

PROFFERS

Engle Homes Virginia, Inc.

RZ 2002-HM-024

March 27, 2003

Pursuant to Section 15.2-2303(a) Code of Virginia, 1950, as amended, the owner and Engle Homes Virginia, Inc., (hereinafter referred to as the "Applicant"), for themselves, their successors and assigns in RZ 2002-HM-024, filed for property identified as Tax Map 25-1 ((1)) 5, (hereinafter referred to as the "Application Property") hereby proffers the following, provided that the Board of Supervisors approves a rezoning of the Application Property to the PDH-8 District in conjunction with a Conceptual/Final Development Plan (CDP/FDP) for residential development. If accepted, these proffers shall replace and supersede any previous proffers approved on the Application Property.

1. CONCEPTUAL/FINAL DEVELOPMENT PLAN –

- a. Subject to the provisions of Section 16-204 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Application Property shall be in substantial conformance with the CDP/FDP, consisting of three sheets prepared by Charles P. Johnson & Associates, Inc. dated July 22, 2002, and revised through March 27, 2003.
- b. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the CDP/FDP may be permitted as determined by the Zoning Administrator. The Applicant reserves the right to make minor adjustments to the layout, internal lot lines, and lot sizes of the proposed subdivision at time of site plan submission.
- c. Notwithstanding that the CDP/FDP is presented on three sheets and said CDP/FDP is the subject of Proffer 1a. above, it shall be understood that the CDP shall be limited to the points of access, location and amount of open space, limits of clearing and grading, and the total number and general location of units and type of units. The Applicant has the option to request Final Development Plan Amendments ("FDPAs") for elements other than CDP elements from the Planning Commission for all of, or a portion of, the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance.

2. TRANSPORTATION –

- a. The Applicant shall construct a six (6) foot wide asphalt trail east of the Application Property's access to Frying Pan Road, and a six (6) foot wide concrete sidewalk west of the Application Property's access to Frying Pan Road, both within a trail easement as shown on the CDP/FDP, and located along the Application Property's Frying Pan Road frontage.
- b. The Applicant shall construct a four (4) foot concrete sidewalk within the residential development as shown on the CDP/FDP.
- c. The Applicant shall construct a six (6) foot wide concrete sidewalk off-site, approximately 140 feet in length, within an existing ten (10) foot sidewalk easement from the western property line to an existing six (6) foot wide sidewalk as shown on the CDP/FDP.
- d. The Applicant shall construct an eight (8) foot wide asphalt trail that meanders through Parcels A and B as shown on the CDP/FDP. A trail connection to the property line shall be made to a trail planned on the adjacent parcel owned by the Fairfax County Park Authority and identified as 25-1 ((17)) D. Said connection shall be field located in coordination with the Fairfax County Park Authority at time of site plan review.
- e. The Applicant shall install a left turn lane into the Application Property within the dedicated right-of-way of Frying Pan Road as shown on the CDP/FDP. If approved by VDOT and DPWES, said turn lane shall be approximately 200 feet in length with a taper of approximately 100 feet. The Applicant may request a modification of the length of the left turn lane and/or the taper at time of site plan submission.
- f. The Applicant shall contribute the sum of two thousand dollars (\$2,000.00) per approved residential unit for the installation of a traffic signal at the intersection of Fox Mill Road and Frying Pan Road. Said contribution shall be made at time of site plan approval.
- g. Applicant reserves density credit as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance for all dedications as may be reasonably required by Fairfax County or VDOT whether such dedications occur prior to or at time of site plan approval.

3. LANDSCAPING AND OPEN SPACE –

- a. Applicant shall strictly adhere to the limits of clearing and grading as shown on the CDP/FDP, however, locations of storm drainage outfalls and clearing limits thereof may be modified, subject to review and approval by DPWES and the Urban Forestry Division, in order to minimize potential stream erosion at, or downstream of, outfalls.
- b. Applicant shall provide landscaping on the Application Property as generally shown on the CDP/FDP, per the Urban Forester's approval. Evergreen trees shall be a minimum height of eight (8) feet and deciduous trees shall have a minimum caliper of two to two and one-half (2 - 2 ½) inches at the time of planting. Trees planted in the vicinity of the Stormwater Management/Best Management Practices facility and between the EQC boundary and the limits of clearing and grading shall be selected from native and desirable tree species from Categories II, III and IV of Public Facilities Manual (PFM) Table 12.7. Category II trees shall be at least six (6) feet in height and Category III and IV trees shall be at least two inches in caliper at the time of planting. The soil in the area shall be stabilized through the application of mulch and a native grass/woody seed mix.
- c. Parcel B as shown on the CDP/FDP shall be open space owned and maintained by the homeowners' association established for the residential development.
- d. A tree preservation plan shall be submitted as part of the first site plan submission. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, reviewed and approved by the Urban Forestry Division. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees greater than ten (10) inches in diameter and within ten (10) feet of the limits of clearing and grading as shown on the CDP/FDP. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that maximize the survivability of trees identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and other as necessary, shall be included in the plan and provided as determined necessary by the Urban Forester.
- e. All trees shown to be preserved on the tree preservation plan shall be protected by fencing a minimum of four (4) feet in height to be placed at the limits of clearing and grading adjacent to tree preservation areas. Tree protection fencing in the form of a four (4) foot high fourteen (14) gauge welded wire fence attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart, shall be erected at the final limits of clearing and grading and shown on the Phase I and II erosion and sediment control sheets. Tree protection fencing shall only be required for tree save areas adjacent to clearing and grading activities. The tree

protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any clearing or removal of fill conducted on the Application Property or the adjacent Fairfax County Park Authority property. A certified arborist shall monitor the installation of the tree protection fencing and verify in writing that the tree protection fence has been properly installed. Five (5) days prior to commencement of any clearing and grading, the Urban Forestry Division shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

4. PARKS AND RECREATION –

- a. Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend the sum of Nine Hundred Fifty-five Dollars (\$955.00) per approved lot. On-site recreation facilities shall include trails and two benches. The balance of any funds not expended on-site shall be contributed to the Fairfax County Park Authority at time of site plan approval for recreation facilities located in Frying Pan Stream Park, which is west of the Application Property.
- b. Parcel A shall be dedicated to the Fairfax County Park Authority at time of recordation of the record plat for the Application Property. Should the Fairfax County Park Authority decline said dedication, Parcel A shall remain as open space to be owned and maintained by the homeowners' association established for the Application Property, and placed within a conservation easement to the benefit of Fairfax County, subsequent to restoration in accordance with the restoration plan as described in these proffers.

5. STORMWATER MANAGEMENT – BEST MANAGEMENT PRACTICES –

- a. The Applicant shall provide an on-site SWM/BMP facility on the Application Property as shown on Sheet 2 of the CDP/FDP in accordance with the requirements of the Public Facilities Manual and Chesapeake Bay Preservation Ordinance. Erosion and sedimentation controls and storm sewer outfalls shall be provided in accordance with the requirements of the PFM. Landscaping, including trees, shrubs and herbaceous vegetation, shall be provided in the stormwater management facility to the greatest extent feasible in accordance with the planting policies of Fairfax County. Applicant shall utilize species native to the area and with a high value to wildlife subject to the approval of DPWES in coordination with the Urban Forestry Division.
- b. The construction of the SWM facility shall allow for no more than a ten (10) percent increase in the footprint of the facility as shown on the CDP/FDP and as determined by DPWES. If additional clearing and/or grading is determined to be necessary, the SWM facility may be constructed as long as the quality and quantity of landscaping

around the pond and non-stormwater management open space is not reduced and the development is otherwise in substantial conformance with the CDP/FDP.

- c. In addition to meeting the standard requirements of the Public Facilities Manual and Chesapeake Bay Preservation Ordinance, the Applicant shall either provide stormwater management for the two-year storm for an off-site area of approximately two acres to include that portion of Frying Pan Road and the Fox Mill Road North Connector that are not controlled by another stormwater management facility or for the one-year storm on-site, whichever design is more effective in minimizing erosion of the stream channel and can be accommodated within the limitations of the pond. The design of stormwater management facility shall be selected at time of site plan submission and shall be approved by DPWES. Actual detention volumes for the off-site area may be modified based on final engineering design and capacity of the on-site pond, subject to the approval of DPWES.
- d. The Applicant shall provide an adequate outfall for the SWM facility, as determined by DPWES. On-site outfall facilities may include plunge pools or instream check dams/grade control structures or other innovative drainage techniques as may be approved by DPWES. The locations and details of the pools, dams/structures or other innovative techniques shall be included on the site plan. In addition, the Applicant shall prepare and evaluate between six (6) and ten (10) cross-sections of the stream that crosses the Application Property. Said cross-sections shall be taken at intervals of no more than 200 feet, with specific locations subject to the approval of DPWES. Cross-sections shall be evaluated prior to site plan approval. At the cross-sections, Applicant shall demonstrate that, as a result of the development of the Application Property, the two-year storm discharge and velocity shall not increase compared to existing conditions.
- e. The Applicant shall provide stream stabilization measures on the Application Property in the locations as generally shown on the CDP/FDP. The final locations of stabilization areas and the specific biological stabilization technique to be utilized shall be determined by the Applicant at time of site plan submission subject to the approval of DPWES in coordination with the Division of Stormwater Management Planning.
- f. The Applicant shall use best efforts to demonstrate to DPWES at time of site plan submission that stormwater management facilities have been designed so that drainage will not flush through the stormwater management pond without adequate controls, subject to the limitations of the pond design.

6. AFFORDABLE HOUSING –

At the time of building permit approval, a contribution shall be made to the Fairfax County Housing Trust Fund of 0.5% of the sales price of each single family dwelling actually constructed. The amount of said contribution shall be determined by the Department of Housing and Community Development.

7. DESIGN –

- a. Each residential dwelling shall have a minimum driveway length of eighteen (18) feet.
- b. All homes constructed on the Application Property shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES, for either electric or gas energy systems.
- c. Residential dwelling units shall be constructed with brick fronts, and shall be generally consistent with the conceptual elevations shown on the CDP/FDP. The side of proposed Lot 14 shall be constructed of brick with window treatments and architectural features consistent with the front of the unit.
- d. Privacy fences, a minimum of six (6) feet in height, shall be provided at the rear of proposed Lots 1 through 7 on Sheet 2 of the CDP/FDP.
- e. Internal parking lot lighting on the Application Property shall be provided as conceptually shown on the CDP/FDP and shall include shields and full cut-off fixtures.
- f. Retaining walls shall be constructed of keystone or modular block, masonry or material of similar appearance and shall be generally consistent with the conceptual elevations shown on the CDP/FDP. Retaining walls shall be terraced where possible and landscaped to soften the appearance of the walls from the trail located within the EQC. The height of the retaining walls shall vary from approximately two (2) feet to approximately eight (8) feet as necessary in accordance with the grading of the Application Property, as shown on the CDP/FDP. The retaining walls shall have a maximum height of nine (9) feet. Pedestrian access and landscaping associated with the retaining walls shall be provided as shown on the CDP/FDP.

8. ENVIRONMENTAL –

- a. Subject to DPWES approval, the Applicant shall remove existing fill from the Application Property. Removal of the fill shall be completed prior to any grading permits for the construction of residential dwelling units. Applicant shall also remove the fill located on the adjacent property owned by the Fairfax County Park

Authority and identified as 25-1 ((17)) D and within that area identified on the CDP/FDP. The topography shall be restored to pre-stockpile condition, and the area stabilized and re-vegetated with native grasses. Said removal and restoration shall be subject to the receipt of the necessary easements and/or letters of permission from the Fairfax County Park Authority. Easements and letters of permission shall be granted to the Applicant by the Fairfax County Park Authority at no cost.

- b. Should any of the fill removed from the Application Property, or the adjacent property, contain hazardous materials, said hazardous materials shall be disposed of by the Applicant in accordance with all applicable local, State and Federal regulations as reviewed and approved by DPWES, the Fire and Rescue Department and the Health Department.
- c. In conjunction with fill removal, Applicant shall restore the Environmental Quality Corridor (EQC). Said restoration shall be completed in accordance with a restoration plan submitted to the Urban Forestry Division of DPWES at time of first site plan submission. The reforestation plan shall contain an appropriate selection of species based on post-grading conditions, water availability and light levels. Selected species shall consist of preferred deciduous trees as identified in Categories II, III and IV of PFM Table 12.7. As necessary, soils shall be tested and treated to ensure seedling survival, as approved by the Urban Forestry Division. In addition to the 2.5 inch caliper trees proposed within the existing EQC and floodplain as shown on the approved CDP/FDP, the reforestation plan shall include seedling planting as specified in PFM 12-0805.5. The reforestation plan shall also include all information needed for successful implementation, including, but not limited to, timing, methods of installation and long-term maintenance commitments to ensure establishment. Restoration efforts shall include the use of hand held machinery, removal of dead or dying vegetation, removal of trash and litter, re-vegetation of the area and stabilization of the re-vegetated area with the planting of an annual rye or other suitable grasses.
- d. Applicant shall provide the following studies:
 1. Prior to site plan approval, a Phase I investigation of the Application Property shall be submitted to DPWES for review and approval in coordination with the Fire and Rescue Department, the Health Department, and other appropriate agencies as determined by DPWES (hereinafter referred to as the "reviewing agencies"). This investigation shall be generally consistent with the procedures described within the American Society for Testing and Materials document entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" as determined by DPWES in coordination with the reviewing agencies.

2. If warranted by the results of the Phase I investigation, as reasonably determined by DPWES in coordination with the reviewing agencies, a Phase II monitoring program shall be performed to determine if soil, surface water, or ground water contaminants are present on the Application Property and/or have migrated from the Application Property. If such a program is pursued, monitoring parameters shall be subject to the approval of DPWES in coordination with the reviewing agencies. If contaminants are detected in concentrations requiring remedial action, a remediation program shall be performed in accordance with all applicable Federal, State, and County requirements. Sufficient documentation of completion of the remediation program (with the exception of long term follow-up monitoring efforts, if necessary) or an appropriate corrective action plan consistent with the proposed development (as determined by DPWES in conjunction with the reviewing agencies) shall be provided to DPWES prior to site plan approval. The purpose of the Phase II Environmental Site Assessment, if necessary, shall be to determine the likelihood of the presence of hazardous materials and its removal. Subsequent to the removal of any hazardous materials, development of the Application Property may proceed in accordance with the CDP/FDP.

9. CONSTRUCTION HOURS –

- a. All construction activity shall be limited to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday. This proffer shall only apply to the original house construction and not to future additions by homeowners.
- b. Construction activity on Sundays shall be limited to interior work only between the hours of 7:00 a.m. to 6:00 p.m. This proffer shall only apply to the original house construction and not to future additions by homeowners.

10. NOISE ATTENUATION –

- a. In order to reduce interior noise to a level of approximately DNL 45 dBA, the facades of units exposed to noise within 180 feet of the centerline of Frying Pan Road, within noise contour levels DNL 65 to 70 dBA, shall include the following acoustical treatment measures:
 1. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.
 2. Doors and windows shall have a laboratory STC of at least 28 unless glazing constitutes more than 20 percent of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20 percent of an exposed facade, then the glazing shall have a STC rating of at least 39.

3. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

 - b. In order to reduce exterior noise in rear yards to a level of DNL 65 dBA, for any rear yard area within 120 feet of the centerline of Frying Pan Road that will not otherwise be shielded from highway noise an architecturally solid privacy fence(s) [with no gaps or openings in the fence(s)] shall be provided. This fence, which can be incorporated into the privacy fencing for these lots, shall be of a height sufficient to break all lines of sight between noise sources and receptors in the rear yards. Documentation shall be provided at the time of site plan review that demonstrates, based on post-development topography, that such a fence will be provided.

 - c. Nothing herein shall be construed to restrict or otherwise limit the use of balconies, patios or decks on residential units.

 - d. The Applicant reserves the right to pursue other methods of mitigating highway noise impacts if it can be demonstrated, through an independent noise study as reviewed and approved by DPWES prior to site plan approval, in coordination with DPZ, that these methods will be effective in reducing interior noise levels to approximately DNL 45 dBA and exterior noise levels to approximately DNL 65 dBA.
11. MISCELLANEOUS –
- a. These proffers shall bind and inure to the benefit of the Applicant and his or her successors and assigns.

 - b. The Applicant shall establish a homeowners' association for the proposed development to own, manage and maintain Parcel B on the CDP/FDP and any other community owned land and improvements. Said maintenance obligations shall be disclosed to contract purchasers of residential units within the proposed development and shall be disclosed in the homeowners' association documents prepared for the Application Property.

 - c. No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia, shall be placed on or off-site to assist in the initial sale of homes on the Application Property. Furthermore, the agents and employees involved in the marketing and sale of the residential units on the Application Property shall be directed to adhere to this proffer.

- d. The Applicant shall contribute the sum of twenty thousand dollars (\$20,000.00) to Fairfax County Public Schools at time of site plan approval.
- e. All of the improvements described herein shall be constructed concurrent with development of the Application Property.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

RZ 2002-HM-024

TITLE OWNER:
BATMAN/MCNAIR ASSOCIATES, L.P.

By: BATMAN/MCNAIR, INC.,
Its: General Partner

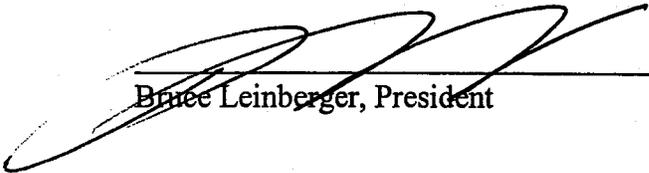


Bahman Batmanghelidj, President

[SIGNATURES END]

RZ 2002-HM-024

APPLICANT/CONTRACT PURCHASER:
ENGLE HOMES VIRGINIA, INC.



Bruce Leinberger, President

[SIGNATURES CONTINUED ON NEXT PAGE]

PROPOSED FINAL DEVELOPMENT PLAN CONDITIONS

FDP 2002-HM-024

April 22, 2003

If it is the intent of the Planning Commission to approve Final Development Plan FDP 2002-HM-024 for development of fourteen (14) single family attached dwelling units located at Tax Map 25-1 ((1)), 5, Staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions.

1. The Applicant shall include in the design of the on-site SWM/BMP facility, subject to approval by DPWES, one or more measures such as a level spreader, check dam, weir, flow splitter, or other similar device(s) to mitigate any "flush-through" effect associated with the conveyance of off-site drainage through the pond, thereby ensuring that the facility will provide effective BMP controls for the required BMP volume and that the facility will be effective in meeting the commitment made by the proffer statement dated March 27, 2003 (Proffer 5c).
2. In order to ensure that the evaluation of cross sections as set forth in Proffer 5d of the March 27, 2003 proffer statement extends a sufficient distance downstream of the property, the extent of the evaluation of cross sections shall extend as far as approximately 1,200 feet downstream of the property, as deemed necessary by DPWES.
3. In the event that the SWM/BMP facility footprint is increased pursuant to Proffer 5b of the March 27, 2003 proffer statement, neither the quantity and quality of landscaping around the pond nor non-SWM open space on the property shall be reduced, subject to the determination of DPWES.

