

**A. CONDITIONAL USE PERMIT  
DR. AND MRS. ALAN W. EDWARDS**OPENING STATEMENT

This public hearing is held pursuant to § 15.2-2204, Code of Virginia, 1950, as amended to receive public comment on the request by Jack Randall, applicant, on behalf of Alan W. and Erin Edwards, owners, for a Conditional Use Permit to keep livestock for personal enjoyment on property with the zoning designation of R-1, Residential, per Sec. 18-127(16) of the Zoning Ordinance. Specifically, the request seeks permission to have a private chicken coop. The property is located at 29102 Mill Stone Circle in the Darden Mill Estates Subdivision and is known as Tax Parcel 46A-1-7. It is in the Jerusalem Voting District and the Jerusalem Magisterial District.

The notice of this public hearing was published in the Tidewater News on November 7 and November 14, 2010 and all adjacent property owners were notified in writing by first class mail as required by law. Following its public hearing on October 14, 2010, the Southampton County Planning Commission voted unanimously to recommend approval of the request, subject to six (6) specific conditions.

After conclusion of this public hearing, the Board of Supervisors will consider the comments offered this evening and may act upon the application or defer action until such time as it deems appropriate.

Mrs. Beth Lewis, our Director of Community Development and Secretary to the Planning Commission will provide introductory remarks, including an overview of the recommended conditions, after which all interested parties are invited to come forward and express their views.

**MOTION REQUIRED:** If the Board is so inclined, a motion is required to accept the Planning Commission recommendation and approve the conditional use permit.

## **CUP 2010:03**

Jack Randall, applicant, for Alan W. and Erin Edwards, owners

Application Request: Conditional Use Permit for a private chicken coop

### **IDENTIFICATION AND LOCATION INFORMATION**

Current Comprehensive  
Plan designation: Single Family Residential

Current Zoning: R-1, Residential District

Acreage: Approximately 2 acres

Proposed Use: Chicken coop for personal use

Tax Map No.: 46A-1-7

Location: 29102 Mill Stone Circle in the Darden Mills Estates  
subdivision

Magisterial District: Jerusalem

Voting District: Jerusalem

Adjacent Zoning: North: R-1, Residential  
South: R-1  
East: R-1  
West: A-1, Agricultural

Adjacent Land Use: North: Single family residential  
South: Single family residential  
East: Single family residential  
West: Pond, agriculture

### **LAND USE ANALYSIS**

#### Overview

The applicant is the attorney for the owners, Alan and Erin Edwards. The Edwards family has a chicken coop in the rear yard of a single family residence.

Once the need for a Conditional Use Permit to house what the Zoning Ordinance defines as "livestock" in a residential district was uncovered, the applicants sought the required permit. The existing coop is located entirely in the rear yard of a single family residence, and is located no closer than the minimum 100 feet from the rear or side property lines, as required by the ordinance.

The keeping of backyard chickens is growing in popularity throughout the country. In Virginia, backyard or "urban" chickens are permitted with no legislative permission under residential conditions in the following localities:

- Alexandria – Coop no less than 200' from any residence
- Fairfax City and County – Coop no less than 100' from property line
- Falls Church – City Manager permission, coop no less than 40' from any residence
- Frederick County – Area must be fenced
- Henrico County – Coop no less than 400' from property line
- Montgomery County – Coop no less than 100' from residence
- Prince George County – Minimum 20,000 square foot lot
- Richmond City and County – Coop no less than 100' from property line

#### Site Topography and Characteristics

The site is a typical single family residential home site. The site is approximately two acres in size, is fairly flat and well-wooded, and abuts Darden's Mill Pond. The coop is located in the rear yard, not less than 100' from the property lines, as required by Sec. 18.2-127(16) of the zoning ordinance. The property owners own the abutting two-acre lot as well.

#### Transportation

NA. A chicken coop for personal use has no effect on the transportation system or anyone's ability to access their property.

#### Utilities

NA. The existing residence is provided with water/sanitary/electrical service and the services to this or other residences in the neighborhood will not be affected by the coop. Water use in conjunction with the coop is limited.

#### Issues to be considered

- The zoning ordinance requires that any building used to house livestock be at least 100' from the property line. The location of this coop meets that requirement.
- Conditional Use Permits are granted to a specific property owner for a specific use on a specific parcel of property, so any Conditional Use Permit

granted would not transfer to subsequent owners or a different parcel of property.

- The applicant has offered the following conditions:
  - No more than 25 chickens and 2 roosters will be on-site.
  - Waste generated by the fowl will be used as fertilizer on-site.
  - No sales of eggs will take place on-site.
  - The owners acknowledge they assume the risk of dogs coming on their property and harming chickens and they waive any right to take action against dog owners.

### Community Comments

Prior to the Planning Commission meeting, one written comment was sent, which was read into the record at the meeting. At the meeting, several residents of the Darden Mills Estates subdivision and surrounding area spoke both in favor of and in opposition to the request.

### **CONCLUSION**

#### Strengths of application:

- The locational requirement for the chicken coop outlined in the Zoning Ordinance is met by this request.
- The property abuts a pond, so there are neighbors only to the sides of the property, not to the rear.
- Limited agricultural uses such as this, as an accessory use to the principal residential use, may be appropriate in a county with a long agricultural heritage such as Southampton County. "Backyard chickens" are becoming common in suburban areas throughout the country.
- Conditions as listed above have been provided by the applicants that seek to limit the impacts on the neighborhood.

#### Weaknesses of application:

- There was some neighborhood opposition to the request.

### **SUPPORT INFORMATION AND ATTACHMENTS**

- 1) Staff Analysis
- 2) Application
- 3) Notification of adjacent landowners
- 4) Site map

## **PLANING COMMISSION ACTION**

Chairman Edwards turned the meeting over to Vice-Chairman Barham and removed himself from the panel, as he and his wife were the applicants in the public hearing to follow.

Vice-Chairman Barham announced that the first and only public hearing was to consider the following:

Request by Jack Randall, applicant, on behalf of Alan W. and Erin Edwards, owners, for a Conditional Use Permit to keep livestock for personal enjoyment on property with the zoning designation of R-1 Residential, per Sec. 18-127(16) of the Zoning Ordinance. Specifically, the request seeks permission to have a private chicken coop. The tract is located at 29102 Mill Stone Circle in the Darden Mills Estates Subdivision and is known as Tax Parcel 46A-1-7. The property is in the Jerusalem Voting District and the Jerusalem Magisterial District.

Vice-Chairman Barham opened the public hearing.

Mrs. Beth Lewis, Principal Planner and Secretary, advised that this property was zoned R-1 Residential, and per the zoning ordinance, the keeping of livestock was only permitted with a conditional use permit. The zoning ordinance referred to all animals that were not household dogs and cats as livestock. It also referred to the structure/enclosure in which the livestock lived as a stable, although stables were usually associated with horses, cows, and other large animals. The application met the requirements of the zoning ordinance in that the building used to house the livestock was at least 100' from the property line, and the livestock was for personal enjoyment. However, as previously stated, this use was only permitted with a conditional use permit. The property was approximately 2 acres in size and contained a single family residential home. Its rear property line was a lake, and the property across the lake was agriculturally zoned.

Secretary Lewis shared the following strengths and weaknesses of the application:

### Strengths

- The location requirement for the chicken coop as outline in the zoning ordinance had been met
- The property abutted a pond, so there were neighbors only to the sides of the property and not to the rear
- Limited agricultural uses such as this, as an accessory use to the principal residential use, may be appropriate in a county with a long agricultural heritage such as Southampton County. "Backyard chickens" were becoming common in suburban areas throughout the country.

### Weaknesses

- No information was provided concerning:
  - the number of chickens currently on-site or planned
  - any roosters on-site or planned
  - sanitation and waste removal

(This information may be forthcoming this evening)

Secretary Lewis noted that one neighbor came in and spoke to her regarding this application, and she received one email from a neighbor who asked her to read it into the record. She did not receive any phone calls.

Vice-Chairman Barham opened the public hearing.

Mr. Jack Randall, attorney on behalf Alan W. and Erin Edwards, owners, addressed the Commission. He requested to speak first and to be followed by Ms. Yvonne Kostelnik (neighbor), Mr. Ryland Beale (property owner), and Debra Beale (resident). He provided the following information, which also addressed the aforementioned weaknesses of the application:

- No more than 25 chickens and 2 roosters
- No commercial business, including no selling of eggs
- Waste would be used as fertilizer

Mr. Randall advised that Mrs. Lewis had outlined what they were requesting to do. He shared pictures of the chicken coop. He acknowledged that Southampton County did not have a leash law, so it was understood that if a dog were to come in the yard and eat a chicken, it was on his clients. He had explained that to his clients and they were fully aware of that.

Ms. Yvonne Kostelnik (next door neighbor) of 29098 Mill Stone Circle spoke. She advised that she enjoyed the chickens and was in favor of the application.

Mr. Ryland Beale of 19914 Governor Darden Road spoke. He advised that he loved to hear the chickens, especially the roosters in the morning. He also loved to talk to back to the roosters. He thought it would be an injustice to Dr. and Mrs. Edwards' children to not allow them to have these few chickens. He thought they should approve the application.

Ms. Debra Beale of 19261 Beale Lane. She stated that she too enjoyed the chickens, roosters, and the whole idea, and that's why she came home. She'd had enough of the city life in Chesterfield County and came back home to real living. Her father, Mr. Ryland Beale, worked all the time and she hardly ever got a smile out of him. But when he came in every morning, he was laughing about the talk he'd had with the roosters. She asked them to consider approving the chicken coop.

Mr. William Tatum of 19071 Lakeside Drive spoke. He advised that one reason he moved to that subdivision was that dogs could run loose. His dog ate some of Dr. Edwards' chickens. He was sorry for that, but the dog was just doing what he knows. Dr. Edwards came after his dog with a gun – that's how bad his temper was. He did not want chickens and chickens were not in his deed restrictions. He was afraid for his dog.

Mr. Doug Kostelnik (next door neighbor) of 29098 Mill Stone Circle spoke. He stated that Mr. Tatum's dog chased his car every day when he drove by.

Mr. Tatum asked was his dog the only dog in the neighborhood that chased cars?

Mr. Ash Cutchin of 29018 Darden Point Road spoke. He advised that he and Dr. Edwards were neighbors and friends, but he was not in favor of or against the application. He was not opposed to barnyard sounds – the geese in the pond were

noisier than the roosters – but the restrictions for the subdivision were still in effect. Number 5 of the restrictions indicated that animals such as chickens and roosters were not allowed. However, number 12 indicated that only 2 buildings were allowed on the property, but a neighbor had 7 buildings. He cautioned the Commission to carefully consider the application, as it was possible they could be viewed as taking care of one of their own (since Dr. Edwards was the Chairman of the Planning Commission).

Mr. Jack Randall, attorney, advised that this application was a land use issue – it was not about the deed restrictions. Nonetheless, he assured them that he had researched it and the deed restrictions had no affect on this application.

Commissioner Harrell asked, in the 18 months they'd had the chickens, had there been any problems with the chickens themselves? Mr. Randall replied no. The only problem was the incident with Mr. Tatum's dog eating the chickens. His clients were ok with Mr. Tatum's dog and understood that if his dog or any other dog ate the chickens, it was on them.

Mr. Glenn Updike spoke. He stated that he thought they should approve the application. Virginia law gave Dr. Edwards the right to legally shoot any dog that bothered his livestock. He noted that at the back of the Comprehensive Plan, they needed to add some common sense definitions.

Mr. Richard E. Railey, Jr., County Attorney, advised that in order for Dr. Edwards to have a right to shoot any dog that bothered his chickens, the chickens had to first be legal chickens. If the Commission approved the application, the chickens would be legal. And per Virginia law, Dr. Edwards could shoot any dog bothering his livestock, which included chickens.

Mr. William Tatum stated that he thought the chickens, legal or not, were an attractive nuisance. He expressed great concern over the safety of his dog if Dr. Edwards could legally shoot his dog. Again his dog liked chickens, and he apologized for that. But he was just doing what he knows.

Mr. Jack Randall stated that Dr. and Mrs. Edwards would not shoot Mr. Tatum's dog, Toby, if he bothered or ate their chickens. He offered that statement as a condition of approval of the application.

Attorney Railey advised that it was not appropriate to condition that they would not shoot one particular dog – the condition needed to apply to all dogs.

Mr. Jack Randall stated that they would be happy to condition that they would not shoot ANY dogs.

Mr. Barry Pavlina of 28516 Darden Point Road spoke. He stated that at first he wasn't sure how he felt about it, but now he was against it. He did not think it was appropriate for a residential neighborhood.

Secretary Lewis read the following email she received into the record:

Southampton County Planning Commission Meeting  
October 14, 2010

Re: Public Hearing Alan W. Edwards and Erin Edwards Conditional Use Permit for  
Livestock

Comments submitted by Darden Mills Estates Resident:

John J. Smolak  
29011 Darden Point Rd.  
Courtland, VA 23837

First I wish to thank Beth Lewis, Director of Community Development for providing me information on this request. I will not be able to attend the October 14, 2010 meeting due to business travel.

I am not an immediate adjacent neighbor but I can easily hear the chickens/rooster noise as I leave my residence for early morning walks and jogs. As I pass the area of the Edward's residence the livestock noise is quite prevalent.

I wish to make the following comments.

One, approval of this conditional use permit could open the gates as a precedent for others wishing to keep some other livestock or the same type of livestock. I also believe approval of this permit will have a negative effect on property values in our subdivision. People have decided to locate in our subdivision for the purpose of retaining property value, property value growth, and the peace and quite of the countryside within a well designed subdivision.

Two, it may be best that those county residents interested in raising livestock, for whatever good intended reasons, may want to choose a more suitable, larger acreage location within the county to reside. This would afford them that privilege to own livestock without disturbing neighbors and possibly effecting a subdivisions land values. Based on the potential negative effect of property values alone, leads me not to support this requested conditional use permit.

However, if the Planning Commission finds evidence to approve this request, it should place restrictions and limitations regarding the number of chickens or hens, allowing no roosters and require appropriate fencing of the livestock area. Perhaps Beth Lewis can provide further guidance on appropriate limitations and conditions.

Respectfully submitted,

John J. Smolak

Vice-Chairman Barham closed the public hearing.

Commissioner Tennessee advised that for the first 20 years of his life, he had the privilege to be around his aunt's chicken coop. He thought the chickens were good for the children. Regarding the condition of not shooting any dogs, he thought Dr. Edwards should have some recourse if a vicious dog attacked his chickens or his family.

Commissioner Mann stated he understood what Commissioner Tennessee was saying about vicious dogs. However, he did not think they should put anything in the conditions about allowing him to shoot a dog. History had it that Dr. Edwards had been upset that Mr. Tatum's dog had been in the yard.

Mr. Jack Randall acknowledged that there had been a disagreement between Dr. Edwards and Mr. Tatum. However, Dr. Edwards wanted to be a good neighbor and was taking responsibility for what may happen to his chickens. He did not have a problem with Mr. Tatum's dog.

Secretary Lewis pointed out that the County did have a specific ordinance that addressed vicious dogs.

Commissioner Chesson recommended that they put a time limit on the conditional use permit. Also, he would be happier if roosters were not on the property due to noise.

Secretary Lewis clarified that putting a time limit on the conditional use permit was not necessary, as the permit applied specifically to the Edwards' and that piece of property with specific conditions. She also noted that approving this application would not set precedence – these applications should be looked at on an individual basis.

Commissioner Drake commented that this case was unusual. The property was zoned residential, but the large size of the property made it more acceptable for a chicken coop.

Commissioner Drake asked if they should perhaps look at some standards for a chicken coop of this nature? Secretary Lewis advised that they would talk later about possible changes to the zoning ordinance.

Commissioner Harrell commented that for years people in Hunterdale had chickens.

Secretary Lewis provided the following summary of conditions:

- No more than 25 chickens and 2 roosters
- Waste will be used as fertilizer on-site
- No commercial use of chickens
- No selling of eggs – eggs for personal use
- The conditional use permit would expire upon the sell of the property
- *Language to be determined for no shooting of dogs (that could be enforced)*

Attorney Railey provided the following language for the condition of no shooting of dogs:

- The applicants waive their rights to prohibit licensed dogs in the Darden Mill Estates Subdivision from coming on their property, and also waive their rights to seek compensation for damages done by dogs.

Commissioner Harrell moved, seconded by Commissioner Tennessee, to recommend approval of the conditional use permit. All were in favor.

Notices mailed: Nov. 12, 2010

Sign posted: Nov. 12, 2010

Ad in Tidewater News: Nov. 7 and 14, 2010



Give a brief description of the application request (attach additional sheets if necessary):

This application includes a request for a private chicken coop. The owners have provided a detailed photograph of the current chicken coop, which is located 100 feet from any side or rear lot line.

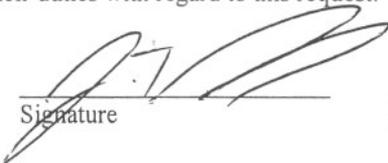
Required Items to be submitted with application:

- Application Form
- Application Fee of \$500.00
- Cover Letter
- Site Plan / Exhibit (Photograph of chicken coop)
- Proffer Statement (if applicable)
- Other (To be determined by agent)

**Note:** If applicant is anyone other than the fee simple owner, written authorization of the fee simple owner designating the applicant as the authorized agent for all matters concerning this application shall be filed with the agent. A Special Limited Power of Attorney form is available upon request.

The undersigned  Owner  Applicant authorizes the entry of Southampton County personnel onto the property in order to perform their duties with regard to this request.

9/9/10  
Date

  
Signature

Signature

**OFFICE USE ONLY**

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Received By: \_\_\_\_\_

Date: \_\_\_\_\_

Post Sign By: \_\_\_\_\_

PC Agenda Date: \_\_\_\_\_

BOS Agenda Date: \_\_\_\_\_

## PROFFERS FOR CONDITIONAL REZONING

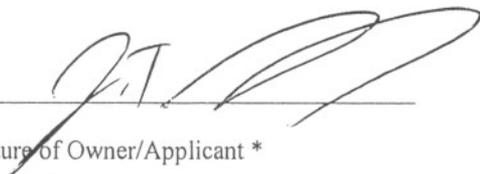
\_\_\_\_\_ Original

\_\_\_\_\_ Amended

Pursuant to Section 18-546 (b) of the Southampton County Code, the owner or duly authorized agent hereby voluntarily proffers the following conditions which shall be applicable to the property, if rezoned:

I (we) hereby proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission:

N/A

  
\_\_\_\_\_  
Signature of Owner/Applicant \*

  
\_\_\_\_\_  
Date

\* If applicant is someone other than the owner, a Special Limited Power of Attorney Form must be submitted with this application.

**STALLINGS &  
BISCHOFF, P.C.**  
ATTORNEYS AND COUNSELORS AT LAW

October 26, 2010

Beth Lewis, AICP, Principal Planner  
Southampton County  
26022 Administration Center Drive  
Courtland, VA 23837

Re: Application for Conditional Use Permit for Alan W. Edwards and Erin Edwards

Dear Ms. Lewis:

With reference to the above-styled application, please be advised that Dr. and Mrs. Edwards have agreed to the following:

- they will have no more than 25 chickens
- they will have no more than 2 roosters
- all waste will be used on site
- no selling of eggs
- they acknowledge they assume the risk of dogs coming on their property and harming chickens and they waive and relinquish any right to take action against dog owners.

If you have any questions, please contact me at (757) 935-9065.

Yours truly,



Jack T. Randall

JTR/ssw

cc: Dr. and Mrs. Alan Edwards

Reply to:

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2101 Parks Avenue, Suite 801, P.O. Box 1687  
Virginia Beach, Virginia 23451-4160  
757-422-4700 • Fax 757-422-3320

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# 29102 Mill Stone Circle, Courtland

