

PROFFERS

RZ 94-D-046

March 10, 1997

Pursuant to Section 15.1-491(a), Code of Virginia, 1950 as amended, the applicant and the owners, hereinafter ("Applicant") hereby proffer that subject to the Board of Supervisors ("Board") approving the Rezoning of the property subject of the captioned rezoning application ("Subject Property") the development of the subject property identified as Fairfax County TMR#s 17-1-004, 18, 19, 20, 21, 22, 40, 41, 42, 43, 44 shall be in accordance with the following conditions which shall supersede any proffers that may have been submitted prior to the above date.

1. Development of the property shall be in conformance with the Generalized Development Plan ("GDP") prepared by The BC Consultants, Inc., dated November 27, 1994 and as revised through February 17, 1997, containing 2 sheets.

2. 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 County Attorney, which shall be 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 Board. The sales contracts for all units in the development shall contain notice of this restriction.

3. Stormwater Management and Best Management Practices shall be provided in accordance with all applicable ordinances, as determined by the Department of Environmental Management.

4. The applicant will adhere to the limits of clearing and grading as shown on the GDP and the area within the limits of clearing and grading shall remain in an undisturbed condition, except as may be necessary, as approved by DEM for the installation of utilities and/or the removal of dead, dying or diseased vegetation. Any areas so disturbed shall be replanted as feasible.

5. Vegetated buffers to consist of existing vegetation and supplemental landscaping shall be provided along all

property boundaries as depicted on the GDP. For the purposes of maximizing the preservation of trees and other existing vegetation within these buffer areas and elsewhere on the site, a landscape plan, prepared in accordance with the GDP shall be submitted as a part of the final site plan and shall be coordinated with and approved by DEM. This plan shall provide for the preservation of specific quality trees or stands of trees located within the buffer areas provided on the periphery of the site and other open space areas and shall be supplemented with understory plantings consisting of ornamental trees, evergreen trees and shrubs as determined by the urban forester.

6. Both the limits of clearing and grading and the drip lines of trees to be preserved that are located outside of the limits of clearing and grading (to the extent reasonably feasible as determined by DEM) shall be fenced prior to clearing and grading and at all other times during construction. In addition, the applicant shall employ other means reasonably necessary, as determined in consultation with DEM, to mitigate the impacts of clearing and grading, including but not limited to, flagging, pruning, fertilization and signing the noted areas to show "Tree Preservation Area."

In the event any of the protected areas or trees designated to be preserved cannot be preserved as the result of final engineering, equivalent tree save areas or equivalent landscaped areas shall be substituted on the site as determined by DEM.

7. The Applicant shall preserve the area shown on the GDP as the future cul de sac until the realigned access road (Laurel Way) and the cul de sac are constructed by VDOT. The area to be dedicated for the future cul du sac shall be dedicated to the Board at Site Plan approval or within 60 days of request by VDOT, whichever first occurs. The Applicant shall reserve density credit in accordance with the Fairfax County Zoning Ordinance in regard to any portions of the subject property dedicated in fee to a public authority.

At the time of Site Plan approval the applicant shall escrow funds, as determined by DEM, for the cost of restoring and landscaping the excess paved area associated with the temporary entrance off Laurel Way which shall be closed at such time that the alternative access is provided in conjunction with construction of the Fairfax County Parkway.

8. For units that will be directly exposed to noise from the future Fairfax County Parkway, located between 150' and 220' of the centerline of the Fairfax County Parkway, a

maximum interior noise level of 45 dBA Ldn shall be achieved. Such standard shall be met by employing the following:

- a. Exterior walls shall have a laboratory sound transmission class ("STC") rating of at least 39.
- b. Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade, they shall have the same laboratory STC rating as walls.
- c. Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
- d. As an alternative to the above, the Applicant, at its sole discretion, may pursue other methods of mitigating highway noise if it can be demonstrated, through an independent noise study for review and approval by DEM, that these methods will be effective in reducing interior noise levels to 45 dBA Ldn or less, or that noise impacts will be such that interior noise mitigation measures will not be needed.

9. In the event noise walls are not constructed by VDOT in conjunction with the construction of the Fairfax County Parkway adjacent to this site, the applicant shall provide noise attenuation structures such as acoustical fencing, walls, earthen berms or a combination thereof to achieve a maximum exterior noise level of 65 dBA Ldn within the rear privacy yards of all units located within 220' of the centerline of the Fairfax County Parkway. The proposed privacy fencing may be utilized for noise attenuation purposes provided the fencing is architecturally solid from ground up with no gaps or openings and is of sufficient height to adequately shield the impacted area from the source of noise, as determined by DEM.

10. Privacy fencing and site amenities such as benches and trellises shall be provided and constructed pursuant to the detail shown on Sheet 2 of the GDP. The proposed rear yard Privacy Fencing shall provide a continuous barrier along the rear property lines of each group of townhouse units. The fences may be designed with gates to provide rear yard access to open space areas. The homeowners association shall be responsible for the continued maintenance of these fences, which shall be evidenced by a covenant in the Homeowners Association documents.

11. Private streets shall be constructed in conformance with Public Facilities Manual standard TS-5A with a minimum 30 foot easement and a minimum 24 foot pavement width. Said private streets shall be constructed of materials and depth of pavement consistent with Section 7-502 of the Public Facilities Manual. Purchasers shall be advised in writing prior to entering into a contract of sale that the homeowners association is responsible for the maintenance of the private streets.

12. Temporary grading and construction easements required by VDOT for the construction of Fairfax Parkway in accordance with the VDOT project #R000-029-249, RW22, C522, as generally depicted on the GDP, shall be provided at time of Site Plan approval or upon demand, whichever is earlier.

13. Upon the issuance of building permits for each unit, the Applicant shall contribute \$500.00 per unit to the Town of Herndon Parks and Recreation Department for the upgrading of athletic fields at Herndon Middle School. Using the Board's approval date of this rezoning application as a base date. This amount shall be adjusted according to the Consumer Cost Index in Engineering News Record by McGraw-Hill.

14. During construction, if blasting is necessary for the installation of utilities and/or foundations, no blasting will be conducted on Sundays.

15. The homeowner's association covenants will contain requirements that any security lighting installed upon the units will be focused so that the light emanating therefrom illuminates the property being secured and does not illuminate other properties.

16. There will be no construction on the exterior of buildings on Sundays on the twelve units that are proximate to the northern property line.

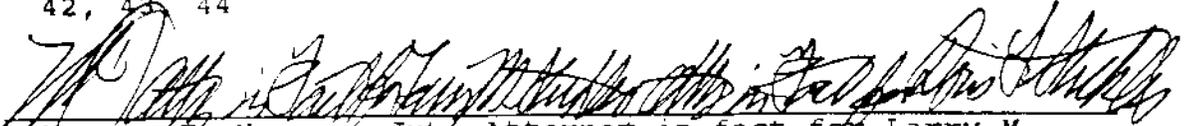
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Signatures on the following page

K. Hovnanian at Stuart Road, Inc., Applicant

By: 
William F. Ostrander, President

Larry M. Stickles as Attorney-in-fact for Doris L. Stickles, Title owner of TMR# 17-1-004, 20, 21, 22, 42, 43, 44

By: 
Norman F. Hammer, Jr., Attorney-in-fact for Larry M. Stickles, Attorney-in-fact for Doris L. Stickles

FWB Bank, Title Owner of TMR# 17-1-004, 18, 19, 40, 41

By: 
Norman F. Hammer, Jr., Attorney-in-fact for FWB Bank