammer responded, 10 year storms.

Councilman Downer pointed out that the plan shows a perimeter of land owned by the homeowners association surrounding the development. He stated this would help to guarantee uniform maintenance of the fence. He pointed out the exercise trail would also be owned and maintained by the homeowners association as well.

Mayor Rust stated the Town Council addressed the lighting for the park approximately three years ago. At that time, proper shielding was discussed as well as the fact that the lighting be kept internal to the park.

Councilman De Noyer stated the Town Council also placed stringent restrictions on the amount of light that would fall on the ground and the adjacent sites.

Councilman Downer stated that even the best shielded lighting can project a glow; therefore, he stated he concurred with the proffer that the sales contracts for all units contain a notice of the existence of the park across the street and the possibility of lighted fields and night play.

Comments from the Audience

Mr. Joseph J. Camarda, Chairman, ARB, stated the applicant presented the proposed development to the ARB at its work session last month and he briefly conveyed the ARB's comments:

- At the time the application was presented to the ARB, the proposed density was 31 units. If the property were developed as three separate parcels, the density would not be 4.3 houses per acre. When comparing "apples to apples," one finds the proposed development is significantly less than the adjacent 10,000 square foot private properties.

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- The development appears to "turn its back" on the neighborhood and, more specifically, on Van Buren Street by the orientation of the homes. This is an entrance to the Town which will become more significant to the Town in the future and the rear of homes will be facing Van Buren Street. While the developer is proposing a "decorative" fence, it will still be the rear of houses facing Van Buren Street. The fencing should be constructed to provide the most pleasing presentation of the Town.
- Suggestion that something be considered, during the site plan process, to adjust the orientation of some of the homes to allow for more vistas and fronts of the homes in the presentation of the development. For example, attach the homes, garage-to-garage, which, with a zero property line, would have the appearance of individual homes because habitat space would not be connected, would limit the amount of narrow land area between each house, would create more green area, and would create interesting backyards with private courts.
- Fencing around the rear of the property and along the side property line facing the Montessori School is a opaque board-on-board high fence and walls the development in from the neighborhood.
- Lack of recreational space provided on the site plan.
- When reviewing the presentation of the development and the fact that the houses will be built on slabs without basements, it became questionable how the developer would achieve the significant size of the units.

Mr. Gray S. Campbell stated that, while he is the Chairman of the Heritage Preservation Review Board (HPRB), his comments this evening would be as a private citizen. He stated his concern regarding the runoff. He stated the proposed development should take care of its own runoff and it should not be "couched" on a waiver of the Chesapeake Bay Ordinance requirements. He also stated his concern that the title of the properties are in three different names. He questioned who is representing who in this application and who has the actual commitment from all three property owners. Mr. Campbell pointed out if the property remained in the R-10 zoning and was subdivided for single family houses, it would be an issue for consideration by the ARB. R-GC district zoning would not normally be an item for consideration by the ARB and he stated his support for the proffer which allows review by the ARB. He stated his concern regarding the density and he pointed out, even if the property was subdivided under the R-10 zoning, the developer would have to allow for adequate setbacks, easements, and access which would only allow for half of the number of houses proposed. Mr. Campbell stated it was his understanding the purpose of the R-GC zoning is to provide gain for the developer -- the developer can get a large number of houses on a much smaller area. R-GC zoning is also to be used when it offers substantial gains to the Town. He urged the Town Council to consider what "substantial" gains the development would have.

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Mayor Rust stated, for the record, that the proffers had been executed by all three property owners.

Mr. Thomas Ganger, 648 Herndon Parkway, stated, in general, the proposed development appears to be agreeable to him as an adjacent property owner because it provides a nice transition from single family dwelling to an area which contains offices. The proposed development is significantly different than adjacent properties where the typical lot is approximately 20,000 square feet. Mr. Ganger stated his concern regarding storm water run off from the development. He stated he has to take special measures to keep water from standing in his crawl space. Currently, there is standing water in the low area between the adjacent residential properties and the property proposed for development. Mr. Ganger stated the other day, he noticed water actually percolating into the street from a manhole cover at the corner of Van Buren Street and Alabama Drive. He questioned whether any one has considered the drainage impacts the proposed development would have on the adjacent residential properties. He stated his concern that a berm may be used along the boundary of the proposed development to separate it from the adjacent residential properties. He pointed out that a berm would cause drainage problems for adjacent properties because of the slow soil percolation between the properties and many of the existing trees would have to be removed to construct a berm. In summary, Mr. Ganger stated that, as an adjacent property owner, he supports the R-GC concept and the proposed development but he questions whether the density has been reduced adequately? He respectfully requested the Town Council to consider his concerns during their decision process. He stated he is not against rezoning property but he does not support rezoning when the same benefits can be realized from the existing zoning.

Mr. Paul Huelskamp, 605 Austin Lane, stated he supports the R-GC concept and he believes the proposed development, along with the development of the Haley M. Smith Park, will be an asset to this location. He requested clarification on the amount of land proposed for rezoning. He stated the public notices identified the parcels, which are the subject of the rezoning, as being approximately seven acres but the discussion this evening indicates the parcels as approximately six acres. He stated he participated in the process for this rezoning request and he commended the cooperative efforts of the applicant, Town staff, Planning Commission, and Town Council. He stated he believes the applicant has addressed the safety issues raised in his letter of January 31, 1997, but he would like to see these issues further addressed by the

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Town. Mr. Huelskamp stated he believes the applicant has addressed issues relating to: density, parking, cash contribution for off-site recreational facilities, open space, and better ability to save trees. In summary, Mr. Huelskamp stated he believes the drainage issues can be adequately resolved and he respectfully requested approval of the proposed application.

For the record, Mayor Rust stated the proposal is to rezone approximately 6.2 acres of land.

Mr. Rick Schneider, 510 Alabama Drive, stated he is fascinated by the numbers that have been "tossed" around. For example, he stated the application is proposing 27 homes. Town staff notes the applicant, by right, can develop nine, 11 or 16 homes on the property under the existing zoning. When the application was considered by the Planning Commission this past January, "31" was the magic number and the Planning Commission had a choice between 31 homes and 16, 11 or nine, by right. He stated he believes there is a number in between those that have been "tossed" around that may fit the density much better than the numbers being offered this evening. Clearly, he stated 27 is better than 31 and he appreciates the cooperative efforts of the Town staff and applicant to reduce the density but he still believes 27 homes are too many for this parcel. In summary, Mr. Schneider stated he supports the R-GC concept and the proposed development but he questions whether the density has been adequately reduced.

Mrs. Sherry Kassinger, 306 Missouri Avenue, stated her concern that a berm or a fence may be used along the boundary of the proposed development to separate it from the adjacent residential properties. She stated, as an adjacent property owner, she would prefer a natural tree buffer and she does not want a berm or the fence. With regard to the earlier comment that this area is "an entrance to Town," she stated she believes the appearance of the proposed development will be a benefit to the Town. She referred to the Town's entrance at Spring Street and she pointed out that something needs to be done to improve the appearance of that entrance. In summary, Mrs. Kassinger stated she supports the application and she respectfully requested approval of the request.

Mrs. Ellen Deck, 2730 Mustang Drive and property owner of 321 Van Buren Street, stated her support for the application. She stated she believes the remaining issues can be resolved with cooperative efforts. She respectfully requested approval of the proposed application.

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Mr. William Deck, 2730 Mustang Drive and property owner of 321 Van Buren Street, stated his support for the application. He respectfully requested approval of the proposed application.

Comments from the Applicant

Mr. Hammer requested the Mayor and Town Council, during their decision process, to give consideration to the application's substantial external benefits to the Town and he respectfully requested approval of the application.

Comments from the Town Council

Vice Mayor Thoesen questioned whether the intent of the project is to construct the homes as slabs on grade?

Mr. Hammer responded, yes.

Vice Mayor Thoesen questioned whether the GDP specifies a berm on the property line?

Ms. Robertson responded, no. She pointed out the GDP does specify a six-foot fence.

Mayor Rust clarified, if approved, the application will be subject to the site plan process, during which more detailed engineering plans will be reviewed, including drainage.

As requested by Mayor Rust, Mr. Moore provided a brief overview of the drainage issues. He stated he believes all of the concerns expressed this evening pertaining to storm water and drainage can be adequately addressed during the site plan process. He stated the site plan will be subject to the Town's requirements, as well as requirements of the Fairfax County Public Facilities Manual, which regulates the flows that will be emulating from the site. The designed pipe system across Van Buren Street and through Haley M. Smith Park appears to be adequate for the proposed development. With regard to the comment that water was percolating into the street from a manhole cover at the corner of Van Buren Street and Alabama Drive, Mr. Moore stated staff is aware of this problem which will be repaired in the near future.

Councilman Downer stated the GDP shows preliminary storm drainage. After last week's work session discussion, the general feeling was not in support of a berm because it would create more problems than would be solved. He stated it appears there are two areas along the west side of the property to divert water from the west which may improve the drainage on the adjacent residential properties.

Mr. Moore stated the staff will be particularly cautious to ensure that run-off from the proposed development does not impact the adjacent properties, even to an average acceptable

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amount, because of the poor soil conditions. He stated staff will work with the applicant's engineers to properly capture any run-off from the proposed development.

Councilman De Noyer questioned what happens to the water when there is a larger than 10-year storm?

Mr. Moore stated there is normally one provision that is reviewed during the design for adequate over-the-land relief to ensure that anything over and above the designed storms can be safely carried downstream without any additional flooding to the structures or other type occurrences.

Mayor Rust stated a 10-year storm is the standard design criteria for all storm sewer in Town.

Councilman Tirrell stated Mr. Huelskamp's letter dated January 31, 1997 referred to the wooden fence and makes suggestions for masonry. Since the fence is part of the GDP, he questioned whether this would foreclose any ARB discussion of materials for the fence.

Ms. Robertson stated the applicant is committed to provide what is shown on the GDP, which would be a masonry and board-on-board fence. Technically, there are no options for the ARB to negotiate other materials for the fence.

Councilman Downer referred to proffer two which states that "...the R-GC, Residential Garden Court District, is an Architectural Control District for the purposes of this development..." He stated the GDP commits to a minimum of what the fence could look like but the ARB may decide the fence needs to be scalloped or should have different design features. He stated he does not believe there is anything in the proffers that would restrict the ARB during its review of the application.

Ms. Robertson stated she does not believe the ARB can require a masonry wall in lieu of the fence that is shown but could require some variation of what is shown.

Mayor Rust stated, after hearing the comments from the applicant and the citizens, the issue appears to be density. He stated the Town Council must consider whether the increase in density is advantageous to the Town. For example, for the increased density, the Town would get a proffered plan that:

- Guarantees a 2,800 square foot minimum house plus garage.
- Guarantees 50 percent brick.
- Guarantees review by the ARB.

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- Guarantees substantial funds for off-site recreational facilities and a pedestrian actuated traffic light at the corner of Van Buren Street/Herndon Parkway.
- Guarantees some on-site recreational amenities.
- Guarantees street improvements.

Mayor Rust stated these are some of the guarantees that the Town would not get if the property were developed under the existing zoning. He stated that, even though there appears to be a mixed opinion from the testimony presented this evening as to whether the proposed development is advantageous, he stated he is persuaded by the testimony of the citizens immediately adjacent to the development and the ones most impacted. He stated all of the citizens who appear to be the most impacted support the proposed development. Mayor Rust stated the berm should not be an issue and he stated he raised this issue at last week's work session and discussed the fact that the berm would only create drainage problems for the existing homes. He stated this area of Town has poor soil conditions and he believes, while debatable, that the proposed development may even help the problem because it provides outlets along the western property line which will give the water from the adjacent properties a place to go as opposed to ditches. He stated the outfall does not go through the adjacent homes in the Downs subdivision but only through a corner of one which is already in a pipe system which exists. Mayor Rust stated all of these factors should be considered by the Town Council during the decision process.

Councilman Downer concurred with the remarks of Mayor Rust. He moved approval of Ordinance 97-O-04, ZMA #96-104, President's Court, as submitted and in accordance with the signed proffers dated February 24, 1997 and distributed February 25, 1997. This motion was seconded by Councilman Husch.

Councilwoman Bruce stated the property is designated "Neighborhood Conservation," which means the density should be similar to that of the surrounding properties. She stated she compares this property to the surrounding area based on what could actually be developed under the existing zoning. She stated, in concept, she believes homes under the R-GC would be attractive; however, the homes will not be visible from the road. In summary, Councilwoman Bruce stated she believes the density is still too high; therefore, if a decision must be reached this evening, she stated she could not support the application because of the density and because of the "walled in" effect the fence will have on the development.

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Councilman Tirrell stated in listening to the testimony this evening, and after reviewing the density now proposed, the difference is 24 homes versus 27 homes. He stated the application is now at a point in negotiations that is almost beyond concern. He stated Councilwoman Bruce's comments regarding the fence should be considered. When driving along Route 123 in Langley, there are a number of developments that are "walled off" from the road; however, if approved, this will be the first such development in Herndon.

Councilman Tirrell stated the staff, during the presentation of the staff report, recommended that a list of "Advisory Guidelines" pertaining to the architectural treatment of the proposed development be forwarded to the ARB for its reference. He questioned whether it was the intent of the Maker and Seconder of the motion that these advisory guidelines be forwarded to the ARB with the consensus of the Mayor and Town Council.

Councilman Downer requested staff to comment on whether the advisory guidelines should be included as part of the motion or whether a separate motion should be made.

Richard B. Kaufman, Town Attorney, stated the guidelines could be included as part of the motion or could be the subject of a separate motion.

Councilman Downer (the Maker) and Councilman Husch (Seconder) amended the motion to include that the Town Council provide the suggested advisory guidelines on the architectural treatment of the proposed development to the ARB. (The suggested guidelines are contained on pages 1-6 and 1-7 of the February 4, 1997 staff report.)

Vice Mayor Thoesen referred to proffer one which states: "...that the development of the subject property of this application shall be in substantial conformity with the conditions set forth on the GDP..." He questioned whether the proffers would preclude the ARB's ability to revise items identified on the GDP and still be in "substantial" conformance with the GDP? Secondly, he questioned whether the GDP precludes the ARB from revising the orientation of the homes? For example, he stated there may be some homes that could be oriented towards Van Buren Street which would eliminate some of the fencing.

Ms. Robertson stated she believes modifications can be made to the fence and still be in "substantial" conformity. She stated the Zoning Administrator would have to determine whether any change in the orientation of the homes would be in "substantial" conformity based on the actual footprints of the proposed buildings.

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Councilman De Noyer referred to the Statement of Intent for the R-GC zoning district which states "...to encourage an opportunity and incentive to the developer to strive for excellence in physical, social, and economic planning..." He stated Mr. Camarda's earlier comments pertaining to the physical aspect of the proposed development were very appropriate. Councilman De Noyer stated he does not believe a six-foot fence in the front yard is very "social." He stated his concern that a six-foot fence would be permitted along what he considers to be fronts of buildings. The Statement of Intent for the R-GC zoning district also states "...to encourage an orderly and creative arrangement of these dwellings with respect to each other and the entire community..." He stated "creative" is very subjective and, in his opinion, it appears the creativity for this particular proposal is to have as many homes as possible on one piece of land. He pointed out there are several lots in the R-10 zoning district where the lot size is considerably larger than 10,000 square feet in this particular area in Town. He stated he does not agree that every peak development in Town must be "maxed" out to 10,000 square feet in R-10. Councilman De Noyer stated he believes a single entrance could be developed in an R-10 zoning concept and make a very attractive development. He again referred to Section 28-8-8(b) of the Zoning Ordinance which states that "...every single family dwelling shall have access to a public street. Access may be over land owned by the association of homeowners..." and he questioned whether the proposed application violates this requirement? He stated the language "shall" is very strong. The driveway shown on the plan is not a public street and does not meet the requirements of a public street. For these reasons, Councilman De Noyer stated he would not support the application.

Mayor Rust requested staff to clarify Section 28-8-8(b) of the Zoning Ordinance.

Ms. Robertson stated the R-GC district has a specific provision that allows for private streets with public access easements.

Councilman De Noyer restated his concern that the "private street" does not meet public street standards.

Mayor Rust stated private streets must meet the structural requirements of the Town of Herndon and the Virginia Department of Transportation (VDOT), but do not have to meet the geometric designs of the Town.

Mr. Moore provided further clarification. He stated the structural integrity of the private streets must be sufficient to withstand the refuse collection and other public services that are

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provided to the development, but the width of the streets and other geometrics associated with VDOT standards are not necessarily needed because the Town would not be seeking reimbursement for the costs to operate and maintain the streets.

Vice Mayor Thoesen stated, in listening to the testimony of citizens this evening and in analyzing the project, he finds that there is a lot of information which must be absorbed in a short time frame. He also referred to several ideas that were discussed this evening regarding the orientation of the homes and the possibility of fronting some of the homes to Van Buren Street.

Vice Mayor Thoesen moved to **TABLE** the motion until March 11, 1997 to allow additional time for Councilmembers to digest all of the information presented for the project. This motion was seconded by Councilwoman Bruce.

Councilman De Noyer stated he would support the motion to table the motion for two weeks.

Councilwoman Bruce stated she would support the motion to table the motion for two weeks.

Following discussion pertaining to the orientation of the homes, the question was called on the motion to table for two weeks which carried by a vote of 4-3. The vote was:

<u>Councilmembers</u>	
Bruce	yes
De Noyer	yes
Downer	no
Husch	no
Thoesen	yes
Tirrell	no
Mayor Rust	yes