

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SE corner of Offutt Road and Edrich Way		
	*	DEPUTY ZONING
2 nd Election District		
4 th Councilmanic District	*	COMMISSIONER
(Edrich Manor East – Parcel A)		
	*	FOR BALTIMORE COUNTY
Edrich Farms, Inc.		
<i>Petitioner</i>	*	Case No. 2009-0058-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Edrich Farms, Inc., the legal property owner. Special Hearing relief is requested pursuant to Sections 500.7 and 1A04.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to confirm Parcel A also known as Lot 17 satisfied the R.C.5 acreage requirement when the subdivision known as “Edrich Manor East” was originally approved, or in the alternative, to confirm Parcel A also known as Lot 17 satisfies the current R.C.5 acreage requirement. Special Hearing relief is also requested pursuant to Sections 1A00.4 and 1B01.3A7 of the B.C.Z.R. to amend the Final Development Plan for “Edrich Manor East” to include Parcel A also known as Lot 17. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing was Petitioner Edward F. Stanfield on behalf of Edrich Farms, Inc. Arnold Jablon, Esquire appeared as attorney for Petitioner. Also appearing in support of the requested relief was Thomas Church with Development Engineering Consultants, Inc., the professional engineer who prepared the site plan. A number of interested citizens living in the Edrich Manor East subdivision also attended the hearing, including Woodrow Greenwood of 3016 Edrich Way, Christopher Kwegan of 3001

Edrich Way, Mike Myles of 3012 Edrich Way, Damon Hughes of 3010 Edrich Way, and Michael Latimore of 3005 Edrich Way.

Testimony and evidence proceeded by way of a proffer from Petitioner's attorney, Mr. Jablon, and revealed that the subject property is an irregular-shaped property consisting of approximately 1.638 gross acres, more or less, zoned R.C.5. The property is situated at the southeast corner of Offutt Road and Edrich Way, west of Old Court Road and south of Liberty Road in the Randallstown area of Baltimore County. The subject property is presently unimproved and is part of the "Edrich Manor East" subdivision that was proposed by the Developer, Edrich Enterprises, in 2001.

As shown on the Concept Plan for "Edrich Manor East" dated March 22, 2001, which was marked and accepted into evidence as Petitioner's Exhibit 2, the subject property was originally designated as a storm water management facility, as part of the planned 16 lot subdivision for the larger tract. Following the introduction of the Concept Plan, in a letter dated September 25, 2001 to the Baltimore County Department of Environmental Protection and Resource Management ("DEPRM"), the Developer's engineer, Mr. Church, requested a waiver of storm water management for the proposed development. As indicated in the letter from DEPRM dated December 19, 2001 that was marked and accepted into evidence as Petitioner's Exhibit 3, the waiver of storm water management was granted. Because the area comprising the subject property was no longer needed for storm water management, the Developer made a preliminary proposal to create "Lot 17." In pursuing this potential 17th lot in the subdivision, Petitioner submitted a "Perc Test Plan," with a proposed dwelling and septic reserve area for Lot 17, which was marked and accepted into evidence as Petitioner's Exhibit 4.

Thereafter, the Development Plan dated June 18, 2002 (and revised November 4, 2002) was prepared and submitted to the County and a Hearing Officer's Hearing was scheduled. A copy of the plan was marked and accepted into evidence as Petitioner's Exhibit 5. As shown on the Development Plan, the subject property was now designated as "Parcel A" with no lot and no dwelling thereon and no reference to a successful perc test. According to Mr. Jablon, the reason for this was because the County at that time refused to allow a perc test for proposed Lot 17 due to the fact that there was a swale running through the property that might negatively affect storm water runoff from the property. Subsequently, a Hearing Officer's Hearing was held on August 29, 2002. Following the hearing, then-Zoning Commissioner Lawrence E. Schmidt issued an Order dated September 11, 2002 approving the Development Plan for 16 single-family lots. A copy of the Order was marked and accepted into evidence as Petitioner's Exhibit 6. The record plat was recorded on January 9, 2004 and shows the subject property as "Parcel A" consisting then of 1.49 acres (outlined in yellow), with an adjacent storm water management reservation area of 0.196 acre (shaded in purple). A copy of the record plat was marked and accepted into evidence as Petitioner's Exhibit 7. The Final Development Plan ("FDP") for Edrich Manor East approved by the Office of Planning on June 30, 2003 also shows the subject property as "Parcel A" and shows a total area of 1.73 acres, and includes the area reserved for storm water management. A copy of the FDP was marked and accepted into evidence as Petitioner's Exhibit 8.

Following approval of the Development Plan and recordation of the record plat, site work improvements were made to the area along Offutt Road, including installation of curb and gutter and storm drains. As a result of these storm water improvements, the Developer's engineer, Mr. Church, sent a letter to DEPRM dated November 27, 2006 and a revised site plan, renewing the request to perform soil percolation tests on Parcel A to determine its viability as a buildable lot. In

a letter dated December 13, 2006, a copy of which was marked and accepted into evidence as Petitioner's Exhibit 9, DEPRM granted the request. According to Mr. Jablon and Mr. Church, the perc test was performed and the property passed the test. At approximately the same time, Mr. Church also requested that DEPRM permit a reduction in the size of the storm water management reservation area so the subject property would have enough area to meet the minimum lot size requirement at that time of 1.5 acres. According to Mr. Church, this request was also granted and the subject property known as "Parcel A" now consists of 1.501 net acres and 1.638 gross acres.

In their Special Hearing request, Petitioner seeks confirmation that Parcel A -- also known as proposed Lot 17 -- met the R.C.5 minimum acreage requirement that was in place when the Edrich Manor East subdivision was originally approved, or in the alternative, that it meets the current R.C.5 minimum acreage requirement. Petitioner also seeks approval of the First Amended FDP for Edrich Manor East that was marked and accepted into evidence as Petitioner's Exhibit 10, and which includes proposed Lot 17. Mr. Jablon explained that when the original development was proposed in 2001 and 2002, the minimum acreage requirement was 1 acre and the maximum gross residential density was 0.667 dwelling per acre. On the 37 acre tract that comprised the original development, this would have allowed 24 lots on the property. Currently, the minimum acreage requirement is 1.5 acres and the maximum gross residential density is 0.5 dwelling per acre. These regulations would permit 18 lots on the property. Mr. Jablon emphasized that Petitioner is not requesting any increase in density, nor any building lots that increase what was shown in the original record plat or FDP. He also indicated that the intent to have Parcel A as a buildable lot was always present during the planning of the Edrich Manor East subdivision, and that Petitioner has continuously complied with all codes and regulations in order to do so. This

was also verified by Mr. Church, who was involved as the engineer on the planned development back in 2001 when the Concept Plan was submitted.

In support of the requested relief, Mr. Church also testified at the hearing. He is a licensed professional engineer who prepared the site plan and other drawings that were accepted into evidence in this case. He was offered and accepted as an expert in planning, zoning, and development, including interpretation of the B.C.Z.R. and the development policies and provisions in Baltimore County, and specifically including Section 1B01.3.A.7 of the B.C.Z.R. concerning amendments to FDP's and Section 502.1 of the B.C.Z.R. setting forth the relevant special exception criteria.

Mr. Church indicated that DEPRM has approved their requests concerning Parcel A and has agreed to allow Lot 17. In addition, the property has undergone soil percolation tests and passed. The proposed First Amended FDP for Edrich Manor East accepted into evidence as Petitioner's Exhibit 10 shows the configuration of Lot 17, which is virtually unchanged from Parcel A. It also shows the location of the proposed home with a three car garage facing Offutt Road. Mr. Church indicated the home proposed for Lot 17 would be very similar and compatible with the home on Lot 2, just on the other side of Edrich Way. Access to Lot 17 would be via Edrich Way, again similar to the access driveway across the street for Lot 2. Moreover, the building envelope would be similar to those of the other homes in the neighborhood. Mr. Church also described the configuration and acreage of the other 16 existing lots. The smallest lot is Lot 14 with 1.08 acres and the largest is Lot 16 with 1.81 acres. The average size of the 16 lots is approximately 1.36 acres. In Mr. Church's view, proposed Lot 17 fits within the size and scope of the other homes and lots in the subdivision.

Mr. Church then discussed the criteria set forth in Section 502.1 of the B.C.Z.R., which are to be considered in a request for amendment of an FDP under Section 1B01.3.A.7.b of the B.C.Z.R. Mr. Church indicated that an amendment of the FDP to include proposed Lot 17 and the dwelling thereon would not be detrimental to the health, safety, or general welfare of the locale, nor would it generate any additional impacts to the area than were contemplated in the original development of Edrich Manor East. In particular, the inclusion of Lot 17 would not tend to create congestion in roads, streets or alleys therein; would not create a potential hazard from fire, panic or other danger; would not tend to overcrowd land and cause undue concentration of population; would not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements; and would not interfere with adequate light and air. Further, it would not be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of the Zoning Regulations; nor would it be inconsistent with the impermeable surface and vegetative retention provisions of the Zoning Regulations, nor would it be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains. Mr. Church also offered his opinion that the amendment to the FDP would be consistent with the spirit and intent of the original plan and of this Article.

As indicated at the outset, several interested neighbors also attended the hearing and offered testimony concerning the requested relief. These gentlemen, identified earlier in this Order, expressed concerns over the addition of another lot. In particular, Damon Hughes, President of Edrich Manor South, Inc., the community association for the properties, acted as the primary spokesperson for the group. He indicated that they were not informed of the possibility of the addition of Lot 17 by Harvard Homes when they were first sold their lots, and that this

information would have been important to them in their purchasing decision. In addition, he expressed concern that with the downturn in the housing market, the value of an additional home on Lot 17 at this time might be less than the value of their homes at their peak several years ago, which would in turn negatively affect their property values. He also expressed concern about the elevations of Lot 17, vis-à-vis the other lots in the neighborhood (which are higher than Lot 17) and questioned Lot 17's compatibility. In addition, Mr. Greenwood, who resides on Lot 2, directly across Edrich Manor Way from proposed Lot 17, expressed opposition to the layout and configuration of the proposed home on Lot 17. As shown on Petitioner's Exhibit 10, the home is configured in such a manner as to face Offutt Road rather than Edrich Way. In short, Mr. Greenwood disagrees with this configuration because his view will be of the side of the house on Lot 17.

The Zoning Advisory Committee (ZAC) comments were received from the relevant County and State agencies and are made part of the record of this case within the case file. Specifically, the comment dated September 11, 2008 from the Baltimore County Fire Marshal's Office indicates that the site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation. In addition, the comment dated September 29, 2008 from the Office of Planning indicates that after reviewing the petition, site plan, original FDP, and visiting the site for "Edrich Manor East," the Office of Planning supports Petitioner's request to amend the FDP to include Parcel A also known as Lot 17, and that Parcel A satisfied the R.C.5 acreage requirements when "Edrich Manor East" was originally approved per Section 1A04.3.B of the B.C.Z.R.

Based on the aforementioned testimony and evidence presented, I am persuaded to grant the special hearing relief. It is clear that proposed Lot 17 met the R.C.5 acreage requirement when

Edrich Manor East was originally approved, and that -- as a result of DEPRM allowing a reduction in the size of the storm water management reservation area adjacent to Lot 17 -- it also meets the current acreage requirement. Hence, I shall grant that relief.

As to the amendment of the FDP, in my judgment, Petitioner has satisfied its burden under Section 1B01.3.A.7 of the B.C.Z.R., and that Petitioner's plans are appropriate and will not be detrimental to the health, safety, or general welfare of the surrounding locale. Although I can appreciate the concerns articulated by the interested neighbors, I do not believe the addition of Lot 17 to this subdivision will have any negative effects on the other homes or the neighborhood as a whole. To that end, I also find that an amendment to the FDP as depicted in Petitioner's Exhibit 10 would be consistent with the spirit and intent of the original plan and of this Article.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 26th day of November, 2008 that Petitioner's request for Special Hearing relief filed pursuant to Sections 500.7 and 1A04.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to confirm Parcel A also known as Lot 17 satisfies the current R.C.5 acreage requirement be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Special Hearing relief filed pursuant to Sections 500.7 and 1A04.3.B of the B.C.Z.R. to confirm Parcel A also known as Lot 17 satisfied the R.C.5 acreage requirement when the subdivision known as "Edrich Manor East" was originally approved be and is hereby DISMISSED as MOOT; and

IT IS FURTHER ORDERED that Petitioner's request for Special Hearing relief filed pursuant to Sections 1A00.4 and 1B01.3A7 of the B.C.Z.R. to amend the Final Development Plan for "Edrich Manor East" to include Parcel A also known as Lot 17, be and is hereby GRANTED, and the First Amended Final Development Plan for Edrich Manor East accepted into evidence as Petitioner's Exhibit 10, be and is hereby APPROVED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz