



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

January 17, 2003

MEMORANDUM

TO: Montgomery County Planning Board

VIA: John A. Carter, Chief, *JAC*
Community-Based Planning Division

FROM: Judy Daniel, AICP, Team Leader, Rural Area Team
Community-Based Planning Division (301/495-4559)

SUBJECT: Zoning Text Amendment: Riding Stable Special Exception

RECOMMENDATION: Approval to Transmit Comments and Recommendations to the County Council.

BACKGROUND:

In July of 2002, the Planning Board reviewed a special exception case for a proposed riding stable on Partnership Road. This was a very complicated case for a very large proposed facility. The Planning Board recommended approval of the use with a number of limiting conditions. When this case was heard before the Board of Appeals, the Board received testimony from the People's Counsel and the attorney representing opposition to this case that revolved around an interpretation of the footnote (#17) for this use category. On consideration of a memorandum regarding the footnote, the Board of Appeals dismissed the petition.

The brief submitted and accepted by the Board of Appeals stated that only the last sentence of the footnote related to riding stables in Agricultural Zones was pertinent as to whether a special exception is required. It states: *If more than two horse shows are conducted per year and the property contains less than 25 acres, a special exception is required.* The Board of Appeals dismissed the case, finding that the application did not require a special exception because it did not propose more than two horse shows a year on less than 25 acres. (The petition was for a property of approximately 88 acres.)

The brief concluded that if the Board of Appeals determined that only the last sentence of the seven clauses of the footnote is to be used to determine the need for special exception - then the first six clauses are pertinent to all riding stables in the Agricultural Zones. Two of those clauses in particular - if read in this context and with this interpretation - clearly limit commercial riding stables in Agricultural Zones to no more than two horses not belonging to the stable owner that may be boarded, and no more than two horses that may be rented for riding or instruction.

The uncertainty for the equestrian community arose because the Board of Appeals believed they did not have the legal right to draw this conclusion - leaving the issue in the hands of the Department of Permitting Services to enforce or interpret. The Board specifically declined to address this implication of their interpretation of the footnote. An excerpt from a segment of the transcript of this hearing pertinent to this conclusion is attached to this report.

The footnote in question (#17) contains seven clauses. It states:

“Minimum lot area for one or 2 horses is 2 acres. For 3-10 horses, the minimum lot area is 5 acres. If more than 10 horses are kept, the minimum lot area must be increased by one-half acre per horse. A maximum of 2 horses may be rented for riding or instruction. A maximum 2 horses not belonging to the property owner may be boarded. Any riding stable for more than 10 horses must coordinate with the soil conservation district in the development of a soil and water conservation plan. If more than two horse shows are conducted per year and the property contains less than 25 acres, a special exception is required.”

This footnote was revised about five years ago, the revised language resulting from the negotiations of a Task Force representing the equestrian community and rural area residents along with the M-NCPPC and County staff. Final modifications to the footnote after the Task Force completed its work resulted in the confusion that the Board of Appeals acted upon.

The original language of the footnote related only to the number of horses that could be kept on the property (clauses 1-5). The added language related to the soil and water conservation plan and the horse shows – issues of concern to rural area residents (clauses 6-7). The original language required a special exception for a riding stable with more than two horses being boarded or rented for riding or instruction. The intent of the modification was not to change that, but to add another threshold for special exception – the number of horse shows. (And to set up a threshold for requiring a soil and water conservation plan.) The language clarifying this intent was left out in the adopted version.

Even though those who worked on that modification were available to clarify the intent of the footnote, the Board of Appeals firmly believes that they cannot accept that type of information and must be fully bound only to a “plain reading” of the language.

Although the Department of Permitting Services has not yet commented on this situation, it unfortunately, by implication, leaves riding stables in the Agricultural Zones (most importantly commercial riding stables in the Agricultural Zones) probably limited to no more than four horses for riding, instruction or boarding. And because the language is in a footnote in the Agricultural Zones, this restriction does not apply to a riding stable in a residential zone. The Board did not believe it was appropriate to address the express illogic of this interpretation, much less the potential hardship on the riding stable owners.

The staff is concerned because the consequences of this interpretation are detrimental to the current and future riding stables in the Agricultural Zones. The staff is also concerned that regulatory interpretations that do not take into account the consequences to the greater community, particularly when the actual intent is clearly known, can cause unnecessary threats to the livelihood of those involved. If a regulation is found to be ambiguous, surely it would be better to interpret on the side of logic and common sense, and then to recommend to the County that the statute be clarified.

In this instance, in order to rectify the situation, the staff recommends that the Planning Board recommend a swift adoption by the Council of a text amendment to clarify the intent of the footnote for riding stables, and further, to provide additional criteria that will allow a better guideline for applications – particularly for larger riding facilities.

CONCLUSION:

Acknowledging the hardship and uncertainty this decision has placed upon the equestrian industry in Montgomery County, the M-NCPPC staff have worked during the fall with the People's Counsel, the Agricultural Services Division of the County, and a task force of stable owners, to draft a text amendment to clear up the longstanding concerns with this footnote, and better address the issues that are of concern when large equestrian facilities are proposed.

The Riding Stable Task Force work began before this immediate situation, because of problems they believe already existed with the regulatory framework for Riding Stables. This decision by the Board of Appeals speeded up their deliberations. The staff believes that swift action is warranted to address the uncertainty created by the Board of Appeal's decision.

These changes should also allow the large majority of small riding stables with little potential to have a negative impact on their surrounding community to be approved by right. With that goal in mind, the staff recommends the following changes to the Zoning Ordinance:

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Attachments

RECOMMENDED AMENDMENTS TO “RIDING STABLE” REGULATORY FRAMEWORK

1. Amend Division 59-A-2 (Definitions) to create the use category of “Equestrian Facility” to replace “Riding Stable.” This category name has a broader connotation that better represents the range of activities that relate to equestrian activities. The suggested modification is:

Equestrian Facility: Any building(s), structure(s), or land area that is used or designed for the care, breeding, boarding, rental, riding, sport eventing, or training of horses or ponies. An Equestrian Facility may conduct horse shows, rodeos or other competition or display of riding ability. An Equestrian Facility may be private or commercial in nature.

Riding Stable: See Equestrian Facility.

2. Modify Division 59-A-6 (Uses Permitted in More than One Class of Zone) to create basic standards for an Equestrian Facility and to determine when they are to be permitted by right and when to be permitted by special exception in the Agricultural Zones. The following standards are recommended. The language on soil and water conservation has been carefully worded to properly reflect the approval methods of the applicable agencies:

Sec. 59-A-6.X. Equestrian Facility Standards

All Equestrian Facilities must meet the operating standards of “A” below.

An Equestrian Facility in designated (59-C-9.3) Agricultural Zones may be permitted by right or by special exception under the following criteria in “B” below. Any one of the listed criteria is sufficient to require special exception review. Those requiring special exception are reviewed under the specific special exception standards of 59-G-2.49.

A. Operating Criteria:

1. For any equestrian facility, the minimum acreage of pasture per horse must be:
 - 1-2 horses 2 acres
 - 3-10 horses 5 acres
 - More than 10 horses an additional one-half acre per horse
2. All Equestrian Facilities for more than 10 horses must meet all nutrient management, water quality, and soil conservation standards of the County and State; and must submit a nutrient management plan approved by the Cooperative Extension Service; and a soil conservation and water quality plan approved by the Montgomery Soil Conservation District Board of Supervisors both to be submitted to the Department of Permitting Services within one year of approval of the special exception.

B. Special Exception Threshold Criteria for Agricultural Zones:

	Commercial Facility		Private Facility
Horses Boarded	P	Up to 30	NA
	SE	Over 30	NA
Horses Rented for Riding or Used for Instruction	P	Up to 30	NA
	SE	Over 30	NA
Total Horses on the property	P	Up to 50	NA
	SE	Over 50	NA
Number Shows per Year	P	1-2	1-2
	SE	More than 2	More than 2
Number Horses/Acre	P	1 per acre of pasture	1 per acre of pasture
	SE	Over 1 per acre of pasture	Over 1 per acre of pasture
Lighted Outdoor Arena/Ring	P	1	1
	SE	More than 1	More than 1
Sport Field	P	no lights	no lights
	SE	lights	lights

3. Amend Section 59-C-1.31 (Land Uses in the One-Family Residential Zones). Change the name of this use from Riding Stable to Equestrian Facility, and modify (noted by underline) the footnote to the use to reference the standards to be established in 59-A-6.X:

42 See 59-A-6.Xa. for Equestrian Facility Operating Criteria. Any riding stable established by special exception in the R-90 zone before May 6, 2002 is a conforming use and may be modified, repaired or reconstructed, or enlarged a maximum of 5% of the total floor area in accordance with the special exception standards in effect before May 6, 2002.

4. Amend Section 59-C-9.3 (Land Uses in the Agricultural Zones) to move the "Equestrian Facility" use from the "Cultural, Entertainment, Recreational" category to the Agricultural category.

In the Agricultural category, separate private equestrian facilities from commercial equestrian facilities in order to ensure that commercial riding facilities are required to meet subdivision regulations.

Provide that the use is Permitted or Special Exception (depending on the criteria in 59-A-6.Xb) in all zones except the Rural Neighborhood Cluster Zone, where it is always to be a Special Exception.

Revise the footnote for this use (#17) to reference the newly created section in 59-A-6 rather than defining the Permitted vs. Special Exception criteria in a footnote.

5. Revise the Special Exception requirements in Section 59-G-2.49 for this use as noted below (with additions and ~~deletions~~ noted). The soil requirement is restated because there is the potential (although unlikely) for a special exception application for a commercial facility for fewer than 10 horses and the staff believes any commercial facility required to have Special Exception approval should have to meet soil and water conservation standards:

Sec. 59-G-2.49. Equestrian Facility or Riding Stable.

The following provisions apply to an Equestrian Facility ~~a riding stable~~ in any zone where allowed by special exception:

- (a) ~~The minimum lot area for one or 2 horses is 2 acres.~~
- (b) ~~If 3 to 10 horses are kept, the minimum lot area is 5 acres. If more than 10 horses are kept, the minimum lot area of 5 acres must be increased by one-half acres per horse. A 5-acre riding stable accommodating more than 10 horses for which a petition was filed with the Board prior to March 25, 1986, is a conforming use and may be amended in accordance with the modification provisions of section 59-G-1.3(c).~~
- (be) No building, show ring, paddock area or manure storage may be located less than 50 feet from the nearest property line, unless the Board or Hearing Examiner grants a waiver upon a finding the reduced setback is compatible with adjacent land uses.
- (cd) In order to prevent adverse impact on adjoining uses, the Board may limit:
 - (1) The number of horses (not belonging to the property owner) that may be boarded.
 - (2) The number of horses that may be rented for recreational riding or instruction.
 - (3) The number of horse shows that may be held in a one-year period.
 - (4) The hours of operation for a commercial equestrian facility.
 - (5) The number of lighted outdoor riding rings, arenas, sport fields or other facilities.
- (e) ~~Any riding stable for more than 10 horses must coordinate with the soil conservation district in the development of a soil and water conservation plan.~~
- (d) Any Equestrian Facility proposing less than one acre of pasture per horse kept on the property must submit a complete plan of pasture maintenance, animal feeding methods, and other information to allow a full evaluation that ensures proper care of the horses and proper maintenance of the pastures.
- (ef) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not need to be controlled as stringently as the impact of the special exception in the residential zones.
- (f g) ~~All animal waste must be contained and controlled on the site.~~ Any Equestrian Facility requesting special exception approval must meet all nutrient management, water quality, and soil conservation standards of the county and state; and must submit a nutrient management plan approved by the Cooperative Extension Service; and a soil conservation and water quality plan approved by the Montgomery Soil Conservation District Board of Supervisors both to be submitted to the Department of Permitting Services within one year of approval of the special exception.

NOTES FROM THE TRANSCRIPT OF THE BOARD OF APPEALS HEARING

Mr. Spence (Chair of the Board of Appeals):

I can't, I don't believe that this Board has, first of all, the issue with regard to whether or not there should be two horses boarded or that there can be more than two horses boarded, we just don't get there. We don't get there because the first question is whether or not a special exception is required. I understand what Mr. Orens is arguing about looking at the statute as a whole. But, I don't think that the statute could be any plainer.....And I don't find, I think it's unfortunate that other agencies in the County government might be sending conflicting signals as to how they would interpret this. But, I just do not see us interpreting any other way than what it says on its face, and that....Again I don't even get to the part as to the Board in question because you know, may not make sense. It may not look right, but it is not an issue that we have today. The question we have is do we have jurisdiction today? This is an administrative appeal. It is a request for a special exception.

Mr. Orens suggests that we ask the County Attorney to issue an interpretation. When the County Council wants to put in the Zoning Ordinance that an appeal or that a special exception going to be heard by the County Attorney, they can go ahead and do that. But, today, it says Board of Appeals. It is our determination to make. We are the agency charged with interpreting the Zoning Ordinance and it does not even require much interpretation. ...

Mr. Fultz (Member of the Board of Appeals):

.....But, I don't find a discrepancy between the intent of the Council in stating that special exception uses in the agricultural zone should be regulated less stringently than those in the residential zones, and the limitation on boarding and renting because in the agricultural zone you could have 100 head of cattle. You could have 100 horses that belong to you and maybe two of those horses are rented out and maybe two of those, and maybe two additional horses belong to someone else and are boarded.

But I don't find that the limitation pertaining to boarding and renting are inconsistent when you look at these uses in agricultural zones in the context of other sorts of agricultural uses involving animals on your property.

Mr. Spence: And let's put it this way. If the language seems to be, doesn't seem to meet the needs of the applicant.... The appropriate remedy is to go to the County Council and not to come to the Board of Appeals.....It can't be any plainer what the Council wanted to do in this instance at least with regard to the special exception.....But I also know that we get, it is this Board's job to interpret, to rule on and determine the appropriateness of a determination of the Department of Permitting Services. And if they make a determination, the appeal is to hear. And if this case comes to us in another posture, at least it will be in the correct posture, framed in an administrative appeal. And in that instance, we'll take whatever is appropriate action as is appropriate here.The Code is clear (to the Board) that this is not a special exception use. That it is a permitted case, and I don't make any opinions as to what the rest of it may mean until that case is in front of us.